
North Dakota Century Code

Title 5: Alcoholic Beverages
Title 12.1: Criminal Code
Title 29: Judicial
Procedure, Criminal
Title 39: Motor Vehicles

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TITLE 5 ALCOHOLIC BEVERAGES

CHAPTER 5-01 GENERAL PROVISIONS

5-01-01. Definitions.

In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume and includes an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses, which has not undergone distillation.
4. "Bottle or can" means any container, regardless of the material from which made, having a capacity less than a bulk container for use for the sale of malt beverages at retail.
5. "Direct shipper" means a person that is licensed by the commissioner and ships or causes to be shipped alcoholic beverages directly into this state to a consumer for the consumer's personal use and not for resale.
6. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
7. "Domestic distillery" means a distillery that produces twenty-five thousand gallons [94635 liters] or fewer of distilled spirits per year.
8. "In bulk" means in containers having a capacity not less than one-sixth barrel for use for the sale of malt beverages at retail.
9. "Licensed alcohol carrier" means a person licensed to transport or deliver alcoholic beverages to a consumer without first having the alcoholic beverage delivered through a wholesaler licensed in this state.
10. "Licensed logistics shipper" means a person that provides fulfillment house services, including warehousing, packaging, distribution, order processing, or shipment of alcoholic beverages on behalf of a licensed direct shipper and by way of a licensed alcohol carrier.
11. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
12. "Liquor" means any alcoholic beverage except beer.
13. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
14. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
15. "Manufacturing distillery" means a distillery that produces forty thousand gallons [151416 liters] or fewer of distilled spirits per year.
16. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises or serves beer produced or manufactured on the premises for purposes of sampling the beer.
17. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
18. "Satellite location" means an offsite location owned or leased by a manufacturing distillery to conduct retail operations.
19. "Sparkling wine" means wine made effervescent with carbon dioxide.

20. "Supplier" means an alcoholic beverage manufacturer, importer, marketer, or wholesaler selling alcoholic beverages to a wholesaler licensed in this state for purposes of resale.
21. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
22. "Twenty-one years of age" means it is after eight a.m. on the date twenty-one years after a person's date of birth.
23. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

5-01-02. Exceptions.

Nothing contained in this title may be construed to apply to the following articles, when they are unfit for beverage purposes:

1. Denatured alcohol produced and used pursuant to Acts of Congress, and the regulations thereunder;
2. Patent, proprietary, medical, pharmaceutical, antiseptic, and toilet preparations;
3. Flavoring extracts, syrups, and food products; or
4. Scientific, chemical, and industrial products;

nor to the manufacture or sale of said articles containing alcohol. This title does not apply to wines delivered to priests, rabbis, and ministers for sacramental use.

5-01-03. Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions.

A person may manufacture alcoholic beverages for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the alcohol and tobacco tax and trade bureau of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the alcohol and tobacco tax and trade bureau of the United States treasury department is guilty of a class A misdemeanor and property used for the same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages, a winery, or a distillery or other plant for the distilling, manufacturing, or processing of alcohol within this state if the person has secured a license from the tax commissioner. This license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. This license shall allow sale to only licensed wholesalers.

5-01-05. Public intoxication - Penalty.

Repealed by S.L. 1969, ch. 91, § 5.

5-01-05.1. Public intoxication - Assistance - Medical care.

1. As used in this section "intoxicated" means a state in which an individual is under the influence of alcoholic beverages, drugs, or controlled substances, or a combination of alcoholic beverages, drugs, and controlled substances.
2. A peace officer may take any apparently intoxicated individual to the individual's home, to a local hospital, to a detoxification center, or, whenever that individual constitutes a danger to that individual or others, to a jail. A tier 1b mental health professional, as defined under section 25-01-01, of a local hospital may hold that individual for treatment up to seventy-two hours.

3. An intoxicated individual may not be held in jail because of intoxication more than twenty-four hours. An intoxicated individual may not be placed in a jail unless a jailer is constantly monitoring the individual and medical services are provided if the need is indicated.
4. Upon placing that individual in jail, or if the individual is admitted to a hospital or detoxification center, upon admission, the peace officer shall make a reasonable effort to notify the intoxicated individual's family as soon as possible.
5. Any additional costs incurred by the city, county, ambulance service, or medical service provider on account of an intoxicated individual are recoverable from that individual.

5-01-05.2. No prosecution for intoxication.

No person may be prosecuted in any court solely for public intoxication. Law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication.

5-01-05.3. Disturbing the peace - Disorderly conduct - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

5-01-05.4. Informational, counseling, and referral centers for alcoholism.

Any county or city within the state at the discretion of their governing bodies, either individually or jointly, may establish or provide office space, including personnel, for informational, counseling, and referral services for alcoholics and their families.

5-01-06. Recovery of damages resulting from intoxication.

Repealed by S.L. 1987, ch. 95, § 5; S.L. 1987, ch. 99, § 2.

5-01-06.1. Claim for relief for fault resulting from intoxication.

1. Every spouse, child, parent, guardian, employer, or other individual who is injured by any obviously intoxicated individual has a claim for relief for fault under section 32-03.2-02 against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to an individual under twenty-one years of age or to an incompetent or an obviously intoxicated individual, and if death ensues, the survivors of the decedent are entitled to damages defined in section 32-21-02. If a retail licensee is found liable under this section and exemplary damages are sought, the finder of fact may consider as a mitigating factor that the licensee provided to an employee alcohol server training that addressed intoxication, drunk driving, and underage drinking.
2. If a retail licensee provided to an employee alcohol server training that addresses intoxication, drunk driving, and underage drinking, a person with a claim for relief under this section may not use the fact that the retail licensee provided this training to prove culpability.
3. A claim for relief under this section may not be had on behalf of the intoxicated individual nor on behalf of the intoxicated individual's estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated individual or on behalf of the passenger's estate or personal representatives.

5-01-07. Township beer or liquor licenses.

No retail beer or liquor license may be issued in any organized township without the written consent of the board of township supervisors.

5-01-08. Individuals under twenty-one years of age prohibited from using alcoholic beverages or entering licensed premises - Penalty.

1. Except as permitted in this section and section 5-02-06, an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or

- attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.
2. An individual under twenty-one years of age may not enter any licensed premises where alcoholic beverages are being sold or displayed, except:
 - a. A restaurant if accompanied by a parent or legal guardian;
 - b. In accordance with section 5-02-06;
 - c. If the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages;
 - d. If the individual is a law enforcement officer or other public official who enters the premises in the performance of official duty; or
 - e. If the individual enters the premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.
 3. An individual who violates this section is guilty of an infraction. For a violation of subsection 1 or 2, the court also may sentence a violator to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44. For a second or subsequent violation of subsection 1 or 2, the court also shall sentence a violator to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.
 4. The court, under this section, may refer the individual to an outpatient addiction facility licensed by the department of health and human services for evaluation and appropriate counseling or treatment.
 5. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.
 6. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals who may be immune for any one occurrence is five individuals.

5-01-08.1. Misrepresentation of age - Penalty - Licensee may keep book.

Any person who misrepresents or misstates that person's age or the age of any other person or who misrepresents that person's age through presentation of any document purporting to show that person to be of legal age to purchase alcoholic beverages is guilty of a class B misdemeanor. Any licensee may keep a book and may require anyone who has shown documentary proof of that person's age, which substantiates that person's age to allow the purchase of alcoholic beverages, to sign the book if the age of that person is in question. The book must show the date of the purchase, the identification used in making the purchase and the appropriate numbers of such identification, the address of the purchaser, and the purchaser's signature.

5-01-08.2. Presumption of licensee's innocence when certain facts established.

The establishment of the following facts by a person making a sale of alcoholic beverages to a person not of legal age constitutes prima facie evidence of innocence and a defense to any prosecution therefor:

1. That the purchaser falsely represented and supported with other documentary proof that the purchaser was of legal age to purchase alcoholic beverages.
2. That the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages.

3. That the sale was made in good faith and in reliance upon the representation and appearance of the purchaser in the belief that the purchaser was of legal age to purchase alcoholic beverages.

5-01-08.3. Proof of age - Seizure of false identification.

1. A licensed retailer of alcoholic beverages or an employee of a licensed retailer may determine proof of age for purchasing or consuming an alcoholic beverage solely by inspection of one of the following:
 - a. A valid driver's license or identification card issued by this state, another state, or a province of Canada which includes the photograph and date of birth of the licensed individual;
 - b. A valid military identification card issued by the United States department of defense; or
 - c. A valid passport issued or recognized by the United States.
2. A licensed retailer or an employee of a licensed retailer may seize a form of identification displayed as proof of age if the licensed retailer or an employee of a licensed retailer has a reasonable belief that the form of identification has been altered, falsified, or is being used to unlawfully obtain alcoholic beverages.
3. Within twenty-four hours of seizing a form of identification as allowed under this section, a licensed retailer or an employee of a licensed retailer shall notify a law enforcement agency of the seizure and the law enforcement agency shall take possession of the identification within twenty-four hours after receipt of the notice.

5-01-09. Delivery to certain persons unlawful.

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to an incompetent or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene and cooperated with medical assistance and law enforcement personnel on the scene, or was the individual in need of medical assistance. The maximum number of individuals that may be immune for any one occurrence is five individuals.
3. If an individual is convicted of this section for delivering alcoholic beverages to an individual under twenty-one years of age, the court shall consider the following in mitigation:
 - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
 - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

5-01-10. Bottle clubs prohibited - Penalty.

Any person operating an establishment whereby persons are allowed to bring their own alcoholic beverages on the premises where the proprietor sells soft drinks, mix, ice, or charges for bringing such beverages on the premises is guilty of a class B misdemeanor.

5-01-11. Unfair competition - Penalty.

A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A

retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state tax commissioner may determine by rule the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense to the wholesaler associated with the furnishing of containers, equipment, and tap or coil cleaning service does not exceed one hundred fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed four hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to five hundred dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that this section restricts the co-ownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

5-01-12. Duty to enforce.

Repealed by S.L. 1975, ch. 106, § 673.

5-01-13. State's attorney's inquiry.

The state's attorney may subpoena persons and take sworn testimony concerning any alleged violation of the alcoholic beverage laws and may apply to the district court for an order compelling persons subpoenaed to appear and testify. Such witnesses shall receive the same fees and mileage as in a civil case in district court.

5-01-14. Microbrew pubs - Licensing - Taxes.

1. A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may manufacture on the licensed premises, store, transport, sell to wholesale malt beverage licensees, and export no more than ten thousand barrels of malt beverages annually; sell malt beverages manufactured on the licensed premises; sell alcoholic beverages regardless of source to consumers for consumption on the microbrew pub's licensed premises; and sell or direct ship malt beverages manufactured on the licensed premises to an individual in this state for consumption in accordance with section 5-01-16. A microbrew pub may not engage in any wholesaling activities. Except as provided in subsection 3, all sales and delivery of malt beverages to any other retail licensed premises may be made only through a wholesale malt beverage licensee. Beer manufactured on the licensed premises and sold by a microbrew pub directly to the consumer for consumption on or off the premises is subject to the taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is required to file a monthly sales report with the tax commissioner by the fifteenth day of the month following the month in which the sales are made. The report must be prepared and submitted in a form and manner as prescribed by the tax commissioner. A microbrew pub is not precluded from retailing beer it purchases from a wholesaler. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron. A licensee may sell beer to any person for off-premises consumption if sold in a brewery-sealed container and the total amount sold to each person does not exceed

- five and sixteen-hundredths gallons [19.53 liters] per day. This section may not be superseded under chapters 11-09.1 and 40-05.1.
2. The tax commissioner may issue a special event permit for not more than forty events per calendar year to a microbrew licensee allowing the licensee, subject to local ordinance, to give free samples of beer manufactured by the licensee, sell beer manufactured by the glass or in closed containers, or dispense beer manufactured by the licensee, at off-premises events.
 3. A microbrew pub may transfer beer in bulk, as defined by section 5-01-01, manufactured by the microbrew pub to an affiliated microbrew pub licensee. For purposes of this subsection, "affiliated microbrew pub licensee" means a microbrew pub of which at least an eighty-five percent interest is owned by the microbrew pub measured annually and:
 - a. The microbrew pub does not own more than three affiliated microbrew pub licensees;
 - b. The microbrew pub licensee receiving the beer in bulk has produced no less than five thousand gallons [18927.06 liters] of beer on the premises in the preceding calendar year. For the purpose of calculating the production requirements, the production must be prorated based on the number of days beer was produced;
 - c. The beer in bulk transferred in any calendar year constitutes no more than fifty percent of the beer being produced by the microbrew pub licensee receiving the beer; and
 - d. For purposes of determining whether the ten thousand barrel production limit under subsection 1 is being exceeded, the beer being transferred is credited to the microbrew pub that manufactured the beer.
 4. A contractee brewer may contract with a contractor brewer to produce beer for the contractee brewer to the extent allowed by federal law under the following conditions:
 - a. The contractee brewer and the contractor brewer must be licensed and owned separately;
 - b. The contractee brewer must have a proper license issued under this section and maintain a physical brewing presence in the state;
 - c. Beer brewed for a contractee brewer counts toward the contractee brewer's annual barrels produced, and the beer does not count toward the contractor brewer's annual barrels produced;
 - d. The contractee brewer retains ownership of the product; and
 - e. Each brewer is separately and distinctly responsible for compliance with this chapter.

5-01-15. Penalty.

Any person who violates any provision of this title, or any rule adopted to implement this title, is guilty of a class B misdemeanor, unless the penalty is provided for elsewhere.

5-01-16. Direct sale from out-of-state person to consumer - Penalty.

1. A person in the business of selling alcoholic beverages may not knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a licensed wholesaler in this state.
2. A person in the business of transporting goods may not knowingly or intentionally transport, or cause to be transported, any alcoholic beverage directly to a person in this state who is not a licensed wholesaler in this state.
3. For a first violation of subsection 1 or 2, the tax commissioner shall notify, by certified mail, the person and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2 and shall assess a civil penalty of one hundred dollars for each illegal shipment. For a second violation of subsection 1 or 2, the tax commissioner shall assess a civil penalty of two hundred dollars for each illegal shipment. For any subsequent violation of subsection 1 or 2, the tax commissioner shall assess a civil penalty of five hundred dollars for each illegal shipment.

4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction by a person holding a valid manufacturer's or retailer's license issued by the state of its domicile and if the person obtains a direct shipping license from and on a form prescribed by the tax commissioner before making a shipment. The annual fee for a direct shipping license is fifty dollars. Licensed direct shippers may sell and ship to an individual twenty-one years of age or older 7.13 gallons [27 liters] or less of wine, two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer, or 2.38 gallons [9 liters] or less of any other alcoholic beverages per month for personal use and not for resale.
 - a. A direct shipper shall ship all containers of alcoholic beverages shipped directly to a resident of this state using a licensed alcohol carrier and may cause the alcoholic beverages to be shipped by a licensed logistics company.
 - b. A direct shipper shall label all containers of alcoholic beverages shipped directly to an individual in this state with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
 - c. A licensed direct shipper shall report and pay the wholesaler excise tax and retailer sales taxes to the tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.6-02. The excise tax reports are due January fifteenth of the year following the year sales and shipments were made. When the fifteenth day of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in format as prescribed by the tax commissioner and include the identification of any logistics or fulfillment houses the licensee used for such shipments. The sales and use tax reports are due as set forth in chapter 57-39.6. The sales and use tax reports must be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
 - d. All alcoholic beverages that are shipped directly to a resident of this state must be properly registered with the federal alcohol and tobacco tax and trade bureau and must be owned by the licensed direct shipper.
6. A licensed alcohol carrier may ship alcoholic beverages into, out of, or within this state. A licensed alcohol carrier shall pay an annual fee of one hundred dollars and obtain a license on an application form provided by the tax commissioner and subject to any requirements determined by the tax commissioner.
 - a. A licensed alcohol carrier shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A licensed alcohol carrier may not deliver alcoholic beverages to a person under twenty-one years of age, or to a person who is or appears to be in an intoxicated state or condition. A licensed alcohol carrier shall obtain valid proof of identity and age before delivery and shall obtain the signature of an adult as a condition of delivery.
 - b. A licensed alcohol carrier shall maintain records of alcoholic beverages shipped into, out of, or within this state which include the name of the licensed direct shipper, the name of any licensed logistics shipper, the date of each shipment, the recipient's name and address, and an electronic or paper form of signature from the recipient of the alcoholic beverages. A licensed alcohol carrier shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
 - c. If the tax commissioner has provided notice to a licensed alcohol carrier that a direct shipper is not licensed, the licensed alcohol carrier must notify the direct

shipper that the direct shipper must obtain a direct shipper permit before tendering packages to the licensed alcohol carrier for delivery. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the licensed alcohol carrier.

7. Licensed logistics shippers must obtain a logistics shipping license from the tax commissioner and shall pay an annual fee of one hundred dollars before making or causing a shipment.
 - a. A licensed logistics shipper shall ensure all containers of alcoholic beverages shipped directly to an individual in this state are labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
 - b. All containers of alcoholic beverage shipped directly to a resident of this state must be shipped using a licensed alcohol carrier as provided in subsection 6.
 - c. A licensed logistics shipper shall maintain records of alcoholic beverages shipped which include the license number and name of the licensed direct shipper, the license number and name of the licensed common carrier, the date of each shipment, the quantity and kind of alcohol shipped, and the recipient's name and address for each shipment. A licensed logistics shipper shall submit a report to the tax commissioner on a monthly basis in the form and format prescribed by the tax commissioner. The report is due on the last day of the month following the month of shipment. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the due date. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.
 - d. Licensed logistics shippers may not ship alcoholic beverages from unlicensed direct shippers or through unlicensed carriers. For a violation, a licensed logistics shipper is subject to the penalties in subsection 3.
8. The tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this section and may request award of all costs and attorney's fees incurred by the state incidental to that action. Upon determination by the tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by any person, the tax commissioner may notify both the alcohol and tobacco tax and trade bureau of the United States department of the treasury and the licensing authority for the state in which the person is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

5-01-17. Domestic winery license.

1. The tax commissioner may issue a domestic winery license to the owner or operator of a winery located within this state to produce wine. A domestic winery may purchase, at wholesale or retail, brandy for use of onpremises fortification. A domestic winery license may be issued and renewed for an annual fee of one hundred dollars, which is in lieu of all other license fees required by this title.
2. A domestic winery may sell wine produced by that winery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its wine to persons inside or outside of the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters] in a calendar year; glassware; wine literature and accessories; and cheese, cheese spreads, and other snack food items. A licensee may dispense free samples of the wines offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between eight a.m. and twelve midnight. The tax commissioner may issue special events permits for not more than forty events per calendar year to a domestic winery allowing the winery, subject to local ordinance, to give free samples of its wine and to sell its wine by the glass or in closed containers, at off-premises events. A domestic winery may not engage in any wholesaling activities. All sales and deliveries of wines to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. For any month in which a domestic

winery has made sales to a North Dakota wholesaler, that domestic winery shall file a report with the tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter.

3. A domestic winery may obtain a domestic winery license and a retailer license allowing the onpremises sales of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.
4. A domestic winery may purchase wine in bulk from within and outside the state, excluding label approved containers and not to exceed four thousand gallons [15142 liters] per calendar year.
5. A domestic winery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all wines sold by the licensee at retail, including all wines shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

5-01-18. Alcohol without liquid devices prohibited - Definition - Penalty.

1. A person may not sell, offer to sell, purchase, possess, use, or if that person is a retail alcoholic beverage licensee, have on the premises an alcohol without liquid device. In this section, an "alcohol without liquid device" means an apparatus that is advertised, designed, or used to vaporize an alcoholic beverage to produce a vapor that may be inhaled by an individual. The term does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended specifically for medical purposes to dispense prescribed or over-the-counter medications or water.
2. This section does not apply to a hospital that operates primarily for the purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.
3. A violation of this section is a class B misdemeanor.

5-01-19. Domestic distillery.

1. The tax commissioner may issue a domestic distillery license to the owner or operator of a distillery that is located within this state. A domestic distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The tax commissioner may not issue the domestic distillery license until the applicant has established that the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.
2. A domestic distillery may sell spirits produced by that distillery at on sale or off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of twenty-five thousand gallons [94635 liters] in a calendar year. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits offered for sale. Subject to local ordinance, sales at on sale and off sale may be made on Sundays between eight a.m. and twelve midnight. A domestic distillery may hold events inside and outside its premises, but only on contiguous property under common ownership, allowing free samples of its spirits and to sell its spirits by the glass or in closed containers. The tax

commissioner may issue special event permits for not more than forty events per calendar year to a domestic distillery allowing the domestic distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers, at off-premises events. A domestic distillery may not engage in any wholesaling activities. Except as provided by section 5-01-19.1, all sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a domestic distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the domestic distillery by the domestic winery. No later than the last business day of a calendar month, a farm distillery that has made sales to a North Dakota wholesaler during the preceding calendar month shall file a report with the tax commissioner reporting those sales.

3. A domestic distillery may obtain a domestic distillery license and a retailer license allowing the onpremises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the domestic distillery. A domestic distillery also may own or operate a winery.
4. A domestic distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the licensee at retail or to a retail licensee, including all spirits shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require that the report be submitted in an electronic format approved by the tax commissioner.

5-01-19.1. Direct sale by domestic distilleries.

1. A domestic distillery that produces no more than twelve thousand proof gallons [45425 liters] of spirits per year may sell and deliver, onsite or offsite, the spirits produced by the distillery directly to licensed retailers. The distillery may sell and deliver spirits onsite to a licensed retailer that presents the retailer's license or a photocopy of the license. The distillery may deliver the spirits offsite if the distillery:
 - a. Uses the distillery's equipment, trucks, and employees to deliver the spirits;
 - b. Contracts with a licensed distributor to ship and deliver the spirits to the retailer;or
 - c. Contracts with a common carrier to ship and deliver the spirits to the retailer directly from the distillery or the distillery's warehouse.
2. The total amount of spirits each domestic distillery may sell or deliver directly to all licensed retailers may not exceed two hundred cases per year. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. A case may not exceed two and thirty-eight hundredths gallons [9 liters].
3. As used in this section, "proof gallon" means a gallon [3.79 liters] of liquid at sixty degrees Fahrenheit [15.5 degrees Celsius] which contains fifty percent ethyl alcohol by volume or its equivalent.

5-01-19.2. Manufacturing distillery - Satellite locations.

1. The tax commissioner may issue a manufacturing distillery license to the owner or operator of a distillery located within this state which uses a majority of North Dakota farm products to manufacture and sell spirits produced on the premises. A manufacturing distillery license may be issued and renewed for an annual fee of one hundred dollars. This fee is in lieu of all other license fees required by this title. The tax commissioner may not issue the manufacturing distillery license until the applicant has established the applicant has applied for and obtained the necessary federal registrations and permits, as required under the Internal Revenue Code of 1986 [26 U.S.C. 5001 et seq.] and the federal Alcohol Administration Act [27 U.S.C. 203], for the operation of a distilled spirits plant.

2. A manufacturing distillery may sell spirits produced by that distillery at off sale, in retail lots, and not for resale, and may sell or direct ship its spirits to persons inside or outside the state in a manner consistent with the laws of the place of the sale or delivery in total quantities not in excess of forty thousand gallons [151416 liters] in a calendar year.
 - a. Direct sales within this state are limited to two and thirty-eight hundredths gallons [9 liters] or less per month per person for personal use and not for resale. The packaging must conform with the labeling requirements in section 5-01-16. A licensee may dispense free samples of the spirits offered for sale. Subject to local ordinance, sales at off sale may be made on Sundays between twelve noon and twelve midnight.
 - b. A manufacturing distillery may hold events inside its premises and at its satellite location. The tax commissioner may issue event permits for not more than forty event days per calendar year to a manufacturing distillery to allow the manufacturing distillery, subject to local ordinance, to give free samples of its product and to sell its product by the glass or in closed containers at events on the premises, off the premises, and at its satellite location.
 - c. A manufacturing distillery may not engage in any wholesaling activities. Except as provided by section 5-01-19.1, all sales and deliveries of spirits to any other retail licensed premises in this state may be made only through a licensed North Dakota liquor wholesaler. However, a manufacturing distillery may sell distilled spirits to a domestic winery if the distilled spirits were produced from products provided to the manufacturing distillery by the domestic winery.
3.
 - a. As used in this subsection, "samples" means the serving of free tastings of a manufacturing distillery's products not to exceed six ounces [0.18 liter] of spirits per individual per day.
 - b. A manufacturing distillery may operate one satellite location in addition to its licensed premises for the purpose of providing samples and on sale or off sale retail sales.
 - (1) The spirits sampled or sold at the satellite location must be produced by the manufacturing distillery.
 - (2) A manufacturing distillery may not produce any spirits at the satellite location.
 - (3) An event permit issued to a manufacturing distillery in accordance with subsection 2 for an indoor or outdoor event held at its satellite location does not count towards the forty event days per calendar year allowed under subsection 2. The manufacturing distillery may offer free samples of its spirits and may sell its spirits by the glass or in closed containers at the event held at the satellite location.
 - (4) The satellite location must be owned or leased by the manufacturing distillery licensee.
 - (5) A manufacturing distillery may not engage in wholesaling activities at its satellite location.
 - c. A manufacturing distillery shall obtain a satellite location license from the tax commissioner before operating a satellite location. The tax commissioner may issue and renew a satellite location license for an annual fee of one hundred dollars. This fee is in addition to all other license fees required by this title.
 - d. A manufacturing distillery is liable for any violation of alcohol or licensing requirements committed on the premises of its satellite location.
4. A person may not hold a manufacturing distillery license and a domestic distillery license.
5. A manufacturing distillery may obtain a manufacturing distillery license and a retailer license allowing the on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located at the manufacturing distillery's satellite location.
6. A manufacturing distillery is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all spirits sold by the

licensee at retail or to a retail licensee, including all spirits shipped directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require the report to be submitted in an electronic format approved by the tax commissioner.

5-01-20. Direct sale by licensed wineries.

1. A licensed winery that produces no more than twenty-five thousand gallons [94635 liters] of wine per year may sell and deliver, onsite or offsite, the wine produced by the winery directly to licensed retailers. The licensed winery may sell and deliver wine onsite to a licensed retailer who presents the retailer's license or a photocopy of the license. The winery may deliver the wine offsite if the winery:
 - a. Uses the winery's equipment, trucks, and employees to deliver the wine;
 - b. Contracts with a licensed distributor to ship and deliver the wine to the retailer; or
 - c. Contracts with a common carrier to ship and deliver the wine to the retailer directly from the winery or the winery's bonded warehouse.
2. The shipments delivered by a winery's equipment, trucks, and employees in a year may not exceed four thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].
3. Individual shipments delivered by common carrier may not exceed three cases a day for each licensed retailer. The shipments delivered by a common carrier in a year may not exceed three thousand five hundred cases. A case may not exceed 2.38 gallons [9 liters].

5-01-21. Brewer taproom license.

1. The tax commissioner may issue multiple brewer taproom licenses to the owner or operator of a brewery producing no more than twenty-five thousand barrels of malt beverages annually. A brewer with multiple taproom licenses must produce malt beverages at each location and the total amount of malt beverages produced at all locations combined may not exceed twenty-five thousand barrels of malt beverages annually. Each brewer taproom license may be issued and renewed for an annual fee of five hundred dollars, which is in lieu of all other state license fees required by this title. All provisions of this chapter which apply to a retail license must apply to a license issued under this section unless the provision is explicitly inconsistent with this section.
2. A brewer holding a brewer taproom license may:
 - a. Manufacture on the licensed premises, store, transport, sell, and export no more than twenty-five thousand barrels of malt beverages annually.
 - b. Sell malt beverages manufactured on the licensed premises or through a contract for consumption on the premises of the brewery or a restaurant owned by the licensee and located on property contiguous to the brewery.
 - c. Sell beer manufactured on the licensed premises or through a contract for off premises consumption in brewery-sealed containers of not more than five and sixteen-hundredths gallons [19.53 liters].
 - d. Sell and deliver beer produced by the brewery to licensed beer wholesalers.
 - e. Dispense free samples of beer offered for sale. Complimentary samples of beer may not be in an amount exceeding sixteen ounces [.47 liter] per patron.
 - f. Sell and deliver beer produced by the brewery to licensed retailers within the state, but only if:
 - (1) The brewer uses the brewer's own equipment, trucks, and employees to deliver the beer;
 - (2) Individual deliveries, other than draft beer, are limited to the case equivalent of eight barrels per day to each licensed retailer;
 - (3) The total amount of beer sold or delivered directly to all retailers does not exceed ten thousand barrels per year; and

- (4) A common carrier is not used to ship or deliver the brewery's product to the public or to licensed retailers. All other sales and deliveries of beer to licensed retailers in this state may be made only through a wholesaler licensed in this state.
- g. Sell or direct ship beer produced by the brewery to an individual in this state for consumption in accordance with section 5-01-16.
- 3. The tax commissioner may issue special event permits for not more than forty events per calendar year to a brewer taproom licensee allowing the licensee, subject to local ordinance, to give free samples of its beer, sell its beer by the glass or in closed containers, or dispense beer manufactured by the licensee, at off-premises events.
- 4. For any month in which a brewery has made sales to a wholesaler licensed in this state, that brewery shall file a report with the tax commissioner no later than the last day of each calendar month reporting sales made during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after that day.
- 5. A brewer taproom licensee is subject to section 5-03-06 and shall report and pay annually to the tax commissioner the wholesaler taxes due on all beer sold by the licensee at retail or to a retail licensee, including all beer sold directly to consumers as set forth in sections 5-03-07 and 57-39.6-02. The annual wholesaler tax reports are due January fifteenth of the year following the year sales were made. When the fifteenth of January falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after that day. The report must provide the detail and be in a format as prescribed by the tax commissioner. The tax commissioner may require the report be submitted in an electronic format approved by the tax commissioner.
- 6. A brewer may have multiple taproom licenses, but may not have an ownership interest in whole or in part, or be an officer, director, agent, or employee of any other manufacturer, brewer, importer, wholesaler, or retailer, or be an affiliate thereof, whether the affiliation is corporate or by management, direction, or control. A brewer may transfer beer in bulk, as defined by section 5-01-01, manufactured by the brewer to an affiliated brewer. For the purposes of this subsection, an "affiliated brewer taproom" means a licensed brewer taproom of which at least an eighty-five percent interest is owned by the brewer taproom, measured annually and:
 - a. The brewer does not own more than three affiliated brewer taprooms;
 - b. The licensed brewer taproom receiving the beer in bulk has produced no less than five thousand gallons [18927.06 liters] of beer on the premises in the preceding calendar year. For the purpose of calculating the production requirements, the production must be prorated based on the number of days beer was produced;
 - c. The beer in bulk transferred in any calendar year constitutes no more than fifty percent of the beer being produced by the licensed brewer taproom receiving the beer; and
 - d. For purposes of determining whether the twenty-five thousand barrel production limit under subsections 1 and 2 is being exceeded, the beer being transferred is credited to the brewer that manufactured the beer.
- 7. A contractee brewer may contract with a contractor brewer to produce beer for the contractee brewer to the extent allowed by federal law under the following conditions:
 - a. The contractee brewer and the contractor brewer must be licensed and owned separately;
 - b. The contractee brewer must have a proper license issued under this section and maintain a physical presence in the state;
 - c. Beer brewed for a contractee brewer counts toward the contractee brewer's annual barrels produced, and the beer does not count toward the contractor brewer's annual barrels produced;
 - d. The contractee brewer retains ownership of product produced by a contractor brewer; and

- e. Each brewer is separately and distinctly responsible for compliance with this chapter.

5-01-22. Powdered alcohol products prohibited - Penalty - Exceptions.

1. As used in this section, "powdered alcohol product" means any alcohol prepared or sold in a powder form for either direct use or reconstitution in a liquid beverage or food.
2. A person may not sell, offer to sell, purchase, offer to purchase, possess, or consume a powdered alcohol product.
3. A violation of this section is a class B misdemeanor.
4. This section does not apply to the use of powdered alcohol products for research by a:
 - a. Health care provider that operates primarily for the purpose of conducting scientific research;
 - b. State institution;
 - c. Private college or university; or
 - d. Pharmaceutical or biotechnology company.

CHAPTER 5-02 RETAIL LICENSING

5-02-01. State and local retail license required - Penalty - Exception.

1. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and a local license from the governing body of any city, or if the business is located outside the corporate limits of a city, the board of county commissioners or the governing body of an Indian tribe, as the location requires, is guilty of a class A misdemeanor.
2. This section does not apply to public carriers engaged in interstate commerce.
3. This section does not apply to a nonprofit organization that sells an alcoholic beverage as part of a fundraising activity. As used in this subsection, fundraising activity includes an auction, raffle, or other prize contest for which consideration is given. If the alcoholic beverage is sold as part of a fundraising event, the sale may not be for consumption at that event.

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid the tax and who continues to pay any such tax imposed by the city or a licensee in a county, a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person that dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize an individual under twenty-one years of age to attend the event but may not authorize the consumption or possession of an alcoholic beverage by an individual under twenty-one years of age.

5-02-02. Qualifications for license.

A retail license may not be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than an organization, must be a legal resident of the United States and be a person of good moral character.
2. If the applicant is:
 - a. A corporation, then:
 - (1) The manager of the licensed premises and the officers and directors must be legal residents of the United States and persons of good moral character; and
 - (2) The shareholders:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.
 - b. A limited liability company, then:
 - (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
 - (2) The members:

- (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
 - (3) The applicant must first be properly registered with the secretary of state.
 - c. A limited partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
 - (2) The general partners and limited partners:
 - (a) If individuals, must be legal residents of the United States and of good moral character; and
 - (b) If organizations, must meet the requirements of this section for applicants that are organizations.
 - (3) The applicant must first be properly registered with the secretary of state.
 - d. A general partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
 - (2) The partners:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
 - e. A limited liability partnership, then:
 - (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
 - (2) The partners:
 - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
 - (b) Which are organizations, must meet the requirements of this section for applicants that are organizations.
- Limited liability partnership applicants must first be properly registered with the secretary of state.
- 3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer, or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.
 - 4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
 - 5. The applicant for a state license must have first secured a local license.
 - 6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
 - 7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.
 - 8. As a condition precedent to a background check, the attorney general may require the applicant to pay, in advance, an estimated additional fee necessary to defray the actual cost of a background check of a person for whom adequate background information sources are not readily available. The estimated additional fee must be placed in the attorney general's refund fund for use to defray the actual expenses of the background check. The remainder of the funds must be returned to the person within thirty days of the conclusion of the background check. In addition, the attorney general may require the applicant or such other person subject to a background check to execute a written consent if needed by the attorney general to obtain background or criminal history information.

5-02-02.1. Sale of alcoholic beverages in gas stations, grocery stores, and convenience stores.

Before a state retail off sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the area to be licensed for the sale of alcoholic beverages must be clearly set out in a blueprint or diagram. The area licensed for the sale of alcoholic beverages must be separated from the nonlicensed portion of the business by a wall designed to allow sales personnel to serve customers and make sales in both the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion.

5-02-03. Local license fees.

The fee for an annual local on and off sale liquor license must be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee shall not exceed one thousand dollars. The fee for an annual on and off sale local beer license must be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive on sale liquor license must be set by ordinance or resolution at not less than two hundred dollars nor more than two thousand dollars, except outside the corporate limits of a city the fee must not exceed one thousand dollars. The fee for an annual local exclusive on sale local beer license must be set by ordinance or resolution at not less than fifty dollars nor more than five hundred dollars. The fee for an annual local exclusive off sale beer or off sale liquor license must not be more than the fee charged for an on and off sale license. The local governing body may by ordinance or resolution provide for issuance of licenses for any period not to exceed one year and may allow for proration and refunds of license fees. In addition to any other license fee permitted by this section, a license fee may be increased by not more than five dollars for each Sunday the licensee sells alcoholic beverages.

5-02-04. State license fee.

The fee for an annual state beer or liquor license is fifty dollars each, except in cities over five hundred population at the last federal decennial census, the fee is one hundred dollars for each license. The fee for an annual state license will be charged on a calendar-year basis. License fees will be prorated from the first day of the month in which the license is issued up to the last day of the month in which such license expires, except that no license fee will be less than twenty-five dollars. A reinstatement fee of one hundred dollars is required in addition to the annual license fee for each license renewal applied for after December thirty-first.

5-02-05. Dispensing prohibited on certain days - Penalty.

A person may not dispense or permit the consumption of alcoholic beverages on a licensed premises between two a.m. and eight a.m., on Christmas Day, or after six p.m. on Christmas Eve. In addition, a person may not provide off sale after two a.m. on Thanksgiving Day or between two a.m. and eight a.m. on Sundays. A person that violates this section is guilty of a class A misdemeanor.

5-02-05.1. Sunday alcoholic beverage permit - Penalty.

Repealed by S.L. 2017, ch. 104, § 2.

5-02-05.2. Local approval of Sunday beer and wine sales by eating establishments - Fee.

Repealed by S.L. 1993, ch. 63, § 6.

5-02-06. Prohibitions for individuals under twenty-one years of age - Penalty - Exceptions.

1. Except as permitted in this section, a licensee who dispenses alcoholic beverages to an individual under twenty-one years of age, or who permits an individual under

- twenty-one years of age to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.
2. An individual under twenty-one years of age may enter and remain on a licensed premises while alcohol is being sold or displayed, at the discretion of the owner of the licensed premises, if:
 - a. The individual is accompanied by a parent or guardian who is twenty-one years of age or older. For purposes of this section, "guardian" means an individual who has the legal responsibility for the health and well-being of the individual under twenty-one years of age;
 - b. The individual is on the premises to consume a meal or in an emergency situation;
 - c. The premises serves at a tabletop, food that is prepared in a kitchen with at least an indoor grill;
 - d. The individual is not on the licensed premises after ten p.m.; and
 - e. The owner of the licensed premises receives permission of the local licensing authority for individuals to be on the premises as allowed under this section and the licensed premises is located in a city with a population of one thousand five hundred or fewer people, or the licensed premises is not located in a city.
 3.
 - a. At the discretion of the owner of the licensed premises, an individual under twenty-one years of age may be permitted to enter and remain in a restaurant where alcoholic beverages are being sold and in the area of the restaurant designated for the opening or mixing of alcoholic beverages if the individual:
 - (1) Is accompanied by a parent or guardian;
 - (2) Is not seated at or within three feet [0.91 meters] of the bar counter; and
 - (3) Does not enter or remain in the designated area after ten p.m.
 - b. At the discretion of the owner of a brewer taproom licensed under section 5-01-21, an individual under twenty-one years of age may be permitted to enter and remain in the brewer taproom if:
 - (1) The brewer taproom is connected to or contracts with an establishment, including a mobile food unit, at which food is prepared and available for purchase to be consumed in the brewer taproom and which is connected to or located at the brewer taproom and receives the majority of its gross sales from the sale of food; and
 - (2) The individual:
 - (a) Is accompanied by the individual's parent or guardian;
 - (b) Is not seated at or within three feet [0.91 meters] of the bar counter; and
 - (c) Does not enter or remain in the brewer taproom after ten p.m. or during any time that food is not available for consumption as provided in paragraph 1.
 - c. An individual under twenty-one years of age may be permitted to remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the designated area in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, or if the individual is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of an individual twenty-one years of age or older and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages.
 - d. For purposes of this subsection, "mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable from which a vendor prepares, cooks, sells, or serves food or beverages for immediate consumption.
 4. An individual under twenty-one years of age may enter and remain on the licensed premises if the individual is an independent contractor or the independent contractor's employee engaged in contract work and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages; if the individual is a law enforcement

officer or other public official who enters the premises in the performance of official duty; or if the individual enters the licensed premises for training, education, or research purposes under the supervision of an individual twenty-one or more years of age with prior notification of the local licensing authority.

5. An individual under twenty-one years of age may attend an event where alcoholic beverages are sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1.
6. A restaurant may employ an individual who is eighteen years of age or older but under twenty-one years of age as provided in subsection 3 to serve and collect money for alcoholic beverages, if the individual is under the direct supervision of an individual twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment that sells alcoholic beverages may employ an individual from eighteen to twenty-one years of age to work on the premises as a musician, disc jockey, or entertainer, or to perform duties directly related to working as a musician, disc jockey, or entertainer if the individual is under the direct supervision of an individual twenty-one or more years of age.
7. For purposes of this section, an individual is not twenty-one years of age until eight a.m. on that individual's twenty-first birthday.
8. If an individual is convicted of this section, the court shall consider the following in mitigation:
 - a. After consuming the alcohol, the underage individual was in need of medical assistance as a result of consuming alcohol; and
 - b. Within twelve hours after the underage individual consumed the alcohol, the defendant contacted law enforcement or emergency medical personnel to report that the underage individual was in need of medical assistance as a result of consuming alcohol.

5-02-06.1. Evidence of an individual under twenty-one years of age in a licensed premises - Proof of identification - Refusal - Penalty.

1. If a peace officer has reasonable and articulable suspicion that an individual under the age of twenty-one is in a licensed premises for a purpose prohibited under section 5-02-06, the peace officer may request the individual to furnish a nondriver photo identification card or an operator's license to verify the individual's age.
2. An individual who refuses to provide proof of identification upon request is guilty of an infraction.
3. If an individual charged with an infraction under this section produces a nondriver photo identification card or an operator's license before the final disposition of the infraction establishing the individual was twenty-one years of age or older at the time of the peace officer's request to furnish identification, the prosecuting attorney shall dismiss the infraction against the individual.

5-02-07. Sale of other items restricted - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

5-02-07.1. Sale of alcoholic beverages in exchange for goods prohibited.

Any licensee engaged in the retail sale of alcoholic beverages who accepts goods, chattels, or other tangible personal property, other than money, checks, legal tender, negotiable instruments, or other evidences of debt, in exchange for any alcoholic beverages is guilty of a class B misdemeanor.

5-02-07.2. Sale of beer in kegs - Registration and marking required.

1. Any retail alcoholic beverage licensee who sells beer in a container with a liquid capacity greater than six gallons [22.71 liters] must place the licensee's state retail alcoholic beverage license number on the container and also must mark the container with a "registration" number or letters, or both, unique to that container. The paint or

ink used to mark the containers or other manner of marking the containers must be approved by the attorney general.

2. Whenever a retail alcoholic beverage licensee sells beer in a container with a liquid capacity greater than six gallons [22.71 liters], the licensee shall record the date of sale and the name, address, and driver's license number or number of other official state or military identification card of the person to whom the beer is sold, together with the signature, and registration number, or letters of the container, or both. Such records must be retained for a period of no less than six months and must be kept on the licensed premises of the retail establishment where the sales are made.
3. Each retail alcoholic beverage licensee shall permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.
4. This section does not apply to the sale of beer in a container by a retail alcoholic beverage licensee if the contents of the container are consumed on the licensed premises where the sale occurred.

5-02-08. Disorderly conduct prohibited - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

5-02-09. Local regulations.

The local governing body by ordinance or resolution may regulate or restrict the operation of licensees, including among other things determining the number of licenses to be granted, establishing health and safety standards for licensed premises, setting of hours, regulation of open door policies by fraternal organizations or private clubs, and regulation of dancing or various forms of entertainment on the premises.

5-02-09.1. Attorney general to adopt rules.

The attorney general pursuant to chapter 28-32 shall adopt rules necessary to carry out the provisions of this chapter.

5-02-10. Hearing on alleged violations.

1. If a person has information that a licensed retailer of alcoholic beverages has violated any provision of this title, the person may file with the attorney general, city attorney, or state's attorney an affidavit specifically explaining the violation within fourteen days of the date of the alleged violation.
2. If a person timely files an affidavit under subsection 1, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the local governing body or forward the affidavit to the attorney general.
3. If a person timely files an affidavit under subsection 1, the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail.
4. If the hearing is held by the local governing body, a copy of the affidavit and notice of hearing must be mailed to the licensee by registered mail not less than five days before the hearing.
5. A hearing conducted under this section must be recorded by stenographic notes or the use of an electronic recording device.

05-02-10.1. Violations - Alcohol server training.

For a first violation taken against the retail licensee by a licensing authority for serving alcoholic beverages, the licensing authority shall accept as a mitigating factor the retail licensee provided to the licensee's employees alcohol server training that addressed intoxication, drunk driving, and underage drinking, as approved by the licensing authority. Under this section, a mitigating factor must result in a lesser punishment than the retail licensee would have received if not for the mitigating factor.

5-02-11. Suspension or revocation of license - Appeal.

If after such hearing the attorney general or local governing body finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the licensee's license for a period of time. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is inoperative while the appeal is pending.

5-02-12. Witnesses - Subpoena - Fees.

The attorney general or a member of the local governing body has the power to administer oaths and subpoena and examine witnesses. Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

5-02-13. Removal of wine from restaurant.

If a full bottle of wine has been opened and the contents partially consumed, a retail alcoholic beverage licensee whose gross sales of food are at least thirty percent of the gross sales of alcoholic beverages consumed on the premises may permit an individual purchasing the bottle to remove the bottle when leaving the licensed premises if the licensee reseals the bottle with a seal that must be made conspicuously inoperative to reopen the bottle, and places a receipt of sale with the bottle. The removal of the bottle under these conditions is not an off sale of wine and is permitted without an additional license.

CHAPTER 5-03 BEER AND LIQUOR WHOLESALERS - TAXATION

5-03-01. State wholesale license required - Qualifications - Penalty - Exception.

Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state tax commissioner. The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state tax commissioner may require the applicant to set forth other information necessary to enable the state tax commissioner to determine if a license should be granted.
3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.
4. The applicant may not have any financial interest in any retail alcoholic beverage business.
5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

A lender who acquires an inventory of beer or liquor by reason of a foreclosure of a security interest in the inventory is exempt from the requirement to obtain a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. Any person distributing alcoholic beverages in this state without compliance with this title is guilty of a class B misdemeanor.

5-03-01.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense shall not disqualify a person from licensure under this chapter unless the state tax commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a beer or liquor wholesaler, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

5-03-01.2. Brand registration - Penalty.

Repealed by S.L. 2005, ch. 73, § 5.

5-03-02. Fees.

The fee for an annual wholesale liquor license is one thousand dollars. The fee for an annual wholesale beer license is two hundred dollars. Fees must be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state tax commissioner. When an application clearly indicates that the applicant does not desire to exercise the privileges granted by the license applied for until on or after the beginning of the quarterly period following the quarterly period in which the application is filed with the department, the fees must be reduced twenty-five percent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date indicated

on the application. A license may not be issued for any period for a fee less than one-half of the annual license fee.

5-03-03. Bond required.

Repealed by S.L. 1995, ch. 74, § 5.

5-03-04. Collection of taxes.

The taxes imposed by this chapter are payable as follows:

1. Except as provided in subsection 3, wholesalers shall pay the tax to the state tax commissioner on or before the fifteenth day of each month.
2. Liquor wholesalers shall make the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make the payments based on the total gallonage purchased from brewers the preceding calendar month. Microbrew pubs shall make payments based on the total gallonage sold onpremises during the preceding calendar month.
3. Sales of alcoholic beverages for export through a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse are excluded from the computation of the gallonage tax. If the alcoholic beverages are returned to this state from the federally bonded warehouse, the foreign trade zone, or the export bonded warehouse, the exemption no longer applies.
4. Upon satisfactory proof, a tax credit is allowed beer wholesalers for beer purchased, but which cannot be sold in this state. A tax credit is allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax is again payable on any accounts subsequently collected.
5. If any wholesaler makes an overpayment of taxes due, the state tax commissioner shall issue a credit applicable to future obligations or certify that amount to the office of management and budget for a refund.
6. Any remittance within one dollar of the correct amount due may be accepted by the state tax commissioner as the correct amount due.

5-03-05. Tax commissioner to adopt rules - Appeal.

The tax commissioner, under chapter 28-32, shall adopt rules governing retailers, licensees, direct shippers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of the tax commissioner are subject to court review.

5-03-06. Examination by tax commissioner - Penalty for improper returns.

The state tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, domestic winery, domestic distillery, microbrew pub, direct shipper, licensed alcohol carrier, licensed logistics shipper, or other person to determine if the person has fully complied with all statutes and rules pertaining to the person's business. If any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax a penalty of five percent of the total amount of the tax or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay, except the first month after the return or tax became due. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, direct shipper, licensed alcohol carrier, or licensed logistics shipper failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state tax commissioner may forgive all or part of any penalty for good cause shown. The tax commissioner shall give notice of the determination to the person liable for tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of the determination must be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever is later. If it is determined upon audit by the tax commissioner that the tax due was twenty-five percent or more above the

amount reported on the return, notice of determination of tax due must be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever is later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return must be given not later than six years after the due date of the return, but if fraudulent information is given in a return or the failure to file a return is due to the fraudulent intent or willful attempt of the taxpayer in any manner to evade the tax, the time limitation provided in this section for giving notice of the determination of tax due does not apply. If any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, or direct shipper is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the tax commissioner that such manufacturer has failed to file required reports with the tax commissioner's office. Any manufacturer, wholesaler, domestic winery, domestic distillery, microbrew pub, direct shipper, licensed alcohol carrier, or licensed logistics shipper may have its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

5-03-06.1. Hearing on alleged violations - Denial of license.

On licenses that are renewable annually, the state tax commissioner may not revoke or suspend a license or deny a renewal prior to conducting a hearing in accordance with chapter 28-32.

5-03-07. Imposition of tax - Rate.

A tax is hereby imposed upon all alcoholic beverage wholesalers, domestic wineries, domestic distilleries, microbrew pubs, brewer taproom licensees, and direct shippers for the privilege of doing business in this state. The amount of this tax shall be determined by the gallonage according to the following schedule:

Beer in bulk containers - per wine gallon	\$.08 (.021 per liter)
Beer in bottles and cans - per wine gallon	.16 (.042 per liter)
Wine, including sparkling wine, containing less than 17% alcohol by volume - per wine gallon	.50 (.132 per liter)
Wine containing 17%-24% alcohol by volume - per wine gallon	.60 (.159 per liter)
Distilled spirits - per wine gallon	2.50 (.66 per liter)
Alcohol - per wine gallon	4.05 (1.07 per liter)

5-03-08. Taxes and fees deposited in the general fund.

All moneys collected by the tax commissioner under this chapter must be transferred to the state treasurer, within ten days after the end of the month in which they were collected, and deposited in the state general fund.

5-03-09. Supplier license required - Filing requirements - Penalty.

1. Before a supplier may engage in the sale or shipment of alcoholic beverages to a licensed North Dakota wholesaler, that supplier must first procure a supplier license from the state tax commissioner.
2. For any month in which a licensed supplier has made sales to a North Dakota wholesaler, that supplier shall file a report with the state tax commissioner no later than the last day of each calendar month covering alcoholic beverages sold or shipped to a North Dakota wholesaler during the preceding calendar month. When the last day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day thereafter. The report must provide such detail and be in a format as prescribed by the state tax commissioner. The state tax commissioner may require that the report be submitted in an electronic format approved by the state tax commissioner.

3. If a supplier fails to file the required report as required by this section, there is imposed a penalty of twenty-five dollars per month for each calendar month or fraction of a month during which the delinquency continues beginning with the month during which the report was due. Any assessed penalty may be waived by the tax commissioner for good cause upon request by the supplier.
4. A supplier in violation of this section or who furnishes information required by this section that is false or misleading is guilty of a class A misdemeanor.
5. In addition, whenever the holder of a supplier's license fails to comply with any of the provisions of this title or any rules or regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner, upon hearing after giving ten days' notice of the time and place of the hearing to show cause why the holder's license should not be revoked, may revoke the license. The state tax commissioner also shall have the power to restore licenses after such revocation. Whenever the holder of a license has had the license revoked for failure to comply with the provisions of this title or any rules and regulations prescribed by the state tax commissioner and adopted under this title, the state tax commissioner shall charge a fee of one hundred dollars for the reissuance of the license.

CHAPTER 5-04

BEER WHOLESALER AND BREWER RELATIONSHIPS

5-04-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Agreement" means one or more of the following:
 - a. A commercial relationship between a licensed beer wholesaler and a licensed brewer of a definite or indefinite duration which is not required to be evidenced in writing.
 - b. A relationship whereby the beer wholesaler is granted the right to offer and sell a brand or brands of beer offered by a brewer.
 - c. A relationship whereby the beer wholesaler, as an independent business, constitutes a component of a brewer's distribution system.
 - d. A relationship whereby the beer wholesaler's business is substantially associated with a brewer's brand or brands, designating the brewer.
 - e. A relationship whereby the beer wholesaler's business is substantially reliant on a brewer for the continued supply of beer.
 - f. A written or oral arrangement for a definite or indefinite period whereby a brewer grants a license to a beer wholesaler to use a brand, trade name, trademark, or service mark, and in which there is a community of interest in the marketing of goods or services at wholesale or retail.
2. "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler, the primary business of which is directly related to the transporting, storing, or marketing of the brewer's products with whom the wholesaler has an agreement.
3. "Beer wholesaler" or "wholesaler" means any licensee, as outlined in section 5-03-01, importing or causing to be imported into this state or purchasing or causing to be purchased within this state, any beer for sale or resale to retailers or wholesalers licensed pursuant to chapter 5-02 or 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.
4. "Brand" means any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product.
5. "Brand extension" is any brand that incorporates all or a substantial part of the unique features of a pre-existing brand of the same brewer or importer and which relies to a significant extent on the goodwill associated with that pre-existing brand.
6. "Brewer" means every licensed brewer or importer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.
7. "Person" means a natural person, corporation, limited liability company, partnership, trust, agency, or other entity as well as the individual officers, directors, or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, conservators, and guardians.
8. "Territory" or "sales territory" means the area of primary sales responsibility designated by any agreement between any beer wholesaler and brewer for the brand or brands of any brewer.

5-04-02. Inducement or coercion prohibited.

A brewer may not:

1. Induce or coerce, or attempt to induce or coerce, a beer wholesaler to accept delivery of an alcoholic beverage or other commodity which has not been ordered by the beer wholesaler.
2. Induce or coerce, or attempt to induce or coerce, a beer wholesaler to enter an agreement or take an action that would violate a law or rule of this state by threatening to amend, cancel, terminate, or refuse to renew an agreement existing between a brewer and a beer wholesaler.

3. Require a wholesaler to assent to a condition, stipulation, or provision limiting the wholesaler's right to sell any other brewer's product anywhere in this state, provided the sale of another brewer's product does not materially impair the quality of service or quantity of sales of the existing brand or brands of the brewer seeking to impose the condition, stipulation, or provision.
4. Require a wholesaler to submit specific, confidential information regarding competitive brands, as a condition of renewal or continuation of an agreement.
5. Fail to provide each wholesaler of its brands with a written contract that conforms to this chapter and embodies the brewer's agreement with each wholesaler.
6. Require a wholesaler to use or prohibit a wholesaler from using a business-to-business electronic commerce platform.

5-04-03. Dual distributorship prohibited.

No brewer who designates a sales territory for which a wholesaler shall be primarily responsible shall enter into an additional agreement with any other beer wholesaler for its brand or brands of beer in the same territory. No wholesaler may deliver beer to a retail account outside a sales territory designated by the brewer of a particular brand or brands.

5-04-04. Agreement cancellation.

Notwithstanding the terms, provisions, or conditions of any agreement, no brewer may amend, cancel, terminate, or refuse to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or causing a resignation. "Good cause" does not include the sale or purchase of a brewer. "Good cause" includes, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in this state.
2. The wholesaler's bankruptcy or insolvency.
3. Assignment for the benefit of creditors or similar disposition of the wholesaler's assets.
4. The wholesaler's failure to comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon the wholesaler by the brewer.

In any dispute over an amendment, cancellation, termination, or nonrenewal, the brewer has the burden of proving the existence of good cause. If a wholesaler initiates a civil action, the brewer bears the burden of proving the existence of good cause after a prima facie showing by the wholesaler that good cause does not exist.

5-04-05. Notice of intent to terminate.

Except as otherwise provided in this section, a brewer shall provide a wholesaler with at least ninety days prior written notice of any intent to amend, terminate, cancel, or not renew any agreement. The notice must state all the reasons for the intended amendment, termination, cancellation, or nonrenewal. The wholesaler has ninety days after receiving notice in which to rectify any claimed deficiency. If the deficiency is rectified within ninety days of notice, the proposed amendment, termination, cancellation, or nonrenewal is void. The notice provisions of this section do not apply if the reason for the termination, cancellation, or nonrenewal is:

1. The wholesaler's bankruptcy or insolvency.
2. An assignment for the benefit of creditors or similar disposition of the business assets.
3. Revocation of the wholesaler's license.
4. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesaler's ability to remain in business.

5-04-06. Assignment, transfer, or sale of business.

No brewer may unreasonably withhold consent to any assignment, transfer, or sale of the wholesaler's business whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of the brewer's wholesalers.

No brewer may unreasonably refuse, withhold, or unduly delay its approval of the issuance, sale, or transfer by a corporate beer wholesaler of its capital stock or any other corporate equity or debt security.

5-04-07. Reasonable compensation for wrongful cancellation.

1. Any brewer which amends, cancels, terminates, or refuses to renew any beer agreement, or causes a wholesaler to resign from an agreement, unless for "good cause" as defined by section 5-04-04, or which unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business includes, but is not limited to, the fair market value of the wholesaler's business with respect to the terminated brand or brands, including the value of any ancillary business of the wholesaler and the goodwill of the business or ancillary business. The value of the wholesaler's business may not exceed the wholesaler's actual damages.
2. If the brewer and the beer wholesaler are unable to mutually agree on reasonable compensation for the value of the wholesaler's business, the matter must be submitted to a neutral arbitrator to be selected by the parties or, if they cannot agree, by the presiding district judge of the district in which the wholesaler's main office is located. All arbitration costs shall be divided equally between the wholesaler and the brewer. The award of the neutral arbitrator shall be final and binding on the parties.

5-04-08. Judicial remedies.

If a brewer engages in conduct prohibited under this chapter, a wholesaler, with whom the brewer has an agreement pursuant to this chapter, may maintain a suit against the brewer. The venue of any legal action taken under this section, or pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of an agreement, is a court, state or federal, located in North Dakota, or where the wholesaler maintains its principal place of business in this state. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court may award actual damages and costs. If the court finds the brewer has acted in bad faith in invoking amendment, termination, cancellation, or nonrenewal under this chapter or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's agreement, the court may also award reasonable attorney's fees.

5-04-09. Product price.

No brewer, whether by means of a term or condition of an agreement or otherwise, may fix or maintain the price at which the wholesaler sells any alcoholic beverage.

5-04-10. Retaliatory action prohibited.

A brewer may not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged violation of state or federal law or regulation by the brewer with the appropriate state or federal regulatory authority. "Retaliatory action" includes, but is not limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

5-04-11. Wholesaler management.

No brewer may require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet essential, reasonable, and nondiscriminatory requirements.

5-04-12. Discrimination prohibited.

No brewer may discriminate among its North Dakota wholesalers in the price of beer sold to the North Dakota wholesalers or in price promotions. No wholesaler may refuse to sell to any licensed alcoholic beverage retailer in its sales territory. No wholesaler may discriminate among the licensed alcoholic beverage retailers in its sales territory in the price of beer sold to the retailers or in price promotions.

5-04-13. Waiver prohibited.

No brewer may require any wholesaler to waive compliance with any provision of this chapter. Nothing in this chapter may be construed to limit or prohibit good-faith dispute settlements voluntarily entered into by the parties. However, no provision of any written agreement may require the law of any state other than North Dakota to govern the relationship of the parties.

5-04-14. Sale of brewer.

Except for good cause, as defined by section 5-04-04, the purchase of a brewer as defined in section 5-04-01 shall obligate the purchaser to all terms and conditions of the agreement in effect on the date of purchase. "Purchase", for the purposes of this chapter, includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

5-04-15. Application to agreements.

The provisions of this chapter cover agreements in existence on July 1, 1981, as well as agreements entered into after July 1, 1981.

5-04-16. Right of free association.

No brewer or wholesaler may restrict or inhibit, directly or indirectly, the right of free association among brewers or wholesalers for any lawful purpose.

5-04-17. Chapter to apply when in conflict with title 51.

The provisions of this chapter apply in any instances when the provisions of this chapter conflict with the unfair practice provisions of title 51.

5-04-18. Same brands - Assignment of brand extensions.

Different categories of products manufactured and marketed under a common identifying trade name are the same brand. For example, "old faithful" includes "old faithful", "old faithful light", "old faithful draft", "old faithful dry", and other products identified principally by the old faithful name. Differences in packaging do not establish different brands. A brewer or importer may assign a brand extension only to the wholesaler with an exclusive sales territory to the brand that is the basis for the brand extension. This limitation does not apply to assignments of brand extensions to wholesalers which were made by a brewer or importer before August 1, 1995. If, before August 1, 1995, a brewer or importer assigned a brand extension to a wholesaler that is without exclusive sales territory to the brand that is the basis of the brand extension, any additional brand extension must be assigned to the wholesaler who first had the brand.

**TITLE 12.1
CRIMINAL CODE**

**CHAPTER 12.1-01
APPLICATION - PURPOSES - PROOF - DEFINITIONS**

12.1-01-01. Title - Retroactivity - Application - Contempt power.

1. Title 12.1 of the Century Code may be cited as the North Dakota Criminal Code.
2. This title, except as provided in subsection 3, shall not apply to offenses committed prior to its effective date. Prosecutions for such offenses shall be governed by prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to the effective date of this title if any of the elements of the offense occurred prior thereto.
3. In cases pending on or after the effective date of this title, and involving offenses committed prior thereto:
 - a. The provisions of this title according a defense or mitigation shall apply, with the consent of the defendant.
 - b. The court, with the consent of the defendant, may impose sentence under the provisions of this title which are applicable to the offense and the offender.
4. This section does not affect the power of a court or legislative assembly to punish for contempt, or to employ any enforcement sanction authorized by law, nor does this section affect any power conferred by law upon military authority to impose punishment upon offenders.

12.1-01-02. General purposes.

The general purposes of this title are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which governmental protection is appropriate. To this end, the provisions of this title are intended, and shall be construed, to achieve the following objectives:

1. To ensure the public safety through: a. vindication of public norms by the imposition of merited punishment; b. the deterrent influence of the penalties hereinafter provided; c. the rehabilitation of those convicted of violations of this title; and d. such confinement as may be necessary to prevent likely recurrence of serious criminal behavior.
2. By definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation.
3. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
4. To safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal.
5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.
6. To define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

12.1-01-03. Proof and presumptions.

1. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is presumed innocent until proven guilty. The fact that the accused has been arrested, confined, or charged with the offense gives rise to no inference of guilt at the accused's trial. "Element of an offense" means:
 - a. The forbidden conduct;

- b. The attendant circumstances specified in the definition and grading of the offense;
 - c. The required culpability;
 - d. Any required result; and
 - e. The nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue.
- 2. Subsection 1 does not require negating a defense:
 - a. By allegation in the charging document; or
 - b. By proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue.

Unless it is otherwise provided or the context plainly requires otherwise, if a statute outside this title defining an offense, or a related statute, or a rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense.
- 3. Subsection 1 does not apply to any defense which is explicitly designated an "affirmative defense". An affirmative defense must be proved by the defendant by a preponderance of evidence.
- 4. When a statute establishes a presumption, it has the following consequences:
 - a. If there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact.
 - b. In submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence of the fact presumed.
- 5. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

12.1-01-03.1. Presumption of age.

- 1. In determining an individual's age for purposes of this title, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:
 - a. A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth;
 - b. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth; or
 - c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence.
- 2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

- 1. "Absconded" means when a probationer, parolee, participant in a pretrial services program, or participant in a prosecution-led diversion program willfully avoids

- supervision by making their whereabouts unknown or fails to report to a supervising authority.
2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
 3. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
 4. "Actor" includes, where relevant, a person guilty of an omission.
 5. "Bodily injury" means any impairment of physical condition, including physical pain.
 6. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
 7. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
 8. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
 9. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
 10. "Firearm" means any weapon that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
 11. "Force" means physical action.
 12. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the state or any political subdivision of the state, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and
 - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
 13. "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.
 14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.
 15. "Included offense" means an offense:
 - a. That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
 16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
 17. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

18. "Local" means of or pertaining to any political subdivision of the state.
19. "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 individual, with due consideration of the totality of circumstances.
20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.
22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
23. "Omission" means a failure to act.
24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government that may lawfully own property in this state.
25. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
26. "Possesses" means an individual has:
 - a. Direct physical control of something on or around the individual's person; or
 - b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
27. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function. The term does not include witnesses.
28. "Responsivity factors" means characteristics of an individual which affect the individual's ability to respond favorably or unfavorably to a treatment goal.
29. "Risk assessment" means a validated, standardized actuarial tool used to identify potential risk factors that increase the likelihood an individual will reoffend and responsivity factors that, when addressed, reduce the likelihood an individual will reoffend. The initial phase is an assessment tool that is administered by a trained corrections professional. A predetermined score on the initial phase initiates the secondary process, approved by the department of health and human services, that may include a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of health and human services shall perform the secondary process of the risk assessment.
30. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.
31. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
32. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.
33. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
34. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance.

Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law may not be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or counties. This section does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

CHAPTER 12.1-02

LIABILITY AND CULPABILITY

12.1-02-01. Basis of liability for offenses.

1. A person commits an offense only if the person engages in conduct, including an act, an omission, or possession, in violation of a statute which provides that the conduct is an offense.
2. A person who omits to perform an act does not commit an offense unless the person has a legal duty to perform the act, nor shall such an omission be an offense if the act is performed on the person's behalf by a person legally authorized to perform it.

12.1-02-02. Requirements of culpability.

1. For the purposes of this title, a person engages in conduct:
 - a. "Intentionally" if, when he engages in the conduct, it is his purpose to do so.
 - b. "Knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
 - c. "Recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.
 - d. "Negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
 - e. "Willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
3.
 - a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is "knowingly".
 - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
 - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
 - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, if the defense is defined in chapters 12.1-01 through 12.1-06; otherwise the least kind of culpability required for the offense is required with respect to such facts.
 - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
4. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.
5. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this title.

12.1-02-03. Mistake of fact in affirmative defenses.

Unless otherwise expressly provided, a mistaken belief that the facts which constitute an affirmative defense exist is not a defense.

12.1-02-04. Ignorance or mistake negating culpability.

Repealed by S.L. 1975, ch. 116, § 33.

12.1-02-05. Causal relationship between conduct and result.

Causation may be found where the result would not have occurred but for the conduct of the accused operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the accused clearly insufficient.

CHAPTER 12.1-03
ACCOMPLICES - CORPORATIONS - AGENTS

12.1-03-01. Accomplices.

1. A person may be convicted of an offense based upon the conduct of another person when:
 - a. Acting with the kind of culpability required for the offense, he causes the other to engage in such conduct;
 - b. With intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a statutory duty to prevent its commission, he fails to make proper effort to do so; or
 - c. He is a coconspirator and his association with the offense meets the requirements of either of the other subdivisions of this subsection.

A person is not liable under this subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.
2. Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:
 - a. The defendant does not belong to the class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or
 - b. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

12.1-03-02. Corporate and limited liability company criminal responsibility.

1. A corporation or a limited liability company may be convicted of:
 - a. Any offense committed by an agent of the corporation or limited liability company within the scope of the agent's employment on the basis of conduct authorized, requested, or commanded, by any of the following or a combination of them:
 - (1) The board of directors or the board of governors.
 - (2) An executive officer, executive manager, or any other agent in a position of comparable authority with respect to the formulation of policy or the supervision in a managerial capacity of subordinate employees.
 - (3) Any person, whether or not an officer of the corporation, who controls the corporation or is responsibly involved in forming its policy.
 - (4) Any person, whether or not a manager of the limited liability company, who controls the limited liability company or is responsibly involved in forming its policy.
 - (5) Any other person for whose act or omission the statute defining the offense provides corporate or limited liability company responsibility for offenses.
 - b. Any offense consisting of an omission to discharge a specific duty of affirmative conduct imposed on a corporation or a limited liability company by law.
 - c. Any misdemeanor committed by an agent of the corporation or the limited liability company within the scope of the agent's employment.
 - d. Any offense for which an individual may be convicted without proof of culpability, committed by an agent of the corporation or the limited liability company within the scope of the agent's employment.
2. It is no defense that an individual upon whose conduct liability of the corporation or the limited liability company for an offense is based has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

12.1-03-03. Individual accountability for conduct on behalf of organizations.

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of an organization or in its behalf to the same extent as if the conduct were performed in his own name or his behalf.
2. Except as otherwise expressly provided, whenever a duty to act is imposed upon an organization by a statute or regulation thereunder, any agent of the organization having primary responsibility for the subject matter of the duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed directly upon himself.
3. When an individual is convicted of an offense as an accomplice of an organization, he is subject to the sentence authorized when a natural person is convicted of that offense.

12.1-03-04. Definitions and general provisions.

1. In this chapter:
 - a. "Agent" means any partner, director, officer, governor, manager, servant, employee, or other person authorized to act in behalf of an organization.
 - b. "Organization" means any legal entity, whether or not organized as a corporation, limited liability company, or unincorporated association, but does not include an entity organized as or by a governmental agency for the execution of a governmental program.
2. Nothing in this chapter shall limit or extend the criminal liability of an unincorporated association.

CHAPTER 12.1-04

JUVENILES - INTOXICATION - FITNESS TO PROCEED

12.1-04-01. Juveniles.

The prosecution of an individual as an adult is barred if the offense was committed while the individual was less than fourteen years of age.

12.1-04-02. Intoxication.

1. Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.
2. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

12.1-04-03. Lack of criminal responsibility a defense.

Repealed by S.L. 1985, ch. 173, § 29.

12.1-04-04. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Fitness to proceed" means sufficient present ability to consult with the individual's counsel with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against the individual.
2. "Least restrictive appropriate setting" means available treatment or service that best meets the identified need and is no more restrictive of physical or social liberties than what is necessary to meet the need.
3. "Therapeutically appropriate treatment" means treatment that provides the individual the greatest probability of improvement or cure.

12.1-04-04.1. Disposition of defendants - Lack of fitness to proceed - Records.

1. A defendant is presumed to be fit to stand trial, to plead, or to be sentenced.
2. An individual who lacks fitness to proceed may not be tried, convicted, or sentenced for the commission of an offense.
3. Any report filed pursuant to this chapter regarding "diagnosis, treatment, or treatment plans" must be kept confidential and may be reviewed only by the court or an appellate court, the state, the defense, the facility providing treatment as required by order of the court, and any other person as directed by the court.

12.1-04-05. Notice of defense, filing.

Superseded by N.D.R.Crim.P., Rule 12.2.

12.1-04-06. Temporary detention for purposes of examination.

Whenever there is reason to doubt the defendant's fitness to proceed, the court may order temporary detention of the defendant for the purpose of an examination. The temporary detention must be in the least restrictive appropriate setting, including the state hospital, the life skills and transition center, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of examination, subject to any reasonable limitation the court may impose. A state-operated behavioral health clinic may be considered if the court is aware an inquiry was made before the court ordered the evaluation to ensure appropriate resources exist at the state-operated behavioral health clinic being ordered to conduct the examination. While the defendant is detained, the defendant's legal counsel, family, and others necessary to assist in the defendant's case must have reasonable opportunity to examine and confer with the defendant.

12.1-04-07. Examination - Report - Hearing when contested.

1. Whenever there is reason to doubt the defendant's fitness to proceed, the court shall order the defendant be examined by a tier 1a mental health professional.
2. An examination must occur within fifteen days from receipt of material necessary to examine the fitness of the individual and notice of entry of the order served upon the tier 1a mental health professional. Attorneys shall disclose any materials necessary to examine the fitness of the individual to the tier 1a examiner contemporaneously with the order. For good cause shown, the court may grant an extension allowing an additional seven days to complete the examination.
3. The report of the examining mental health professional, whether for a retrospective evaluation of fitness or an evaluation of the defendant's current fitness, must be provided to the court in writing within thirty days of the date of the examination.
4. The report must include:
 - a. The identity of the individuals interviewed and records and other information considered.
 - b. Procedures, tests, and techniques utilized in the assessment.
 - c. The date and time of the examination of the defendant, and the identity of each individual present during the examination.
 - d. The relevant information obtained, other information not obtained, and the defendant's responses to questions related to the defendant's fitness to proceed, except for any restricted, proprietary, copyrighted, or other information subject to trade secret protection which the examiner believes may be relevant, and the findings made.
 - e. An opinion as to whether the defendant is fit to proceed, is able to understand the nature or purpose of the proceedings against the defendant, is able to effectively communicate with counsel, and whether the defendant will attain fitness to proceed within the time frames set forth in section 12.1-04-08. If the examiner is unable to determine whether the defendant will attain fitness within a specified period of time, the report must include the reasoning. The report may include a general description of the type of treatment needed and of the therapeutically appropriate treatment or other appropriate treatment.
5. If the findings of the report are contested, the court shall hold a hearing before deciding whether the defendant currently lacks fitness to proceed and whether the defendant will attain fitness to proceed. Upon hearing, the prosecution and defense have the right to summon and cross-examine the persons responsible for the report and to offer evidence upon the issues.

12.1-04-08. Suspension or dismissal of proceedings - Referral for services.

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and the defendant is charged with a class B misdemeanor, except a class B misdemeanor under chapter 12.1-17, the proceedings must be dismissed.
2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed, the defendant is charged with a felony or a class A misdemeanor, and the report as required under section 12.1-04-07 indicates a likelihood the defendant will attain fitness within a specified period of time from the date of the finding upon completion of a course of therapeutically appropriate treatment, the proceedings against the defendant must be suspended for a period of up to one hundred eighty days. The court may extend the suspension for an additional three hundred sixty-five days if there is medical evidence to believe the defendant's fitness to proceed will be restored during the extended period. For a defendant charged with a class B misdemeanor under chapter 12.1-17, the proceedings must be suspended for a period no longer than the maximum term of imprisonment for the most serious offense charged. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If prosecution of the defendant has not resumed or it is determined by the

- court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed within the allotted time, the charges against the defendant must be dismissed.
3. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services. Other appropriate services include:
 - a. Determination of incapacity, by a district court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29;
 - b. Civil commitment of the person pursuant to chapter 25-03.1; or
 - c. Any other services the court deems appropriate.
 4. If the court determines the defendant currently lacks fitness to proceed and the defendant may attain fitness to proceed under subsection 2, the court may enter an order for a course of treatment considering the least restrictive form of treatment therapeutically appropriate.
 - a. Unless excused by the court, in a proceeding to determine therapy in an attempt to attain fitness, the defendant shall be represented by trial counsel.
 - b. If the court finds the individual is not able to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds to examine the individual.
 - c. In a motion hearing to resume prosecution, the state or prosecuting authority must show by a preponderance of the evidence the defendant has attained fitness to proceed.
 5. If the court orders the defendant committed to a treatment facility in an attempt to attain fitness to proceed under subsection 2, the court shall provide the special custody and commitment terms in the order. The special terms of commitment must include an order for the defendant to accept all nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, including the use of involuntary treatment with prescribed medication without the need for a separate commitment under chapter 25-03.1.
 - a. If the order does not indicate the terms of commitment, the director or superintendent of the treatment facility may determine the nature of the constraints necessary within the treatment facility to carry out the order of the court.
 - b. If the court orders an individual committed for therapeutic treatment to attain fitness to proceed, the court shall set a date consistent with the timeline established in this section for a review of the defendant's fitness to proceed. At least sixty days before the date specified for review, the director or director's designee or the superintendent of the treatment facility shall inquire as to whether the individual is represented by counsel and file a written report of the facts ascertained with the court.
 6. If the parties to the action have reason to modify the special terms of the commitment order under this section, the parties shall make a motion to the court and the court shall determine by a preponderance of the evidence if the modification of the special terms is necessary and the least restrictive therapeutic alternative therapy in an attempt to attain fitness to proceed.
 7. The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law.

12.1-04-09. Legal objections to prosecution allowed.

The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

12.1-04-10. Acquittal due to mental disease or defect - Petition to clerk of court.
Repealed by S.L. 1985, ch. 173, § 29.

CHAPTER 12.1-04.1
CRIMINAL RESPONSIBILITY AND POST-TRIAL RESPONSIBILITY ACT

12.1-04.1-01. Standard for lack of criminal responsibility.

1. An individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs:
 - a. The individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and
 - b. It is an essential element of the crime charged that the individual act willfully.
2. For purposes of this chapter, repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense, does not constitute in itself mental illness or defect at the time of the alleged offense. Evidence of the conduct or impairment may be probative in conjunction with other evidence to establish mental illness or defect.
3. An individual ten years of age or older may be assessed for criminal responsibility under this chapter.

12.1-04.1-02. Court authorization of state-funded mental health services for certain defendants.

A defendant who is unable to pay for the services of a tier 1a mental health professional, and to whom those services are not otherwise available, may apply to the court for assistance. Upon a showing of a likely need for examination on the question of lack of criminal responsibility or lack of requisite state of mind as a result of the defendant's mental condition, the court shall authorize reasonable expenditures from public funds for the defendant's retention of the services of one or more tier 1a mental health professionals. Upon request by the defendant, the application and the proceedings on the application must be ex parte and in camera, but any order under this section authorizing expenditures must be made part of the public record.

12.1-04.1-03. Notice of defense of lack of criminal responsibility.

1. If the defendant intends to assert the defense of lack of criminal responsibility, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court. The notice must indicate whether the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.
3. If the defendant fails to give notice in accordance with this section, lack of criminal responsibility may not be asserted as a defense.

12.1-04.1-04. Notice regarding expert testimony on lack of state of mind as element of alleged offense.

1. If the defendant intends to introduce at trial evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense to show the defendant lacked the state of mind required for the alleged offense, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.

12.1-04.1-05. Examination at request of prosecuting attorney.

1. If the defendant has given notice under section 12.1-04.1-03 or 12.1-04.1-04 of intent to introduce evidence obtained from examination of the defendant by a tier 1a mental health professional after the time of the alleged offense, the court, upon application by the prosecuting attorney and after opportunity for response by the defendant, shall order the defendant be examined by one or more tier 1a mental health professionals retained by the prosecuting attorney. The court shall include in the order provisions as to the time, place, and conditions of the examination.
2. If the parties agree to examination of the defendant by a tier 1a mental health professional retained by the prosecuting attorney without order of the court, sections 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14, and 12.1-04.1-15 apply to that examination.

12.1-04.1-06. Explanation to defendant.

At the beginning of each examination conducted under section 12.1-04.1-05, the tier 1a mental health professional shall inform the defendant the examination is being made at the request of the prosecuting attorney; the purpose of the examination is to obtain information about the defendant's mental condition at the time of the alleged offense; and information obtained from the examination may be used at trial and, if the defendant is found not guilty by reason of lack of criminal responsibility, in subsequent proceedings concerning commitment or other disposition.

12.1-04.1-07. Scope of examination.

An examination of the defendant conducted under section 12.1-04.1-05 may consist of such interviewing, clinical evaluation, and psychological testing the tier 1a mental health professional considers appropriate, within the limits of nonexperimental, generally accepted medical, psychiatric, or psychological practices.

12.1-04.1-08. Recording of examination.

1. An examination of the defendant conducted under section 12.1-04.1-05 must be audio-recorded and, if ordered by the court, video-recorded. The manner of recording may be specified by rule or by court order in individual cases.
2. Within seven days after completion of an examination conducted under section 12.1-04.1-05, the tier 1a mental health professional conducting the examination shall deliver a copy of the recording of the examination, under seal, to the court and a copy of the recording to the defendant. The recording may not be disclosed except in accordance with this chapter.

12.1-04.1-09. Consequence of deliberate failure of defendant to cooperate.

If the defendant without just cause deliberately fails to participate or to respond to questions in an examination conducted under section 12.1-04.1-05, the prosecuting attorney may apply before trial to the court for appropriate relief. The court may consider the recording of the examination as evidence on the application, but proceedings under this section involving consideration of the recording must be in camera and out of the presence of counsel.

12.1-04.1-10. Reports by tier 1a mental health professionals and expert witnesses.

A tier 1a mental health professional retained by the prosecuting attorney and a tier 1a mental health professional whom the defendant intends to call to testify at trial shall prepare a written report concerning any examination of the defendant and other pretrial inquiry by or under the supervision of the tier 1a mental health professional. Any other individual whom either party intends to call at trial as an expert witness on any aspect of the defendant's mental condition shall prepare a written report. A report under this section must contain:

1. The specific issues addressed.
2. The identity of individuals interviewed and records or other information used.
3. The procedures, tests, and techniques used.

4. The date and time of examination of the defendant, the explanation concerning the examination given to the defendant, and the identity of each individual present during an examination.
5. The relevant information obtained and findings made.
6. Matters concerning which the mental health professional was unable to obtain relevant information and the reasons therefor.
7. The conclusions reached and the reasoning on which the conclusions were based.

12.1-04.1-11. Exchange of reports and production of documents.

Not less than fifteen days before trial, the prosecuting attorney shall furnish to the defendant reports prepared pursuant to section 12.1-04.1-10, and the defendant shall furnish to the prosecuting attorney reports by each tier 1a mental health professional or other expert on any aspect of the defendant's mental condition whom the defendant intends to call at trial. Upon application by either party and after hearing, the court may require production of documents prepared, completed, or used in the examination or inquiry by the tier 1a mental health professional or other expert.

12.1-04.1-12. Use of reports at trial.

Use at trial of a report prepared by a tier 1a mental health professional or other expert is governed by the North Dakota Rules of Evidence. A report of a tier 1a mental health professional or other expert furnished by the defendant pursuant to section 12.1-04.1-10 may not be used at trial unless the tier 1a mental health professional or other expert who prepared the report has been called to testify by the defendant.

12.1-04.1-13. Notice of expert witnesses.

Not less than twenty days before trial, each party shall give written notice to the other of the name and qualifications of each tier 1a mental health professional or other individual the respective party intends to call as an expert witness at trial on the issue of lack of criminal responsibility or requisite state of mind as an element of the crime charged. For good cause shown, the court may permit later addition to or deletion from the list of individuals designated as expert witnesses.

12.1-04.1-14. Use of evidence obtained from examination.

1. Except as provided in subsection 2 and in sections 12.1-04.1-09 and 12.1-04.1-26, information obtained as a result of examination of a defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is not admissible over objection of the defendant in any proceeding against the defendant.
2. Subject to the limitation in section 12.1-04.1-15, information obtained from an examination of the defendant by a tier 1a mental health professional conducted under section 12.1-04.1-05 is admissible at trial to rebut evidence introduced by the defendant obtained from an examination of the defendant by a tier 1a mental health professional or to impeach the defendant on the defendant's testimony as to mental condition at the time of the alleged offense.

12.1-04.1-15. Use of recording of examination.

Except as provided in section 12.1-04.1-09, recording of an examination of the defendant concerning the defendant's mental condition at the time of the alleged offense may be referred to or otherwise used only on cross-examination for the purpose of impeachment of the tier 1a mental health professional who conducted the examination and then on redirect examination of that witness to the extent permitted by the North Dakota Rules of Evidence. The defendant must make the recording available to the prosecuting attorney before any use of it pursuant to this section. If the recording is so used, this section does not preclude its use for the purpose of impeachment of the defendant in any other criminal, civil, or administrative proceeding.

12.1-04.1-16. Bifurcation of issue of lack of criminal responsibility.

Upon application of the defendant, the court may order that issues as to the commission of the alleged offense be tried separately from the issue of lack of criminal responsibility.

12.1-04.1-17. Jury instruction on disposition following verdict of lack of criminal responsibility.

On request of the defendant in a trial by jury of the issue of lack of criminal responsibility for the alleged offense, the court shall instruct the jury as to the dispositional provisions applicable to the defendant if the jury returns a verdict of not guilty by reason of lack of criminal responsibility.

12.1-04.1-18. Form of verdict or finding.

If the issue of lack of criminal responsibility is submitted to the trier of fact:

1. In a unitary trial, the trier of fact must first determine whether the prosecuting attorney has proven that the defendant committed the crime charged. In a bifurcated trial, the trier of fact must first determine whether the prosecuting attorney has proven that the defendant committed the crime charged and, if so, whether the defendant is criminally responsible. Each determination must be made at the conclusion of the phase of the trial at which the respective issue is tried. If the trier of fact concludes that the prosecuting attorney failed to prove that the defendant committed the crime charged, the appropriate verdict or finding is "not guilty".
2. If the trier of fact determines that the defendant committed the crime charged and the defendant was criminally responsible for that crime, the appropriate verdict or finding is "guilty".
3. If the trier of fact determines that the defendant committed the crime charged, but was not criminally responsible for that crime, the appropriate verdict or finding is a statement that the defendant committed the crime charged but that the defendant is "not guilty by reason of lack of criminal responsibility".

12.1-04.1-19. Post-trial motions and appeal from verdict or finding of not guilty by reason of lack of criminal responsibility.

1. A defendant found not guilty by reason of lack of criminal responsibility may seek post-trial relief in the trial court and may appeal to the supreme court on issues pertaining to the verdict or finding that the defendant committed the crime charged.
2. If the verdict or finding is not guilty by reason of lack of criminal responsibility, and a new trial is ordered on the issue of whether the defendant committed the crime charged, unless defendant elects to waive the defense, the verdict or finding of lack of criminal responsibility is conclusive on that issue in the retrial.

12.1-04.1-20. Jurisdiction of court.

1. Unless earlier discharged by order of the court pursuant to section 12.1-04.1-22, 12.1-04.1-24, or 12.1-04.1-25, an individual found not guilty by reason of lack of criminal responsibility is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not guilty by reason of lack of criminal responsibility. In a juvenile proceeding, a child not adjudicated by reason of lack of criminal responsibility is subject to the jurisdiction of the court for one year.
2. Upon expiration of its jurisdiction under this chapter or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to chapter 25-03.1. In a juvenile proceeding, the court may order an investigation into whether a child in need of protection proceedings should be initiated under chapter 27-20.3.

12.1-04.1-21. Proceeding following verdict or finding.

After entry of a verdict, finding, or an unresisted plea, that an individual committed the crime charged, but is not guilty by reason of lack of criminal responsibility, the court shall:

1. Make a finding, based upon the verdict or finding provided in section 12.1-04.1-18, of the expiration date of the court's jurisdiction; and
2. Order the individual committed to a treatment facility, as defined under chapter 25-03.1, for examination. The superintendent or the director of a treatment facility may petition the court to transfer or assign the individual committed if, in the superintendent's or director's opinion, it would be more appropriate for the individual committed to receive the examination in or by a least restrictive setting if the attending physician or director of the least restrictive setting consents. The order of the court may set terms of custody during the period of examination.

12.1-04.1-22. Initial order of disposition - Commitment to treatment facility - Conditional release - Discharge.

1. The court shall conduct a dispositional hearing within ninety days after an order of commitment pursuant to section 12.1-04.1-21 is entered, unless the court, upon application of the prosecuting attorney or the individual committed, for cause shown, extends the time for the hearing. The court shall enter an initial order of disposition within ten days after the hearing is concluded.
2. In a proceeding under this section, unless excused by order of the court, defense counsel at the trial shall represent the individual committed.
3. If the court finds the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and that those services are not otherwise available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition.
4. In a proceeding under this section, the individual committed has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds the individual is not mentally ill or defective or that there is not a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act, the court shall order the individual discharged from further constraint under this chapter.
 - b. If the court finds the individual is mentally ill or defective and there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is not a proper subject for conditional release, the court shall order the individual committed to a treatment facility for custody and treatment. If the court finds the risk the individual will commit an act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment if the individual is conditionally released and that necessary supervision and treatment are available, the court shall order the individual released subject to conditions it considers appropriate for the protection of society.
 - c. If the court finds the individual is mentally ill or defective and there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act not included in subdivision b, the court shall order the individual to report to a treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

12.1-04.1-23. Terms of commitment - Periodic review of commitment.

1. Unless an order of commitment of an individual to a treatment facility provides for special terms as to custody during commitment, the director or superintendent of the

treatment facility may determine from time to time the nature of the constraints necessary within the treatment facility to carry out the court's order. In an order of commitment, the court may authorize the director or superintendent to allow the individual a limited leave of absence from the treatment facility on terms the court may direct.

2. In an order of commitment of an individual to a treatment facility under this chapter, the court shall set a date for review of the status of the individual. The date set must be within one year after the date of the order.
3. At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, counsel must be provided at public expense to consult with the individual and, if the individual is indigent, to seek arrangement of counsel at public expense to represent the individual in a proceeding for conditional release or discharge.
4. If the court finds in a review the individual lacks sufficient financial resources to retain the services of a tier 1a mental health professional and those services are otherwise not available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more tier 1a mental health professionals to examine the individual and make other inquiry concerning the individual's mental condition. In proceedings brought before the next date for review, the court may authorize expenditures from public funds for that purpose.
5. If an application for review of the status of the individual has not been filed by the date for review, the director or superintendent shall file a motion for a new date for review to be set by the court. The date set must be within one year after the previous date for review.

12.1-04.1-24. Modification of order of commitment - Conditional release or discharge - Release plan.

1. After commitment of an individual to a treatment facility under this chapter, the director or superintendent may apply to the court for modification of the terms of an order of commitment or for an order of conditional release or discharge. The application must be accompanied by a report setting forth the facts supporting the application and, if the application is for conditional release, a plan for supervision and treatment of the individual.
2. An individual who has been committed to a treatment facility under this chapter, or another person acting on the individual's behalf, may apply to the court for modification of the terms of a commitment order or for an order of conditional release or discharge. If the application is being considered by the court at the time of the review of the order of commitment, the court shall require a report from the director or superintendent of the treatment facility.
3. The court shall consider and dispose of an application under this section promptly. In a proceeding under this section, the applicant has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds that the individual committed is not mentally ill or defective or that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act, it shall order the individual discharged from further constraint under this chapter.
 - b. If the court finds that the individual is mentally ill or defective, but that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage, it shall vacate the order committing the individual to a treatment facility. If the court finds that there is a substantial risk that the individual will commit, as a result of mental illness or defect, a nonviolent criminal act, it may order the individual to report to any treatment facility for noncustodial

evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

- c. If the court finds that the individual is mentally ill or defective, but that the risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment and that necessary supervision and treatment are available, it shall order the individual released subject to conditions it considers appropriate for the protection of society.
4. In any proceeding for modification of an order of commitment to a treatment facility, if the individual has been represented by counsel and the application for modification of the order of commitment is denied after a plenary hearing, the court shall set a new date for periodic review of the status of the individual. The date set must be within one year after the date of the order.

12.1-04.1-25. Conditional release - Modification - Revocation - Discharge.

1. In an order for conditional release of an individual, the court shall designate a treatment facility or a person to be responsible for supervision of the individual.
2. As a condition of release, the court may require the individual released to report to any treatment facility for evaluation and treatment, require the individual to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, and impose other conditions reasonably necessary for protection of society.
3. The person or the director or superintendent of a treatment facility responsible for supervision of an individual released shall furnish reports to the court, at intervals prescribed by the court, concerning the mental condition of the individual. Copies of reports submitted to the court must be furnished to the individual and to the prosecuting attorney.
4. If there is reasonable cause to believe that the individual released presents an imminent threat to cause bodily injury to another, the person or the director or superintendent of the treatment facility responsible for supervision of the individual pursuant to an order of conditional release may take the individual into custody or request that the individual be taken into custody. An individual taken into custody under this subsection must be accorded an emergency hearing before the court not later than the next court day to determine whether the individual should be retained in custody pending a further order pursuant to subsection 5.
5. Upon application by an individual conditionally released, by the director or superintendent of the treatment facility or person responsible for supervision of an individual pursuant to an order of conditional release, or by the prosecuting attorney, the court shall determine whether to continue, modify, or terminate the order. The court shall consider and dispose of an application promptly. In a proceeding under this section, the applicant has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds that the individual is not mentally ill or defective or that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act, it shall order that the individual be discharged from further constraint under this chapter.
 - b. If the court finds that the individual is mentally ill or defective, but that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage, it may modify the conditions of release as appropriate for the protection of society.
 - c. If the court finds that the individual is mentally ill or defective and that there is a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury

or inflicting property damage and that the individual is no longer a proper subject for conditional release, it shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the individual is mentally ill or defective and that there is a substantial risk that the individual, as a result of mental illness or defect, will commit a nonviolent criminal act, it may order the individual to report to any treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

12.1-04.1-26. Procedures.

1. An applicant for a court order under sections 12.1-04.1-20 through 12.1-04.1-25 shall deliver a copy of the application and any accompanying documents to the individual committed, the prosecuting attorney, the director or superintendent of the treatment facility to which the individual has been committed, or the person or the director or superintendent of a treatment facility responsible for supervision of an individual conditionally released. The North Dakota Rules of Civil Procedure, adapted by the court to the circumstances of a postverdict proceeding, apply to a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25.
2. In a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25 for an initial order of disposition, in a proceeding for modification or termination of an order of commitment to a treatment facility initiated by the individual at the time of a review, or in a proceeding in which the status of the individual might be adversely affected, the individual has a right to counsel. If the court finds that the individual is indigent and that counsel is not otherwise available, counsel must be provided at public expense to represent the individual.
3. In a proceeding under sections 12.1-04.1-20 through 12.1-04.1-25, the North Dakota Rules of Evidence do not apply. If relevant, evidence adduced in the criminal trial of the individual and information obtained by court-ordered examinations of the individual pursuant to section 12.1-04.1-04 or 12.1-04.1-22 are admissible.
4. A final order of the court is appealable to the supreme court.

CHAPTER 12.1-05
JUSTIFICATION - EXCUSE - AFFIRMATIVE DEFENSES

12.1-05-01. Justification.

1. Except as otherwise expressly provided, justification or excuse under this chapter is a defense.
2. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable in a prosecution for such recklessness or negligence.
3. That conduct may be justified or excused within the meaning of this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

12.1-05-02. Execution of public duty.

1. Conduct engaged in by a public servant in the course of the person's official duties is justified when it is required or authorized by law.
2. A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action directed by the public servant is plainly unlawful.
3. A person is justified in using force upon another to effect that person's arrest or prevent that person's escape when a public servant authorized to make the arrest or prevent the escape is not available if the other person has committed, in the presence of the actor, any crime which the actor is justified in using force to prevent, or if the other person has committed a felony involving force or violence.
4. Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer alone could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.
5. A member of the armed forces is justified in using deadly force when it reasonably appears to be necessary to prevent the loss, theft, destruction, sabotage, or unauthorized control of a nuclear weapon, critical nuclear component, or nuclear explosive device.

12.1-05-03. Self-defense.

A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted.
2. A person is not justified in using force if:
 - a. He intentionally provokes unlawful action by another person to cause bodily injury or death to such other person; or
 - b. He has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

12.1-05-04. Defense of others.

A person is justified in using force upon another person in order to defend anyone else if:

1. The person defended would be justified in defending himself; and
2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities.

The use of force upon an individual is justified under any of the following circumstances:

1. Except as provided in section 15.1-19-02, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.
 - a. If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.
 - b. The reasonable force may be used for this purpose, regardless of whether the reasonable force is "necessary" as required by subsection 1 of section 12.1-05-07.
 - c. The reasonable force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
2. A guardian or other person responsible for the care and supervision of an individual who is incompetent, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the individual for the purpose of safeguarding or promoting the welfare of the individual, including the prevention of the individual's misconduct or, if the individual is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution.
 - a. The force may be used for these purposes, regardless of whether the force is "necessary" as required by subsection 1 of section 12.1-05-07.
 - b. The force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
3. A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
4. A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
 - a. In an emergency;
 - b. With the consent of the patient, or, if the patient is a minor or an individual who is incompetent, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or
 - c. By order of a court of competent jurisdiction.
5. A person may use force upon an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of that individual.

12.1-05-06. Use of force in defense of premises and property.

Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property.

12.1-05-07. Limits on the use of force - Excessive force - Deadly force.

1. An individual is not justified in using more force than is necessary and appropriate under the circumstances.

2. Deadly force is justified in the following instances:
- a. When it is expressly authorized by law or occurs in the lawful conduct of war.
 - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the individual menaced. An individual seeking to protect another individual must, before using deadly force, try to cause the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. However, the duty to retreat or avoid force does not apply under the following circumstances:
 - (1) A public servant justified in using force in the performance of the public servant's duties or an individual justified in using force in assisting the public servant need not desist from the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the other individual against whom the public servant's or individual's action is directed; and
 - (2) An individual who is not engaged in an unlawful activity that gives rise to the need for the use of deadly force and has not provoked the individual against whom the deadly force is used, unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply, is not required to retreat within or from any place the individual otherwise is legally allowed to be.
 - c. When used by an individual in possession or control of a dwelling, place of work, motor vehicle, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, motor vehicle, or occupied motor home or travel trailer, and the use of force other than deadly force for these purposes would expose any individual to substantial danger of serious bodily injury.
 - d. When used by a public servant authorized to effect arrests or prevent escapes, if the force is necessary to effect an arrest or to prevent the escape from custody of an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.
 - e. When used by a guard or other public servant, if the force is necessary to prevent the escape of a prisoner from a detention facility, unless the guard or public servant knows that the prisoner is not an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of an individual charged with or convicted of an offense, charged with being or adjudicated a juvenile delinquent, held for extradition, or otherwise confined under court order.
 - f. When used by a duly licensed physician, or an individual acting at the physician's direction, if the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered in an emergency; with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or by order of a court of competent jurisdiction.
 - g. When used by an individual who is directed or authorized by a public servant, and who does not know that the public servant is not authorized to use deadly force under the circumstances.

12.1-05-07.1. Use of deadly force - Presumption of fear of death or serious bodily injury.

1. An individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if:
 - a. The individual against whom the deadly force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered and remains within a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, or if the individual had removed or was attempting to remove another against that individual's will from the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01; and
 - b. The individual who uses deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
2. The presumption in subsection 1 may be rebutted by proof beyond a reasonable doubt that the individual who used the deadly force did not have a reasonable fear of imminent peril of death or serious bodily injury to that individual or another.
3. The presumption in subsection 1 does not apply if the court finds that any of the following have occurred:
 - a. The individual against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, including an owner, lessee, or titleholder, and there is not a temporary or permanent domestic violence protection order or any other order of no contact against that individual;
 - b. The individual removed or sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the individual against whom the deadly force is used;
 - c. The individual who uses deadly force is engaged in the commission of a crime or is using the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 to further the commission of a crime; or
 - d. The individual against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual entering or attempting to enter was a law enforcement officer.

12.1-05-07.2. Immunity from civil liability for justifiable use of force.

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual was a law enforcement officer.
2. The court shall award loss of income, reasonable attorney's fees, court costs, and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

12.1-05-08. Excuse.

A person's conduct is excused if he believes that the facts are such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this chapter, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability. Excuse under

this section is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

12.1-05-09. Mistake of law.

Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense if he acted in reasonable reliance upon a statement of the law contained in:

1. A statute or other enactment.
2. A judicial decision, opinion, order, or judgment.
3. An administrative order or grant of permission.
4. An official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the crime.

12.1-05-10. Duress.

1. In a prosecution for any offense, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or to another. In a prosecution for an offense which does not constitute a felony, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.
2. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

12.1-05-11. Entrapment.

1. It is an affirmative defense that the defendant was entrapped into committing the offense.
2. A law enforcement agent perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, the law enforcement agent induces or encourages and, as a direct result, causes another person to engage in conduct constituting such a crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.
3. In this section "law enforcement agent" includes personnel of federal and local law enforcement agencies as well as state agencies, and any person cooperating with such an agency.

12.1-05-12. Definitions.

In this chapter:

1. "Deadly force" means force which a person uses with the intent of causing, or which he knows creates a substantial risk of causing, death or serious bodily injury. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.
2. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a person's home or place of lodging.
3. "Force" means physical action, threat, or menace against another, and includes confinement.

4. "Premises" means all or any part of a building or real property, or any structure, vehicle, or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.

CHAPTER 12.1-06
CRIMINAL ATTEMPT - FACILITATION - SOLICITATION - CONSPIRACY

12.1-06-01. Criminal attempt.

1. A person is guilty of criminal attempt if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.
2. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 12.1-03-01 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime, for example, because he has a defense of justification or entrapment.
3. Criminal attempt is an offense of the same class as the offense attempted, except that (a) an attempt to commit a class AA felony is a class A felony and an attempt to commit a class A felony is a class B felony; and (b) whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt did not come dangerously close to commission of the crime, an attempt to commit a class B felony shall be a class C felony and an attempt to commit a class C felony shall be a class A misdemeanor.

12.1-06-02. Criminal facilitation.

1. A person is guilty of criminal facilitation if he knowingly provides substantial assistance to a person intending to commit a felony and that person, in fact, commits the crime contemplated, or a like or related felony, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by a defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the felony facilitated or related statutes.
2. Except as otherwise provided, it is no defense to a prosecution under this section that the person whose conduct the defendant facilitated has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
3. Facilitation of a class A felony is a class C felony. Facilitation of a class B or class C felony is a class A misdemeanor.

12.1-06-03. Criminal solicitation.

1. A person is guilty of criminal solicitation if he commands, induces, entreats, or otherwise attempts to persuade another person to commit a particular felony, whether as principal or accomplice, with intent to promote or facilitate the commission of that felony, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.
2. It is a defense to a prosecution under this section that, if the criminal object were achieved, the defendant would be a victim of the offense, or the offense is so defined that his conduct would be inevitably incident to its commission, or he otherwise would not be guilty under the statute defining the offense or as an accomplice under section 12.1-03-01.
3. It is no defense to a prosecution under this section that the person solicited could not be guilty of the offense because of lack of responsibility or culpability, or other incapacity or defense.
4. Criminal solicitation is an offense of the class next below that of the offense solicited.

12.1-06-04. Criminal conspiracy.

1. A person commits conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes an offense or offenses, and any one or more of such persons does an overt act to effect an objective of the conspiracy. The agreement need not be explicit but may be implicit in the fact of collaboration or existence of other circumstances.
2. If a person knows or could expect that one with whom he agrees has agreed or will agree with another to effect the same objective, he shall be deemed to have agreed with the other, whether or not he knows the other's identity.
3. A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. "Objectives" includes escape from the scene of the crime, distribution of booty, and measures, other than silence, for concealing the crime or obstructing justice in relation to it. A conspiracy shall be deemed abandoned if no overt act to effect its objectives has been committed by any conspirator during the applicable period of limitations.
4. It is no defense to a prosecution under this section that the person with whom such person is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.
5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined as provided in section 12.1-03-01.
6. Conspiracy is an offense of the same class as the crime which was the objective of the conspiracy.

12.1-06-05. General provisions.

1. The definition of an offense in sections 12.1-06-01 to 12.1-06-04 does not apply to another offense also defined in sections 12.1-06-01 to 12.1-06-04.
2. Whenever "attempt" or "conspiracy" is made an offense outside this chapter, it means attempt or conspiracy, as the case may be, as defined in this chapter.
3.
 - a. Other than as provided in subsection 4, in a prosecution under section 12.1-06-01, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant avoided the commission of the crime attempted by abandoning any criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.
 - b. Other than as provided in subsection 4, in a prosecution under section 12.1-06-03 or 12.1-06-04, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy.
 - c. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by (1) a belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime, or (2) a decision to postpone the criminal conduct until another time or to substitute another victim, or another but similar objective.
4. An individual is immune from prosecution under this chapter if:
 - a. The individual voluntarily and completely renounced the individual's criminal intent;
 - b. The individual is a student enrolled in an elementary school, middle school, or a high school in this state or is enrolled at an institution of higher education in this state;
 - c. The offense would have resulted in:
 - (1) Harm to another student enrolled in an elementary school, middle school, or a high school in this state;

- (2) Harm to another student enrolled in an institution of higher education in this state;
 - (3) Harm to an employee of a school district or a nonpublic school in this state;
 - (4) Harm to an employee of an institution of higher education in this state; or
 - (5) Damage to property of a school district in this state or property of an institution of higher education in this state; and
- d. The renunciation was given to a law enforcement officer, to an administrator of a school or school district in this state, or to an official of an institution of higher education in this state before any harm to others or damage to property occurs.

CHAPTER 12.1-06.1
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

12.1-06.1-01. Definitions.

1. For the purpose of section 12.1-06.1-02:
 - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
 - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
 - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or moneylender under the jurisdiction of the state department of financial institutions or its commissioner, or the state banking board, or the state credit union board.
 - d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of chapter 38-23 or the rules adopted pursuant to that chapter, or hazardous waste in willful violation of chapter 23.1-04 or the rules adopted pursuant to that chapter.
 - e. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
 - f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
 - (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.
 - (4) Forgery.
 - (5) Theft.
 - (6) Bribery.
 - (7) Gambling.
 - (8) Usury.
 - (9) Extortion.
 - (10) Unlawful delivery of controlled substances.
 - (11) Trafficking in explosives, weapons, or stolen property.
 - (12) Leading a criminal association.

- (13) Obstructing or hindering criminal investigations or prosecutions.
- (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
- (15) Fraud.
- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17) Obscenity.
- (18) Child pornography.
- (19) Prostitution.
- (20) Human trafficking.
- g. "Records" means any book, paper, writing, record, computer program, or other material.
- 3. For the purposes of section 12.1-06.1-08:
 - a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
 - b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
 - c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
 - d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
 - e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
 - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
 - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
 - h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
 - i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

12.1-06.1-02. Leading a criminal association - Classification.

- 1. A person is guilty of an offense by any of the following:
 - a. Intentionally organizing, managing, directing, supervising, or financing a criminal association.
 - b. Knowingly inciting or inducing others to engage in violence or intimidation to promote or further the criminal objectives of a criminal association.
 - c. Willfully furnishing advice, assistance, or direction in the conduct, financing, or management of a criminal association's affairs with the intent to promote or further the criminal objectives of a criminal association.

- d. Intentionally promoting or furthering the criminal objectives of a criminal association by inducing or committing any act or omission by a public servant in violation of official duty.
2. No person shall be convicted pursuant to this section on the basis of accountability as an accomplice unless that person aids or participates in violating this section in one of the ways specified.
3. Leading a criminal association is a class B felony.

12.1-06.1-03. Illegal control of an enterprise - Illegally conducting an enterprise.

1. A person is guilty of an offense if such person, through a pattern of racketeering activity or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
2. A person is guilty of an offense if the person is employed or associated with any enterprise and conducts or participates in the conduct of that enterprise's affairs through a pattern of racketeering activity.
3. A knowing violation of this section is a class B felony.

12.1-06.1-04. Judicial powers over racketeering criminal cases.

During the pendency of any criminal case charging an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to subsections 1 and 2 of section 12.1-06.1-05. Upon conviction of a person for an offense included in the definition of racketeering if it is shown to the satisfaction of the court when ruling upon the application for the order that the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, the court may, in addition to its other powers, issue an order pursuant to section 12.1-06.1-05.

12.1-06.1-05. Racketeering - Civil remedies.

1. A person who sustains injury to person, business, or property by a pattern of racketeering activity or by a violation of section 12.1-06.1-02 or 12.1-06.1-03 may file an action in district court for the recovery of treble damages and the costs of the suit, including reasonable attorney fees. The state may file an action in behalf of those persons injured or to prevent, restrain, or remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
2. The district court has jurisdiction to prevent, restrain, and remedy a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.
3. Prior to a determination of liability, orders may include entering restraining orders, receivership orders or prohibitions or other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section.
4. Following a determination of liability, orders may include:
 - a. Ordering any person to divest himself of any interests, direct or indirect, in any enterprise.
 - b. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.
 - c. Ordering dissolution or reorganization of any enterprise.

- d. Ordering the payment of treble damages and appropriate restitution to those persons injured by a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
- e. Ordering the payment of all costs and expenses and reasonable attorneys' fees concerned with the prosecution and investigation of any offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of the state or county that brings the action.
- f. Forfeiture, pursuant to chapter 32-14, to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered to be paid in other damages:
 - (1) Any property or other interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (2) Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - (3) All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate commission of the offense if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity.
- g. Payment to the state school fund of the state or county as appropriate under section 29-27-02.1 of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of racketeering if upon application for the order it is shown to the satisfaction of the court that the racketeering offense has occurred as a part of a pattern of racketeering activity.
- 5. In addition to or in lieu of an action under this section the state may file an action for forfeiture to the state school fund of the state or county as appropriate under section 29-27-02.1, to the extent not already ordered paid pursuant to this section, of:
 - a. Any interest acquired or maintained by a person in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - b. Any interest in, security of, claims against, or property or contractual right of any kind affording a source of influence over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of in violation of section 12.1-06.1-02 or 12.1-06.1-03.
 - c. All proceeds traceable to an offense included in the definition of racketeering and all moneys, negotiable instruments, securities, and other things of value used or intended to be used to facilitate the commission of the offense if upon application for the order it is shown to the satisfaction of the court that such racketeering offense has occurred as a part of a pattern of racketeering activity.
- 6. A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For purposes of this subsection, a conviction may result from a verdict or plea including a no contest plea.
- 7. Notwithstanding any law to the contrary, the initiation of civil proceedings related to violations of any offense included in the definition of racketeering or a violation of section 12.1-06.1-02 or 12.1-06.1-03 must be commenced within seven years of actual discovery of the violation.
- 8. This state may, in a civil action brought pursuant to this section, file with the clerk of the district court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding judge of the district court in which the action is pending and, upon receipt of the copy,

the judge shall immediately designate a judge to hear and determine the action. The judge designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

9. The standard of proof in actions brought pursuant to this section is the preponderance of the evidence.
10. A person other than the attorney general or state's attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the district court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.
11. Except in cases filed by a state's attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought pursuant to this section if the attorney general certifies that in his opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.
12. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting any provisions of this chapter.
13. A civil action under this section is remedial and does not limit any other civil or criminal action. Civil remedies provided under this section are supplemental and not mutually exclusive.

12.1-06.1-06. Racketeering lien - Content - Filing - Notice - Effect.

1. The state, upon filing a civil action under section 12.1-06.1-05 or upon charging an offense included in the definition of racketeering if the offense is committed as a part of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03, may file a racketeering lien. A filing fee or other charge is not required for filing a racketeering lien.
2. A racketeering lien shall be signed by the attorney general or the state's attorney representing the state in the action and set forth the following information:
 - a. The name of the defendant whose property, interests in property, or other interests are to be subject to the lien.
 - b. In the discretion of the attorney general or state's attorney filing the lien, any aliases or fictitious names of the defendant named in the lien.
 - c. If known to the attorney general or state's attorney filing the lien, the present residence or principal place of business of the person named in the lien.
 - d. A reference to the proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number for the proceeding.
 - e. The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed.
 - f. A statement that the notice is being filed pursuant to this section.
 - g. The amount which the state claims in the action or, with respect to property or other interests which the state has requested forfeiture to the state or county, a description of the property or interests sought to be paid or forfeited.
 - h. If known to the attorney general or state's attorney filing the lien, a description of property which is subject to forfeiture to the state or property in which the defendant has an interest which is available to satisfy a judgment entered in favor of the state.
 - i. Such other information as the attorney general or state's attorney filing the lien deems appropriate.

3. The attorney general or the state's attorney filing the lien may amend a lien filed under this section at any time by filing an amended racketeering lien in accordance with this section which identifies the prior lien amended.
4. The attorney general or the state's attorney filing the lien shall, as soon as practical after filing a racketeering lien, furnish to any person named in the lien a notice of the filing of the lien. Failure to furnish notice under this subsection does not invalidate or otherwise affect a racketeering lien filed in accordance with this section.
5. A racketeering lien is perfected against interests in personal property by filing the lien with the secretary of state, except that in the case of titled motor vehicles it shall be filed with the director of the department of transportation. A racketeering lien is perfected against interests in real property by filing the lien with the county recorder of the county in which the real property is located. The state may give additional notice of the lien.
6. The filing of a racketeering lien in accordance with this section creates a lien in favor of the state in:
 - a. Any interest of the defendant in real property situated in the county in which the lien is filed, then maintained or later acquired in the name of the defendant identified in the lien.
 - b. Any interest of the defendant in personal property situated in this state, then maintained or later acquired in the name of the defendant identified in the lien.
 - c. Any property identified in the lien to the extent of the defendant's interest in the property.
7. The filing of a racketeering lien under this section is notice to all persons dealing with the person or property identified in the lien of the state's claim. The lien created in favor of the state in accordance with this section is superior and prior to the claims or interests of any other person, except a person possessing:
 - a. A valid lien perfected prior to the filing of the racketeering lien.
 - b. In the case of real property, an interest acquired and recorded prior to the filing of the racketeering lien.
 - c. In the case of personal property, an interest acquired prior to the filing of the racketeering lien.
8. Upon entry of judgment in favor of the state, the state may proceed to execute the judgment as in the case of any other judgment, except that in order to preserve the state's lien priority as provided in this section the state shall, in addition to notice as required by law, give at least thirty days' notice of execution to any person possessing at the time notice is given, an interest recorded after the date the state's lien was perfected.
9. Upon the entry of a final judgment in favor of the state providing for forfeiture of property to the state, the title of the state to the property:
 - a. In the case of real property, or a beneficial interest in real property, relates back to the date of filing the racketeering lien with the county recorder of the county where the real property is located, or if no racketeering lien is filed, then to the date of recording of the final judgment with the county recorder of the county where the real property is located.
 - b. In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the state, or the date of filing of a racketeering lien in accordance with this section, whichever is earlier, but if the property was not seized and no racketeering lien was filed then to the date the final judgment was filed with the secretary of state, or in the case of a titled motor vehicle, with the director of the department of transportation.
10. This section does not limit the right of the state to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under section 12.1-06.1-05 or available under other applicable law.

12.1-06.1-07. Racketeering - Investigation of records - Confidentiality - Court enforcement - Classification.

1. A custodian of the records of a financial institution shall, at no expense to the financial institution, produce for inspection or copying the records in the custody of the financial institution when requested to be inspected by the attorney general or a state's attorney authorized by the attorney general, if the person requesting the information signs and submits a sworn statement to the custodian that the request is made to investigate a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03. Records may be removed from the premises of the financial institution only for the purpose of copying the records and must be returned within forty-eight hours. The attorney general or an authorized state's attorney or any peace officer designated by an authorized state's attorney or the attorney general may not use or release the information except in the proper discharge of official duties. The furnishing of records in compliance with this section by a custodian of records is a bar to civil or criminal liability against the custodian or financial institution in any action brought alleging violation of the confidentiality of the records. The fact that records have been obtained may not be released in any way by the financial institution until ninety days after the release.
2. The attorney general or the authorized state's attorney may petition the district court for enforcement of this section upon noncompliance with the request for inspection. Enforcement must be granted if the request is reasonable and the attorney general or the authorized state's attorney has reasonable grounds to believe the records sought to be inspected are relevant to a civil or criminal investigation of a pattern of racketeering activity or a violation of section 12.1-06.1-02 or 12.1-06.1-03.
3. The investigation authority granted pursuant to the provisions of this section may not be exercised by a state's attorney in the absence of authorization by the attorney general.
4. Any person releasing information obtained pursuant to this section, except in the proper discharge of official duties, is guilty of a class B misdemeanor.

12.1-06.1-08. Computer fraud - Computer crime - Classification - Penalty.

1. A person commits computer fraud by gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, or destroying any computer, computer system, computer network, or any part of the computer, computer system, or computer network, without authorization, and with the intent to devise or execute any scheme or artifice to defraud, deceive, prevent the authorized use of, or control property or services by means of false or fraudulent pretenses, representations, or promises. A person who commits computer fraud is guilty of a class C felony.
2. A person commits computer crime by intentionally and either in excess of authorization given or without authorization gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, introducing a computer contaminant into, destroying, or preventing the authorized use of any computer, computer system, or computer network, or any computer software, program, or data contained in the computer, computer system, or computer network. A person who commits computer crime is guilty of a class A misdemeanor.
3. In addition to any other remedy available, the owner or lessee of a computer, computer system, computer network, or any part of the computer, computer system, or computer network may bring a civil action for damages, restitution, and attorney's fees for damages incurred as a result of the violation of this section.

CHAPTER 12.1-06.2 CRIMINAL STREET GANGS

12.1-06.2-01. Definitions.

As used in this chapter, the term:

1. "Crime of pecuniary gain" means any violation of state law that directly results or was intended to result in the defendant alone, or in association with others, receiving income, benefit, property, money, or anything of value.
2. "Crime of violence" means any violation of state law where a person purposely or knowingly causes or threatens to cause death or physical bodily injury to another person or persons.
3. "Criminal street gang" means any ongoing organization or group of three or more persons, whether formal or informal, that acts in concert or agrees to act in concert with a purpose that any of those persons alone or in any combination commit or will commit two or more predicate gang crimes one of which occurs after August 1, 1995, and the last of which occurred within five years after the commission of a prior predicate gang crime.
4. "Participate in a criminal street gang" means to act in concert with a criminal street gang with intent to commit or with the intent that any other person associated with the criminal street gang will commit one or more predicate gang crimes.
5. "Predicate gang crime" means the commission, attempted commission, or solicitation of any felony, misdemeanor crime of violence, or misdemeanor crime of pecuniary gain.

12.1-06.2-02. Criminal street gang crime - Penalty.

Any person who commits a felony or class A misdemeanor crime of violence or crime of pecuniary gain for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, or obtain membership into a criminal gang, is guilty of a class C felony.

12.1-06.2-03. Encouraging minors to participate in criminal street gang - Penalty.

1. Any person eighteen years of age or older who knowingly or willfully causes, aids, abets, encourages, solicits, or recruits a person under the age of eighteen years to participate in a criminal street gang is upon conviction guilty of a class C felony.
2. Nothing in this section may be construed to limit prosecution under any other provision of law.

12.1-06.2-04. Local ordinances not preempted.

Nothing in this chapter may be construed as preventing a local governing body from adopting and enforcing ordinances relating to gangs and gang-related violence.

CHAPTER 12.1-07
TREASON - FLAG DESECRATION

12.1-07-01. Treason.

Treason as defined in section 17 of article I of the Constitution of North Dakota is a class A felony.

12.1-07-02. Desecration of the flag of the United States.

1. A person is guilty of a class A misdemeanor if he knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it.
2. The term "flag of the United States" as used in this section shall include any flag, standard, colors, or ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standard, colors, or ensign of the United States of America.

12.1-07-03. Carrying in parade or the display of certain flags, ensigns, banners, and standards prohibited.

No flag of any nation, state, country, or territory other than the flag of the United States or a state flag, or the flag of a friendly foreign nation, or the dependencies of such nations, shall be:

1. Carried in parade on any public street or highway within this state.
2. Exhibited in any hall or public place.
3. Displayed or exhibited:
 - a. On any vehicle.
 - b. On any building or premises.
 - c. In any other manner in public within the state.

12.1-07-04. Red or black flags prohibited.

Repealed by S.L. 1981, ch. 155, § 2.

12.1-07-05. Penalty.

Any person who violates any of the provisions of section 12.1-07-03 is guilty of a class B misdemeanor.

CHAPTER 12.1-08
OBSTRUCTION OF LAW ENFORCEMENT - ESCAPE

12.1-08-01. Physical obstruction of government function.

1. A person is guilty of a class A misdemeanor if he intentionally obstructs, impairs, impedes, hinders, prevents, or perverts the administration of law or other governmental function.
2. This section does not apply to the conduct of a person obstructing arrest of himself, but such conduct is subject to section 12.1-08-02. This section does apply to the conduct of a person obstructing arrest of another. Inapplicability under this subsection is a defense.
3. It is a defense to a prosecution under this section that the administration of law or other government function was not lawful, but it is no defense that the defendant mistakenly believed that the administration of law or other government function was not lawful. For the purposes of this subsection, the conduct of a public servant acting in good faith and under color of law in the execution of a warrant or other process for arrest or search and seizure shall be deemed lawful.

12.1-08-02. Preventing arrest or discharge of other duties.

1. A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.
2. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

12.1-08-03. Hindering law enforcement.

1. A person is guilty of hindering law enforcement if he intentionally interferes with, hinders, delays, or prevents the discovery, apprehension, prosecution, conviction, or punishment of another for an offense by:
 - a. Harboring or concealing the other;
 - b. Providing the other with a weapon, money, transportation, disguise, or other means of avoiding discovery or apprehension;
 - c. Concealing, altering, mutilating, or destroying a document or thing, regardless of its admissibility in evidence;
 - d. Warning the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law; or
 - e. Giving false information or a false report to a law enforcement officer knowing such information or report to be false.
2. Hindering law enforcement is a class C felony if the actor:
 - a. Knows of the conduct of the other and such conduct constitutes a class AA, class A, or class B felony; or
 - b. Knows that the other has been charged with or convicted of a crime and such crime is a class AA, class A, or class B felony.Otherwise hindering law enforcement is a class A misdemeanor.
3. A person who commits the crime of hindering law enforcement is subject to prosecution in this state if the conduct interferes with or hinders an investigation of a

crime occurring within this state. The venue of a criminal action involving the crime of hindering law enforcement is in any county in which the conduct of hindering is committed or in any county in which a criminal offense is being investigated which is hindered by the false information or other interfering conduct.

12.1-08-04. Aiding consummation of crime.

1. A person is guilty of aiding consummation of crime if he intentionally aids another to secrete, disguise, or convert the proceeds of a crime or otherwise profit from a crime.
2. Aiding consummation of a crime:
 - a. Is a class C felony if the actor knows of the conduct of the other and such conduct constitutes a class A or class B felony.
 - b. Is a class A misdemeanor if the actor knows of the conduct of the other and such conduct constitutes a class C felony or class A misdemeanor.Otherwise aiding consummation of a crime is a class B misdemeanor.

12.1-08-05. Failure to appear after release - Bail jumping.

1. A person is guilty of an offense if, after having been released upon condition or undertaking that he will subsequently appear before a court or judicial officer as required, he willfully fails to appear as required.
2. The offense is a class C felony if the actor was released in connection with a charge of felony or while awaiting sentence or pending appeal after conviction of any crime. Otherwise it is a class A misdemeanor.

12.1-08-06. Escape.

1. A person is guilty of escape if, without lawful authority, the person removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period. A person who is subject to official detention under this section is guilty of escape, if while outside the state of North Dakota and without lawful authority, the person removes or attempts to remove himself from official detention, or fails to return to official detention following temporary leave granted for a specified purpose or limited period, when at the time the person is in the legal custody of a warden of the penitentiary, department of corrections and rehabilitation, or other competent authority by virtue of a lawful commitment to official detention.
2. Escape is a class B felony if the actor uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to effect the actor's removal from official detention. Escape is a class C felony if:
 - a. The actor uses any other force or threat of force against another in effecting or attempting to effect the actor's removal from official detention; or
 - b. The person escaping was in official detention by virtue of the person's arrest for, or on charge of, a felony, or pursuant to the person's conviction of any offense.Otherwise escape is a class A misdemeanor.
3. In this section:
 - a. "Conviction of an offense" does not include an adjudication of juvenile delinquency.
 - b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by chapter 12-67, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or

placement facility. "Official detention" does not include supervision on probation or parole or constraint incidental to release.

4. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to a prosecution under this section if the escape is from the penitentiary or other facility used for official detention or from detention pursuant to commitment by an official proceeding. In the case of other detentions, irregularity or lack of jurisdiction shall be an affirmative defense if:
 - a. The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or
 - b. The detaining authority did not act in good faith under color of law.
5. The jurisdiction of a violation of this section when the person is in the legal custody of a warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority is in the county where the violation occurred if the violation occurred within this state, and is in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

12.1-08-07. Public servants permitting escape.

A public servant concerned in official detention pursuant to process issued by a court, judge, or magistrate is guilty of a class A misdemeanor if he recklessly permits an escape and is guilty of a class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.

12.1-08-08. Inciting or leading riot in detention facilities.

1. A person is guilty of a class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.
2. In this section:
 - a. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.
 - b. "Riot" means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function.

12.1-08-09. Introducing or possessing contraband useful for escape.

1. A person is guilty of a class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
2. An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
3. In this section:
 - a. "Official detention" has the meaning prescribed in subsection 3 of section 12.1-08-06.
 - b. "Unlawfully" means surreptitiously or contrary to a statute or regulation, rule, or order issued pursuant thereto.

12.1-08-10. Harboring a runaway minor - Penalty.

A person who willfully harbors a runaway minor with knowledge that the child is being sought by a law enforcement authority is guilty of a class A misdemeanor. This section does not apply to a person who provides temporary sanctuary, not exceeding seventy-two hours, to a runaway minor who is seeking refuge from a physically, sexually, or mentally abusive person. For the purposes of this section, a "runaway minor" is an unemancipated minor who is voluntarily absent from the minor's home without the consent of a minor's parent entitled to legal custody of the minor or legal guardian with the intention of evading the direction or control of the parent or guardian. This section does not apply to persons providing temporary sanctuary to minors accompanied by a parent or legal guardian in a domestic violence shelter or safe home.

12.1-08-11. Refusing to halt.

Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

CHAPTER 12.1-09
TAMPERING AND UNLAWFUL INFLUENCE

12.1-09-01. Tampering with witnesses and informants in proceedings.

1. A person is guilty of a class C felony if he uses force, threat, deception, or bribery:
 - a. With intent to influence another's testimony in an official proceeding; or
 - b. With intent to induce or otherwise cause another:
 - (1) To withhold any testimony, information, document, or thing from an official proceeding, whether or not the other person would be legally privileged to do so;
 - (2) To violate section 12.1-09-03;
 - (3) To elude legal process summoning him to testify in an official proceeding; or
 - (4) To absent himself from an official proceeding to which he has been summoned.
2. A person is guilty of a class C felony if he solicits, accepts, or agrees to accept from another a thing of pecuniary value as consideration for:
 - a. Influencing the actor's testimony in an official proceeding; or
 - b. The actor's engaging in the conduct described in paragraphs 1 through 4 of subdivision b of subsection 1.
3.
 - a. It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the threat was not of unlawful harm and was used solely to influence the other to testify truthfully.
 - b. In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.
 - c. It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.
4. This section shall not be construed to prohibit the payment or receipt of witness fees provided by statute, or the payment, by the party upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time spent in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.

12.1-09-02. Tampering with informants in criminal investigations.

A person is guilty of a class C felony if, believing another may have information relating to an offense, he deceives such other person or employs force, threat, or bribery with intent to hinder, delay, or prevent communication of such information to a law enforcement officer. The affirmative defense in subdivision b of subsection 3 of section 12.1-09-01 applies to this section.

12.1-09-03. Tampering with physical evidence.

1. A person is guilty of an offense if, believing an official proceeding is pending or about to be instituted, or believing process, demand, or order has been issued or is about to be issued, he alters, destroys, mutilates, conceals, or removes a record, document, or thing with intent to impair its verity or availability in such official proceeding or for the purposes of such process, demand, or order.
2. The offense is a class C felony if the actor substantially obstructs, impairs, or perverts prosecution for a felony. Otherwise it is a class A misdemeanor.
3. In this section, "process, demand, or order" means process, demand, or order authorized by law for the seizure, production, copying, discovery, or examination of a record, document, or thing.

12.1-09-04. Harassment of and communication with jurors.

1. A person is guilty of a class A misdemeanor if, with intent to influence the official action of another as juror, that person communicates directly or indirectly with the juror, other than as part of the proceedings in a case, or harasses or alarms the juror. A person is guilty of a class A misdemeanor if, with the intent to harass or annoy a former juror because of the verdict returned by the jury or the participation of the juror in the verdict, that person communicates directly or indirectly with the juror in a manner that intimidates the juror or conveys a threat of injury or damage to the juror's property or person. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.
2. In this section, "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror, and any referee, arbitrator, umpire, or assessor authorized by law to hear and determine any controversy.

12.1-09-05. Eavesdropping on jury deliberations.

1. A person is guilty of a class A misdemeanor if he intentionally:
 - a. Records the proceedings of a jury while such jury is deliberating or voting; or
 - b. Listens to or observes the proceedings of any jury of which he is not a member while such jury is deliberating or voting.
2. This section shall not apply to the taking of notes by a juror in connection with and solely for the purpose of assisting him in the performance of his official duties. Nor does this section apply to a person studying the jury process in the manner provided by statute, and under the control and supervision of the court. Inapplicability under this subsection is a defense.
3. In this section, "jury" means grand jury or petit jury, and "juror" means grand juror or petit juror.

12.1-09-06. Nondisclosure of retainer in criminal matter.

1. A person employed for compensation to influence the official action of a public servant with respect to:
 - a. The initiation, conduct, or dismissal of a prosecution;
 - b. The imposition or modification of a sentence; or
 - c. The granting of parole or probation is guilty of a class A misdemeanor if he privately addresses to such public servant any representation, entreaty, argument, or other communication intended to influence official action without disclosing the fact of such employment, knowing that the public servant is unaware of it.
2. This section does not apply to an attorney at law or to a person authorized by statute or regulation to act in a representative capacity with respect to the official action when he is acting in such capacity and makes known to the public servant or has indicated in any manner authorized by law that he is acting in such capacity. Inapplicability under this subsection is a defense.

CHAPTER 12.1-10
CONTEMPT - OBSTRUCTION OF JUDICIAL PROCEEDINGS

12.1-10-01. Criminal contempt.

Repealed by S.L. 1993, ch. 89, § 32.

12.1-10-02. Failure to appear as witness, to produce information, or to be sworn.

1. A person who has been lawfully ordered to appear at a specified time and place to testify or to produce information in an official proceeding is guilty of a class A misdemeanor if, without lawful privilege, he fails to appear or to produce the information at that time and place.
2. A person attending an official proceeding is guilty of a class A misdemeanor if, without lawful privilege, he fails to comply with a lawful order:
 - a. To occupy or remain at the designated place from which he is to testify as a witness in such proceeding; or
 - b. To be sworn or to make equivalent affirmation as a witness in such proceeding.
3. It is a defense to a prosecution under this section that the defendant:
 - a. Was prevented from appearing at the specified time and place or unable to produce the information because of circumstances to the creation of which he did not contribute in reckless disregard of the requirement to appear or to produce; or
 - b. Complied with the order before his failure to do so substantially affected the proceeding.
4. In this section, and in section 12.1-10-03:
 - a. "Authorized agency" means an agency authorized by statute to issue subpoenas or similar process supported by the sanctions of this section.
 - b. "Information" means a book, paper, document, record, or other tangible object.
 - c. "Official proceeding" means:
 - (1) An official proceeding before a judge or court of this state, a magistrate, or a grand jury.
 - (2) An official proceeding before the legislative assembly or one of its session or interim committees.
 - (3) An official proceeding in which, pursuant to lawful authority, a court orders attendance or the production of information.
 - (4) An official proceeding before an authorized agency.
 - (5) An official proceeding which otherwise is made expressly subject to this section.

12.1-10-03. Refusal to testify.

1. A person is guilty of a class A misdemeanor if, without lawful privilege, he refuses:
 - a. To answer a question pertinent to the subject under inquiry in an official proceeding before the legislative assembly, or one of its session or interim committees, and continues in such a refusal after the presiding officer directs him to answer, and advises him that his continuing refusal may make him subject to criminal prosecution; or
 - b. To answer a question in any other official proceeding and continues in such refusal after a court or judge directs or orders him to answer and advises him that his continuing refusal may make him subject to criminal prosecution.
2. It is a defense to a prosecution under this section that the defendant complied with the direction or order before his refusal to do so substantially affected the proceeding.

12.1-10-04. Hindering proceedings by disorderly conduct.

1. A person is guilty of a class A misdemeanor if the person intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.
2. A person is guilty of a class B misdemeanor if the person recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

12.1-10-05. Disobedience of judicial order.

1. A person is guilty of a class A misdemeanor if the person disobeys or resists a lawful temporary restraining order or preliminary or final injunction or other final order, other than for the payment of money, of a court of this state.
2. Notwithstanding the limitations of section 12.1-32-01, the defendant may be sentenced to pay a fine in any amount deemed just by the court.

12.1-10-06. Soliciting obstruction of proceedings.

A person is guilty of a class A misdemeanor if the person solicits another to commit an offense defined in sections 12.1-10-02 through 12.1-10-05.

CHAPTER 12.1-11
PERJURY - FALSIFICATION - BREACH OF DUTY

12.1-11-01. Perjury.

1. A person is guilty of perjury, a class C felony, if, in an official proceeding, the person makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and the person does not believe the statement to be true.
2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.
3. If in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by the defendant under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements constitutes a prima facie case that one or the other of the statements was false, but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.
4. For purposes of this section, "false statement under oath or equivalent affirmation" includes a writing made in accordance with chapters 31-14 and 31-15.

12.1-11-02. False statements.

1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.
2. A person is guilty of a class A misdemeanor if, in a governmental matter, he:
 - a. Makes a false written statement, when the statement is material and he does not believe it to be true;
 - b. Intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;
 - c. Submits or invites reliance on any material writing which he knows to be forged, altered, or otherwise lacking in authenticity;
 - d. Submits or invites reliance on any sample, specimen, map, boundarymark, or other object which he knows to be false in a material respect; or
 - e. Uses a trick, scheme, or device which he knows to be misleading in a material respect.
3. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.
4. A matter is a "governmental matter" if it is within the jurisdiction of a government office or agency, or of an office, agency, or other establishment in the legislative or the judicial branch of government.

12.1-11-03. False information or report to law enforcement officers or security officials.

1. An individual is guilty of a class A misdemeanor if that individual:
 - a. Gives false information or a false report to a law enforcement officer which that individual knows to be false, and the information or report may interfere with an investigation or may materially mislead a law enforcement officer; or

- b. Falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when that individual knows the incident did not occur. "Security official" means a public servant responsible for averting or handling emergencies involving public safety.
2. An on duty law enforcement officer having probable cause to suspect an individual has vexatiously provided a false report regarding another individual to a law enforcement officer or security official shall report the information to the state's attorney of the county in which the violation occurs.

12.1-11-04. General provisions.

1. Falsification is material under sections 12.1-11-01, 12.1-11-02, and 12.1-11-03 regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsification is material in a given factual situation is a question of law. It is no defense that the declarant mistakenly believed the falsification to be immaterial.
2. It is no defense to a prosecution under sections 12.1-11-01 or 12.1-11-02 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at a time when the actor represents it as being so verified shall be deemed to have been duly sworn or affirmed.
3. It is a defense to a prosecution under sections 12.1-11-01, 12.1-11-02, or 12.1-11-03 that the actor retracted the falsification in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding or the matter.
4. In sections 12.1-11-01 and 12.1-11-02, "statement" means any representation but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

12.1-11-05. Tampering with public records.

1. A person is guilty of an offense if he:
 - a. Knowingly makes a false entry in or false alteration of a government record; or
 - b. Knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record.
2. The offense is:
 - a. A class C felony if committed by a public servant who has custody of the government record.
 - b. A class A misdemeanor if committed by any other person.
3. In this section "government record" means:
 - a. Any record, document, or thing belonging to, or received or kept by the government for information or record.
 - b. Any other record, document, or thing required to be kept by law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section.

12.1-11-06. Public servant refusing to perform duty.

Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

12.1-11-07. Fraudulent practice in urine testing.

A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance. A person is guilty of a class A misdemeanor if that person knowingly possesses, distributes, or

assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.

CHAPTER 12.1-12
BRIBERY - UNLAWFUL INFLUENCE OF PUBLIC SERVANTS

12.1-12-01. Bribery.

1. A person is guilty of bribery, a class C felony, if he knowingly offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, a thing of value as consideration for:
 - a. The recipient's official action as a public servant; or
 - b. The recipient's violation of a known legal duty as a public servant.
2. It is no defense to a prosecution under this section that a recipient was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.
3. A prima facie case is established under this section upon proof that the actor knew that a thing of pecuniary value was offered, given, or agreed to be given by, or solicited, accepted, or agreed to be accepted from, a person having an interest in an imminent or pending:
 - a. examination, investigation, arrest, or judicial or administrative proceeding; or
 - b. bid, contract, claim, or application, and that interest could be affected by the recipient's performance or nonperformance of his official action or violation of his known legal duty as a public servant.

12.1-12-02. Illegal influence between legislators or between legislators and governor.

Any person who violates the provisions of section 9 of article IV or section 10 of article V of the Constitution of North Dakota is guilty of a class C felony.

12.1-12-03. Unlawful compensation for assistance in government matters.

1. A public servant is guilty of a class A misdemeanor if he solicits, accepts, or agrees to accept a thing of pecuniary value from nongovernmental sources:
 - a. As compensation for advice or other assistance in preparing or promoting a bill, contract, claim, or other matter which is or is likely to be subject to his official action;
 - b. As compensation for omitting or delaying official action; or
 - c. As a fee or compensation for services not rendered or to which he was not legally entitled.
2. A person is guilty of a class A misdemeanor if he knowingly offers, gives, or agrees to give a thing of pecuniary value to a public servant, receipt of which is prohibited by this section.

12.1-12-04. Trading in public office and political endorsement.

1. A person is guilty of a class A misdemeanor if he solicits, accepts, or agrees to accept, or offers, gives, or agrees to give, a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for:
 - a. Appointment, employment, advancement, or retention as a public servant; or
 - b. Designation or nomination as a candidate for elective office.
2. In this section:
 - a. "Approval" includes recommendation, failure to disapprove, or any other manifestation of favor or acquiescence.
 - b. "Disapproval" includes failure to approve or any other manifestation of disfavor or nonacquiescence.
 - c. "Party official" means a person who holds a position or office in a political party, whether by election, appointment, or otherwise.
3. Any appointment of a public servant made in violation of this section is void, but any official action taken by the appointee prior to conviction under this section is valid.

12.1-12-05. Trading in special influence.

A person is guilty of a class A misdemeanor if he knowingly offers, gives, or agrees to give, or solicits, accepts, or agrees to accept, a thing of pecuniary value for exerting, or procuring another to exert, special influence upon a public servant with respect to his legal duty or official action as a public servant. "Special influence" means power to influence through kinship or by reason of position as a public servant or party official, as defined in section 12.1-12-04.

12.1-12-06. Threatening public servants.

1. A person is guilty of a class C felony if that person threatens harm to a public servant with intent to influence the public servant's official action as a public servant in a pending or prospective judicial or administrative proceeding held before the public servant, or with intent to influence the public servant to violate the public servant's duty as a public servant.
2. A person is guilty of a class C felony if, with intent to influence another's official action as a public servant, the person threatens:
 - a. To commit any crime or to do anything unlawful;
 - b. To accuse anyone of a crime; or
 - c. To expose a secret or publicize an asserted fact, whether true or false, tending to subject any individual, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute.
3.
 - a. A person is guilty of an offense if the person files any lien or encumbrance against real or personal property of a public servant if that person knows or has reason to know the lien or encumbrance is false or contains any materially false or fraudulent statement or representation.
 - b. An offense under this subsection is a class A misdemeanor, unless the person previously pled guilty or had been convicted under this subsection on two or more occasions, in which event the offense is a class C felony.
4. It is not a defense to a prosecution under this section that an individual whom the actor sought to influence was not qualified to act in the desired way whether because the individual had not yet assumed office, or lacked jurisdiction, or for any other reason.

12.1-12-07. Sports bribery.

1. A person is guilty of a class C felony if, with intent to prevent a publicly exhibited sporting contest from being conducted in accordance with the rules and usages purporting to govern it, he:
 - a. Confers, offers, or agrees to confer any benefit upon, or threatens any harm to, a participant, official, or other person associated with the contest; or
 - b. Tampers with any person, animal, or thing.
2. A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1.
3. A "publicly exhibited sporting contest" is any contest in any sport, between individual contestants or teams of contestants, the occurrence of which is publicly announced in advance of the event.
4. The status of the contestant as amateur or professional is not material to the commission of the offense described in this section.

12.1-12-08. Commercial bribery.

1. A person is guilty of a class C felony if he:
 - a. Confers, agrees, or offers to confer any benefit upon an employee or agent without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs; or
 - b. Confers, agrees, or offers to confer any benefit upon any fiduciary without the consent of the beneficiary, with intent to influence the fiduciary to act or conduct himself contrary to his fiduciary obligation.

2. A person is guilty of a class C felony if he knowingly solicits, accepts, or agrees to accept any benefit, the giving of which is prohibited under subsection 1.

12.1-12-09. Definitions for chapter.

In this chapter, "thing of value" and "thing of pecuniary value" do not include (1) salary, fees, and other compensation paid by the government in consideration for which the official action or legal duty is performed; or (2) concurrence in official action in the course of legitimate compromise among public servants, except as provided in section 9 of article IV or section 10 of article V of the Constitution of North Dakota.

CHAPTER 12.1-13
CONFIDENTIAL INFORMATION - CONFLICT OF INTEREST - IMPERSONATION

12.1-13-01. Disclosure of confidential information provided to government.

A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

12.1-13-02. Speculating or wagering on official action or information.

1. An individual is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by the individual as a public servant or by a government agency with which the individual is or has been associated as a public servant, or in reliance on information to which the individual has or had access only in the individual's capacity as a public servant, the individual:
 - a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by the information or official action;
 - b. Speculates or wagers on the basis of the information or official action; or
 - c. Aids another individual to do any of the foregoing.
2. An individual is guilty of a class A misdemeanor if as a public servant the individual takes official action which is likely to benefit the individual as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which the individual made, or caused or aided another to make, in contemplation of the official action.
3. An individual is immune from prosecution under this section if:
 - a. The individual was a member of the legislative assembly at the time the official action was taken;
 - b. The official action was a vote on a measure in the senate or house of representatives or a legislative committee; and
 - c. The individual adhered to legislative conflict of interest rules requiring an individual to disclose a personal or private interest to the member's respective chamber of the legislative assembly, a legislative committee, the president of the senate, or the speaker of the house.

12.1-13-03. Public servant's interest in public contracts.

1. Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.
2. Subsection 1 shall not apply to:
 - a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.
 - b. Sales, leases, or contracts entered into between school boards and school board members or school officers.

12.1-13-04. Impersonating officials.

1. A person is guilty of an offense if he falsely pretends to be:
 - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
 - b. A public servant or a former public servant and thereby obtains a thing of value.

- c. A law enforcement officer.
- 2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.
- 3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

CHAPTER 12.1-14

OFFICIAL OPPRESSION - ELECTIONS - CIVIL RIGHTS

12.1-14-01. Official oppression.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity is guilty of a class A misdemeanor if, knowing that his conduct is illegal, he:

1. Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or
2. Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

12.1-14-02. Interference with elections.

A person is guilty of a class A misdemeanor if, whether or not acting under color of law, the person, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because the other individual is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as an election official or an election observer, in any primary, special, or general election.
2. Injures, intimidates, or interferes with another in order to prevent that individual or any other individual from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as an election official or an election observer, in any primary, special, or general election.

12.1-14-03. Safeguarding elections.

A person is guilty of a class A misdemeanor if, in connection with any election, he:

1. Makes or induces any false voting registration;
2. Offers, gives, or agrees to give a thing of pecuniary value to another as consideration for the recipient's voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;
3. Solicits, accepts, or agrees to accept a thing of pecuniary value as consideration for conduct prohibited under subsection 1 or 2; or
4. Otherwise obstructs or interferes with the lawful conduct of such election or registration therefor.

As used in this section, "thing of pecuniary value" shall include alcoholic beverages, by the drink or in any other container.

12.1-14-04. Discrimination in public places.

A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.
2. Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.

12.1-14-05. Preventing exercise of civil rights - Hindering or preventing another aiding third person to exercise civil rights.

A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1. Injures, intimidates, or interferes with another because he is or is about to exercise his civil rights, or because he has exercised his civil rights.
2. Intimidates or prevents another from aiding a third person to exercise his civil rights.

CHAPTER 12.1-15
DEFAMATION - INTERCEPTION OF COMMUNICATIONS

12.1-15-01. Criminal defamation.

1. A person is guilty of a class A misdemeanor if he willfully publishes defamatory matter or knowingly procures such publication or in any way knowingly aids or assists in the same being done.
2. It is a defense to a prosecution under this section that:
 - a. The matter alleged to be defamatory is true; or
 - b. The matter alleged to be defamatory was contained in a privileged communication.
3. In this section:
 - a. "Defamatory matter" means any written or oral communication concerning a natural person made public with actual malice or with reckless disregard of the truth by any utterance, printing, writing, sign, picture, representation, or effigy tending to expose such person to public hatred, contempt, or ridicule or to deprive him of the benefits of public confidence and social intercourse or any written or oral communication concerning a natural person made public as aforesaid designed to blacken and vilify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends.
 - b. "Privileged communication" means a communication made to a person entitled to or interested in the communication by one who is also entitled to or interested in or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent.
 - c. "Publication" means a knowing display of defamatory matter, or the parting with its immediate custody under circumstances which exposed the defamatory matter to be read or seen or understood by a person other than the publisher of the defamatory matter, although it is not necessary that the matter complained of should have been seen or read by another.

12.1-15-02. Interception of wire or oral communications - Eavesdropping.

1. A person is guilty of a class C felony if he:
 - a. Intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or
 - b. Intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.
2. A person is guilty of a class A misdemeanor if he secretly loiters about any building with intent to overhear discourse or conversation therein and to repeat or publish the same with intent to vex, annoy, or injure others.
3. It is a defense to a prosecution under subsection 1 that:
 - a. The actor was authorized by law to intercept, disclose, or use, as the case may be, the wire or oral communication.
 - b. The actor was:
 - (1) A person acting under color of law to intercept a wire or oral communication, and
 - (2) He was a party to the communication or one of the parties to the communication had given prior consent to such interception.
 - c. (1) The actor was a party to the communication or one of the parties to the communication had given prior consent to such interception, and
 - (2) Such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

12.1-15-03. Traffic in intercepting devices.

1. A person is guilty of a class C felony if, within this state, he manufactures, assembles, possesses, transports, or sells an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful to the purpose of the surreptitious interception of wire or oral communications.
2. A person is guilty of a class A misdemeanor if he places, in a newspaper, magazine, handbill, or other publication published in this state, an advertisement of an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful for surreptitious interception of wire or oral communications, or knowing that such advertisement promotes the use of such device for surreptitious interception of wire or oral communications.
3. It is a defense to a prosecution under this section that the actor was:
 - a. An officer, agent, or employee of, or a person under contract with, a communications common carrier, acting within the normal course of the business of the communications common carrier; or
 - b. A public servant acting in the course of his official duties or a person acting within the scope of a government contract made by a person acting in the course of his official duties.

12.1-15-04. Definitions.

In sections 12.1-15-02 through 12.1-15-04:

1. "Communications common carrier" shall have the meaning prescribed for the term "common carrier" by section 8-07-01.
2. "Contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.
3. "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:
 - a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (1) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (2) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.
 - b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.
4. "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of an electronic, mechanical, or other device, or by secretly overhearing the communication.
5. "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.
6. "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of communications.

12.1-15-05. Interception of correspondence.

1. A person is guilty of a class A misdemeanor if, knowing that a letter, postal card, or other written private correspondence has not yet been delivered to the person to whom it is directed, and knowing that he does not have the consent of the sender or receiver of the correspondence, he:
 - a. Damages or destroys the correspondence with intent to prevent its delivery;
 - b. Opens or reads sealed correspondence with intent to discover its contents; or

- c. Knowing that sealed correspondence has been opened or read in violation of subdivision b, intentionally divulges its contents, in whole or in part, or a summary of any portion thereof.

12.1-15-06. Implanting microchips prohibited.

A person may not require that an individual have inserted into that individual's body a microchip containing a radio frequency identification device. A violation of this section is a class A misdemeanor.

CHAPTER 12.1-16

HOMICIDE

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if the person:
 - a. Intentionally or knowingly causes the death of another human being;
 - b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or
 - c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, a felony offense against a child under section 12.1-20-03, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 14-09-22, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime causes the death of any person. In any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
 - (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;
 - (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury;
 - (3) Reasonably believed that no other participant was armed with such a weapon; and
 - (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under circumstances which would be class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in that person's situation under the circumstances as that person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

12.1-16-02. Manslaughter.

A person is guilty of manslaughter, a class B felony, if he recklessly causes the death of another human being.

12.1-16-03. Negligent homicide.

A person is guilty of a class C felony if he negligently causes the death of another human being.

12.1-16-04. Assisting the commission of suicide - Causing death by suicide - Penalties.

1. Any person who intentionally or knowingly aids, abets, facilitates, solicits, or incites another person to commit suicide, or who provides to, delivers to, procures for, or prescribes for another person any drug or instrument with knowledge that the other person intends to attempt to commit suicide with the drug or instrument is guilty of a class C felony.
2. Any person who, through deception, coercion, or duress, willfully causes the death of another person by suicide is guilty of a class AA felony.

12.1-16-05. Injunctive relief.

1. A claim for relief for an injunction may be maintained against any person who has attempted or will attempt to violate subsection 1 of section 12.1-16-04 by any person who is entitled to inherit from the person who would commit suicide or who is the spouse, parent, child, sibling, or health care provider of such person.
2. Any public official with jurisdiction to prosecute or enforce the laws of this state may maintain a claim for relief for an injunction against any present or future violation or attempted violation of subsection 1 of section 12.1-16-04.

12.1-16-06. Construction.

Sections 12.1-16-04 through 12.1-16-06 do not preclude the use of medications or procedures necessary to relieve a person's pain or discomfort if the use of the medications or procedures is not intentionally or knowingly prescribed or administered to cause the death of that person. In addition, sections 12.1-16-04 through 12.1-16-06 do not preclude the withholding or withdrawal of life-prolonging treatment pursuant to state or federal law.

12.1-16-07. Civil damages.

Any person given standing under subsection 1 of section 12.1-16-05, except the health care provider, may maintain a claim for relief for compensatory and punitive damages against any person who violates or attempts to violate section 12.1-16-04. Prior knowledge of or consent to the violation by the plaintiff does not preclude a claim for relief under this section. This section does not preclude any claim under any other provision of law.

12.1-16-08. Suspension or revocation of license of health care provider.

If the person who assists in a suicide in violation of section 12.1-16-04 is a person who is licensed, certified, or otherwise authorized by title 43 to administer health care in the ordinary course of business or professional practice, the licensing agency that issued the license or certification to that person may suspend or revoke the license or certification of that person upon receipt of:

1. A copy of the record of criminal conviction or plea of guilty to a felony in violation of section 12.1-16-04;
2. A copy of the record of a judgment of contempt of court for violating an injunction issued under section 12.1-16-05; or
3. A copy of the record of a judgment assessing damages under section 12.1-16-07.

CHAPTER 12.1-17
ASSAULTS - THREATS - COERCION - HARASSMENT

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit, or emergency department worker or hospital worker, engaged in essential patient care, in the performance of the member's duties.
 - b. A class B misdemeanor except as provided in subdivision a.

12.1-17-01.1. Assault.

A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person:

1. Willfully causes substantial bodily injury to another human being; or
2. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

12.1-17-01.2. Domestic violence.

1. For purposes of this section "family or household member" means family or household member as defined in section 14-07.1-01.
2. A person is guilty of an offense if that person willfully causes:
 - a. Bodily injury to the actor's family or household member;
 - b. Substantial bodily injury to the actor's family or household member; or
 - c. Serious bodily injury to the actor's family or household member.
3. The offense is:
 - a. A class B misdemeanor for the first offense under subdivision a of subsection 2 and a class A misdemeanor for a second or subsequent offense under this section or sections 12.1-17-01, 12.1-17-01.1, or 12.1-17-02 involving the commission of domestic violence, as defined in section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of any assault offense in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this section.
 - b. A class A misdemeanor for an offense under subdivision b of subsection 2 and a class C felony for an offense under subdivision c of subsection 2.
 - c. A class B felony for an offense under subdivision b or c of subsection 2 if the victim is under twelve years of age.
4. A person charged with an offense under this section must be prosecuted in district court.
5. This section applies to an individual under the age of eighteen if the:
 - a. Victim is or was in a dating relationship with the individual; or
 - b. Individual has a child in common with the victim.

12.1-17-02. Aggravated assault.

1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:
 - a. Willfully causes serious bodily injury to another human being;
 - b. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
 - c. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
 - d. Fires a firearm or hurls a destructive device at another human being.
2. The person is guilty of a class B felony if the person violates subsection 1 and the victim:
 - a. Is under twelve years of age;
 - b. Is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; or
 - c. Suffers permanent loss or impairment of the function of a bodily member or organ.

12.1-17-03. Reckless endangerment.

An individual is guilty of an offense if the individual creates a substantial risk of serious bodily injury or death to another. The offense is a class B felony if the individual uses a firearm. The offense is a class C felony if the circumstances manifest the individual's extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.

12.1-17-04. Terrorizing.

A person is guilty of a class C felony if, with intent to place another human being in fear for that human being's or another's safety or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious disruption or public inconvenience, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person:

1. Threatens to commit any crime of violence or act dangerous to human life; or
2. Falsely informs another that a situation dangerous to human life or commission of a crime of violence is imminent knowing that the information is false.

12.1-17-04.1. Domestic terrorism - Definitions - Penalty.

1. As used in this section:
 - a. "Domestic terrorism" means an activity conducted within the geographical boundaries of the state which:
 - (1) Is done in cooperation with any federally designated terrorist organization that threatens or appears to threaten the sovereignty of the state or the United States of America;
 - (2) Is a violation of criminal law; and
 - (3) Either:
 - (a) Involves violent acts or threats specifically intended to physically harm human life and:
 - [1] Intimidate, coerce, influence, or disrupt other lawful activity within the state; or
 - [2] Influence the policy of the state or any political subdivision of the state; or
 - (b) Involves the use of weapons of mass destruction.
 - b. "Material support or resources" means currency or other financial securities, financial services, lodging, safe houses, training, false documentation or identification, communications equipment, facilities, weapons, lethal substances,

explosives, personnel, transportation, and other physical assets. The term does not include medical or religious material.

2. A person is guilty of a class C felony if the person willfully:
 - a. Assembles with one or more persons for the purpose of training or instructing in the use of, or practicing with, any technique or means capable of causing property damage, or bodily injury or death, with the intent to employ such training, instruction, or practice in the commission of domestic terrorism;
 - b. Commits an act of domestic terrorism;
 - c. Conspires with one or more persons to commit an act of domestic terrorism; or
 - d. Provides material support or resources, or conceals or disguises the nature, location, source, or ownership of material support or resources, with the knowledge and intention that the support or resources are to be used in domestic terrorism.

12.1-17-05. Menacing.

A person is guilty of a class A misdemeanor if he knowingly places or attempts to place another human being in fear by menacing him with imminent serious bodily injury.

12.1-17-06. Criminal coercion.

1. A person is guilty of a class A misdemeanor if, with intent to compel another to engage in or refrain from conduct, he threatens to:
 - a. Commit any crime;
 - b. Accuse anyone of a crime;
 - c. Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person, living or deceased, to hatred, contempt, or ridicule, or to impair another's credit or business repute; or
 - d. Take or withhold official action as a public servant or cause a public servant to take or withhold official action.
2. It is an affirmative defense to a prosecution under this section that the actor believed, whether or not mistakenly:
 - a. That the primary purpose of the threat was to cause the other to conduct himself in his own best interest; or
 - b. That a purpose of the threat was to cause the other to desist from misbehavior, engage in behavior from which he could not lawfully abstain, make good a wrong done by him, or refrain from taking any action or responsibility for which he was disqualified.

12.1-17-07. Harassment.

1. As used in this section "robot" means an artificial object or system that senses, processes, and acts using technology, including the associated elements, communication links, and artificial intelligence. The term includes remotely piloted aircraft.
2. A person is guilty of an offense if, with intent to frighten or harass another, the person:
 - a. Communicates in writing or by electronic communication a threat to inflict injury on any person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively coarse language;
 - c. Makes repeated telephone calls or other electronic communication, whether or not a conversation ensues, with no purpose of legitimate communication;
 - d. Communicates a falsehood in writing or by electronic communication and causes mental anguish;
 - e. Communicates in writing, by electronic communication, or by electronically publishing, posting, or otherwise disclosing information to a public internet site or public forum an individual's personal identifying information; or
 - f. Uses a robot to engage in offensive conduct with no legitimate purpose.

3. The offense is a class A misdemeanor if it is under subdivision a of subsection 2 or subsection 5. Otherwise it is a class B misdemeanor.
4. Any offense defined herein and committed by use of electronic communication may be deemed to have been committed at either the place at which the electronic communication was made or at the place where the electronic communication was received.
5. A person is guilty of an offense if the person initiates communication with a 911 emergency line, public safety answering point, or an emergency responder communication system with the intent to annoy or harass another person or a public safety agency or who makes a false report to a public safety agency.
 - a. Intent to annoy or harass is established by proof of one or more calls with no legitimate emergency purpose.
 - b. Upon conviction of a violation of this subsection, a person is also liable for all costs incurred by any unnecessary emergency response.
6. Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means. Electronic communication means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

12.1-17-07.1. Stalking.

1. As used in this section:
 - a. "Course of conduct" means a pattern of conduct consisting of two or more acts evidencing a continuity of purpose. The term includes an act conducted with a robot in the direct control of the person. The term does not include constitutionally protected activity.
 - b. "Immediate family" means a spouse, parent, child, or sibling. The term also includes any other individual who regularly resides in the household or who within the prior six months regularly resided in the household.
 - c. "Robot" means an artificial object or system that senses, processes, and acts using technology, including the associated elements, communication links, and artificial intelligence. The term includes remotely piloted aircraft.
 - d. "Stalk" means:
 - (1) To engage in an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person and which serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family and must cause a reasonable person to experience fear, intimidation, or harassment; or
 - (2) The unauthorized tracking of the person's movements or location through the use of a global positioning system, robot, or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose.
2. A person may not intentionally stalk another person.
3. In any prosecution under this section, it is not a defense that the actor was not given actual notice that the person did not want the actor to contact or follow the person; nor is it a defense that the actor did not intend to frighten, intimidate, or harass the person. An attempt to contact or follow a person after being given actual notice that the person does not want to be contacted or followed is prima facie evidence that the actor intends to stalk that person.
4. In any prosecution under this section, it is a defense that a private investigator licensed under chapter 43-30 or a peace officer licensed under chapter 12-63 was acting within the scope of employment.
5. If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.
6. a. A person who violates this section is guilty of a class C felony if:

- (1) The person previously has been convicted of violating section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-04, 12.1-17-05, or 12.1-17-07, or a similar offense from another court in North Dakota, a court of record in the United States, or a tribal court, involving the victim of the stalking;
 - (2) The stalking violates a court order issued under chapter 14-07.1 protecting the victim of the stalking, if the person had notice of the court order; or
 - (3) The person previously has been convicted of violating this section.
- b. If subdivision a does not apply, a person who violates this section is guilty of a class A misdemeanor.

12.1-17-07.2. Distribution of intimate images without or against consent - Penalty.

1. As used in this section:
 - a. "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.
 - b. "Hosting company" means a person that provides services or facilities for storing or distributing content over the internet without editorial or creative alteration of the content.
 - c. "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:
 - (1) Exposed human male or female genitals or pubic area, with less than an opaque covering;
 - (2) A female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
 - (3) The individual engaged in any sexually explicit conduct.
 - d. "Service provider" means an internet service provider, including a person who leases or rents a wire or cable for the transmission of data.
 - e. "Sexually explicit conduct" means actual or simulated:
 - (1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (2) Masturbation;
 - (3) Bestiality;
 - (4) Sadistic or masochistic activities;
 - (5) Exhibition of the genitals, pubic region, buttocks, or female breast of any individual;
 - (6) Visual depiction of nudity or partial nudity;
 - (7) Fondling or touching of the genitals, pubic region, buttocks, or female breast; or
 - (8) Explicit representation of the defecation or urination functions.
 - f. "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.
2. A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual, if:
 - a. The person knows that the depicted individual has not given consent to the person to distribute the intimate image;
 - b. The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy; and
 - c. Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.
3. This section does not apply to:
 - a. Lawful practices of law enforcement agencies;
 - b. Prosecutorial agency functions;

- c. The reporting of a criminal offense;
 - d. Court proceedings or any other judicial proceeding;
 - e. Lawful and generally accepted medical practices and procedures;
 - f. An intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or
 - g. An intimate image that is portrayed in a lawful commercial setting.
4. This section also does not apply to:
- a. An internet service provider or interactive computer service, as defined in 47 U.S.C. 230(f)(2);
 - b. A provider of an electronic communications service, as defined in 18 U.S.C. 2510;
 - c. A telecommunications service, information service, or mobile service, as defined in 47 U.S.C. 153, including a commercial mobile service, as defined in 47 U.S.C. 332(d);
 - d. A cable operator, as defined in 47 U.S.C. 552, if:
 - (1) The distribution of an intimate image by the cable operator occurs only incidentally through the operator's function of:
 - (a) Transmitting or routing data from one person to another person; or
 - (b) Providing a connection between one person and another person;
 - (2) The operator does not intentionally aid or abet in the distribution of the intimate image; and
 - (3) The operator does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the operator, as a specific condition for permitting the person to distribute the intimate image; or
 - e. A hosting company, if:
 - (1) The distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (2) The hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and
 - (3) The hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.
5. Distribution of an intimate image is a class A misdemeanor.

12.1-17-08. Consent as a defense.

- 1. When conduct is an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury by all persons injured or threatened by the conduct is a defense if:
 - a. Neither the injury inflicted nor the injury threatened is such as to jeopardize life or seriously impair health;
 - b. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or
 - c. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods, and the persons subjected to such conduct or injury, having been made aware of the risks involved, consent to the performance of the conduct or the infliction of the injury.
- 2. Assent does not constitute consent, within the meaning of this section, if:
 - a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense and such incompetence is manifest or known to the actor;
 - b. It is given by a person who by reason of youth, mental disease or defect, or intoxication is manifestly unable or known by the actor to be unable to make a

- reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- c. It is induced by force, duress, or deception.

12.1-17-09. Killing or injury of law enforcement support animal - Definition - Penalty.

1. A person is guilty of a class C felony and is subject to a civil penalty of up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a law enforcement support animal.
2. A person is guilty of a class A misdemeanor and is subject to a civil penalty of up to five thousand dollars if that person willfully:
 - a. Harasses, taunts, or provokes a law enforcement support animal;
 - b. Interferes with a law enforcement support animal while the animal is working; or
 - c. Interferes with the individual handling the animal.
3. For purposes of this section, "law enforcement support animal" means any animal used by or on behalf of a law enforcement officer in the performance of the officer's functions and duties, including crowd control, corrections, arson investigation, or search and rescue, regardless of whether the animal is on or off duty.
4. This section does not apply to a law enforcement officer or a veterinarian who terminates the life of a law enforcement support animal to relieve the animal of undue suffering and pain.

12.1-17-10. Hazing - Penalty.

A person is guilty of an offense when, in the course of another person's initiation into or affiliation with any organization, the person willfully engages in conduct that creates a substantial risk of physical injury to that other person or a third person. As used in this section, "conduct" means any treatment or forced physical activity that is likely to adversely affect the physical health or safety of that other person or a third person, or which subjects that other person or third person to extreme mental stress, and may include extended deprivation of sleep or rest or extended isolation, whipping, beating, branding, forced calisthenics, overexposure to the weather, and forced consumption of any food, liquor, beverage, drug, or other substance. The offense is a class A misdemeanor if the actor's conduct causes physical injury, otherwise the offense is a class B misdemeanor.

12.1-17-11. Contact by bodily fluids or excrement.

1. An individual is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with:
 - a. A law enforcement officer acting in the scope of employment;
 - b. An employee of a correctional facility or the department of corrections and rehabilitation acting in the scope of employment unless the employee does an act within the scope of employment which requires or causes the contact;
 - c. An individual lawfully present in a correctional facility who is not an inmate;
 - d. An individual lawfully present in the penitentiary or an affiliated facility of the penitentiary who is not an inmate;
 - e. An individual transporting an individual who is lawfully detained;
 - f. A health care facility employee or contractor acting within the scope of employment unless the employee or contractor is performing an act within the scope of employment which requires or causes the contact; or
 - g. An emergency responder, including a licensed medical services provider, law enforcement officer, firefighter, volunteer firefighter, officer of a nonprofit volunteer fire department, emergency medical technician, emergency nurse, ambulance operator, or a provider of civil defense services, who while acting in the scope of employment is present at a health care facility.
2. Subsection 1 does not apply to a mentally ill person as defined in section 25-03.1-02 who has been detained pursuant to chapter 25-03.1.

3. The offense is a class C felony if the individual knowingly causes the contact and is a class A misdemeanor if the individual recklessly causes the contact.
4. As used in this section, "health care facility" means an office or institution providing health care services or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including a hospital; clinic; ambulatory surgery center; outpatient care facility; weight control clinic; nursing home; basic care or assisted living facility; laboratory; or office of any medical professional licensed or registered under title 43 or any individual who is included within a specialty and subspecialty of those fields. The term includes a waiting room, hallway, private room, semiprivate room, ward, and any mobile or temporary facility.

12.1-17-12. Assault or homicide while fleeing peace officer.

A person is guilty of a class A felony if that person negligently causes the death of another or a class B felony if that person negligently causes serious bodily injury to another while in violation of section 39-10-71.

12.1-17-13. Mandated intervention program for domestic violence offenders.

1. As used in this section, "intimate partner" means an offender's spouse, former spouse, current dating partner, recent former dating partner, or another individual with whom the offender has a child in common regardless of whether the offender and the individual are or have been married to each other, are or have been in a dating relationship with each other, or resided together at any time.
2. The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-05, 12.1-17-07, 12.1-17-07.1, 12.1-18-02, 12.1-18-03, 12.1-21-05, 12.1-21-06.1, 12.1-31.2-02, or 14-07.7-07 against an intimate partner, must include an order to complete a domestic violence offender assessment and intervention program as determined by the court. A court may not order the offender to attend anger management classes or individual counseling unless a domestic violence offender intervention program is not reasonably available to the defendant and the court makes findings for the record explaining why an order to complete a domestic violence offender intervention program would be inappropriate.
3. If an offender who is ordered to complete a domestic violence offender assessment and intervention program is assessed and determined to be inappropriate for the program by the program provider, a court may find the order to complete a domestic violence offender assessment and intervention program to be satisfied or may order the offender to complete other appropriate programming.

12.1-17-14. Forced or coerced abortion - Penalty.

1. As used in this section:
 - a. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination will with reasonable likelihood cause the death of the unborn child. The use, prescription, or means is not an abortion if done with the intent to:
 - (1) Save the life or preserve the health of the unborn child;
 - (2) Remove a dead unborn child caused by spontaneous abortion; or
 - (3) Treat a woman for an ectopic pregnancy.
 - b. "Force or coerce" means committing, attempting to commit, or threatening to commit physical harm to a woman, the unborn child, or another individual intended to compel the woman to have an abortion performed against her will.
 - c. "Threat" means at least one statement, or a course of conduct by the individual, which places a woman in reasonable apprehension that the individual will follow through with the statement or act as implied by the individual's course of conduct.

The term does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.

2. It is a class C felony to force or coerce a woman to have an abortion against her will.
3. Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty-four hours before initially contacting the individual alleged to have committed a violation of this section.

CHAPTER 12.1-17.1 OFFENSES AGAINST UNBORN CHILDREN

12.1-17.1-01. Definitions.

As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.
2. "Person" does not include the pregnant woman.
3. "Unborn child" means the conceived but not yet born offspring of a human being, which, but for the action of the actor would beyond a reasonable doubt have subsequently been born alive.

12.1-17.1-02. Murder of an unborn child.

1. A person is guilty of murder of an unborn child, a class AA felony, if the person:
 - a. Intentionally or knowingly causes the death of an unborn child;
 - b. Causes the death of an unborn child under circumstances manifesting extreme indifference to the value of the life of the unborn child or the pregnant woman; or
 - c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, the person, or another participant, if any, causes the death of an unborn child; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
 - (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof;
 - (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon that under the circumstances indicated a readiness to inflict serious bodily injury;
 - (3) Reasonably believed that no other participant was armed with such a weapon; and
 - (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subdivisions a and b are inapplicable in the circumstances covered by subsection 2.

2. A person is guilty of murder of an unborn child, a class A felony, if the person causes the death of an unborn child under circumstances which would be class AA murder, except that the person causes the death of the unborn child under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in the person's situation under the circumstances as the person believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation or a serious event or situation for which the offender was not culpably responsible.

12.1-17.1-03. Manslaughter of an unborn child.

A person is guilty of manslaughter of an unborn child, a class B felony, if the person recklessly causes the death of an unborn child.

12.1-17.1-04. Negligent homicide of an unborn child.

A person is guilty of negligent homicide of an unborn child, a class C felony, if the person negligently causes the death of an unborn child.

12.1-17.1-05. Aggravated assault of an unborn child.

A person is guilty of assault of an unborn child, a class C felony, if that person willfully assaults a pregnant woman and inflicts serious bodily injury on an unborn child.

12.1-17.1-06. Assault of an unborn child.

A person is guilty of assault of an unborn child, a class A misdemeanor, if the person willfully assaults a pregnant woman and inflicts bodily injury on an unborn child.

12.1-17.1-07. Exception.

This chapter does not apply to acts or omissions that cause the death or injury of an unborn child if those acts or omissions are committed during an abortion performed by or under the supervision of a licensed physician to which the pregnant woman has consented, nor does it apply to acts or omissions that are committed pursuant to usual and customary standards of medical practice during diagnostic or therapeutic treatment performed by or under the supervision of a licensed physician.

12.1-17.1-08. Other convictions not prohibited.

A prosecution for or conviction under this chapter is not a bar to conviction of or punishment for any other offense committed by a person as part of the same conduct.

CHAPTER 12.1-18 KIDNAPPING

12.1-18-01. Kidnapping.

1. A person is guilty of kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:
 - a. Hold him for ransom or reward;
 - b. Use him as a shield or hostage;
 - c. Hold him in a condition of involuntary servitude;
 - d. Terrorize him or a third person;
 - e. Commit a felony or attempt to commit a felony; or
 - f. Interfere with the performance of any governmental or political function.
2. Kidnapping is a class A felony unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a class B felony.

12.1-18-02. Felonious restraint.

A person is guilty of a class C felony, if he:

1. Knowingly abducts another;
2. Knowingly restrains another under terrorizing circumstances or under circumstances exposing him to risk of serious bodily injury; or
3. Restrains another with intent to hold him in a condition of involuntary servitude.

12.1-18-03. Unlawful imprisonment.

1. A person is guilty of a class A misdemeanor if he knowingly subjects another to unlawful restraint.
2. It is a defense to a prosecution under this section that the actor is a parent or person in equivalent relation to the person restrained and that the person restrained is a minor.

12.1-18-04. Definitions.

In this chapter:

1. "Abduct" means to restrain a person with intent to prevent his liberation by:
 - a. Secreting or holding him in a place where he is not likely to be found; or
 - b. Endangering or threatening to endanger the safety of any human being.
2. "Restrain" means to restrict the movement of a person unlawfully and without consent so as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is "without consent" if it is accomplished by: a. force, intimidation, or deception; or b. any means, including acquiescence of the victim, if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement.

12.1-18-05. Removal of child from state in violation of custody decree - Penalty.

Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of the custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

CHAPTER 12.1-19.1

ABORTION

12.1-19.1-01. Definitions.

As used in this chapter:

1. "Abortion" means the act of using, selling, or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge the termination by those means will with reasonable likelihood cause the death of the unborn child. The use, sale, prescription, or means is not an abortion if done with the intent to:
 - a. Remove a dead unborn child caused by spontaneous abortion;
 - b. Treat a woman for an ectopic pregnancy; or
 - c. Treat a woman for a molar pregnancy.
2. "Physician" means an individual licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
3. "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child.
4. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
5. "Serious health risk" means a condition that, in reasonable medical judgment, complicates the medical condition of the pregnant woman so that it necessitates an abortion to prevent substantial physical impairment of a major bodily function, not including any psychological or emotional condition. The term may not be based on a claim or diagnosis that the woman will engage in conduct that will result in her death or in substantial physical impairment of a major bodily function.

12.1-19.1-02. Abortion prohibited - Penalty.

It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.

12.1-19.1-03. Exceptions.

This chapter does not apply to:

1. An abortion deemed necessary based on reasonable medical judgment which was intended to prevent the death or a serious health risk to the pregnant female.
2. An abortion to terminate a pregnancy that based on reasonable medical judgment resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20, if the probable gestational age of the unborn child is six weeks or less.
3. An individual assisting in performing an abortion if the individual was acting within the scope of that individual's regulated profession, was under the direction of or at the direction of a physician, and did not know the physician was performing an abortion in violation of this chapter.

CHAPTER 12.1-20 SEX OFFENSES

12.1-20-01. General provisions.

In sections 12.1-20-03 through 12.1-20-08:

1. When criminality depends on a child being below the age of fifteen, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than fourteen.
2. When criminality depends on the victim being a minor, it is an affirmative defense that the actor reasonably believed the victim to be an adult.
3. When criminality depends on the victim being a minor fifteen years of age or older, the actor is guilty of an offense only if the actor is at least three years older than the minor.
4. When criminality depends on the victim being below the age of fifteen, and the actor is a minor, the actor is guilty of an offense only if the actor is at least three years older than the victim.

12.1-20-02. Definitions.

In sections 12.1-20-03 through 12.1-20-12:

1. "Coercion" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
2. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
3. "Object" means anything used in commission of a sexual act other than the person of the actor.
4. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
5. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

12.1-20-03. Gross sexual imposition - Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
 - a. The victim is less than fifteen years old;

- b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
 - c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.
- 3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.
- b. Otherwise the offense is a class A felony.
- 4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed unless the defendant was a juvenile at the time of the offense.

12.1-20-03.1. Continuous sexual abuse of a child.

- 1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.
- 2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.
- 3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

12.1-20-04. Sexual imposition.

A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

- 1. Compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or
- 2. Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

12.1-20-05. Corruption or solicitation of minors.

- 1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.
- 2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at

least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.

3. An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

12.1-20-05.1. Luring minors by computer or other electronic means.

1. An adult is guilty of luring minors by computer or other electronic means when:
 - a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and
 - b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
2. A violation of this section is a class A misdemeanor if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older and the adult reasonably believes the minor is age fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.
3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

12.1-20-06. Sexual abuse of wards.

A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class C felony if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.

12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.

Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.

2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, addiction counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
 - a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
 - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
 - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
 - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
 - f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is:
 - a. A class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age; or
 - b. A class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or if the actor's conduct violates subdivision a of subsection 1.

12.1-20-08. Fornication.

An individual is guilty of a class A misdemeanor if the individual engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07.

12.1-20-09. Adultery.

1. A married person is guilty of a class A misdemeanor if he or she engages in a sexual act with another person who is not his or her spouse.
2. No prosecution shall be instituted under this section except on the complaint of the spouse of the alleged offender, and the prosecution shall not be commenced later than one year from commission of the offense.
3. The court shall grant immunity from prosecution under this section to a person subject to prosecution under this section who, as part of a divorce, annulment, or separation proceeding, provides information regarding sexual acts with another person.

12.1-20-10. Unlawful cohabitation.

Repealed by S.L. 2007, ch. 131, § 4.

12.1-20-11. Incest.

A person who intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

12.1-20-12. Deviate sexual act.

A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire is guilty of a class A misdemeanor.

12.1-20-12.1. Indecent exposure.

1. An individual, with intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual:
 - a. Masturbates in a public place or in the presence of a minor;
 - b. Exposes the individual's penis, vulva, or anus in a public place or to a minor in a public or private place;
 - c. Exposes the individual's penis, vulva, or anus by unsolicited electronic means; or
 - d. Exposes the individual's penis, vulva, or anus by any electronic means to a minor.
2. An individual is guilty of a class C felony if the individual violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.
3. An individual who commits a violation of subdivision a or b of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An individual who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.
4. As used in this section, "electronic means" includes images and pictures transmitted via electronic mail, electronic messaging, or from an electronic communications device.

12.1-20-12.2. Surreptitious intrusion.

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:
 - a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another.
 - b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
 - c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
 - d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, after being required to register under section 12.1-32-15, or if the victim is a minor.

12.1-20-12.3. Sexual extortion.

1. An individual commits the offense of sexual extortion if the individual:
 - a. With an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, communicates in person or by electronic means:
 - (1) A threat to the victim's or another's person, property, or reputation; or
 - (2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
 - b. Knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, by means of:
 - (1) A threat to the victim's or another's person, property, or reputation; or
 - (2) A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
2. The offense is:
 - a. A class B felony if the actor's conduct violates subdivision b of subsection 1 and the victim is a minor or vulnerable adult, otherwise a class A misdemeanor.
 - b. A class A misdemeanor if the actor's conduct violates subdivision a of subsection 1.
3. For purposes of this section:
 - a. "Intimate image" has the meaning provided in subsection 1 of section 12.1-17-07.2.
 - b. "Sexual contact" has the meaning provided in section 12.1-20-02.
 - c. "Sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.2.
 - d. "Simulated sexually explicit conduct" has the meaning provided in subsection 1 of section 12.1-17-07.2.

12.1-20-13. Bigamy.

1. A person who marries another person, while married to another person, is guilty of a class C felony.
2. Subsection 1 does not extend to:
 - a. A person whose spouse has been absent for five successive years and is believed by him or her to be dead.
 - b. A person whose spouse has voluntarily absented himself and has continually remained without the United States for the space of five successive years.
 - c. A person whose former marriage has been pronounced void, null, or dissolved by the judgment of a competent court.

12.1-20-14. Admissibility of evidence concerning reputation of complaining witness - Gross sexual imposition and sexual imposition.

Superseded by N.D.R.Ev. 412.

12.1-20-15. Credibility of complaining witness attacked - Procedure.

Superseded by N.D.R.Ev. 412.

12.1-20-15.1. Admissibility of evidence of victim's manner of dress in sex offense cases.

Superseded by N.D.R.Ev. 412.

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses.

A minor or an individual with a developmental disability who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, section 12.1-20-11, or chapter 12.1-41, may, at the discretion of the district court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the minor or the individual with a developmental disability. An individual who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem must receive notice of and may attend all depositions, hearings, and trial proceedings to support the minor or the individual with a developmental disability and advocate for the protection of the minor or the individual with a developmental disability but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the supreme court. The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in district court pursuant to chapter 25-03.1.

12.1-20-17. Transfer of body fluid that may contain the human immunodeficiency virus - Definitions - Defenses - Penalty.

Repealed by S.L. 2025, ch. 127, § 1.

12.1-20-18. Definitions.

Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-19. Release of sexual offender from place of confinement - Duties of official in charge.

Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-20. Duty to register.

Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-21. Change of address - Duty to inform.

Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-22. Duration of registration.

Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-23. Penalty.

Repealed by S.L. 1993, ch. 129, § 5.

12.1-20-24. Facilitation of sexual acts in public.

1. As used in this section:
 - a. "Adult entertainment center" means any commercial facility at which motion pictures or videos that include explicit representations of sexual conduct are offered for viewing at that facility, but does not include the guest rooms of a hotel or motel.
 - b. "Sexual act" has the meaning prescribed in section 12.1-20-02.
 - c. "Sexual conduct" has the meaning prescribed in section 12.1-27.1-01.
2. It is an infraction for a person to willfully own, rent, lease, manage, or exercise control of any portion of an adult entertainment center if that portion contains:

- a. Any partition between subdivisions of a room or area that has an opening that facilitates a sexual act between individuals on either side of the partition; or
- b. A room, booth, stall, or partitioned portion of a room offered to individuals for a fee as an incident to viewing a video, motion picture, or similar entertainment, unless the room, booth, stall, or partitioned portion of the room has:
 - (1) At least one side open to an adjacent public space so that the area inside is visible to individuals in the adjacent public space; and
 - (2) The viewing area is lighted in a manner that the persons in that area are visible from the adjacent public space.
3. This section does not apply to an enclosure that is a private office space used by the owner, manager, or employees of the adult entertainment center if that office space is not held out or available to the public for the purpose of viewing a video, motion picture, or similar entertainment for a fee.
4. The department of health and human services or the state's attorney having jurisdiction may bring an action to enjoin a pattern of violations of this section.

12.1-20-25. Sexual offender presence near schools prohibited.

1. Except for purposes of voting in a school building used as a public polling place or attending an open meeting under chapter 44-04 in a school building, a sexual offender, as defined in section 12.1-32-15, who has pled guilty or been found guilty of or has been adjudicated delinquent of a class A misdemeanor or felony sexual offense against a minor or is required to register under section 12.1-32-15 or equivalent law of another state may not knowingly enter upon the real property comprising a public or nonpublic elementary, middle, or high school unless provided by this section or allowed on school property through compliance with a written policy adopted by the school board of a public school or governing body of a nonpublic school. The school board or governing body shall provide a copy of the policy to local law enforcement upon request.
2. If a school board or a governing body does not have a written policy on sexual offenders on school property, subsection 1 does not apply under the following circumstances:
 - a. The offender is a parent or guardian of a student attending the school and the offender, with the written permission of the school board or governing body of the school, or designee of the board or body, is attending a conference at the school with school personnel to discuss the progress of the student academically or socially, participating in a child review conference in which evaluation and placement decisions may be made regarding special education services, or attending a conference to discuss other student issues, including retention and promotion.
 - b. The offender is a parent, guardian, or relative of a student attending or participating in a function at the school and the offender has requested advance permission from the school board or governing body, or designee of the board or body, and received permission allowing the offender's presence at the school function.
 - c. The offender is a student at the school with the written permission of the school board or governing body, or designee of the board or body.
 - d. The school board or governing body, or designee of the board or body, allows the offender on school property under other circumstances on a case-by-case basis.
3. An individual who violates this section is guilty of a class A misdemeanor.

12.1-20-26. Sexual reproductive imposition.

1. As used in this section:
 - a. "Donor" means an individual who donates reproductive material, regardless of whether for personal use or compensation.
 - b. "Egg" means the unfertilized female reproductive cell.

- c. "Health care provider" means an individual licensed or certified by the state to deliver health care. The term includes an individual licensed to practice medicine or osteopathy under chapter 43-17.
 - d. "Pre-embryo" means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.
 - e. "Recipient" means an individual who receives reproductive material from a donor.
 - f. "Reproductive material" includes any human egg, pre-embryo, or sperm.
 - g. "Sperm" means the male reproductive cell.
- 2. A health care provider may not intentionally penetrate the vagina of a recipient with the reproductive material of a donor or any object containing the reproductive material of a donor knowing the recipient has not consented to the use of the reproductive material from that donor.
 - 3. A violation of this section is a class C felony.
 - 4. Notwithstanding section 29-04-02, the applicable period of limitation for prosecution of a violation under this section does not begin to run until the date on which the violation is discovered and reported to law enforcement authorities.

CHAPTER 12.1-21

DAMAGING PROPERTY OR PUBLIC SERVICES

12.1-21-01. Arson.

1. An individual is guilty of arson, a class B felony, if the individual starts or maintains a fire or causes an explosion with intent to destroy:
 - a. An entire or any part of a building or inhabited structure of another or a vital public facility;
 - b. Or damage the individual's own real or personal property for the purpose of collecting insurance for the loss;
 - c. Or damage the individual's own real property for the purpose of depriving another with a legal interest in the real property damaged or destroyed; or
 - d. Or damage the individual's own personal property for the purpose of depriving another with a legal interest in the personal property damaged or destroyed, and the value of the personal property damaged or destroyed has a value in excess of two thousand dollars.
2. For purposes of this section, "a legal interest" includes a joint legal interest by joint ownership of the property, or an individual's own legal interest in property financed by another, such as a mortgage, contract, deed, or lien.

12.1-21-02. Endangering by fire or explosion.

1. An individual is guilty of an offense if the individual intentionally starts or maintains a fire or causes an explosion and thereby recklessly:
 - a. Places another person in danger of death or bodily injury;
 - b. Places an entire or any part of a building or inhabited structure of another or a vital public facility in danger of destruction; or
 - c. Causes damage to property of another constituting pecuniary loss in excess of two thousand dollars.
2. For purposes of this section, "person in danger" includes fire department, law enforcement, and emergency medical personnel, a firefighter, and a volunteer firefighter while responding to a fire or during fire suppression efforts.
3. The offense is a class B felony if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life. Otherwise it is a class C felony.

12.1-21-03. Failure to control or report a dangerous fire.

A person who knows that a fire which was started or maintained, albeit lawfully, by him or with his assent is endangering life or a substantial amount of property of another is guilty of a class A misdemeanor if he willfully fails either to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself or to give a prompt fire alarm.

12.1-21-03.1. Negligent act resulting in fire - Penalty.

It is unlawful for any person to negligently cause a fire to be started in any part of any hotel, motel, roominghouse, lodginghouse, or other place of public abode so as to endanger life or property in any way or to any extent.

1. The state fire marshal shall print and distribute copies of this section to all hotels, motels, roominghouses, lodginghouses, and other places of public abode in this state and such copies shall be conspicuously displayed in each room of every hotel, motel, roominghouse, lodginghouse, and other place of public abode in this state.
2. Violation of this section is a class B misdemeanor.

12.1-21-04. Release of destructive forces.

1. A person is guilty of a class B felony if he intentionally causes a catastrophe by any means and is guilty of a class C felony if he does so willfully.

2. A person is guilty of a class C felony if he willfully creates a risk of catastrophe, although no fire, explosion, or other destruction results.
3. A person who knowingly does an act which causes or which he knows is likely to cause a catastrophe, or assents to the doing of such act, is guilty of a class C felony if he willfully fails to take reasonable measures to prevent the catastrophe.
4. Catastrophe means serious bodily injury to ten or more people or substantial damage to ten or more separate habitations or structures or property loss in excess of five hundred thousand dollars.

12.1-21-05. Criminal mischief.

1. A person is guilty of an offense if that person:
 - a. Willfully tampers with tangible property of another so as to endanger person or property; or
 - b. Willfully damages tangible property of another.
2. The offense is:
 - a. A class B felony if the actor intentionally causes pecuniary loss in excess of ten thousand dollars.
 - b. A class C felony if the actor intentionally causes pecuniary loss in excess of two thousand dollars but not in excess of ten thousand dollars or damages tangible property of another by means of an explosive or a destructive device.
 - c. A class C felony if the actor commits the offense while engaged in a riot, as defined in section 12.1-25-01.
 - d. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of two thousand dollars or if the actor intentionally causes pecuniary loss of from one hundred dollars through two thousand dollars.

Otherwise the offense is a class B misdemeanor.

12.1-21-06. Tampering with or damaging a critical infrastructure facility or a public service - Penalty.

1. An individual may not cause a substantial interruption or impairment of a critical infrastructure facility or a public service by:
 - a. Tampering with or damaging the tangible property of another;
 - b. Incapacitating an operator of a critical infrastructure facility or a public service;
 - c. Damaging, destroying, vandalizing, defacing, or tampering with equipment in a critical infrastructure facility;
 - d. Damaging, destroying, vandalizing, defacing, impeding, inhibiting, or tampering with the operations of a critical infrastructure facility; or
 - e. Interfering, inhibiting, impeding, or preventing the construction or repair of a critical infrastructure facility.
2. A violation of this section is a class C felony if the actor engages in the conduct intentionally and a class A misdemeanor if the actor engages in the conduct knowingly or recklessly. Otherwise it is a class B misdemeanor.
3. This section does not apply to an employee or contractor acting within the scope of the employee's or contractor's employment. As used in this subsection, "employee or contractor" means any person hired or under contract to provide services to a critical infrastructure facility or public service.
4. An organization that has pled guilty or been convicted of a violation under section 12.1-06-04 for conspiring with an individual who has pled guilty or been convicted under subsection 1 must be assessed a fine equivalent to the penalty authorized by subsection 2 for each individual who has pled guilty or been convicted under subsection 1, not to exceed one hundred thousand dollars.
5. This section may not be construed to prevent or prohibit lawful assembly and peaceful and orderly petition for the redress of grievances, including a labor dispute between an employer and its employee.
6. As used in this section, "critical infrastructure facility" includes:
 - a. A petroleum or alumina refinery;

- b. An electrical power generating facility, substation, switching station, electrical control center, or electric power line and associated equipment infrastructure;
- c. A chemical, polymer, or rubber manufacturing facility;
- d. A drinking water source, water transmission line, water treatment plant, water distribution system, ground water monitoring well, waste water treatment plant, or waste water collection system;
- e. A natural gas compressor station;
- f. A liquid natural gas terminal or storage facility;
- g. Wireline telecommunications and internet infrastructure, including central offices, fiber optic lines, cable lines, and all additional equipment associated with the provision of broadband or telecommunication services;
- h. Wireless telecommunications infrastructure, including a cell tower, telephone pole or line, including a fiber optic line;
- i. A port, railroad switching yard, railroad track, trucking terminal, or other freight transportation facility;
- j. A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or a natural gas liquid;
- k. A transmission facility used by a federally licensed radio or television station;
- l. A steel-making facility using an electric arc furnace to make steel;
- m. A facility identified and regulated by the United States department of homeland security chemical facility anti-terrorism standards program;
- n. A dam regulated by the state or federal government;
- o. A natural gas transmission or distribution utility facility, including a pipeline interconnection, a city gate or town border station, a metering station, below or aboveground piping, a regulator station, and a natural gas storage facility;
- p. A crude oil or refined product storage and distribution facility, including a valve site, pipeline interconnection, pump station, metering station, below or aboveground pipeline or piping, and a truck loading or offloading facility;
- q. Any below or aboveground portion of an oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or other storage facility;
- r. An oil and gas production site; and
- s. A site or location designated or approved for the construction of a facility described in this subsection.

12.1-21-06.1. Interference with telephone during emergency call.

A person is guilty of an offense if that person removes, damages, or obstructs any telephone or telephone line or any part or apparatus on the line, or severs any wire connected to the line, so as to interfere with an emergency telephone call. The offense is a class C felony if it was done intentionally. The offense is a class A misdemeanor if it was done knowingly or recklessly.

12.1-21-07. Consent as a defense.

Whenever in this chapter it is an element of the offense that the property is of another, it is a defense to a prosecution under those sections that the other has consented to the actor's conduct with respect to the property.

12.1-21-08. Definitions.

In this chapter:

- 1. "Inhabited structure" means a structure or vehicle:
 - a. Where any person lives or carries on business or other calling;
 - b. Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or
 - c. Which is used for overnight accommodation of persons.

Any structure or vehicle is deemed to be "inhabited" regardless of whether a person is actually present. If a building or structure is divided into separately inhabited units, any unit which is property of another constitutes an inhabited structure of another.

2. Property is that "of another" if anyone other than the actor has a possessory or proprietary interest therein.
3. "Vital public facility" includes a facility maintained for use as a bridge (whether over land or water), dam, tunnel, wharf, communications installation, or power station.

12.1-21-09. Tampering with, disabling, or falsely sounding a fire alarm - Tampering with or disabling fire suppression equipment.

1. A person may not tamper with, disable, or falsely sound an alarm signifying a fire in a hotel, motel, roominghouse, lodginghouse, or other place of public abode or in any other public place so as to endanger person or property. A person does not violate this subsection if that person sounds an alarm and has a reasonable belief there is a fire endangering person or property.
2. A person may not tamper with or disable fire suppression equipment in a hotel, motel, roominghouse, lodginghouse, or other place of abode or in any other public place so as to endanger person or property.
3. A violation of this section is a class B misdemeanor.

CHAPTER 12.1-21.1 ANIMAL RESEARCH FACILITY DAMAGE

12.1-21.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Animal" means any living organism that is used in food, fur, or fiber production, agriculture, research, testing, or education. The term does not include a human being, plant, or bacteria.
2. "Animal facility" means any vehicle, building, structure, research facility, premises, or defined area where an animal is kept, handled, housed, exhibited, bred, or offered for sale.
3. "Deprive" means to:
 - a. Withhold an animal or other property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;
 - b. Restore the animal or property only upon payment of a reward or other compensation; or
 - c. Dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.
4. "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:
 - a. Induced by force or threat;
 - b. Given by a person the offender knows is not legally authorized to act for the owner; or
 - c. Given by a person who by reason of age, mental disease or defect, or influence of drugs or alcohol is known by the offender to be unable to make a reasonable decision.
5. "Owner" means a person who has title to the property, possession of the property, or a greater right to possession of the property than the actor.
6. "Possession" means actual care, custody, control, or management.
7. "Research facility" means any place at which any scientific test, experiment, or investigation involving the use of any living animal is carried out, conducted, or attempted.

12.1-21.1-02. Animal facility - Damage or destruction.

No person without the effective consent of the owner may:

1. Intentionally damage or destroy an animal facility, an animal or property in or on the animal facility, or any enterprise conducted at the animal facility.
2. Acquire or otherwise exercise control over an animal facility or an animal or other property from an animal facility with the intent to deprive the owner and to damage the enterprise conducted at the facility.
3. Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section.
4. Enter an animal facility and remain concealed with intent to commit an act prohibited by this section.
5. Enter an animal facility and commit or attempt to commit an act prohibited by this section.
6. Enter an animal facility and use or attempt to use a camera, video recorder, or any other video or audio recording equipment.
7. Intentionally turn out or release any animal in or on an animal facility.

This section does not apply to lawful activities of a governmental agency carrying out its duties under law.

12.1-21.1-03. Entry forbidden - Notice.

No person may without the effective consent of the owner, and with the intent to damage the enterprise conducted at the animal facility, enter or remain on an animal facility, if the person had notice that the entry was forbidden or received notice to depart but failed to do so. Notice includes communication by the owner or someone with apparent authority to act for the owner, fencing or other enclosures designed to exclude intruders or to contain animals, or a sign posted on the property or at the entrance to the animal facility indicating that entry is forbidden.

12.1-21.1-04. Penalty.

A person who violates subsection 1 of section 12.1-21.1-02 is guilty of a class B felony if there is damage of ten thousand dollars or more, a class C felony if there is damage of at least five hundred dollars but less than ten thousand dollars, and a class A misdemeanor if there is damage of less than five hundred dollars. A person who violates subsections 2 through 5 or 7 of section 12.1-21.1-02 is guilty of a class C felony. A person who violates subsection 6 of section 12.1-21.1-02 is guilty of a class B misdemeanor.

12.1-21.1-05. Civil action.

A person who has been damaged by reason of violation of this chapter may bring an action in the district court against the person causing the damage to recover an amount equal to three times all actual and consequential damages and court costs and reasonable attorney fees.

This chapter does not affect any other rights of a person who has been damaged by reason of violation of this chapter.

CHAPTER 12.1-22
ROBBERY - BREAKING AND ENTERING OFFENSES

12.1-22-01. Robbery.

1. A person is guilty of robbery if, in the course of committing a theft, he inflicts or attempts to inflict bodily injury upon another or threatens or menaces another with imminent bodily injury.
2. Robbery is a class A felony if the actor fires a firearm or explodes or hurls a destructive device or directs the force of any other dangerous weapon against another. Robbery is a class B felony if the robber possesses or pretends to possess a firearm, destructive device, or other dangerous weapon, or menaces another with serious bodily injury, or inflicts bodily injury upon another, or is aided by an accomplice actually present. Otherwise robbery is a class C felony.
3. In this section:
 - a. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit, the theft.
 - b. "Dangerous weapon" means a weapon defined in section 12.1-01-04 or a weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

12.1-22-02. Burglary.

1. A person is guilty of burglary if he willfully enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein.
2. Burglary is a class B felony if:
 - a. The offense is committed at night and is knowingly perpetrated in the dwelling of another; or
 - b. In effecting entry or while in the premises or in immediate flight therefrom, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.Otherwise burglary is a class C felony.

12.1-22-03. Criminal trespass - Noncriminal offense on posted property.

1. An individual is guilty of a class C felony if, knowing the individual is not licensed or privileged to do so, the individual enters or remains in a dwelling or in highly secured premises.
2. An individual who unlawfully detains, occupies, or trespasses upon a residential dwelling is guilty of a class C felony for the first offense and a class B felony for a second or subsequent offense if the second or subsequent offense occurred at the same residential dwelling as the first offense.
3. An individual is guilty of a class A misdemeanor if, knowing the individual is not licensed or privileged to do so, the individual:
 - a. Enters or remains in or on any building, occupied structure, or storage structure, or separately secured or occupied portion thereof; or
 - b. Enters or remains in any place enclosed by a fence or otherwise enclosed as manifestly to exclude intruders, unless the individual is a licensed hunter or angler who is lawfully hunting or fishing. For purposes of this subdivision, "fence" means a permanent structure on nonurban, private property which is maintained and capable of containing livestock.

4.
 - a. An individual is guilty of a class B misdemeanor if, knowing the individual is not licensed or privileged to do so, the individual enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the owner or an individual authorized by the owner or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.
 - b. Even if the conduct of the owner or individual authorized by the owner varies from the provisions of subdivision a, an individual may be found guilty of violating subdivision a if the owner or individual authorized by the owner substantially complied with subdivision a and notice against trespass is clear from the circumstances.
 - c. An individual who violates subdivision a is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
5.
 - a. A peace officer may cite an individual who, knowing the individual is not licensed or privileged to do so, entered or remained in a place as to which notice against trespass is given by posting in a manner reasonably likely to come to the attention of intruders or a place enclosed by a fence as defined in subsection 2, with a noncriminal offense. An individual cited under this subsection may not be prosecuted under subsection 2 or 3 for the same offense.
 - b. The fine for a citation under subdivision a is two hundred fifty dollars for each violation.
 - c. The peace officer citing the individual shall:
 - (1) Take the name and address of the individual; and
 - (2) Notify the individual of the right to request a hearing if posting bond by mail.
 - d. The peace officer may not take the individual into custody or require the individual to proceed with the peace officer to any other location for the purpose of posting bond. The officer shall provide the individual with an envelope for use in mailing the bond.
 - e. An individual cited may appear before the designated official and pay the statutory fine for the violation at or before the time scheduled for hearing.
 - f. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.
 - g. If the individual posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the envelope or citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the individual is deemed to have admitted to the violation and to have waived the right to a hearing on the issue of commission of the violation. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons to the individual requesting the hearing notifying the individual of the date of the hearing before the designated official.
 - h. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The official may at that time waive or suspend the statutory fine or bond.
 - i. A citing peace officer may not receive the statutory fine or bond.
 - j. The bond required to secure appearance before the judge must be identical to the statutory fine established in subdivision b.
6. An individual is guilty of a class B misdemeanor if that individual remains upon the property of another after being requested to leave the property by a duly authorized individual. An individual who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
7. This section does not apply to a peace officer in the course of discharging the peace officer's official duties.

12.1-22-03.1. Surreptitious intrusion.

Repealed by S.L. 2001, ch. 134, § 11.

12.1-22-04. Unlawful entry into or concealment within a vehicle.

1. A person is guilty of an offense if, knowing that the person is not licensed or privileged to do so, the person:
 - a. Forcibly enters a vehicle, vessel, or aircraft;
 - b. Enters a vehicle, vessel, or aircraft, without the use of force, with intent to commit a crime; or
 - c. Enters a vehicle, vessel, or aircraft lawfully, and with the intent to commit a crime, conceals oneself in the vehicle, vessel, or aircraft.
2. The offense is a class B felony if the actor is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury. Otherwise the offense is a class C felony.

12.1-22-05. Stowing away.

A person is guilty of a class A misdemeanor if, knowing that he is not licensed or privileged to do so, he surreptitiously remains aboard a vehicle, train, vessel, or aircraft with intent to obtain transportation.

12.1-22-06. Definitions.

In sections 12.1-22-02 to 12.1-22-06:

1. "Dwelling" means real property or residential property, including a building, structure, or part of a building or structure, used or intended to be used as a home or residence.
2. "Highly secured premises" means any place which is continuously guarded and where display of visible identification is required of persons while they are on the premises.
3. "Night" means the period between thirty minutes past sunset and thirty minutes before sunrise.
4. "Occupied structure" means a structure or vehicle:
 - a. Where any person lives or carries on business or other calling; or
 - b. Which is used for overnight accommodation of persons.
 - c. Any such structure or vehicle is deemed to be "occupied" regardless of whether a person is actually present.
5. "Storage structure" means any structure, truck, railway car, or aircraft which is used primarily for the storage or transportation of property.

CHAPTER 12.1-23 THEFT AND RELATED OFFENSES

12.1-23-01. Consolidation of theft offenses.

1. Conduct denominated theft in sections 12.1-23-02 to 12.1-23-04 constitutes a single offense designed to include the separate offenses heretofore known as larceny, stealing, purloining, embezzlement, obtaining money or property by false pretenses, extortion, blackmail, fraudulent conversion, receiving stolen property, misappropriation of public funds, swindling, and the like.
2. An indictment, information, or complaint charging theft under sections 12.1-23-02 to 12.1-23-04 which fairly apprises the defendant of the nature of the charges against him shall not be deemed insufficient because it fails to specify a particular category of theft. The defendant may be found guilty of theft under such an indictment, information, or complaint if his conduct falls under sections 12.1-23-02 to 12.1-23-04, so long as the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case he must meet.

12.1-23-02. Theft of property.

A person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or
3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

12.1-23-02.1. Disarming or attempting to disarm a law enforcement officer.

Notwithstanding subdivision d of subsection 3 of section 12.1-23-05, a person is guilty of a class C felony if, without the consent of the law enforcement officer, the person willfully takes or removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in the performance of official duties.

12.1-23-03. Theft of services.

A person is guilty of theft if:

1. He intentionally obtains services, known by him to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services; or
2. Having control over the disposition of services of another to which he is not entitled, he knowingly diverts those services to his own benefit or to the benefit of another not entitled thereto.

Where compensation for services is ordinarily paid immediately upon their rendition, as in the case of hotels, restaurants, and comparable establishments, absconding without payment or making provision to pay is prima facie evidence that the services were obtained by deception.

12.1-23-04. Theft of property lost, mislaid, or delivered by mistake.

A person is guilty of theft if he:

1. Retains or disposes of property of another when he knows it has been lost or mislaid; or
2. Retains or disposes of property of another when he knows it has been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property,

and with intent to deprive the owner of it, he fails to take readily available and reasonable measures to restore the property to a person entitled to have it.

12.1-23-05. Grading of theft offenses.

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.
2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a felony.
3. Theft under this chapter is a class C felony if:
 - a. The property or services stolen exceed one thousand dollars in value;
 - b. The property or services stolen are acquired or retained by threat and:
 - (1) Are acquired or retained by a public servant by a threat to take or withhold official action; or
 - (2) Exceed one hundred dollars in value;
 - c. The property or services stolen exceed one hundred dollars in value and are acquired or retained by a public servant in the course of official duties;
 - d. The property stolen is a firearm, ammunition, or an explosive or destructive device;
 - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
 - f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
 - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
 - h. The property stolen consists of livestock taken from the premises of the owner;
 - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access;
 - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or
 - k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.
 - l. The property is stolen while engaging in a riot as defined in section 12.1-25-01 or while with an organized group of five or more individuals.
4. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 5 are met.
5.
 - a. Theft under this chapter of property or services of a value not exceeding five hundred dollars is a class B misdemeanor for a first offense if:
 - (1) The theft was committed by shoplifting; or
 - (2) The following three factors are met:
 - (a) The theft was not committed by threat;
 - (b) The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
 - (c) The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.
 - b. The special classification provided in paragraph 2 of subdivision a applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.
 - c. A second or third offense under paragraph 1 of subdivision a, or an equivalent ordinance, occurring within three years is a class A misdemeanor. A fourth or subsequent violation under paragraph 1 of subdivision a, or an equivalent ordinance, occurring within four years is a class C felony.

- d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense.
- 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
- 7. For purposes of grading, the amount involved in a theft under this chapter is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

12.1-23-06. Unauthorized use of a vehicle.

- 1. A person is guilty of an offense if, knowing that the person does not have the consent of the owner, the person takes, operates, or exercises control over an automobile, train, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of another.
- 2. It is a defense to a prosecution under this section that the actor reasonably believed that the owner would have consented had the owner known of the conduct on which the prosecution was based.
- 3. The offense is a class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and the cost of retrieval and restoration exceeds one thousand dollars. Otherwise the offense is a class A misdemeanor.

12.1-23-07. Misapplication of entrusted property.

- 1. A person is guilty of misapplication of entrusted property if the person disposes of, uses, or transfers any interest in property that has been entrusted to the person as a fiduciary, or in the person's capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that the person knows is not authorized and that the person knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.
- 2. Misapplication of entrusted property is:
 - a. A class A felony if the value of the property misapplied exceeds fifty thousand dollars.
 - b. A class B felony if the value of the property misapplied exceeds ten thousand dollars but does not exceed fifty thousand dollars.
 - c. A class C felony if the value of the property misapplied exceeds one thousand dollars but does not exceed ten thousand dollars.
 - d. A class A misdemeanor if the value of the property misapplied exceeds five hundred dollars but does not exceed one thousand dollars.
 - e. A class B misdemeanor in all other cases.

12.1-23-08. Defrauding secured creditors.

- 1. An owner of property who creates a security interest in such property may not intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or otherwise deal with property that is subject to the security interest without the prior consent of the secured party if that action has the effect of hindering the enforcement of the security interest.
- 2. A person may not destroy, remove, damage, conceal, encumber, transfer, or otherwise deal with property that is subject to a security interest with the intent to prevent collection of the debt represented by the security interest.

3. A person may not, at the time of sale of property that is subject to a security interest, or is described in a certificate provided for under section 41-09-28, make false statements as to the existence of security interests in the property, or as to the ownership or location of the property.
4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value of more than one thousand dollars, as determined under subsection 7 of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor.

12.1-23-08.1. Removal of identification marks.

1. A person commits the offense of removal of identification marks if he, with intent to cause interruption of the ownership of another, defaces, erases, or otherwise alters any serial number or identification mark placed or inscribed on any personal property by the manufacturer or owner for the purpose of identifying the personal property or its component parts, provided the personal property exceeds one hundred dollars in value. A person removes identification marks if he attempts to or succeeds in erasing, defacing, altering, or removing a serial number or identification mark or part thereof, on the personal property of another, that exceeds one hundred dollars in value.
2. A person who commits the offense of removal of identification marks on property or its component parts which exceeds one hundred dollars in value is guilty of a class A misdemeanor.

12.1-23-08.2. Possession of altered property.

1. A person is guilty of the offense of possession of altered property if he possesses property the identifying features of which, including serial numbers or labels, have been removed or in any fashion altered, knowing the serial number or identification mark placed on the same by the manufacturer or owner for the purpose of identification, has been erased, altered, changed, or removed for the purpose of changing the identity of such personal property.
2. A person who commits the offense of possession of altered property or its component parts which exceed one hundred dollars in value, shall be guilty of a class A misdemeanor. In the event that more than one item of personal property is defaced, erased, or otherwise altered or unlawfully possessed, as specified in sections 12.1-23-08.2 and 12.1-23-08.3, by an individual, then an offense is determined to be committed under this section if the aggregate of the value of the property so defaced, erased, or otherwise altered or unlawfully possessed is in excess of one hundred dollars.

12.1-23-08.3. Dealing in stolen property.

1. A person is guilty of the offense of dealing in stolen property if he:
 - a. Traffics in, or endeavors to traffic in, the property of another that has been stolen; or
 - b. Initiates, organizes, plans, finances, directs, manages, or supervises the theft and trafficking in the property of another that has been stolen.
2. A person who commits the offense of dealing in stolen property in violation of:
 - a. Subdivision a of subsection 1 shall be guilty of a class C felony; or
 - b. Subdivision b of subsection 1 shall be guilty of a class B felony.

12.1-23-08.4. Duplication of keys.

1. Except as provided in subsection 2, no person shall duplicate or make a key from another key marked with the words "Do Not Duplicate", "Do Not Copy", or words of similar intent.
2. It shall be an affirmative defense to prosecution under subsection 1 that:
 - a. The person made or duplicated the key for his employer, solely for use within the employer's place of business.

- b. The person for whom the key was made or duplicated owns the lock which the key fits.
- 3. Any person who violates any provision of this section is guilty of a class B misdemeanor.

12.1-23-09. Defenses and proof as to theft and related offenses.

- 1. It is a defense to a prosecution under this chapter that:
 - a. The actor reasonably believed that the actor had a claim to the property or services involved which the actor was entitled to assert in the manner which forms the basis for the charge against the actor; or
 - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.
- 2. It does not constitute a defense to a prosecution for conduct constituting an offense in violation of this chapter that:
 - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
 - b. A facility or an opportunity to engage in such conduct, including offering for sale property not stolen as if it were stolen, was provided; or
 - c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.
- 3.
 - a. It is a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to the person as part of that person's official duties or if an audit reveals a shortage or falsification of the person's accounts.
 - b. It is a prima facie case of theft under this chapter if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.
 - c. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
 - d. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- 4. The testimony of an accomplice, if believed beyond a reasonable doubt, is sufficient for a conviction for conduct constituting an offense in violation of sections 12.1-23-08.1 through 12.1-23-08.3 when:
 - a. Stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed;
 - b. A facility or an opportunity to engage in such conduct including offering for sale property not stolen as if it were stolen, was provided; or
 - c. Mere solicitation that would not induce an ordinary law-abiding person to engage in such conduct was made by a law enforcement officer to gain evidence against a person predisposed to engage in such conduct.

12.1-23-10. Definitions for theft and related offenses.

In this chapter:

- 1. "Dealer in property" means a person who buys or sells property as a business.

2. "Deception" means:
 - a. Creating or reinforcing a false impression as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise may not be inferred from the fact alone that the person did not substantially perform the promise unless it is part of a continuing scheme to defraud;
 - b. Preventing another from acquiring information which would affect his judgment of a transaction;
 - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship;
 - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events;
 - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record;
 - f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer:
 - (1) Where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized; and
 - (2) Where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
 - g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
3. "Deprive" means:
 - a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated;
 - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
 - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation, limited liability company, or other organization which is a fiduciary.
5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
6. "Obtain" means:
 - a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another.
 - b. In relation to services, to secure performance thereof.
7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim

to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.

8. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
9. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
11. "Shoplifting" means to willfully take possession of any merchandise owned, held, offered, or displayed for sale, by a merchant, store, or other mercantile establishment, with the intent to deprive the owner of the merchandise. The term includes:
 - a. Removing merchandise from a store or other mercantile establishment without paying for the merchandise;
 - b. Concealing a nonpurchased good or merchandise;
 - c. Altering, transferring, or removing a price marking on a good or merchandise;
 - d. Transferring a good from one container to another; and
 - e. Causing the amount paid for a good or merchandise to be less than the stated retail price.
12. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 12.1-23-06.
13. "Threat" means an expressed purpose, however communicated, to:
 - a. Cause bodily injury in the future to the person threatened or to any other person;
 - b. Cause damage to property;
 - c. Subject the person threatened or any other person to physical confinement or restraint;
 - d. Engage in other conduct constituting a crime;
 - e. Accuse anyone of a crime;
 - f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute;
 - g. Reveal any information sought to be concealed by the person threatened;
 - h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
 - i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;
 - j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent;
 - k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
 - l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship.

Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

14. "Traffic" means:

- a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person; or
- b. To buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense, or otherwise dispose of to another person.

12.1-23-11. Unauthorized use of personal identifying information - Penalty.

1. As used in this section, "personal identifying information" means any of the following information:
 - a. An individual's name;
 - b. An individual's address;
 - c. An individual's telephone number;
 - d. The operator's license information assigned to an individual by the department of transportation under section 39-06-14;
 - e. An individual's social security number;
 - f. An individual's employer or place of employment;
 - g. An identification number assigned to the individual by the individual's employer;
 - h. The maiden name of the individual's mother;
 - i. An individual's financial institution account number, credit card number, or debit card number;
 - j. An individual's birth, death, or marriage certificate;
 - k. An individual's health insurance policy number or subscriber identification number or any unique identifier used by a health insurer to identify the individual;
 - l. The nondriver color photo identification card information assigned to the individual by the department of transportation under section 39-06-03.1;
 - m. An individual's digitized or other electronic signature;
 - n. An individual's photograph or computerized image;
 - o. An individual's electronic mail address;
 - p. An individual's username and password of any digital service or computer system;
 - q. An individual's payment card information;
 - r. An individual's biometric data; or
 - s. Any other numbers, documents, or information that can be used to access another person's financial records.
2. An individual is guilty of an offense if the individual obtains or attempts to obtain, transfers, records, or uses or attempts to use any personal identifying information of another individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.
3. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony.
4. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before

the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

5. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.
6. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

12.1-23-12. Jurisdiction - Conduct outside this state.

Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive the person of property is subject to prosecution under this chapter in the courts of this state. Except as provided in section 12.1-23-11, the venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

12.1-23-13. Distribution and use of theft detection shielding devices.

1. A person is guilty of unlawful distribution of a theft detection shielding device if the person knowingly manufactures, sells, offers for sale, or distributes any laminated or coated bag or device peculiar to shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.
2. A person is guilty of unlawful possession of a theft detection shielding device if the person knowingly possesses any laminated or coated bag or device peculiar to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.
3. A person is guilty of unlawful possession of a theft detection device deactivator or remover if the person knowingly possesses any tool or device designed to allow the deactivation or removal of any theft detection device from any merchandise without the permission of the merchant or person owning or holding the merchandise.
4. A person is guilty of unlawful deactivation or removal of a theft detection device if the person intentionally deactivates or removes the device from a product before purchase.
5. A person is guilty of unlawful distribution of a theft detection device deactivator or remover if the person knowingly manufactures, sells, offers for sale, or distributes any tool or device designed to allow the deactivation or removal of a theft detection device from merchandise without the permission of the merchant or person owning or holding the merchandise.
6. An offense under subsections 1 and 5 is a class C felony. An offense under subsections 2, 3, and 4 is a class A misdemeanor.

12.1-23-14. Detention of persons suspected of unlawful use or removal of theft detection devices - Reasonable cause.

1. The activation of an antishoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment constitutes reasonable cause for the detention of the person exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that the device is being utilized. Each detention must be made in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.
2. If the taking into custody and detention of the person by a law enforcement officer, security officer, merchant, or merchant's employee is done in compliance with the requirements of this section, the law enforcement officer, security officer, merchant, or merchant's employee may not be held criminally or civilly liable, including any liability

for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress, or defamation.

12.1-23-15. Purchase of beer kegs - Penalty.

A recycler, scrap metal dealer, or scrapyard operator may not purchase a metal beer keg, whether damaged or undamaged, except from the brewer or the brewer's authorized representative, if:

1. The keg is clearly marked as the property of a brewery manufacturer; or
2. The keg's identification markings have been made illegible.

A person who willfully violates this section is guilty of a class B misdemeanor.

12.1-23-16. Automated sales suppression device, zapper, or phantom-ware - Prohibition - Penalties.

1. For purposes of this section:
 - a. "Automated sales suppression device" or "zapper" means a software program accessed through any method which falsifies the electronic records, transaction data, or transaction reports of electronic cash registers and other point-of-sale systems.
 - b. "Electronic cash register" means a device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data or transaction reports.
 - c. "Phantom-ware" means a hidden, preinstalled or installed at a later time, programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register, which can be used to create a virtual second cash register or that can eliminate or manipulate transaction records that may be preserved in digital formats to represent the true or manipulated transaction data or reports in the electronic cash register and is intended to falsify the electronic records of an electronic cash register or other point-of-sale system.
 - d. "Transaction data" means items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.
 - e. "Transaction report" means a report documenting sales, the tax collected, methods of payment, voided sales, or other information at an electronic cash register which is printed on cash register tape at the end of a day or shift, or a report documenting every transaction at an electronic cash register that is stored electronically.
2. It is unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or use in this state, an automated sales suppression device, zapper, or phantom-ware.
3. Any person convicted of a violation under subsection 2 is guilty of a class B felony. Any person convicted of a second or subsequent violation of subsection 2 is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.
4. It is a defense to prosecution under this section that the person purchased, possessed, installed, transferred, owned, or used in this state, an automated sales suppression device, zapper, or phantom-ware for a legitimate purpose.
5. Any person violating subsection 2 is liable for all sales and use tax, income tax, or other tax under title 57, and any county or city sales and use tax imposed under sections 11-09.2-05 and 40-05.1-06, and associated penalties and interest due the state as the result of the fraudulent use of an automated sales suppression device, zapper, or phantom-ware. Any tax found to be due must be assessed at double the amount so determined.

6. The person shall forfeit all proceeds associated with the sale or use of an automated sales suppression device, zapper, or phantom-ware. The proceeds forfeited under this section must be deposited with the state treasurer for deposit in the state general fund.
7. An automated sales suppression device, zapper, or phantom-ware, and the cash register or other device containing the device or the software, is contraband and subject to forfeiture in accordance with chapter 29-31.1.

12.1-23-17. Unlawful skimming of credit, debit, or other electronic payment cards - Penalty.

Repealed by S.L. 2019, ch. 111, § 4.

12.1-23-18. Definitions.

As used in this chapter:

1. "Payment card" means a credit card, charge card, debit card, or any other card issued to an authorized card user which allows the user to obtain, purchase, or receive credit, money, goods, services, or anything else of value.
2. "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card, driver's license, or state-issued identification card, or any electronic medium that allows an authorized transaction to occur.
3. "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, information encoded on a computer chip or magnetic strip or stripe of a payment card, driver's license, or state-issued identification card.
4. "Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial information contained on a payment card or encoded on a computer chip or magnetic strip or stripe of a payment card.

12.1-23-19. Use and possession of re-encoders and scanning devices - Penalty.

1. An individual is guilty of a class B felony if the individual uses or attempts to use a skimmer, re-encoder, or a scanning device to obtain information from a payment card, driver's license, or state-issued identification card without the permission of the authorized card user of the card from which the information is being skimmed, re-encoded, or scanned. An individual convicted of a second or subsequent violation of this subsection is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.
2. An individual is guilty of a class A misdemeanor if the individual owns or possess a skimmer, re-encoder, or scanning device with the intent to commit, aid, or abet any unlawful activity.

CHAPTER 12.1-23.1 THEFT OF CABLE TELEVISION

12.1-23.1-01. Theft of cable television services - Penalty.

A person is guilty of a class B misdemeanor if the person:

1. Knowingly obtains or attempts to obtain cable television service from another by any means, artifice, trick, deception, or device without the payment to the cable television operator of all lawful compensation for each type of service obtained;
2. Knowingly assists or instructs any other person in obtaining or attempting to obtain any cable television service without the payment to the cable television operator of all lawful compensation for each type of service obtained or attempted to be obtained;
3. Knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the cable television operator; or
4. Knowingly manufactures, imports into this state, distributes, sells, offers for sale or rental, possesses for sale, or advertises for sale, any device, plan or kit for a device, or printed circuit, designed to unlock, decode, descramble, or otherwise make intelligible any locked, encoded, scrambled, or other nonstandard signal carried by the cable television system, thereby facilitating the doing of any acts specified in subsections 1, 2, and 3.

12.1-23.1-02. Civil penalties for theft of cable television services.

1. Any person who violates subsection 1, 2, or 3 of section 12.1-23.1-01 is liable to the franchised or otherwise duly licensed cable television system for the greater of one thousand dollars or three times the amount of actual damages, if any, sustained by the system, plus reasonable attorney fees.
2. Any person who violates subsection 4 of section 12.1-23.1-01 is liable to the franchised or otherwise duly licensed cable television system for the greater of ten thousand dollars or three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney fees. A second or subsequent conviction is punishable by the greater of twenty thousand dollars or three times the amount of actual damages, if any, plus reasonable attorney fees.

12.1-23.1-03. Theft of cable television services - Action - Injunction - Property forfeiture.

1. Any franchised or otherwise duly licensed cable television system may bring an action to enjoin and restrain violation of section 12.1-23.1-01 or an action for conversion, or both, and may in the same action seek damages as provided for in section 12.1-23.1-02.
2. Any communications paraphernalia prohibited under section 12.1-23.1-01 may be seized and, upon conviction, is forfeited to the jurisdiction where the arrest was made. The paraphernalia may be, pursuant to court order, sold or destroyed.
3. It is not a necessary prerequisite to an action pursuant to section 12.1-23.1-02 that the plaintiff has suffered, or is threatened with, actual damages.

12.1-23.1-04. Amateur radio communications - Exemption.

This chapter shall not be construed to prevent the manufacture, importation, distribution, sale, offer for sale or rental, possession for sale, or advertisement for sale, any device, plan or kit for a device, or printed circuit, used by federally-licensed amateur radio (ham) operators for amateur radio communications as permitted under 47 CFR 91.7 et seq.

CHAPTER 12.1-24 FORGERY AND COUNTERFEITING

12.1-24-01. Forgery or counterfeiting.

1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such deception or harm by another person, the person:
 - a. Knowingly and falsely makes, completes, or alters any writing; or
 - b. Knowingly utters or possesses a forged or counterfeited writing.
2. Forgery or counterfeiting is:
 - a. A class B felony if:
 - (1) The actor forges or counterfeits an obligation or other security of the government; or
 - (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars, but not in excess of fifty thousand dollars. If the value of the property exceeds fifty thousand dollars, the offense is a class A felony.
 - b. A class C felony if:
 - (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by the actor's office;
 - (2) The actor forges or counterfeits foreign money or other legal tender, or utters or possesses any forged or counterfeited obligation or security of the government or foreign money or legal tender;
 - (3) The actor forges or counterfeits any writing from plates, dies, molds, photographs, or other similar instruments designed for multiple reproduction;
 - (4) The actor forges or counterfeits a writing which purports to have been made by the government; or
 - (5) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one thousand dollars.
 - c. A class A misdemeanor in all other cases.

12.1-24-02. Facilitation of counterfeiting.

1. A person is guilty of an offense if, except as authorized by statute or by regulation, he knowingly makes, executes, sells, buys, imports, possesses, or otherwise has within his control any plate, stone, paper, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any forged or counterfeited security or tax stamp or any writing which purports to be made by this government or any foreign government.
2. A person is guilty of an offense if, except as authorized by statute or by regulation, he:
 - a. Knowingly photographs or otherwise makes a copy of:
 - (1) Money or other obligation or security of this government or of any foreign government, or any part thereof;
 - (2) Any plate, stone, tool, die, mold, or other implement or thing uniquely associated with or fitted for the preparation of any writing described in subsection 1; or
 - b. Knowingly sells, buys, imports, possesses, or otherwise has within his control any photograph or copy the making of which is prohibited by subdivision a.
3. In a prosecution under this section, authorization by statute or by regulation is a defense.
4. An offense defined in this section is a class B felony if the implement or the impression relates to the forging or counterfeiting of an obligation or security of the government. Otherwise it is a class C felony.

12.1-24-03. Deceptive writings.

1. A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that the person is facilitating such a deception or harm by another person, the person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing.
2. The offense is:
 - a. A class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars.
 - b. A class C felony if:
 - (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by the actor's office; or
 - (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one thousand dollars.
 - c. A class A misdemeanor in all other cases.

12.1-24-04. Definitions.

In this chapter:

1. The definitions prescribed in section 12.1-23-10 apply.
2. A "deceptive writing" is a writing which has been:
 - a. Procured by deception; or
 - b. Issued without authority.
3. "Falsely alters" means to make a change in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker.
4. "Falsely completes" means to make an addition to or an insertion in a writing, without authority, such that the writing appears to have been made by, or fully authorized by, its apparent maker.
5. "Falsely makes" means to make a writing which purports to be made by the government or another person, or a copy thereof, but which is not because the apparent maker is fictitious or because the writing was made without authority.
6. To "forge" or to "counterfeit" a writing means to falsely make, complete, or alter the writing, and a "forged" or "counterfeited" writing is a writing which has been falsely made, completed, or altered. The terms "forgery" and "counterfeiting" and their variants are intended to be synonymous in legal effect.
7. The term "obligation or other security of this state" means a bond, certificate of indebtedness, coupon, fractional note, certificate of deposit, a stamp, or other representative of value of whatever denomination, issued pursuant to a statute.
8. "Possess" means to receive, conceal, or otherwise exercise control over.
9. "Security" other than as provided in subsection 10 includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of interest in tangible or intangible property, instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise, uncanceled stamp issued by a foreign government (whether or not demonetized); or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing.
10. "Tax stamp" includes any tax stamp, tax token, tax meter imprint, or any other form of evidence of an obligation running to a state, or evidence of the discharge thereof.
11. "Utter" means to issue, authenticate, transfer, publish, sell, transmit, present, use, or otherwise give currency.
12. "Without authority" includes conduct that, on the specific occasion called into question, is beyond any general authority given by statute, regulation, or agreement.

13. "Writing" means:
- a. Any paper, document, or other instrument containing written or printed matter or its equivalent, including money, a money order, bond, public record, affidavit, certificate, contract, security, or obligation.
 - b. Any coin or any gold or silver bar coined or stamped at a mint or assay office or any signature, certification, credit card, token, stamp, seal, badge, decoration, medal, trademark, or other symbol or evidence of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of the government or any person.

12.1-24-05. Making or uttering slugs.

1. A person is guilty of an offense if he makes or utters a slug with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.
2. The offense is a class A misdemeanor if it involves slugs which exceed fifty dollars in value. Otherwise it is a class B misdemeanor.
3. In this section:
 - a. "Slug" means a metal, paper, or other object which by virtue of its size, shape, or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token.
 - b. "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed:
 - (1) To receive a coin or bill of a certain denomination or a token made for the purpose; and
 - (2) In return for the insertion or deposit thereof, automatically to offer, provide, assist in providing, or permit the acquisition of property or a public or private service.
 - c. "Value" of the slugs means the value of the coins, bills, or tokens for which they are capable of being substituted.

CHAPTER 12.1-25

RIOT

12.1-25-01. Inciting riot.

1. A person is guilty of an offense if he:
 - a. Incites or urges five or more persons to create or engage in a riot; or
 - b. Gives commands, instructions, or directions to five or more persons in furtherance of a riot.
2. "Riot" means a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs law enforcement or other government function.
3. A person shall be convicted under section 12.1-06-01, 12.1-06-03, or 12.1-06-04 of attempt, solicitation, or conspiracy to commit an offense under this section only if he engages in the prohibited conduct under circumstances in which there is a substantial likelihood that his conduct will imminently produce a violation of this section.
4. The offense is a class B felony if it is under subdivision b of subsection 1 or the riot involves one hundred or more persons. Otherwise it is a class C felony.

12.1-25-02. Arming rioters.

1. A person is guilty of a class B felony if the person:
 - a. Knowingly supplies a firearm, dangerous weapon, or destructive device for use in a riot;
 - b. Teaches another to prepare or use a firearm, dangerous weapon, or destructive device with intent that any such thing be used in a riot; or
 - c. While engaging in a riot, is knowingly armed with a firearm, dangerous weapon, or destructive device.
2. "Riot" has the meaning prescribed in section 12.1-25-01.

12.1-25-03. Engaging in a riot.

1. A person is guilty of a class A misdemeanor if the person engages in a riot, as defined in section 12.1-25-01.
2. The provisions of subsection 3 of section 12.1-25-01 are applicable to attempt, solicitation, and conspiracy to commit an offense under this section. Mere presence at a riot is not an offense under this section.

12.1-25-04. Disobedience of public safety orders under riot conditions.

A person is guilty of a class A misdemeanor if, during a riot as defined in section 12.1-25-01, or when one is immediately impending, the person disobeys a reasonable public safety order to move, disperse, or refrain from specified activities in the immediate vicinity of the riot. A public safety order is an order designed to prevent or control disorder, or promote the safety of persons or property, issued by the senior law enforcement official on the scene.

CHAPTER 12.1-26
FIREARMS AND DESTRUCTIVE DEVICES
[Repealed by S.L. 1985, ch. 683, § 8]

CHAPTER 12.1-27

OBSCENITY

[Repealed by S.L. 1975, ch. 119, § 13]

CHAPTER 12.1-27.1 OBSCENITY CONTROL

12.1-27.1-01. Obscenity - Definitions - Dissemination - Classification of offenses.

1. A person is guilty of a class C felony if, knowing of its character, the person disseminates obscene material or if the person produces, transports, or sends obscene material with intent that it be disseminated.
2. A person is guilty of a class C felony if the person presents or directs an obscene performance for pecuniary gain or participates in any portion of a performance which contributes to the obscenity of the performance as a whole.
3. A person is guilty of a class C felony if the person, as owner or manager of an establishment licensed under section 5-02-01, permits an obscene performance in the establishment. A person is guilty of a class C felony if that person participates, whether or not for compensation, in an obscene performance in an establishment licensed under section 5-02-01.
4.
 - a. In addition to the penalty provided in subsection 1, 2, or 3, any person who violates subsection 1, 2, or 3 in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:
 - (1) For an individual, a fine not to exceed ten thousand dollars; or
 - (2) For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.
 - b. In addition to the penalty provided in subsection 1, 2, or 3, the court shall impose the following penalty upon the conviction of a person or entity described in subdivision a for a second or subsequent offense under subsection 1, 2, or 3:
 - (1) For an individual, a fine not to exceed fifty thousand dollars; or
 - (2) For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.
5. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
 - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
 - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
 - c. Taken as a whole, the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.
6. As used in this chapter, "disseminate" means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain. "Disseminate" includes any transmission of visual material shown on a cable television system, whether or not accompanied by a soundtrack, and any sound recording played on a cable television system.
7. As used in this chapter, the term "material" means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being's receptive senses.
8. As used in this chapter, the term "patently offensive" means so offensive on its face as to affront the contemporary North Dakota standards of decency.
9. As used in this chapter, the term "performance" means any play, dance, or other exhibition presented before an audience.

10. As used in this chapter, the term "prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.
11. As used in this chapter, the term "sexual conduct" means actual or simulated:
 - a. Sexual intercourse;
 - b. Sodomy;
 - c. Sexual bestiality;
 - d. Masturbation;
 - e. Sadomasochistic abuse;
 - f. Excretion; or
 - g. Lewd exhibition of the male or female genitals.

As used in this subsection, the term "sodomy" means contact between the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus. As used in this subsection, the term "sadomasochistic abuse" means a depiction or description of flagellation or torture by or upon a person who is nude or clad in undergarments or in a bizarre or revealing costume; or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
12. As used in this chapter, the term "book" means any book, magazine, pamphlet, newspaper, or other article made out of paper and containing printed, typewritten, or handwritten words.
13. As used in this chapter, "sexually expressive image" means a real, altered, or computer-generated photograph or visual representation that exhibits a nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, or sexual conduct.

12.1-27.1-02. Promoting obscenity to minors - Definitions.

As used in this section and in section 12.1-27.1-03:

1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.
2. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct or sexual excitement, when such description or representation:
 - a. Considered as a whole, appeals to the prurient sexual interest of minors;
 - b. Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
 - c. Considered as a whole, lacks serious literary, artistic, political, or scientific value for minors.
3. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.

1. It is a class C felony for a person, knowing of its character, to recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.
2. It is a class C felony to permit a minor to participate in a performance which is harmful to minors.

12.1-27.1-03.1. Objectionable materials or performance - Display to minors - Definitions - Penalty.

1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is

devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.

2. As used in this section:

- a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.
- b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.
- c. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.

12.1-27.1-03.2. Exhibition of X-rated motion picture in unscreened outdoor theater - Penalty.

Any person who, knowing of its character, exhibits any motion picture rated X by the motion picture association of America in any outdoor theater where the screen is visible beyond the limits of the theater audience area, so that the motion picture may be seen and its content or character distinguished by normal unaided vision by a minor viewing it from beyond the limits of the theater audience area, is guilty of a class B misdemeanor.

12.1-27.1-03.3. Creation, possession, or dissemination of sexually expressive images prohibited - Exception - Civil action.

1. A person is guilty of a class A misdemeanor if, knowing of its character and content, that person:
 - a. Without written consent from each individual who has a reasonable expectation of privacy in the image, surreptitiously creates or willfully possesses a sexually expressive image that was surreptitiously created; or
 - b. Distributes or publishes, electronically or otherwise, a sexually expressive image with the intent to cause emotional harm or humiliation to any individual depicted in the sexually expressive image who has a reasonable expectation of privacy in the image, or after being given notice by an individual or parent or guardian of the individual who is depicted in a sexually expressive image that the individual, parent, or guardian does not consent to the distribution or publication of the sexually expressive image.
2. A person is guilty of a class B misdemeanor if, knowing of its character and content, that person acquires and knowingly distributes any sexually expressive image that was created without the consent of the subject of the image.
3. This section does not authorize any act prohibited by any other law. If the sexually expressive image is of a minor and possession does not violate section 12.1-27.2-04.1, a parent or guardian of the minor may give permission for a person to possess or distribute the sexually expressive image.
4. This section does not apply to any book, photograph, video recording, motion picture film, or other visual representation sold in the normal course of business through wholesale or retail outlets that possess a valid sales tax permit or used by an attorney, attorney's agent, or any other person obtaining evidence for a criminal investigation or pending civil action, or by a medical professional or a peace officer acting within that individual's scope of employment.
5. Nothing in this section may be construed to impose liability on a provider of an interactive computer service, as defined under 47 U.S.C. 230, or an information service or telecommunication service, as defined under 47 U.S.C. 153, for content provided by another person.
6. A depicted individual who is identifiable and who suffers harm from a person's violation of this section has a cause of action against the person if the person produced, possessed, distributed, promoted, advertised, sold, exhibited, broadcasted, or

transmitted the sexually expressive image for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

- a. The court may order the filing party to redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff.
 - b. A party to whom subdivision a applies shall file with the court and serve on all other parties a redacted and unredacted version of the filing and a confidential information form that includes the redacted plaintiff's name and other identifying characteristics.
 - c. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.
7. In an action under subsection 6, a prevailing plaintiff may recover:
- a. The greater of:
 - (1) Economic and noneconomic damages proximately caused by the defendant's violation of this section, including damages for emotional distress whether or not accompanied by other damages; or
 - (2) Statutory damages not to exceed ten thousand dollars against each defendant found liable under this section;
 - b. An amount equal to any monetary gain made by the defendant from the distribution, promotion, advertising, sale, exhibition, broadcasting, or transmission of the sexually expressive image; and
 - c. Exemplary damages.
8. In an action under subsection 6, the court may award a prevailing plaintiff:
- a. Reasonable attorney fees and costs; and
 - b. Other remedies available by law, including injunctive relief.
9. This chapter does not affect or preclude any other right or remedy available under federal law or a law of this state other than this section.

12.1-27.1-03.4. Restrictions on adult-oriented performances - Penalty.

1. As used in this section:
 - a. "Adult-oriented performance" means a performance that, regardless of whether or not performed for consideration, is intended to appeal to a prurient interest and features:
 - (1) The purposeful exposure, whether complete or partial, of:
 - (a) A human genital, the pubic region, the human buttocks, or a female breast, if the breast is exposed below a point immediately above the top of the areola; or
 - (b) Prosthetic genitalia, breasts, or buttocks; or
 - (2) Sexual conduct.
 - b. "Public property" means real property in which a state agency or a political subdivision has an ownership interest.
2. A person is guilty of a class A misdemeanor for a first offense and a class C felony for a second or subsequent offense if the person organizes an adult-oriented performance:
 - a. On public property; or
 - b. At a business establishment frequented by minors, or where minors are or may be invited as a part of the general public.

12.1-27.1-03.5. Public libraries prohibited from maintaining explicit sexual material - Report.

1. As used in this section:
 - a. "Explicit sexual material" means any material which:
 - (1) Taken as a whole, appeals to the prurient interest of minors;
 - (2) Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and
 - (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

- b. "Public library" means a library established under chapter 40-38.
- 2. A public library may not maintain in its children's collection inventory books that contain explicit sexual material.
- 3. By January 1, 2024, each public library shall develop a policy and process for reviewing library collections to ensure conformance with the requirements of this section. The policy must include a procedure:
 - a. For the removal or relocation of explicit sexual material in the public library;
 - b. For the development of a book collection that is appropriate for the age and maturity levels of the individuals who may access the materials, and which is suitable for, and consistent with, the purpose of the library;
 - c. For the public library to receive, evaluate, and respond to a request from an individual regarding the removal or relocation of one or more of the books or other materials in the library collection containing explicit sexual material; and
 - d. To periodically review the library collection to ensure the library collection does not contain explicit sexual material in the children's collection.
- 4. Each public library shall provide a compliance report to the legislative management before May 1, 2024, on the implementation of collection development and relocation of materials policies as required by this section and to ensure sufficient compliance with this section.

12.1-27.1-04. Definitions.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-05. Civil proceeding a prerequisite to criminal liability.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-06. Commencement of civil proceeding - Intervention - Seizure of materials.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-07. Procedures - Expanded district court - Appeal.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-08. Judgment - Effect - Notice to constructive defendants - Use in criminal prosecutions.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-09. Preliminary injunction - Limitations.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-10. Conflicting decisions - Resolution.

Repealed by S.L. 1981, ch. 157, § 1.

12.1-27.1-11. Exceptions to criminal liability.

Sections 12.1-27.1-01 and 12.1-27.1-03 shall not apply to the possession or distribution of material in the course of law enforcement, judicial, or legislative activities; or to the possession of material by a bona fide school, college, university, museum, or public library for limited access for educational research purposes carried on at such an institution by adults only. Sections 12.1-27.1-01 and 12.1-27.1-03 shall also not apply to a person who is returning material, found to be obscene, to the distributor or publisher initially delivering it to the person returning it.

12.1-27.1-12. State pre-emption of local laws regulating obscenity.

This chapter is applicable throughout the state, and a political subdivision may not enact new, or enforce existing, ordinances or resolutions regulating or prohibiting the dissemination of

obscene materials, or controlling obscene or adult-oriented performances, except ordinances authorized by section 5-02-09, section 58-03-11, chapter 11-33, or chapter 40-47.

CHAPTER 12.1-27.2

SEXUAL PERFORMANCES BY CHILDREN

12.1-27.2-01. Definitions.

As used in this chapter:

1. "Computer-generated image" means an image or visual representation created through the use of artificial intelligence or other computer program.
2. "Minor" means an individual under eighteen years of age or a computer-generated image used, created, adapted, altered, or modified to appear to depict an individual under eighteen years of age by face, likeness, or other distinguishing characteristics.
3. "Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
4. "Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.
5. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate, present, exhibit, or advertise.
6. "Sexual conduct" means actual or simulated:
 - a. Sexual intercourse;
 - b. Sodomy, as defined under section 12.1-27.1-01;
 - c. Sexual bestiality;
 - d. Masturbation;
 - e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
 - f. Lewd exhibition of the buttocks, breasts, or genitals;
 - g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or
 - h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it.
7. "Sexual performance" means any performance which includes sexual conduct by a minor.
8. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

12.1-27.2-02. Use of a minor in a sexual performance.

1. A person is guilty of a class A felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.
2. An adult is guilty of a class A felony if, with the intent to persuade, induce, entice, or coerce a minor to engage in a sexual performance, the adult portrays the adult to be a minor.

12.1-27.2-03. Promoting or directing an obscene sexual performance by a minor.

A person is guilty of a class A felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

12.1-27.2-04. Promoting a sexual performance by a minor.

A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

12.1-27.2-04.1. Possession of certain materials prohibited.

1. A person is guilty of a class C felony if, knowing of its character and content, that person knowingly possesses any motion picture, computer-generated image, photograph, or other visual representation that includes sexual conduct by a minor.
2. An individual violating this section is guilty of a class B felony if:
 - a. The offense involved twenty or more images;
 - b. The offense involved sadistic or masochistic conduct or other depictions of violence;
 - c. The offense involved sexual bestiality;
 - d. The offense involves a prepubescent minor or a minor under twelve years of age; or
 - e. The individual has previously been convicted of an offense subject to registration under section 12.1-32-15.
3. This section does not impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. 230, or an internet service provider, cloud computer provider, cybersecurity provider, communication service provider, or information service or telecommunication service network, as defined in 47 U.S.C. 153, for any content provided by another person.

12.1-27.2-04.2. Sexual performance by a minor - Enhanced penalties.

1. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, a person who commits an offense under this chapter and who acts in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:
 - a. For an individual, a fine not to exceed ten thousand dollars; or
 - b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.
2. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, the court shall impose the following fine upon the conviction of a person or entity described in subsection 1 for a second or subsequent offense under this chapter:
 - a. For an individual, a fine not to exceed fifty thousand dollars; or
 - b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.

It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older, if the minor was in fact fifteen years of age or older; or
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance.

12.1-27.2-06. Proof of age of minor.

When it becomes necessary under this chapter to determine whether a minor participated in a sexual performance, the trier of fact may base its determination on personal inspection of the minor, inspection of a photograph or motion picture of the sexual performance, testimony by a

witness to the sexual performance as to the age of the minor based upon the minor's appearance, expert testimony based upon the appearance of the minor in the sexual performance, or any other method authorized by law or by rule.

CHAPTER 12.1-28 GAMBLING AND RELATED OFFENSES

12.1-28-01. Gambling - Definitions.

As used in this chapter:

1. "Gambling" means risking any money, credit, deposit, or other thing of value for gain, contingent, wholly or partially, upon lot, chance, the operation of gambling apparatus, or the happening or outcome of an event, including an election or sporting event, over which the person taking the risk has no control. Gambling does not include:
 - a. Lawful contests of skill, speed, strength, or endurance in which awards are made only to entrants or to the owners of entries;
 - b. Lawful business transactions, or other acts or transactions now or hereafter expressly authorized by law; or
 - c. Use of gaming equipment and devices that may not otherwise be lawful in the state when the equipment or devices are used by any institution under the control of the state board of higher education which awards degrees of bachelor's or higher for the purpose of conducting scientific research in a controlled environment on the campus of that institution.
2. "Gambling apparatus" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons, or gambling by a person involving the playing of a machine. Gambling apparatus does not include an amusement game or device as defined in section 53-04-01.
3. "Gambling house" means any location or structure, stationary or movable, wherein gambling is permitted or promoted, or where a lottery is conducted or managed. In the application of this definition, any place where gambling apparatus is found is presumed to be a gambling house, provided that this presumption shall not apply where cards, dice, or other games are found in a private residence.
4. "Lottery" means any plan for the distribution of a thing of value, whether tangible or intangible, to a person or persons selected by chance from among participants, some or all of whom have given a consideration for the chance of being selected.

12.1-28-02. Gambling - Related offenses - Classification of offenses.

Except as permitted by law:

1. It is an infraction to engage in gambling on private premises where the total amount wagered by an individual player exceeds twenty-five dollars per individual hand, game, or event.
2. It is a class A misdemeanor to:
 - a. Sell, purchase, receive, or transfer a chance to participate in a lottery, whether the lottery is drawn in state or out of state, and whether the lottery is lawful in the other state or country;
 - b. Disseminate information about a lottery with intent to encourage participation in it, except that a legal lottery may be advertised in North Dakota; or
 - c. Engage in gambling on private premises where the total amount wagered by an individual player exceeds five hundred dollars per individual hand, game, or event.
3. A person is guilty of a class C felony if that person engages or participates in the business of gambling. Without limitation, a person is deemed to be engaged in the business of gambling if that person:
 - a. Conducts a wagering pool or lottery;
 - b. Receives wagers for or on behalf of another person;
 - c. Alone or with others, owns, controls, manages, or finances a gambling business;
 - d. Knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house;
 - e. Maintains for use on any place or premises occupied by that person a coin-operated gaming device; or

- f. Is a public servant who shares in the proceeds of a gambling business whether by way of a bribe or otherwise.
- 4.
 - a. As used in subsection 3 but with the exceptions provided by subdivision b of this subsection, the term "coin-operated gaming device" means any machine that is:
 - (1) A so-called "slot" machine that operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; or
 - (2) A machine that is similar to machines described in paragraph 1 and is operated without the insertion of a coin, token, or similar object.
 - b. The term "coin-operated gaming device" does not include a bona fide vending or amusement machine in which gambling features are not incorporated as defined in section 53-04-01, or an antique "slot" machine twenty-five years old or older that is collected and possessed by a person as a hobby and is not maintained for the business of gambling.
 - c. A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under chapter 29-31.1.

CHAPTER 12.1-29 PROSTITUTION

12.1-29-01. Promoting prostitution.

1. A person is guilty of an offense if he:
 - a. Operates a prostitution business or a house of prostitution;
 - b. Induces or otherwise intentionally causes another to become engaged in sexual activity as a business; or
 - c. Knowingly procures a prostitute for a prostitution business or a house of prostitution.
2. The offense is a class C felony if it is under subdivision b or c of subsection 1 or if it is under subdivision a and the actor owns, controls, manages, or otherwise supervises the prostitution business or house of prostitution. Otherwise the offense is a class A misdemeanor.

12.1-29-02. Facilitating prostitution.

1. A person is guilty of an offense if the person:
 - a. Knowingly solicits a person to patronize a prostitute;
 - b. Knowingly procures a prostitute for a patron;
 - c. Knowingly leases or otherwise permits a place controlled by the actor, alone or in association with others, to be regularly used for prostitution, promoting prostitution, or facilitating prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or taking other legally available means; or
 - d. Knowingly induces or otherwise intentionally causes another to remain a prostitute. A person who is supported in whole or substantial part by the proceeds of prostitution, other than the prostitute or the prostitute's minor child or a person whom the prostitute is required by law to support, is presumed to be knowingly inducing or intentionally causing another to remain a prostitute.
2. The offense is a class A felony if the actor intentionally causes another to remain a prostitute by force, coercion, threat, or deception, or the prostitute is the actor's spouse or ward, or a person for whose care, protection, or support the actor is responsible. Otherwise it is a class C felony.

12.1-29-03. Prostitution.

An adult is guilty of prostitution, a class B misdemeanor, if the adult:

1. Is an inmate of a house of prostitution or is otherwise engaged in sexual activity as a business;
2. Solicits another person with the intention of being hired to engage in sexual activity; or
3. Agrees to engage in sexual activity with another for money or other items of pecuniary value.

12.1-29-04. Testimony of spouse in prostitution offenses.

Testimony of a person against his or her spouse shall be admissible to prove offenses under this chapter involving that spouse's prostitution.

12.1-29-05. Definitions.

In this chapter:

1. A "house of prostitution" is any place where prostitution is regularly carried on by a person under the control, management, or supervision of another.
2. An "inmate" is a prostitute who acts as such in or through the agency of a house of prostitution.
3. A "prostitute" is a person who engages in sexual activity for hire.

4. A "prostitution business" is any business which derives funds from prostitution regularly carried on by a person under the control, management, or supervision of another.
5. "Sexual activity" means sexual act or sexual contact as those terms are defined in section 12.1-20-02.

12.1-29-06. Hiring an individual to engage in sexual activity.

Except as provided in section 12.1-41-06, an individual who hires or offers or agrees to hire another individual with the intention of engaging in sexual activity is guilty of:

1. A class B misdemeanor for a first offense; and
2. A class A misdemeanor for a second or subsequent offense within ten years.

12.1-29-07. Offender education program.

A sentence for an offense under section 12.1-29-06 or chapter 12.1-41 may include an order for the offender to participate in an offender education program on the negative consequences of the commercial sex industry, including health and legal consequences and the impact on communities, survivors, spouses, and children. The court may order the offender to pay the cost of the offender education program.

CHAPTER 12.1-30
SUNDAY CLOSING LAW

12.1-30-01. Business or labor on Sunday - Exemptions - Classification of offenses.

Repealed by S.L. 2019, ch. 112, § 2.

12.1-30-02. Items prohibited from sale or rental on Sunday.

Repealed by S.L. 2019, ch. 112, § 2.

12.1-30-03. Businesses allowed to operate on Sunday - Limitations.

Repealed by S.L. 2019, ch. 112, § 2.

12.1-30-04. Retail business leases or agreements - Penalty.

A retail business may not be required to be open on Sunday as a part of a lease agreement, franchise agreement, or any other contractual arrangement entered and executed before January 1, 2019. A violation of this section is a class A misdemeanor.

CHAPTER 12.1-31

MISCELLANEOUS OFFENSES

12.1-31-01. Disorderly conduct.

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:
 - a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
 - b. Makes unreasonable noise;
 - c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
 - d. Obstructs vehicular or pedestrian traffic or the use of a public facility;
 - e. Persistently follows a person in or about a public place or places;
 - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose;
 - h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person; or
 - i. Uses a fixed optical device that enhances or records a visual occurrence to view through any window of another person's property; or uses a surveillance camera to capture an image from the dwelling or accessory structure of another person; however, an individual using a surveillance camera has seven days from notice by a law enforcement officer to direct or shield the camera so as to not capture an image from another person's dwelling or accessory structure before there is an offense.
2. This section does not apply to constitutionally protected activity. If an individual claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.

12.1-31-01.1. Disorderly conduct at a funeral - Penalty.

1. For purposes of this section:
 - a. "Funeral" means the ceremonies, rituals, processions, and memorial services held at a funeral site in connection with the burial, cremation, or memorial of a deceased individual.
 - b. "Funeral site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, gravesite, mausoleum, or other place at which a funeral is conducted or is scheduled to be conducted within the next hour or has been conducted within the last hour.
2. An individual is guilty of disorderly conduct at a funeral if the individual:
 - a. Engages, with knowledge of the existence of a funeral site, in any loud singing, playing of music, chanting, whistling, yelling, or noisemaking within one thousand feet [300.48 meters] of any ingress or egress of that funeral site if the volume of the singing, music, chanting, whistling, yelling, or noisemaking is likely to be audible at and disturbing to the funeral site; or
 - b. Displays, with knowledge of the existence of a funeral site and within one thousand feet [300.48 meters] of any ingress or egress of that funeral site, any visual images that convey fighting words or actual or veiled threats against any other individual.
3. Disorderly conduct at a funeral is a class B misdemeanor. A second or subsequent violation of this section is a class A misdemeanor.

12.1-31-01.2. Sexual assault restraining order - Penalty.

Repealed by S.L. 2025, ch. 145, § 17.

12.1-31-02. Engaging in or financing criminal usury business.

1. A person is guilty of a class C felony if he knowingly engages in, or directly or indirectly provides financing for, the business of making extensions of credit at such a rate of interest that repayment or performance of any promise given in consideration thereof is unenforceable through civil judicial process in this state.
2. Knowledge of unenforceability shall be presumed, in the case of a person engaging in the business, if any of the following exist, and in the case of a person directly or indirectly providing financing, if he knew any of the following:
 - a. It is an offense to charge, take, or receive interest at the rate involved.
 - b. The rate of interest charged, taken, or received is fifty or more per centum greater than the maximum enforceable rate of interest.
 - c. The rate of interest involved exceeds forty-five per centum per annum or the equivalent rate for a longer or shorter period.
3. Unless otherwise provided by law, the rate of interest is to be calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which a payment is applied first to the accumulated interest and the balance is applied to the unpaid principal.
4. It is a defense to a prosecution under this section that the defendant was licensed or otherwise authorized by the United States or by any state government to engage in the business of making extensions of credit.
5. In this section:
 - a. An "extension of credit" means any loan, or any agreement, tacit or express, whereby the repayments or satisfaction of any debt, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.
 - b. "Debtor" means any person to whom an extension of credit is made, or who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.
 - c. The repayment of any extension of credit includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

12.1-31-03. Sale of tobacco, electronic smoking devices, or alternative nicotine products to an individual under twenty-one years of age and use by an individual under twenty-one years of age prohibited.

1.
 - a. It is an infraction for any person to sell or furnish to an individual under twenty-one years of age, or procure for an individual under twenty-one years of age, cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products. As used in this subdivision, "sell" includes dispensing from a vending machine under the control of the actor.
 - b. It is an infraction for any person to display or offer for sale cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a self-service display. This subdivision does not apply to a:
 - (1) Vending machine or other coin-operated machine that is permitted under section 12.1-31-03.1; or
 - (2) Self-service display that is located in a tobacco specialty store.
2. It is a noncriminal offense for an individual eighteen years of age or older but under twenty-one years of age, and an infraction for an individual fourteen years of age or older but under eighteen years of age, to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.

However, an individual under twenty-one years of age may purchase and possess tobacco, electronic smoking devices, or alternative nicotine products as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco, electronic smoking devices, or alternative nicotine products retailer, or association of tobacco, electronic smoking devices, or alternative nicotine products retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.

3. Subsections 1 and 2 do not apply to an individual under twenty-one years of age who possesses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be used for smoking or chewing, electronic smoking devices, or alternative nicotine products when required in the performance of the individual's duties as an employee.
4. It is a noncriminal offense for an individual under twenty-one years of age to present or offer to another individual a purported proof of age which is false, fraudulent, or not actually that individual's own proof of age, for the purpose of attempting to purchase or possess cigarettes, cigars, cigarette papers, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products.
5. A city or county may adopt an ordinance or resolution regarding the sale of tobacco, electronic smoking devices, or alternative nicotine products to individuals under twenty-one years of age and use of tobacco, electronic smoking devices, or alternative nicotine products by individuals under twenty-one years of age which includes prohibitions in addition to those in subsection 1, 2, or 4. Any ordinance or resolution adopted must include provisions deeming a violation of subsection 2 or 4 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for an individual fourteen years of age or older who has been charged with an offense under subsection 2 or 4. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except an individual under twenty-one years of age may not be imprisoned for the contempt.
6. An individual fourteen years of age or older but under eighteen years of age found to have violated subsection 2 or 4 has committed an infraction and must be sent to juvenile court. An individual eighteen years of age or older but under twenty-one years of age found to have violated subsection 2 or 4 must pay a fee of twenty-five dollars.
 - a. Any individual who has been cited for a violation of subsection 2 or 4 may appear before a court of competent jurisdiction and pay the fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the fee. This subdivision does not allow a citing officer to receive the fee or bond.
 - b. If an individual cited for a violation of subsection 2 or 4 does not choose to follow the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation cited. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual cited shall deposit with the court an appearance bond equal to the fee for the violation cited.
 - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except an individual may not be imprisoned for the contempt.

7. The prosecution must prove the commission of a cited violation under subsection 2 or 4 by a preponderance of the evidence.
8. A law enforcement officer that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
9. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.
10. As used in this section:
 - a. "Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include any cigarette, cigar, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, any electronic smoking device, or any product regulated as a drug or device by the United States food and drug administration under chapter V of the Federal Food, Drug, and Cosmetic Act [21 U.S.C 501 et seq.].
 - b. "Electronic smoking device" means any electronic product that delivers nicotine or other substances to the individual inhaling from the device, including, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act [52 Stat. 1040; 21 U.S.C. 301 et seq.].
 - c. "Self-service display" means a display that contains cigarettes, cigarette papers, cigars, snuff, tobacco in any other form which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products and is located in an area that is openly accessible to the retailer's customers, and from which customers can readily access those products without the assistance of a salesperson. A display case that holds those products behind locked doors does not constitute a self-service display.
 - d. "Tobacco specialty store" means a retail store that:
 - (1) Derives at least seventy-five percent of its revenue from the sale of cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products; and
 - (2) Does not permit minors to enter the premises unless accompanied by a parent or legal guardian.
 - e. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or other means of payment that is designed or used for vending purposes, including machines or devices that use remote control locking mechanisms.

12.1-31-03.1. Vending machines prohibited - Penalty.

1. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through a vending machine, except as provided in subsection 2.
2. Subsection 1 does not apply to:
 - a. A vending machine that is located in an area in which individuals under twenty-one years of age are not permitted access; or
 - b. A vending machine that dispenses cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through the operation of a device that requires a salesperson to control the dispensation of such product.

3. It is an infraction for any person to sell or furnish cigarettes, cigarette papers, cigars, snuff, tobacco in any other form in which it may be utilized for smoking or chewing, electronic smoking devices, or alternative nicotine products through any vending machine, if those products are placed together with any nontobacco product, other than matches, in the vending machine.
4. As used in this section, "electronic smoking devices" and "alternative nicotine products" have the same meaning as in section 12.1-31-03.

12.1-31-03.2. Child-resistant packaging for liquid nicotine containers. (Contingent expiration date - [See note](#))

1. Any nicotine liquid container that is sold at retail in this state must satisfy the child-resistant effectiveness standards set forth in title 16, CFR, part 1700, section 15(b)(1), when tested in accordance with the method described in title 16, CFR, part 1700, section 20.
2. As used in this section, "nicotine liquid container" means a bottle or other container of a liquid or other substance containing nicotine in which the liquid or substance is sold, marketed, or intended for use in an electronic smoking device. The term does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in an electronic smoking device, provided that the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.
3. Any person that engages in retail sales of liquid nicotine containers in violation of this section is subject to a civil penalty of not more than five hundred dollars for each separate violation of this section, to be recovered by any enforcement authority designated by the city or political subdivision in which the violation occurred.

12.1-31-03.3. Sale of flavored e-liquid to minors prohibited - Penalty.

1. A person may not sell, offer for sale, or distribute in this state any flavored e-liquid or electronic smoking device containing flavored e-liquid to an individual under twenty-one years of age.
2. A person that violates subsection 1 and is not a manufacturer is subject to a fine of five hundred dollars for each individual package of flavored e-liquid product or electronic smoking device containing flavored e-liquid sold or offered for sale.

12.1-31-04. Manufacture, sale, or delivery of paraphernalia - Definitions - Penalty.

Repealed by S.L. 1981, ch. 160, § 8.

12.1-31-05. Child procurement - Penalty.

Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption. This section does not apply to parties to any agreement in which a woman agrees to become a surrogate, as defined in section 14-18-01, or to relinquish her rights and duties as parent of a child conceived through assisted reproduction, as defined in section 14-20-02.

12.1-31-06. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty.

Repealed by S.L. 2001, ch. 214, § 10.

12.1-31-07. Endangering an eligible adult - Penalty.

1. In this chapter, unless the context otherwise requires:
 - a. "Caregiver" means a person who is responsible for the care of an eligible adult as a result of a familial or legal relationship, or a person who has assumed

responsibility for the care of an eligible adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to an eligible adult who is the patient or client of the licensed health care provider.

- b. "Eligible adult" means an individual who is at least sixty-five years old or a vulnerable adult as defined in section 50-25.2-01.
 - c. "Undue influence" means the use of a position of trust and confidence with an eligible adult to exploit or take advantage of that eligible adult through actions or tactics, including emotional, psychological, or legal manipulation.
2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly performs an act that causes an eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the eligible adult and the failure causes the eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, is guilty of a class B felony.

12.1-31-07.1. Exploitation of an eligible adult - Penalty.

1. A person is guilty of exploitation of an eligible adult if:
 - a. The person stands in a position of trust and confidence or has a business relationship with the eligible adult and knowingly, by deception, intimidation, or undue influence, obtains or uses, or attempts to obtain or use, the eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the eligible adult of the use, benefit, or possession of the property, for the benefit of someone other than the eligible adult; or
 - b. The person knows the eligible adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the eligible adult of the use, benefit, or possession of the property for the benefit of someone other than the eligible adult.
2. Exploitation of an eligible adult is:
 - a. A class A felony if the value of the exploited funds, assets, or property exceeds fifty thousand dollars.
 - b. A class B felony if the value of the exploited funds, assets, or property exceeds ten thousand dollars but does not exceed fifty thousand dollars.
 - c. A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed ten thousand dollars.
 - d. A class A misdemeanor if the value of the exploited funds, assets, or property does not exceed one thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
 - a. Managed the eligible adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
 - b. Made a good-faith effort to assist in the management of the eligible adult's funds, assets, or property.

12.1-31-07.2. Criminal proceeding involving an eligible adult - Speedy trial.

In a criminal proceeding in which an eligible adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the eligible adult must endure the stress of involvement in the proceedings. In ruling on a motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the eligible adult.

12.1-31-08. Possession or distribution of certain photographs or other visual representations prohibited - Penalty.

Repealed by S.L. 2009, ch. 133, § 3.

12.1-31-09. Fraudulent use of receipts and universal product code labels prohibited - Penalty.

Except as otherwise provided in this section, any person who, with the intent to defraud a retailer, possesses, uses, utters, transfers, alters, counterfeits, or reproduces a retail sales receipt or a universal product code label is guilty of a class A misdemeanor. Any person who, with the intent to defraud a retailer, possesses fifteen or more fraudulent retail sales receipts or universal product code labels or who possesses a device the purpose of which is to manufacture fraudulent retail sales receipts or universal product code labels is guilty of a class C felony. For purposes of this section, "universal product code" means the twelve-digit identification number and bar code system developed by the uniform code council which is used to uniquely identify products.

12.1-31-10. Sale of bidis prohibited - Penalty.

It is an infraction for any person to sell the tobacco product commonly referred to as bidis or beedies. For purposes of this section, "bidis" or "beedies" means a product containing tobacco which is wrapped in temburni leaf, also known as diospyros melanoxylon, or tendu leaf, also known as diospyros exculpra.

12.1-31-11. False representation of marital status.

An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other.

12.1-31-12. Abortion - Affirmative defenses.

Repealed by S.L. 2023, ch. 122, § 11.

12.1-31-13. Tattooing, branding, subdermal implants, scarifying, and piercing - Minors.

1. As used in this section:
 - a. "Brand" means the use of heat, cold, or any chemical compound to imprint permanent markings on an individual's skin.
 - b. "Pierce" means the puncture of any part of an individual's body to insert studs, pins, rings, chains, or other jewelry or adornment.
 - c. "Scarify" means to cut, tear, or abrade an individual's skin for the purpose of creating a permanent mark or design on the skin.
 - d. "Subdermal implant" means to insert a foreign object beneath the skin to decorate an individual's body.
 - e. "Tattoo" means to mark the skin of an individual by insertion of permanent colors through puncture of the skin.
2. It is a class B misdemeanor for a person, other than a licensed health care professional acting within that professional's scope of practice, to tattoo, brand, subdermal implant, scarify, or pierce an individual who is under eighteen years of age unless the tattooing, branding, subdermal implanting, scarifying, or piercing takes place in the presence of and with the written consent of the individual's parent or legal guardian.
3. It is a class B misdemeanor for a person to sell, trade, or otherwise provide materials or kits for tattooing, self-tattooing, branding, self-branding, scarifying, self-scarifying, subdermal implanting, self-subdermal implanting, body piercing, or self-body piercing to an individual who is under eighteen years of age.
4. A political subdivision may enact and enforce an ordinance restricting tattooing, branding, subdermal implanting, scarifying, and piercing or restricting the sale of

tattooing, branding, subdermal implanting, scarifying, and piercing materials and kits if the ordinance is equal to or more stringent than this section.

12.1-31-14. Surreptitious intrusion or interference with privacy.

1. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of another, the individual:
 - a. Enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another; or
 - b. Enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
2. An individual is guilty of a class B misdemeanor if, with intent to intrude upon or interfere with the privacy of an occupant, the individual:
 - a. Surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy; or
 - b. Surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy.
3. An individual is guilty of an infraction if the individual enters upon another's property and installs any device for observing, recording, or photographing wildlife while the owner of the device is absent unless:
 - a. The individual has written permission from the owner or an individual authorized by the owner of the property; and
 - b. The device has a permanently affixed metal or plastic tag with a registration number issued by the game and fish department, or the individual's name, address, and telephone number.
4. In a prosecution under this section, it is an affirmative defense that an individual was acting pursuant to section 50-10.2-02.1.

12.1-31-15. Wearing of masks during commission of criminal offense prohibited.

1. An individual may not wear a mask, hood, or other device that covers, hides, or conceals any portion of that individual's face:
 - a. With the intent to intimidate, threaten, abuse, or harass any other individual;
 - b. For the purpose of evading or escaping discovery, recognition, or identification during the commission of a criminal offense;
 - c. For the purpose of concealment, flight, or escape when the individual has been charged with, arrested for, or convicted of a criminal offense; or
 - d. With the intent to conceal the identity of the individual while congregating in a public place with other individuals wearing a mask, hood, or other device that covers, hides, or conceals any portion of the individual's face.
2. Subdivision d of subsection 1 does not apply to public gatherings to celebrate Halloween, a masquerade, or other similar celebration.
3. A violation of this section is a class A misdemeanor.

CHAPTER 12.1-31.1
DRUG PARAPHERNALIA
[Repealed by S.L. 2001, ch. 214, § 10]

CHAPTER 12.1-31.2
DISORDERLY CONDUCT RESTRAINING ORDER

12.1-31.2-01. Disorderly conduct restraining order - Penalty.

Repealed by S.L. 2025, ch. 145, § 17.

12.1-31.2-02. Order prohibiting contact.

1.
 - a. If an individual is charged with, arrested for, or subject to a sentence or order deferring imposition of sentence for a crime of violence or threat of violence, stalking, harassment, or a sex offense, the court authorizing the release of the individual, imposing a sentence, or issuing an order deferring imposition of sentence, shall consider and may issue an order prohibiting the individual from having contact with the victim. The order must contain the court's directives and must inform the individual that any violation of the order constitutes a criminal offense. The state's attorney shall provide a copy of the order to the victim. The court shall determine at the time of the individual's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section before the time the individual is charged, the order expires at the individual's arraignment or within seventy-two hours of issuance if charges against the individual are not filed.
 - b. A party or victim may file a written request with the court to modify or terminate an order issued under this section. If requested, the court may hold a hearing to determine whether to grant or deny the request to modify or terminate an order.
 - c. If an order prohibiting contact is issued upon a charge or arrest, the order terminates upon dismissal, acquittal, sentence, or order deferring imposition of sentence. Upon sentence or order deferring imposition of sentence, the court may issue a new order under this subsection.
2. If the court has probable cause to believe the individual subject to an order under subsection 1 is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further act of violence, the court shall require the individual surrender for safekeeping any firearm or specified dangerous weapon in or subject to the individual's immediate possession or control, to the sheriff of the county or chief of police of the city in which the individual resides.
3. If an order prohibiting contact is issued, modified, or terminated under this section, the clerk of court shall forward a copy of the order within one business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order in the central warrant information system and the national crime information center database provided by the federal bureau of investigation, or its successor agency.
 - a. Once the bureau, after consultation with the state court administrator, determines and implements a method to transmit electronically to the bureau an order prohibiting contact, the court electronically shall send the full text of the order as issued, modified, or terminated in accordance with this section and any data fields identified by the bureau. This electronic submission will fulfill the law enforcement agency's requirement to enter the order in the central warrant information system, but will not fulfill its requirement to enter, maintain, and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.
 - b. Once the bureau, after consultation with the state court administrator, determines and implements an electronic method to notify law enforcement about the order, the clerk of court's requirement to forward the order to the law enforcement agency will be satisfied.
 - c. Once the bureau, after consultation with the director of the state emergency communications center, determines and implements a method to enter the order into the national crime information center database provided by the federal bureau of investigation, or its successor agency, the bureau shall enter the order

electronically in the national crime information center database provided by the federal bureau of investigation, or its successor agency. This electronic entry will fulfill the law enforcement agency's requirement to enter the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency, but will not fulfill its requirement to maintain and respond to inquiries regarding the order in the national crime information center database provided by the federal bureau of investigation, or its successor agency.

4. An individual who violates a court order issued under this section is guilty of a class A misdemeanor.
5. A law enforcement officer shall arrest an individual without a warrant if the officer determines there is probable cause that the individual has committed the offense of violating an order prohibiting contact under this section, whether or not the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from any civil or criminal liability for making an arrest under this subsection.

CHAPTER 12.1-32 PENALTIES AND SENTENCING

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of imprisonment for three hundred sixty days, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of one hundred thousand dollars.
2. For a class B felony, a maximum fine of seventy thousand dollars.
3. For a class C felony, a maximum fine of fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. a. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - (1) Payment of the reasonable costs of the person's prosecution.
 - (2) Probation.
 - (3) A term of imprisonment, including intermittent imprisonment:

- (a) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
 - (b) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (c) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.
 - (d) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation.
- (4) A fine.
- (5) Restitution for damages resulting from the commission of the offense.
- (6) A no contact order prohibiting contact with a victim of the offense.
- (7) Restoration of damaged property or other appropriate work detail.
- (8) Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
- (9) Commitment to a sexual offender treatment program.
- (10) Treatment court program. A treatment court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for treatment court programs.
- (11) Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
- (12) Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- (13) Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.
- (14) An order prohibiting contact.
- b. Except as provided in section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under paragraph 5 or 7 of subdivision a must be imposed in the manner provided in section 12.1-32-08. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.
- 2. Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal. The total amount of credit the defendant is entitled to for

- time spent in custody and any credit for sentence reduction under section 12-44.1-32 or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.
3. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
 4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 12.1-32-07.1.
 5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
 6. All sentences imposed must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement must become part of the record of the case.
 7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
 8. Unless otherwise specifically authorized in the statute defining the offense, a court may not include a minimum term of imprisonment as part of its sentence.
 9. A person who is convicted of a felony and sentenced to imprisonment for not more than three hundred sixty days is deemed to have been convicted of a misdemeanor. However, if an order is entered revoking a term of probation that was imposed as part of a sentence, the person is deemed to have been convicted of a felony.
 10. A court shall order a defendant to pay fifty dollars to the department of corrections and rehabilitation at the time a presentence investigation is initiated to partially defray the costs incurred by the department for the preparation of the presentence report. The court may also order that any additional costs incurred by the department relating to the presentence investigation and report be paid by the defendant at a rate of payment up to the full costs of conducting the investigation and preparing the report as established by the department.
 11. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-03.1, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. A presentence investigation for a charge under section 12.1-20-03 must include a risk assessment. A court may order the inclusion of a risk assessment in any presentence investigation. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

- a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
 - b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
 - a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
 - b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.
5. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

12.1-32-02.2. Repayment of rewards paid by crimestoppers programs - Duties of attorney general - Qualified local programs - Disbursement of moneys collected.

1. After a defendant has been convicted of a felony, the court may order the defendant to repay all or part of any reward paid by a qualified local program. In determining whether the defendant must repay the reward or part of the reward, the court shall consider:
 - a. The ability of the defendant to make the payments, including any financial hardship that payment may cause to the defendant's dependents.
 - b. Whether the information that was reported to the qualified local program substantially contributed to the defendant being charged with the offense. To the extent allowed by law, the court shall respect the confidentiality of the records of the qualified local program.
2. "A qualified local program" means a program approved by the attorney general to receive repayment of rewards. The attorney general shall consider the organization, continuity, leadership, community support, and general conduct of the program to determine whether the repayments will be spent to further crime prevention purposes of the program. The attorney general also shall determine that the qualified local program provides rewards to persons who report information concerning criminal activity and whether that information substantially leads to defendants being charged with felonies.
3. If the court determines that a defendant is capable of repaying all or any part of a reward paid by a qualified local program, the judgment must include a statement of the amount owed, the identity of the qualified local program, and a schedule, if any, of payments to be made by the defendant. The clerk of court may establish an account within which to deposit repayments of rewards and at least quarterly shall pay over to each qualified local program the sums that have been collected for the benefit of that program.
4. A judgment that includes a repayment of reward, either alone or in conjunction with section 29-26-22, may be docketed and thereafter constitutes a lien upon the real estate of the defendant in the same manner as a judgment for money rendered in a civil action.

12.1-32-02.3. Mandatory sentences - Exceptions.

1. In addition to any other provision of law, when sentencing an individual convicted of a violation in chapter 19-03.1 for which there is a mandatory minimum sentence, the

court may depart from the applicable mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

2. Subsection 1 does not apply if the individual is sentenced under section 12.1-32-02.1.
3. Upon departing from a mandatory minimum sentence, a judge shall report to the state court administrator who shall make available in electronic form and on the world wide web an annual report by July 1 of each year on the total number of departures from mandatory minimum sentences.

12.1-32-03. Special sanction for organizations.

When an organization is convicted of an offense, the court may, in addition to any other sentence which may be imposed, require the organization to give notice of its conviction to the persons or class of persons ostensibly harmed by the offense, by mail or by advertising in designated areas or by designated media or otherwise.

12.1-32-03.1. Procedure for trial of infraction - Incidents.

1. Except as provided in this subsection, all procedural provisions relating to the trial of criminal cases as provided in the statutes or rules relating to criminal procedure shall apply to the trial of a person charged with an infraction. A person charged with an infraction is not entitled to be furnished counsel at public expense nor to have a trial by jury unless the person may be subject to a sentence of imprisonment under subsection 7 of section 12.1-32-01.
2. Except as provided in this title, all provisions of law and rules of criminal procedure relating to misdemeanors shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the jurisdiction of courts, the periods for commencing action and bringing a case to trial, and the burden of proof.
3. Following conviction of an infraction, the offender may be sentenced in accordance with subsection 1 of section 12.1-32-02, except that a term of imprisonment may not be imposed except in accordance with subsection 3 of section 12.1-32-05, or subsection 7 of section 12.1-32-01.
4. If a statute provides that conduct is an infraction without specifically including a requirement of culpability, no culpability is required.

12.1-32-04. Factors to be considered in sentencing decision.

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.

9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

12.1-32-04.1. Gross sexual imposition - Deferred imposition of sentence.

A person who violates subdivision d of subsection 1 or subdivision a of subsection 2 of section 12.1-20-03 may not receive a deferred imposition of sentence unless that person proves at sentencing by clear and convincing evidence that that person reasonably believed the victim to be fifteen years of age or older.

12.1-32-05. Imposition of fine - Response to nonpayment.

1. The court, in making a determination of the propriety of imposing a sentence to pay a fine, shall consider the following factors:
 - a. The ability of the defendant to pay without undue hardship.
 - b. Whether the defendant, other than a defendant organization, gained money or property as a result of commission.
 - c. Whether the sentence to pay a fine will interfere with the defendant's capacity to make restitution.
 - d. Whether a sentence to pay a fine will serve a valid rehabilitative purpose.
2. The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served in the event that the fine is not paid.
3. If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following periods of imprisonment for failure to pay a fine:
 - a. If the defendant was convicted of a misdemeanor, to a period not to exceed thirty days.
 - b. If the defendant was convicted of a felony, to a period not to exceed six months.

12.1-32-06. Incidents of probations.

Repealed by S.L. 1989, ch. 158, § 18.

12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.

1. Except as provided in this section, the length of unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or
 - c. Termination of the defendant's parole.
2. Except as provided in this section, the length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which

- involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22; three years for any other felony offense; two years for a class A misdemeanor; and three hundred sixty days for a class B misdemeanor offense from the later of the date of:
- a. The order imposing probation;
 - b. The defendant's release from incarceration or an alternative to incarceration; or
 - c. Termination of the defendant's parole.
3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose additional periods of unsupervised probation not to exceed five years for each additional period imposed.
 4. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose additional periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.
 5. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
 6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose additional probation if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment or the total time on probation authorized under this section.
 - a. For class B and greater felony offenses, an offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1, which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, or a violation of section 14-09-22, the total time on probation may not exceed ten years.
 - b. For all other felony offenses, the total time on probation may not exceed five years.
 - c. For misdemeanor cases, the total time on probation may not exceed three years.
 - d. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
 7. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
 8. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony offense subject to section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section

12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.

2. The department of corrections and rehabilitation may administer a risk assessment for the evaluation of each defendant placed under the supervision and management of the department of corrections and rehabilitation. The results of the risk assessment may be used to set a level of supervision and management and develop an individualized case plan for the defendant. The case plan may include a list of responsivity factors and a plan to address any risk factors identified in the risk assessment.
3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
 - a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house;
 - h. Intensive supervision program;
 - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
 - j. Participation in the twenty-four seven sobriety program; or
 - k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:

- a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
 - d. Support the defendant's dependents and meet other family responsibilities.
 - e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
 - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
 - g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.
 - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
 - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted.
 - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant. When reimbursement of indigent defense costs and expenses is imposed as a condition of probation, the court shall proceed as provided in subsection 4 of section 12.1-32-08.
 - q. Provide community service for the number of hours designated by the court.
 - r. Refrain from any subscription to, access to, or use of the internet.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
 6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time before the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.
 7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the

expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.

8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.
9. Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.
10. The department of corrections and rehabilitation shall provide written notice to a defendant who is in the department's physical custody of any untried petition for revocation against the defendant of which the department has notice and of the defendant's right to make a request for final disposition of the petition.
 - a. Upon notice of an untried petition for revocation of probation, the defendant may request final disposition of the petition. The defendant's request must be in writing and name the court in which the petition for revocation of probation is pending and the prosecuting official charged with the duty of prosecuting the petition.
 - b. The defendant shall submit the request to the department. The department shall certify the term of commitment under which the defendant is being held, the time the defendant has served on the sentence, the time remaining to be served, sentence reduction credit the defendant has earned, the defendant's eligibility for parole, and whether the parole board has made a decision regarding the defendant's parole.
 - c. The department shall send by registered mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom the request and certificate is addressed.
 - d. The petition for revocation of probation must be brought to the court for hearing within ninety days after the receipt of the request and certificate by the court and prosecuting official. If the petition is not brought to the court for hearing within the ninety days, the court shall dismiss the petition with prejudice.
 - e. The parties may stipulate for a continuance or the court may grant a continuance upon a showing of good cause by either party for a petition under this subsection.
 - f. If the defendant escapes from custody subsequent to the defendant's execution of a request for final disposition of a petition for revocation, the request is considered void.

12.1-32-07.1. Release, discharge, or termination of probation.

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of probation, the court shall cause to be issued to the person a final discharge from further supervision.
2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. A person convicted of gross sexual imposition under subdivision a of subsection 1 of section 12.1-20-03 is not entitled to early termination of probation pursuant to this section, unless the court finds after at least eight years of supervised probation that further supervision would impose a manifest injustice. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the

information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

12.1-32-07.2. Records and filing of papers.

1. Whenever the court orders that a person convicted of a felony is to be placed on probation, the clerk of the court in which the order is entered immediately shall make full copies of the judgment or order of the court with the conditions of probation and shall certify the same to the director of parole and probation of the department of corrections and rehabilitation. Upon the disposition of any criminal case, the clerk of court shall transmit to the department of corrections and rehabilitation statistical data, in accordance with rules adopted by the department, regarding all defendants whether found guilty or discharged.
2. Whenever imposition of sentence is deferred and, pursuant to section 12.1-32-07.1, the plea of guilty is withdrawn by the defendant or the verdict of guilty is set aside by the court, the clerk of court shall file all papers, including the findings and final orders in proceedings under section 12.1-32-07.1, and shall note the date of filing on the papers. The records and papers are subject to examination by the clerk, a judge of the court, the juvenile commissioner, probation officers, the defendant or defendant's counsel, and the state's attorney. Others may examine the records and papers only upon the written order of a judge of the court.

12.1-32-07.3. When probationer deemed escapee and fugitive from justice.

A probationer is considered an escapee and a fugitive from justice if the probationer leaves the jurisdiction before the expiration of the probationary period without permission of the court or the department of corrections and rehabilitation.

12.1-32-07.4. Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
 - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
 - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
 - c. If the individual used force, threats, or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

12.1-32-08. Hearing prior to ordering restitution or reparation - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.

1. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may

impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.

2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay to the victim under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident.
5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.
6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of twenty dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and

county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

7. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
8. If the court finds that the defendant is unable to pay a fine or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences - Procedure.

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.
 - b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony.
 - d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
 - e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:
 - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
 - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
 - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special

offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, the court may order the notice sealed and the notice is not subject to subpoena or public inspection during the pendency of the criminal matter, except on order of the court, but is subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, in accordance with this subsection as follows:
 - a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.
 - b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.
5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2.

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or

- an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
 3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
 4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
 5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

12.1-32-10. Mandatory parole components.

Repealed by S.L. 1989, ch. 51, § 5.

12.1-32-11. Merger of sentences - Sentencing for multiple offenses.

1. Unless the court otherwise orders, when a person serving a term of commitment imposed by a court of this state is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. A court merging sentences under this subsection shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. A court which imposed a sentence which is merged pursuant to this subsection shall modify such sentence in accordance with the effect of the merger.
2. Repealed by S.L. 1977, ch. 129, § 1.
3. When sentenced only for misdemeanors, a defendant may not be consecutively sentenced to more than one year, except that a defendant being sentenced for two or more class A misdemeanors may be subject to an aggregate maximum not exceeding that authorized by section 12.1-32-01 for a class C felony if each class A misdemeanor was committed as part of a different course of conduct or each involved a substantially different criminal objective.

12.1-32-12. Penalties, sentences, and parole for offenses unclassified and in other titles.

Where an offense is defined by a statute or by the constitution without specification of its classification pursuant to section 12.1-32-01, the offense is punishable as provided in the statute or constitutional provision defining it, or:

1. If the offense is declared to be a felony, without further specification of punishment, it is punishable as if it were a class C felony.
2. If the offense is declared to be a misdemeanor, without further specification of punishment, it is punishable as if it were a class A misdemeanor.

The sentencing alternatives available under section 12.1-32-02 are available to a court sentencing an offender for commission of an offense defined by a statute outside this title.

12.1-32-13. Minor convicted of felony - Sentencing.

Whenever a minor is convicted of a felony, the sentencing court may commit the person to the North Dakota youth correctional center as provided in this title. Provided, however, that a minor over the age of sixteen who is convicted of a felony may be sentenced to a penal institution or detention facility.

12.1-32-13.1. Juveniles - Sentencing - Reduction.

1. Notwithstanding any other provision of law, a court may reduce a term of imprisonment imposed upon a defendant convicted as an adult for an offense committed and completed before the defendant was eighteen years of age if:
 - a. The defendant has served at least twenty years in custody for the offense;
 - b. The defendant filed a motion for reduction in sentence; and
 - c. The court has considered the factors provided in this section and determined the defendant is not a danger to the safety of any other individual, and the interests of justice warrant a sentence modification.
2. A defendant whose sentence is reduced under this section must be ordered to serve a period of supervised release of at least five years upon release from imprisonment. The conditions of supervised release and any modification or revocation of the term of supervised release must be in accordance with this chapter.
3. When determining whether to reduce a term of imprisonment under this section, the court shall consider:
 - a. The factors provided in section 12.1-32-04, including the nature of the offense;
 - b. The age of the defendant at the time of the offense;
 - c. A report and recommendation from the department of corrections and rehabilitation, including information relating to the defendant's ability to comply with the rules of the institution and whether the defendant completed any educational, vocational, or other prison programming;
 - d. A report and recommendation from the state's attorney for any county in which the defendant was prosecuted;
 - e. Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to re-enter society sufficient to justify a sentence reduction;
 - f. A statement by a victim or a family member of a victim who was impacted by the actions of the defendant;
 - g. A report of a physical, mental, or psychiatric examination of the defendant conducted by a licensed health care professional;
 - h. The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
 - i. The role of the defendant in the offense and whether an adult also was involved in the offense;
 - j. The diminished culpability of juveniles compared to adults and the level of maturity and failure to appreciate the risks and consequences; and
 - k. Any additional information the court determines relevant.
4. A defendant may make a second motion for a reduction in sentence under this section no earlier than five years after the initial motion for reduction.
5. A defendant may make a final motion for a reduction in sentence no earlier than five years after the order for a second motion was filed.

12.1-32-14. Restoration of property or other work to be required of certain offenders.

Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief is placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection 4 of section 12.1-32-07.

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
- e. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
- f. "Reside" means to live permanently or be situated for a considerable time in a home or a particular place.
- g. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1, 12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and subdivision b of subsection 1 if the offense involves only a demand for money, chapter 12.1-27.2, subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.
- h. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
- i. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within three days of coming into a county in which the individual resides, is homeless, or within the period identified in this section that the individual becomes temporarily domiciled. The individual must register with the chief of police of the city of the individual's place of residence, or the sheriff of the county if the individual resides in an area other than a city. A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present. The court shall require an individual to register by stating this requirement on the court records, if that individual:

- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender.

- b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for, a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a child or an attempted crime against a child. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - d. Has pled guilty or nolo contendere or been found guilty of any crime against another individual which is not otherwise specified in this section if the court determines that registration is warranted by the nature of the crime and therefore orders registration for the individual. If the court orders an individual to register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.
 - e. Is a child who has been adjudicated delinquent of an offense which would classify the child as a sexual offender, the prosecutor requested the court to consider sexual offender registration, and the court determines the child:
 - (1) Exhibited a mental abnormality or predatory conduct in the commission of the offense; or
 - (2) Previously has been adjudicated as a sexual offender.
3. If a court has not ordered an individual to register in this state, an individual who resides, is homeless, or is temporarily domiciled in this state shall register if the individual:
- a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 if the individual was not the parent of the victim, or as a sexual offender;
 - b. Has pled guilty or nolo contendere to, or has been found guilty of, an offense in a court of this state for which registration is mandatory under this section or an offense from another court in the United States, a tribal court, or court of another country equivalent to those offenses set forth in this section; or
 - c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred after July 31, 1985.
4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision d of subsection 2, the court may state on the record in open court its affirmative finding for not requiring an offender to register.
5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in

charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
7. Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general, and the biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall register, within three days after the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall register, at least ten days before the change, with the law enforcement agency having local jurisdiction of the individual's place of residence of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section, the individual shall register within three days of the termination with the law enforcement agency having local jurisdiction of the individual's place of residence. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register also shall register within three days at the law enforcement agency having local jurisdiction of the new place of residence. If an individual required to register in North Dakota, including in a tribal

registry, resides in another state or on tribal lands, that individual shall register employment and school addresses and any changes in required registration information with the law enforcement agency having local jurisdiction over the school or employment address. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the biometric data portion of the registration if that agency has a set of biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
 - a. A period of fifteen years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
 - b. A period of twenty-five years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the attorney general as provided in subsection 12; or
 - c. For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of a crime against a child or as a sexual offender. If all qualifying offenses are misdemeanors, this lifetime provision does not apply unless a qualifying offense was committed after August 1, 1999;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim, or an equivalent offense from another court in the United States, a tribal court, or court of another country; or
 - (3) Is assigned a high risk by the attorney general as provided in subsection 12.
9. An individual required to register under this section who violates this section is guilty of a class C felony. The failure of a homeless individual to register as required in subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of court shall forward all warrants issued for a violation of this section to the county sheriff, who shall enter all such warrants into the national crime information center wanted person file. A court may not relieve an individual, other than a juvenile, who violates this section from serving a term of at least ninety days in jail and completing probation of one year.
10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked.
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender as follows:

- a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.
 - c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sexual offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
 - d. The attorney general shall notify the offender of the risk level assigned to that offender. An offender may request a review of that determination with the attorney general's sexual offender risk assessment committee and may present any information that the offender believes may lower the assigned risk level.
13. An individual assessed as a high-risk sexual offender in accordance with subsection 12, may not reside within five hundred feet [152.4 meters] of a public or nonpublic preschool or elementary, middle, or high school.
14. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that disclosure of the conviction and registration information is necessary for public protection. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
 - a. Is required to register for a lifetime under subsection 8;
 - b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
 - c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include, at a minimum, notification of the offense to the victim registered under chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.
15. A state officer, law enforcement agency, or public school district or governing body of a nonpublic school or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations, allowing a sexual offender to attend a school function under section 12.1-20-25, or for disclosing or for failing to disclose information as permitted by this section.
16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of health and human services, or the public if disclosure is necessary to protect public health or safety. The law enforcement agency shall release any relevant and necessary information on file to the

superintendent or principal of the school the juvenile attends. The school administration shall notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.

17. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.
18. A sexual offender who is currently assigned a moderate or high-risk level by the attorney general may not use a state park of this state as a residence or residential address to comply with the registration requirements of this section. Before arriving at a state park for overnight lodging or camping, a sexual offender who is assigned a moderate or high-risk level by the attorney general shall notify a parks and recreation department law enforcement officer at the state park where the sexual offender will be staying.
19. When an individual who is required to register pursuant to this section plans to travel outside of the United States, at least twenty-one days before the intended travel, the individual shall inform the agency with which the individual last registered the individual's residence address the details of the intended travel. Upon receipt of the information from the registering law enforcement agency, the attorney general shall report the travel to the United States marshal service.

12.1-32-16. Restitution to be required of certain offenders - Penalty.

Notwithstanding any other provision in this chapter, whenever a person whose license has been suspended for nonpayment of child support under section 50-09-08.6 is convicted of engaging in activity for which the license was required, the court shall require as a condition of the sentence that the person pay restitution in the amount of two hundred fifty dollars, or a higher amount set by the court, as specified in subdivision e of subsection 4 of section 12.1-32-07. Any restitution ordered under this section must be paid to the state disbursement unit for distribution under section 14-09-25.

CHAPTER 12.1-33 RIGHTS OF CONVICTS

12.1-33-01. Rights lost.

1. A person sentenced for a felony to a term of imprisonment, during the term of actual incarceration under such sentence, may not:
 - a. Vote in an election; or
 - b. Become a candidate for or hold public office.
2. A public office, other than an office held by one subject to impeachment, held at the time of sentence is forfeited as of the date of the sentence if the sentence is in this state, or, if the sentence is in another state or in a federal court, as of the date a certification of the sentence from the sentencing court is filed in the office of the secretary of state who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section, but if the conviction is reversed, the defendant shall be restored to any public office forfeited under this section from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture.

12.1-33-02. Rights retained by convicted person.

Except as otherwise provided by law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, personal, civil, and otherwise, including the right to hold public office or employment; to vote; to hold, receive, and transfer property; to enter into contracts; to sue and be sued; and to hold offices of private trust in accordance with law.

12.1-33-02.1. Prior conviction of a crime not bar to state licensures - Exceptions.

1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
 - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
 - b. Information pertaining to the degree of rehabilitation of the convicted person.
 - c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.
3. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.
4. A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with chapter 28-32, except for attorneys disbarred or suspended under chapter 27-14.

12.1-33-02.2. Public employment - Consideration of criminal record.

1. A public employer may not inquire into or consider the criminal record or criminal history of an applicant for public employment until the applicant has been selected for an interview by the employer.
2. This section does not apply to the department of corrections and rehabilitation or to a public employer that has a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.
3. This section does not prohibit a public employer from notifying an applicant that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.
4. As used in this section, the term "public employer" means the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district.

12.1-33-03. Certificate of discharge.

1. If the sentence were in this state, the sentence shall state that the defendant's rights to vote and to hold any future public office are not lost except during the term of any actual incarceration and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided in such sentence or by law.
2. If the sentence were in another state or in a federal court, the convicted person shall lose the rights to vote and to hold public office only during the term of actual incarceration. Any person who has been sentenced in another state or in a federal court to a term of imprisonment and who is present in this state shall be presumed to have had such rights restored.
3. If another state having a similar statute issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which he was deprived in this state, under section 12.1-33-01, are restored to him in this state.

12.1-33-04. Savings provisions.

This chapter does not:

1. Affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of probation, or the power of the parole board to impose conditions of parole.
2. Deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.
3. Affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.
4. Affect the rights of others arising out of the conviction or out of the conduct on which the conviction is based and not dependent upon the doctrines of civil death, the loss of civil rights, the forfeiture of estate, or corruption of blood.
5. Affect laws governing rights of inheritance of a murderer from his victim.

CHAPTER 12.1-34

FAIR TREATMENT OF VICTIMS AND WITNESSES

12.1-34-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Court" means a forum established by law for the adjudication of juvenile petitions, criminal complaints, informations, or indictments.
2. "Crime" includes all felony offenses; class A misdemeanors, excluding violations of section 6-08-16.1 for no-account checks; all violations of chapters 12.1-17 and 12.1-20, including all corresponding violations of municipal ordinances; and any of the offenses in this subsection that may result in adjudication of delinquency.
3. "Crime of violence" means any crime in which force, as defined by section 12.1-01-04, or threat of force was used against the victim.
4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, state penitentiary or Missouri River correctional center, state hospital, or any other inpatient mental health or treatment facility to which a criminal defendant may be sentenced or referred.
5. "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person convicted of a crime or found delinquent or against whom a finding of sufficient facts for conviction or finding of delinquency is made.
6. "Family member" includes a spouse, child, sibling, parent, grandparent, grandchild, legal guardian, or custodian of a victim, and any person with a relationship to the victim which is substantially similar to a relationship specified in this section.
7. "Prosecuting attorney" includes city attorney, state's attorney, attorney general, or their assistants.
8. "Registered victim" or "registered witness" means a victim or witness registered with the statewide automated victim information and notification system.
9. "System" means the statewide automated victim information and notification system.
10. "Victim" means a person who suffers direct or threatened physical, financial, or psychological harm as the result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.
11. "Witness" means any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

12.1-34-02. Fair treatment standards for victims and witnesses.

Victims and witnesses of crime must be afforded the following rights where applicable:

1. Informed by those entities that have contact with the victim or witness as to the availability of and the methods available for registration with the statewide automated victim information and notification system. Those entities include law enforcement, prosecuting attorneys, the courts, and custodial authorities. A victim or witness who clearly objects to registration may not be required to register with the system or must be able to opt out of the system. A victim has the right to:
 - a. Prevent the disclosure of confidential or privileged information about the victim or the victim's family; and
 - b. Be notified of any request for identifying information or confidential or privileged information about the victim or victim's family.
2. Informed as to status of investigation. Victims and witnesses, upon request, must be informed by law enforcement authorities investigating a criminal case of the status of the investigation, except where the prosecuting attorney or law enforcement authority determines that to disclose such information would unreasonably interfere with the investigation, until such time as the alleged offender is apprehended or the investigation is closed. A victim, upon request, must be allowed to confer with the prosecuting attorney.

3. Informed as to criminal charges filed. Victims must be promptly informed by the prosecuting attorney of any criminal charges, arising from an incident in which the person was a victim, filed against any person arrested. The prosecuting attorney shall also provide a brief statement in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims must also be informed by the prosecuting attorney of the pretrial status of each person arrested, including bail and any pretrial release conditions.
4. Notice of pretrial release.
 - a. Registered victims must be given prompt notice of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender is scheduled to be released prior to an appearance in court, prompt notice must be given to the registered victim and witness.
 - b. Victims who are not registered must be given prompt notice, by the law enforcement agency that has made an arrest in any case involving a crime of violence, of any hearing in which the arrested person's pretrial release status will be determined. If the alleged offender in a crime of violence is scheduled to be released before an appearance in court, the custodial authority shall give prompt notice to the victim and witness or, if unavailable, to the arresting law enforcement agency, which shall provide the notice to the victim or witness. The law enforcement agency or custodial authority may fulfill its obligation to notify by registering the victim with the system.
 - c. Victims and witnesses must be informed by the prosecuting attorney of the methods for enforcing any pretrial release conditions including information as to the level of protection available from law enforcement in the case of harm, threats, or intimidation made to the victim or witness.
5. Notice as to victims' and witnesses' participation in court proceedings. Victims must be informed by the prosecuting attorney of all court proceedings in a reasonable time prior to the proceedings. Witnesses must be informed by the prosecuting attorney of all court proceedings at which their presence is required in a reasonable time prior to the proceedings and informed in nontechnical language of the procedural steps involved in the processing of a criminal case. Victims and witnesses must be notified by the prosecuting attorney of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance in court. All victims and witnesses shall provide the prosecuting attorney with current information as to address and telephone number, such information to be kept confidential subject to other provisions of this chapter. The notice given by the prosecuting attorney to the victims and witnesses must be given by any means reasonably calculated to give prompt notice.
6. Services available. Victims and witnesses must be informed by the prosecuting attorney and arresting law enforcement agency of all appropriate and available public or private programs that provide counseling, treatment, or support for victims and witnesses, including rape crisis centers, victim and witness assistance programs, elderly victim services, victim assistance hotlines, social service agencies, and domestic violence programs. Victims and witnesses must be informed of the right to seek the advice of an attorney. The prosecuting attorney and law enforcement authority shall advise victims eligible for services of the relevant provisions of chapter 54-23.4.
7. Employer intercession. Victims and witnesses upon request must be provided by the prosecuting attorney with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.
8. Witness fee. Witnesses must be informed by the prosecuting attorney or the court of the procedures to be followed in order to apply for and receive any witness fee to which they are entitled under law.

9. Return of property. Victims shall have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, prosecuting attorney, or law enforcement agency within ten days after its taking or recovery if it is not needed for law enforcement, prosecution, or defense purposes or as expeditiously as possible when the property is no longer needed for law enforcement, prosecution, or defense purposes. If there is a defendant, the prosecuting attorney shall notify the defendant of the intent to return the property to the owner. Upon a motion made by the defendant and upon good cause shown that the property contains exculpatory evidence of the defendant's innocence, the court may order the law enforcement personnel in possession of the property not to release it to the owner.
10. Waiting area. Victims and witnesses must be provided by prosecuting attorneys and defense attorneys as assisted by the court with a waiting area separate from the defendant, defendant's relatives and friends, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victims' and witnesses' contact with the defendant, defendant's relatives and friends, and defense witnesses during court proceedings.
11. Protection of identifying information. Victims and witnesses may not be compelled to testify at any pretrial proceeding or at trial for purposes of identifying the victims' or witnesses' address, telephone number, place of employment, or other personal identification except for name without the victims' or witnesses' consent, unless there is a showing of good cause as determined by the court. Records of a criminal justice agency as defined by section 44-04-18.7, a correctional facility as defined in section 12-44.1-01, and the department of corrections and rehabilitation containing the address, telephone number, place of employment, or other information that could be used to locate the victim or witness to a crime, are exempt.
12. Right to be present throughout trial. The victim must be informed by the prosecuting attorney of the victim's right to be present throughout the trial of the defendant, except as provided by rule 615 of the North Dakota Rules of Evidence.
13. Prompt disposition of case. Victims and witnesses must be informed by the prosecuting attorney of their rights to a prompt disposition of the cases in which they are involved as victims or witnesses as defined by the docket currency standards of the North Dakota supreme court.
14. Notice as to scheduling of hearing. Registered victims must be informed of the date, time, and place of hearing at which a plea of guilty or not guilty will be entered and of a sentencing hearing. Victims who are not registered must be given the same information by the prosecuting attorney. The prosecuting attorney shall explain to and consult with the victim in nontechnical language details of any potential plea agreement or verdict.
15. Victim impact statement. The victim must be informed by the prosecuting attorney, prior to sentencing, of the victim's right to submit or make a written impact statement to the court in any criminal case. If a presentence investigation is ordered, the probation officer assigned the report shall include this information in the report. This statement may include an explanation by the victim of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage suffered by the victim; an opinion of the need for and extent of restitution; and the victim's recommendation for an appropriate sentence. The prosecuting attorney shall advise all victims that the presentence report is subject to review by the defendant and that the report will include the victim's statement. If the sentencing court does not order a presentence investigation, the victim may submit a written impact statement, under oath, to the office of the state's attorney which statement must be submitted to the sentencing court. The victim of violent crime may appear in court to make an oral crime impact statement at the sentencing of the defendant in appropriate circumstances at the

discretion of the judge. This oral statement must be made under oath and is subject to cross-examination.

16. Notice of final disposition and parole procedures. Registered victims and witnesses must be informed of the final disposition of any criminal case. Victims who are not registered must be given the same notice by the prosecuting attorney. The prosecuting attorney shall explain to the victim the parole process and pardon process and further advise the victim of the necessity of advising the custodial authority and the parole board and the pardon clerk of the victim's address in order for the victim to receive further information under other provisions of this chapter.
17. Prompt notice of custodial release. Registered victims and witnesses must be informed whenever a criminal defendant receives a temporary, provisional, or final release from custody or whenever the defendant escapes from custody. Victims who are not registered must be given the same notice by the appropriate custodial authority. Notification must include the transfer of the defendant to a work-release or education release program, a community residential program, or transfer to a mental health facility. All notices to the registered victim and witnesses concerning this release information must be within a reasonable time prior to the defendant's release or transfer. The notice given by the custodial authority must be given by any means reasonably calculated to give prompt notice.
18. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. A victim statement made under this subsection is a confidential record and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Victim testimony and written statements under this subsection are confidential and may be disclosed only to the parole board, the governor, the pardon advisory board, or their authorized representative. Notice must be given by the parole board, pardon clerk, or authorized representative informing the registered victim of the pending review. The registered victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.
19. Victims and witnesses of crimes committed by juveniles are entitled to the same rights under this chapter in juvenile delinquency proceedings as in any other proceeding. In addition, every victim or a witness who is a minor is entitled to have that person's spouse, parent, guardian, and no more than two other designated adults present with that person during any juvenile delinquency proceedings.
20. Access to law enforcement report. Upon request of the child sexual abuse victim over the age of eighteen, the prosecuting attorney or law enforcement authority shall provide the victim with a copy of the law enforcement report corresponding with the victim's case number.
21. Preservation of evidence. A prosecuting attorney, law enforcement authority, criminal laboratory, or evidentiary storage facility may not destroy or dispose of any evidence to a criminal offense before the limitation period for prosecution for the offense has ended or the offense has been adjudicated.
22. If the victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim which is substantially similar to a listed relationship, may exercise the rights granted to a victim under this chapter.

12.1-34-02.1. Sexual violence survivor rights.

1. As used in this section:
 - a. "Sexual assault victim advocate" means a victim advocate of a domestic violence sexual assault organization as defined under section 14-07.1-01, or a victim advocate from a children's advocacy center as defined in section 50-25.1-02.
 - b. "Sexual violence survivor" means an individual who is a victim of a crime defined under section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, or 12.1-20-12.3.
2. In addition to the rights provided under section 12.1-34-02, a sexual violence survivor must be afforded the following rights:
 - a. The right to consult with a sexual assault victim advocate during any forensic medical examination, unless the advocate is not available in a timely manner. A survivor's:
 - (1) Communication with a sexual assault victim advocate is privileged, unless waived by the survivor; and
 - (2) Waiver of the right to a sexual assault victim advocate is privileged.
 - b. The right to the presence of privately retained counsel when speaking with law enforcement regarding the alleged assault, unless law enforcement is conducting a forensic interview with an alleged child victim.
 - c. Except as provided by law, the right to access the law enforcement report prepared for the survivor's case at no cost.
 - d. The right to a document prepared by the attorney general explaining the rights of sexual violence survivors under this section and other relevant law, which must be provided by a medical provider or law enforcement officer upon initial contact with the survivor.

12.1-34-03. Responsibilities of victims and witnesses.

Victims and witnesses have all of the following responsibilities to aid in the prosecution of crime:

1. To make a timely report of the crime.
2. To cooperate with law enforcement authorities throughout the investigation, prosecution, and trial.
3. To testify at trial.
4. To notify the system, law enforcement authorities, prosecuting attorney, custodial authority, parole board, pardon clerk, and court, where appropriate, of any change of contact information. Except for release to a domestic violence sexual assault organization as defined in section 14-07.1-01, all contact information provided must be kept confidential.

12.1-34-04. Victim and witness services.

Each prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in this chapter. Those services include all of the following:

1. Court appearance notification services, including cancellations of appearances.
2. Informational services relative to the availability of the collection of witness fees, victim compensation, or restitution.
3. Escort and other transportation services related to the investigation or prosecution of the case, if necessary.
4. Case process notification services.
5. Employer intercession services.
6. Expedited return of property services.
7. Protection services.
8. Family support services, including child and other dependent care services.
9. Waiting facilities.
10. Social service and other public or private agency referrals.

12.1-34-05. Cause of action for damages or injunctive relief.

Nothing in this chapter may be construed as creating a cause of action for money damages or injunctive relief against the state, county, municipality, or any of their agencies, instrumentalities, or employees. Furthermore, the failure to provide a right, privilege, or notice to a victim under this chapter is not grounds for the defendant to seek to have the conviction or sentence set aside. This chapter does not limit any rights to which victims and witnesses of crime are otherwise entitled.

12.1-34-06. Statewide automated victim information and notification system.

1. The office of the attorney general shall maintain a statewide automated victim information and notification system that must:
 - a. Permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public website.
 - b. Notify a registered victim by telephone, mail, text message, or electronic mail in accordance with this chapter.
 - c. Notify a registered victim by telephone, mail, text message, or electronic mail when the offender has a scheduled court proceeding, a parole review, or a change in the status of the offender's parole or probation status, including a change in the offender's address.
 - d. Notify a registered victim by telephone, mail, text message, or electronic mail when a protective order requested by the victim has been served upon the respondent.
 - e. Permit a victim to receive a status report for an offender under the supervision or in the custody of the department of corrections and rehabilitation or other correctional facility by calling the system on a toll-free telephone number or by accessing the system through a public website.
2. The provision of offender and case data on a timely basis to the automated victim information and notification system satisfies any obligation under this chapter to notify a registered victim of an offender's custody and the status of the offender's scheduled court proceedings.
3. The user agency shall ensure that an offender's information contained in the system is updated to timely notify a victim that an offender has been released or discharged or has escaped. The failure of the system to provide notice to the victim does not establish a cause of action by the victim against the state or any custodial authority.
4. All affected entities, including custodial authorities, prosecuting attorneys, law enforcement agencies, courts, the attorney general's office, and the parole clerk, shall cooperate with the system operator in establishing and maintaining the statewide automated victim information and notification system.

12.1-34-07. Medical screening and acute forensic medical examinations costs - Reimbursement by attorney general - Use of evidence.

1. An acute forensic medical examination is an examination performed on an alleged victim of criminal sexual conduct or domestic violence for the purpose of gathering evidence of an alleged crime and is performed within one hundred twenty hours after the alleged crime unless good cause is shown for the delay in performing the examination. When an acute forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the acute forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged victim.
2. A child forensic medical examination is an examination performed on an alleged child victim of criminal sexual conduct, physical abuse, or neglect for the purpose of gathering evidence of an alleged crime. When a child forensic medical examination is performed, the costs incurred by a health care facility or health care professional for performing the child forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged child victim or the child's parent, guardian, or custodian.

3. Upon submission of appropriate documentation, the attorney general, within the limits of legislative appropriations, shall reimburse from the general fund the health care facility or a health care professional for the reasonable costs incurred in performing the medical screening and acute forensic medical examination. The attorney general, subject to legislative appropriations, shall reimburse from the general fund each accredited children's advocacy center located in the state for a forensic interview that is not reimbursable by Medicaid or crime victims compensation.
4. Evidence obtained during a medical examination under this section may not be used against an alleged victim for the prosecution of the alleged victim for a separate offense.

12.1-34-08. Victim's rights card.

The attorney general shall develop a card containing the rights of victims as provided in this chapter and section 25 of article I of the Constitution of North Dakota to be distributed to all crime victims.

CHAPTER 12.1-41

UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

12.1-41-01. Definitions.

In this chapter:

1. "Adult" means an individual eighteen years of age or older.
2. "Coercion" means:
 - a. The use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;
 - b. The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;
 - c. The abuse or threatened abuse of law or legal process;
 - d. Controlling or threatening to control an individual's access to a controlled substance as defined in section 19-03.1-01;
 - e. The destruction or taking of or the threatened destruction or taking of an individual's identification document or other property;
 - f. The use of debt bondage;
 - g. The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function; or
 - h. The commission of civil or criminal fraud.
3. "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received, by a person.
4. "Debt bondage" means inducing an individual to provide commercial sexual activity in payment toward or satisfaction of a real or purported debt or inducing an individual to provide labor or services in payment toward or satisfaction of a real or purported debt if the reasonable value of the labor or services is not applied toward the liquidation of the debt or if the length of the labor or services is not limited and the nature of the labor or services is not defined. The term does not include an effort by a creditor to collect an enforceable obligation by means that are permitted under state or federal laws.
5. "Human trafficking" means the commission of an offense created by sections 12.1-41-02 through 12.1-41-06.
6. "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.
7. "Labor or services" means activity having economic value.
8. "Minor" means an individual less than eighteen years of age.
9. "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.
10. "Sexual activity" means "sexual act" as defined in section 12.1-20-02. The term includes a sexually explicit performance.
11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.
12. "Victim" means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

12.1-41-02. Trafficking an individual.

1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:
 - a. Forced labor in violation of section 12.1-41-03; or
 - b. Sexual servitude in violation of section 12.1-41-04.
2. Trafficking an individual who is an adult is a class A felony.
3. Trafficking an individual who is a minor is a class AA felony.

12.1-41-03. Forced labor.

1. A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when that conduct is permissible under federal law or law of this state other than this chapter.
2. Forced labor of an individual who is an adult is a class A felony.
3. Forced labor of an individual who is a minor is a class AA felony.

12.1-41-04. Sexual servitude.

1. A person commits the offense of sexual servitude if the person knowingly:
 - a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
 - b. Uses coercion or deception to compel an adult to engage in commercial sexual activity.
2. It is not a defense in a prosecution under subdivision a of subsection 1 that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.
3. Sexual servitude under subdivision a of subsection 1 is a class AA felony.
4. Sexual servitude under subdivision b of subsection 1 is a class A felony.

12.1-41-05. Patronizing a victim of sexual servitude.

1. A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.
2. Patronizing a victim of sexual servitude who is an adult is a class B felony.
3. Patronizing a victim of sexual servitude who is a minor is a class A felony.

12.1-41-06. Patronizing a minor for commercial sexual activity.

1. A person commits the offense of patronizing a minor for commercial sexual activity if:
 - a. With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
 - b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.
2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1 is a class A felony.
3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1 is a class B felony.

12.1-41-07. Business entity liability.

1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06 as provided by chapter 12.1-03.
2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity's

conduct and order penalties in addition to those otherwise provided for the offense, including:

- a. A fine of not more than one million dollars per offense;
- b. Disgorgement of profit from activity in violation of this chapter; and
- c. Debarment from state and local government contracts.

12.1-41-08. Aggravating circumstance.

1. An aggravating circumstance during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.
2. If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the defendant may be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

12.1-41-08.1. Prohibited acts - Mandatory terms of imprisonment.

A person who violates a provision of this chapter is subject to mandatory minimum sentencing requirements to be served without the benefit of parole as follows:

1. For a class AA felony, the court shall impose a minimum sentence of twenty years' imprisonment.
2. For a class A felony, the court shall impose a minimum sentence of ten years' imprisonment.
3. For a class B felony, the court shall impose a minimum sentence of five years' imprisonment.

12.1-41-09. Restitution.

1. The court shall order a person convicted of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 to pay restitution to the victim of the offense for:
 - a. Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and
 - b. An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
 - (1) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
 - (2) The amount the defendant contracted to pay the victim; or
 - (3) The value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act, [29 U.S.C. 201 et seq.] or section 34-06-22, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.
2. The court shall order restitution under subsection 1 even if the victim is unavailable to accept payment of restitution.
3. If the victim does not claim restitution ordered under subsection 1 for five years after entry of the order, the restitution must be paid to the crime victims restitution and gift fund under section 54-23.4-05.

12.1-41-10. Victim confidentiality.

In an investigation of or a prosecution for an offense under this chapter, a law enforcement agency and state's attorney shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

1. Necessary for the purpose of investigation or prosecution;
2. Required by law or court order; or
3. Necessary to ensure provision of services or benefits for the victim or the victim's family.

12.1-41-11. Past sexual behavior of victim.

In a prosecution for an offense under this chapter or a civil action under section 12.1-41-15, evidence of a specific instance of the alleged victim's past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

1. Admitted in accordance with the North Dakota rules of evidence; or
2. Offered by the prosecution to prove a pattern of human trafficking by the defendant.

12.1-41-12. Immunity of minor.

1. If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20.4 for:
 - a. Prostitution under section 12.1-29-03;
 - b. Misdemeanor forgery under section 12.1-24-01;
 - c. Misdemeanor theft offenses under chapter 12.1-23;
 - d. Insufficient funds or credit offenses under section 6-08-16;
 - e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and
 - f. Drug paraphernalia offenses under chapter 19-03.4.
2. It is an affirmative defense to felony forgery, felony theft, and felony drug distribution that the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim as defined by this chapter.
3. An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20.4 for prostitution if the individual was a minor at the time of the offense.
4. A minor who, under subsection 1 or 3, is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be a child in need of services under chapter 50-25.1.
5. This section does not apply in a prosecution or a juvenile delinquency proceeding for patronizing a prostitute.

12.1-41-13. Affirmative defense of victim.

An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

12.1-41-14. Motion to vacate and seal conviction.

1. An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and seal the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.
2. Official determination or documentation is not required to grant a motion by an individual under subsection 1, but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.
3. A motion filed under subsection 1, any hearing conducted on the motion, and any relief granted are governed by chapter 29-32.1.

12.1-41-15. Civil action.

1. A victim may bring a civil action against a person that commits an offense against the victim under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 for compensatory damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief.

2. If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.
3. An action under this section must be commenced not later than ten years after the later of the date on which the victim:
 - a. No longer was subject to human trafficking; or
 - b. Attained eighteen years of age.
4. Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to section 12.1-41-09 for the same item.
5. This section does not preclude any other remedy available to a victim under federal law or law of this state other than this chapter.

12.1-41-16. Display of public-awareness sign.

The department of transportation shall display in every transportation station, rest area, and welcome center in the state which is open to the public a public-awareness sign that contains any state or local human trafficking resource information and the National Human Trafficking Resource Center hotline information.

12.1-41-17. Eligibility for benefit or service.

1. A victim is eligible for a benefit or service available through the state, including compensation under chapter 54-23.4, regardless of immigration status.
2. A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state, regardless of immigration status.
3. As soon as practicable after a first encounter with an individual who reasonably appears to law enforcement to be a victim or a minor who has engaged in commercial sexual activity, the law enforcement agency shall notify the victim services division of the department of corrections and rehabilitation that the individual may be eligible for a benefit or service under the law of this state.
4. For purposes of this section, "a benefit or service available through the state" does not include a benefit or service of a program administered by the department of health and human services using federal or special funds, if the victim or minor does not meet program eligibility requirements including an eligibility requirement that is based on immigration status.

12.1-41-18. Law enforcement protocol.

1. On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.
2. If the law enforcement agency determines that an individual does not meet the requirements for the law enforcement agency to comply with subsection 1, the law enforcement agency shall inform the individual of the reason and that the individual may make another request under subsection 1 and submit additional evidence satisfying the requirements.

12.1-41-19. Grant to or contract with service provider.

1. The attorney general may make a grant to or contract with a unit of state or local government, tribal government, or nongovernmental victims service organization to develop or expand service programs for victims.
2. A recipient of a grant or contract under subsection 1 shall report annually to the attorney general the number and demographic information of all victims receiving services under the grant or contract.

12.1-41-20. Use of public funds for abortions prohibited.

Except as provided by federal law, funds of this state or a political subdivision of this state and federal funds passing through the state treasury or a state agency to provide treatment and support services for victims of human trafficking may be used to refer for or counsel for family planning services, but may not be used to perform, refer for, or encourage abortion.

12.1-41-21. Forced or coerced abortion.

1. As used in this section:
 - a. "Forces or coerces" means committing, attempting to commit, or threatening to commit physical harm to the woman, the unborn child, or another individual intended to compel a victim of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 to have an abortion performed against her will.
 - b. "Threat" means at least one statement, or a course of conduct by the defendant, which places one in reasonable apprehension that the individual will follow through with the statement or act as implied by the defendant's course of conduct. The term does not include constitutionally protected speech or any generalized statement regarding a lawful pregnancy option.
2. A forced or coerced abortion during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant forces or coerces a victim of the offense to have an abortion against her will.
3. Upon the request of the victim, a law enforcement agency investigating a violation of this section shall notify the victim not less than twenty-four hours before initially contacting the individual alleged to have committed a violation of this section.
4. If the trier of fact finds that a forced or coerced abortion occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the court may sentence the defendant to be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

TITLE 29
JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 29-01
GENERAL PROVISIONS

29-01-01. How crimes prosecuted - Exceptions.

Every public offense must be prosecuted by information or indictment unless it is one in which:

1. A proceeding is had for the removal of a civil officer of the state or an officer of some political subdivision thereof;
2. There is a breach of military discipline arising in the militia, when in actual service, and in the land and naval forces in time of war or public danger, or which this state may keep, with the consent of Congress, in time of peace;
3. The offense is a misdemeanor or an infraction; or
4. Trial may be had in municipal court.

29-01-02. Criminal action medium of trial and punishment.

The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a criminal action.

29-01-03. How prosecution entitled.

A criminal action is prosecuted in the name of the state of North Dakota as a party against the party charged with the offense.

29-01-04. Affidavits need not be entitled.

It is not necessary to entitle an affidavit or deposition in an action whether taken before or after information or indictment or upon an appeal, but if made without a title or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refers to the proceeding, information, indictment, or appeal in which it is made.

29-01-05. Party defendant is party prosecuted.

The party prosecuted in a criminal action is designated in this code as the accused or as the defendant.

29-01-06. Rights of defendant.

In all criminal prosecutions the party accused has the right:

1. To appear and defend in person and with counsel;
2. To demand and be informed of the nature and cause of the accusation;
3. To meet the witnesses against the party face to face;
4. To have the process of the court to compel the attendance of witnesses in the party's behalf; and
5. To a speedy and public trial, and by an impartial jury in the county in which the offense is alleged to have been committed or is triable, but subject to the right of the state to have a change of the place of trial for any of the causes for which the party accused may obtain the same.

29-01-06.1. Rights of defendant - Exception.

When the defendant is charged with a crime under a multiple count indictment or information as allowed by the North Dakota Rules of Criminal Procedure, the defendant may be tried on all counts in any one of the counties in which one of the offenses was committed.

29-01-06.2. Summoned person to report to sheriff.

Whenever a person charged with a felony is not arrested but is summoned to appear in court, that person shall submit to the sheriff for identification procedures at the time of the first court appearance.

29-01-07. Only once prosecuted.

No person can be twice put in jeopardy for the same offense, nor can any person be subjected to a second prosecution for a public offense for which that person has once been prosecuted and convicted, or acquitted, or put in jeopardy, except as is provided by law for new trials.

29-01-08. Extent of restraint permissible.

No person charged with a public offense can be subjected before conviction to any more restraint than is necessary for the person's detention to answer the charge.

29-01-09. How conviction can be had.

No person can be convicted of a crime or public offense except:

1. By the verdict of a jury accepted and recorded by the court;
2. Upon a plea of guilty;
3. Upon a judgment against that person, that person's motion to quash having been denied;
4. Upon a judgment of a municipal court, or such other court as is or may be created by law for cities in a case in which such judgment may be lawfully given without the intervention of a jury; or
5. By the judgment of a court, a jury having been waived.

29-01-10. Where district courts held.

Each district court may be held, for the trial of a criminal action, in an organized county.

29-01-11. District court always open - Exception - Question of fact - Terms.

Superseded by N.D.R.Crim.P., Rule 56.

29-01-12. Decision of district court reviewable.

The final decision of the district court in a criminal action is reviewable and determinable by the supreme court according to law on an appeal bringing up for review the record and proceedings therein.

29-01-13. Definitions.

As used in this title, unless the context or subject matter otherwise clearly requires:

1. Superseded by N.D.R.Crim.P., Rule 3.
2. An "indictment" is an accusation in writing presented by a grand jury to a competent court charging a person with a crime or public offense.
3. A "presentment" is an informal statement in writing by a grand jury representing to the court that a public offense has been committed which is triable in the county or subdivision, and that there is reasonable ground to believe that a particular individual named or described has committed it.
4. An "information" is an accusation in writing, in form and substance like an indictment for the same offense, charging a person with a crime or public offense, signed and verified by some person and presented to the district court and filed in the office of the clerk of said court.
5. A "magistrate" is an officer authorized by law to issue a warrant for the arrest of a person charged with a crime or public offense.
6. The term "writing" includes printing and typewriting.
7. The term "oath" includes an affirmation.

8. The term "signature" includes a mark, when the person cannot write, the person's name being written near it and the mark being witnessed by a person who writes the witness's own name as a witness, except that if the paper is an affidavit or deposition, or a paper issued before a judicial officer, the attestation of the officer is sufficient.
9. The term "county" includes an organized county, or an organized county and such unorganized counties or other territory or parts of this state as may be attached by law to such organized county for judicial purposes.

29-01-14. Who are magistrates.

The following officers are magistrates:

1. The judges of the supreme court, with authority to act as such throughout the state.
2. The judges of the district courts, with authority to act as such throughout the judicial districts for which they respectively are elected.
3. As limited by law directing the place of exercising their jurisdiction and authority, magistrates appointed by the presiding judge of a judicial district, municipal judges, and small claims court referees who are licensed to practice law and authorized by the presiding judge of the judicial district in case of an emergency, each with authority to act as magistrate throughout the county or the city for which the magistrate is elected or appointed.

29-01-15. Jurisdiction of municipal judges and small claims court referees.

1. Any municipal judge may:
 - a. Act as committing magistrate; provided, that this subsection does not apply to municipal judges who are not attorneys currently licensed under chapter 27-11.
 - b. Hear, try, and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution of North Dakota and this and other laws.
 - c. Adjudge and impose the punishment prescribed by law, upon conviction, in all cases within the municipal judge's jurisdiction to hear, try, and determine.
2. A small claims court referee authorized pursuant to subsection 3 of section 29-01-14 may act as a committing magistrate. A magistrate appointed by the presiding judge of the judicial district has the authority to act to the extent allowed by rules promulgated by the supreme court.

29-01-16. When misdemeanor or infraction may be compromised.

When a defendant is held to answer on a charge constituting a misdemeanor or infraction, for which a person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in section 29-01-17, except:

1. If the offense was committed by or upon a judge of any court in this state, or in any city in this state, or a peace officer, while in the execution of the duties of the person's office;
2. If the offense was committed with an intent to commit a felony; or
3. If the offense involves a crime of domestic violence as defined in section 14-07.1-01 or is a violation of section 12.1-20-05, 12.1-20-07, 12.1-20-12.1, or 12.1-20-12.2.

29-01-17. Stay of proceedings upon compromise.

If a party injured appears before the court in which a trial for the commission of a public offense is to be had, at any time before the trial, and acknowledges that the party injured has received satisfaction for the injury, the court, on payment of the costs incurred, may order all proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom, but in such a case the reasons for the order must be set forth therein and entered on the minutes.

29-01-18. Order to stay is a bar.

The order authorized by section 29-01-17 is a bar to another prosecution for the same offense.

29-01-19. Compromise limited.

A public offense may not be compromised, nor may any proceeding for the prosecution or punishment of a public offense, upon a compromise, be stayed except as is provided in sections 29-01-16 and 29-01-17.

29-01-20. Stolen property to be held by peace officer.

1. Except as provided in subsection 2, whenever property alleged to have been stolen or embezzled comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.
2. Subsection 1 does not apply to:
 - a. Consumer goods, as defined in section 41-09-02; and
 - b. Goods covered by a certificate of title if proof of certificate of title is presented to the peace officer.

29-01-21. Magistrate to give order for delivery.

On satisfactory proof of the title of the owner of the property, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on the owner's paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

29-01-22. Delivery of stolen property by magistrate.

If property stolen or embezzled comes into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of the owner's title and on the owner's paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

29-01-23. Court may order delivery of stolen property.

If property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, on proof of the owner's title, may order it to be restored to the owner.

29-01-24. Unclaimed stolen property - Delivery to county treasurer.

If the property stolen or embezzled is not claimed by the owner within six months from the conviction of a person for stealing or embezzling it, the magistrate or officer having it in custody, on the payment of the necessary expenses incurred in its preservation, shall deliver it to the county treasurer by whom, if it is money, it must be paid into the county treasury, or if it is not money, it must be sold and the proceeds paid into such treasury.

29-01-25. Receipt to accused and clerk or magistrate.

When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it at the time shall give duplicate receipts therefor, specifying particularly the amount of the money, or the kind of property taken, one of which receipts the officer shall deliver to the defendant, and the other of which the officer shall file at once with the clerk of the court to which the complaint and other papers in the case by law are required to be sent. When such property is taken by a police officer of any incorporated city, the officer shall deliver one of the receipts to the defendant and one, with the property, at once to the clerk or other person in charge of the police office in such city, or, if there is no such clerk or other person, then to the magistrate before whom such defendant may be taken for examination or trial.

29-01-26. Duty of clerk or magistrate.

The clerk, magistrate, or other person to whom property is delivered, as provided in section 29-01-25, shall record every amount of money and a description of every article of property taken from each person arrested, attach a number to every amount of money and every article

of property, and make a corresponding entry thereof. Sufficient compliance with this section is met if the entries are made in the docket of the magistrate after the receipt and property are delivered to a magistrate, as provided in section 29-01-25.

29-01-27. Indigent defendant - Attorney appointed - Compensation - Limitation.

Repealed by S.L. 1967, ch. 259, § 3.

29-01-28. Spectators excluded from trial of minors.

Repealed by S.L. 1995, ch. 124, § 21.

29-01-29. Rule of construction of title.

The rule of the common law that penal statutes are to be strictly construed has no application to this title. This title establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to promoting its objects and in furtherance of justice.

29-01-30. To what this title applies.

Superseded by N.D.R.Crim.P., Rule 1.

29-01-31. Common law prevails when title silent.

Superseded by N.D.R.Crim.P., Rule 1.

29-01-32. Defendant required to disclose information to prosecuting attorney.

Repealed by S.L. 1997, ch. 51, § 40.

29-01-33. Change of place of criminal proceedings - Jury.

Superseded by N.D.R.Crim.P., Rules 18, 21.

CHAPTER 29-02 PREVENTION OF PUBLIC OFFENSES

29-02-01. Lawful resistance to commission of offense, by whom made.

Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured; or
2. By other parties.

29-02-02. Resistance by party about to be injured.

Resistance sufficient to prevent a public offense may be made by a party about to be injured:

1. To prevent an offense against the party's person or the party's family or some member thereof; or
2. To prevent an illegal attempt by force to take or injure property in the party's lawful possession.

29-02-03. Third person may resist offense.

Any person, in aid or defense of a person about to be injured by a public offense, may make resistance sufficient to prevent the offense.

29-02-04. Public offense may be prevented by officers.

Public offenses may be prevented by the intervention of officers of justice:

1. By requiring security to keep the peace;
2. By providing police in cities and by requiring their attendance in exposed places; and
3. By suppressing riots.

29-02-05. Persons aiding officers justified.

Whenever officers of justice are authorized to act in the prevention of public offenses, other persons who by their command act in their aid are justified in so doing.

29-02-06. Complaint for threatening, before whom laid.

A complaint may be laid before any magistrate mentioned in section 29-01-14, authorized by law to act within the county, that a person has threatened to commit an offense against the person or property of another.

29-02-07. Complaint as to threatened offense.

A complaint within the meaning of section 29-02-06 is a statement in writing, made to a magistrate, that a person has threatened to commit an offense against the person or property of another, and subscribed and sworn to by the complainant.

29-02-08. Magistrate must issue warrant.

If it appears from a complaint to a magistrate that there is just reason to fear the commission of an offense threatened by the person complained of, the magistrate shall issue a warrant directed generally to the sheriff of the county, marshal, or policeman of the city, reciting the substance of the complaint and commanding the officer forthwith to arrest the person complained of and to bring that person before the magistrate.

29-02-09. Procedure when charge controverted.

If a person complained of is brought before a magistrate upon the charge that that person threatened to commit an offense against another, the magistrate, if the charge is controverted, shall take testimony in relation thereto. The evidence on demand of the defendant must be reduced to writing and subscribed by the witnesses.

29-02-10. When accused must be discharged.

If it appears that there is no just reason to fear the commission of an offense alleged to have been threatened, the person complained of must be discharged.

29-02-11. When accused must give undertaking.

If there is just reason to fear the commission of an offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding one thousand dollars, as the magistrate may direct, with one or more sufficient sureties to abide the order of the next district court of the county, and in the meantime to keep the peace toward the people of this state, and particularly toward the complainant.

29-02-12. When undertaking is or is not given.

If an undertaking to keep the peace as required by section 29-02-11 is given, the party complained of must be discharged. If the party does not give it, the magistrate shall commit the person to prison specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

29-02-13. Accused committed - How discharged - Undertaking transmitted to district court.

If a person complained of for threatening to commit an offense against the person or property of another is committed for not giving security, that person, upon giving the same, may be discharged by any municipal judge who is authorized to act as a committing magistrate, or by the judge of the district court of the county. Any undertaking so accepted must be transmitted by the acting magistrate to the district court of the county for disposition at the next term.

29-02-14. Assault in presence of court - Security required - Committed on default.

A person who in the presence of a court or magistrate assaults or threatens to assault another, or to commit an offense against another's person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as is provided in section 29-02-11, or if that person refuses to do so that person may be committed as is provided in section 29-02-12.

29-02-15. Accused must appear at district court.

A person who has entered into an undertaking to keep the peace shall appear on the first day of the next term of the district court of the county. If that person does not, the court may forfeit that person's undertaking and order it to be prosecuted unless that person's default is excused.

29-02-16. Complainant not appearing - Accused discharged.

If the one who complained of a person who has entered into an undertaking to keep the peace does not appear on the first day of the next term of the district court of the county, the person complained of may be discharged unless good cause to the contrary is shown.

29-02-17. Procedure when parties appear.

If the complainant and accused both appear, as is required by sections 29-02-15 and 29-02-16, the court may hear their proofs and allegations, and may discharge the undertaking or require a new one for a time not exceeding one year.

29-02-18. When undertaking broken.

An undertaking to keep the peace is broken on the failure of a person complained of to appear at the district court as provided in section 29-02-15 or upon that person's being convicted of a breach of the peace.

29-02-19. Action upon the undertaking to keep peace.

If the state's attorney produces to the district court to which an undertaking to keep the peace is returned, evidence that the principal has been convicted of a breach of the peace, that court shall order the undertaking to be prosecuted and the state's attorney thereupon shall commence an action upon it in the name of this state.

29-02-20. What alleged in action.

In an action prosecuted for breach of an undertaking to keep the peace, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and such record is conclusive evidence thereof.

29-02-21. Limitation.

Security to keep the peace or to be of good behavior cannot be required except as is prescribed in this chapter.

29-02-22. Costs to be taxed.

In all cases in which security is furnished under the provisions of this chapter to keep the peace, the court, in addition to the orders mentioned in this chapter, shall tax the costs against the complainant or defendant, or both, as justice may require, and shall enter judgment therefor. Such judgment may be enforced as a judgment for costs in a criminal case, and execution may issue therefor.

29-02-23. Police to attend public meetings - Direction.

The mayor or other officer having the direction of the police in a city shall order a force sufficient to preserve the peace to attend any public meeting when that person is satisfied that a breach of the peace is reasonably apprehended.

29-02-24. When officers may disperse assembly.

If the persons assembled and commanded to disperse do not immediately disperse, any magistrate or law enforcement officer may command the aid of a sufficient number of persons and may proceed in such manner as in that person's judgment is necessary to disperse the assembly and arrest the offenders.

CHAPTER 29-03

LOCAL JURISDICTION OF PUBLIC OFFENSES

29-03-01. Crime commenced without this state and consummated within state.

When the commission of a public offense, commenced without this state, is consummated within its boundaries, and the defendant is liable to prosecution as provided in section 29-03-01.1, the venue is in the county in which the offense is consummated, or in which the offenders are apprehended.

29-03-01.1. When persons liable to prosecution in this state.

Any person who commits one or more of the following acts is liable to prosecution under the laws of this state:

1. Commission of a robbery or theft outside this state and bringing the stolen property into this state.
2. Soliciting, while outside this state, criminal action within this state.
3. Soliciting, while outside this state, sexual contact with a person believed to be a minor who at the time of the solicitation is located in this state.
4. Commission of kidnapping or felonious restraint when the victim is brought into this state.

29-03-02. Duel without this state, causing death within - Jurisdiction where death occurs.

When an inhabitant or resident of this state, by previous appointment or engagement, fights a duel or is concerned as a second or surgeon therein, out of the jurisdiction of this state, and in the duel a wound is inflicted upon a person from which the person dies in this state, the jurisdiction of the offense is in the county where the death occurs.

29-03-03. Inhabitant leaving to evade law - Jurisdiction in county of residence.

When an inhabitant or resident of this state leaves the same for the purpose of evading the operation of the provisions of the statutes relating to dueling, and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant or resident when the offense was committed.

29-03-04. Part committed in different counties - Jurisdiction in either.

When a crime or public offense is committed in part in one county and in part in another, or when the acts or effects thereof constituting, or requisite to the consummation of, the offense occur in two or more counties, the jurisdiction is in either or any of said counties.

29-03-05. Committed near boundary - Jurisdiction in either.

When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

29-03-06. On board vessel - Jurisdiction in any county traversed.

When an offense is committed in this state on board a boat or vessel navigating or lying in a river, lake, or canal, in the prosecution of the voyage, the jurisdiction is in any county through which the vessel is navigated in the course of the voyage, or in the county where the voyage terminates.

29-03-07. Venue of offense in or against aircraft.

Subject to section 29-01-33, any person who commits an offense in or against any aircraft while it is in flight over this state may be tried in any county in this state.

29-03-08. Venue of offenses committed on railroad train or other vehicle.

Subject to section 29-01-33, when an offense is committed on a railroad train or other vehicle while in the course of a trip, the trial may be in any county through which the train or other public vehicle passed during the trip.

29-03-09. Venue of kidnapping, forcible restraint, unlawful imprisonment, electronic luring, or prostitution cases.

The venue of a criminal action for any of the following offenses is in any county in which the offense is committed, or into or out of which the individual upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense:

1. Kidnapping, forcible restraint, or unlawful imprisonment, in violation of chapter 12.1-18;
2. A violation of section 12.1-29-01, 12.1-29-02, or 12.1-29-03 relating to prostitution; or
3. Luring a minor by computer or other electronic means in violation of section 12.1-20-05.1.

29-03-10. Venue of burglary, robbery, or theft cases - Property taken from one county to another.

When property taken in one county by burglary, robbery, or theft has been brought into another county, the venue of the offense is in either county.

29-03-11. Treason - Overt act without state.

The jurisdiction of a criminal action for treason, when the overt act is committed out of this state, is in any county of the state.

29-03-12. Jurisdiction of accessory in county where committed.

In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

29-03-13. Conviction or acquittal in another state bar to prosecution.

When an act charged as a public offense is within the jurisdiction of another state, country, or territory as well as in this state, a conviction or acquittal thereof in the former is a bar to a prosecution or indictment therefor in this state.

29-03-14. Conviction or acquittal in another county a bar in another.

When an offense is in the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment thereof in another.

29-03-15. Escaping from penitentiary - Jurisdiction in Burleigh County.

Repealed by S.L. 2001, ch. 131, § 3.

29-03-16. Escaping from jail - Jurisdiction where jail located.

Repealed by S.L. 2001, ch. 131, § 3.

29-03-17. Bringing stolen property into state.

The jurisdiction of a criminal action for stealing in any state, country, or territory, the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this state, is in any county into which such stolen property has been brought.

29-03-18. Murder or manslaughter.

The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county and the party injured dies in another or out of the state, is in the county where the injury was inflicted.

29-03-19. Action against a principal not present.

The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission thereof, is in the county in which it would be under this title, if the principal were present and aiding and abetting therein.

29-03-20. Prizefighting violations - Jurisdiction.

The jurisdiction of a criminal action for the violation of section 53-01-19 is in any county:

1. In which any act is done toward the commission of the offense;
2. Into, out of, or through which the offender passed to commit the offense; or
3. Where the offender is arrested.

29-03-21. When mailing of letter is criminal - Venue.

In those cases in which the sending of a letter is made an offense, the offense is deemed completed when the letter is deposited in any post office or postal receptacle, or delivered to any person with intent that it be forwarded. The person sending the letter may be tried in any county in which the letter is so deposited or delivered, or in the county in which it is received by the addressee.

29-03-22. Venue of multiple theft offenses involving credit cards.

If any of a series of thefts can be charged as one offense for purposes of grading under subsection 7 of section 12.1-23-05, if each of those thefts involved the use of a credit card, and if the total value of the property or services stolen is at least fifty dollars, venue for the criminal action, in which the series of thefts is charged as one offense, is in any county where any of the thefts was committed.

CHAPTER 29-04 LIMITATIONS

29-04-01. Prosecution for murder not limited.

There is no limitation of the time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

29-04-02. Prosecution for felony other than murder within three years.

Except as otherwise provided by law, a prosecution for any felony other than murder must be commenced within three years after its commission. Prosecution of felony offenses under chapter 12.1-23 or 50-24.8 must be commenced within the later of three years of commission of the last act that is an element of the offense, three years of discovery of the stolen property, or three years of discovery of the loss of the property or services. Nothing in this section prevents a person prosecuted for murder from being found guilty of any included offense and punished accordingly.

29-04-02.1. Prosecution for a felony sexual offense or human trafficking.

Except as otherwise provided by law, a prosecution for a felony violation of chapter 12.1-20 or for the crime of human trafficking must be commenced in the proper court within seven years after the commission of the offense.

29-04-03. Prosecution for misdemeanor or infraction within two years.

A prosecution of a misdemeanor or infraction, except as otherwise provided by law, must be commenced within two years after its commission. Prosecution of misdemeanor offenses under chapter 12.1-23 must be commenced within the later of two years of commission of the last act that is an element of the offense, two years of discovery of the stolen property, or two years of discovery of the loss of the property or services.

29-04-03.1. Prosecution for sexual abuse of minors.

1. Except as provided in subsection 2, a prosecution for a violation of sections 12.1-20-03 through 12.1-20-08 or of section 12.1-20-11 if the victim was under eighteen years of age at the time the offense was committed must be commenced in the proper court within twenty-one years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities.
2. If, based upon evidence containing deoxyribonucleic acid or a fingerprint obtained at the time of offense, a suspect is conclusively identified by deoxyribonucleic acid testing after the time period prescribed in subsection 1 has expired, a prosecution may be commenced within three years after the suspect is conclusively identified by the deoxyribonucleic acid testing or fingerprint authentication.

29-04-03.2. Statute of limitations as to child victim.

If the victim of a violation of chapter 12.1-20 or of the crime of human trafficking is under the age of fifteen, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of fifteen.

29-04-04. Time of defendant's absence not part of limitation.

If, when a crime or public offense is committed, the defendant is out of the state, or if the defendant is within the state and subsequently leaves the state, the information may be filed, or the indictment found, within the time herein limited, after the defendant's return to the state. No time during which the defendant is not an inhabitant of, or usually resident within, this state is part of the limitation.

29-04-05. When prosecution is commenced.

A prosecution is commenced when a uniform complaint and summons, a complaint, or an information is filed or when a grand jury indictment is returned.

CHAPTER 29-05 THE COMPLAINT AND WARRANT OF ARREST

29-05-01. What complaint must state.

A complaint must state:

1. The name of the person accused, if known, or if not known and it is so stated, that person may be designated by any other name;
2. The county in which the offense was committed;
3. The general name of the crime or public offense committed;
4. The acts or omissions complained of as constituting the crime or public offense named;
5. The person against whom, or against whose property, the offense was committed, if known; and
6. If the offense is against the property of any person, a general description of such property.

The complaint must be subscribed and sworn to by the complainant.

29-05-02. Who must make complaint.

Superseded by N.D.R.Crim.P., Rule 3.

29-05-03. Magistrate may examine complainant.

Superseded by N.D.R.Crim.P., Rule 3.

29-05-04. Accused arrested without warrant.

Superseded by N.D.R.Crim.P., Rule 5.

29-05-05. Witnesses other than complainant.

Every person making complaint charging the commission of a crime or public offense shall inform the magistrate of all persons whom the person believes to have any knowledge of its commission, and the magistrate, at the time of issuing the warrant, may issue subpoenas for such persons, requiring them to attend at a specified time and place as witnesses.

29-05-06. When a warrant of arrest to be issued.

Superseded by N.D.R.Crim.P., Rule 4.

29-05-07. Warrant defined - Form.

Superseded by N.D.R.Crim.P., Rules 4, 58.

29-05-08. Requisites of warrant - Contents.

Superseded by N.D.R.Crim.P., Rule 4.

29-05-09. Direction and execution of warrant.

Superseded by N.D.R.Crim.P., Rule 4.

29-05-10. Peace officer defined.

A peace officer is a sheriff of a county or the sheriff's deputy, or a coroner, marshal, or policeman of a township or city, or any state or federal law enforcement officer.

29-05-11. Duty of officer if offense charged is felony.

Superseded by N.D.R.Crim.P., Rule 5.

29-05-11.1. Duty of peace officer to enter warrant.

A peace officer who receives a warrant for the arrest of a fugitive and does not execute the warrant shall enter the warrant in the central warrant information system. A warrant of arrest for

the failure to pay a fine or fee may be entered at the discretion of the peace officer. A criminal justice agency may specify whether the agency will extradite from outside the county or state and the county or state from which the agency will extradite.

29-05-12. Bail if offense charged is a misdemeanor or infraction.

If the offense charged in a warrant of arrest is a misdemeanor or infraction not within the jurisdiction of the magistrate who issued it to punish, and the accused is arrested in another county, the officer, upon request of the accused, shall take the accused before a magistrate in the county in which the arrest is made, who shall admit the accused to bail and take bail from the accused accordingly. If there is no magistrate residing within the county wherein the accused is arrested, and the accused requires it, the officer shall take the accused before a magistrate of any other county nearer or more accessible than the magistrate issuing the warrant, and said magistrate shall admit the accused to bail and take bail from the accused accordingly.

29-05-13. Procedure when bail taken.

On taking bail, as is provided in section 29-05-12, the magistrate shall certify that fact on the warrant and deliver the warrant and undertaking of bail to the officer having charge of the accused. The officer then shall discharge the accused from arrest and without delay shall deliver the warrant and undertaking to the clerk of the court at which the accused is required to appear.

29-05-14. When bail is not given.

If, on the admission of an accused to bail, the bail is not given forthwith, the officer shall take the accused before the magistrate who issued the warrant, or, in case of that magistrate's absence or inability to act, before the nearest or most accessible magistrate in the same county, and at the same time shall deliver to the magistrate the warrant with the officer's return endorsed thereon and subscribed by the officer.

29-05-15. Misdemeanor within magistrate's jurisdiction - Procedure.

If the offense charged in a warrant of arrest is within the jurisdiction of the magistrate to try and punish upon conviction, the accused, if arrested in another county, must be taken before the magistrate who issued the warrant, or, if that magistrate is absent, then before some other magistrate, as is provided in section 29-05-14.

29-05-16. When complaint sent to magistrate not issuing warrant.

If, after an arrest, the accused is taken before a magistrate other than the one who issued the warrant, the complaint on which the warrant was granted must be sent to that magistrate, or if it cannot be procured, the prosecutor and the prosecutor's witnesses must be summoned to give their testimony anew.

29-05-17. Requirements of warrant for accused from other county - Complaint to accompany.

Superseded by N.D.R.Crim.P., Rule 5.

29-05-18. Accused taken to proper county - Delivery of complaint with the accused - Depositions.

The officer who executes a warrant for an offense triable in another county shall take the accused before the nearest or most accessible magistrate of the county in which the offense is triable and shall deliver to the magistrate the complaint and the depositions, if any, and the warrant, with the officer's return endorsed thereon, and the magistrate then shall proceed in the same manner as upon a warrant issued by that magistrate.

29-05-19. Procedure if offense is misdemeanor.

Superseded by N.D.R.Crim.P., Rule 5.

29-05-20. Unnecessary delay after arrest prohibited - Attorney visitation.

The accused in all cases must be taken before a magistrate without unnecessary delay, and any attorney at law entitled to practice in the courts of record of this state, at the request of the attorney or the accused, may visit the accused after the accused's arrest.

29-05-21. Officer not liable to arrest while in charge of a person arrested.

While having in charge any person arrested in a criminal action or proceeding, neither the officer, nor any of the officer's assistants, is liable to arrest on civil process, and such officer is authorized to require any citizen to aid in securing the accused and to retake the accused, if the accused escapes, in any part of the state, as if the officer were within the officer's own county. A refusal or neglect to render such aid is an offense in the same manner as if the arresting officer were an officer of the county where such aid is required.

29-05-22. Giving bail deemed waiver of examination.

Repealed by S.L. 1973, ch. 252, § 1.

29-05-23. Warrant transmitted by telegraph.

Whenever a warrant for the arrest of a person accused of a crime or public offense is issued by a magistrate, the delivery of the warrant by telegraph may be authorized by a judge of the supreme or district court by an endorsement authorizing telegraphic delivery, at any place within this state, upon the warrant of arrest under the hand of the judge, directed generally to any peace officer in the state. After endorsement, a copy of the warrant may be sent by telegraph to any peace officer within the state, and the copy is as effectual in the hands of any peace officer, who shall serve the same and in all regards proceed thereunder, as though the peace officer held an original warrant issued by the magistrate making the endorsement thereon.

29-05-24. Duty of officer transmitting warrant.

Every officer causing telegraphic copies of a warrant to be sent shall certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and the endorsement thereon, and shall return the original with a statement of the officer's action thereunder signed by the officer.

29-05-25. Warrant returnable in county where issued - Telegraphic copy deemed original - Misdemeanor or infraction.

Every person arrested by warrant for any offense, when no other provision is made for that person's examination, must be taken before some magistrate of the county in which the warrant was issued, and the warrant with the proper return thereon, signed by the person who made the arrest, must be delivered to such magistrate. Any telegraphic copy of a warrant under which an officer has acted in making an arrest must be deemed the original warrant. If the offense charged in the warrant is a misdemeanor or infraction within the jurisdiction of a magistrate to try and upon conviction to punish, a trial must be had as is provided by law.

29-05-26. Arrest directed by telegraph.

In all cases in which by law a peace officer of this state may arrest a person without a warrant, or having a warrant for the arrest of a person accused of a crime or public offense when the person otherwise may escape from this state, the peace officer may direct any other peace officer in this state, by telegraph, to arrest the person, who must be designated by name or description or both.

29-05-27. How an order by wire executed - Procedure.

An order by a police officer directing other peace officers in the state to make an arrest may be directed generally to any of such officers and executed by the officer receiving it. The officer executing any such order shall take into the officer's custody the person designated therein and shall detain that person upon such order for such length of time as is necessary for the officer

directing the arrest to reach the place of detention by the ordinary course and means of travel, or until sooner demanded by an officer having a warrant for the arrest of such person.

29-05-28. Summons against corporation.

Superseded by N.D.R.Crim.P., Rule 4.

29-05-29. Form of summons.

Superseded by N.D.R.Crim.P., Rules 4, 58.

29-05-30. Service of summons against corporation.

Superseded by N.D.R.Crim.P., Rule 4.

29-05-31. Uniform traffic complaint and summons.

There is established a uniform complaint and summons that may be used in cases involving violations of statutes or ordinances. The use of a uniform complaint and summons must comply with the North Dakota Rules of Criminal Procedure and be in substantially the following form:

State of North Dakota) In _____ Court,
) ss.
County of _____) Before Hon. _____;
The undersigned, being sworn, says that, on _____, _____,

First Name Middle Name Last Name Street City State
did unlawfully operate a motor vehicle upon a public highway, namely
_____, _____ N E S W of _____ and did then and there commit
Location City
the following offense: _____
MPH in _____
MPH Zone _____

All in violation of N. D. Century Code Sec. _____ and against the peace and dignity of the state of N. D.

Officer _____ LET A WARRANT ISSUE HEREIN Sworn to and subscribed before me on _____, _____.

Judge State's Attorney

DESCRIPTION OF DEFENDANT AND VEHICLE
Mo. _____ Day _____ Yr. _____ Race _____ Sex _____ Wt. _____ Ht. _____
Birth date _____
Hair _____ Dr. Lic: State _____ No. _____ Motor Vehicle: _____
PSC

Make _____ Reg. No. _____ State _____ Year _____ ICC No. _____

CLAIMED CONDITIONS OF THE VIOLATION

SLIPPERY SURFACE

_____ Rain _____ Snow _____ Ice

DARKNESS

_____ Night _____ Fog _____ Snow

OTHER TRAFFIC PRESENT

_____ Cross _____ Oncoming _____ Pedestrian _____ Same direction

IN ACCIDENT

_____ Ped. _____ Vehicle _____ Intersection

_____ Right angle _____ Head on _____ Rear end

_____ Ran off road _____ Other _____

Area: _____ School _____ Rural _____ Business _____
_____ Industrial _____ Residential _____
Highway: _____ 2 Lane _____ 4 Lane _____ 4 Lane Divided
Type: _____ Gravel _____ Dirt _____

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

_____ Yes _____ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT
(CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

You are summoned to appear at the time and place designated below to answer to the charge made against you.

Appearance

Before: Municipal Judge District Ct. _____ A.M./P.M.

Location Month Day Year Time

Dated _____, _____

Officer _____

PROMISE TO APPEAR

I consent and promise to appear at the time and place specified in the above summons, the receipt of a copy of which is acknowledged, and I expressly waive earlier hearing.

Dated _____, _____

Defendant _____

(STATE NONCRIMINAL TRAFFIC VIOLATION)

You are notified of your right to request, within fourteen days of the date of this citation, a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the alleged violation. Failure to do so may result in the suspension of your operator's license. You will be notified of the hearing date by the court for the county in which this citation was issued.

REQUEST FOR HEARING

I submit the designated bond and request a hearing on the alleged traffic violation and promise to appear at the time and date specified in the summons issued by the court for the county in which the citation was issued.

Dated _____, _____

Defendant _____

29-05-32. Release of information contained in complaint or warrant.

The magistrate who issues a warrant for arrest shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

CHAPTER 29-06 ARREST

29-06-01. Arrest defined.

An arrest is the taking of a person into custody in the manner authorized by law to answer for the commission of an offense.

29-06-02. Who may make an arrest.

An arrest may be made:

1. By a peace officer, under a warrant;
2. By a peace officer, without a warrant; or
3. By a private person.

29-06-03. Officer may summon aid to make arrest.

Any officer making an arrest may summon as many persons orally as the officer deems necessary to aid the officer therein.

29-06-04. Persons must aid in making arrest.

Every person, when required, shall aid an officer in the making of an arrest.

29-06-05. Foreign peace officer in fresh pursuit may arrest in state.

Any member of a duly organized state, county, or municipal law enforcement unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit of a person in order to arrest the person on the ground that the person is believed to have committed a felony, misdemeanor, or traffic violation in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county, or municipal law enforcement unit of this state to arrest and hold in custody a person on the ground that the person is believed to have committed a felony, misdemeanor, or traffic violation in this state.

29-06-05.1. Foreign officer providing transportation for law enforcement purposes.

Any member of a duly organized state, county, or municipal law enforcement unit of another state of the United States who enters this state to perform an assigned duty of transporting persons in legal custody for law enforcement purposes has the same authority to transport persons in legal custody as any member of any duly organized state, county, or municipal law enforcement unit of this state if a reciprocal right to transport persons in legal custody is extended to North Dakota peace officers in the peace officer's state or local jurisdiction.

29-06-05.2. Federal law enforcement officer - Authority to make arrests.

1. "Federal agent" means an employee of the federal bureau of investigation; the federal drug enforcement administration; the bureau of alcohol, tobacco, firearms and explosives; the homeland security investigations unit of the department of homeland security; the bureau of Indian affairs police; the United States marshals service; or the United States customs and border protection who is authorized to arrest, with or without a warrant, any individual for a violation of the United States Code and carry a firearm in the performance of the employee's duties as a federal law enforcement officer.
2. A federal agent has the same authority and immunity as a peace officer in this state when making an arrest for a nonfederal crime if any of the following exist:
 - a. The federal agent has reasonable grounds to believe that a felony offense was committed and the individual arrested committed the offense.
 - b. The federal agent is rendering assistance to a peace officer in an emergency or at the request of the peace officer.
 - c. The federal agent is working as a part of a task force composed of North Dakota peace officers and federal law enforcement officers.

3. Any agreement entered under this section relating to reciprocal jurisdiction between a public agency and a tribal government must be made pursuant to chapter 54-40.2.

29-06-05.3. Peace officers acting outside geographic jurisdiction.

1. As used in this section, "peace officer" means a salaried public servant employed by a criminal justice agency of the state or a political subdivision to enforce the law or to conduct or engage in investigations or prosecutions for violations of law.
2. If a peace officer is transporting an individual who is under arrest or is being detained under chapter 25-03.1, the peace officer's authority extends throughout the entire state, as follows:
 - a. After arrest, until the individual is delivered into the custody of the nearest jail, regional corrections center, or correctional facility as defined by chapter 12-44.1, including while the individual is being treated for a medical condition or infirmity;
 - b. While an individual is being detained during pretrial, in any jail, regional corrections center, or correctional facility and, is being transported for treatment for a medical condition or other physical or mental infirmity that occurred while the individual was in custody;
 - c. While the peace officer is detaining an individual under chapter 25-03.1 and the individual is being transported to a treatment facility for evaluation or treatment;
 - d. While the peace officer is detaining or transporting an individual pursuant to an order issued by the district court; and
 - e. While the peace officer is transporting an individual convicted under chapter 12.1-32 to a jail, regional corrections center, or correctional facility to serve a term of confinement as ordered by the district court.

29-06-06. Hearing before local magistrate and order thereon.

1. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 29-06-05, the officer, without unnecessary delay, shall take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state, or shall admit the person to bail for such purpose. If the magistrate determines that the arrest was unlawful, the magistrate shall discharge the person arrested.
2. Notwithstanding the provisions of chapter 29-30.3 and subsection 1, a person arrested for a misdemeanor or traffic violation pursuant to section 29-06-05 may voluntarily return to the foreign state without a hearing before a magistrate.

29-06-07. Definition of fresh pursuit.

As used in section 29-06-05, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed or who is reasonably suspected of having committed a felony, misdemeanor, or traffic violation. It also shall include the pursuit of a person suspected of having committed a supposed felony, misdemeanor, or traffic violation, though no felony, misdemeanor, or traffic violation has been actually committed, if there is reasonable ground for believing that a felony, misdemeanor, or traffic violation has been committed. Fresh pursuit, as the term is used in this chapter, shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

29-06-08. When arrest made for felony, misdemeanor, or infraction.

An arrest for a felony, misdemeanor, or infraction may be made on any day and at any time of the day or night.

29-06-09. How arrest made.

An arrest is made by an actual restraint of the person of the defendant or by the defendant's submission to the custody of the person making the arrest.

29-06-10. Restraint in an arrest is limited.

A person who is arrested may not be subjected to unnecessary or unreasonable force, nor to any greater restraint than is necessary for the person's detention.

29-06-11. Warrant must be shown.

If the person making an arrest is acting under the authority of a warrant, the person shall inform the defendant to that effect and shall show the warrant, if required.

29-06-12. Officer must obey warrant in making arrest.

An officer making an arrest in obedience to a warrant shall proceed with the person arrested as commanded in the warrant, or as otherwise provided by law.

29-06-13. When defendant resists, force necessary may be used to make arrest.

If, after notice of intention to arrest the defendant, the defendant either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

29-06-13.1. Resisting peace officer.

Repealed by S.L. 1975, ch. 106, § 673.

29-06-14. Officer may break door.

An officer may break open any door or window of a dwelling house to execute a warrant of arrest, or to make such arrest for a felony without a warrant, as is provided in section 29-06-15, if, after notice of the officer's authority and purpose, the officer is refused admittance.

29-06-15. Arrest without warrant - Peace officer - Federal agent.

1. A law enforcement officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle in violation of section 39-08-01.
 - g. For the offense of violating an order prohibiting contact under section 12.1-31.2-02 or a civil protection order under chapter 14-07.7.
 - h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section 19-03.1-22.1.
 - i. For the offense of harassing a public safety agency or making a false report to a public safety agency under subsection 4 of section 12.1-17-07.
2. A federal agent, without a warrant, may arrest a person if all of the following circumstances exist:
 - a. The officer is on duty.
 - b. One or more of the following situations exist:

- (1) The person commits an assault or other crime, defined and punishable under chapter 12.1-17, against the officer or against any other person in the presence of the officer.
 - (2) The officer has reasonable cause to believe that a crime, as defined in paragraph 1, has been committed and reasonable cause to believe that the person to be arrested has committed it.
 - (3) The officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the person to be arrested has committed it.
 - (4) The officer has received positive information from an authoritative source that a peace officer holds a warrant for the person's arrest.
3. If a law enforcement officer has reasonable cause to believe an individual has violated a lawful order of a court of this state which requires the individual to participate in the twenty-four seven sobriety program authorized in sections 54-12-27 through 54-12-31, the law enforcement officer may immediately take the individual into custody without a warrant. An individual taken into custody under this subsection may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate.

29-06-15.1. Arrest of nonresident traffic violator.

A police officer at the scene of a traffic accident may arrest without a warrant any driver of a vehicle who is a nonresident of this state and who is involved in the accident when based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense under the provisions of title 39 in connection with the accident, and if the officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

Whenever any person is arrested under the provisions of this section, the person must be taken without unnecessary delay before the proper magistrate.

29-06-16. Arrest at night - Reasonable cause.

Repealed by S.L. 1971, ch. 314, § 2.

29-06-17. Officer shall state authority when arresting without warrant.

When making an arrest without a warrant, the officer shall inform the person to be arrested of the officer's authority and the cause of the arrest, unless:

1. The person to be arrested then is engaged in the commission of an offense;
2. Such person is pursued immediately after the commission of an offense or after an escape;
3. Such person flees or forcibly resists before the officer has opportunity so to inform the person; or
4. The giving of such information will imperil the arrest.

29-06-18. Arrest by bystander.

An officer may take before a magistrate a person who, while engaged in a breach of the peace, is arrested by a bystander and delivered to the officer.

29-06-19. Offense committed in presence of magistrate.

When a public offense is committed in the presence of a magistrate, the magistrate, by a verbal or written order, may command any person immediately to arrest the offender, and thereupon may proceed as if the offender had been brought before the magistrate on a warrant of arrest.

29-06-20. When private person may arrest.

A private person may arrest another:

1. For a public offense committed or attempted in the arresting person's presence.

2. When the person arrested has committed a felony, although not in the arresting person's presence.
3. When a felony has been in fact committed, and the arresting person has reasonable grounds to believe the person arrested to have committed it.

29-06-21. Must inform person of cause of arrest.

A private person making an arrest must inform the person to be arrested of the intention to arrest the person, and of the cause of the arrest, unless:

1. The person to be arrested then is engaged in the commission of an offense;
2. Such person is pursued immediately after its commission or after an escape;
3. Such person flees or forcibly resists before the person making the arrest has opportunity to inform the person; or
4. The giving of such information will imperil the arrest.

29-06-22. When a private person may break into a building.

A private person, in order to make an arrest when a felony was committed in the arresting person's presence, as authorized in section 29-06-20, if the person is refused admittance after the person has announced the person's purpose and the person reasonably believes an individual inside is at imminent risk of serious bodily injury or death, may break open a door or window of any building in which the person to be arrested is, or is reasonably believed to be.

29-06-23. Arrested by private person - Duty - Taken before magistrate.

A private person who has arrested another for the commission of a public offense, without unnecessary delay, shall take the person before a magistrate or deliver the person to a peace officer.

29-06-24. Offensive weapons taken - Delivery to magistrate.

Any person making a lawful arrest shall take from the person arrested all offensive weapons which the person arrested may have and shall deliver them to the magistrate before whom the person arrested is taken.

29-06-25. Procedure against person arrested without warrant.

When an arrest is made by a peace officer or a private person without a warrant, the person arrested without unnecessary delay must be taken:

1. Before the nearest or most accessible magistrate in the county where the arrest is made; or
2. If there is no magistrate in said county qualified to act, then before the nearest or most accessible magistrate authorized to act for the county where the arrest is made.

A complaint stating the charge against the person arrested must be made before such magistrate, as is provided in rule 5 of the North Dakota Rules of Criminal Procedure.

29-06-26. Who may break door to liberate self.

Any person who has lawfully entered a house for the purpose of making an arrest, or who while therein makes an arrest, may break open the door or window thereof, if detained therein, when necessary to exit the house, and an officer may do the same when necessary for the purpose of liberating a person who, acting in the officer's aid, lawfully enters for the purpose of making an arrest and is detained therein.

29-06-27. Shoplifting - Arresting person exempt from liability.

Repealed by S.L. 1975, ch. 454, § 6.

CHAPTER 29-06.1 TRIBAL ARREST WARRANTS

29-06.1-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Tribal arrest warrant" means any document issued by a court of a tribe in this state which authorizes a peace officer to take custody of a person.
2. "Tribe" means any of the federally recognized Indian nations, tribes, or bands in this state.

29-06.1-02. Arrest with or without warrant.

1. A peace officer may arrest a person subject to a tribal arrest warrant if presented with the warrant and may arrest a person without a tribal arrest warrant upon probable cause to believe that the person is the subject of such a warrant. An arrest is authorized under this subsection only if the arrest warrant is issued for commission of a crime punishable as a misdemeanor under the applicable tribal ordinance or resolution.
2. The arrested person may waive the right to appear before a judge and consent to transfer of custody to the applicable tribal authority by executing a written waiver in the presence of a peace officer or correctional officer. Before executing a written waiver, the arrested person must be informed of the name of the tribe that issued the arrest warrant, the right to assistance of counsel, and the right to appear before a district judge before transfer of custody to the applicable tribal authority. If a waiver is executed, the court shall issue an order transferring custody of the arrested person to the applicable tribal authority or, with the consent of the applicable tribal authority, authorize the voluntary return of the arrested person to the applicable tribal authority.
3. If the arrested person does not waive appearance before a judge under subsection 2, the arrested person must be brought without unnecessary delay before the nearest available district judge.
4. The district judge shall issue an order continuing custody upon presentation of the tribal arrest warrant or, if the arrest is made without a warrant, upon testimony or affidavit showing probable cause to believe the person is the subject of such a warrant.

29-06.1-03. Court appearance.

1. The district judge shall inform the person appearing under section 29-06.1-02 of the name of the tribe that has subjected the person to an arrest warrant, the basis for the arrest warrant, the right to assistance of counsel, and the right to require a judicial hearing before transfer of custody to the applicable tribal authority.
2. After being informed by the district judge of the effect of a waiver, the arrested person may waive the right to require a judicial hearing and consent to return to the applicable tribal authority by executing a written waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody under section 29-06.1-04 or, with the consent of the applicable tribal authority, authorize the voluntary return of the person to that authority.
3. If a hearing is not waived under subsection 2, the district judge shall hold a hearing within three days, excluding weekends and holidays, after the appearance. The arrested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The judge shall release the person upon conditions that will reasonably assure availability of the person for the hearing or direct a law enforcement officer to maintain custody of the person until the time of the hearing. Following the hearing, the judge shall issue an order to transfer custody under section 29-06.1-04 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the person identified in the warrant.

4. If the judge does not order transfer of custody, the judge shall order the arrested person to be released.

29-06.1-04. Order to transfer custody.

1. A judicial order to transfer custody issued under section 29-06.1-03 must direct a law enforcement officer to take or retain custody of the person until an agent of the applicable tribal authority is available to take custody. If the agent has not taken custody within three days, excluding weekends and holidays, the judge may order the release of the person upon conditions that will assure the person's availability on a specified date within seven days, excluding weekends and holidays. If the agent has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued.
2. The judge in the order transferring custody may authorize the voluntary return of the person with the consent of the applicable tribal authority.
3. An order to transfer custody is not appealable. An order denying transfer is appealable.

CHAPTER 29-07 PRELIMINARY EXAMINATIONS

29-07-01. Magistrate's duty - Testimony may be taken.

Superseded by N.D.R.Crim.P., Rules 5, 44.

29-07-01.1. Payment of expenses for defense of indigents - Indigent defense administration fund - Continuing appropriation.

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted for a violation of a municipal ordinance, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall pay the expenses in any matter transferred to district court under section 40-18.1-18, 40-18.1-23, 40-18.1-24, or 40-18.1-25, in any appeal taken to district court from a judgment of conviction in municipal court under section 40-18.1-19 or 40-18.1-20, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services.
2. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the commission on legal counsel for indigents to be used in the administration of the indigent defense system.

29-07-02. Waiver of examination.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-03. Examination of witnesses.

If the accused waives preliminary examination, the state's attorney may cause the testimony of any witness or witnesses to be taken in writing as is provided by law, with the same force and effect as if such examination had not been waived. Such testimony must be returned by the magistrate to the district court of the magistrate's county as in other cases.

29-07-04. Magistrate must allow accused counsel.

Superseded by N.D.R.Crim.P., Rules 5, 44.

29-07-05. The preliminary examination.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-06. Change of place of hearing - Procedure.

Whenever a person accused of a public offense is brought before a municipal judge for examination, and, at any time before the examination is commenced, the person files with the municipal judge an affidavit stating that by reason of the bias or prejudice of the municipal judge the person believes a fair or impartial examination cannot be had before the municipal judge, the municipal judge shall transfer the action, and all the papers therein, including a certified copy of the municipal judge's docket entries, to a district judge serving the county. The state's attorney, or assistant state's attorney, in the same manner and for the same reasons as the defendant, may obtain a transfer of the action from the municipal judge before whom the action

was commenced, or from the district judge to whom it has been transferred on the application of the state, in which event it must be transferred to another district judge designated by the presiding judge of the judicial district. The place of examination cannot be changed more than once by each party under this section.

29-07-07. Adjournment - Three days limit.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-08. Disposition of accused on adjournment.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-09. Commitment for examination.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-10. Summoning of witnesses.

Superseded by N.D.R.Crim.P., Rule 5.

29-07-11. Procedure on examination - Reading complaint.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-12. How witnesses examined.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-13. Witnesses kept separate - Exclusion during the examination of any witness.

The magistrate may exclude all witnesses who have not been examined. The magistrate also may cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

29-07-14. Persons not excluded.

The magistrate holding a preliminary hearing, upon the request of the defendant, may exclude from the examination every person except the magistrate's clerk, the prosecutor and the prosecutor's counsel, the attorney general of the state, the state's attorney of the county, the defendant and the defendant's counsel, and such other person as the defendant may designate, and the officer having the defendant in custody, but such exclusion, and the extent thereof, is within the discretion of the court.

29-07-15. Testimony reduced to writing - Conditions - Payment.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-16. Accused may produce witnesses after state concludes testimony.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-17. Keeping and disposition of depositions - Violation is a misdemeanor.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-18. Procedure - Accused discharged.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-19. Costs taxed when prosecution malicious.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-20. Accused held to answer.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-21. If offense not bailable defendant committed.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-22. When offense bailable.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-23. When bail not taken.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-24. Commitment - Procedure.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-25. Form of commitment.

Superseded by N.D.R.Crim.P., Rules 5.1, 58.

29-07-26. Magistrate must deliver papers to district court.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-27. Charge investigated by magistrate if corporation appears.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-28. Appearance by corporation - Hearing - Certificate of magistrate - Procedure.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-29. Return of certificate of probable cause - Procedure.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-30. Information or indictment against corporation without preliminary hearing.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-31. Effect of failure by corporation to answer summons.

Superseded by N.D.R.Crim.P., Rule 5.1.

29-07-32. Record of magistrate to be kept on docket.

Superseded by N.D.R.Crim.P., Rule 5.1.

CHAPTER 29-08 BAIL

29-08-01. Bail defined.

Bail is the security required and given for the release of a person who is in the custody of the law that the person will appear before any court in which the person's appearance may be required and that the person will do, or refrain from doing, such things as are stipulated in the bail bond or recognizance referred to in this chapter as the undertaking.

29-08-02. Admission to bail defined - Delegation of authority by magistrate.

Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon an undertaking with sufficient sureties for the defendant's appearance. Any magistrate or municipal judge in this state may designate, authorize, and appoint an additional person or persons to arrange, receive, and approve bail in cases involving traffic violations.

29-08-03. Taking of bail defined.

The taking of bail consists of the acceptance by a competent court or magistrate, or a legally authorized officer, of an undertaking with sufficient sureties for the appearance of the defendant in person, according to the terms of the undertaking, or that the sureties will pay to the state a specified sum.

29-08-03.1. Supreme court uniform bail schedule initiative - Report.

1. The supreme court shall establish a uniform bail schedule to apply when an individual has been taken into custody and has not yet appeared before the district court for a violation of a state offense to achieve substantial uniformity of bail in district court.
2. The uniform bail schedule must be established in cooperation with the district court.
3. When establishing the uniform bail schedule, the supreme court shall consider the following factors when setting the standard amount of bail:
 - a. Maintaining public safety;
 - b. The severity of the offense justifying the bail amount;
 - c. The need to assure defendants appear for court hearings;
 - d. Equal treatment within the judicial system;
 - e. Constitutional limits and requirements related to bail;
 - f. Prohibiting excessive bail; and
 - g. Any other factors considered by the supreme court to be relevant.
4. The supreme court may adjust the standard bail amounts established by the uniform bail schedule as needed or when requested by the district court.
5. The uniform bail schedule must be implemented by August 1, 2024.
6. Before September 1, 2024, the supreme court shall provide a report to the legislative management regarding the implementation of the uniform bail schedule and the standard amount of bail for each state offense.

29-08-04. When bail must be taken.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-05. Bail upon charge of murder in first degree.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-06. Bail on appeal after conviction.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-07. Amount of bail upon charge of larceny of livestock.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-08. Admission to bail before conviction.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-09. Admission to bail after conviction.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-10. Bail in cases of illness.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-11. Bail taken - Order of discharge.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-12. Qualification of bail - Justification.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-13. Fidelity and surety company may act as sureties on criminal undertaking for bail.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-14. Deposit of money or bonds as bail.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-15. Bail after deposit of money or bonds.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-16. Notice to state's attorney.

Whenever admission to bail is a matter of discretion, the court, magistrate, or officer to whom application therefor is made shall require reasonable notice thereof to be given to the state's attorney of the county.

29-08-17. Who may take bail.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-18. Form of undertaking of bail.

Superseded by N.D.R.Crim.P., Rules 46, 58.

29-08-19. Who may make order admitting to bail on appeal.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-20. Defendant may be arrested by bail.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-21. Forfeiture of bail - Excuse - Disposition of traffic violation cases.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-22. Increase or decrease of bail - Notice to state's attorney.

The court in which a criminal action is pending, or a judge thereof, for good cause and with or without notice to the defendant, may increase or reduce the amount of bail. If the defendant applies for a reduction of the amount of bail, reasonable notice of such application must be given to the state's attorney of the county.

29-08-23. Additional security may be required by court.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-24. Action on undertaking - Defects not fatal.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-25. When surety may be discharged.

Superseded by N.D.R.Crim.P., Rule 46.

29-08-26. Bail pending extradition.

Pending the determination of habeas corpus proceedings, a person taken into custody under a warrant issued by the governor of this state upon the requisition of the governor of another state or territory at the discretion of the court or judge may be admitted to bail by the court or judge issuing the writ of habeas corpus.

29-08-27. Jumping bail a misdemeanor.

Repealed by S.L. 1975, ch. 106, § 673.

29-08-28. Bail - Defendant's property.

Except as otherwise provided in this section, moneys deposited as bail are the property of the defendant, whether deposited by the defendant or by a third person on the defendant's behalf. If bail moneys are deposited by a third person, the person must be notified at the time of deposit that the moneys may be paid to the defendant upon final disposition of the case or applied to any fine, cost, or restitution imposed on the defendant. The person may direct, subject to further order of the judge, that the deposited moneys be released to that person upon final disposition of the case. When moneys are accepted by the court as bail, the judge shall order that the moneys received be deposited with the clerk of court. The clerk shall retain the moneys until the final order of the court disposing of the case. Upon release of the moneys held by the clerk, the moneys must be paid to the defendant or pursuant to the defendant's written direction or, unless otherwise ordered by the judge, as directed by a person who deposited moneys on behalf of the defendant. In the case of a conviction, the judge may order the moneys to be applied to any fine, cost, or restitution imposed on the defendant. The balance of the deposit, if any, must be paid to the defendant. Moneys deposited with the court or clerk of court as bail are exempt from garnishment, attachment, or execution.

CHAPTER 29-10.1 GRAND JURY

29-10.1-01. Grand jury defined - Formation - Functions.

A grand jury must consist of not less than eight nor more than eleven persons of the county possessing the qualifications of jurors prescribed by law, and impaneled and sworn to inquire into all crimes or public offenses against laws of this state triable within the county and, if the evidence warrants, present them to the district court by written indictment.

29-10.1-02. When grand jury may be called.

No grand jury may be drawn, summoned, or convened in any county within this state unless the district judge thereof shall so direct by a written order filed with the clerk of the court in the county wherein the said grand jury is required to attend. Any judge of the district court for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

1. The judge deems the attendance of a grand jury necessary for the due enforcement of the laws of the state;
2. The state's attorney of the county wherein the court is to be held, in writing, requests the judge so to do; or
3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least twenty-five percent of the total vote cast in the county for the office of governor of the state at the last general election, but the number of signatures required may not be fewer than two hundred twenty-five nor exceed five thousand.

29-10.1-03. Judge to summon grand jury.

Upon presentment of the request of petition, the judge shall promptly summon and convene the grand jury.

29-10.1-04. Petition for grand jury - Petitioners - Number - Session.

The petition for a grand jury prescribed by section 29-10.1-02 must be verified on information and belief by at least three of the petitioners. The formation of a grand jury under this chapter may not be invalidated should it appear or be proven after the grand jury has been summoned that any of the petitioners were not qualified electors or that the petition was not signed by the required number of qualified electors. No grand jury may remain in session in excess of ten calendar days, unless the judge by written order filed with the clerk of the court extends the session as may be necessary. Unless extended, the grand jury must be discharged at the close of the tenth day of its session. Saturdays, legal holidays, and days in recess must be excluded in computing the duration of the initial or extended session.

29-10.1-05. Challenges by state, when, and causes.

1. The state may challenge the panel of a grand jury or an individual grand juror at any time before the grand jury is impaneled and sworn.
2. A challenge to the panel may be asserted by the state upon the ground only that the grand jurors were not selected according to law.
3. A challenge to an individual grand juror may be asserted by the state upon the ground only that the person is not a qualified juror.

29-10.1-06. Challenge may be oral or written.

A challenge to the panel or to an individual grand juror may be oral or in writing and must be tried to the court.

29-10.1-07. Challenge allowed or disallowed - Entry by clerk.

The court shall allow or disallow a challenge to the panel of a grand jury or to an individual grand juror, and the clerk shall enter its decision upon the minutes.

29-10.1-08. Challenge allowed - Procedure.

Whenever a challenge to the panel or to an individual grand juror is allowed, the court shall make an order to the jury commission to summon without delay a sufficient number of persons to complete or to form a grand jury.

29-10.1-09. Jury discharged if challenge to panel allowed.

If a challenge to the panel is allowed, the grand jury must be discharged in which event the judge may order another grand jury to be summoned and convened.

29-10.1-10. Challenge to panel after indictment presented.

At any time prior to pleading to the indictment, the person against whom an indictment has been found and presented may move the court to dismiss the indictment upon the ground that the jurors were not selected or impaneled according to law.

29-10.1-11. Court to appoint foreman and vice foreman.

When the grand jury is completed, the court shall appoint one of the jurors to be foreman and another to act as foreman in case of the absence of the foreman.

29-10.1-12. Oath of grand jurors.

Superseded by N.D.R.Ct. 6.10.

29-10.1-13. Court shall charge grand jury - Duty of court to advise.

After the grand jury is impaneled and sworn, the court shall charge the jurors concerning the offenses that may be considered by them or that are likely to come before them, and concerning their duties as prescribed by law. The court, upon request of the grand jurors and at all reasonable times, shall advise them regarding their duties.

29-10.1-14. Retirement of grand jurors.

After the charge by the court, the grand jurors shall retire to a private room which must be provided for by the county commissioners and perform their duties as prescribed by law.

29-10.1-15. Clerk appointment by grand jurors - Duty.

The grand jury, unless a competent reporter is appointed, shall appoint a member of the jury as clerk, who shall preserve minutes of all the proceedings of the jurors, and exhibits presented, except of the votes of the individual members, and of the evidence given before them. Upon the conclusion of the grand jury session, all exhibits must be placed in the custody of the state's attorney unless otherwise directed by the court.

29-10.1-16. Reporter - Transcript.

1. Unless otherwise directed by the court, the grand jury shall appoint a competent reporter who must be sworn and who shall record in shorthand or stenotype notes, the testimony given in matters before the grand jury. Whenever an indictment is returned, and if so directed by the court, the reporter shall cause the testimony to be transcribed.
2. Whenever the court directs the testimony to be transcribed, the reporter shall certify and file with the clerk of court the original and sufficient copies of the transcript so as to provide a copy for each person indicted and one for the state's attorney or prosecutor. The reporter shall complete the certification of the transcript within thirty days after the date of the order unless a different period of time is specified by the court.
3. All exhibits presented to the grand jury must be placed in the custody of the state's attorney or prosecutor unless otherwise directed by the court.

29-10.1-17. Selection of jurors.

Before accepting a person drawn as a grand juror, the court must be satisfied that such person is duly qualified to act as such. A person drawn as a juror may be excused for good cause by the court before the person is sworn.

29-10.1-18. Expenses.

All necessary expenses of the grand jury incurred in its official capacity must be paid by the state out of funds appropriated to the supreme court.

29-10.1-19. Subpoenas.

The grand jury may issue subpoenas or subpoenas duces tecum to any witness within the state. Subpoenas may also be issued by the state's attorney or prosecutor in the manner provided in the statutes or North Dakota Rules of Criminal Procedure.

29-10.1-20. Filling vacancies.

Whenever the membership of a grand jury is reduced in number for any reason, after the grand jury has been impaneled, the judge may direct that the vacancy be filled, and shall so direct if necessary to maintain the minimum number required, in the same manner as the original members were selected. No person selected as a grand juror to fill a vacancy may vote on any matter upon which evidence has been taken prior to the time of the person's selection.

29-10.1-21. General duties of grand jury.

Each grand jury impaneled within any county shall inquire into offenses against the criminal laws of the state alleged to have been committed within that county. The alleged offenses may be brought to the attention of the grand jury by the court or by any state's attorney or the state's attorney's designee. The state's attorney or the state's attorney's designee shall inform the grand jury of the alleged offense, the identity of the alleged offender, and the state's attorney or state's attorney's designee's action or recommendation. As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of an information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court.

29-10.1-22. Subjects of grand jury inquiry.

Whenever directed by the district court, the grand jury shall inquire into:

1. The condition and management of the public prisons in the county; and
2. Willful and corrupt felonious misconduct in office of public officials of every description in the county.

29-10.1-23. Grand jurors entitled to access to prisons and public records.

Grand jurors are entitled to free access, at all reasonable times, to public prisons, and to the examination, without charge, of all public records in the county.

29-10.1-24. Member must report known offense and must give evidence.

If a member of a grand jury knows or has reason to believe that a public offense which is triable in the county has been committed, the member shall declare such fact to the member's fellow jurors, who shall investigate the same. In such investigation, the grand juror may be sworn as a witness.

29-10.1-25. Oath or affirmation to witness.

Superseded by N.D.R.Ct. 6.10.

29-10.1-26. Reception of evidence.

1. Subject to subsection 2, the grand jury shall receive only evidence which is:
 - a. Given by witnesses produced and sworn before the grand jury;
 - b. Furnished by writings, material objects, or other things perceivable through the senses; or

- c. Contained in a deposition or transcript that is admissible under the North Dakota Rules of Criminal Procedure.
2. The grand jury shall receive only evidence that would be admissible over objection at the trial of a criminal action, but the fact the evidence inadmissible at the trial was received by the grand jury does not render the indictment void if sufficient competent evidence to support the indictment was received by the grand jury.

29-10.1-27. Exculpatory evidence.

The grand jury shall weigh all the evidence submitted to it, and when it has reason to believe that there is exculpatory evidence within its reach, it shall order the evidence to be produced, and for that purpose may require the state's attorney or prosecutor to issue process for the production of such evidence.

29-10.1-28. Who may be present during sessions of grand jury.

No person may be present at a session of the grand jury, other than the witnesses under examination, the judge while giving advice requested by the grand jury, the state's attorney or prosecutor, the attorney general, and the reporter, or interpreter, if any. No person other than the grand jurors may be present while the grand jurors are deliberating or voting, nor may the grand jurors deliberate or vote while any other persons are present. Whenever the grand jury is investigating the state's attorney or any person connected with the state's attorney's office, neither the state's attorney nor any of the state's attorney's assistants or staff may be present before such grand jury during the time of such investigation, except as a witness and, after such appearance as a witness, shall leave the place where the grand jury is in session.

29-10.1-29. Duty of state's attorney.

The state's attorney or prosecutor, upon the request of the grand jurors, shall advise them regarding their duties. The state's attorney or prosecutor, at all reasonable times, may appear before them on the person's own motion for the purpose of giving the grand jurors information or advice regarding any matter cognizable by them and may interrogate witnesses before them whenever the state's attorney or prosecutor believes it necessary.

29-10.1-30. Secrecy of things said and votes - Limited disclosure by certain persons and under certain conditions.

1. Every member of a grand jury shall keep secret whatever that member or any other grand juror may have said, or in what manner that member or any other grand juror may have voted on a matter before the jurors.
2. Matters other than the deliberations and vote of any grand juror may be disclosed by the state's attorney, prosecutor, or attorney general solely in the performance of the person's duties.
3. Otherwise a juror, attorney, interpreter, reporter, or public servant, having official duties in or about a grand jury room or proceeding, may disclose matters occurring before the grand jury only when so directed by the court pursuant to section 29-10.1-31.
4. A witness may not disclose any matter about which the witness is interrogated, or any proceedings of the grand jury had in the witness's presence, except to the witness's attorney or when so directed by the court, until an indictment is filed and the accused person is in custody.

29-10.1-31. When juror may disclose testimony upon order of the court.

A member of a grand jury or its reporter or interpreter may be required by any court to disclose the testimony of a witness examined before the grand jury for the purpose of impeachment of the witness before the court, or to disclose the testimony given before them by any person, upon a charge against the person for perjury in giving the person's testimony, or upon the person's trial in a criminal prosecution.

29-10.1-32. Grand juror cannot be questioned.

A grand juror cannot be questioned for anything the grand juror may say, or any vote the grand juror may give, in a session of the grand jury, relative to a matter legally pending before the jurors, except upon a charge against the grand juror for perjury in giving the person's testimony to the person's fellow jurors.

29-10.1-33. When indictment ought to be found.

The grand jurors shall find an indictment charging a person with the commission of an offense when all the evidence before them, taken together, is such as in their judgment would warrant a conviction by the trial jury.

29-10.1-34. Finding indictment - Number of jurors required.

An indictment cannot be found without the concurrence of at least six grand jurors. Whenever so found, it must be endorsed "a true bill" and the endorsement must be signed by the foreman of the grand jury. The names of the witnesses known to the grand jury must be endorsed thereon before the indictment is presented to the court.

29-10.1-35. Presentment of indictment to court by foreman.

An indictment found by the grand jurors must be presented by the foreman, in their presence, to the court, and must be filed with the clerk.

29-10.1-36. Persons indicted - How arrested.

Whenever an indictment is found and presented against a person, the proceedings prescribed in chapter 29-12 govern when necessary to secure the person's appearance before the court.

29-10.1-37. Jurors to be discharged upon completion of business.

Upon the completion of the business before them, or whenever the court is of opinion that the public interests will not be served by further continuation of their sessions, the grand jurors must be discharged by the court.

29-10.1-38. Transcript demand - Waiver of transcript and preliminary examination, when.

Within five days after a first appearance before a magistrate, the person against whom an indictment has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to that person and the charges against that person. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the testimony cannot be obtained, the person indicted is entitled, but not otherwise, to a preliminary examination, as provided by the statutes or North Dakota Rules of Criminal Procedure for persons otherwise charged with a crime. Under such conditions, the preliminary examination must be had before a judge of the district court serving the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

29-10.1-39. Violation constitutes contempt.

Any person who willfully violates any provision of this chapter is guilty of contempt of court.

CHAPTER 29-10.2 STATE GRAND JURY

29-10.2-01. Definition.

As used in this chapter, "organized crime" means racketeering, as defined in section 12.1-06.1-01, or any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid, or abet the violation of criminal laws relating to prostitution, gambling, loansharking, drug abuse, illegal alcohol or drug distribution, counterfeiting, extortion, or corruption of law enforcement officers or other public officers or employees.

29-10.2-02. Attorney general to request state grand jury - District court to impanel jury.

Whenever the attorney general considers it to be in the public interest to convene a grand jury with jurisdiction extending beyond the boundaries of any single county, the attorney general shall petition a judge of the district court for an order impaneling a state grand jury. The judge shall, upon good cause shown, order the impaneling of a state grand jury which has jurisdiction to investigate and indict for crimes committed anywhere within the state. In determining good cause for impaneling a state grand jury, the judge shall require a showing that the matter concerns multicounty criminal activities which involves organized crime as that term is defined herein or corruption of law enforcement officers or other public officers, officials, or employees. The authority and powers granted to the attorney general by this chapter do not supplant or diminish the authority and powers as set out in chapter 29-10.1.

29-10.2-03. Impaneling state grand jury - Selection - Composition.

The judge granting the order to impanel a state grand jury shall determine the counties from which the grand jurors are to be selected with due regard for the expense involved and the inconvenience of travel. The judge granting the order for a state grand jury shall notify the clerk of district court of each county from which the judge intends to select the members of the state grand jury. Upon receipt of the notice to impanel a state grand jury, each clerk of district court shall prepare a list of nine prospective state grand jurors from existing county jury lists in the manner provided by chapter 27-09.1, and forward the clerk's state grand jury list to the clerk of district court of the county in which the order to impanel a state grand jury was granted. The judge granting the order shall impanel the state grand jury from such lists. A state grand jury must be composed of not less than eight nor more than eleven persons and each grand juror shall possess the qualifications of jurors within their respective counties as provided by law. However, not more than one-half of the members may be residents of one county. The members of the state grand jury must be selected and the foremen appointed in the manner provided by chapter 29-10.1 and shall serve a term or terms as provided therein.

29-10.2-04. Summoning jurors - Presentation of evidence - Return of indictments.

1. State grand jurors must be summoned in the same manner and must be governed by the same provisions as jurors of county grand juries. Judicial supervision of the state grand jury must be maintained by the judge who granted the order impaneling the state grand jury in the same manner as with county grand juries. All indictments or other formal returns of any kind made by the state grand jury must be returned to that judge. An indictment may be found only upon the concurrence of at least six jurors.
2. The presentation of the evidence must be made to a state grand jury by the attorney general, an assistant attorney general, or special counsel appointed by the attorney general.
3. Any indictment by a state grand jury must be returned to the supervising judge without any designation of venue. Thereupon the judge shall designate the county of venue for the purposes of trial.

29-10.2-05. Grand jury investigations - Confidentiality - Exceptions.

1. In addition to its power of indictment, a state grand jury impaneled under this chapter may, at the request of the attorney general, cause an investigation to be made into the extent of multicounty criminal activity which involves organized crime as defined herein or corruption of law enforcement officers or other public officers, officials, or employees.
2. Disclosure of any matters occurring before a state grand jury, other than its deliberation and the vote of any juror, may be made to the attorney general for use in the performance of the attorney general's duties. The attorney general may disclose so much of the state grand jury's proceedings to law enforcement agencies as the attorney general considers essential to the public interest and effective law enforcement.
3. A report or presentment of a state grand jury relating to an individual which is not accompanied by a true bill of indictment may not be made public or be published until the individual concerned has been furnished a copy of the report and given thirty days to file with the district court a motion to suppress or seal the report or a portion that is improper and unlawful. The motion, whether granted or denied, automatically acts as a stay of public announcement of the report, or portion of the report, until the district court's ruling on the motion is either affirmed or denied by an appellate court, or until the time in which the order may be appealed has expired, whichever occurs first. The report or portion of the report which is suppressed or sealed may not be opened even by order of the court.

29-10.2-06. Juror fees and expenses.

1. State grand jurors, in addition to receiving the juror fee provided by law for petit jurors, must be reimbursed for necessary expenses on a per diem basis in the same manner and at the same rate as state employees.
2. The costs and expenses incurred in impaneling a state grand jury and in the performance of its functions and duties must be paid by the state out of funds appropriated to the attorney general.

CHAPTER 29-12

PROCESS UPON INFORMATION AND INDICTMENT

29-12-01. Presence enforced by direction of court.

Superseded by N.D.R.Crim.P., Rule 10.

29-12-02. Warrant of arrest.

Superseded by N.D.R.Crim.P., Rule 46.

29-12-03. Warrant, clerk to issue.

Superseded by N.D.R.Crim.P., Rule 9.

29-12-04. Warrant, form - Felony.

Superseded by N.D.R.Crim.P., Rules 9, 58.

29-12-05. Bench warrant, misdemeanor, infraction, or bailable felony.

If an offense is a misdemeanor, an infraction, or a bailable felony, the bench warrant issued must be in a form similar to form 12 as contained in the appendix to the North Dakota Rules of Criminal Procedure but must add to the body thereof a direction to the following effect: "or if the person requires it, that you take the person before any magistrate of that county or in the county in which you arrest the person, that the person may give bail to answer the information (or indictment)".

29-12-06. Court must fix amount of bail.

Superseded by N.D.R.Crim.P., Rule 9.

29-12-07. Arrest upon bench warrant offense not bailable - Custody.

A defendant, when arrested under a bench warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the information is filed or the indictment found.

29-12-08. Warrant served in any county.

Superseded by N.D.R.Crim.P., Rule 9.

29-12-09. Magistrate taking bail - Procedure.

If a defendant is brought before a magistrate of another county under a bench warrant for the purpose of giving bail, the magistrate shall proceed in respect thereto in the same manner as if the defendant had been brought before the magistrate upon a warrant of arrest, and the same proceedings may be had thereon.

29-12-10. Felony, bail given - Increased amount.

When an information or indictment is for a felony, and the defendant, before the filing or finding thereof, has given bail for the defendant's appearance to answer the charge, the court to which the information or indictment is presented, or sent, or removed for trial, may order the defendant to be committed to actual custody either without bail, or until the defendant gives bail in an increased amount, to be specified in the order.

29-12-11. Procedure - Defendant present, defendant absent.

If a defendant is present when an order for a bench warrant is made, the defendant must be committed forthwith. If the defendant is not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

29-12-12. Appearance of corporation charged with offense - Pleas.

Superseded by N.D.R.Crim.P., Rule 43.

29-12-13. Information filed or indictment returned - Summons.

If an information is filed without a preliminary examination, or an indictment is returned against a corporation or limited liability company, the clerk of the district court shall issue a summons in the corporate name of the corporation or limited liability company in the form prescribed in rule 4 of the North Dakota Rules of Criminal Procedure commanding it to appear and answer the information or indictment. Such summons must be served as a summons in a civil action is served.

29-12-14. Default of a corporation or limited liability company - Plea - Fine collected.

Whenever a sheriff or other officer returns a summons issued as is provided in section 29-12-13 with the officer's certificate showing due service thereof, the corporation or limited liability company, if it does not appear on and after the day appointed in such summons for its appearance, must be considered in default and the court shall order the clerk to enter a plea of not guilty for said corporation or limited liability company in the minutes of the court, and all further proceedings must be had in said action as if the corporation or limited liability company had appeared and pleaded not guilty to the information or indictment. If upon the trial the corporation or limited liability company is found guilty, the court shall impose a fine upon it as prescribed by law and shall enter judgment for the amount of such fine and the costs of said action in the same manner as on a judgment in a civil action.

CHAPTER 29-15
REMOVAL OF CAUSE AND CHANGE OF JUDGE

29-15-01. Causes for removal of action.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-02. Petition - Notice - Time to prepare.

Superseded by N.D.R.Crim.P., Rules 21, 22.

29-15-03. Court must order only one change.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-04. Duty of clerk.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-05. Disposition of defendant upon removal.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-06. Court may require bail.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-07. Witnesses upon removal - Undertaking - Notice - Subpoena.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-08. Trial upon removal - Original pleadings - Copies.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-09. Clerk, neglect upon removal - Damages.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-10. Several defendants, removal by one.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-11. Removal by state - Procedure.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-12. Prosecution by officers of county where action was commenced - Jurisdiction of court.

Superseded by N.D.R.Crim.P., Rule 21.

29-15-13. Prejudice or bias of judge - Affidavit - Filing.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-14. Affidavit of prejudice to be filed.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-15. The supreme court to designate trial judge.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-16. Judge designated to conduct trial forthwith - Notice to parties.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-17. Expenses of judge designated.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-18. Jurors not to be excused by disqualified judge.

Repealed by S.L. 1951, ch. 203, § 1.

29-15-19. Only one change of judges allowable.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-20. Procedure when affidavit of prejudice and for change of venue is filed in criminal action.

Repealed by S.L. 1971, ch. 316, § 2.

29-15-21. Demand for change of judge.

1. Subject to the provisions of this section, any party to a civil or criminal action or proceeding pending in the district court may obtain a change of the judge before whom the trial or any proceeding with respect thereto is to be heard by filing with the clerk of the court in which the action or proceeding is pending the original of a written demand for change of judge, executed either:
 - a. By the personal signature of the party, if an individual, and by the personal signature of an authorized officer or manager, if a corporation, limited liability company, or association; or
 - b. By the attorney for a party with the permission of the party, in which event the attorney shall file with the demand a certificate that the attorney has mailed a copy of the demand to such party.
2. The demand is invalid unless it is filed with the clerk of the court not later than ten days after the occurrence of the earliest of any one of the following events:
 - a. The date of the notice of assignment or reassignment of a judge for trial of the case;
 - b. The date of notice that a trial has been scheduled; or
 - c. The date of service of any ex parte order in the case signed by the judge against whom the demand is filed.
3. Any party who has been added, voluntarily or involuntarily, to the action or proceeding after the date of any occurrence in subsection 2 has the right to file a demand for change of judge within ten days after any remaining event occurs or, if all of those events have already occurred, within ten days after that party has been added. In any event, no demand for a change of judge may be made after the judge sought to be disqualified has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity to be heard. Any proceeding to modify an order for alimony, property division, or child support pursuant to section 14-05-24 or an order for child custody pursuant to section 14-05-22 must be considered a proceeding separate from the original action and the fact that the judge sought to be disqualified made any ruling in the original action does not bar a demand for a change of judge.
4. The demand for change of judge must state that it is filed in good faith and not for the purposes of delay. It must indicate the nature of the action or proceeding, designate the judge sought to be disqualified, and certify that that judge has not ruled upon any matter pertaining to the action or proceeding in which the moving party was heard or had an opportunity to be heard.
5. Upon the filing of the demand for change of judge, the clerk shall immediately send a copy of the demand for a change of judge to the presiding judge of the judicial district and the judge sought to be disqualified.
6. Upon receipt of a copy of a demand for change of judge, the judge sought to be disqualified has no authority or discretion to determine the timeliness or validity of the demand and shall proceed no further or take any action in the action or proceeding and is thereafter disqualified from doing any further act in the cause unless the demand is invalidated by the presiding judge. The judge sought to be disqualified shall promptly submit to the presiding judge any comments the judge may have regarding

the demand. If the presiding judge thereafter invalidates the demand because it was not timely filed or for other reasons, the judge sought to be disqualified shall resume jurisdiction in the case and hear and determine the case to conclusion.

7. If a demand for a change of judge has been made and another judge assigned by the presiding judge of the judicial district, the presiding judge may decline to grant another demand for a change of judge made by a party whose interests in the matter are not adverse to those of the party whose demand was granted. A judge assigned by the presiding judge pursuant to a demand for change of judge is not disqualified upon a subsequent demand for change of judge unless and until the subsequent demand is granted and notice thereof is given to that judge by the presiding judge. A subsequent demand for a change of judge may be made only within five days after receiving notice of the assignment of a judge by the presiding judge pursuant to a previous demand.
8. Upon receipt of a timely filed demand for a change of judge from the clerk of the court, the presiding judge of the judicial district in which the demand is filed shall promptly designate another judge to act in the place and stead of the judge disqualified.
9. The judge designated, after receiving such notice of the assignment from the presiding judge, shall promptly proceed with the hearing or trial, first giving to the parties or their attorneys reasonable notice of the date of the hearing or trial.

CHAPTER 29-16 METHOD OF TRIAL

29-16-01. Issue of fact.

Repealed by S.L. 2023, ch. 304, § 1.

29-16-02. Issues of fact tried by jury - When trial by jury may be waived.

In any case, whether a misdemeanor or felony, a trial jury may be waived by the consent of the defendant and the state's attorney expressed in open court and entered on the minutes of the court. Otherwise, the issues of fact must be tried by the jury.

29-16-03. Presence of defendant if felony charged.

Superseded by N.D.R.Crim.P., Rule 43.

29-16-04. Presence of defendant in prosecution for misdemeanor.

Superseded by N.D.R.Crim.P., Rule 43.

29-16-05. Order or warrant requiring presence of defendant.

If the presence of a defendant on trial for an infraction or a misdemeanor, who is voluntarily absent, is necessary for any purpose, the court, upon application of the state's attorney or other person appointed to prosecute, may make an order or warrant requiring the personal attendance of the defendant at the trial.

29-16-06. Presence of defendant at proceedings before and after trial.

Superseded by N.D.R.Crim.P., Rule 43.

29-16-07. Time to prepare for trial.

After a plea of not guilty, the defendant, if the defendant requests it, is entitled to at least one day to prepare for trial, and further time for good cause shown.

CHAPTER 29-17 TRIAL JURY

29-17-01. Jurors in criminal actions same as those summoned for civil actions.

The jurors duly drawn and summoned for the trial of civil actions also are the jurors for the trial of criminal actions.

29-17-02. How trial jury formed.

A trial jury for a criminal action must be formed in the same manner as a trial jury in a civil action.

29-17-03. Clerk selection of juror names - Randomized list.

At the opening of the court, the clerk shall select the names of prospective jurors from a randomized list of names developed in accordance with chapter 27-09.1 and supreme court rule.

29-17-04. Parties may require names of all jurors in panel to be called.

When a case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court may order that an attachment issue against those who are absent, but the court, in its discretion, may wait or not for the return of the attachment.

29-17-05. Manner of drawing jury.

Repealed by S.L. 2009, ch. 280, § 3.

29-17-06. Ballots laid aside until jurors discharged.

Repealed by S.L. 2009, ch. 280, § 3.

29-17-07. When jurors discharged names returned to box.

Repealed by S.L. 2009, ch. 280, § 3.

29-17-08. Name of absent or disqualified juror returned to box when jury completed.

Repealed by S.L. 2009, ch. 280, § 3.

29-17-09. Completion of panel - Procedure.

Repealed by S.L. 1999, ch. 292, § 2.

29-17-10. Names of additional jurors - Ballots deposited in box.

Repealed by S.L. 2009, ch. 280, § 3.

29-17-11. Drawing the jury.

Repealed by S.L. 2009, ch. 280, § 3.

29-17-12. Number of jurors - How sworn.

In all felony cases when a jury is impaneled, a jury must consist of twelve qualified jurors. In class A misdemeanor cases when a jury is impaneled, a jury must consist of six qualified jurors unless the defendant makes a timely written demand for a jury of twelve. In all other misdemeanor cases when a jury is impaneled, a jury must consist of six qualified jurors. Jurors must be sworn or affirmed well and truly to try and true deliverance make between the state of North Dakota and the defendant whom they have in charge, and to give a true verdict according to the evidence. The verdict must be unanimous.

29-17-13. Number failing, others summoned.

If a sufficient number of jurors cannot be selected to form a trial jury, the court, as often as is necessary, may order the sheriff to summon from the body of the county as many persons qualified to serve as jurors as the court deems sufficient to form a jury. The jurors so summoned may be called from the list returned by the sheriff, and as many of them not excused or discharged as may be necessary to complete the jury must be impaneled and sworn.

29-17-14. Juror may affirm.

Superseded by N.D.R.Ct. 6.10.

29-17-15. Challenges defined and classified.

A challenge is an objection made to the trial jurors and is of two kinds:

1. To the panel; and
2. To an individual juror.

29-17-16. When several defendants are tried together they must join their challenges.

When several defendants are tried together they cannot sever their challenges but must join therein.

29-17-17. Panel defined.

A jury panel is a list of jurors returned by a sheriff to serve at a particular court or for the trial of a particular action.

29-17-18. Challenge to panel defined.

A challenge to a panel is an objection made to all the trial jurors returned and may be taken by either party.

29-17-19. Causes for challenge to panel.

A challenge to a panel can be founded only on a material departure from the forms prescribed by law in respect to the drawing and return of the jury, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

29-17-20. Challenge to panel before challenge to individual juror.

A challenge to a jury panel must be taken before a juror is sworn and must be in writing specifying plainly and distinctly the facts constituting the ground of challenge.

29-17-21. Sufficiency of facts controverted - Procedure.

If the sufficiency of the facts alleged as a ground of challenge of a panel is controverted by the adverse party, that party may except to the challenge. The exception need not be in writing but must be entered upon the minutes of the court, and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts therein alleged to be true.

29-17-22. Facts stated in challenge denied - Procedure.

If, on the exception, the court deems the challenge to a panel sufficient, it, if justice requires it, may permit the party excepting to withdraw the party's exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court, in like manner, may permit an amendment of the challenge.

29-17-23. Trial of question of fact.

If facts alleged as the grounds of a challenge to a panel are denied, the denial, in like manner, may be oral and must be entered upon the minutes of the court, and the court shall proceed to try the questions of fact.

29-17-24. Officers may be examined.

Upon the trial of a challenge to a panel, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

29-17-25. Challenge taken for officer's bias.

When a jury is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form and determined in the same manner as if made to a juror.

29-17-26. Challenge allowed - Jury discharged.

If upon an exception to a challenge to a panel, or a denial of the facts, the challenge is allowed, the court shall discharge the jury, and another jury can be summoned for the same term forthwith from the body of the county, or the judge may order a jury to be drawn and summoned in the regular manner. If the challenge is disallowed, the court shall direct the jury to be impaneled.

29-17-27. Challenge to individual juror - Peremptory or for cause.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-28. Jurors examined by either party.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-29. Challenge taken before juror sworn.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-30. Peremptory challenge.

A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given but upon which the court must exclude that juror.

29-17-31. Challenges to prosecution and defendant.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-32. Challenge for cause.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-33. Challenges for cause defined and classified.

A challenge for cause is an objection to a particular juror and is either:

1. General, that the juror is disqualified from serving in any case or trial; or
2. Particular, that the juror is disqualified from serving in the case on trial.

29-17-34. General causes of challenge specified.

General causes of challenges are:

1. A want of any of the qualifications prescribed by law to render a person a competent juror, including a want of knowledge of the English language as used in the courts; and
2. Unsoundness of mind or such defect in the faculties of the mind or organs of the body as renders the juror incapable of performing the duties of a juror.

29-17-35. Particular causes of challenge specified.

Particular causes of challenge are of two kinds:

1. A bias which, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias; and
2. The existence of a state of mind on the part of the juror, with reference to the case or to either party, which satisfies the court, in the exercise of a sound discretion, that the

juror cannot try the issue impartially without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.

29-17-36. Matters constituting implied bias specified.

A challenge for implied bias of a juror may be taken for all or any of the following causes, and for no other:

1. Consanguinity or relationship to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.
2. The relationship of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor, or membership in the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or employment by either.
3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by the defendant in a criminal prosecution.
4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the action.
5. Having served on a trial jury which has tried another person for the offense charged.
6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.
7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.
8. Repealed by S.L. 1975, ch. 106, § 673.
9. Having served as a member of the jury panel within two years.

29-17-37. Exemption is not cause.

An exemption from service on a jury is not a cause of challenge but the privilege of the person exempted.

29-17-38. How challenge taken - Cause stated.

In a challenge for implied bias, one or more of the causes stated in section 29-17-36 must be alleged. In a challenge for actual bias, the cause stated in subsection 2 of section 29-17-35 must be alleged, but no person may be disqualified as a juror by reason of the fact that the person may have heard from others or read in newspapers or public journals any statement or statements with regard to the case to be submitted to the jury, if it appears to the satisfaction of the court that the impression remaining upon the mind of such person from the statements so communicated to the person will not prevent the person from trying the case fairly and impartially. The challenge may be oral but must be entered upon the minutes of the court.

29-17-39. Exception to the challenge.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-40. All challenges tried by the court.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-41. Juror challenged a witness.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-42. Other witnesses may be examined - Rules of evidence.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-43. Court must allow or disallow challenge.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-44. Order of taking challenges.

All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the state, and each party shall exhaust all of that party's challenges before the other begins.

29-17-45. Order of challenges for cause.

The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias; and
4. To an individual juror for actual bias.

29-17-46. Peremptory challenges taken.

If all challenges on both sides are disallowed, either party, first the state and then the defendant, may take a peremptory challenge, unless the party's peremptory challenges are exhausted.

29-17-47. Alternate jurors, selection - Procedure.

Superseded by N.D.R.Crim.P., Rule 24.

29-17-48. Alternate jurors, oath - Duties.

Superseded by N.D.R.Crim.P., Rule 24.

CHAPTER 29-18
DISMISSAL OF PROSECUTION

[Superseded by North Dakota Rules of Criminal Procedure, Rule 48]

CHAPTER 29-19 CONTINUANCE

29-19-01. Definition of continuance.

A continuance, within the meaning of this chapter, is the postponement of a cause for any period of time.

29-19-02. Right to speedy trial.

In a criminal prosecution, the state and the defendant each shall have the right to a speedy trial. The right to a speedy trial in a criminal case in which the charging instrument contains a charge of a felony offense under section 19-03.1-23 or under chapter 12.1-20 is for the trial to begin within ninety days of the date the party elects this right. The prosecution and the defendant shall elect this right within fourteen days following the arraignment. The court may allow the trial to begin later than ninety days of the arraignment for good cause.

29-19-03. Court may grant continuance.

The court, upon a showing of sufficient cause therefor by either party, may direct the trial of a cause to be postponed to another day in the same term or to the next term.

29-19-04. Cause for postponement.

Any cause that would be considered adequate for a postponement of a civil action is sufficient in a criminal action.

29-19-05. When application for continuance to be made.

An application for a continuance may be made when a criminal action is called for trial, or at any time previous thereto.

29-19-06. Application for continuance on ground of absent witness.

An application for a continuance on the ground that a witness is absent must show:

1. That the applicant has used due diligence to prepare for the trial;
2. The nature of the diligence used;
3. The name and residence of the absent witness;
4. What the applicant expects or believes such witness would testify were that witness present and orally examined in court;
5. That the testimony of the witness is material;
6. The nature of any document wanted and where the same may be found;
7. That the same facts cannot be satisfactorily shown by other evidence; and
8. That the witness is not absent through the connivance or counsel of the applicant.

29-19-07. Application for continuance on ground defendant or attorney is member of assembly - Grounds.

An application for a continuance on the ground that the defendant or the defendant's attorney of record is a member of either house of the legislative assembly must show:

1. That the legislative assembly then is, or at the time of trial, will be in session;
2. If made by the attorney, that the person has been the attorney of record for the defendant for more than fifteen days prior to the making of the application;
3. That the applicant is a member of one of the houses of the legislative assembly;
4. That the applicant then is, or at the beginning of the term of court in which said action is pending will be, actually engaged in the person's duties in the assembly; and
5. That the applicant's attendance is necessary to a fair and proper trial of said action.

Service of the application must be made at least ten days before the opening of the term of court at which such action is pending. The case may not be tried over the objection of the defendant within ten days after the adjournment of the legislative assembly.

29-19-08. Application for continuance to be in writing - Contents.

An application for a continuance must be in writing unless otherwise ordered by the court. Such application must specify the ground or grounds upon which it is based and must be filed by the state's attorney or counsel for the defendant, as the case may be.

29-19-09. Hearing of application and action thereon.

The party applying for a continuance may file affidavits in support of that application and counter affidavits may be received or denied as the court may direct.

29-19-10. Entry of reasons for continuance in minutes of court.

Whenever a continuance is granted, the reasons therefor must be entered in the minutes of the court.

29-19-11. Continuance when there are several defendants.

When there are several defendants and a continuance is granted on the application of one or more but not of all defendants, the trial of the other defendants must proceed unless the court otherwise directs.

CHAPTER 29-20
DETERMINATION OF DEFENDANT'S MENTAL CONDITION
[Repealed by S.L. 1973, ch. 116, § 41]

CHAPTER 29-21 TRIAL

29-21-01. Order of trial.

The jurors having been impaneled and sworn, the trial must proceed in the following order:

1. If the information or indictment is for a felony, the clerk or state's attorney shall read it, and shall state the plea of the defendant to the jury. In all other cases this formality may be dispensed with.
2. The state's attorney, or other counsel for the state, shall open the case and offer the evidence in support of the information or indictment.
3. The defendant or the defendant's counsel then may open the defense and offer the defendant's evidence in support thereof.
4. The parties then, respectively, may offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, or to correct an evident oversight, permits them to offer evidence upon their original case.
5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the counsel for the state shall commence, and the defendant or the defendant's counsel shall follow. Then the counsel for the state shall conclude the argument to the jury.
6. The judge then shall charge the jury.

29-21-02. Order of trial may be changed for cause.

When the state of the pleadings requires it, or in any other case, for good reasons and in the sound discretion of the court, the order of trial and argument prescribed in section 29-21-01 may be departed from.

29-21-03. Court to decide questions of law.

The court shall decide all questions of law which arise in the course of the trial.

29-21-04. Jurors generally determine only facts.

On the trial of an information or indictment for any offense other than libel, questions of law are to be decided by the court, and, although the jurors have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

29-21-05. Presumption of innocence - Acquittal on reasonable doubt.

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether the defendant's guilt is satisfactorily shown, the defendant is entitled to be acquitted.

29-21-06. Doubt as to degree of crime.

When it appears that a defendant has committed a public offense and there is reasonable ground to doubt in which of two or more degrees the defendant is guilty, the defendant can be convicted of the lowest of such degrees only.

29-21-07. Persons jointly accused of crime jointly tried - Exceptions.

Whenever two or more persons are jointly charged with any crime, they must be tried jointly, subject to the power of the court, in its discretion and for special reasons, to order separate trials as to one or more of the defendants, and when tried jointly there may be joint or several convictions or acquittals, as the jury may determine the facts.

29-21-08. Defendant discharged to testify.

When two or more persons are charged with an offense in the same information or indictment, the court, at any time before the defendants have gone into their defense, on the

application of the state's attorney, may direct any defendant to be discharged from the information or indictment, that that defendant may be a witness for the state.

29-21-09. Discharge to be witness for codefendant.

Whenever two or more persons are charged with an offense in the same information or indictment, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put that person on that person's defense, it shall order that person to be discharged before the evidence is closed that that person may be a witness for that person's codefendant.

29-21-10. Such discharge an acquittal - Bar to further prosecution.

The discharge of a defendant under either of sections 29-21-08 and 29-21-09 is an acquittal of the offense charged in the information or indictment, or any offense of which that person might have been found guilty thereunder, and is a bar to another prosecution therefor.

29-21-11. Defendant witness in own behalf.

In the trial of a criminal action or proceeding before any court or magistrate of this state, whether prosecuted by information, indictment, complaint, or otherwise, the defendant, at the defendant's own request and not otherwise, must be deemed a competent witness, but the defendant's neglect or refusal to testify does not create or raise any presumption of guilt against the defendant. Nor may such neglect or refusal be referred to by any attorney prosecuting the case, or considered by the court or jury before whom the trial takes place.

29-21-12. Rules of evidence.

Superseded by N.D.R.Crim.P., Rule 26; N.D.R.Ev., Rule 101.

29-21-12.1. Statements, admissions, or confessions procured by duress, fraud, threat, or promises inadmissible in any criminal action.

Repealed by S.L. 1995, ch. 320, § 1.

29-21-13. Forgery - Proof on trial.

Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

29-21-14. Testimony of accomplice - Corroboration required.

A conviction cannot be had upon the testimony of an accomplice unless the accomplice is corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense, or the circumstances thereof.

29-21-15. Mistake in offense charged - Other proceedings.

When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant must not be discharged, if there appears good cause to detain the defendant in custody, but the court shall commit the defendant, or require the defendant to give bail for the defendant's appearance to answer to the offense, and also may require the witnesses to give bail for their appearance. The provisions of rule 12 of the North Dakota Rules of Criminal Procedure as to the manner and time of prosecution, so far as applicable, govern the further proceedings under this section.

29-21-16. Mistake in charge not former acquittal nor putting once in jeopardy.

Repealed by S.L. 2023, ch. 304, § 1.

29-21-17. Trial on original charge after mistake.

If, after a mistake in charging an offense as is provided in section 29-21-15, a new information is not filed nor a new indictment found as is provided in rule 12 of the North Dakota Rules of Criminal Procedure, the court shall proceed again to try the defendant on the original charge.

29-21-18. Juror knowing fact - Witness.

Superseded by N.D.R.Ev., Rule 606.

29-21-19. Want of jurisdiction appearing - Jury discharged.

The court may direct the jury to be discharged, when it appears that it has not jurisdiction of the offense, or that the facts charged in the information or indictment do not constitute an offense punishable by law.

29-21-20. Disposition of accused on discharge of jury.

If the jury is discharged because the court has not jurisdiction of the offense charged, and it appears that it was committed out of the jurisdiction of this state, the defendant must be discharged, unless the court orders that the defendant be detained for a reasonable time, to be specified in the order, to enable the state's attorney to communicate with the chief executive officer of the country, state, territory, or district where the offense charged was committed.

29-21-21. Admission to bail.

If an offense which the court is without jurisdiction to try was committed within the jurisdiction of another county of this state, the court may direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for the defendant's arrest, or if the offense is a misdemeanor or an infraction, it may admit the defendant to bail in an undertaking, with sufficient sureties, that the defendant, within such time as the court may appoint, will submit to a warrant for the defendant's arrest from the proper county, and if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a time particularly specified in the undertaking, to submit to the warrant if issued, or that the defendant's bail will forfeit such sum as the court may fix, and to be mentioned in the undertaking.

29-21-22. Certified copies of papers sent to proper county by clerk.

In the cases provided for in section 29-21-21, the clerk forthwith shall transmit a certified copy of the information or indictment and of all the papers filed in the action to the proper county, the expense of which transmission is chargeable to that county.

29-21-23. When accused discharged.

If a defendant is not arrested on a warrant from the proper county:

1. The defendant must be discharged from custody;
2. The defendant's bail in the action must be exonerated; or
3. Money deposited instead of bail must be refunded,

as the case may be, and the sureties in the undertaking, as mentioned in section 29-21-21, must be discharged.

29-21-24. Proceedings if accused arrested.

If a defendant, on a warrant from a proper county, is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county, on a warrant of arrest issued by a magistrate.

29-21-25. Court must discharge accused - Exception.

If a jury is discharged because the facts as charged do not constitute an offense punishable by law, the court shall order that the defendant, if in custody, be discharged therefrom, or, if admitted to bail, that the defendant's bail be exonerated, or if the defendant has deposited

money instead of bail, that the money deposited be refunded to the defendant, unless in its opinion a new information or indictment can be framed upon which the defendant can be legally convicted, in which case it may direct the state's attorney to file a new information, or, if an information cannot be legally filed sooner, it may direct that the case be submitted to the same or another grand jury, and the provisions of rule 12 of the North Dakota Rules of Criminal Procedure, so far as applicable, as to the time and manner of the prosecution, govern the further proceedings under this section.

29-21-26. Jury may view place.

When, in the opinion of the court, it is proper that the jurors should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jurors to be conducted in a body, in the custody of proper officers, to such place, which must be shown to them by a person appointed by the court for that purpose, and the officers must be sworn to suffer no person to speak to nor communicate with the jurors, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time. The trial judge must be present and the state's attorney and counsel for the defendant may be present at the view by the jurors.

29-21-27. Custody and conduct of jury.

The jurors sworn to try a criminal action, at any time before the cause is submitted to the jurors, in the discretion of the court, may be permitted to separate, or may be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to nor communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof.

29-21-28. Court must admonish jury.

The jurors also, at each adjournment of the court, whether permitted to separate or required to be kept in charge of officers, must be admonished by the court that it is their duty not to converse among themselves nor with anyone else on any subject connected with the trial, nor to form or express any opinion thereon, until the case is finally submitted to them.

29-21-29. Counsel's argument restricted.

The court, in its discretion, may restrict the argument to the jury in a criminal case to one counsel for the prosecution and one for each defendant.

29-21-30. Instructing the jury - Procedure.

Superseded by N.D.R.Crim.P., Rule 30.

29-21-31. Instructions to be read.

Superseded by N.D.R.Crim.P., Rule 30.

29-21-32. Fees for court reporter's instructions.

The reporter of the court shall receive for writing out the oral instructions of the court the same fees as for making transcripts.

29-21-33. Charge - Exceptions before given.

Superseded by N.D.R.Crim.P., Rules 30, 51.

29-21-34. Defendant may be committed.

Superseded by N.D.R.Crim.P., Rule 46.

29-21-35. Death or illness of juror - Procedure.

Superseded by N.D.R.Crim.P., Rule 24.

29-21-36. Substitute for state's attorney.

If the state's attorney fails or is unable to attend at the trial, the court may appoint some attorney at law to perform the duties of the state's attorney on such trial.

29-21-37. Court may advise jury to acquit.

Superseded by N.D.R.Crim.P., Rule 29.

29-21-38. Pleadings not evidence in criminal action.

No pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in such pleading.

CHAPTER 29-22

JURY AFTER SUBMISSION OF CAUSE AND VERDICT

29-22-01. Retirement of jurors.

After hearing the charge, the jurors shall retire for deliberation to a room which must be provided for them by the board of county commissioners. Such room must be supplied with heat, light, and other conveniences. If a room is not provided by such board, the court may order the sheriff to provide one and the expenses incurred in complying with such order, when certified by the court, are a charge against the county.

29-22-02. Custody of jurors.

The jurors shall retire in charge of one or more officers who must be sworn to keep them together in some private and convenient place until they have rendered their verdict. Such officer or officers shall furnish food and other necessities to the jurors, at the expense of the state, as directed by the court, and may not speak to nor communicate with such jurors or any of them nor permit any other person so to do except by order of the court. Men and women jurors may retire, when rest or sleep or propriety requires it, to separate rooms.

29-22-03. Selection of a foreman.

The court shall appoint one of the jurors foreman or instruct the jurors to select one of their number as foreman.

29-22-04. What papers jurors may take.

Upon retiring for deliberation, the jurors may take with them:

1. All papers or things other than depositions which have been received as evidence in the cause, but if, in the opinion of the court, a public record or private document received in evidence should not be taken from the person having possession, a copy must be taken instead of the original;
2. All or such parts of the written instructions as the court may direct;
3. Notes of the testimony, or other proceedings on the trial, taken by jurors themselves or any of them, but none taken by any other person; and
4. Forms of verdict approved by the court.

29-22-05. Disagreement - Further instructions.

Superseded by N.D.R.Crim.P., Rule 43.

29-22-06. Court may recall jurors for supplemental instructions.

The court may recall the jurors after they have retired to consider their verdict to give them additional instructions or to correct any erroneous instructions it has given them. Such additional or corrective instructions may be given only after notice to the state's attorney and to counsel for the defendant.

29-22-07. Court open during absence of jury.

While the jurors are absent, the court may adjourn from time to time as to other business, but it nevertheless is deemed open for every purpose connected with the cause submitted to them until a verdict is rendered or the jury is discharged.

29-22-08. Verdict prevented - Cause retried.

When jurors are discharged or prevented from giving a verdict by reason of an accident or other cause, except when the defendant is discharged from the information or indictment during the progress of the trial or after the cause is submitted to them, the cause may be tried again at the same or another term, as the court may direct.

29-22-09. Return of verdict.

When the jurors have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names then must be called and if not all of them appear, the rest must be discharged without giving a verdict. In that case the cause must be tried again at the same or another term.

29-22-10. Verdict may be oral or in writing - Preparation.

The verdict of the jurors may be rendered orally or in writing, as the jurors may elect, unless the court, at the time the case is submitted to the jurors, requires that it be rendered in writing. When the court so requires, the clerk of the court, under the direction of the court, shall provide blank verdicts of suitable form for any verdict the jurors may return in the action and such blank verdicts must be taken by the jurors when they retire.

29-22-11. Presence of defendant - Felony or misdemeanor.

Superseded by N.D.R.Crim.P., Rule 43.

29-22-12. Procedure when jurors appear.

When the jurors appear, they must be asked by the court or the clerk whether they have agreed upon their verdict and if the foreman answers in the affirmative, they, on being required, shall declare the same.

29-22-13. Jurors may be polled - Procedure.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-14. Clerk to record verdict - Dissent - Procedure.

When the verdict given is such as the court may receive, the clerk immediately shall record it in full upon the minutes and shall read it to the jurors and inquire of them whether it is their verdict. If any juror disagrees, the fact must be entered upon the minutes and the jurors again sent out, but if no disagreement is expressed, the verdict is complete and the jurors must be discharged from the case.

29-22-15. General or special verdict - Libel.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-16. General verdicts - Contents.

Repealed by S.L. 1981, ch. 91, § 66.

29-22-17. Special verdict - Sufficiency.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-18. Special verdict rendered in writing.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-19. Form of special verdict.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-20. Sealed verdict - Proceedings upon.

The court, with the consent of the state's attorney and the defendant, may instruct the jurors that if they should agree upon a verdict during a temporary adjournment of the court, they may sign the same by their foreman, seal it in an envelope, and deliver it to the officer in whose charge they are, after which they may separate until the next convening of the court, at which time they shall reassemble in the jury box. As soon as convenient, the officer shall deliver the sealed verdict to the clerk. When the jurors have reassembled in open court, the envelope must be opened and the same proceedings must be had as upon the reception of other verdicts, except that the consent by the defendant to a sealed verdict constitutes a waiver of the

defendant's right to poll the jury as provided in rule 31 of the North Dakota Rules of Criminal Procedure.

29-22-21. Sealed verdict - Admonition to jurors.

If the court authorizes the rendition of a sealed verdict, it shall admonish the jurors not to make any disclosure concerning it nor to speak with any other person concerning the cause until their verdict has been rendered in open court.

29-22-22. Verdict rendered and additional instruction given on any day.

A verdict and additional or corrective instructions may be given on any day, including Sunday or any legal holiday.

29-22-23. Conviction of attempt or of included offense.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-24. Finding on charge of previous conviction.

Whenever the fact of a previous conviction of another offense is charged in the information or indictment, the jurors, if they find a verdict of guilty of the offense with which the defendant is charged, also must find whether or not the defendant has suffered such previous conviction, unless the answer of defendant admits the charge. In addition to the verdict of "guilty", the verdict of the jurors upon a charge of previous conviction may be, "we also find the charge of previous conviction true", or "we also find the charge of previous conviction not true", as they find that the defendant has or has not suffered such conviction.

29-22-25. Several defendants - Part convicted.

Superseded by N.D.R.Crim.P., Rule 31.

29-22-26. Verdict returned - Duty of court - May decrease or increase punishment.

If the jurors return a verdict of guilty against the accused, the court, before it is accepted, shall ascertain whether it conforms to the law of the case. If, in the opinion of the court, the verdict does not conform to the requirements of the law of the case, the court, with proper instructions as to the error, shall direct the jurors to reconsider the verdict and the verdict cannot be accepted nor recorded until it is rendered in proper form. But if the punishment imposed by the jurors in the verdict, when they are authorized by law to determine the punishment, is not in conformity to the law of the case in that regard, the court may proceed as follows:

1. If the punishment imposed by the jurors in the verdict is under the limit prescribed by law for the offense of which the defendant is found guilty, the court may receive the verdict and thereupon render judgment and pronounce sentence for the lowest limit prescribed by law in such a case; or
2. If the punishment imposed by the jurors in the verdict is greater than the highest limit prescribed by law for the offense of which the defendant is found guilty, the court shall disregard the excess and render judgment and pronounce sentence according to the highest limit prescribed by law in the particular case.

29-22-27. Reconsideration of verdict of guilty - None of acquittal.

When there is a verdict of conviction in which it appears to the court that the jurors have mistaken the law, the court may explain the reason for that opinion and may direct the jurors to reconsider their verdict. If, after the reconsideration, they return the same verdict, it must be entered. When there is a verdict of acquittal, the court cannot require the jurors to reconsider it.

29-22-28. Reconsideration of verdict neither general nor special.

If the jurors render a verdict which is neither a general nor a special verdict, the court, with proper instructions as to the law, may direct them to reconsider it, and it cannot be recorded until it is rendered in such form that it can be clearly understood therefrom whether the intent of

the jurors is to render a general verdict or to find the facts specially and to leave the judgment to the court.

29-22-29. Judgment if jurors persist - Acquittal.

If the jurors persist in finding a verdict such as is described in section 29-22-28 from which it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court shall give a judgment of acquittal. No judgment of conviction can be given, however, unless the jurors expressly find against the defendant upon the issue, or unless judgment is given against the defendant on a special verdict.

29-22-30. Judgment of acquittal - Discharge of defendant.

If a judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, the defendant must be discharged as soon as judgment is given.

29-22-31. Verdict of guilty - Procedure.

If a general verdict is rendered against the defendant, or a special verdict is given, the defendant must be remanded, if in custody, or, if the defendant is at large on bail, may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, the defendant's bail is exonerated, or if money is deposited instead of bail, it must be refunded in accordance with section 29-08-28.

29-22-32. Argument of special verdict.

A special verdict may be brought to argument by either party, upon two days' notice to the other, at the same or another term of the court.

29-22-33. Judgment upon special verdict.

Repealed by S.L. 2023, ch. 304, § 1.

29-22-34. New trial must be ordered for incomplete verdict.

If the jurors, in a special verdict, do not pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely and not the conclusions of fact from the evidence, as established to their satisfaction, the court shall order a new trial.

29-22-35. When conviction or acquittal a bar.

If the defendant has been convicted or acquitted upon an information or indictment for an offense consisting of different degrees, the conviction or acquittal is a bar to another information or indictment for the offense charged or for any lower degree of that offense or for an offense necessarily included therein.

29-22-36. When defense insanity and jury acquits.

Repealed by S.L. 1981, ch. 91, § 66.

29-22-37. Discharge of jurors.

After the retirement of the jurors to consider their verdict, they may be discharged from the cause when:

1. The verdict has been returned and entered on the minutes of the court;
2. One of the jurors becomes so sick that that juror cannot continue to discharge that juror's duty and there is no alternate juror;
3. Any accident or other cause prevents keeping the jurors together for deliberation;
4. Upon the expiration of such time as the court deems proper, it appears that there is no reasonable probability that the jurors can agree upon a verdict; or
5. The court finally adjourns.

The court in any event may discharge the jurors from the cause if the state's attorney and the defendant consent to such discharge and their consent is entered upon the minutes of the court.

29-22-38. Juror counseling following graphic evidence or testimony.

1. The court shall offer, not more than ten hours of post-trial psychological counseling, without charge, to a juror or alternate juror who served on a trial jury in a trial involving extraordinarily graphic, gruesome, or emotional evidence or testimony.
2. The counseling offered under subsection 1 applies only to a juror or alternate juror who served on a trial jury for a trial involving the following offenses:
 - a. Murder under section 12.1-16-01;
 - b. Manslaughter under section 12.1-16-02;
 - c. Negligent homicide under section 12.1-16-03;
 - d. Felony-level assault or domestic violence under chapter 12.1-17;
 - e. A sexual offense under chapter 12.1-20 or 12.1-27.2;
 - f. Abuse or neglect of a child under sections 14-09-22 and 14-09-22.1; and
 - g. Others as determined by the court.
3. The counseling offered under this section:
 - a. Must occur not later than one hundred eighty days after the jury is discharged;
 - b. May be provided by the court system, by a state agency, or by contract; and
 - c. May be individual or group counseling.

CHAPTER 29-23
PROCEEDINGS AFTER VERDICT AND BEFORE JUDGMENT

29-23-01. Statement of the case - How constituted.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-02. Statement of case - Its office - What need not be embodied.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-03. Statement of the case - By whom settled.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-04. Statement of the case - Filing thereof - Made part of record.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-05. Matters deemed excepted to.

Superseded by N.D.R.Crim.P., Rule 51.

29-23-06. Instructions excepted to part of record.

Superseded by N.D.R.Crim.P., Rules 30, 51.

29-23-07. Clerk to enter orders - Certified copies.

The clerk of the district court in which any criminal action or proceeding is pending or tried shall enter, in the minutes of such court, each ruling or decision of the court made in open court, if such ruling is not noted by the official reporter. A certified copy of any or all such entries must be and become a part of the record of said action.

29-23-08. When supreme court may settle statement.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-09. Time may be extended.

Superseded by N.D.R.App.P., Rules 10, 28.

29-23-10. Title construed.

Nothing in this title contained is to be construed so as to deprive either party of the right to take advantage of any action or decision of the court in a criminal action or proceeding which affects any other material or substantial right of either party, whether before or after the trial, or on such trial.

29-23-11. An error in record basis of motion for new trial or appeal.

Any error committed by the court in or by any decision, ruling, instruction, or other act, and appearing in the record of the action, may be taken advantage of upon a motion for a new trial or in the supreme court on an appeal.

CHAPTER 29-24
MOTION FOR NEW TRIAL

[Superseded by North Dakota Rules of Criminal Procedure, Rule 33]

CHAPTER 29-25

MOTION IN ARREST OF JUDGMENT

29-25-01. Motion in arrest of judgment defined.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-02. Grounds for arrest of judgment.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-03. Form and contents of motion - Entry in minutes.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-04. Notice of motion - When motion heard and decided.

Superseded by N.D.R.Crim.P., Rule 34.

29-25-05. Effect of allowing a motion in arrest.

The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which the defendant was before the information was filed or the indictment found.

29-25-06. Judgment arrested - Further prosecution - Acquittal.

If, from the evidence in a trial, there is reason to believe the defendant guilty, and a new information or indictment can be framed upon which the defendant may be convicted, the court may order the defendant to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new information or indictment. If the evidence shows the defendant guilty of another offense, the defendant must be committed or held thereon, and in neither case may the verdict be a bar to another prosecution. If no evidence appears sufficient to charge the defendant with any offense, the defendant, if in custody, must be discharged, or if admitted to bail, the defendant's bail must be exonerated, or if money has been deposited instead of bail, it must be refunded, and the arrest of judgment operates as an acquittal of the defendant of the charge upon which the information or indictment was founded.

CHAPTER 29-26 JUDGMENT AND SENTENCE

29-26-01. Judgment after conviction - Time.

Superseded by N.D.R.Crim.P., Rule 32.

29-26-02. Time specified for pronouncing judgment.

Superseded by N.D.R.Crim.P., Rule 32.

29-26-03. Judgment - Where rendered.

Judgment must be rendered in open court unless for cause its rendition is deferred.

29-26-04. Defendant's presence - Felony or misdemeanor.

Superseded by N.D.R.Crim.P., Rule 43.

29-26-05. Officer to produce defendant.

When the defendant is in custody, the court may direct the officer in whose custody the defendant is to bring the defendant before it for judgment, and the officer must do so accordingly.

29-26-06. Bench warrant if defendant does not appear for judgment.

If the defendant has been discharged on bail, or has deposited money in lieu thereof, and does not appear for judgment when the defendant's personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for the defendant's arrest.

29-26-07. Issuance of bench warrant - Duty of clerk.

The clerk, on the application of the state's attorney, at any time after the order directing a bench warrant to be issued, whether the court is sitting or not, shall issue a bench warrant into one or more counties.

29-26-08. Form of bench warrant.

Superseded by N.D.R.Crim.P., Rule 58.

29-26-09. Bench warrant service.

A bench warrant may be served in any county of the state and in the same manner as a warrant of arrest.

29-26-10. Disposition of defendant on arrest.

Whether a bench warrant issued as provided in section 29-26-06 is served in the county in which it was issued or in another county, the officer shall arrest the defendant and bring the defendant before the court, or commit the defendant to the officer mentioned in the warrant, according to the command thereof.

29-26-11. Defendant informed of rights.

When a defendant appears for judgment, the defendant must be informed by the court, or by the clerk under its direction, of the nature of the charge against the defendant, and of the defendant's plea, and the verdict, if any, thereon, and must be asked whether the defendant has any legal cause to show why judgment should not be pronounced against the defendant.

29-26-12. Defendant may show cause against judgment.

The defendant may show cause against pronouncement of judgment:

1. That the defendant is insane;

2. That the defendant has good cause to offer, either in arrest of judgment or for a new trial, in which case the court may order the judgment to be deferred, and may proceed to decide upon the motion in arrest of judgment or for a new trial;
3. That the defendant is not the person against whom the verdict was rendered; or
4. That the defendant has been pardoned of the offense for which judgment is to be rendered.

29-26-13. Procedure when insanity alleged as cause for not pronouncing sentence.

When the cause alleged for not pronouncing sentence is insanity, the court, if there is reasonable ground to believe that the defendant is insane, shall postpone the pronouncement of judgment and shall proceed to have the defendant's mental condition determined in the manner prescribed in this title, so far as applicable, for the determination of the mental condition of a defendant before or during trial. Whenever it is determined that the defendant is or has become sane, the defendant must be brought before the court for judgment.

29-26-14. Procedure when nonidentity or pardon is alleged as cause for not pronouncing sentence.

When the reason alleged for not pronouncing sentence is that the person brought before the court to be sentenced is not the person against whom the verdict was rendered, or that the defendant has been pardoned of the offense charged, the court shall postpone the pronouncement of judgment, if necessary, for the purpose of hearing evidence relating to the identity or pardon of such person, and on proof of nonidentity or pardon, as the case may be, shall discharge such person from custody, unless the person is in custody on some other charge.

29-26-15. Judgment rendered.

Superseded by N.D.R.Crim.P., Rule 32.

29-26-16. Court to hear evidence - Degree of crime.

Upon a plea of guilty of a crime divided into degrees, the court, if such plea is accepted and the defendant does not designate in the defendant's plea the degree thereof, before passing sentence, shall determine the degree, and the provisions, so far as applicable, of section 29-26-18 and of rule 32 of the North Dakota Rules of Criminal Procedure shall govern in said determination.

29-26-17. Extent of punishment - Aggravation or mitigation - Hearing.

After a plea or verdict of guilty, in a case when a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, in its discretion, may hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

29-26-18. Evidence in aggravation or mitigation of punishment - How presented.

Circumstances in aggravation or mitigation of punishment must be presented by testimony of witnesses examined in open court, except when a witness is so sick or infirm as to be unable to attend, that witness's deposition may be taken by a magistrate of the county out of court, at a specified time and place, upon such notice to the adverse party as the court may direct, the criminal record of the defendant furnished by the federal bureau of investigation or the state superintendent of criminal identification and reports of the state parole office may be received by the court without verification or other foundation, and, results of psychological testing and psychiatric examination, certified in writing, may be received by the court without verification or other foundation, subject to such inspection and confrontation of witnesses as the court may permit or require in the interests of justice.

29-26-19. Other evidence prohibited.

Superseded by N.D.R.Crim.P., Rule 32.

29-26-20. Successive terms of imprisonment.

Repealed by S.L. 1973, ch. 116, § 41.

29-26-21. Judgment for fine and costs.

A judgment that the defendant pay a fine and costs may not direct that the defendant be imprisoned until both the fine and costs are satisfied. Response to nonpayment of a fine must be as provided in section 12.1-32-05.

29-26-22. Judgment for fines - Court administration fee - Community service supervision fee - Special funds - Docketing and enforcement. (Retroactive application - [See note](#))

1. In all criminal cases except infractions, upon a plea or finding of guilt, the court shall impose a court administration fee in lieu of the assessment of court costs. The court administration fee must include a fee of one hundred twenty-five dollars for a class B misdemeanor, two hundred dollars for a class A misdemeanor, four hundred dollars for a class C felony, six hundred fifty dollars for a class B felony, and nine hundred dollars for a class A or AA felony.
2. In addition, in all criminal cases except infractions, the court shall impose an indigent defense and court facilities fee of one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.
3. In addition to any fees that may be imposed under subsections 1 and 2, the court shall impose upon each defendant who receives a sentence that includes community service a community service supervision fee of twenty-five dollars. The community service supervision fee must be deposited in the community service supervision fund. The fees deposited in this fund must be used to provide community service supervision grants subject to legislative appropriations.
4. A court may waive the court administration fee, indigent defense and court facilities fee, or community service supervision fee upon a showing of indigency as provided in section 25-03.1-13. District court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A judgment that the defendant pay a fine or fees, or both, may be docketed and if docketed constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.
5. Upon successful completion of an approved adult treatment court program, a court may waive all unpaid fines, fees, and costs imposed in the criminal judgment sentencing the defendant to the treatment court program, except for restitution. For purposes of this subsection, "approved treatment court program" means a district court-supervised treatment program approved by the supreme court.

29-26-22.1. Judgment for fine, costs, restitution, or reparation in criminal cases - Docketing and enforcement.

The court, within ten years of the date of entry of a judgment that imposes a fine, imposes a requirement that restitution or reparation be paid, or assesses costs against a defendant, may order the judgment to be docketed by the clerk of court in the judgment docket maintained pursuant to section 28-20-13 in the same manner in which a civil judgment for money is docketed. The docketing of the judgment has the same effect as the docketing of a civil judgment. The docketed judgment may be docketed in any other county in the same manner, it imposes a lien upon the real property owned by the defendant to the same extent, it is subject to the same statute of limitations, and it is enforceable by execution in the same manner as provided for a civil judgment for money. The court may direct a judgment be entered in favor of a person to whom restitution or reparation is ordered to be paid. That person may enforce the judgment as a civil judgment.

29-26-22.2. Authority to compromise judgment by county commissioners.

1. If, after a lapse of two years from the filing of a judgment, the board of county commissioners determines the judgment cannot be collected in full, the board of county commissioners may compromise and settle any judgment for fines or costs arising from criminal proceedings which are payable to the state treasurer.
2. The county's compromise or settlement may include a request to the district court to convert any amount still owed to a civil judgment.
3. Upon receipt of a certified copy of the board's action, the state's attorney of the county where the judgment was filed shall file a partial or total satisfaction of the judgment.
4. In the absence of a compromise or settlement, or after one year has passed following the date of a compromise or settlement, the county may contract with a private debt collection company to collect any remaining balance. The county shall deposit any additional revenue collected under this subsection in the county general fund.

29-26-22.3. Renewal of prior judgments.

Repealed by omission from this code.

29-26-22.4. Cost of digital forensic examination.

An individual convicted of a felony or misdemeanor shall, as part of the sentence imposed by the court, pay for the reimbursement of the cost of any digital forensic examination performed on any personal electronic device in the investigation and prosecution of the crime for which the defendant is convicted. The fee assessed may not exceed one hundred dollars for each defendant. All fees collected under this section must be remitted to the state treasurer for deposit in the internet crimes investigation fund established in section 54-12-37. For purposes of this section, the term "personal electronic device" means any portable electronic device designed for and capable of wireless communication or electronic data retrieval, including a cellular telephone, tablet, laptop, computer, or two-way messaging device.

29-26-23. Judgment upon conviction entered in minutes - Record.

When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and, as soon as possible, shall annex together and file the following papers which constitute a record of the action:

1. The information or indictment and all the papers filed in the action, together with a copy of the minutes of the plea;
2. A copy of the minutes of the trial;
3. The written charges given or refused, with endorsements, if any, thereon, and the written instructions given by the court, and the copy of any oral instructions by the court and filed with the clerk; and
4. A copy of the judgment.

29-26-24. Provisions governing suspension of sentence, probation, and parole not affected by this chapter.

Nothing in this chapter may be construed as affecting any statute governing suspension of sentence, suspension of imposition of sentence, probation, or parole.

CHAPTER 29-27 EXECUTION

29-27-01. Execution to officer.

When a judgment imposing a penalty other than a fine only has been pronounced, a certified copy of the entry thereof upon the minutes must be furnished forthwith to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

29-27-02. Judgment for fine or costs.

If the judgment mentioned in section 29-27-01 imposes a fine or assesses costs and the judgment has been docketed in the judgment docket by order of the court, the judgment is enforceable by execution in the same manner as provided for a judgment for money in a civil action.

29-27-02.1. Disposition of statutory fees, fines, forfeitures, pecuniary penalties, and bond forfeitures.

Except as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund.

29-27-03. Judgment for imprisonment or as response to nonpayment of fine.

If a judgment is for imprisonment, initially or as response to nonpayment of a fine in accordance with section 12.1-32-05, the defendant forthwith must be committed to the custody of the proper officer and be detained by that officer until the judgment is complied with.

29-27-04. Judgment - By what officer executed.

When the judgment in a criminal action or proceeding under section 12.1-32-05 is imprisonment in the county jail, the judgment must be executed by the sheriff of the county. In all other cases when the sentence is imprisonment, the sheriff of the county shall deliver the defendant to the proper officer in execution of the judgment.

29-27-05. Judgment of imprisonment in department of corrections and rehabilitation.

If the judgment is for commitment to the legal and physical custody of the department of corrections and rehabilitation, the sheriff of the county, upon receipt of a certified copy thereof, shall take and deliver the defendant to the correctional facility designated by the department. The sheriff also shall deliver to the department a certified copy of the judgment and take from the department a receipt for the defendant and make return thereof to the court.

29-27-06. Authority of sheriff while conveying defendant.

Repealed by S.L. 1975, ch. 106, § 673.

29-27-07. Commitment of offenders to department of corrections and rehabilitation - Place of confinement.

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of safety, security, discipline, medical care, or if the department determines it is in the best interest of the public, the inmate, or the department.

CHAPTER 29-28 APPEALS

29-28-01. Review proceedings by appeal - Writ of error abolished.

Superseded by N.D.R.App.P., Rule 1.

29-28-02. Who may appeal.

Either the defendant or the state may take an appeal as provided in this chapter.

29-28-03. Appeals are matter of right.

An appeal to the supreme court provided for in this chapter may be taken as a matter of right.

29-28-04. Designation of parties on appeal.

Superseded by N.D.R.Crim.P., Rule 37.

29-28-05. Appeal by one of several defendants.

Superseded by N.D.R.App.P., Rule 3.

29-28-06. From what defendant may appeal.

An appeal may be taken by the defendant from:

1. A verdict of guilty;
2. A final judgment of conviction;
3. An order refusing a motion in arrest of judgment;
4. An order denying a motion for a new trial; or
5. An order made after judgment affecting any substantial right of the party.

29-28-07. From what the state may appeal.

An appeal may be taken by the state from:

1. An order quashing an information or indictment or any count thereof.
2. An order granting a new trial.
3. An order arresting judgment.
4. An order made after judgment affecting any substantial right of the state.
5. An order granting the return of property or suppressing evidence, or suppressing a confession or admission, when accompanied by a statement of the prosecuting attorney asserting that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding. The statement must be filed with the notice of appeal.

29-28-08. Time for appeals in criminal cases.

Superseded by N.D.R.Crim.P., Rule 37.

29-28-09. Manner of taking appeal - Notice.

Superseded by N.D.R.Crim.P., Rules 37, 38.

29-28-10. Personal service impossible - Publication.

Superseded by N.D.R.Crim.P., Rule 49.

29-28-11. When appeal deemed taken.

Superseded by N.D.R.Crim.P., Rule 37.

29-28-12. Appeal by state - Effect.

An appeal taken by the state in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed.

29-28-13. What judgments superseded by appeal - Certificate of probable cause.

Superseded by N.D.R.Crim.P., Rule 38.

29-28-14. Certificate of probable cause issued - Duty of sheriff.

Superseded by N.D.R.Crim.P., Rule 38.

29-28-15. Execution suspended during pendency of appeal.

Superseded by N.D.R.Crim.P., Rule 38.

29-28-16. Stay on appeal - Custody of defendant.

Superseded by N.D.R.Crim.P., Rules 38, 46.

29-28-17. Certificate of appeal taken and bail put in - Duty of sheriff.

Superseded by N.D.R.Crim.P., Rules 38, 46.

29-28-18. Transmission of papers to supreme court.

Superseded by N.D.R.App.P., Rule 11.

29-28-19. Printing of transcripts or briefs not required.

Superseded by N.D.R.App.P., Rule 32.

29-28-20. Irregularity in substantial particulars - Notice.

Superseded by N.D.R.App.P., Rules 3, 27.

29-28-21. An appeal must not be dismissed for informality.

Superseded by N.D.R.App.P., Rule 3.

29-28-22. Appeal stands for argument at first term.

Superseded by N.D.R.App.P., Rule 45.

29-28-23. When verdict or judgment must be affirmed - Reversal.

Superseded by N.D.R.App.P., Rule 34.

29-28-24. Number of counsel heard.

Superseded by N.D.R.App.P., Rule 34.

29-28-25. Defendant need not appear in supreme court.

Superseded by N.D.R.App.P., Rule 34.

29-28-26. Technical errors to be disregarded on appeal.

Superseded by N.D.R.Crim.P., Rule 52.

29-28-27. Court may review intermediate orders.

Superseded by N.D.R.App.P., Rule 35.

29-28-28. Power of supreme court on appeal.

Superseded by N.D.R.App.P., Rule 35.

29-28-29. New trial ordered - Where had.

Superseded by N.D.R.App.P., Rule 35.

29-28-30. Judgment reversed without new trial - Defendant discharged - Disposal of bail.

If a judgment against the defendant is reversed without ordering a new trial, the supreme court, if the defendant is in custody, shall direct that the defendant be discharged therefrom, or if on bail, that the defendant's bail be exonerated, or if money was deposited instead of bail, that it be refunded to the defendant.

29-28-30.1. Verdict affirmed - Must be enforced.

If a verdict against the defendant is affirmed, the original verdict must stand and any court orders thereon, including suspension and deferred imposition of sentence, must be enforced.

29-28-31. Judgment affirmed must be enforced.

If a judgment against the defendant is affirmed, the original judgment must be enforced.

29-28-32. Judgment of court entered - Certificate.

Superseded by N.D.R.App.P., Rule 36.

29-28-33. Certificate remitted - District court only has jurisdiction.

After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings therein, and all orders necessary to carry the judgment into effect must be made by the district court to which the certificate is remitted.

29-28-34. Imprisonment, reversal, reimprisonment - Deduction of time already served.

Repealed by S.L. 1975, ch. 106, § 673.

29-28-35. Appeal by state - Power of supreme court.

If the appeal is taken by the state, the supreme court cannot reverse the judgment or modify it so as to increase the punishment, but may affirm it, and shall point out any errors in the proceedings or in the measure of punishment, and its opinion is obligatory on the district court as the correct exposition of the law.

CHAPTER 29-29 SEARCH WARRANTS

29-29-01. Search warrant defined.

A search warrant is an order in writing, made in the name of the state, signed by a magistrate, directed to a peace officer, commanding the peace officer to search for personal property and to bring it before the magistrate.

29-29-02. Grounds for issuance of search warrant.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-03. Issued only upon probable cause.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-04. Sworn complaint must be made - Depositions of witnesses.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-05. Requisites of search warrant.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-06. Form of search warrant.

Superseded by N.D.R.Crim.P., Rules 41, 58.

29-29-07. By whom search warrant served.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-08. Execution of warrant - Use of force.

An officer directed to serve a search warrant may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant:

1. If, after notice of the officer's authority and purpose, the officer is refused admittance;
or
2. Without notice of the officer's authority and purpose if the warrant was issued by a magistrate who is learned in the law and who has inserted a direction therein that the officer executing it shall not be required to give such notice.

The magistrate may so direct only upon written or recorded oral petition and proof under oath, to the magistrate's satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given.

29-29-09. Liberating self or assistant - Use of force.

To execute a search warrant, an officer may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid the officer in the execution of the warrant, is detained therein, or when necessary for the officer's own liberation.

29-29-10. Search warrant to be served in daytime - Exception.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-11. Search warrant void if not executed in ten days.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-12. Return of warrant.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-13. Copy of inventory - To whom delivered.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-14. Complaint controverted - Testimony in writing - Authentication.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-15. When property taken under search warrant to be restored.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-16. Papers relating to search warrant to be returned to district court.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-17. Disposal of property taken on a warrant.

Superseded by N.D.R.Crim.P., Rule 41.

29-29-18. Causing issuance of search warrant on false information - Penalty.

A person who recklessly and without probable cause causes a search warrant to be issued and executed is guilty of a class A misdemeanor.

29-29-19. Officer exceeding authority guilty of misdemeanor.

Repealed by S.L. 1975, ch. 106, § 673.

29-29-20. Search of accused for dangerous weapons - Circumstances permitting.

When a person charged with a felony is supposed by the magistrate before whom the person is brought to have possession of a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct the person to be searched in the magistrate's presence, and the weapon or other thing to be retained, subject to the magistrate's order or the order of the court in which the defendant may be tried.

29-29-21. Temporary questioning of persons in public places - Search for weapons.

A peace officer may stop any person abroad in a public place whom the officer reasonably suspects is committing, has committed, or is about to commit:

1. Any felony.
2. A misdemeanor relating to the possession of a concealed or dangerous weapon or weapons.
3. Burglary or unlawful entry.
4. A violation of any provision relating to possession of marijuana or of narcotic, hallucinogenic, depressant, or stimulant drugs.

The peace officer may demand of such person the person's name, address, and an explanation of the person's actions. When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that the officer is in danger of life or limb, the officer may search such person for a dangerous weapon. If the peace officer finds such a weapon or any other thing, the possession of which may constitute a crime, the officer may take and keep it until the completion of the questioning, at which time the officer shall either return it, if lawfully possessed, or arrest such person.

29-29-22. Release of information contained in complaint or warrant.

The magistrate who issues a search warrant shall order the information in the complaint and warrant confidential, if the law enforcement officer articulates a reason for the confidentiality that convinces the issuing magistrate that limited confidentiality is necessary for the safety of the law enforcement officer or to enable the warrant to be properly served. The magistrate shall limit the duration of the order to the time of the arrest of the accused and shall exempt law enforcement officers in the performance of official duties.

CHAPTER 29-29.1

ADMINISTRATIVE SEARCH WARRANTS

29-29.1-01. Warrants to conduct inspections authorized by law.

1. Notwithstanding the provisions of chapter 29-29, any official or employee of the state or of a unit of county or local government of North Dakota may, under the conditions specified herein, obtain a warrant authorizing to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.
2. The warrant may be issued by any magistrate whose territorial jurisdiction encompasses the property to be inspected.

29-29.1-01.1. Warrant for electronic communication information.

1. As used in this section, "Electronic communication information" means any information about an electronic communication or the use of an electronic communication service, limited to the contents of electronic communications and precise or approximate location of the target sender or target recipient at any point during the communication.
2. Notwithstanding chapter 29-29, any official or employee of the state or of a unit of county or local government of the state may, under the conditions specified in this section, obtain a warrant requiring disclosure of electronic communication information.
3. A warrant issued under this section may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant.
4. Under this section, the time for executing the warrant refers to the seizure or onsite copying of the media or information, and not to any later offsite copying or review.
5. The issuing magistrate may grant an extension of a warrant on the owner or the possessor of electronic communication information upon an application under oath stating the owner or the possessor has not produced the requested electronic communication information within ten days and that an extension is necessary to achieve the purposes for which the search warrant was granted. An extension may not exceed thirty days.

29-29.1-02. Conditions to be met before issuance.

The issuing magistrate shall issue the warrant when the magistrate is satisfied the following conditions are met:

1. The one seeking the warrant shall establish under oath or affirmation that the property or electronic communication information to be searched or inspected is to be searched or inspected as a part of a legally authorized program of inspection which naturally includes that property or electronic communication information, or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such a search or inspection of that property or electronic communication information;
2. An affidavit indicating the basis for the establishment of one of the grounds described in subsection 1 must be signed under oath or affirmation by the affiant; and
3. The issuing magistrate shall examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit.

29-29.1-03. Requirements for valid issuance.

The warrant is validly issued only if it meets the following requirements:

1. It must be signed by the issuing magistrate and must bear the date and hour of its issuance above the magistrate's signature with a notation that the warrant is valid for only ten days following its issuance;

2. It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorizes an inspection of;
3. It must indicate the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and
4. It must be attached to the affidavit required to be made in order to obtain the warrant.

29-29.1-04. Warrant valid for ten days.

Any warrant issued under this chapter for a search or inspection is valid for only ten days after its issuance, must be personally served upon an owner or possessor of the property, or upon any person present on the premises if an owner or possessor cannot reasonably be found between the hours of 8:00 a.m. and 8:00 p.m., and must be returned within forty-eight hours of service except as provided in section 29-29.1-01.1.

29-29.1-05. Competency of evidence discovered.

No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this chapter may be competent as evidence in any civil, criminal, or administrative action, nor considered in imposing any civil, criminal, or administrative sanction against any person, nor as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity, or circumstance which it was the legal purpose of the search or inspection to discover; but this does not prevent any such facts or evidence to be so used when the warrant issued is not constitutionally required in those circumstances.

29-29.1-06. Not criminal search warrants.

The warrants authorized under this chapter may not be regarded as search warrants for the purpose of application of chapter 29-29.

CHAPTER 29-30
FUGITIVES FROM JUSTICE
[Repealed by S.L. 1979, ch. 375, § 31]

CHAPTER 29-30.1
UNIFORM RENDITION OF ACCUSED PERSONS ACT
[Repealed by S.L. 1985, ch. 364, § 27]

CHAPTER 29-30.2
CRIMINAL EXTRADITION ACT
[Repealed by S.L. 1985, ch. 364, § 27]

CHAPTER 29-30.3 UNIFORM EXTRADITION AND RENDITION ACT

29-30.3-01. (1-101) Definitions.

As used in this chapter:

1. "Arrest warrant" means any document that authorizes a peace officer to take custody of a person.
2. "Certified copy" means a copy of a document accompanied by a statement of a custodian authorized by the law of a state to maintain the document that the copy is a complete and true copy of an official record filed and maintained in a public office.
3. "Demanded person" means a person whose return to a demanding state is sought from another state by extradition under sections 29-30.3-08 through 29-30.3-14.
4. "Demanding state" means a state that is seeking the return of a person from another state through the process of extradition under sections 29-30.3-08 through 29-30.3-14.
5. "Executive authority" means the chief executive in a state other than this state, any person performing the functions of chief executive, or a representative designated by the chief executive.
6. "Governor" means the governor of this state, any person performing the functions of governor, or a representative designated by the governor.
7. "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.
8. "Requested person" means a person whose return to a requesting state is sought from another state by rendition under sections 29-30.3-15 through 29-30.3-20.
9. "Requesting state" means a state that is seeking the return of a person from another state through the process of rendition under sections 29-30.3-15 through 29-30.3-20.

29-30.3-02. (1-102) Conditions of release.

The law of pretrial release of this state governs release of a person pursuant to sections 29-30.3-06, 29-30.3-13, 29-30.3-19, and 29-30.3-21.

29-30.3-03. (1-103) Nonwaiver by this state.

This chapter and proceedings under it are not exclusive and do not affect the authority of this state to:

1. Try a demanded or requested person for a crime committed within this state;
2. Take custody of a demanded or requested person by extradition or rendition proceedings for the purpose of trial, sentence, or punishment for a crime committed within this state;
3. Take custody of a person under other provisions of law, including interstate agreements; or
4. Release a person from custody upon any valid conditions.

29-30.3-04. (2-101) Arrest without warrant.

1. A peace officer may arrest a person without an arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for:
 - a. Commission of a crime punishable by death or imprisonment for a term exceeding one year;
 - b. Escape from confinement; or
 - c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.
2. The arrested person must be brought before the nearest available magistrate.
3. The magistrate shall issue an order to continue custody or other process to assure the appearance of the person, if testimony or affidavit shows probable cause to believe the person is the subject of another state's arrest warrant issued for:
 - a. The commission of a crime punishable by death or imprisonment for a term exceeding one year;

- b. Escape from confinement; or
- c. Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

29-30.3-05. (2-102) Issuance of process or arrest warrant prior to receipt of demand or request.

1. A magistrate for the county where arrest is sought shall authorize the issuance of an arrest warrant or other process to obtain the appearance of a person, if testimony or affidavit shows probable cause to believe:
 - a. The person is in this state; and
 - b. The person is the subject of another state's arrest warrant issued for:
 - (1) The commission of a crime punishable by death or imprisonment for a term exceeding one year;
 - (2) Escape from confinement; or
 - (3) Violation of any term of bail, probation, parole, or order arising out of a criminal proceeding.
2. Other process to obtain the appearance of a person must require the appearance before a magistrate.
3. The arrest warrant must require that the person be brought forthwith before a magistrate.

29-30.3-06. (2-103) Appearance prior to receipt of demand or request.

1. The magistrate shall inform the person appearing pursuant to section 29-30.3-04 or 29-30.3-05 of:
 - a. The name of the other state that has subjected the person to an arrest warrant;
 - b. The basis for the arrest warrant in the other state;
 - c. The right to assistance of counsel; and
 - d. The right to require a judicial hearing under this chapter before transfer of custody to the other state.
2. After being informed by the magistrate of the effect of a waiver, the arrested person may waive the right to require a judicial hearing under this chapter and consent to return to the other state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or, with the consent of the official upon whose application the arrest warrant was issued in the other state, authorize the voluntary return of the person to that state.
3. Unless a waiver is executed pursuant to subsection 2, the magistrate shall:
 - a. Release the person upon conditions that will reasonably assure availability of the person for arrest pursuant to section 29-30.3-12 or 29-30.3-18; or
 - b. Direct a law enforcement officer to maintain custody of the person.
 Subject to section 29-30.3-07, the period of conditional release or custody may not exceed thirty days.

29-30.3-07. (2-104) Extension of time.

1. If the person is not arrested pursuant to section 29-30.3-12 or 29-30.3-18 within the period specified in the arrest warrant or other process, the magistrate for good cause may issue further orders under subsection 3 of section 29-30.3-06 for additional periods not exceeding a total of sixty days. Further extensions of orders may be requested by the person under subsection 3 of section 29-30.3-06.
2. If the person is not arrested pursuant to section 29-30.3-12 or 29-30.3-18 within the time specified by the magistrate, the person may not be subjected to any further order in this state under subsection 3 of section 29-30.3-06. If the person is subsequently arrested in this state under section 29-30.3-04 or 29-30.3-05 on the basis of the same arrest warrant of the other state, the person may not be subjected to the issuance of orders under subsection 3 of section 29-30.3-06 and must be released from custody.

However, the person may be arrested thereafter pursuant to section 29-30.3-12 or 29-30.3-18.

29-30.3-08. (3-101) Demand for extradition.

1. The governor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:
 - a. Is charged with a crime in the demanding state; or
 - b. Having been charged with or convicted of a crime in the demanding state has:
 - (1) Escaped from confinement; or
 - (2) Violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.
2. The governor may demand the extradition of a person from another state in accordance with the Constitution of the United States and may comply with the requirements of the other state for recognition of a demand.

29-30.3-09. (3-102) Supporting documentation.

A demand for extradition must be accompanied by a certified copy of an arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding.
4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

29-30.3-10. (3-103) Governor's investigation.

The governor may:

1. Investigate the demand for extradition and the circumstances of the demanded person;
2. Request the attorney general or any state's attorney to investigate; or
3. Hold a hearing.

29-30.3-10.1. Guilt or innocence of accused - When inquiry made.

The guilt or innocence of the accused as to the crime with which the person is charged may not be inquired into by the governor or in any proceeding after a demand for extradition has been presented to the governor or a demand for rendition has been filed with the attorney general, except as it may be involved in identifying the person held as the person charged with the crime.

29-30.3-11. (3-104) Extradition of persons imprisoned or awaiting trial.

1. If a demanded person is being prosecuted, is imprisoned, is on parole or probation, or is subject to an order arising out of a criminal proceeding, in this state, the governor may:
 - a. Grant extradition;
 - b. Delay action; or
 - c. Agree with the executive authority of the demanding state to grant extradition upon conditions.
2. The governor may agree with an executive authority of another state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is

subject to an order arising out of a criminal proceeding, in that state upon conditions prescribed by the agreement.

29-30.3-12. (3-105) Governor's warrant.

1. If the governor decides to comply with the demand for extradition, the governor shall issue a warrant for the arrest and extradition of the demanded person. The governor's warrant must recite the name of the state demanding extradition and the crime charged or other basis for the demand.
2. The governor may specify the time and manner in which the warrant is executed.
3. At any time before the transfer of custody of the demanded person to the agent of the demanding state, the governor may recall the warrant or issue another warrant.
4. The warrant must be directed to any law enforcement officer and require compliance with section 29-30.3-13.
5. The law relating to assistance in the execution of other arrest warrants in this state applies to the execution of the governor's warrant.

29-30.3-13. (3-106) Rights of demanded person.

1. A person arrested under a governor's warrant must be brought before the nearest available magistrate who shall receive the warrant and inform the person of:
 - a. The name of the state demanding extradition;
 - b. The crime charged or other basis for the demand;
 - c. The right to assistance of counsel; and
 - d. The right to a judicial hearing under section 29-30.3-14.
2. After being informed by the magistrate of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or, with the consent of the executive authority of the demanding state, authorize the voluntary return of the person.
3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The demanded person and the state's attorney of the county in which the hearing is to be held must be informed of the time and the place of the hearing. The magistrate shall:
 - a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
 - b. Direct a law enforcement officer to maintain custody of the person.

29-30.3-14. (3-107) Judicial extradition hearing.

1. If the magistrate after hearing finds that the governor has issued a warrant supported by the documentation required by subsection 1 of section 29-30.3-08 and section 29-30.3-09, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the demanded person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the demanding state has not taken custody within the time specified in the order to transfer custody, the demanded person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

29-30.3-15. (4-101) Request for rendition.

1. Subject to subsections 2 and 3, this state may grant a written request by an issuing authority of another state for the rendition of a person in this state.

2. The request must be refused if the requested person is:
 - a. Being prosecuted or is imprisoned in this state for a criminal offense;
 - b. The subject of a pending proceeding in a juvenile court of this state brought for the purpose of adjudicating the person to be a delinquent child;
 - c. In the custody of an agency of this state pursuant to an order of disposition of a juvenile court of this state as a delinquent child; or
 - d. Under the supervision of the juvenile court of this state pursuant to informal adjustment or an order of disposition of the court.
3. The request must allege that the person:
 - a. Is charged with a crime punishable in the requesting state by death or imprisonment for a term exceeding one year in the requesting state; or
 - b. Having been charged with or convicted of a crime in the requesting state, has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the requesting state.
4. Upon application of the attorney general or a state's attorney, an issuing authority may request rendition of a person from another state and may comply with requirements of that state for the granting of the request. A correction official who is also an issuing authority may request rendition from another state of a person described in subdivision b of subsection 3, and subject to the jurisdiction of the correction official.

29-30.3-16. (4-102) Supporting documentation.

A request for rendition must be accompanied by a certified copy of the arrest warrant and one of the following:

1. A statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the requested person committed the crime, together with a copy of the provisions of law defining the crime and fixing the penalty therefor.
2. A certified copy of the indictment upon which the arrest warrant is based.
3. A statement by the issuing authority that the warrant was issued after a determination of probable cause to believe that the requested person has violated any term of bail, probation, or other judicial order arising out of a criminal proceeding.
4. A certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the requested person has escaped from confinement or violated any term of parole.

29-30.3-17. (4-103) Filing of request.

A request for rendition under section 29-30.3-15 must be filed with the attorney general's office, which office shall forward the request to the proper state's attorney. The governor by written order may terminate the use of rendition at any time before the issuance of an order to transfer custody.

29-30.3-18. (4-104) Issuance of arrest warrant or process.

Upon receipt of a request under section 29-30.3-17, the prosecuting official shall apply to a magistrate for the issuance of an arrest warrant, or other process, to obtain the appearance of the requested person. If the magistrate finds that the provisions of sections 29-30.3-15 and 29-30.3-16 have been complied with, the magistrate shall issue the warrant or other process. The warrant must require that the person be brought forthwith before the magistrate. Other process to obtain the appearance of a person must require the appearance before a magistrate.

29-30.3-19. (4-105) Rights of requested person.

1. The magistrate shall inform the person appearing pursuant to section 29-30.3-18 of:
 - a. The name of the state requesting rendition;
 - b. The basis for the arrest warrant in the other state;
 - c. The right to assistance of counsel; and
 - d. The right to require a judicial hearing pursuant to section 29-30.3-20.

2. After being informed by the magistrate of the effect of a waiver, the requested person may waive the right to a judicial hearing and consent to return to the requesting state by executing a written waiver in the presence of the magistrate. If the waiver is executed, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 or with consent of the official upon whose application the request was issued authorize the voluntary return of the person.
3. If a hearing is not waived, the magistrate shall hold it within ten days after the appearance. The requested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The magistrate shall:
 - a. Release the person upon conditions that will reasonably assure availability of the person for the hearing; or
 - b. Direct a law enforcement officer to maintain custody of the person.

29-30.3-20. (4-106) Judicial rendition hearing.

1. If the magistrate after hearing finds that sections 29-30.3-15 and 29-30.3-16 have been complied with, the magistrate shall issue an order to transfer custody pursuant to section 29-30.3-21 unless the arrested person establishes by clear and convincing evidence that arrested person is not the requested person.
2. If the magistrate does not order transfer of custody, the magistrate shall order the arrested person to be released. If the agent of the requesting state has not taken custody within the time specified in the order to transfer custody, the requested person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued as a result of a new demand for extradition or a new request for rendition.
3. An order to transfer custody is not appealable.
4. An order denying transfer is appealable.

29-30.3-21. (5-101) Order to transfer custody.

1. Except as provided in subsection 2, a judicial order to transfer custody issued pursuant to section 29-30.3-06, 29-30.3-13, 29-30.3-14, 29-30.3-19, or 29-30.3-20 must direct a law enforcement officer to take or retain custody of the person until an agent of the other state is available to take custody. If the agent of the other state has not taken custody within ten days, the magistrate may:
 - a. Order the release of the person upon conditions that will assure the person's availability on a specified date within thirty days; or
 - b. Extend the original order for an additional ten days upon good cause shown for the failure of an agent of the other state to take custody.
2. If the agent of the other state has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant or other process to obtain appearance of a person is issued as a result of a new demand for extradition or a new request for rendition.
3. The magistrate in the order may authorize the voluntary return of the person with consent of the executive authority or with the consent of the official upon whose application the request for rendition was made.

29-30.3-22. (5-102) Confinement.

An agent who has custody of a person pursuant to an order to transfer custody issued in any state may request confinement of the person in any detention facility in this state while transporting the person pursuant to the order. Upon production of proper identification of the agent and a copy of the order, the detention facility shall confine the person for that agent. The person is not entitled to another extradition or rendition proceeding in this state.

29-30.3-23. (5-103) Cost of return.

Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

29-30.3-24. (5-104) Applicability of other law.

1. A person returned to this state is subject to the law of this state as well as the provisions of law that constituted the basis for the return.
2. This chapter does not limit the powers, rights, or duties of the officials of a demanding or requesting state or of this state.

29-30.3-25. (5-105) Payment of transportation and subsistence costs.

If a person returned to this state is found not to have violated the law that constituted the basis for the return, the magistrate may order the county or state to pay the person the cost of transportation and subsistence to:

1. The place of the person's initial arrest; or
2. The person's residence.

29-30.3-26. Payment of expenses.

When the charged offense is a felony, the expenses of returning the demanded person to this state must be paid out of the state treasury, on the certificate of the governor and warrant of the county auditor and in all other cases they must be paid out of the county treasury in the county in which the crime is alleged to have been committed. The expenses are the fees paid to the officers of the state under sections 44-08-04 and 54-06-09.

CHAPTER 29-31
CONFISCATION OF EQUIPMENT USED IN COMMISSION OF CRIME
[Repealed by S.L. 1991, ch. 346, § 3]

CHAPTER 29-31.1

PROPERTY FORFEITURE AND DISPOSITION

29-31.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Forfeitable property" means any of the following:
 - a. Property that is illegally possessed or is contraband.
 - b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a co-owner, whether by joint tenancy, tenancy in common, or tenancy by the entireties, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
 - c. Property that is acquired as or from the proceeds of a criminal offense.
 - d. Property offered or given to another as an inducement for the commission of a criminal offense.
 - e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.
 - f. Personal property used in the theft of livestock or the transportation of stolen livestock.
2. "Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody.
3. "Seizing agency" is the law enforcement agency that has taken possession of or seized property in the course of that agency's official duties.

29-31.1-02. Disposition of nonforfeitable property.

Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than two hundred fifty dollars, or certified mail, if the value of the property is equal to or greater than two hundred fifty dollars, to the last-known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

29-31.1-03. Seizure of forfeitable property.

Forfeitable property may be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by taking custody of the property or by serving upon the person in possession of the property a notice of forfeiture and seizure. If the court finds that the forfeiture is warranted, an order transferring ownership to the seizing agency must be

entered and the property must be delivered to the seizing agency for disposition as directed by the court. Property that has been seized for forfeiture, and is not already secured as evidence in a criminal case, must be safely secured or stored by the agency that caused its seizure.

29-31.1-04. Forfeiture proceedings.

1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.
2. Forfeiture proceedings brought under this chapter must be conducted in accordance with the procedures established for the forfeiture of property in sections 19-03.1-36.1 through 19-03.1-36.7.

29-31.1-05. Transfer of forfeitable property.

Title to, and responsibility for, forfeitable property vests with the seizing agency at the time of the seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the seizing agency unless the seizure and forfeiture is declared by the court to be a nullity or as otherwise ordered by the court.

29-31.1-06. Disposition of forfeited property.

When property is forfeited under this chapter, the seizing agency may:

1. Retain the property for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency.
2. Sell the forfeited property that is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale, together with any monetary funds ordered to be forfeited, must be used first for the payment of all proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund.
3. Dispose of the property in accordance with the order of the court if the property cannot be retained, used, or sold by the seizing agency.

29-31.1-07. Nonforfeitable interest - Purchase of forfeitable interest.

1. Property may not be forfeited under this chapter to the extent of an interest of an owner who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.
2. Upon receipt of forfeited property, the seizing agency shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within sixty days of mailing of written notice to such person of such option, the option is terminated unless the time for exercising the option is extended by the seizing agency.
3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, must either be reimbursed to the extent of the nonforfeitable property interest or to the extent of the amount raised by the sale of the item, whichever amount is less. The sale of forfeited property must be conducted in a manner that is commercially reasonable and calculated to provide a sufficient return to cover the cost of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date the property is seized. All costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, must be

first deducted from the sale proceeds and paid to the party incurring such costs and expenses.

4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the seizing agency.

29-31.1-08. Retention of forfeited property.

If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it must be retained under the control of the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

29-31.1-09. Disposition of forfeitable property held as evidence in criminal proceeding.

Notwithstanding other provisions of this chapter, in the case of forfeitable property seized and held as evidence of the commission of a criminal offense, the court in which a criminal prosecution was commenced may issue its order, upon motion and after hearing unless waived, for disposition of the property in accordance with this chapter. Notice of the motion must be served in accordance with the North Dakota Rules of Civil Procedure upon the owner and all persons known to be claiming an interest in the property to be forfeited. The notice must be served at least twenty days before a hearing on the motion unless the time period is waived by all parties claiming an interest in the property. The motion must contain the information required in a complaint as set forth in section 19-03.1-36.3. Although no separate forfeiture proceeding is required to be instituted under this section, all other provisions of this chapter apply to proceedings commenced pursuant to this section.

29-31.1-10. Inapplicability of chapter.

The provisions of this chapter do not apply to forfeiture proceedings commenced under other specific provisions of law, including chapters 12.1-06.1, 19-03.1, and 20.1-10.

CHAPTER 29-32
UNIFORM POSTCONVICTION PROCEDURE ACT
[Repealed by S.L. 1985, ch. 366, § 16]

CHAPTER 29-32.1
UNIFORM POSTCONVICTION PROCEDURE ACT

29-32.1-01. Remedy - To whom available - Conditions.

1. A person who has been convicted of and sentenced for a crime may institute a proceeding applying for relief under this chapter upon the ground that:
 - a. The conviction was obtained or the sentence was imposed in violation of the laws or the Constitution of the United States or of the laws or Constitution of North Dakota;
 - b. The conviction was obtained under a statute that is in violation of the Constitution of the United States or the Constitution of North Dakota, or that the conduct for which the applicant was prosecuted is constitutionally protected;
 - c. The court that rendered the judgment of conviction and sentence was without jurisdiction over the person of the applicant or the subject matter;
 - d. The sentence is not authorized by law;
 - e. Evidence, not previously presented and heard, exists requiring vacation of the conviction or sentence in the interest of justice;
 - f. A significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively;
 - g. The sentence has expired, probation or parole or conditional release was unlawfully revoked, or the applicant is otherwise unlawfully in custody or restrained; or
 - h. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error available before July 1, 1985, under any common law, statutory or other writ, motion, proceeding, or remedy.
2. Except as provided in subsection 3, an application for relief under this chapter must be filed within two years of the date the conviction becomes final. A conviction becomes final for purposes of this chapter when:
 - a. The time for appeal of the conviction to the North Dakota supreme court expires;
 - b. If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires; or
 - c. If review was sought in the United States supreme court, the date the supreme court issues a final order in the case.
3.
 - a. Notwithstanding subsection 2, a court may consider an application for relief under this chapter if:
 - (1) The petition alleges the existence of newly discovered evidence, including DNA evidence, which if proved and reviewed in light of the evidence as a whole, would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted;
 - (2) The petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief; or
 - (3) The petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States supreme court or a North Dakota appellate court and the petitioner establishes that the interpretation is retroactively applicable to the petitioner's case.
 - b. An application under this subsection must be filed within two years of the date the petitioner discovers or reasonably should have discovered the existence of the new evidence, the disability or disease ceases, or the effective date of the retroactive application of law.
4. A proceeding under this chapter is not a substitute for and does not affect any remedy incident to the prosecution in the trial court or direct review of the judgment of conviction or sentence in an appellate court. Except as otherwise provided in this chapter, a proceeding under this chapter replaces all other common law, statutory, or other remedies available before July 1, 1985, for collaterally challenging the validity of the judgment of conviction or sentence. It is to be used exclusively in place of them. A

proceeding under this chapter is not available to provide relief for disciplinary measures, custodial treatment, or other violations of civil rights of a convicted person occurring after the imposition of sentence.

29-32.1-02. Exercise of original jurisdiction in habeas corpus.

A court in which original jurisdiction in habeas corpus is vested may entertain a habeas corpus proceeding under chapter 32-22 or this chapter. This chapter, to the extent appropriate, governs the proceeding.

29-32.1-03. Commencement of proceedings - Filing - Service.

1. A proceeding is commenced by filing an application with the clerk of the court in which the conviction and sentence took place. The state must be named as respondent. No filing fee is required.
2. An application may be filed at any time.
3. If an application is filed before the time for appeal from the judgment of conviction or sentence has expired, the court, on motion of the applicant, may extend the time for appeal until a final order has been entered in the proceeding under this chapter.
4. If an application is filed while an appeal or other review is pending, the appellate court, on motion of either party or on its own motion, may defer further action on the appeal or other review until the determination of the application by the trial court or may order the application certified and consolidated with the pending appeal or other review.
5. Upon receipt of an application, the clerk shall forthwith file it, make an entry in the appropriate docket, and deliver a copy to the state's attorney of the county in which the criminal action was venued.
6. If the applicant is not represented by counsel, the clerk shall notify the applicant that assistance of counsel may be available to persons unable to obtain counsel. The clerk shall also inform the applicant of the procedure for obtaining counsel.
7. The application may be considered by any judge of the court in which the conviction took place.

29-32.1-04. Application - Contents.

1. The application must identify the proceedings in which the applicant was convicted and sentenced, give the date of the judgment and sentence complained of, set forth a concise statement of each ground for relief, and specify the relief requested. Argument, citations, and discussion of authorities are unnecessary.
2. The application must identify all proceedings for direct review of the judgment of conviction or sentence and all previous postconviction proceedings taken by the applicant to secure relief from the conviction or sentence, the grounds asserted therein, and the orders or judgments entered. The application must refer to the portions of the record of prior proceedings pertinent to the alleged grounds for relief. If the cited record is not in the files of the court, the applicant shall attach that record or portions thereof to the application or state why it is not attached. Affidavits or other material supporting the application may be attached, but are unnecessary.

29-32.1-05. Counsel at public expense - Applicant's inability to pay costs and litigation expenses.

1. If an applicant requests counsel and the court is satisfied that the applicant is indigent, counsel shall be provided at public expense to represent the applicant.
2. Costs and expenses incident to a proceeding under this chapter, including fees for counsel provided at public expense, must be reimbursed in the same manner as are costs and expenses incurred in the defense of criminal prosecutions.

29-32.1-06. Response by answer or motion.

1. Within thirty days after the docketing of an application or within any further time the court may allow, the state shall respond by answer or motion.

2. The state may move to dismiss an application on the ground that it is evident from the application that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings. In considering the motion, the court shall take account of substance regardless of defects of form.
3. The following defenses may be raised by answer or motion:
 - a. The claim has been fully and finally determined in a previous proceeding in accordance with subsection 1 of section 29-32.1-12; or
 - b. The application constitutes misuse of process in accordance with subsection 2 of section 29-32.1-12.

29-32.1-07. Amended and supplemental pleadings.

1. The court may make appropriate orders allowing amendment of the application or any pleading or motion, allowing further pleadings or motions, or extending the time for filing any pleading.
2. At any time before the entry of judgment, the court, for good cause, may grant leave to withdraw the application without prejudice.

29-32.1-08. Discovery.

The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

29-32.1-09. Summary dismissal.

1. The court, on its own motion, may enter a judgment denying a meritless application on any and all issues raised in the application before any response by the state. The court also may summarily deny a second or successive application for similar relief on behalf of the same applicant and may summarily deny any application when the issues raised in the application have previously been decided by the appellate court in the same case.
2. The court, on its own motion, may dismiss any grounds of an application which allege ineffective assistance of postconviction counsel. An applicant may not claim constitutionally ineffective assistance of postconviction counsel in proceedings under this chapter.

29-32.1-09.1. Summary disposition.

1. The court may grant a motion by either party for summary disposition if the application, pleadings, any previous proceeding, discovery, or other matters of record show that no genuine issues exist as to any material fact and the moving party is entitled to judgment as a matter of law.
2. If an evidentiary hearing is necessary, the court may determine which issues of material fact are in controversy and appropriately restrict the hearing.

29-32.1-10. Hearing - Evidence.

1. Evidence must be presented in open court, recorded, and preserved as part of the record of the proceedings.
2. A certified record of previous proceedings may be used as evidence of facts and occurrences established therein, but use of that record does not preclude either party from offering additional evidence as to those facts and occurrences.
3. The deposition of a witness may be received in evidence, without regard to the availability of the witness, if written notice of intention to use the deposition was given in advance of the hearing and the deposition was taken subject to the right of cross-examination.

29-32.1-11. Findings of fact - Conclusions of law - Order.

1. The court shall make explicit findings on material questions of fact and state expressly its conclusions of law relating to each issue presented.
2. If the court rules that the applicant is not entitled to relief, its order must indicate whether the decision is based upon the pleadings, is by summary disposition, or is the result of an evidentiary hearing.
3. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the previous proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

29-32.1-12. Affirmative defenses - Res judicata - Misuse of process.

1. An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.
2. A court may deny relief on the ground of misuse of process. Process is misused when the applicant:
 - a. Presents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding; or
 - b. Files multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous.
3. Res judicata and misuse of process are affirmative defenses to be pleaded by the state. The burden of proof is also upon the state, but, as to any ground for relief which, by statute or rule of court, must be presented as a defense or objection at a specified stage of a criminal prosecution, the applicant shall show good cause for noncompliance with the statute or rule.

29-32.1-13. Reimbursement of costs and litigation expenses.

If an application is denied, the state may move for an order requiring the applicant to reimburse the state for costs and for litigation expenses paid for the applicant from public funds. The court may grant the motion if it finds that the applicant's claim is so completely lacking in factual support or legal basis as to be frivolous or that the applicant has deliberately misused process. The court may require reimbursement of costs and expenses only to the extent reasonable in light of the applicant's present and probable future financial resources.

29-32.1-14. Review.

A final judgment entered under this chapter may be reviewed by the supreme court of this state upon appeal as provided by rule of the supreme court.

29-32.1-15. Motion for DNA testing not available at trial.

1. Without limitation on a court's authority to order discovery under section 29-32.1-08, a person convicted of a crime may make a motion for the performance of forensic DNA testing to demonstrate the person's actual innocence if:
 - a. The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and
 - b. The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.
2. A person who makes a motion under subsection 1 must present a prima facie case that:
 - a. Identity was an issue in the trial; and
 - b. The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.
3. The court shall order that the testing be performed if:

- a. A prima facie case has been established under subsection 2;
- b. The testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and
- c. The testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

**TITLE 39
MOTOR VEHICLES**

**CHAPTER 39-01
DEFINITIONS AND GENERAL PROVISIONS**

39-01-01. Definitions.

In this title, unless the context or subject matter otherwise requires:

1. "Appropriate licensed addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed by the department of health and human services or conducted by a licensed individual specifically trained in addiction treatment.
2. "Authorized emergency vehicles":
 - a. "Class A" authorized emergency vehicles means:
 - (1) Vehicles of a governmentally owned fire department.
 - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles.
 - (3) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation.
 - (4) Ambulances and other vehicles authorized by licensure granted under chapter 23-27.
 - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.
 - (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
 - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.
 - (8) Vehicles operated by or under the control of the director of the parks and recreation department.
 - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
 - (10) Vehicles operated by or under the control of the state forester.
 - (11) Vehicles operated by or under the control of the bureau of criminal investigation and used for law enforcement purposes.
 - (12) Vehicles operated by or under the department of health and human services in cases of emergencies.
 - (13) Vehicles used or operated by governmental search and rescue personnel while performing emergency operations or duties. As used in this paragraph, "search and rescue" means deployment, coordination, and use of available resources and personnel in locating, relieving the distress, and preserving the life of and removing an individual who is missing, trapped, or lost in the backcountry, remote areas, or waters of the state. The term includes water and dive rescue.
 - b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
 - c. "Class C" authorized emergency vehicles means:
 - (1) Vehicles used by the state division of homeland security and emergency management or local division of emergency management organizations.
 - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.

- (3) Vehicles, other than ambulances, used by emergency medical services personnel.
 - (4) Vehicles used by volunteer search and rescue personnel if performing an emergency operation or duty upon the request of a state entity, political subdivision, or volunteer fire department. A volunteer organization may classify a personal vehicle as a class C emergency vehicle if needed to assist in a search and rescue operation in accordance with this paragraph. As used in this paragraph, "search and rescue" means deployment, coordination, and use of available resources and personnel in locating, relieving the distress, and preserving the life of and removing an individual who is missing, trapped, or lost in the backcountry, remote areas, or waters of the state. The term includes water and dive rescue.
- 3. "Bicycle" means every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel. The term includes an electric bicycle and a multipassenger bicycle.
 - 4. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons, and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. Provided, every motor vehicle designed for carrying not more than fifteen persons and used for a ridesharing arrangement, as defined in section 8-02-07, is not a "bus".
 - 5. "Business district" means the territory contiguous to a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet [91.44 meters] or more is occupied by buildings in use for business.
 - 6. "Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.
 - 7. "Cancellation" means a license is annulled and terminated because of an error or defect or because the licensee is no longer entitled to the operator's license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after the cancellation.
 - 8. "Child restraint system" means a specifically designed device, built-in seating system, or belt-positioning booster that meets the federal motor vehicle safety standards and is permanently affixed to a motor vehicle, is affixed to the vehicle by a safety belt or universal attachment system, or is combined with a federally compliant safety belt system.
 - 9. "Commercial freighting" means the carriage of things other than passengers, for hire, except that such term does not include:
 - a. The carriage of things other than passengers within the limits of the same city;
 - b. Carriage by local dray lines of baggage or goods to or from a railroad station from or to places in such city or in the immediate vicinity thereof, in this state, and not to exceed two miles [3.22 kilometers] from the corporate or recognized limits of said city; or
 - c. Hauling done by farmers for their neighbors in transporting agricultural products to or from market.
 - 10. "Commercial passenger transportation" means the carriage of passengers for hire, except that the term does not include:
 - a. The carriage of passengers within the limits of a city.
 - b. The carriage by local buslines of passengers to or from a railroad station from or to places within any city or within two miles [3.22 kilometers] of the limits of the city.
 - c. The carriage of passengers under a ridesharing arrangement, as defined in section 8-02-07.
 - 11. "Commissioner" means the director of the department of transportation of this state, acting directly or through authorized agents as provided by section 24-02-01.3.

12. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.
13. "Conviction" means a final order or judgment or conviction by the North Dakota supreme court, any lower court having jurisdiction, a tribal court, or a court in another state if an appeal is not pending and the time for filing a notice of appeal has elapsed. Subject to the filing of an appeal, the term includes:
 - a. An imposed and suspended sentence;
 - b. A deferred imposition of sentence under subsection 4 of section 12.1-32-02; or
 - c. A forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.
14. "Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.
15. "Dealer" means every person, partnership, corporation, or limited liability company engaged in the business of buying, selling, or exchanging motor vehicles, or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of motor vehicles, or who engages in the buying of motor vehicles for resale. Any person, partnership, corporation, limited liability company, or association doing business in several cities or in several locations within a city must be considered a separate dealer in each such location.
16. "Department" means the department of transportation of this state as provided by section 24-02-01.1.
17. "Director" means the director of the department of transportation of this state as provided by section 24-02-01.3.
18. "Driver" means every person who drives or is in actual physical control of a vehicle.
19. "Electric bicycle" means a bicycle equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of seven hundred fifty or fewer watts which meets the requirements of one of the following three classes:
 - a. A class 1 electric bicycle if the motor provides assistance only when the individual is pedaling and the motor ceases to provide assistance when a speed of twenty miles [32 kilometers] per hour is achieved.
 - b. A class 2 electric bicycle if the motor is capable of propelling the bicycle without the individual pedaling and the motor ceases to provide assistance when a speed of twenty miles [32 kilometers] per hour is achieved.
 - c. A class 3 electric bicycle if the motor provides assistance only when the individual is pedaling and the motor ceases to provide assistance when a speed of twenty-eight miles [45 kilometers] per hour is achieved.
20. "Electronic communication device" means an electronic device, including a wireless telephone, personal digital assistant, a portable or mobile computer or other device, and video display equipment. The term does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.
21. "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation and includes all integral parts and body parts, the removal, alteration, or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
22. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or

- packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or by destroying life or limb.
23. "Farm tractor" includes every motor vehicle designed and used primarily as a farm implement for drawing plows, moving machines, and other implements of husbandry.
 24. "Farm trailer" includes those trailers and semitrailers towed by a bona fide resident farmer hauling the farmer's own agricultural, horticultural, dairy, and other farm products if the gross weight, not including the towing vehicle, does not exceed twenty-four thousand pounds [10886.22 kilograms].
 25. "Fifth-wheel travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.
 26. "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit [21.11 degrees Celsius], or less, as determined by a tagliabue or equivalent closed-cup test device.
 27. "Foreign vehicle" means every motor vehicle which is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.
 28. "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.
 29. "Guest" means and includes a person who accepts a ride in any vehicle without giving compensation therefor.
 30. "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and of every way privately maintained within a mobile home park, trailer park, or campground containing five or more lots for occupancy by mobile homes, travel trailers, or tents when any part thereof is open for purposes of vehicular travel.
 31. "House car" or "motor home" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:
 - a. Cooking facilities.
 - b. Icebox or mechanical refrigerator.
 - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
 - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
 - e. Heating or air-conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.
 - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.
 32. "Implement of husbandry" means every vehicle designed and adapted exclusively for agricultural, horticultural, or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highway.
 33. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty feet [9.14 meters] or more apart, then every crossing of each roadway of such divided highway by an intersecting highway must be regarded as a separate intersection. In the event such

intersecting highway also includes two roadways thirty feet [9.14 meters] or more apart, then every crossing of two roadways of such highways must be regarded as a separate intersection.

- 34. "Intoxicating liquor" means and includes any beverage containing alcohol.
- 35. "Judgment" means any judgment which has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a claim for relief arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a claim for relief on an agreement of settlement for such damages.
- 36. "Legal owner" means a person who holds the legal title to a vehicle.
- 37. "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.
- 38. "Lienholder" means a person holding a security interest in a vehicle.
- 39. "Local authorities" includes every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state.
- 40. "Mail" means to deposit mail properly addressed and with postage prepaid with the United States postal service.
- 41. "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.
- 42. "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected onsite, is three hundred twenty square feet [29.73 square meters] or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to whether the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.
- 43. "Manufacturer" means any person who manufactures, assembles, or imports and sells new motor vehicles to new motor vehicle dealers for resale in the state; but such term does not include a person who assembles or specially builds interior equipment on a completed vehicle supplied by another manufacturer, distributor, or supplier.
- 44. "Metal tires" includes all tires the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material except that this provision does not apply to pneumatic tires.
- 45. "Mobile home" means a structure, either single or multisectional, which is built on a permanent chassis, ordinarily designed for human living quarters, either on a temporary or permanent basis, owned or used as a residence or place of business of the owner or occupant, which is either attached to utility services or is twenty-seven feet [8.23 meters] or more in length.
- 46. "Modular unit" includes every factory fabricated transportable building unit designed to be incorporated with similar units at a building site into a modular structure to be used for residential, commercial, educational, or industrial purposes.
- 47. "Motor vehicle" includes every vehicle that is self-propelled, every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and

- operator's licenses, motorized bicycles. The term does not include a snowmobile as defined in section 39-24-01, an electric bicycle, or a multipassenger bicycle.
48. "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding implements of husbandry. The term does not include an electric bicycle.
49. "Motorized bicycle" means a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion or footrests for use by the operator, a power source providing up to a maximum of two brake horsepower having a maximum piston or rotor displacement of 3.05 cubic inches [49.98 milliliters] if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed thirty miles [48.28 kilometers] per hour on a level road surface, and a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged, and the vehicle may not have a width greater than thirty-two inches [81.28 centimeters]. The term does not include an electric bicycle.
50. "Motor-powered recreational vehicle" means a motorcycle, unconventional vehicle, or off-highway vehicle as defined in section 39-29-01, or a snowmobile as defined in section 39-24-01. The term does not include an electric bicycle.
51. "Multipassenger bicycle" means a vehicle that:
- Has fully operative pedals for propulsion entirely by human power;
 - Has at least four wheels and is operated in a manner similar to a bicycle;
 - Has at least five seats for passengers;
 - Has been designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power;
 - Is used for commercial purposes;
 - Is operated by the owner of the vehicle or an employee of the owner of the vehicle;
 - Is equipped with a steering wheel that gives the driver exclusive control of the direction of the vehicle;
 - Is equipped with at least one taillamp in accordance with section 39-21-04;
 - Is equipped with a stop lamp in accordance with subsection 1 of section 39-21-19; and
 - Is equipped with headlamps in accordance with section 39-27-17.1.
52. "Nonresident" means any person who is not a resident of this state.
53. "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in this state.
54. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.
55. "Operator" means every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
56. "Operator's license", "driver's license", or "license to operate a motor vehicle" means any operator's or driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state, including:
- Any temporary license or instruction permit;
 - The privilege of any person to drive a motor vehicle whether such person holds a valid license; or
 - Any nonresident's operating privilege as defined in this section.
57. "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

- 58. "Park", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.
- 59. "Passenger motor vehicle" means every motor vehicle designed principally for the transportation of persons and includes vehicles which utilize a truck chassis, but have a seating capacity for four or more passengers.
- 60. "Pedestrian" means any person afoot.
- 61. "Person" includes every natural person, firm, copartnership, association, corporation, or limited liability company.
- 62. "Pneumatic tires" includes all tires inflated with compressed air.
- 63. "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.
- 64. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- 65. "Primary source identity document" means documentary evidence of an individual's name, date of birth, and legal presence required in chapters 39-06 and 39-06.2 related to the issuance of permits, licenses, and nondriver photo identification cards, and retained in the driver record.
- 66. "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.
- 67. "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring after the effective date of the proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to the limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.
- 68. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.
- 69. "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
- 70. "Reconstructed vehicle" means any vehicle, of a type required to be registered, materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.
- 71. "Recreational vehicle" means any motorcycle not qualified for registration, off-highway vehicle, snowmobile, vessel, or personal watercraft. The term does not include an electric bicycle.
- 72. "Residence district" means territory contiguous to a highway not comprising a business district, when the frontage on such highway for a distance of three hundred feet [91.44 meters] or more is occupied mainly by dwellings, or by dwellings and buildings in use for business.
- 73. "Revocation" means that the operator's license is terminated and may not be renewed or restored, except on application for a new license presented to and acted upon by the director after the expiration of the period of revocation.
- 74. "Right of way" means the privilege of the immediate use of a roadway.
- 75. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

76. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately but not to all such roadways collectively.
77. "Saddle mount" means placing the front wheels of the drawn vehicle upon the bed of the drawing vehicle.
78. "Safety zone" means the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set aside as a safety zone.
79. "Salvage certificate of title" means a document issued by the department for purposes of proof of ownership of a salvage or destroyed vehicle and not acceptable for motor vehicle registration purposes.
80. "Schoolbus" means a motor vehicle designed or used to carry more than ten passengers in addition to the driver, and is used for the purpose of transporting preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-related events. For the purposes of chapter 39-21, "schoolbus" means any motor vehicle that is owned or leased by a public or governmental agency and used to transport preprimary, primary, or secondary school students to or from school or to or from school-related events, or is privately owned and operated for compensation to transport preprimary, primary, or secondary school students to or from school or to or from school-related events. Schoolbus does not include a bus used as a common carrier.
81. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a truck or truck tractor that some part of its own weight and that of its own load rests upon or is carried by a truck or truck tractor, except that it does not include a "housetrailer" or "mobile home".
82. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.
83. "Solid tire" includes every tire made of rubber or other resilient material other than a pneumatic tire.
84. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway.
85. "Specially constructed vehicle" means any vehicle which was not constructed originally under the distinct name, make, model, or type by a generally recognized manufacturer of vehicles.
86. "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.
87. "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province of the Dominion of Canada.
88. "Stop", when required, means complete cessation from movement.
89. "Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.
90. "Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
91. "Superintendent" means the superintendent of the North Dakota state highway patrol, acting directly or through authorized employees of the superintendent.
92. "Suspension" means that the operator's license is temporarily withdrawn but only during the period of the suspension.
93. "Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from

intersecting highways is required by law to yield right of way to vehicles on such through highway and in obedience to either a stop sign or yield sign, when such signs are erected by law.

94. "Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.
95. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.
96. "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
97. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, except that it does not include a "house trailer" or "mobile home", which terms mean a vehicle as defined in this subsection which is designed and intended for use as living or sleeping quarters for people and which is not used for commercial hauling of passengers.
98. "Travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require a special highway movement permit when towed by a motorized vehicle.
99. "Truck" includes every motor vehicle designed, used, or maintained primarily for transportation of property.
100. "Truck camper" means a portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use; consists of a roof, floor, and sides; and is designed to be loaded onto and unloaded from the bed of a pickup truck.
101. "Truck tractor" includes every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.
102. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet [30.48 meters] for a distance of a quarter of a mile [402.34 meters] or more.
103. "Used vehicle" means a motor vehicle which has been sold, bargained, exchanged, given away, or the title to which has been transferred to another, by the person who first acquired it from the manufacturer or importer, dealer, or agent of the manufacturer or importer.
104. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. The term does not include an electric bicycle.

39-01-01.1. Declaration of legislative intent.

The legislative assembly in adopting title 39 recognized that the development of a modern and integrated highway system which is so essential to safe and efficient highway transportation represents a large investment of public funds. To ensure maximum public benefits from such investment, authority has been vested in appropriate agencies of government for the establishment, construction, maintenance, and operation of needed road facilities, within the limits of funds made available.

Additionally, the legislative assembly recognizes that other functions of government, established pursuant to title 39 to govern the ownership and use of motor vehicles, also are supported by public funds and render important public services which contribute to the safe and efficient use of roads and streets. The responsibilities of state government include such functions as vehicle registration and titling, driver licensing, financial responsibility, police traffic supervision, accident investigation and reporting, and use of accident records, traffic operations, and similar functions conducted under motor vehicle laws affecting motor vehicles and their use.

In fulfilling these responsibilities, the legislative assembly recognizes the necessity that individual prerogatives be considered secondary to the general welfare and so it is expected

that the officials will adopt such reasonable policies, procedures, rules, and regulations as may be necessary, within the authority granted by law, and in so doing shall make appropriate use of recommended standards developed by recognized official groups to ensure a desirable level of uniformity throughout the state and with other states. Such uniformity is especially important in the use and application of uniform signs, signals, and markings.

It is expected, further, that the officials will cooperate with each other where such cooperation is essential, and not otherwise prescribed by law. Moreover, there is also need for more effective coordination of activities among all branches and levels of government in carrying out their respective traffic safety responsibilities, including the governor's office, the state legislative assembly and city councils, the administrative, enforcement, and judicial officials of the state and its political subdivisions. In all matters of mutual concern, and where appropriate, cooperation is also encouraged among state officials, officials of other states and the federal government, and other responsible groups, both public and private.

Highway transportation is a dynamic force in our society and is influenced by new developments and changing public needs. To keep abreast of foreseeable adjustments, it is expected that the officials will engage in such research and planning as may be necessary and as may be provided for in this title. Such efforts should be conducted in cooperation with all interested public and private groups, and directed towards the development of realistic traffic accident prevention programs to guide legislative decisions and enlist public support in meeting immediate and potential needs.

In keeping with the policies herein enunciated, it is the intent of the legislative assembly to equip each function with the necessary authority to maintain an adequate level of performance in all functions concerned with the ownership and use of motor vehicles, as they are established in title 39, consistent with the expanding needs of highway transportation, in order to protect the public safety, promote the general welfare, and advance the economy of the state.

39-01-01.2. Autonomous vehicle operations.

1. As used in this section:
 - a. "Automated driving system" means hardware and software collectively capable of performing the entire dynamic driving task for the vehicle on a sustained basis when installed on a motor vehicle and engaged regardless of whether it is limited to a specific operational design domain.
 - b. "Autonomous vehicle" means a vehicle equipped with an automated driving system.
 - c. "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within the vehicle's specific operational design domain, if any, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints.
 - d. "Human driver" means an individual with a valid license to operate a motor vehicle who manually exercises in-vehicle braking, accelerating, steering, and transmission gear selection input devices to operate a vehicle.
 - e. "Minimal risk condition" means a low-risk operating mode in which an autonomous vehicle operating without a human driver achieves a reasonably safe state, such as bringing the vehicle to a complete stop, upon experiencing a failure of the vehicle's automated driving system that renders the vehicle unable to perform the entire dynamic driving task.
 - f. "Operational design domain" means a description of the specific operating domain in which an automated driving system is designed to properly operate, including roadway types, speed range, environmental conditions, and other domain constraints.
2. An autonomous vehicle must be capable of operating in compliance with all applicable federal and state law, except to the extent exempted under applicable federal or state law, and may operate on the public highways of this state in full compliance with all vehicle registration, title, insurance, and all other applicable requirements under this title.

3. An autonomous vehicle with automated driving systems engaged does not require a human driver to operate on the public highway if the autonomous vehicle is capable of achieving a minimal risk condition in case a system failure occurs which renders the automated driving system unable to perform the entire dynamic driving task relevant to the vehicle's intended operational design domain.
4. An individual using an autonomous vehicle is not driving or in actual physical control of the autonomous vehicle and, therefore, is exempt from licensing requirements if:
 - a. The automated driving system is completing the entire dynamic driving task; and
 - b. The autonomous vehicle is capable of achieving a minimal risk condition if a system failure occurs that renders the automated driving system unable to perform the entire dynamic driving task relevant to the vehicle's intended operational design domain.
5. This section may not be construed to modify, limit, or restrict any statutory provision affecting liability, including chapter 26.1-40, 26.1-41, 28-01.3, 32-03.2, or 39-16.1.

39-01-02. Motor vehicles owned or leased by the state to display name on side of vehicles - Exceptions - Penalty.

All motor vehicles owned and operated by the state, except vehicles under the control of the central vehicle management system and the official vehicle for use by the governor, must have displayed on each front door the words NORTH DAKOTA. The words must be in letters four inches [10.16 centimeters] in height. Two and one-half inches [6.35 centimeters] directly below those words there must be printed in letters one and one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the motor vehicle. The width of the display required by this section must be proportionate to the required height. The color of the lettering must be in clear and sharp contrast to the background. The state auditor shall include in the auditor's report to the governor and the legislative assembly any instance of noncompliance with this section. The above requirements and the requirements for no smoking signs do not apply to vehicles operated by a state entity that engages in investigatory activities. The central vehicle management system vehicles must display a window decal designed by the director. The state highway patrol and all peace officers of this state shall enforce this section.

39-01-03. Motor vehicle owned by the state, North Dakota art museum, or an international peace garden not to be used for private use or in political activities.

A person, officer, or employee of the state or of any department, board, bureau, commission, institution, industry, or other agency of the state, or person, officer, or employee of the North Dakota art museum, or of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, may not use or drive any motor vehicle belonging to the state or to any department, board, bureau, commission, institution, industry, or other agency of the state, or person, officer, or employee of the North Dakota art museum, or of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, for private use, or while engaged in any political activity.

39-01-04. Political activity defined.

The term "political activity" as used in this chapter includes any form of campaigning or electioneering, such as attending or arranging for political meetings; transporting candidates or workers engaged in campaigning or electioneering; distributing campaign literature, political guide cards, or placards; soliciting or canvassing for campaign funds; transporting electors to the polls on election day; and any other form of political work usually and ordinarily engaged in by state officers and employees during primary and general election campaigns.

39-01-05. Expenses not to be collected by state officers or employees engaged in political activity.

A state officer or employee who uses or drives any privately owned motor vehicle while engaged in political activity may not collect or receive from this state any expense moneys for the use or operation of the motor vehicle while engaged in the political activity. A state officer or employee may not collect or receive any traveling expense reimbursement from this state for any time spent engaging in any political activity.

39-01-06. Collecting or receiving expense money wrongfully - Civil action for recovery - Liability of bond.

Any officer or employee who collects or receives any expense moneys in violation of section 39-01-05 is subject to a suit for the recovery of the funds wrongfully collected or received by that person, and if that person's office or position is bonded by the state bonding fund, such fund also is liable therefor.

39-01-07. Penalty for violation of chapter.

Any person violating any provision of this chapter for which another penalty is not specifically provided is guilty of a class A misdemeanor.

39-01-08. State, political subdivisions, and International Peace Gardens authorized to carry insurance on vehicles - Waiver of immunity to extent only of insurance purchased.

1. The state or any department, agency, or bureau, as well as any county, city, or other political subdivision including townships, school districts, and park districts, and any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, using or operating motor vehicles and aircrafts, may carry insurance for their own protection and for the protection of any employees from claims for loss or damage arising out of or by reason of the use or operation of the motor vehicle or aircraft, whether the vehicle or aircraft at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, the insurance policy may be taken out for more than one year, but in no event beyond a period of five years.
2. If insurance is purchased pursuant to subsection 1, then the purchaser waives its immunity to suit only to the extent of allowing a determination of liability to the extent of the waiver of the immunity against liability described in subsection 3.
3. If insurance is purchased pursuant to subsection 1, then the purchaser waives its immunity against liability only to the types of its insurance coverage and only to the extent of the policy limits of the coverage. Provided, the purchaser or its insurance carrier is not liable for claims arising out of the conduct of a ridesharing arrangement, as defined in section 8-02-07.
4. If any dispute exists concerning the amount or nature of the insurance coverage, the dispute must be tried separately before the main trial determining the claims and damages of the claimant.
5. This statute confers no right for a claimant to sue the insurer directly.
6. When liability insurance is carried pursuant to this section or pursuant to section 32-12.1-05, no defense in a negligence action may be raised by the insurance carrier upon the basis of section 39-07-05.

39-01-08.1. Senior citizens group motor vehicle - Availability of coverage under political subdivision policies.

Any political subdivision may provide for the inclusion of buses, vans, or other motor vehicles used by senior citizens groups to transport members in a motor vehicle insurance policy of the political subdivision. The political subdivision may require payment by a senior

citizens group for any increase in the premium rate charged to the political subdivision which is attributable to the coverage provided to that senior citizens group. The political subdivision may provide for a payment procedure to require the payment of any premium or premium portion attributable to the coverage provided for the senior citizens group.

39-01-08.2. Senior citizens group motor vehicle - Availability of coverage under state policies.

Except as otherwise provided in this section, any insurance policy providing coverage of state-owned motor vehicles must provide, at the request of a senior citizens group prior to the issuance or renewal of the policy, for the inclusion of buses, vans, or other motor vehicles used by the senior citizens group to transport members. The state agency negotiating the insurance policy may require payment by a senior citizens group for any increase in the premium rate charged to the state agency which is attributable to the coverage provided to that senior citizens group. The state agency shall provide by rule for the payment by the senior citizens group of the premium portion attributable to the group's coverage under the policy. The state agency may refuse to provide coverage to a senior citizens group if the coverage would hinder the ability of or not allow the state to obtain insurance.

39-01-09. Parking meters prohibited.

It is unlawful for the state of North Dakota, its political subdivisions, counties, cities, and the state department of transportation to establish and maintain any mechanical device or devices known as "parking meters", or by whatever name designated, requiring the deposit therein of coins or tokens for the privilege of parking cars or other vehicles upon the streets and highways in the state of North Dakota. Any and all ordinances and resolutions now existing authorizing the establishment and maintenance of such mechanical devices or parking meters, or by whatever name designated, are hereby declared null and void.

39-01-10. Proof of payment of registration fees and taxes.

The director of the department of transportation may require all owners or operators of motor vehicles using the highways of this state or registered in this state to show proof of the payment of all proper taxes and registration fees upon such motor vehicles.

39-01-11. Nonresident motor vehicle user - Service upon.

The use and operation by a resident of this state or that person's agent, or by a nonresident or that person's agent, of a motor vehicle upon or over the highways of this state must be deemed an appointment by such resident when that person has been absent from this state continuously for six months or more following an accident or by such nonresident at any time, of the director of the department of transportation of this state to be the person's true and lawful attorney upon whom may be served all legal process in any action or proceeding against the person growing out of the use or operation of the motor vehicle resulting in damages or loss to person or property, whether the damage or loss occurs upon a public highway or upon public or private property, and such use or operation constitutes an agreement that any such process in any action against the person which is so served has the same legal force and effect as if served upon the person personally, or, in case of the person's death, that such process has the same legal force and effect as if served upon the administrator of the person's estate. Service of the summons in such case may be made by delivering a copy thereof to the director with a fee of ten dollars.

39-01-12. Mailing notice to defendant upon service of nonresident motor vehicle user.

Within ten days after service of summons as provided in section 39-01-11, notice of such service together with a copy of the summons and complaint in the action must be sent by the plaintiff to the defendant at the defendant's last-known address by registered or certified mail with return receipt requested, and proof of such mailing must be attached to the summons.

39-01-13. Director to keep record of process received for nonresident motor vehicle users.

The director shall keep a record of all process served upon the director under the provisions of section 39-01-11. Such record must show the day and hour of service. If any defendant served under section 39-01-11 has made proof of financial responsibility by filing a certificate of insurance coverage, as provided in section 39-16.1-09, the director shall mail a copy of such summons and complaint to the insurance carrier named in such certificate.

39-01-14. Protecting rights of defendant served as nonresident motor vehicle user.

When service has been made as provided in section 39-01-11, the court, before entering default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend any action against the defendant.

39-01-15. Parking privileges for mobility impaired - Certificate - Revocation - Continuing appropriation - Penalty.

1. A mobility-impaired individual who displays prominently upon a motor vehicle parked by that individual or under that individual's direction and for that individual's use, the distinguishing certificate specified in subsection 4, license plates issued under section 39-04-10.2, or a disabled veteran plate issued under subdivision j of subsection 2 of section 39-04-18 is entitled to courtesy in the parking of the motor vehicle. However, any municipality may prohibit, by ordinance, parking on any highway for the purpose of creating a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours. The privileges extended to a mobility-impaired individual do not apply on a highway if parking is prohibited.
2. A mobility-impaired individual as used in this section includes an individual who uses portable oxygen; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American heart association; has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest; or is a disabled veteran issued a plate under subdivision j of subsection 2 of section 39-04-18.
3. Repealed by S.L. 1989, ch. 319, § 6.
4. The director may issue a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written or electronic statement issued by a qualified physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The director shall waive the requirement for a written or electronic statement from a qualified physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse if the applicant has previously submitted an application containing a certification from a qualified physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse that the applicant's impairment is not reversible. The application must include the information required by the director. The physician's, physician assistant's, chiropractor's, physical therapist's, or advanced practice registered nurse's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician, physician assistant, chiropractor, physical therapist, or an advanced practice registered nurse who provides a false statement that an individual is mobility impaired for the purpose of that individual obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be

imposed. A certificate issued under this subsection must be nine and one-half inches [24.13 centimeters] in height and three inches [7.62 centimeters] in width and must bear, in white on blue, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's, physician assistant's, chiropractor's, physical therapist's, or an advanced practice registered nurse's statement. The director may issue a maximum of one additional temporary certificate for a fee of three dollars. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's, physician assistant's, chiropractor's, physical therapist's, or an advanced practice registered nurse's statement that the extension is warranted. Temporary certificates must be the same size as other certificates issued under this section and must be white on red. The director may issue a maximum of one additional certificate, if the applicant does not have number plates issued under section 39-04-10.2 or under subdivision j of subsection 2 of section 39-04-18, to a mobility-impaired individual to whom a certificate has been issued under this subsection. The additional certificates may be used only by or on behalf of the mobility-impaired individual.

5. Except as provided in this subsection, two dollars of each fee for issuance of a certificate and one dollar of each fee for issuance of an additional certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee, and the five dollar fee received for the issuance of an additional certificate under subsection 4, must be deposited in the state treasury and credited to the state rehabilitation council fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the department of health and human services for use by the state rehabilitation council to accomplish the council's statutory duties provided under section 50-06.1-16. If a certificate is lost, mutilated, or destroyed, the individual to whom the certificate was issued is entitled to a replacement. The individual shall furnish proof satisfactory to the director that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
6. A certificate issued under this section must be hung from the rearview mirror or placed on the dashboard of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility-impaired individual or another individual for the purposes of transporting the mobility-impaired individual. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.
7. An applicant may appeal a decision denying issuance of the certificate to the director. Written notice of the appeal must be received within ten business days following receipt by the applicant of notice of denial. The applicant has sixty days to provide additional supportive material to the director for purposes of deciding the appeal. The director shall affirm or reverse the decision to deny issuance of the certificate within thirty days after receipt of the supportive material. Written notice of the decision must be given to the applicant.
8. If a law enforcement officer finds that the certificate is being improperly used, the officer may report to the director any violation and the director may, in the director's discretion, remove the privilege. An individual who is not mobility impaired and who exercises the privileges granted a mobility-impaired individual under subsection 1 is guilty of an infraction for which a fine of one hundred dollars must be imposed.
9. a. If a public or private entity designates parking spaces for accessible parking, the spaces must comply with the requirements of the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36] and must be indicated by blue paint on the curb or edge of the paved portion of the street or

- parking lot adjacent to the space. In addition to blue paint, each reserved space must be indicated by a sign bearing the international symbol of accessibility for the mobility impaired. The sign must indicate that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed.
- b. For any event, a public or a private entity temporarily may reserve additional accessible parking spaces for use by motor vehicles operated by a mobility-impaired individual. In that case, each temporarily reserved space must be indicated by a sign bearing the international symbol of accessibility for the mobility impaired at least four hours before the event.
 - c. A parking space clearly identified as reserved for the mobility impaired is considered designated and reserved for the mobility impaired and is sufficient basis for the enforcement of this section if the parking space has two of the following requirements:
 - (1) Blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space;
 - (2) A sign bearing the international symbol of accessibility for the mobility impaired; or
 - (3) Notice that unauthorized use of the space is a nonmoving violation for which a fee of one hundred dollars must be imposed.
 - d. Except for a temporarily reserved parking space for the mobility impaired, a sign posted must be immovable.
 - e. A law enforcement officer shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.
10. If the designated parking spaces for mobility-impaired individuals are occupied or inaccessible, a motor vehicle displaying the distinguishing certificate specified in subsection 4, license plates issued under section 39-04-10.2, or a disabled veteran plate issued under subdivision j of subsection 2 of section 39-04-18 may park at an angle and occupy two standard parking spaces.
11. An individual may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the director to a mobility-impaired individual. A mobility-impaired individual may not permit the use of a certificate issued under this section by an individual who is not mobility impaired when that use is not in connection with the transport of the mobility-impaired individual. The registered owner of a vehicle may not allow that vehicle to be used in a manner that violates this subsection. Proof of intent is not required to prove a registered owner's violation of this subsection. The registered owner, however, may be excused from a violation if the owner provides the citing authority with the name and address of the individual operating the vehicle at the time of the violation. A vehicle may temporarily use a space reserved for a mobility-impaired individual without a mobility-impaired certificate for the purpose of loading and unloading a mobility-impaired individual. A violation of this subsection is a nonmoving violation for which a fee of one hundred dollars must be imposed. Notwithstanding section 29-27-02.1, fifty percent of the fee imposed and collected under this subsection is appropriated on a continuing basis to the state rehabilitation council for the development of competitive and integrated employment opportunities.
12. A motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of a mobility-impaired individual must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section.
13. An entity that violates the requirements of subsection 9 is guilty of an infraction if the entity does not comply with subsection 9 within sixty days after receiving official notification of the violation.

14. The department shall issue a mobility-impaired parking permit for a vehicle owned and operated by care providers licensed by the state, veterans-related organizations, and other entities that regularly transport mobility-impaired individuals for use by those providers and entities to park in designated parking spaces while transporting mobility-impaired individuals.

39-01-16. Hearing on alleged violations.

Any person having information that a licensed dealer has violated any provisions of this title may file with the director an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by certified mail. The notice must provide the dealer with an opportunity for a hearing prior to the effective date of the license revocation or suspension. A record of such hearings must be made by stenographic notes or use of an electronic recording device.

If after such hearing the director finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the director. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

The director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the director for consideration and final decision.

Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

39-01-17. Authority to administer oaths and certify copies of records - Admissibility of records.

1. Officers and employees of the department designated by the director are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and must do so without fee.
2. A certified copy of any record, electronic or original, maintained by the director relative to title 39 is admissible in any judicial proceedings or administrative hearing in the same manner as the original of the record.
3. In response to a subpoena, or upon the request of any appropriate government or judicial official, the director shall provide a duly certified copy of any book, paper, entry, record, or other document of that agency. This certified copy may consist of a photocopy or computer printout of the requested document certified by the director or a duly authorized representative.

39-01-18. Dealer bond cancellation - Reinstatement - Revocation of license.

Any dealer required to be bonded by the provisions of title 39 whose bond is canceled by the surety company shall file a new bond with the department before the effective date of the cancellation. The effective date of a bond cancellation must be thirty days after notification by certified mail to the department from the surety company. Any dealer failing to maintain a current surety bond with the department shall return the dealer's license and dealer's plates to the department on or before the effective date of the cancellation. Failure to return the dealer's license or dealer's plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer's license or dealer's plates not returned to the department as required in this section. The department shall reinstate the dealer's license and dealer's plates if a new bond is received within thirty days of the revocation.

39-01-19. Permits for vending machines at rest areas.

A vending machine that allows access to a tobacco product may not be placed or remain upon a rest area, and any other vending machine may not be placed or remain upon a rest area

under the supervision of the director without a permit from the director. The director shall charge a fee for the issuance of a vending machine permit. The amount of the permit fee must relate to the department's actual cost of administration, annual review, and enforcement of the permit process, but may not exceed twenty-five dollars annually. The permit process may not be affected by the content of a publication. The director shall require permittees to comply with appropriate indemnification, insurance, and other risk management provisions of the permit. Vending machines must be secured in a manner that prevents tipping and moving, deters theft, and leaves state property undamaged. Plexiglass, safety glass, or other shatter-resistant materials must be employed in windows or displays. All vending machines must be sufficiently enclosed to prevent the distributed product from inadvertently being removed or blown from the machine or weathered by the elements. Stolen or damaged vending machines do not result in liability to the department and must be repaired, restored, or replaced within thirty calendar days. All cashboxes and accesses to cashboxes must be metal and securely locked in place. All vending machines must be placed in a well-lighted area visible from the rest area roadway. All vending machines must be placed on a route allowing parallel access by motorized or standard wheelchairs, with at least sixty-six inches [1676.400 millimeters] of clear width. A vending machine may not have a component or function used by the public which requires more than five pounds [2.268 kilograms] of force to be applied. The height of controls, doors, or access points necessary for use by the public may not exceed sixty inches [1524 millimeters]. The director may determine the maximum number of vending machine placements at a given rest area. Priority must be given to vending machines placed pursuant to the Randolph Sheppard Act [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107], as administered by the vocational rehabilitation division of the department of health and human services under section 50-06.1-13. When, after allowing for the placement of vending machines pursuant to the Randolph Sheppard Act [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107], the director determines that the number of permit applications for a particular rest area would exceed the remaining available space or would prevent compliance with this section or other law, the director shall grant permits by means of a lottery, with permits allocated pro rata according to the number of applications for each type. The permittee is solely responsible to ensure that any trash, wrapping, boxes, or debris, generated when stocking or servicing vending machines is not left on or at the rest area. The permittee is solely responsible for all installation, maintenance, replacement, inspection, access area cleaning, and stocking of vending machines. Vandalism and graffiti on vending machines must be repaired or removed within fourteen days of written notice by the director. The permittee must inspect and stock vending machines as needed, but at least monthly, to provide adequate service to the public. Vending machines removed for repair or for other reasons must be restored or replaced by the permittee within thirty days. Vending machines in violation of this section or any other applicable law may be removed by the director fourteen days after notice of violation is provided and without liability to the director. Vending machines judged by the director to pose a risk to safety may be removed immediately without liability to the director and without prior notice to the permittee. The director shall retain any removed vending machines for thirty days to allow retrieval by the permittee, after compensation to the director for removal costs. The director may dispose of or sell machines not retrieved within thirty days of removal, but removal costs must be satisfied only to the extent of proceeds received by the director. The director has a cause of action to recover any deficiency, attorney's fees, and litigation expenses. The director, upon the determination that a rest area must be closed for a period of greater than thirty days, may order the permittee, at the permittee's expense, to remove all vending machines in a manner that does not damage state property, or remove all product and money and place upon the vending machine a prominent notice that all product and money have been removed. Should the director determine that removal of vending machines is necessary to conduct repairs, construction, surveys, or other duties of the department, the permittee, at the permittee's expense, shall remove all vending machines in a manner that does not damage state property, upon fourteen days' notice. The current address and telephone number where customer service or business is conducted by the permittee must be legibly and prominently posted upon the vending machine. The director shall cancel the permit should the permittee remove vending machines, except as provided in this section. The cost of any removal must be borne by the permittee. The permittee, at the permittee's own

expense, must restore the site the machine formerly occupied to the satisfaction of the director. For purposes of this section, "vending machine" means any device that allows access to a newspaper, magazine, beverage, concession, or other item for public consumption or use. For purposes of this section, "permittee" means any person or organization, including any corporation, partnership, firm, or any other legal entity capable of owning property and transacting business, which has applied for a permit under this chapter. For purposes of this section, "notice" consists of a written communication and must be deemed to have occurred within seventy-two hours of mailing, if mailed within North Dakota, or one hundred twenty hours of mailing, if mailed outside North Dakota. "Notice" to a vendor of the condition of a vending machine also occurs if a period of time greater than the required inspection interval for the vending machines has passed.

CHAPTER 39-02
DEPARTMENT TO REGISTER MOTOR VEHICLES

39-02-01. Registrar of motor vehicles - Appointment - Term - Removal - Oath - Bond.
Repealed by S.L. 1989, ch. 72, § 25.

39-02-02. Salary and expenses of registrar.
Repealed by S.L. 1989, ch. 72, § 25.

39-02-03. Powers and duties of director and department.

The director may adopt and enforce such administrative rules, designate such agencies, and establish such branch offices, including contracted branch offices, as may be necessary to carry out the motor vehicle and driver's license laws applicable to the director's office and department. The director shall provide suitable motor vehicle and driver's license forms and equipment requisite for the operation of the director's office and department, and shall prepay all transportation charges thereon. Branch office contracts entered under this section may extend five years and may be renewed in accordance with this section. At least one year before the end of each branch office contract term, the department shall consider entering contracts with new branch office vendors. Notwithstanding any other provision of law, the director may enter direct negotiations and contract with qualified vendors to provide branch office services. The director may provide for a maximum fee schedule for the various services provided by the branch offices, not to exceed ten dollars for each service provided. Any branch office may establish a different fee schedule if the schedule does not contain a fee that exceeds a maximum fee established by the director and is approved by the director. All branch office managers must be bonded. The department may lease or provide office space or other costs as necessary to independent motor vehicle branch managers. All rents collected under this section must be deposited in the state highway fund. The department and the officers thereof shall enforce the provisions of all laws pertaining to the director and the department.

39-02-03.1. Director to provide notice and opportunity for hearing prior to cancellation, revocation, suspension, or rescission of a motor vehicle registration or a certificate of title to a motor vehicle.

Whenever, under the laws pertaining to the cancellation, revocation, suspension, or rescission of a registration of a motor vehicle or a certificate of title to a motor vehicle, a determination has been made to cancel, revoke, suspend, or rescind either the registration or certificate of title, or both, the director shall provide the legal and registered owner with notice of such cancellation, revocation, suspension, or rescission and the opportunity for a hearing. Such notice must be sent by registered or certified mail, return receipt requested, not less than ten days prior to the effective date of the cancellation, revocation, suspension, or rescission.

39-02-04. Office of registrar open for licenses and information - Time.
Repealed by S.L. 1989, ch. 72, § 25.

39-02-05. Records of the department open to public inspection. (Contingent expiration date - [See note](#))

Except as provided by chapter 39-33, all registration and license records in the office of the department must be public records and must be open to inspection by the public during business hours. The director shall charge a uniform fee, not to exceed three dollars, for each item of information furnished to any person concerning a specific motor vehicle. However, such charges may not be assessed to a person requesting information concerning a motor vehicle of which that person is the owner, nor may such charges apply to law enforcement officials requesting motor vehicle information in their official capacity. All fees received under the provisions of this section must be credited to the highway tax distribution fund.

39-02-06. Records of stolen or recovered motor vehicles to be furnished certain officials and departments.

Repealed by S.L. 1963, ch. 265, § 7.

39-02-07. Penalty for violation of chapter.

Repealed by S.L. 1975, ch. 106, § 673.

CHAPTER 39-03 HIGHWAY PATROL

39-03-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Assistant superintendent" means the assistant highway patrol superintendent.
2. "Superintendent" means the state highway patrol superintendent.
3. "Troopers" means the members of the highway patrol including the superintendent and the assistant superintendent.

39-03-02. State highway patrol superintendent appointed by governor - Duties.

The governor shall appoint a state highway patrol superintendent who shall enforce the provisions of the laws of this state relating to the protection and use of the highways in this state and the operation of motor and other vehicles upon such highways.

39-03-03. Troopers - Appointment - Removal - Duties.

The superintendent, the assistant superintendent, and the troopers constitute the highway patrol. The highway patrol shall enforce the provisions of the laws of this state relating to the protection and use of highways and shall patrol the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways. All troopers and the assistant superintendent must be appointed by the superintendent. Each trooper appointed is deemed a probationary employee for an initial period of six months, during which the trooper must be placed under probationary training and service and is subject to an extension of an additional period of six months or dismissal at the will of the superintendent or the superintendent's designee. At the end of the probationary period, a probationary employee must either be taken off probationary status or dismissed. A nonprobationary employee employed in a regular, classified position is subject to removal for cause by the superintendent or the superintendent's designee, but the employee may appeal a dismissal under chapter 54-44.3 provided the removal of the assistant superintendent from the assistant superintendent position does not entitle that person to appeal the removal unless that person also is dismissed from the patrol.

39-03-04. Qualifications of troopers - Veterans have preference.

No person may be appointed as a trooper unless the person has all of the following qualifications:

1. Has passed such physical examination and such other qualification test as may be required by the superintendent.
2. Is of good moral character and temperate habits.
3. Has been a citizen of the United States for not less than two years prior to the appointment.

Preference for appointment must be given at all times to honorably discharged veterans and citizens of the state of North Dakota, and all appointments must be made without regard to any political party affiliation of the applicant.

39-03-05. Badge issued to troopers - Contents of badge.

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

39-03-06. Oath required of superintendent, assistant superintendent, and troopers.

The superintendent, assistant superintendent, and each trooper, before entering upon the performance of the person's duties, shall take and file the oath prescribed by law for state officers.

39-03-07. Salary of superintendent - Limitations.

The salary of the superintendent must be within the amount appropriated for salaries by the legislative assembly. The salary of the assistant superintendent and each trooper must be fixed by the superintendent, and must be paid in the same manner as other state employees are paid.

39-03-08. Manner of paying salaries, wages, and expenses of highway patrol.

All salaries, wages, and other expenses of the highway patrol must be paid by the office of management and budget and state treasurer out of the patrol fund, upon vouchers required by law for the payment of all state expenses, duly approved by the superintendent, and audited and allowed by the office of the budget.

39-03-08.1. Contracts - Bids.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.2. Requests for bids - How advertised.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.3. Bids - Requirement.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.4. Checks of three lowest bidders retained.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.5. Award of contracts - Bond.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-09. Powers of highway patrol.

The superintendent and each member of the highway patrol shall have the power:

1. Of a peace officer for the purpose of enforcing the provisions of this title relating to operators' licenses, the provisions of title 24 relating to highways, and of any other law regulating the operation of vehicles or the use of the highways, and in addition the highway patrol shall enforce all laws relating to the use or presence of alcoholic beverages in motor vehicles.
2. To make arrests upon view and without warrant for any violation committed in the person's presence of any of the provisions of this title relating to operators' licenses, or of title 24 relating to highways or to other laws regulating the operation of vehicles or the use of the highways.
3. To direct traffic in conformance with law, or, in case of fire or emergency and to expedite traffic, or, to ensure safety by directing traffic as conditions may require notwithstanding the provisions of law.
4. To facilitate compliance with the provisions of this title, to require the driver of a vehicle to stop and exhibit the driver's operator's license and the registration cards issued for the vehicle, if any are required, and to submit to an inspection and test of the equipment of such vehicle.
5. For the purpose of locating stolen vehicles and to investigate the title and registration thereof, to inspect any vehicle of a type required to be registered under the provisions of this title, in any public garage or repair shop, or in any place where such vehicles are held for sale or wrecking.
6. To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.
7. To investigate traffic accidents and secure testimony of witnesses or of persons involved.
8. To investigate reported thefts of motor vehicles, trailers, or semitrailers.
9. To take applications for operators' licenses without making a charge therefor.

10. To enforce all laws, rules, or regulations of the state of North Dakota pertaining to the closing hours of all businesses or establishments selling alcoholic beverages outside the limits of incorporated cities of this state.
11. Of a peace officer over all violations of law committed on state owned or leased property.
12. Of a peace officer over all violations of law committed in their presence or when in pursuit of any actual or suspected law violator.
13. To require a motor carrier owner, or a motor carrier's agent, affected by rules adopted under chapter 39-21 to produce logs or other documents to determine compliance with rules adopted under chapter 39-21.
14. Of a peace officer when providing security and protection for the governor, the governor's immediate family, and other officers next in order of succession to the office of governor as deemed adequate and appropriate by the superintendent.
15. Of a peace officer when providing security and protection for members of the legislative assembly as deemed adequate and appropriate by the superintendent.
16. Of a peace officer when responding to a call for emergency assistance requiring an immediate response. Following a call for emergency assistance which occurs outside state-owned or state-leased property, a highway, or the highway right of way, notification must be provided to the local law enforcement agency having primary jurisdiction.
17. To promote public trust and an understanding of law enforcement through education, community outreach, and job shadowing programs.
18. Of a peace officer over any violation of law committed on public or private property when requested by another law enforcement agency.
19. Of a peace officer when providing security and protection for visiting dignitaries at the request of another law enforcement agency or the governor. The highway patrol may request the assistance of other law enforcement agencies with security and protection, and the other law enforcement agencies may provide the assistance as requested under this section.

39-03-09.1. Job shadowing.

For purposes of education and community outreach, and to promote public trust, the superintendent may permit a nonmember of the highway patrol to participate in job shadowing activities, including:

1. Participating in a ride-along program with a member of the highway patrol while on duty;
2. Operating a highway patrol motor vehicle on a closed course under the supervision of a member of the highway patrol; and
3. Discharging a firearm owned and used by the highway patrol while at a training facility and under the supervision of a member of the highway patrol.

39-03-10. Patrolmen to inspect motor vehicles - Report violations.

Repealed by S.L. 1967, ch. 296, § 2.

39-03-11. Penalty for impersonating trooper.

Any person is guilty of a class A misdemeanor if:

1. Without authority, the person wears the badge of a member of the highway patrol, or a badge of similar design which would tend to deceive anyone;
2. The person impersonates a member of the highway patrol or other officer or employee of the highway patrol with intent to deceive anyone; or
3. Without authority, the person wears a uniform likely to be confused with the official uniform of the highway patrol.

39-03-12. Penalty in violation of chapter.

Any person who violates any of the provisions of this chapter, for which another penalty is not specifically provided, is guilty of a class B misdemeanor.

39-03-13. Additional powers of superintendent.

In addition to the superintendent's powers as a member of the highway patrol, the superintendent of the patrol has the following powers as administrative head of the patrol:

1. The superintendent may organize the patrol into divisions, bureaus, and districts as the superintendent deems necessary.
2. The superintendent may designate ranks, fix salaries with appropriate allowances for those ranks, and establish promotional procedures.
3. The superintendent or the superintendent's designee may take reasonable disciplinary action against members of the patrol for inefficiency, misconduct, insubordination, or violation of an established rule, whenever the superintendent or the superintendent's designee deems the actions necessary, provided that:
 - a. When demotion in rank is ordered summarily against a member of the patrol as a disciplinary measure, to be limited to a one-grade reduction in rank, the order is appealable under chapter 54-44.3.
 - b. When a reduction in pay of a member of the patrol is ordered summarily as a disciplinary measure, it must be limited to one year's duration and the order is appealable under chapter 54-44.3.
 - c. Suspension of pay for a member of the patrol for a period not exceeding seven days may be ordered summarily as a disciplinary measure, but an order for suspension of pay for a longer period is appealable under chapter 54-44.3.
4. A suspension of pay for a member of the patrol may be summarily ordered not more than twice in one year as separate disciplinary measures, except that further suspensions are appealable under chapter 54-44.3.

39-03-13.1. Law enforcement training center - Training conducted.

The superintendent of the highway patrol is responsible for the operation, maintenance, and administration of the law enforcement training center. The superintendent shall appoint a director of the training center who is responsible for coordinating basic and advanced peace officer training and such other duties as may be prescribed by the superintendent. All peace officer training which is conducted at the law enforcement training center shall meet the certification criteria established by the peace officer standards and training board and must be in accordance with the basic and advanced peace officer curriculum established by the peace officer standards and training board.

39-03-13.2. Silver alert notice system.

Repealed by S.L. 2025, ch. 549, § 2.

39-03-14. Disciplinary board of review.

Repealed by S.L. 1971, ch. 352, § 3.

39-03-15. Radar evidence in speed violations.

The speed of any motor vehicle may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays the officer's badge of authority; provided that such officer has observed the record of the speed of such motor vehicle by the radio microwaves or other electrical device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electrical device. Nothing herein shall affect the powers of cities or towns to adopt and use such device to measure speed.

39-03-16. Safety division created - Director.

There is hereby created a safety division within the state highway patrol for the purpose of reducing the danger of travel on the highways, roads, and streets of this state, the number of motor vehicle accidents with resultant loss of lives, personal injuries, and property damage, and encouraging better law enforcement, more uniform penalties, safe driving practices, and public adherence to traffic safety laws, through public education, information, and support.

The director of the safety division must be appointed by the superintendent in accordance with sections 39-03-03 and 39-03-04, and possessing such qualifications by education or experience in the field of highway safety as the superintendent shall determine. The director shall receive such compensation as may be determined by the superintendent.

39-03-17. Powers and duties of director of the safety division.

The director of the safety division, under the supervision of the highway patrol superintendent, shall direct and carry on a public education and information program and assist and cooperate with all governmental or private agencies, organizations, or groups in order to encourage better and safer driving practices, better law enforcement, and more uniform penalties, for the purpose of reducing the number of motor vehicle accidents.

The director shall coordinate and strengthen the highway and traffic safety activities of the state of North Dakota and its political subdivisions. The director shall specifically promote the coordination of the functions of driver licensing and control, financial responsibility, traffic law enforcement, and other highway and traffic safety activities of the state highway patrol and the department of transportation, and shall generally work and cooperate with the officials in charge of these departments and all public officials in all matters relating to motor vehicle safety.

All supplies and equipment of the public safety division of the department of transportation are hereby transferred to the public safety division of the highway patrol created by section 39-03-16.

39-03-18. Highway patrol - Assets forfeiture fund - Purpose - Continuing appropriation.

There is created a fund to be known as the highway patrol assets forfeiture fund. The fund consists of funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. The total amount of deposits into the fund may not exceed three hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated as a continuing appropriation to the highway patrol for the following purposes:

1. For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of the property.
2. For paying overtime compensation incurred as a result of investigations or violations of any state criminal law or law relating to the control of drug abuse.
3. For purchasing equipment related to criminal interdiction.
4. For paying matching funds required as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation or apprehension of persons violating the provisions of chapter 19-03.1.

The superintendent of the highway patrol, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for the use of the fund and shall personally approve, in writing, all requests for the use of the fund.

39-03-18.1. Highway patrol - Federal assets forfeiture fund - Continuing appropriation.

There is created in the state treasury the highway patrol federal assets forfeiture fund. The fund consists of moneys received through federal asset forfeiture sharing programs. Funds received through federal sharing programs may not be deposited in the same account as assets forfeited pursuant to section 39-03-18. Up to three hundred thousand dollars are appropriated

from the fund on a continuing basis each biennium to the highway patrol. Funding may be used only for eligible purchases identified by the federal department of justice and federal department of treasury. The superintendent, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures in accordance with the federal asset sharing program for the use of the fund. All expenditures of moneys in the fund must be approved by the superintendent.

39-03-19. Capitol building access card fund - Continuing appropriation.

There is created in the state treasury a capitol building access card fund. The fund consists of any fees received by the superintendent for the issuance of capitol building access cards. The superintendent shall establish policies regarding the issuance of capitol building access cards and may charge a fee of ten dollars for each access card issued to an individual who is not an employee of the state of North Dakota. All moneys in the fund are appropriated to the highway patrol on a continuing basis for costs associated with the issuance of capitol building access cards and capitol complex security needs.

CHAPTER 39-03.1

HIGHWAY PATROL TROOPERS' RETIREMENT SYSTEM

39-03.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to the contributor's credit in the fund, and interest credited on those amounts at a rate established by the board.
2. "Board" means the North Dakota public employees retirement board.
3. "Contributor" means any person who is a member of the North Dakota highway patrol, is subject to salary deductions to support the fund, and is employed on or after July 1, 1981.
4. "Fund" means the North Dakota highway patrol troopers' retirement fund.
5. "Patrol" means the North Dakota highway patrol.
6. "Salary" means the actual dollar compensation, excluding any bonus, overtime, or expense allowance, paid to or for a contributor for the contributor's services.
7. "Surviving spouse" means that person lawfully married to the contributor at the time of the contributor's death.

39-03.1-02. North Dakota highway patrol troopers' retirement system.

A retirement system is hereby established for the members of the North Dakota highway patrol.

39-03.1-03. North Dakota highway patrolmen's retirement board.

Repealed by S.L. 1983, ch. 419, § 4.

39-03.1-04. Administrative expenses.

The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, must be paid by the state of North Dakota, by appropriation out of the highway patrol fund, made on the basis of budgets submitted by the board.

39-03.1-05. Deposit of contributions - Appropriation.

All moneys of the fund, including employers' contributions, contributors' contributions, grants, donations, legacies, and devises for the benefit of the fund, must be deposited in the public employees retirement fund account with the Bank of North Dakota. All of these moneys, not otherwise appropriated, are appropriated for the purpose of making investments for the fund and to make payments to beneficiaries under the program.

39-03.1-06. Rules and regulations - Actuarial data.

The board shall, from time to time, establish such rules and regulations for the administration of this chapter as may be deemed necessary. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund.

39-03.1-07. Membership.

Except as otherwise provided, each member of the patrol, including the superintendent and assistant superintendent, shall contribute to the fund, and is eligible to nominate and vote for members of the board. Personnel of the truck regulatory division of the state highway department transferred to the highway patrol after July 1, 1983, are not required to contribute to the fund. They are members of the public employees retirement system and social security system.

39-03.1-08. Service allowance.

Repealed by S.L. 1987, ch. 444, § 8.

39-03.1-08.1. Purchase of legislative service credit.

A contributor may, prior to retirement, purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while a member of the fund. The contributor shall pay for the service credit an amount equal to the required member contributions and the state contributions for that period of time plus interest as established by the board. Service credit for legislative sessions prior to July 1, 1985, must be purchased before January 1, 1986. Service credit for each later legislative session must be purchased within one year after the adjournment of that legislative session.

39-03.1-08.2. Purchase of additional service credit.

1. The fund may accept rollovers from other eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code [26 U.S.C. 408].
2. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).
3. A contributor may elect to purchase credit for years of service and prior service for which the contributor is not presently receiving credit. A contributor is entitled to purchase additional credit under this section for the following service or prior service, except this service is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system:
 - a. Except as provided in subsection 3 of section 39-03.1-10.1, up to four years of credit for active employment in the armed forces of the United States.
 - b. Employment as a permanent employee by a public employer either within or outside the state.
 - c. Employment as a permanent employee by the federal government.
4. A contributor may elect to purchase credit for the following absences for which the participating contributor is not receiving service credit:
 - a. Employer-approved leave of absence; and
 - b. Months away from work while participating as a seasonal employee.
5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.
6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.
7. In addition to service credit identified in this section, a vested contributor may purchase up to five years of service credit.
8. Pursuant to rules adopted by the board, the board may allow a contributor to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a contributor elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the purchase arrangement.

39-03.1-09. Payments by contributors - Employer payment of employee contribution.

1. Every member, except as provided in section 39-03.1-07, shall contribute into the fund ten and thirty-hundredths percent of the member's monthly salary, which sum must be deducted from the member's salary and credited to the member's account in the fund. Member contributions increase by one percent of the member's monthly salary beginning with the monthly reporting period of January 2012; with an additional

increase of one percent, beginning with the monthly reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2022; with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2023; with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2024; and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2025.

2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.
3. For compensation earned after August 1, 2009, all employee contributions required under subsection 1, and not otherwise paid under subsection 2, must be paid by the state in lieu of contributions by the member. All contributions paid by the state under this subsection must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the state under this subsection may not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until the contributions are distributed or made available. Contributions paid by the state in accordance with this subsection must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made before the date the contributions were assumed by the state. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee. The state shall continue making payments under this section unless otherwise specifically provided for under the agency's biennial appropriation or by law.

39-03.1-10. Contributions by the state.

The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. State contributions increase by one percent of the monthly salary or wage of a participating member beginning with the monthly reporting period of January 2012; with an additional increase of one percent, beginning with the reporting period of January 2013; with an additional increase of one percent, beginning with the monthly reporting period of January 2014; with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2022; with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2023; with an additional increase of one-half of one percent, beginning with the monthly reporting period of

January 2024; and with an additional increase of one-half of one percent, beginning with the monthly reporting period of January 2025. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under section 39-03.1-10.3.

39-03.1-10.1. Refund and repurchase of contributions.

Except as provided in section 39-03.1-10.3, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor or is automatically payable if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund and the contributor has an account balance of less than one thousand dollars.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to the date of refund and cannot use those months for any future benefit calculations.
2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon re-employment, elect to repurchase the forfeited past service for the retirement program and the retiree health benefits program in accordance with the rules adopted by the board.

39-03.1-10.2. Employer service purchases.

An employer may purchase additional service credit on behalf of a contributor under the following conditions:

1. The contributor may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The contributor must meet one of the following conditions at the time the purchase is made:
 - a. The contributor's age plus service credit must be equal to or greater than seventy; or
 - b. The contributor's age must be at least fifty and the contributor must have at least ten years of service credit.
3. The board must determine the purchase price on an actuarially equivalent basis.
4. The purchase must be completed before the contributor's retirement.
5. The employer may purchase a maximum of five years of service credit on behalf of the contributor.
6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

39-03.1-10.3. Military service under the Uniformed Services Employment and Re-employment Rights Act - Member retirement credit.

A member re-employed under the Uniformed Services Employment and Re-employment Rights Act of 1994, as amended [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4333], is entitled to receive retirement credit for the period of qualified military service. The required contribution for the credit, including payment for retiree health benefits, must be made in the same manner and by the same party as would have been made had the employee been continuously employed. If the salary the member would have received during the period of service is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit

being purchased must be used. Employees must be allowed up to three times the period of military service or five years, whichever is less, to make any required payments. This provision applies to all qualifying periods of military service since October 1, 1994. Effective for years after December 31, 2008, compensation for purposes of Internal Revenue Code section 415 [26 U.S.C. 415], as amended, includes military differential wage payments, as defined in Internal Revenue Code section 3401(h) [26 U.S.C. 3401(h)], as amended. Any payments made by the member to receive qualifying credit inconsistent with this provision must be refunded. Employees shall make application to the employer for credit and provide a DD Form 214 to verify service. After December 31, 2006, if a participating member dies while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code [26 U.S.C. 414(u)(5)], as amended, the deceased member's beneficiaries are entitled to any death benefits, other than credit for years of service for purposes of benefits, which would have been provided under the plan if the participating member had resumed employment and then terminated employment on account of death. The period of that member's qualified military service is treated as vesting service under the plan.

39-03.1-10.4. Reduction in member and employer contributions.

The required increase in the amount of member and employer contributions under sections 39-03.1-09 and 39-03.1-10 must be reduced to the rate in effect on July 1, 2013, effective on the July first that follows the first valuation of the highway patrol troopers' retirement plan showing a ratio of the actuarial value of assets to the actuarial accrued liability of the highway patrol troopers' retirement plan that is equal to or greater than one hundred percent.

39-03.1-11. Retirement benefit.

Each contributor whose employment with the highway patrol has been terminated may apply to the board for retirement benefits according to this section and rules adopted by the board consistent with this chapter. The following procedures apply:

1. A contributor is entitled to credit for permanent employment or its equivalent from the date eligibility is attained until normal or postponed retirement date, as described in subsection 3.
2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred twenty months of employment. For contributors who terminate employment on or after August 1, 2010, final average salary is the average of the highest salary received by the contributor for any thirty-six months employed during the last one hundred eighty months of employment. For contributors who terminate employment between July 31, 2005, and August 1, 2010, final average salary is the average of the highest salary received by the member for any thirty-six months employed during the period for which the board has appropriate and accurate salary records on its electronic database, but that period may not be more than the last one hundred eighty months of employment. For members who terminate employment after December 31, 2019, final average salary is the higher of the final average salary calculated on December 31, 2019, or the average salary earned in the three highest periods of twelve consecutive months employed during the last one hundred eighty months of employment. Months without earnings are excluded for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.
3. Retirement dates are as follows:
 - a. Early retirement date is the first day of the month next following the month in which the contributor attains the age of fifty years and has completed at least ten years of eligible employment.
 - b. Normal retirement date is:
 - (1) The first day of the month next following the month in which the contributor attains the age of fifty-five years and has completed at least ten years of eligible employment; or

- (2) When the contributor has a combined total of years of service credit and years of age equal to eighty and has not received a retirement benefit under this chapter.
 - c. Postponed retirement date is the first day of the month next following the month in which the contributor attains the age of sixty years.
 - d. Disability retirement date is the first day of the month after a contributor becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of employment.
4. The board shall calculate retirement benefits as follows:
- a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:
 - (1) The first twenty-five years of credited service multiplied by three and sixty hundredths percent of final average salary.
 - (2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.
 - (3) All contributors who retired before August 1, 2001, or their beneficiaries, are entitled to receive benefits equal to three and sixty hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning August 1, 2001.
 - b. Early retirement benefits are normal retirement benefits accrued to the date of termination of employment, but actuarially reduced to account for benefit payments beginning before the normal retirement date.
 - c. Postponed retirement benefits, for all contributors reaching the postponed retirement date, are calculated in the same manner as normal retirement benefits.
 - d. Disability retirement benefits are payable monthly and are:
 - (1) Seventy percent of the contributor's final average salary, reduced by any workforce safety and insurance benefits paid. The minimum monthly disability retirement benefit under this subsection is one hundred dollars.
 - (2) An individual or that person's beneficiary who, on July 31, 2001, is receiving a disability retirement benefit is entitled to receive an increase in benefits equal to six percent of the individual's present benefits, with the increase payable beginning August 1, 2001.
5. On termination of employment after completing ten years of eligible employment but before the normal retirement date, a contributor who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits. The deferred benefits are payable beginning on the contributor's normal retirement date in one of the forms provided in this section. Contributors who have delayed or inadvertently failed to apply for retirement benefits to commence on their normal retirement date may choose to receive either a lump sum payment equal to the amount of missed payments, or an actuarial increase to the form of benefit the member has selected, which increase must reflect the missed payments. The final average salary used for calculating deferred vested retirement benefits must be increased annually, from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increases provided state employees pursuant to action by the legislative assembly.
6. If before retiring a contributor dies after completing ten years of eligible employment, the board shall pay the contributor's accumulated deductions to the contributor's designated beneficiary as provided in this subsection. If the contributor has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the contributor's account balance to the named beneficiary. If the contributor has named more than one primary beneficiary, the board shall pay the contributor's

account balance to the named primary beneficiaries in the percentages designated by the contributor or, if the contributor has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the contributor, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the contributor's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the contributor's account balance to the contributor's estate. If the contributor has not designated an alternate beneficiary under this section or the surviving spouse is the beneficiary, the surviving spouse of the contributor may select one of the following optional forms of payment:

- a. A lump sum payment of the contributor's accumulated deductions as of the date of death.
 - b. Payment of a monthly retirement benefit equal to fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.
7. If a contributor not eligible for the benefits of subsection 6 terminates employment for any reason before retirement, the contributor or the contributor's designated beneficiary is entitled to the contributor's accumulated deductions at termination.
 8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a contributor receiving retirement benefits, or a contributor's surviving spouse receiving retirement benefits, dies before the total amount of benefits paid to them equals the amount of the contributor's accumulated deductions at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.
 9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. An actuarially equivalent joint and survivor one hundred percent option.
 - b. An actuarially equivalent life with ten-year or twenty-year certain options.
 - c. An actuarially equivalent partial lump sum distribution option with a twelve-month maximum lump sum distribution.
 - d. An actuarially equivalent graduated benefit option with either a one percent or two percent increase to be applied the first day of January of each year.

Unless a contributor requests that the contributor receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension, with a fifty percent option to the surviving spouse.

39-03.1-11.1. Benefit limitations.

Repealed by S.L. 2003, ch. 308, § 7.

39-03.1-11.2. Internal Revenue Code compliance.

The board shall administer the plan in compliance with the following sections of the Internal Revenue Code, as amended, as it applies for governmental plans.

1. Section 415, including the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code.
 - a. The defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as approved by the legislative assembly, must be adjusted under section 415(d) of the Internal Revenue Code, effective January first of each year following a regular legislative session. The adjustment of the defined benefit dollar limitation under section 415(d) applies to participating members who have had a separation from employment, but that member's benefit payments may not reflect the adjusted limit prior to January first of the calendar year in which the adjustment applies.
 - b. If a participating member's benefit is increased by plan amendment after the commencement of benefit payments, the member's annual benefit may not

- exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code, as adjusted under section 415(d) for the calendar year in which the increased benefit is payable.
- c. If a participating member is, or ever has been, a participant in another defined benefit plan maintained by the employer, the sum of the participant's annual benefits from all the plans may not exceed the defined benefit dollar limitation under section 415(b)(1)(A) of the Internal Revenue Code. If the participating member's employer-provided benefits under all such defined benefit plans would exceed the defined benefit dollar limitation, the benefit must be reduced to comply with section 415 of the Internal Revenue Code. This reduction must be made pro rata between the plans, in proportion to the participating member's service in each plan.
 2. The minimum distribution rules under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit requirements under section 401(a)(9)(G), and the regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a member's required beginning date, and the required minimum distribution rules override any inconsistent provision of this chapter. For a member who attains age seventy and one-half before January 1, 2020, the member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half or terminates employment. For a member who attains age seventy and one-half after December 31, 2019, the member's required beginning date is April first of the calendar year following the later of the calendar year in which the member attains age seventy-two or terminates employment.
 3. The annual compensation limitation under section 401(a)(17) of the Internal Revenue Code, as adjusted for cost-of-living increases under section 401(a)(17)(B).
 4. The rollover rules under section 401(a)(31) of the Internal Revenue Code. Accordingly, a distributee may elect to have an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, paid in a direct rollover to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, specified by the distributee. For purposes of this section, "distributee" includes a beneficiary, other than a spouse, of a deceased member, provided however, in the case of a beneficiary other than a spouse, the direct rollover may be made only to an individual retirement account or individual retirement annuity described in section 408 or 408A of the Internal Revenue Code which is established on behalf of the beneficiary and will be treated as an inherited individual retirement account or individual retirement annuity under section 402(c)(11) of the Internal Revenue Code.
 5. If the plan of retirement benefits set forth in this chapter is terminated or discontinued, the rights of all affected participating members to accrued retirement benefits under this chapter as of the date of termination or discontinuance is nonforfeitable, to the extent then funded.

39-03.1-11.3. Supplemental retiree benefit payment.

If the board determines that the fund has obtained a total return on investments of nine and six hundredths percent or higher for the fiscal year ending June 30, 2007, or June 30, 2008, the board shall authorize an additional payment equal to seventy-five percent of the January retirement allowance following the fiscal yearend to each eligible retiree in pay status as of that January, including joint and survivor and term certain beneficiaries, under this chapter. The board may only make one payment under this section.

39-03.1-12. Retirement allowance.

Repealed by S.L. 1987, ch. 444, § 8.

39-03.1-13. Optional retirement.

Repealed by S.L. 1987, ch. 444, § 8.

39-03.1-14. Optional retirement allowance.

Repealed by S.L. 1987, ch. 444, § 8.

39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. For the purpose of determining eligibility for benefits under this chapter, a member's years of service is the total of the years of service earned under this chapter and the years of service employment or years of service credit earned in any number of the following, the total of which may not exceed twelve months of credit per year:
 - a. The public employees retirement system.
 - b. The teachers' fund for retirement.
 - c. The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.
2. If a member terminates eligible employment under this chapter, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in subdivision a or b of subsection 1, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions. The election must be made within ninety days after beginning the eligible employment. The board shall terminate the inactive status of a member under this subsection if the member gains eligible employment under this chapter or if the member terminates eligible employment under a plan described in subdivision a or b of subsection 1.
3. Pursuant to rules adopted by the board, a member who has service credit in the system and in any of the alternate plans described in subdivision a or b of subsection 1 is entitled to benefits under this chapter. The employee may elect to have benefits calculated using the benefit formula in section 39-03.1-11 under either of the following calculation methods:
 - a. By using the final average salary as calculated in section 39-03.1-11. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
 - b. Using the final average salary as calculated in section 39-03.1-11, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

39-03.1-14.2. Benefit payments to alternate payee under qualified domestic relations order.

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the contributor and the named alternate payee of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a contributor, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all

or a part of the benefits payable to the contributor. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the retirement system, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the contributor has not terminated eligible employment. A qualified domestic relations order must specify:

- a. The name and the last-known mailing address of the contributor and the name and mailing address of each alternate payee covered by the order;
- b. The amount or percentage of the contributor's benefits to be paid by the plan to each alternate payee;
- c. The number of payments or period to which the order applies; and
- d. Each retirement plan to which the order applies.

39-03.1-15. Disability retirement.

Repealed by S.L. 1981, ch. 380, § 8.

39-03.1-16. Disability retirement allowance.

Repealed by S.L. 1981, ch. 380, § 8.

39-03.1-17. Severance allowance.

Repealed by S.L. 1987, ch. 444, § 8.

39-03.1-18. Compulsory termination of employment.

A contributor who is at least the age of sixty years may not continue employment with the patrol. The superintendent shall terminate the employment of such a member. The termination is effective no later than the member's sixtieth birthday.

39-03.1-19. Refunds in case of resignation or discharge.

Repealed by S.L. 1965, ch. 269, § 9.

39-03.1-20. Payments upon death.

Repealed by S.L. 1965, ch. 269, § 9.

39-03.1-21. Payments in case of death.

Repealed by S.L. 1987, ch. 444, § 8.

39-03.1-21.1. Children's benefit - Limitation.

Repealed by S.L. 1981, ch. 380, § 8.

39-03.1-22. Payments of allowances.

The allowances granted under the provisions of this chapter may not be increased, decreased, revoked, or repealed except as provided by law.

39-03.1-23. Exemptions from taxes and executions.

Repealed by S.L. 1987, ch. 386, § 2.

39-03.1-24. Service in the armed forces of the United States.

Repealed by S.L. 1993, ch. 377, § 2.

39-03.1-25. Fraud - Correction of errors.

No person may knowingly make any false statement, or may falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system. Should any such change in records fraudulently made or any mistake in records

inadvertently made result in any contributor or other beneficiary receiving more or less than the person would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor in such manner that the benefit to which the contributor was correctly entitled shall be paid.

39-03.1-26. Payments under other laws.

All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the workforce safety and insurance laws of this state.

39-03.1-27. Legislative intent.

The legislative assembly in recognition of the value of good employer-employee relationships and the need to recruit and retain qualified highway patrol troopers in this state, hereby declares its intent that the state should provide the comparable contribution for retirement of highway patrol troopers' retirement system members as it provides for other state employees. It is the further intent of the legislative assembly that because of the increase in state contributions to the North Dakota highway patrol troopers' retirement system, the members of such system shall not obligate the state to additional payments for federal social security benefits for such members.

39-03.1-28. Confidentiality of records.

All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the member specifically withholds consent.
3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.
10. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

11. The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.
12. A government child support enforcement agency for purposes of establishing paternity or establishing, modifying, or enforcing a child support obligation of the member.
13. A person if the information relates to an employer service purchase under section 39-03.1-10.2, but the information must be limited to the member's name and employer, the retirement program in which the member participates, the amount of service credit purchased by the employer, and the total amount expended by the employer for that service credit purchase, and that information may only be obtained from the member's employer.

39-03.1-29. Savings clause - Plan modifications.

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

39-03.1-30. Conversion of sick leave.

A member is entitled to credit in the retirement system for each month of unused sick leave, as certified by the employer, if the member or the member's employer pays an amount equal to the member's final average salary, times the number of months of sick leave converted, times the employer and employee contribution, plus the required contribution for the retiree health benefits program. Hours of sick leave equal to a fraction of a month are deemed to be a full month for purposes of conversion to service credit. A member may convert all of the member's certified sick leave or a part of that person's certified sick leave.

CHAPTER 39-04

MOTOR VEHICLE REGISTRATION

39-04-01. Definitions.

Repealed by S.L. 1987, ch. 439, § 2.

39-04-02. Application for the registration of a vehicle - Contents - Penalty.

Application for the registration of a vehicle must be made as provided in this section:

1. Application must be made by the owner thereof using the legal name as evidenced by a valid state-issued driver's license, identity card, or any other documentary evidence that confirms to the satisfaction of the director the true identity of the owner, upon appropriate forms approved or furnished by the department, and every application must be signed by the owner and must contain the owner's county of residence, address, and a brief description of the vehicle to be registered, including the name of the maker, either the engine, serial, or identification number, if any, whether new or used, and the last license number known, and the state in which issued, and, upon the registration of a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle. When two or more owners are designated, at least one of the owners must comply with the identification requirement in this subsection and all names used must be legal names. The application must contain other information as may be required by the department.
2. If the vehicle for which registration is sought is a specially constructed, reconstructed, or foreign vehicle, the facts must be stated in the application. The owner of every vehicle which has been registered outside this state shall exhibit to the department the certificate of the title and registration card or other evidence as will satisfy the department that the applicant is the lawful owner or possessor of the vehicle.
3. If the vehicle for which registration is sought is a new vehicle, no registration may be issued unless a certificate of origin executed by the manufacturer of such vehicle is attached to the application for registration or is attached to the application for the certificate of title for such vehicle. If the new vehicle for which registration is sought is of foreign manufacture, the certificate of origin must be furnished by the importer of such vehicle. The manufacturer or importer of all new vehicles shall designate the total shipping weight of the vehicle on the certificate of origin.
4. In applying for registration the buyer shall state the buyer's post-office address and county and city or township of residence and the dealer shall make specific inquiry relative thereto before completing the application.
5. If the registration is for a semitrailer tank designated as MC306, MC307, MC312, MC330, MC331, or MC338, the applicant must show, upon request by an officer of the highway patrol, the status of compliance with hazardous material rules of the United States department of transportation or of this state. Violation of this subsection is punishable by a fine of one hundred dollars.

39-04-02.1. Change of address.

Whenever any person after making application for or obtaining the registration of a vehicle moves from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the department of the person's old and new addresses.

39-04-03. Size of tires to be given in application when truck, combination truck, or trailer registered.

Repealed by S.L. 1971, ch. 355, § 1.

39-04-04. Register of applicants to be kept by the department.

The department shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled thereto, shall register the

described vehicle and the owner in books or electronic data processing files or on index cards or film as follows:

1. Under a distinctive registration number assigned to the vehicle and its owner, referred to in this chapter as the registration number.
2. Alphabetically under the name of the owner.
3. Numerically by the serial or identification number of the vehicle.
4. In the discretion of the department, in any other manner it may deem desirable.

39-04-05. Grounds for refusing registration.

The department shall refuse registration or any transfer of registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration of the vehicle under this chapter.
2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.
3. That the department has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration would constitute a fraud against the rightful owner or other person having valid lien upon the vehicle.
4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.
5. That the required fee has not been paid.
6. When any sales tax or motor vehicle excise tax, properly due, has not been paid.
7. For failure to maintain security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance on a motor vehicle as required by chapter 26.1-41.
8. For failure to provide proof of payment of the heavy vehicle use tax due, as required, to the internal revenue service.
9. When the vehicle is operating in violation of the provisions of the international registration plan, international fuel tax agreement, or the unified carrier registration plan.
10. When a motor carrier has been ordered out of service by the federal motor carrier safety administration.

The director shall promulgate rules and regulations for refusal of registration of vehicles not equipped as required by chapter 39-21.

39-04-05.1. Refusal to register vehicle - Revoking registration - Appeal.

1. If the department determines that an applicant for registration of a vehicle is not entitled to registration, it may refuse to register the vehicle. The applicant has no further right to apply for registration on the statements contained in the application unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction.
2. The department may, after giving notice to the owner and an opportunity for a hearing, revoke the registration of a vehicle if it determines that the vehicle is not entitled to registration. The notice must be served in person or by registered or certified mail.

39-04-06. When registration rescinded or suspended.

The department shall rescind or suspend the registration of a vehicle for any of the following:

1. When the department determines a vehicle is unsafe or unfit to be operated or is not equipped as required by law.
2. When the person to whom the registration card or registration number plates have been issued makes or permits any unlawful use of the same or permits the use thereof by a person or on a vehicle not entitled thereto.

3. When the department finds that a vehicle is registered in accordance with a reciprocity agreement, arrangement, or declaration and the vehicle is operated in violation of the agreement.
4. When the department determines that a motor vehicle is not covered by security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance as required by chapter 26.1-41.
5. When the department is satisfied that the registration or registration card, plate, or permit was fraudulently or erroneously issued.
6. When a registered vehicle has been dismantled or wrecked.
7. When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.
8. When the department determines that the owner has committed any offense under this chapter involving the registration or the registration card, plate, or permit to be suspended or rescinded.
9. When the purchaser or transferee of a vehicle fails to present the endorsed and assigned certificate of title to the department for transfer and make application for a new certificate of title within thirty days as required by section 39-05-17.
10. When the department determines a vehicle is operating in violation of the provisions of the international fuel tax agreement.
11. When a motor carrier has been ordered out of service by the federal motor carrier safety administration.

Any registration suspended for any of the above reasons must be restored upon compliance with the laws governing vehicle registration.

Whenever a check is returned to the department for want of payment the department shall rescind the registration of the vehicle covered by the check.

Any registration rescinded for want of payment of a check must be restored upon payment of the registration fee and a reasonable cost not to exceed twenty dollars for the collection of the check. If a returned check has a value exceeding one thousand dollars, the department shall also collect an additional fee of one percent of the value of the check.

39-04-07. Department to suspend registration upon notice of theft or embezzlement.

Whenever the owner of any motor vehicle which is stolen or embezzled files an affidavit alleging either of such facts, the department immediately shall suspend the registration of such vehicle and may not transfer the registration thereof nor reregister the same until such time as it is notified that the owner has recovered such vehicle. Notices given as provided in this section are effective only during the current registration year in which given, but if during such year such vehicle is not recovered a new affidavit may be filed with like effect during the ensuing year. Every owner who has filed an affidavit of theft or embezzlement immediately must notify the department of the recovery of such vehicle.

39-04-08. Number plates furnished by the department.

The department shall furnish to every motor vehicle owner two number plates for each registered motor vehicle, and one number plate for each registered motorcycle, trailer, or house trailer. The department may, in its discretion, furnish only one number plate for each registered apportioned vehicle licensed under the international registration plan as authorized in section 39-19-04, truck tractor, or semitrailer.

39-04-08.1. Assignment of motor vehicle number plates.

Motor vehicle number plates may not be assigned as a reward for any political activity, in recognition of any political affiliation or membership in any political party, or on the basis of political favoritism. However, an elected state office may be assigned a single or double digit number on a number plate as requested by that official. The department of transportation may adopt rules governing the assignment of numbers on motor vehicle number plates in accordance with this section.

39-04-09. Director may design and issue number plates.

The director may design and issue plates of distinctly different color for each classification of motor vehicle, and there must at all times be a marked contrast between the background color of the plates and that of the numerals and letters on the plates. License plates must be acquired from the North Dakota state penitentiary if the penitentiary has the facilities to manufacture license plates. The director shall make a general issue during the biennium beginning July 1, 2013, and ending June 30, 2015, and continuing into the biennium beginning July 1, 2015, and ending June 30, 2017.

39-04-09.1. Commemorative Lewis and Clark number plates.

Repealed by S.L. 2015, ch. 260, § 1.

39-04-10. Special plates for amateur radio station licenseholders.

Owners of motor vehicles required to be registered under subdivisions a and b of subsection 2 of section 39-04-19, who hold an unrevoked and unexpired official amateur radio station license issued by the federal communications commission, Washington, D.C., may receive special plates. The plates will be issued upon application to the department, accompanied by proof of ownership of the amateur radio station license, compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles, and payment of the regular license fee, as prescribed under the North Dakota motor vehicle laws. The special plates will be issued in lieu of the plates ordinarily issued, and must have inscribed on the plates the official amateur radio call letters of the applicant as assigned by the federal communications commission and the words "AMATEUR RADIO". Applicants under this section may apply for up to five plates with the same call letters. The department shall add an additional ascending number from two to five to each subsequent plate issued to the same applicant under this section.

39-04-10.1. Manufacturer's plate - Fee.

A resident factory representative of any motor vehicle manufacturer may procure from the director a manufacturer's plate, which must be designed by the director, for a fee of one hundred fifty dollars, which fee is for a twelve-month period. If such plate is procured at other than the beginning of the registration period, such fees must be prorated on a monthly basis. The procurement of such manufacturer's plate by a factory representative is in lieu of the payment of any other registration fees, sales tax, or use tax on the motor vehicle used by the factory representative in the course of employment for the period for which the manufacturer's plate is current and valid. The manufacturer's plate may not be used by any person other than the representative to whom it was issued, nor may such plate be used on any vehicle other than that vehicle used by the factory representative in the course of employment. Upon the sale of the vehicle for which such manufacturer's plate was issued, the plate must be retained by the factory representative and used upon replacement vehicles subsequently acquired from the manufacturer for use in the course of employment.

In addition to the foregoing provisions, a manufacturer of motor vehicles is entitled to use a manufacturer plate on its demonstration vehicles. Such plate must be issued in the name of the manufacturer and must be used solely for demonstration purposes only by the registrant or its designated employees.

39-04-10.2. Special plates for mobility-impaired individuals.

The director may issue, without charge, upon application and payment of the regular license fee, plates marked with the international symbol of accessibility for the mobility impaired, to a motor vehicle owner possessing a parking certificate issued under subsection 4 of section 39-01-15. One set of plates per mobility-impaired individual may be issued to a vehicle the mobility-impaired individual is not listed as the owner of if the vehicle is designated for the exclusive use of transporting that mobility-impaired individual. This section is not applicable to an applicant possessing more than one parking certificate issued under subsection 4 of section 39-01-15.

39-04-10.3. Personalized plates.

At the request of a registrant, the department may provide special license plates marked with not more than seven numerals, letters, or combinations of numerals and letters, upon application for a special license plate and payment of an additional fee of twenty-five dollars per registration period, unless the plate is a gold star license plate, military sacrifice license plate, or a prisoner of war license plate, then there is no additional charge. A personal plate containing a restricted character may not be renewed. The department shall make the special license plates authorized by this section available for motor vehicles registered under section 39-04-10.6, trailers, travel trailers, and motorcycles. The fee for the special license plates issued under this section for vehicles registered under section 39-04-10.6 is a one-time fee of one hundred dollars. The special license plates for motorcycles may contain not more than six numerals, letters, or a combination of not more than six numerals and letters. In the event of sale or transfer of the vehicle, the owner shall remove the special license plates in accordance with section 39-04-36. Upon payment of the applicable transfer fee, the special license plates may be transferred to a replacement motor vehicle.

39-04-10.4. Antique motor vehicles - License and fee - Use.

1. Any motor vehicle which is at least forty years old may be permanently licensed by the department upon the payment of a registration fee of ten dollars. The department shall design and issue a distinctive number plate for this purpose. In lieu of the distinctive number plate, the owner of the motor vehicle may, at the discretion of the director, display on the motor vehicle a number plate from the year in which the motor vehicle was manufactured or in the case of military vehicles, military identification numbers. The number plate from the year of manufacture or military identification numbers may not be used in lieu of a distinctive number plate when it would create a duplication of a number in the recordkeeping system of the department. A number plate from the year of manufacture or military identification numbers must be legible and must be restored to the satisfaction of the department. Notwithstanding section 39-04-11, only one number plate needs to be displayed on a motor vehicle licensed under this subsection. Motor vehicles registered under the provisions of this section may not be used in the routine functions of a business or farming operation.
2. Any motor vehicle which is at least forty years old may, if not licensed under subsection 1, be permanently licensed using a personalized plate issued under section 39-04-10.3, in which case a one-time fee of one hundred dollars is due.

39-04-10.5. Prisoner of war plates - Transfer to certain surviving spouses - Retirement.

On the death of a prisoner of war to whom was issued a special number plate under subdivision o of subsection 2 of section 39-04-18, the director shall comply with this section. If the deceased prisoner of war was survived by a spouse, the director shall transfer the number plate to that spouse's name, and the spouse may retain the number plate as an active plate. If the surviving spouse remarries, then within thirty days of that remarriage, the surviving spouse shall surrender the plate to the director. On receipt of a surrendered plate, on the death of the surviving spouse, or if the deceased prisoner of war had no surviving spouse, the director shall retire the number used on the number plate. On retirement of a number plate and at the request of the survivors of the deceased prisoner of war, the director shall issue to the survivors one commemorative plaque resembling the number plate that had been issued to the prisoner of war.

39-04-10.6. Registration of motor vehicles owned by collectors.

A person who owns a motor vehicle that is at least twenty-five years old but that is not eligible for registration under section 39-04-10.4 may register that motor vehicle as a collector's motor vehicle. The motor vehicle is eligible for collector's registration if it is owned and operated solely as a collector's item and if the owner owns another motor vehicle the owner uses for general transportation. A motor vehicle qualifies as a collector's item under this section only if it

is operated on public streets and highways for the purpose of driving the vehicle to and from active entry and participation in parades, car shows, car rallies, other public gatherings held for the purpose of displaying or selling the vehicle, and to and from service or storage facilities. An applicant for registration of a vehicle as a collector's motor vehicle shall file an affidavit with the director that states the owner's name and address, the make, year, and the manufacturer's identification number of the motor vehicle, and a statement that the motor vehicle is owned and operated solely as a collector's item and not for general transportation purposes. If the director is satisfied that the affidavit is true and correct, the director shall register the motor vehicle as a collector's motor vehicle on the payment of a registration fee of sixty dollars. The registration is valid as long as the collector's motor vehicle is owned by the person who applied for the registration under this section. The director shall design and issue distinctive number plates for collector's motor vehicles registered under this section. In lieu of the distinctive number plates, the owner of the motor vehicle, at the discretion of the director, may display on the motor vehicle number plates from the year in which the motor vehicle was manufactured. The number plates from the year of manufacture may not be used in lieu of distinctive number plates when it would create a duplication of a number in the recordkeeping system of the department. Number plates from the year of manufacture must be legible and must be restored to the satisfaction of the department. A person violating this section or a department rule regarding this section forfeits the right to the registration provided in this section and any registration fees that have been paid.

39-04-10.7. Special number plates for farm vehicles.

The director shall issue, without an additional charge, upon application and payment of the registration fee, special number plates or validation decals making them distinctly different from other number plates, to any person registering a truck or combination of trucks and trailers as a farm vehicle under section 39-04-19. The director shall determine the form and size of the special number plates or validation decals and shall adopt rules governing the issuance of these special number plates or validation decals.

39-04-10.8. National guard number plates.

The director, in cooperation with the adjutant general, shall issue distinctive number plates to members of the national guard. A plate issued under this section must bear the national guard insignia designated by the adjutant general and the letters "NG" before the number. The director may issue the plates to the owner of a passenger motor vehicle, a truck the registered gross weight of which does not exceed twenty thousand pounds [9071.84 kilograms], or a motorcycle. On request of the director, the adjutant general shall certify those members of the national guard eligible to receive the plates. On payment of all other fees required under this chapter for registration of the motor vehicle, and payment of an additional fee of not more than five dollars to cover the cost of issuing the distinctive number plates, the applicant is entitled to issuance of the distinctive number plates. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the national guard or if the registrant has retired from the national guard after twenty years or more of military service. On termination of the registrant's eligibility, the registrant shall return the distinctive number plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and adjutant general shall cooperate in establishing procedures to implement this section.

39-04-10.9. Law enforcement plates.

Upon request, the department shall issue identical plates that contain the word "SHERIFF" for the vehicles used and owned by a sheriff's department and the word "POLICE" for the motor vehicles used and owned by a city's police department. The plates must be in black letters and on the designed background in use at the time of issuance. The plates must be provided at actual cost. Notwithstanding section 39-04-11, the plates are the property of the law enforcement agency to which issued. At an appropriate time, replacement of the plates must occur whenever the designed background used by the state changes. Notwithstanding section

39-04-11, a motor vehicle that displays a plate under this section must have a clearly visible distinctive identification number on the rear of the vehicle assigned by the appropriate law enforcement agency.

39-04-10.10. North Dakota veterans' number plates.

1. The director may issue distinctive number plates to individuals eligible for interment in the North Dakota veterans' cemetery. The director shall issue a number plate under this section upon receiving:
 - a. Payment of all other fees required under this chapter for registration of a motor vehicle;
 - b. Payment of an initial fee of fifteen dollars of which ten dollars is to be deposited in the highway tax distribution fund and five dollars is to be deposited in the veterans' cemetery maintenance fund unless for a plate issued to a veteran who has been awarded the purple heart, then there is not an initial fee; and
 - c. Verification of subsequent payments of an annual surcharge of ten dollars paid to the adjutant general unless for a plate issued to a veteran who has been awarded the purple heart, then there is not an annual surcharge.
2. The department shall collect the fees and the ten dollar surcharge under this section. The department shall report to the legislative assembly on the funds collected under this section during each legislative session. The department shall pay the funds collected under subdivisions b and c of subsection 1 to the adjutant general monthly, who then, within ten days of receipt of the funds, shall deposit five dollars of each initial fee in the veterans' cemetery maintenance fund and the ten dollar surcharge shall be divided with five dollars being deposited in the veterans' cemetery trust fund and five dollars being deposited in the veterans' cemetery maintenance fund in the state treasury. Investment of the fund is the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. At the request of the adjutant general, the interest in the veterans' cemetery trust fund must be deposited in the veterans' cemetery maintenance fund for the purpose of funding salaries and maintenance of the veterans' cemetery.
3. The veterans' cemetery trust fund may accept funds from private and federal sources.

39-04-10.11. Firefighter's association plates.

The director, in cooperation with the North Dakota firefighter's association, shall design a decorative decal that contains an insignia representing service in the pursuit of firefighting and which is to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle, and payment of an additional annual fee of fifteen dollars for deposit in the highway fund, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decal and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which exceeds twenty thousand pounds [9071.84 kilograms]. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the North Dakota firefighter's association. On request of the director, the North Dakota firefighter's association shall certify those members of the North Dakota firefighter's association eligible to receive the decals and plates. On termination of the registrant's eligibility, the registrant shall return the decals and plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and the North Dakota firefighter's association shall cooperate in establishing procedures to implement this section.

39-04-10.12. North Dakota future farmers of America foundation number plates.

The director shall design a decorative decal that contains the insignia of the North Dakota FFA foundation to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional fee of ten dollars, the applicant is entitled to issuance of the decals and plates. However, the director may

not issue the decals and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which exceeds twenty thousand pounds [9071.84 kilograms].

39-04-10.13. Public or nonprofit organization number plate.

1. The director shall develop an organization number plate program for distinctive number plates for qualifying public and for nonprofit organizations recognized by the internal revenue service as tax exempt under 26 U.S.C. 501(c)(3). When appropriate, the department shall design a distinctive number plate to minimize the changes to a single application of overlay on the left side of the number plate. The organization may submit a design for the distinctive number plate for approval by the director. Upon approval by the director and proper application with proof of a minimum of fifty applicants and a one-time payment of one thousand five hundred dollars for a certain organization's number plate, the director shall include the number plate in the organization number plate program.
2. The following organizations do not qualify for an organization number plate: out-of-state colleges and universities; groups within high schools, junior colleges, universities, and technical schools, including individual boosters, athletic boosters, and similar groups; unions; political organizations; religious organizations; groups that promote racial or social disharmony; and public offices.
3. Upon proper application for a plate in the organization number plate program and payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional annual fee of twenty-five dollars, a qualified applicant is entitled to issuance of a certain organization number plate. However, the director may not issue the plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which exceeds twenty thousand pounds [9071.85 kilograms].
4. The director shall deposit ten dollars of the additional organization number plate fee in the highway tax distribution fund and transfer monthly fifteen dollars to the proper organization to support programs of that organization.

39-04-10.14. North Dakota gold star number plates.

1. The director may issue distinctive number plates to a surviving spouse, parent, including stepmother, stepfather, parent through adoption, and foster parent who stands or stood in loco parentis, grandparents, child, including stepchild and child through adoption, and sibling, including half-brother and half-sister, of a member of the armed forces of the United States who died while serving on active duty during a time of military conflict. The director shall issue a number plate under this section upon receiving payment of all other fees required under this chapter for registration of a motor vehicle.
2. Plates issued under this section must bear a gold star emblem logo on the left side of the plate and the letters "GS" before the number. The director shall cooperate with the director of the department of veterans' affairs to design the gold star emblem logo. The director may issue one set of plates per eligible owner of a passenger motor vehicle or a truck the registered gross weight of which does not exceed twenty thousand pounds [9071.85 kilograms].
3. On request of the director, the department of veterans' affairs shall certify those surviving family members of deceased members of the United States armed forces listed above as eligible to receive the plates.
4. Once declared eligible for a gold star plate, the department may not remove the eligibility of a surviving family member.
5. Once a plate number is issued to an eligible family member, the department may not assign the plate to another eligible person.

39-04-10.15. Patriotic number plates.

1. The director shall issue patriotic plates under this section upon receiving:

- a. Payment of all other fees required under this chapter for registration of a motor vehicle;
 - b. Payment of an initial fee of twenty-five dollars of which twenty dollars is deposited in the highway tax distribution fund and five dollars is deposited in the veterans' postwar trust fund; and
 - c. Payment of an annual surcharge of twenty-five dollars of which ten dollars is deposited in the highway tax distribution fund and fifteen dollars is deposited in the veterans' postwar trust fund.
2. The department shall collect the initial fees and the annual surcharges under this section. Deposits in the veterans' postwar trust fund under this section must be added to the principal of the fund. Investment of the fund is the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments.
 3. Patriotic plates must include a flag of the United States decal plate, bald eagle decal plate, or boonie stomper decal plate.

39-04-10.16. Special vehicle license plates for volunteer emergency responders, volunteer firefighters, and volunteer search and rescue personnel.

1. As used in this section:
 - a. "Fire department" means a certified city fire department, certified rural fire department, or certified fire protection district that has filed a certificate of existence under section 18-04-02.
 - b. "Volunteer emergency responder" means an emergency medical services provider certified by the department of health and human services and the individual's squad leader for a continuous period exceeding two years and who receives an annual compensation of less than ten thousand dollars.
 - c. "Volunteer firefighter" means an active member in good standing with a North Dakota fire department who has had a continuous membership for a period exceeding two years and receives an annual compensation of less than ten thousand dollars from the fire department.
 - d. "Volunteer search and rescue personnel" includes water and dive rescue personnel and means an active member:
 - (1) Of an organization that at the request of a state entity, political subdivision, or volunteer fire department deploys, coordinates, and uses available resources and personnel in locating, relieving the distress of, preserving the life of, or extracting an individual who is missing, trapped, or lost in remote areas or waters of the state;
 - (2) In good standing and with continuous membership for a period exceeding two years with an organization under paragraph 1; and
 - (3) Who receives an annual compensation of less than ten thousand dollars from an organization under paragraph 1.
2. Upon application, the director shall issue red personalized plates to volunteer emergency responders, volunteer firefighters, and volunteer search and rescue personnel at no initial or annual cost to the volunteers. Qualified applicants are eligible to receive one set of plates. Plates may not be displayed on a vehicle with a registered gross weight exceeding twenty thousand pounds [9071.85 kilograms]. The first three digits of the plate are the last three digits of the zip code where the volunteer's department or organization is located. The remaining space may contain up to three characters of the volunteer's choosing. This plate serves as an entrance pass to all North Dakota state parks. In cooperation with the volunteer organizations, the director shall designate qualifications and verification procedures for the plates issued under this section.
3. On termination of the registrant's eligibility, the registrant shall return the plates to the director, who shall reissue for a fee of not more than five dollars, and upon payment of applicable registration fees, another number plate to which that registrant is entitled under this chapter.

4. If a registrant fails to return the plates to the director, the director, upon notification of the registrant's ineligibility, may revoke the plates and reissue for a fee of not more than five dollars, and upon payment of applicable registration fees, another number plate for which the registrant is entitled under this chapter.

39-04-10.17. Military sacrifice plates.

1. The director shall issue distinctive number plates to individuals eligible under this section upon receiving:
 - a. Payment of all other fees required under this chapter for registration of a motor vehicle; and
 - b. Verification, as determined by the department, of an individual's eligibility status under this section.
2. An individual is eligible for a military sacrifice plate if the individual is an immediate family member of a individual who died outside a combat zone while serving honorably and has not been not found guilty of willful misconduct as defined in title 38, Code of Federal Regulations, part 3, subpart a, section 3.1, subsection n, as a current member of any branch of the armed forces of the United States, either active or reserve, the national guard under federal or state control, or the United States coast guard.
3. On request of the director, the department of veterans' affairs shall certify an immediate family member of an individual listed in subsection 2 as eligible to receive military sacrifice plates.
4. Military sacrifice plates must be inscribed with a distinctive emblem and the words "military sacrifice".
5. For purposes of this section "immediate family member" means a:
 - a. Spouse;
 - b. Parent, stepparent, or other individual who acted in loco parentis;
 - c. Sibling, whether of the whole or half blood, or by adoption;
 - d. Child, including those by adoption, or a stepchild; or
 - e. Grandparent.
6. The director may issue military sacrifice plates under this section only to the owner of a passenger motor vehicle or a truck the registered gross vehicle weight rating of which does not exceed twenty thousand pounds [9071.85 kilograms].

39-04-10.18. Blackout number plates.

1. The director shall issue blackout number plates under this section upon receiving payment of:
 - a. All other fees required under this chapter for registration of a motor vehicle; and
 - b. An additional fee of twenty-five dollars per registration period.
2. Blackout number plates issued under this section must have:
 - a. A solid black background; and
 - b. White numbers and letters.
3. The director may issue blackout number plates under this section only to the owner of a passenger motor vehicle, a truck the registered gross weight of which does not exceed twenty thousand pounds [9071.85 kilograms], or a motorcycle.

39-04-11. Display of number plates and tabs - Temporary registration permit.

Unless otherwise provided by law, an individual may not operate a vehicle on a public highway of this state unless the vehicle has a distinctive number assigned to the vehicle by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened, except number plates assigned to a housetrailer must be attached to the rear of the housetrailer. An individual may operate a motor vehicle on a public highway of this state with a valid temporary registration permit. A temporary registration permit obtained from the department of transportation or a licensed motor vehicle dealer must be displayed on the rear window, the rearmost driver's side window, or in the location of the rear license plate. The

temporary registration permit must be clearly visible and free of any obstructions. Number plates assigned to a motorcycle or trailer must be attached to the rear of the motorcycle or trailer and may be displayed vertically. When only one number plate is furnished for an apportioned vehicle registered under the international registration plan as authorized in section 39-19-04, truck tractor, or semitrailer, the plate must be attached to the front of the apportioned vehicle or truck tractor and the rear of the semitrailer. The bottom of each number plate must be at a height of not less than twelve inches [30.48 centimeters] above the level surface upon which the vehicle stands. Each plate must be mounted in a visible manner that clearly displays the distinctive number assigned to the vehicle and the name of the state on the plate. As far as is reasonably possible, the plates must at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or evidence of registration or licensing except for the current year must be removed from the vehicle. All vehicle license plates issued by the department are the property of the department for the period for which the plates are valid. An annual registration tab or sticker for the current registration year must be displayed on each number plate, in the area designated by the department for the tab or sticker, in those years for which tabs or stickers are issued in lieu of number plates.

39-04-12. Contents of number plates - Size of letters and numerals on plates - Reflectorized - Tabs or stickers.

1. Number plates must be of metal or other suitable material bearing the name of the state, either in full or by abbreviation, the number of the year, the slogan "Peace Garden State" and a distinctive number for assignment to each vehicle. The distinctive number may be in figures or a combination of figures and letters and must be of a size clearly distinguishable by law enforcement officers and individuals generally. To reduce highway accidents at night all number plates and temporary registration permits must be legible for a minimum distance of one hundred feet [30.48 meters] to an approaching motorist by day or night with lawful headlight beams and without other illumination. Each plate must be treated with a reflectorized material according to the specifications prescribed by the department. The department shall furnish for each annual registration a year plate, tab, or sticker to designate the year registration. The plate, tab, or sticker must show the registration year for which issued, and is valid only for that year.
2. The department may provide to an owner of a fleet of one hundred or more vehicles number plates that are valid for as many as six consecutive years and that are exempt from the requirements of evidence of annual validation. The registrant shall file with the department a corporate surety bond in an amount the department determines to be reasonable and adequate, and conditioned that the owner will pay the annual fee at the beginning of each annual registration period for which the number plates are valid.

39-04-13. Duplicates to be obtained of number plate, tab, sticker, or registration card if lost, mutilated, or illegible - Fee.

If any number plate, tab, sticker, or registration card issued under the provisions of this chapter is lost, mutilated, or becomes illegible, the person who is entitled thereto shall make immediate application for and obtain a duplicate or substitute upon furnishing information of such fact satisfactory to the department and upon payment of the cost of issuing the duplicate item, not to exceed the sum of five dollars for each duplicate number plate, tab, sticker, or registration card issued. The department may issue a duplicate number plate, tab, sticker, or registration card at no cost to the owner when satisfied the vehicle owner did not receive the original number plate, tab, sticker, or registration card which was issued.

39-04-14. Renewal of registration.

Every vehicle registration, except those described in sections 39-04-14.1 and 39-04-14.4, under this chapter expires on December thirty-first each year and must be renewed annually upon application by the owner and by payment of the fees required by law, such renewal to take effect on the first day of January each year. An owner who has made proper application for

renewal of registration of a vehicle previous to January first but who has not received the number plates, plate, or registration card for the ensuing year is entitled to operate or permit the operation of such vehicle upon the highways upon displaying thereon the number plates or plate issued for the preceding year for such time, to be prescribed by the department, as may be required for the issuance of the new plates. If a previously registered motor vehicle whose registered gross weight exceeds twenty thousand pounds [9071.84 kilograms] is purchased during the period the vehicle's registration in this state is expired, the registration fee must be prorated on a monthly basis from the date of purchase to January first.

39-04-14.1. Renewal of registration of motor vehicles under certain weight.

Except as otherwise provided in this section, the registration of a motor vehicle whose registered gross weight does not exceed twenty thousand pounds [9071.84 kilograms] expires on the last day of the month which is the anniversary of the month it was originally registered. The registration may be renewed annually on application by the owner and payment of fees required by law. The renewal takes effect on the first day of the first month of the registration period. An owner of more than one vehicle qualifying for staggered registration under this section may renew all of the owner's vehicles in the same month. The director shall prorate the registration fees accordingly. If a previously registered motor vehicle whose registered gross weight does not exceed twenty thousand pounds [9071.84 kilograms] is purchased during the period the vehicle's registration in this state is expired, the department shall collect the annual registration fee under section 39-04-19 and shall issue registration that expires on the last day of the month that is the anniversary of the month the vehicle was purchased.

39-04-14.2. Staggered registration for apportioned vehicles.

The director may establish a procedure for the implementation of a staggered registration system for vehicles registered pursuant to the international registration plan. Procedures established under this section may provide for a one-time collection of up to eighteen months of registration fees.

39-04-14.3. Online registration renewal receipt showing compliance with registration is prima facie evidence.

The possession of a receipt, via the department's online registration renewal service, is prima facie evidence of compliance with motor vehicle registration laws, with reference to the vehicle therein described, for a period of fifteen days from the date of the printed receipt.

39-04-14.4. Renewal of motorcycle registration.

Every motorcycle registration under this chapter expires on March thirty-first and must be renewed every year upon application by the owner and by payment of the fees required by law. The renewal takes effect on the first day of April. The department may prorate the initial registration fee.

39-04-15. When registration fees become due and delinquent.

The registration fee for a vehicle becomes due as soon as the vehicle is used upon the highways of this state. The registration for a vehicle becomes delinquent immediately upon expiration of the prior registration.

39-04-15.1. Installment registration of vehicles licensed for a gross weight in excess of thirty-six thousand pounds [16329.33 kilograms] - Delinquencies - Penalty.

Repealed by S.L. 1983, ch. 423, § 2.

39-04-16. Penalty for delinquent registration fees - Exceptions.

Repealed by S.L. 1975, ch. 328, § 1.

39-04-17. Certificate of notary showing compliance with registration is prima facie evidence - Penalty.

The possession of a certificate made out by a notary public or an authorized agent of a licensed vehicle dealer who took the acknowledgment of the application when the vehicle was first registered or required to be registered under the laws of this state, if such certificate shows the date of application, the make, registered weight, and year model of the motor vehicle, the manufacturer's number of the motor vehicle which such application describes, and further shows that such notary public, or authorized agent of a vehicle dealer, personally mailed the application with the remittance fee, is prima facie evidence of compliance with motor vehicle law with reference to the vehicle therein described, for a period of seventy-five days from the date of such application. Any violation of this section is an infraction punishable by a fine of not less than fifty dollars.

39-04-18. Motor vehicles exempt from registration fees - Reciprocal use of state highways by foreign licensed motor vehicles.

1.
 - a. Except as provided in this section, a motor vehicle as defined in section 39-01-01 or a trailer operated or intended to be operated upon a highway, road, or street in this state must be registered annually with the department.
 - b. A semitrailer or a farm trailer operated or intended to be operated upon a highway, road, or street in this state must be registered with the department either annually or permanently, at the discretion of the registrant.
 - c. A vehicle being operated on highways, roads, or streets of this state must display license plates as furnished by the department upon payment of the fees prescribed in this chapter.
 - d. Upon satisfactory proof to the department that a motor vehicle owned by a resident of this state was not used upon any of the highways of this state in any one or more years, the motor vehicle may be registered upon payment of the registration fee for the current year.
 - e. A resident of the state of North Dakota, serving in the armed forces of the United States for a period of time greater than one year, may relicense a motor vehicle owned by the veteran without paying a fee or penalty for the intervening years when the vehicle was not licensed, providing the veteran shows by suitable affidavit that the vehicle was not in use during a year in which it was not licensed. The vehicle must be licensed for the license fee applicable to the month of the year in which application for license is made.
2. The following motor vehicles may be operated upon the highways, roads, and streets of this state without being registered, under such limitations as are herein specified; provided, however, that whenever the department determines that it is to the best interest of the state of North Dakota and determines by reciprocal agreement or otherwise that as great or greater privileges are not granted North Dakota residents while traveling in other states or territories, the department may cancel or limit the application of any exception to residents or motor vehicles from such other state or territory:
 - a. Farm tractors as defined in section 39-01-01, special mobile equipment and road rollers and other road construction or maintenance machinery that cannot be operated on the highways and streets of this state in a normal operating manner.
 - b. Motor vehicles owned by or in possession of Indian mission schools, by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction, or by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; provided, however, that the vehicles must display license plates provided by the department at actual

cost. Upon request, qualifying law enforcement motor vehicles must be issued a license plate under section 39-04-10.9.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate. The license plates must be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

A person may not use a driver education motor vehicle bearing official license plates for any purpose other than driver education course instruction. A person is not in violation of this subdivision if the person is required by the dealer or a school administrator to house or otherwise protect the vehicle at the person's home or other facility.

- c. Motor vehicles registered in any other state or territory when coming into this state a distance not exceeding twenty miles [32.19 kilometers]; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state. Nor may such vehicles be required to pay any other tax, and no registration fee or tax may be required when such vehicles do not leave the incorporated limits of any city while in the state of North Dakota within a zone circumscribed by a line running parallel to the corporate limits of any city or contiguous cities and twenty miles [32.19 kilometers] distant therefrom. This section does not prevent trucks from coming into the state such distance as shall be necessary to reach the nearest railway shipping station. For purposes of this subdivision, an individual is a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purposes of this subdivision, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction if that jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under a reciprocity agreement.
- d. Motor vehicles owned and operated by the United States government, or any foreign government, or any of their agencies or departments; provided, however, that such motor vehicles must display identification plates.
- e. Passenger motor vehicles registered in any other state or territory; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state. For purposes of this subdivision, an individual is a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purposes of this subdivision, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction if that jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under a reciprocity agreement.
- f. Motor vehicles owned and operated by a manufacturer of motor vehicles when such motor vehicles are operated or moved such distance as may be authorized by the director from the factory where manufactured or assembled, to a depot or place of shipment or other point of delivery; provided, however, that such vehicles

- have displayed in plain sight the name and address of the manufacturer and a written permit from local police authorities.
- g. Motor vehicles owned and operated by a licensed North Dakota motor vehicle dealer from a railway depot, warehouse, salesroom, or place of shipment; provided, however, that such vehicles have displayed in plain sight the name and address of the dealer and a written permit from the local police authorities.
 - h. Motor vehicles owned and operated by nonresidents engaged in harvest of agricultural products from June first through December thirty-first of any one year; provided, however, that such motor vehicles have displayed thereon a decal or other means of identification issued by the director upon payment of a fee of fifty dollars.
 - i. Vehicles owned by nonresident military personnel stationed in this state and operated by such military personnel or their dependents, provided such vehicle is registered in the state or territory whereof such military person is a resident, and provided further that current license plates from such state or territory are displayed on such vehicle.
 - j. Motor vehicles not exceeding twenty-six thousand pounds [11793.40 kilograms] registered gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 3901], a disabled veteran who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or a disabled veteran who has an extra-schedular rating to include individual unemployability which results in the veteran being paid at the one hundred percent rate as determined by the department of veterans' affairs is entitled to display either a distinctive license plate or a standard plate that does not identify the veteran as a veteran or disabled veteran which is issued by the department at no cost to the qualifying veteran or surviving spouse or any other distinctive or vanity plate purchased from the department by the qualifying veteran or surviving spouse. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time. A surviving spouse of a disabled veteran who is receiving United States department of veterans affairs dependency and indemnity compensation is eligible for the exemption under this subdivision for one vehicle. If the determination of disability or service-connected death occurs subsequent to the qualifying veteran's death through application of a law that renders a surviving spouse of a qualifying veteran eligible for United States department of veterans affairs disability and indemnity compensation, the determination for purposes of the exemption under this subdivision is presumed to precede the veteran's death. Sufficient proof of receipt of United States department of veterans affairs dependency and indemnity compensation includes correspondence directed to a surviving spouse of a qualifying veteran by the United States department of veterans affairs which indicates the surviving spouse is a survivor of the qualifying veteran and is in receipt of United States department of veterans affairs dependency and indemnity compensation.
 - k. Motor vehicles having not over two axles and not being used in combination owned and operated by nonresidents and any motor vehicle or combination of three axles or more operated in this state pursuant to a proportional licensing or other agreement or arrangement with any jurisdiction having motor vehicle registration authority.
 - l. Motor vehicles owned and operated by a resident building mover or by a resident well driller; provided, however, that such vehicles are used only for moving buildings or building-moving equipment, or are used only for drilling water wells or moving water well-drilling equipment; provided, further, that such vehicles display a license plate issued by the director upon the payment of a fee of twenty-five dollars for two axle trucks, fifty dollars for tandem axle trucks and single axle truck-tractor units, and seventy-five dollars for each tandem axle truck-tractor unit.

Any vehicle which has been issued this special motor vehicle license may be registered under the regular motor vehicle registration law, by payment of the difference between the amount paid for the special motor vehicle license and the regular registration fee for such vehicle.

Any vehicle which has been issued this special motor vehicle license and is found being operated upon the highways of this state without being equipped with special house-moving or well-drilling equipment shall forfeit the fee paid and, in addition, must be required to register under the regular motor vehicle registration law of this state. None of the above limitations may be construed as restricting the operation of the special licensed vehicle when such operation would not require a greater fee than that paid for this operation.

- m. Any trailer, semitrailer, or farm trailer when the gross weight, not including the weight of the towing vehicle, does not exceed one thousand five hundred pounds [680.39 kilograms] and it is not for hire or commercial use, or when used to transport recreational vehicles or boats and it is not for hire or commercial use.
- n. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The crossing must be made at an angle of approximately ninety degrees to the direction of the highway.
- o. Passenger motor vehicles, house cars, or pickup trucks not exceeding twenty thousand pounds [9071.84 kilograms] registered gross weight owned and operated by a resident who, while serving in the United States armed forces, was a prisoner of war and has received an honorable discharge from the United States armed forces is entitled to display a distinctive license plate issued by the department. This exemption also applies to any passenger motor vehicle, house car, or pickup truck not exceeding twenty thousand pounds [9071.84 kilograms] registered gross weight subsequently purchased or acquired by such a former prisoner of war. This exemption applies to no more than two motor vehicles owned by a former prisoner of war at any one time. A surviving spouse of a former prisoner of war who has not remarried retains the exemption of the deceased veteran who qualified under this subdivision for one vehicle.
- p. Motor vehicles not exceeding twenty-six thousand pounds [11793.40 kilograms] registered gross weight owned and operated by a veteran who was awarded the purple heart is entitled to a distinctive license plate issued by the department. This exemption applies to one motor vehicle owned by a veteran who was awarded the purple heart.

39-04-18.1. Failure to register upon gainful employment.

A person operating a motor vehicle in violation of subdivision c or e of subsection 2 of section 39-04-18 shall purchase an annual registration for that motor vehicle for a fee that is not discounted from the appropriate amount listed in a table in section 39-04-19. A law enforcement officer may issue a registration for that vehicle and shall remit the registration fee to the department of transportation. The department shall provide for evidence of registration to be issued by a law enforcement officer enforcing subdivision c or e of subsection 2 of section 39-04-18.

39-04-18.2. Temporary motor vehicle registration - Fees.

1. Any owner, lessee, or operator of a motor vehicle who is employed in this state on a temporary or full-time basis may choose to purchase a temporary registration permit in lieu of registering the vehicle pursuant to section 39-04-18, if the vehicle displays a valid registration and license plate from another jurisdiction and is properly insured. Application for the temporary registration permit must be made in the manner and form prescribed by the department. The temporary registration permit must bear a distinctive number assigned to the vehicle and an expiration date. At all times the operator shall ensure that the temporary registration permit is displayed and clearly visible on the vehicle in a manner prescribed by the department. Motor vehicles temporarily registered under this section may be registered without a title transfer or

imposition of motor vehicle excise tax. The operator shall keep evidence of registration from the other jurisdiction in the motor vehicle and provide evidence of registration to a law enforcement officer or the department, upon request.

2. Motor vehicles temporarily registered in this state must be furnished a permit as follows:

- a. Passenger vehicles, pickups, vans, and trucks not exceeding twenty thousand registered gross weight pounds [9071.84 kilograms] temporarily registered in this state must be furnished a permit upon payment of sixty dollars for six months or one hundred twenty dollars for twelve months of required registration.

- b. Trucks or combinations of trucks and trailers weighing more than twenty thousand registered gross weight pounds [9071.84 kilograms] temporarily registered in this state must be furnished a permit upon payment of the following fees:

Weight	Six-Month Fee	Twelve-Month Fee
20,001 - 42,000	\$220	\$440
42,001 - 62,000	\$380	\$760
62,001 - 82,000	\$530	\$1,060
82,001 - 105,500	\$900	\$1,800

- c. Motorcycles temporarily registered in this state must be furnished a permit upon payment of thirty dollars for six months or sixty dollars for twelve months.

- d. An additional fee of ten dollars applies to each temporary registration permit.

39-04-19. Motor vehicle registration fees and mile tax.

Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the state highway fund.

2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle, including a motorcycle or trailer, first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:

- a. Passenger motor vehicles:

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, and 9th Years	10th, 11th, and 12th Years	13th and Subsequent Years
Less than 3,200	\$73	\$65	\$57	\$49
3,200 - 4,499	93	81	69	57
4,500 - 4,999	111	94	79	63
5,000 - 5,999	142	120	98	76
6,000 - 6,999	175	146	117	89
7,000 - 7,999	208	172	137	102
8,000 - 8,999	241	199	157	115
9,000 and over	274	225	177	128

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

A pickup truck is subject to registration at the rates prescribed for other vehicles under this subdivision by applying the gross vehicle weight rating of the vehicle to the fee schedule. At a minimum, the registered gross weight displayed on the registration card for a pickup truck must be the gross vehicle weight rating of the vehicle. Unless otherwise exempted by this chapter, the owner of a pickup truck shall request the registered gross weight of the pickup truck be increased to ensure the registered gross weight is sufficient to include the total weight of the

vehicle and any load transported on or by the vehicle. For purposes of this subdivision, a pickup truck is a motor vehicle with a manufacturer's gross vehicle weight rating of less than eleven thousand five hundred pounds [5216.31 kilograms], with an unladen weight of less than eight thousand pounds [3628.74 kilograms], and which is equipped with an open box-type bed not exceeding nine feet [2.74 meters] in length.

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under this subsection or subsection 5:

Gross Weights	YEARS REGISTERED				
	1st Through 6th Years	7th Through 9th Years	10th Through 12th Years	13th Through 19th Years	20th and Subsequent Years
Not over 4,000	\$71	\$58	\$53	\$50	\$49
4,001 - 6,000	76	63	57	51	50
6,001 - 8,000	81	68	61	52	51
8,001 - 10,000	86	73	65	54	53
10,001 - 12,000	91	78	69	56	55
12,001 - 14,000	96	83	73	59	58
14,001 - 16,000	101	88	77	62	61
16,001 - 18,000	106	93	81	64	63
18,001 - 20,000	109	96	83	65	64

Gross Weights	YEARS REGISTERED		
	1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years	8th, 9th, 10th, 11th, and 12th Years	13th and Subsequent Years
20,001 - 22,000	\$139	\$113	\$100
22,001 - 26,000	191	161	145
26,001 - 30,000	252	210	188
30,001 - 34,000	318	263	235
34,001 - 38,000	379	312	278
38,001 - 42,000	440	361	320
42,001 - 46,000	501	409	363
46,001 - 50,000	562	458	406
50,001 - 54,000	632	516	457
54,001 - 58,000	693	565	500
58,001 - 62,000	755	614	543
62,001 - 66,000	815	662	586
66,001 - 70,000	876	711	628
70,001 - 74,000	937	760	671
74,001 - 78,000	998	809	714
78,001 - 82,000	1,059	858	757
82,001 - 86,000	1,182	963	844
86,001 - 90,000	1,304	1,067	931
90,001 - 94,000	1,426	1,172	1,018
94,001 - 98,000	1,548	1,277	1,106
98,001 - 102,000	1,670	1,381	1,193
102,001 - 105,500	1,792	1,486	1,280

- c. Motorcycles, fifteen dollars.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding twenty-six thousand pounds

[11793.40 kilograms] registered gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

4. a. Each trailer, except a semitrailer or farm trailer, required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. A trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars.
- b. A semitrailer or farm trailer required to be registered under this chapter must be furnished:
 - (1) Permanent registration plates upon the payment of a permanent registration fee of one hundred twenty dollars. The permanent registration is valid until ownership of the semitrailer or farm trailer is transferred, assigned, or if the semitrailer is destroyed or otherwise completely removed from the service of the owner; or
 - (2) Annual registration upon the payment of a twenty dollar annual fee.
- c. Upon the request of a person with a trailer or farm trailer to whom a registration or identification plate is provided under this subsection, the department shall provide a plate of the same size as provided for a motorcycle. The department shall provide notification of this option to the person before the replacement or issuance of the plate.
5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th and 8th Years	9th and 10th Years	11th and Subsequent Years
20,001 - 22,000	\$111	\$97	\$83	\$65
22,001 - 24,000	116	101	86	67
24,001 - 26,000	124	107	90	69
26,001 - 28,000	135	115	96	73
28,001 - 30,000	144	123	102	77
30,001 - 32,000	159	136	113	86
32,001 - 34,000	169	144	119	90
34,001 - 36,000	179	152	125	94
36,001 - 38,000	189	160	131	98
38,001 - 40,000	199	168	137	102
40,001 - 42,000	209	176	143	106
42,001 - 44,000	219	184	149	110
44,001 - 46,000	229	192	155	114
46,001 - 48,000	239	200	161	118
48,001 - 50,000	249	208	167	122
50,001 - 52,000	269	226	183	136

52,001 - 54,000	279	234	189	140
54,001 - 56,000	289	242	195	144
56,001 - 58,000	299	250	201	148
58,001 - 60,000	309	258	207	152
60,001 - 62,000	319	266	213	156
62,001 - 64,000	329	274	219	160
64,001 - 66,000	339	282	225	164
66,001 - 68,000	349	290	231	168
68,001 - 70,000	359	298	237	172
70,001 - 72,000	369	306	243	176
72,001 - 74,000	379	314	249	180
74,001 - 76,000	389	322	255	184
76,001 - 78,000	399	330	261	188
78,001 - 80,000	409	338	267	192
80,001 - 82,000	419	346	273	196
82,001 - 84,000	429	368	316	272
84,001 - 86,000	449	385	330	284
86,001 - 88,000	469	402	344	296
88,001 - 90,000	489	419	358	308
90,001 - 92,000	509	436	372	320
92,001 - 94,000	529	453	386	332
94,001 - 96,000	549	470	400	344
96,001 - 98,000	569	487	414	356
98,001 - 100,000	589	504	428	368
100,001 - 102,000	609	521	442	380
102,001 - 104,000	629	538	456	392
104,001 - 105,500	649	555	470	404

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

39-04-19.1. Registration of soil and water conservation vehicles.

Trucks or combinations of trucks and trailers owned and operated by a bona fide resident of this state, but no more than one truck tractor and lowboy trailer unit, of a gross weight of twenty-four thousand one pounds [10886.67 kilograms] or more and used exclusively in soil and water conservation work or exclusively for township road construction work that results in direct benefits to agriculture, shall be furnished license plates upon the payment of one-half the annual fees for such corresponding weight as provided in subdivision b of subsection 2 of section 39-04-19.

This section is not applicable to any trucks and trailers used in road construction work, the contract for which is in excess of three thousand dollars.

39-04-19.2. Electric and plug-in hybrid vehicle road use fee - Definitions.

1. In addition to all other fees required under this chapter for registration of a motor vehicle, the department shall collect at the beginning of each annual registration period:
 - a. An electric vehicle road use fee of one hundred twenty dollars for each electric vehicle registered.
 - b. A plug-in hybrid vehicle road use fee of fifty dollars for each plug-in hybrid vehicle registered.
 - c. An electric motorcycle road use fee of twenty dollars for each electric motorcycle registered.
2. As used in this section:
 - a. "Electric motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider, is designed to travel on not more than three wheels in contact with the ground, and is propelled by an electric motor powered by a battery or other

- electric device incorporated into the vehicle and not propelled by an engine powered by the combustion of a hydrocarbon fuel, including gasoline, diesel, propane, or liquid natural gas.
- b. "Electric vehicle" means a vehicle propelled by an electric motor powered by a battery or other electric device incorporated into the vehicle and not propelled by an engine powered by the combustion of a hydrocarbon fuel, including gasoline, diesel, propane, or liquid natural gas.
 - c. "Plug-in hybrid vehicle" means a vehicle drawing propulsion energy from an internal combustion engine, an energy storage device, and a receptacle to accept grid electricity.
3. The department shall deposit any moneys collected under this section into the highway tax distribution fund.

39-04-20. Additional fees required of trucks.

Repealed by S.L. 1995, ch. 450, § 1.

39-04-21. Fees for motor vehicles first registered in state.

When a motor vehicle first becomes subject to registration during the calendar year, the registration fee must be for the remainder of the year prorated on a monthly basis, one-twelfth of the annual registration fee for each calendar month or fraction thereof. Penny adjustments must be carried to the next even dollar. Temporary registrations must be issued in such manner as is prescribed by the director of the department of transportation.

39-04-21.1. Trailers, semitrailers, farm trailers - Registration fees prorated - Excess weight registration.

Repealed by S.L. 1983, ch. 427, § 3.

39-04-22. Motor vehicle exceeding registered gross weight for which licensed not to be operated on highway - Exception.

Except as otherwise provided by law, a motor vehicle, or a combination of motor vehicles, may not be operated upon the highways of this state when the gross weight exceeds the registered gross weight for which the vehicle or combination of vehicles was licensed. Any person violating the provisions of this section will be required to license such motor vehicle at the higher legal rate in accordance with the weight carried by the motor vehicle at the time of the violation for the entire license period. However, such registration may not be construed to authorize the movement of loads in violation of chapter 39-12.

39-04-23. Registered motor vehicle transporting property may change registration to higher or lower registered gross weight.

Any owner of a motor vehicle transporting property who has licensed the vehicle for any gross weight limitations may change the registration to a higher registered gross weight limitation by the payment of the difference between the fee required for the new registration and the fee paid for the registration under which the vehicle is being operated. The fee must equal one-twelfth of the annual higher registration fee less one-twelfth of the registration fee already paid, the difference multiplied by the number of whole and partial calendar months remaining in the registration period. In no event may the fee be less than five dollars.

39-04-24. Director to determine weight of motor vehicle when manufacturer's weight unknown.

Any motor vehicle not having an advertised manufacturer's weight shall pay a license fee based upon the actual weight as determined by the director from satisfactory proofs submitted to the director. Any truck not having a manufacturer's advertised load capacity shall pay a license fee in accordance with the schedules provided in this chapter and applicable thereto upon its load capacity as determined by the director upon satisfactory proofs submitted to the director.

39-04-25. When seasonal registration of passenger buses permitted.

Repealed by S.L. 1983, ch. 423, § 2.

39-04-26. Registration of vehicles transporting property - Based on registered gross weight - Minimum gross weight - Exemption.

The registration and license fee for a motor vehicle or for any lawful combination of motor vehicles used for the transportation of property must be based upon the registered gross weight of the motor vehicle or combination of vehicles. The minimum gross weight for which the motor vehicle or combination of motor vehicles can be licensed is double the unloaded weight of the motor vehicle or combination of vehicles and, subject to the minimum, the owner of any motor vehicle or combination of vehicles in the application for license shall set out the gross weight for which the owner desires a license. The gross weight of any trailer, semitrailer, or farm trailer may not be included in the minimum gross weight for which a vehicle must be licensed when the vehicle or combination of vehicles is not for hire and when the gross weight of the trailer, semitrailer, or farm trailer being towed does not exceed twenty-four thousand pounds [10886.22 kilograms].

39-04-27. Manufacturer or dealer to give notice of sale or transfer.

Repealed by S.L. 1975, ch. 328, § 1.

39-04-28. Motor vehicle and motorcycle dealers licenses - Fees - Additional number plates.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-29. Certificate of title to be delivered.

Repealed by S.L. 1981, ch. 378, § 38.

39-04-30. Cancellation of licenses.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-31. Bond required.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-31.1. Imposing fees in lieu of truck-mile tax.

Repealed by omission from S.L. 1959, ch. 289, § 15.

39-04-32. Used car lots - Location.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-33. Dealer permitting license to be used by another dealer - License revoked - Penalty.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-34. Dealers to furnish information to registrar.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-34.1. Transfer of certain powers to public service commission.

Repealed by S.L. 1953, ch. 237, § 7.

39-04-35. Dealer to file list of used cars with registrar - Fees paid on used cars by dealer.

Repealed by S.L. 1963, ch. 285, § 14.

39-04-36. Transfer of registered vehicle - Removal of number plates - Transfer of number plates.

1. Whenever the ownership of a vehicle registered under the provisions of this chapter, chapter 39-18, or chapter 39-29.2 is transferred or assigned, the registration of the vehicle expires and the transferor shall remove the number plates.
2. Upon applying for the transfer of the registration and paying a five dollar fee, a person who transfers or assigns to another person the ownership of a registered vehicle may receive credit for the unused portion of the fees paid for the transferred vehicle. The transferor must use a number plate previously removed pursuant to subsection 1, regardless of whether there is any license fee credit remaining. If the number plate has become lost, stolen, or mutilated, the transferor may apply for duplicate plates. The department may establish procedures that permit the transferor to assign the credit to the transferee if the transferor is the spouse, a sibling, or a lineal ancestor or descendant of the transferee. Any remaining credit on a vehicle owned by a leasing company must be credited to the lessee. One-twelfth of the annual fee must be credited for each month of the registration period remaining after the month in which the transfer is made. The credit may not extend beyond the original expiration of the registration. Except as provided in section 39-04-44, the credit must be applied to the registration fees for a replacement vehicle. The transferor shall apply for the transfer of registration within thirty days of the purchase of the replacement vehicle.
3. Except as otherwise permitted in this chapter, before the transferee of a registered vehicle may operate the vehicle on a highway, the transferee must apply for and obtain a new registration of the vehicle, as on an original registration. To provide the transferee adequate time to obtain a new registration, the director may provide for the issuance of a temporary registration certificate to permit the transferee to operate the vehicle for seventy-five days after the date of acquisition. The vehicle may be operated for five days from date of purchase without a plate or certificate of ownership if dated evidence of ownership is carried in the vehicle. The evidence of ownership must be in a form as prescribed by the department.

39-04-37. Violations of registration provisions.

It is unlawful for any person to commit any of the following acts:

1. To operate, or for the owner thereof knowingly to permit anyone to operate, upon a highway any vehicle the registration of which has been canceled or revoked, or for which the registration fees required in this title have not been paid, or which does not have attached thereto and displayed thereon a number plate, plates, temporary registration permit, or validation tabs assigned thereto by the director for the current registration period, subject to the exemptions allowed in this title.
2. To display or cause or permit to be displayed, or to have in possession, any registration card, registration number plate, temporary registration permit, or validation tabs knowing the same to be fictitious or to have been canceled, revoked, suspended, or altered.
3. To lend any registration number plate, registration card, temporary registration permit, or validation tabs to any person not entitled thereto, or knowingly permit the use of any registration number plate or registration card by any person not entitled thereto.
4. To fail or refuse to surrender to the department, upon demand, any registration card, registration number plate, temporary registration permit, or validation tab which has been suspended, canceled, or revoked as is provided in this chapter.
5. To use a false or fictitious name or address in any application for the registration of any vehicle, or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise to commit a fraud in any application.
6. To operate, or for the owner thereof knowingly to permit anyone to operate a motor vehicle on a highway if the owner is employed in this state on a temporary or full-time basis, is a resident of the state, and does not have a temporary registration permit when required under subsection 1 of section 39-04-18.2. As used in this subsection,

the term "resident" means a resident as defined under subdivision e of subsection 2 of section 39-04-18.

39-04-38. Taxes or fees provided for to be in lieu of other state or local personal property taxes.

The taxes or fees provided for in this chapter are in lieu of all other personal property taxes, either state or local, upon such motor vehicles and upon any trailer or semitrailer for which a certificate of title is required to be issued and has been issued pursuant to the provisions of chapter 39-05.

39-04-39. Distribution of registration fees collected.

1. Any moneys in the registration fund accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, must be promptly deposited in the highway tax distribution fund which must be distributed in the manner as prescribed by law.
2. The state treasurer shall transfer annually from the highway tax distribution fund to the low-carbon fuels fund under section 4.1-01-21.2 an amount equal to forty percent of all sums collected for the registration of farm vehicles under subsection 5 of section 39-04-19 until the cumulative total transfers under this subsection equals thirty million dollars.

39-04-39.1. Distribution to local highway funds.

Repealed by S.L. 1967, ch. 304, § 8.

39-04-39.2. Refunds of registration fees.

No refunds of registration fees may be made, except when the vehicle has been improperly registered or when the vehicle has been destroyed.

39-04-39.3. 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 under which the department may collect any motor vehicle registration fees assessed by the city. Agreements entered into under this section must provide for an agreed-upon amount to be allowed the department for services rendered in connection with the collections. Any agreed-upon amount collected must be deposited in the motor vehicle registration fund. 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.

39-04-39.4. Refund of registration fees.

Any owner of a motor vehicle, if such motor vehicle is returned to the manufacturer under the provisions of chapter 51-07, may claim a refund in the amount equal to the unused portion of the fee upon the vehicle, computed pro rata by the month, one-twelfth of the annual fee paid for each month of the registration period remaining after the month in which the vehicle was returned, provided the number plates and validation tabs issued for the vehicle are returned to the department.

39-04-39.5. Allocation of portion of registration fee.

Repealed by S.L. 2005, ch. 40, § 15.

39-04-40. Officers to enforce the provisions of chapter.

The highway patrol and all other road or police officers shall enforce the provisions of this chapter.

39-04-41. Penalty for violation of provisions of chapter.

Any person violating any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

39-04-42. Construction contract truck registration - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

39-04-43. Antique automobile - License and fee.

Repealed by S.L. 1981, ch. 378, § 38.

39-04-44. Credits on destroyed vehicle.

1. Any owner of a motor vehicle licensed in this state, if such vehicle is permanently and involuntarily destroyed, may during the same year or following year claim a refund in an amount equal to the unused portion of the fee paid, less five dollars, upon the vehicle so destroyed, computed pro rata by the month, one-twelfth of the annual fee paid for each month of the year remaining after the month in which such vehicle was so destroyed, provided the number plates, registration card, and certificate of title are returned to the department. If the number plates or registration card assigned to the vehicle are destroyed, a refund may be obtained upon furnishing information of such fact satisfactory to the department. Upon receiving the certificate of title, the department shall issue a salvage certificate of title.
2. If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the registrant of the fleet shall notify the department. The department may require surrender of cab cards and other identification devices with respect to the vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet operator, the unused portion of the fees paid with respect to the vehicle must be applied against liability of the fleet operator for subsequent additions to the fleet during the registration year or for additional fees upon audit. If at the end of the registration year there remains an unused portion of fees paid with respect to the permanently withdrawn vehicles, the unused fees must be applied against registration fees for the registration year immediately following the year during which the vehicles were permanently withdrawn. The used portion of fees of a vehicle permanently withdrawn from a fleet is a sum equal to the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by one-twelfth of the total annual proportional registration fee applicable to the vehicle for each calendar month of the registration year including the month the notice of withdrawal is received by the department, except that no unused portion of fees of less than five dollars may be considered or applied. If an unused portion of fees cannot be applied against registration fees for the registration year immediately following, an application for refund of the unused portion may be made to the department, which shall adopt rules as may be required for payment of the refund.

39-04-44.1. Transporter's license and registration card.

A vehicle otherwise properly registered may be used for transporting other vehicles not registered provided that the transported vehicle has displayed a transporter's license plate and the transporting vehicle carries a transporter's registration card. The fee for the transporter's license plate and registration card is sixty-five dollars per year.

39-04-45. Driveaway transporter registration.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-46. Driveaway transporter registration - Expiration.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-47. Driveaway transporter registration - Display.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-48. Driveaway transporter registration - Application.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-49. Driveaway transporter registration - Fee.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-50. Motor vehicle department powers.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-51. Penalties.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-52. Driveaway transport license fees - Effect.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-53. Noncompliance - Effect.

Repealed by S.L. 1963, ch. 265, § 7.

39-04-54. Registration card - Issuance - Contents - Signing.

Upon registering a vehicle, the department shall issue to the owner a registration card which must set forth all of the following:

1. The date issued.
2. The registration number assigned to the vehicle.
3. A description of the registered vehicle, including either serial or identification number.
4. A space for the signature of the owner.
5. The name of the owner.
6. Other statements of fact as may be determined necessary by the department.

39-04-55. Registration to be carried in or on vehicle - Inspection - Penalty.

The registration issued for a vehicle must be in the driver's vehicle or on an electronic device in the possession of the driver or, in the case of a house trailer or mobile home or a trailer or semitrailer, regardless of when such vehicle was acquired, inside or on the vehicle, at all times while the vehicle is being operated upon a highway in this state. The registration is subject to inspection by any peace officer or highway patrol officer. Upon request of an inspection by any peace officer or highway patrol officer, a driver may produce either a registration card or electronic registration as provided by the department. An electronic registration must be designed so that there is no need for the registration holder to relinquish possession of the device, in which the electronic registration is installed, to present the registration, or for the individual to whom the registration is presented to access the verification system to confirm the validity of the registration. Any person violating this section must be assessed a fee of twenty dollars. However, a person cited for violation of this section may not be found to have committed the violation if the person, within fourteen days after being cited produces and displays to the office of the prosecutor where the matter is pending, a registration valid at the time the person was cited. A peace officer or highway patrol officer, upon citing a person for violating this section, shall inform the person that a violation will be considered as not having occurred if the person produces and displays a valid registration in the manner provided in this section.

39-04-56. Altering or forging registration card or temporary registration permit - Penalty.

It is a class A misdemeanor for any person to:

1. Alter with fraudulent intent any registration card or temporary registration permit issued by the department;

2. Forge or counterfeit any registration card or temporary registration permit purporting to have been issued by the department under the provisions of this chapter;
3. Alter or falsify with fraudulent intent or forge any assignment of a registration card or temporary registration permit; or
4. Use any registration card, temporary registration permit, or assignment, knowing the same to have been altered, forged, or falsified.

CHAPTER 39-04.2 PUBLIC TRANSPORTATION

39-04.2-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Public transportation" means the vehicular transportation of persons from place to place within this state, but does not include the provision of transportation facilities otherwise provided by public funds, such as roads, streets, highways, bridges, lighting equipment, or signs.
2. "Ridership" means a one-way trip provided to any one person in a motorized vehicle designed to carry eight or more persons in an enclosed area with separate seating for each person.
3. "Transportation provider" means a political subdivision, tribal agency, or any nonprofit corporation that provides transportation to the public, especially to elderly and handicapped citizens.

39-04.2-02. Public transportation fund - Administration of the fund.

The director shall administer the public transportation fund. Payments disbursed under this chapter must be paid from moneys deposited in the fund. The expenses arising from administration of the fund must be paid from the fund within the limits of legislative appropriations.

39-04.2-03. Additional registration fee - Deposit in fund.

Repealed by S.L. 2009, ch. 40, § 26.

39-04.2-04. Distribution of funds - Continuing appropriation.

1. Moneys in the public transportation fund must be disbursed under guidelines issued by the director. The funds must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped, and may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the director. Moneys in the public transportation fund are appropriated to the department of transportation on a continuing basis for distributions authorized under this section.
2. Each county shall receive a base amount of four-tenths of one percent of the appropriation for the program plus one dollar and fifty cents per capita of population in the county, based upon the latest regular or special official federal census. Each year the director shall increase or decrease the one dollar and fifty cents per capita amount in order to distribute all funds appropriated for the biennium. If there are multiple transportation providers in one county, then the base amount must be divided equally among the providers and the additional per capita amount must be based upon the percentage of elderly and handicapped ridership provided by each transportation provider within the county. Funds not expended by a county during a contract period, or previous contract periods, may be redistributed under guidelines established by the director. In addition, unexpended funds may also be used by the director for transit coordination purposes.

CHAPTER 39-05 TITLE REGISTRATION

39-05-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires, "motor vehicle" includes a house trailer or mobile home and a semitrailer designed to be towed by a truck tractor and "manufactured home" means a manufactured home as defined in section 41-09-02.

39-05-02. Vehicles exempt from provisions of chapter.

Repealed by S.L. 1975, ch. 328, § 1.

39-05-02.1. Certificate of title required.

Except as otherwise provided in this chapter, every owner of a vehicle which is in this state and for which no certificate of title has been issued shall make application to the department for a certificate of title to the vehicle.

39-05-02.2. Exclusions from the certificate of title requirement.

A certificate of title need not be obtained for:

1. A vehicle owned by the United States unless it is registered in this state.
2. A vehicle owned by a manufacturer or dealer and held for sale, even if incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing.
3. A vehicle owned by a nonresident of this state and not required by law to be registered in this state.
4. A vehicle regularly engaged in interstate transportation of persons or property which is registered in accordance with the international registration plan and for which a currently effective certificate of title has been issued in another state that has a reciprocal excise tax agreement with this state.
5. A vehicle moved solely by human or animal power.
6. Implements of husbandry.
7. Special mobile equipment.
8. A self-propelled wheelchair or tricycle for a mobility-impaired individual.
9. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The vehicle shall cross the highway at an angle of approximately ninety degrees to the direction of the highway.
10. Other vehicles not required to be registered in this state or not required to display distinctive plates.
11. A manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.
12. An electric bicycle.

39-05-03. Department not to license vehicle until application is made for a certificate of title.

The department may not register or renew the registration for license of any vehicle unless an application is made for an official certificate of title for the vehicle, satisfactory evidence is presented that a certificate of title for the vehicle has been issued previously to the lienholder or owner by the department, or the vehicle is regularly engaged in interstate commerce of persons or property, is registered in accordance with the international registration plan, and has a currently effective certificate of title that has been issued in another state that has a reciprocal excise tax agreement with this state.

39-05-04. Certificate of title required before vehicle can be operated on highway - Penalty.

Repealed by S.L. 1959, ch. 289, § 16.

39-05-05. Application for certificate of title - Contents - Fee.

1. An application for a certificate of title must be made upon a form provided by the department and must contain all of the following:
 - a. A full description of the vehicle, including the name of the manufacturer, model year if the model year is known, either the engine, serial, or identification number, and any other distinguishing marks. The department shall assign a vehicle identification number for a vehicle not otherwise assigned a number or for a vehicle in which the identification number can not be located. The assigned number must be permanently affixed to the vehicle and the department may require the applicant to provide a photo of the vehicle identification number before issuing a certificate of title for the vehicle.
 - b. A statement as to whether the vehicle is new or used.
 - c. A statement of the applicant's title and the name and address of each lienholder in the order of priority.
 - d. The name and address of the person to whom the certificate of title must be delivered.
 - e. If applicable, a statement as to whether the vehicle is a specially constructed, reconstructed, or foreign vehicle.
 - f. The owner's legal name, as evidenced by a valid state-issued driver's license, identity card, or any other documentary evidence that confirms to the satisfaction of the director the true identity of the owner, street address, city, and county, or township and county, of residence. When two or more owners are designated, at least one of the owners must comply with the identification requirement of this subdivision and all names used must be legal names. A dealer shall make specific inquiry as to this information before filling in the information on the application.
 - g. The department may require odometer disclosure information as required under the Truth in Mileage Act of 1986 [Pub. L. 99-579].
 - h. Any other information required by the department.
2. The owner of every vehicle that has been registered outside this state shall surrender to the department the certificate of title and registration card or other evidence that may satisfy the department the applicant is the lawful owner or possessor of the vehicle.
3. If the vehicle for which certificate of title is sought is a new vehicle, a certificate of title may not be issued unless a certificate of origin executed by the manufacturer of the vehicle is attached to the application for registration or is attached to the application for the certificate of title for the vehicle. If the new vehicle for which certificate of title is sought is of foreign manufacture, the certificate of origin must be furnished by the importer of the vehicle. The manufacturer or importer of all new vehicles shall designate the total shipping weight of the vehicle on the certificate of origin.
4. When a new vehicle is purchased from a dealer, the application for the certificate of title must include a statement of the transfer by the dealer.
5. Each application must be accompanied by a fee of five dollars, which is in addition to any fee charged for the registration of the vehicle.

39-05-06. Application to be verified - When officers and employees of department may verify.

Repealed by S.L. 1977, ch. 340, § 1.

39-05-07. False statement in application or other document - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

39-05-08. Application to be checked against certain indexes.

The department shall maintain a vehicle identification number index of registered motor vehicles and upon receiving an application for a certificate of title it shall check first the vehicle identification number shown in the application against such index.

39-05-09. Issuance, contents, delivery, and term of certificate.

1. After checking the application for a certificate as provided in section 39-05-08 and except as provided in subsection 4, the department, if it is satisfied that the applicant is the person entitled to the possession of the vehicle, shall issue a certificate of title in paper or electronic form, which must contain:
 - a. The name of the owner.
 - b. The vehicle identification number.
 - c. The signature of the director.
 - d. The date issued.
 - e. A description of the vehicle as determined by the department.
 - f. A statement of the owner's title and of all liens or encumbrances upon the vehicle therein described and whether possession is held by the owner or lienholder.
2. Forms must be made available on the reverse side of the paper version or electronically for the assignment of title or interest and warranty thereof by the owner with a space for the notation of liens and encumbrances upon such vehicle at the time of a transfer.
3. The amount of any lien or encumbrance upon the vehicle need not be shown anywhere on the certificate of title, only the fact of such lien or encumbrance, and the identity of the lienholder or encumbrancer. The department shall deliver the certificate of title to the owner or first lienholder. The certificate is good for the life of the vehicle as long as the vehicle is owned or held by the original holder of the certificate.
4. The department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-27.
5. The holder of a manufacturer's certificate of origin to a manufactured home may deliver it to a person to facilitate conveying or encumbering the manufactured home. A person receiving a manufacturer's certificate of origin so delivered holds the certificate in trust for the person delivering the certificate.
6. Notwithstanding any other provision of law, a certificate of title issued by the department for a manufactured home is prima facie evidence of the facts appearing on the certificate, notwithstanding that the manufactured home, at any time, becomes affixed in any manner to real property.

39-05-09.1. Lost, stolen, or mutilated certificate of title.

If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the department, and upon the payment of five dollars. The department may issue a duplicate title at no cost to the first lienholder or, if none, the owner named in the certificate, when satisfied the first lienholder or owner did not receive the original title which was issued. The duplicate certificate of title must contain the legend "This is a duplicate certificate and may be subject to the rights of a person under the original certificate". It must be mailed to the first lienholder named in it or, if none, to the owner.

A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the department.

39-05-09.2. Suspension or revocation of certificates of title.

1. The department shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with chapter 28-32, when authorized by any other provision of law or if it finds:

- a. The certificate of title was fraudulently procured or erroneously issued;
 - b. The vehicle has been scrapped, dismantled, or destroyed; or
 - c. A person has acquired a vehicle but has failed to transfer the ownership as required by this chapter.
2. For purposes of this section, the following apply:
 - a. Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.
 - b. When the department suspends or revokes a certificate of title, the owner or person in possession of it shall immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department.
 - c. The department may seize and impound any certificate of title which has been suspended or revoked.
3. Except as provided in subsection 2 of section 39-05-35, the department may not suspend or revoke a certificate of title to a manufactured home by reason of the fact that at any time the manufactured home becomes affixed in any manner to real property.

39-05-10. Registration card - Issuance - Contents - Signing.

Repealed by S.L. 1973, ch. 295, § 2.

39-05-11. Altering or forging certificate of title - Penalty.

Any person who shall:

1. Alter with fraudulent intent any certificate of title issued by the department;
2. Forge or counterfeit any certificate of title purporting to have been issued by the department under the provisions of this chapter;
3. Alter or falsify with fraudulent intent or forge any assignment of a certificate of title; or
4. Use any certificate or assignment, knowing the same to have been altered, forged, or falsified;

is guilty of a class C felony.

39-05-12. Registration card to be carried in or on vehicle - Inspection of card - Penalty.

Repealed by S.L. 1973, ch. 295, § 2.

39-05-13. Duplicate number plate, trailer plate, certificate of registration card issued when, fee.

Repealed by S.L. 1959, ch. 289, § 16.

39-05-14. Special number when engine or serial number is altered, removed, or defaced - Application - Stamping - Record.

Repealed by S.L. 1959, ch. 289, § 16.

39-05-15. Registration card to be endorsed and sent to department upon transfer of vehicle - Penalty.

Repealed by S.L. 1949, ch. 246, § 1.

39-05-16. Legal owner of a motor vehicle not to transfer title without certificate - Penalty.

Repealed by S.L. 1975, ch. 106, § 673.

39-05-16.1. Release of a security interest.

1. Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lienholder, the lienholder, within ten days after demand and in any event within thirty days of the satisfaction, shall execute a release of the

lienholder's security interest in a manner prescribed by the department. The lienholder shall:

- a. Mail or deliver the certificate of title and release to the next lienholder named on the certificate of title, who, within thirty days of receipt, shall mail or deliver the certificate of title, release, and a fee of five dollars to the department. The department shall issue and mail or deliver a new certificate of title to the first lienholder named on the new certificate of title.
 - b. If there are no other lienholders named on the certificate of title, mail or deliver the certificate of title and release to the owner or the owner's designee. Within thirty days of receipt, the person receiving the certificate of title and release shall mail or deliver the certificate of title, release, and a fee of five dollars to the department. The department may prescribe further application procedures and, upon determining that there has been a proper compliance with these procedures, shall issue a new certificate of title and mail or deliver it to the owner or the owner's designee.
2. Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of a prior lienholder, the lienholder whose security interest is satisfied shall execute, within ten days after demand and in any event within thirty days of the satisfaction, a release in the form the department prescribes and deliver the release to the owner or the owner's designee. Upon receipt of a release delivered by the owner to the lienholder in possession of the certificate of title, that lienholder shall mail or deliver the release and the certificate of title to the department. Upon the payment of a five dollar fee, the department shall issue a new certificate.
 3. Notwithstanding this section, a lienholder who uses an electronic lien notification system shall follow the procedure adopted for that system by the department.

39-05-17. Transfer of title of vehicle - Endorsement required - Certificate of title delivered - New certificate obtained - Penalty.

1. The owner or transferor of a motor vehicle who transfers title to a vehicle shall endorse an assignment and warranty of title upon the certificate of title for the vehicle. The owner or transferor shall include on the assignment and warranty of title the name of the transferee and the selling price of the vehicle if applicable.
2. If legal title passes to the transferee, the owner shall deliver the endorsed certificate of title to the transferee within thirty days of the date the vehicle was purchased.
3. If legal title passes to a lienholder rather than the transferee, the transferee shall endorse a statement that the lienholder holds the lien and shall send the certificate of title to the department with an application for a new certificate of title showing the names of the new owner and lienholder. The certificate of title when issued must be sent by the department to the lienholder or the department may use an electronic lien notification procedure in lieu of sending a certificate of title to a lienholder.
4. Within thirty days of receiving the title, the transferee shall deliver the endorsed certificate of title to the department with a transfer fee of five dollars, and shall make an application for a new certificate of title. In addition to any other penalty, the registration to a motor vehicle may be suspended or revoked if the transferee fails to present the endorsed certificate of title to the department for transfer and make application for a new certificate of title within thirty days. The department shall deliver the new certificate of title to the lienholder with priority. If there is no lienholder, delivery must be made to the owner.
5. A violation of this section by an owner, lienholder, or transferee is a class B misdemeanor.

39-05-17.1. Certificate of title to be delivered.

Repealed by S.L. 2005, ch. 327, § 5.

39-05-17.2. Body damage disclosure - Rules - When required - Penalty.

1. The department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department may not transfer the title without the required damage disclosure statement.
2. Motor vehicle body damage disclosure requirements apply only to the transfer of title on motor vehicles of a model year which have been released in the current calendar year and those motor vehicles of a model year which were released in the seven calendar years before the current calendar year. When a motor vehicle has been subject to this disclosure requirement and a motor vehicle of a model year has not been released in the current calendar year or the seven calendar years before the current calendar year, the holder of the certificate of title with the damage disclosure may have the disclosure removed and a new certificate of title issued for a fee of five dollars.
3. As used in this section, "motor vehicle body damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of ten thousand dollars or twenty-five percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.
4. A person repairing, replacing parts, or performing body work on a motor vehicle of a model year which was released in the current calendar year or the seven calendar years before the current calendar year shall provide a statement to the owner of the motor vehicle when the motor vehicle has sustained motor vehicle body damage requiring disclosure under this section. The owner shall disclose this damage when ownership of the motor vehicle is transferred. When a vehicle is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, the person repairing, replacing parts, or performing body work on the motor vehicle of a model year which has been released in the current calendar year or the seven calendar years before the current calendar year shall also advise the owner of the motor vehicle that the owner of the vehicle must comply with section 39-05-20.2.
5. The amount of damage to a motor vehicle is determined by adding the retail value of all labor, parts, and material used in repairing the damage. When the retail value of labor has not been determined by a purchase in the ordinary course of business, for example when the labor is performed by the owner of the vehicle, the retail value of the labor is presumed to be the product of the repair time, as provided in a generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.
6. A person who violates this section or rules adopted pursuant to this section is guilty of a class A misdemeanor.

39-05-17.3. Vehicle leases that are not sales or security interests.

Notwithstanding any other provision of law, a transaction regarding motor vehicles or trailers does not create a sale or security interest merely because an agreement provides that the rental price may be adjusted by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

39-05-18. Forwarding certificate of title to department not required when transferee is dealer - Exception.

Repealed by S.L. 1951, ch. 250, § 2.

39-05-19. Obtaining certificate of title for vehicle when ownership obtained by other than voluntary means.

Whenever the ownership of any vehicle passes otherwise than by voluntary transfer, the transferee may obtain a certificate of title for the vehicle from the department upon application for the certificate and payment of a fee of five dollars. The application for the certificate must be accompanied by instruments or documents of authority, or copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto, provided that the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-27.

39-05-20. Transferee may obtain new certificate of title upon inability to obtain old certificate - Proof of ownership - Valuation on transfer - Appeal.

1. When the transferee of a vehicle is unable to obtain a properly assigned certificate of title for a vehicle, and makes application for a new certificate and presents satisfactory proof of ownership, the department may cancel the old certificate and issue a new certificate to the transferee, provided the department may not issue a certificate of title for a manufactured home with respect to which there has been recorded an affidavit of affixation under section 47-10-27. Except as otherwise provided by this subsection, satisfactory proof of ownership must include compliance by the transferee with the procedures outlined in title 35.
 - a. If the transferee is an insurer that has paid a total loss claim on a vehicle but the payment has not satisfied all liens of record on the vehicle, the transferee is not required to comply with the procedures outlined in title 35 to establish satisfactory proof of ownership and the department may cancel the old certificate of title and issue a new certificate to the insurer free and clear of all liens and claims of ownership.
 - b. If the transferee is a tax exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] to which a vehicle has been donated, the transferee shall provide an affidavit providing proof the vehicle was donated.
 - c. If the transferee is a licensed motor vehicle dealer that, at the request of an insurer, took possession of a vehicle that is the subject of an insurance claim but for which a total loss claim is not paid by the insurer and the vehicle has been in the possession of the dealer for more than thirty days, the necessary satisfactory proof of ownership includes only proof the dealer made at least two written attempts by certified mail with return receipt addressed to the owner of record and any known lienholder to have the vehicle removed from the dealer's facility, upon payment of applicable charges. If satisfactory proof of ownership is established, the department may cancel the old certificate of title and issue a new certificate to the licensed motor vehicle dealer free and clear of all liens and claims of ownership.
 - d. If the transferee is a person and the vehicle is less than forty years old at the time of the application, satisfactory proof of ownership must include that the transferee has paid for the vehicle, and that the transferee made at least two written attempts by certified mail with return receipt addressed to the owner of record and any known lienholder to obtain the certificate of title. If satisfactory proof of ownership is established, the department shall cancel the old certificate of title and issue a new certificate to the person, subject to any existing lien.
 - e. If the transferee is a person and the vehicle is more than forty years old at the time of the application, satisfactory proof of ownership is established by a bill of sale or affidavit of ownership. An affidavit of ownership created by the department under this section must have the option for an applicant to provide a vehicle purchase price. If satisfactory proof of ownership is established, the department shall cancel the old certificate of title and issue a new certificate to the person,

subject to any existing lien. When valuing a vehicle transferred under this subdivision, the department shall use the sale price on the bill of sale if a bill of sale is presented. The department may only request an appraisal of the vehicle if a bill of sale is not presented to the department. A transfer under this subdivision is exempt from subsection 1 of section 39-04-36.

2. The department may establish procedures for determining satisfactory proof of ownership of a vehicle in those cases when the department is unable to determine the legal owner of record. The procedures may include determining the validity of any liens on a certificate of title. Any person aggrieved by a decision of the department as to ownership of a vehicle may appeal that decision to the district court under chapter 28-32.
3. A person holding a certificate of title whose interests in the vehicle have been extinguished or transferred other than by voluntary transfer shall mail or deliver the certificate to the department upon request of the department. The delivery of the certificate pursuant to the request of the department does not affect the rights of the person surrendering the certificate. The action of the department in issuing a new certificate of title as provided herein is not conclusive upon the rights of the owner or lienholder listed in the old certificate.
4. If the department can verify the ownership of a vehicle and the vehicle has a vehicle identification number, the vehicle may be transferred under this section regardless of the condition of the vehicle.

39-05-20.1. Salvage certificate of title.

The department shall issue a salvage certificate of title for a salvaged or destroyed vehicle when the owner of the vehicle has returned the certificate of title for the vehicle to the department. The department shall prescribe the form and content of the salvage certificate of title. The certificate must include a prominent notation that it has been issued for a salvaged motor vehicle.

39-05-20.2. Issuance of salvage certificate of title.

1. The owner of a vehicle that is damaged in excess of seventy-five percent of the vehicle's retail value as determined by the national automobile dealers association official used car guide shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title. Glass damage and hail damage must be excluded in the determination of whether a vehicle has been damaged in excess of seventy-five percent of the vehicle's retail value.
2. If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The applicant shall include with the application a certificate of inspection in the form required by the department, the salvage certificate of title, and a five dollar fee. The department shall place on the regular certificate of title and on all subsequent certificates of title issued for the vehicle the words "previously salvaged" and a notation that damage disclosure information is available from the department. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.
3. The certificate of inspection required under this section must be completed by a business that is registered with the secretary of state, is in good standing, and offers motor vehicle repair to the public. The business completing the certificate of inspection may not be the business that reconstructed the vehicle and must state the vehicle is in compliance with the requirements of chapter 39-21.

39-05-20.3. Grounds for refusing certificate of title.

The department may not issue a certificate of title or transfer a certificate of title if:

1. The application contains any false or fraudulent statements, the applicant has failed to furnish required information or reasonable additional information requested by the department, or the applicant is not entitled to the issuance of a certificate of title under this chapter.
2. The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways. A vehicle is unfit and unsafe if the vehicle has an out-of-state marked title that includes a certificate for destruction or a notation on the title that the vehicle is scrap, parts-only, junk, unrepairable, nonrebuildable, a dismantler, or any other similar notation.
3. The department has reason to believe the vehicle is a stolen or embezzled vehicle or the granting of title would constitute a fraud against the rightful owner or other person having valid lien upon the vehicle.
4. The certificate of title is suspended or revoked for any reason.
5. The required fee has not been paid.
6. Any sales tax or motor vehicle excise tax, properly due, has not been paid.
7. There is failure to provide security for payment of basic no-fault benefits and the liabilities covered under motor vehicle liability insurance on a motor vehicle as required by chapter 26.1-41.

39-05-20.4. Titles for salvage and junk motor vehicles - Rules - Penalty.

The department may adopt rules defining salvage and junk motor vehicles and governing the manner and circumstances under which certificates of title for such a motor vehicle may be required. The rules must describe the facts and circumstances under which a person must receive from the department a salvage certificate of title or a junk certificate of title for a motor vehicle. A person who violates a rule adopted pursuant to this section is guilty of a class A misdemeanor.

39-05-21. Refusal to issue certificate of title - Revoking certificate - Appeal.

If the department determines that an applicant for a certificate of title to a vehicle is not entitled thereto, it may refuse to issue the certificate, and in that event, unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant has no further right to apply for a certificate of title on the statements in the application. The department, for a like reason, after notice and hearing, may revoke the outstanding certificate of title. Said notice must be served in person or by registered or certified mail. An appeal must be taken in accordance with the provisions of chapter 28-32.

39-05-22. Department to maintain file of surrendered certificates of title - Purpose - Records.

The department shall retain and appropriately file every surrendered certificate of title, such file to be maintained to permit the tracing of title of vehicles designated therein.

1. The department shall file, upon receipt, each affidavit of affixation relating to a manufactured home that is delivered in accordance with section 47-10-27 when satisfied of the affidavit's genuineness and regularity.
2. The department shall maintain a record of each affidavit of affixation filed in accordance with subsection 1. The record must state the name of each owner of the related manufactured home, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-27, and any other information the department prescribes.
3. The department shall file, upon receipt, each application for surrender of the manufacturer's certificate of origin relating to a manufactured home that is delivered in accordance with subsection 1 of section 39-05-35, when satisfied of the application's genuineness and regularity.
4. The department shall file, upon receipt, each application for surrender of the certificate of title relating to a manufactured home that is delivered in accordance with

subsection 2 of section 39-05-35, when satisfied of the application's genuineness and regularity.

5. The department shall file, upon receipt, each application for confirmation of conversion relating to a manufactured home that is delivered in accordance with subsection 3 of section 39-05-35, when satisfied of the application's genuineness and regularity.
6. The department shall maintain a record of each manufacturer's certificate of origin accepted for surrender as provided in subsection 1 of section 39-05-35. The record must state the name of each owner of the manufactured home, the date the manufacturer's certificate of origin was accepted for surrender, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-27, and any other information the department prescribes.
7. The department shall maintain a record of each manufactured home certificate of title accepted for surrender as provided in subsection 2 of section 39-05-35. The record must state the name of each owner of the manufactured home, the date the certificate of title was accepted for surrender, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-27, and any other information the department prescribes.
8. The department shall maintain a record of each application for confirmation of conversion accepted as provided in subsection 3 of section 39-05-35. The record must state the name of each owner of the manufactured home, the county of recordation, the date of recordation, the book and page number of each book of records in which there has been recorded an affidavit of affixation under section 47-10-27, and any other information the department prescribes.
9. Records of surrendered certificates of title and the records referred to in subsections 6, 7, and 8 must be maintained permanently. The department shall maintain a website an interested person may use to supply a vehicle identification number in order to confirm the status of a manufactured home as real estate under subsection 6 of section 47-10-27 and to confirm the department retired the manufacturer's certificate of origin or certificate of title.

39-05-23. Peace officers to report stolen and recovered motor vehicles to department.
Repealed by S.L. 1963, ch. 265, § 7.

39-05-24. Index of stolen and recovered motor vehicles kept by department - Department to report to municipalities, counties, and other states.
Repealed by S.L. 1963, ch. 265, § 7.

39-05-25. Receiving, transferring, or having possession of stolen vehicles - Felony.
Repealed by S.L. 1975, ch. 106, § 673.

39-05-26. Used car dealers to maintain records - Contents.
Repealed by S.L. 1975, ch. 328, § 1.

39-05-27. Vehicle dealer to have certificate of title or other documentary evidence to prove possession.

Every vehicle dealer shall have in the dealer's possession a separate certificate of title assigned to such dealer or other documentary evidence of the dealer's right to the possession of every vehicle in the dealer's possession.

39-05-28. Penalty for defacing, destroying, removing, or altering engine, serial, or identification numbers.

Any person who with fraudulent intent shall:

1. Deface, destroy, remove, or alter the engine, serial, or identification number of a motor vehicle;
 2. Place or stamp other than the original engine, serial, or identification number, or a number assigned, upon a motor vehicle; or
 3. Sell or offer for sale any motor vehicle bearing an altered or defaced engine, serial, or identification number, other than the original or a number assigned,
- is guilty of a class C felony.

39-05-29. Registration of housetrailer - Provisions of chapter not applicable to trailers or semitrailers less than fifty dollars in value.

Repealed by S.L. 1961, ch. 253, § 6.

39-05-30. Fees and revenues collected placed in highway tax distribution fund - Payment of salaries and expenses.

All fees and revenues received by the director under the provisions of this chapter must be deposited by the director in the state treasury. Such moneys must be placed in the highway tax distribution fund. All salaries and other expenses incurred in connection with the provisions of this chapter must be paid out of the motor vehicle registration fund in the manner provided by law for the disbursement of said fund.

39-05-31. Director may employ office help and purchase supplies.

Within the legislative appropriation, the director may employ all office help and purchase all supplies necessary to carry out the provisions of this chapter.

39-05-31.1. Administration of oaths.

Officers and employees of the department designated by the director may administer oaths for the purposes of this chapter but may not charge any fee therefor.

39-05-32. Officers to enforce provisions of chapter.

The highway patrol and all other road or police officers shall enforce the provisions of this chapter.

39-05-33. General penalty.

Any person violating any provision of this chapter for which another penalty is not provided specifically is guilty of a class B misdemeanor. This section does not apply to the department.

39-05-34. Penalty for felony.

Repealed by S.L. 1975, ch. 106, § 673.

39-05-35. Manufactured homes - Conversion to real property - Procedure - Rules.

1. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is covered by a manufacturer's certificate of origin which the owner is able to produce and that is permanently affixed to real property as defined in subsection 1 of section 47-10-27, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-27, may surrender the manufacturer's certificate of origin to the manufactured home to the department by filing with the department an application for surrender of manufacturer's certificate of origin containing or accompanied by:
 - (1) The name, residence, and mailing address of the owner;
 - (2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;

- (3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;
 - (4) A statement, signed by the owner, stating either:
 - (a) Any facts or information known to the owner that may affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or
 - (b) That no such facts or information are known to the owner;
 - (5) A copy of the recorded affidavit of affixation as provided in accordance with subsection 5 of section 47-10-27;
 - (6) The original manufacturer's certificate of origin;
 - (7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;
 - (8) The applicable fee for filing the application for surrender; and
 - (9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-27 and is entitled to surrender the manufacturer's certificate of origin and the existence or nonexistence of security interests in or liens on the manufactured home.
 - b. When satisfied of the genuineness and regularity of the surrender of a manufacturer's certificate of origin to a manufactured home and upon satisfaction of the requirements of subdivision a, the department shall:
 - (1) Cancel the manufacturer's certificate of origin and update the department's records in accordance with the provisions of section 39-05-22; and
 - (2) Provide written acknowledgment of compliance with the provisions of this section to each person identified on the application for surrender of a manufacturer's certificate of origin under paragraph 7 of subdivision a.
 - c. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application to surrender a manufacturer's certificate of origin is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.
 - d. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.
2. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is covered by a certificate of title which the owner is able to produce and that is permanently affixed to real property as defined in subsection 1 of section 47-10-27, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-27, may surrender the certificate of title to the manufactured home to the department by filing with the department an application for surrender of title containing or accompanied by:
 - (1) The name, residence, and mailing address of the owner;
 - (2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;
 - (3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the

- names and addresses of any security interest holders and lienholders in the order of their apparent priority;
- (4) A statement, signed by the owner, stating either:
 - (a) Any facts or information known to the owner that may affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or
 - (b) That no such facts or information are known to the owner;
 - (5) A copy of the recorded affidavit of affixation provided in accordance with subsection 5 of section 47-10-27;
 - (6) The original certificate of title;
 - (7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;
 - (8) The applicable fee for filing the application for surrender; and
 - (9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-27 and is entitled to surrender the certificate of title and the existence or nonexistence of security interests in or liens on the manufactured home.
- b. The department may not accept for surrender a certificate of title to a manufactured home unless and until all security interests or liens perfected under section 35-01-05.1 have been released.
 - c. When satisfied of the genuineness and regularity of the surrender of a certificate of title to a manufactured home and upon satisfaction of the requirements of subdivisions a and b, the department shall:
 - (1) Cancel the certificate of title and update the department's records in accordance with the provisions of section 39-05-22; and
 - (2) Provide written acknowledgment of compliance with the provisions of this section to each person identified on the application for surrender of title under paragraph 7 of subdivision a.
 - d. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application to surrender a certificate of title is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed, and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.
 - e. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.
3. a. The owner or, if there is more than one owner, all owners, of a manufactured home that is not covered by a manufacturer's certificate of origin or a certificate of title, or of a manufactured home that is covered by a manufacturer's certificate of origin or certificate of title but which the owner of the manufactured home, after diligent search and inquiry, is unable to produce, and that is permanently affixed to real property as defined in subsection 1 of section 47-10-27, or which the owner intends to permanently affix to real property as defined in subsection 1 of section 47-10-27, may apply to the department by filing with the department an application for confirmation of conversion containing or accompanied by:
 - (1) The name, residence, and mailing address of the owner;
 - (2) A description of the manufactured home, including the name of the manufacturer, the make, the model name, the model year, the dimensions, the manufacturer's serial number of the manufactured home, whether the manufactured home is new or used, and any other information the department requires;

- (3) The date of purchase by the owner of the manufactured home, the name and address of the person from whom the home was acquired, and the names and addresses of any security interest holders and lienholders in the order of their apparent priority;
- (4) A statement, signed by the owner, stating either:
 - (a) Any facts or information known to the owner that could affect the validity of the title to the manufactured home or the existence or nonexistence of a security interest in or lien on the manufactured home; or
 - (b) That no such facts or information are known to the owner;
- (5) A recorded copy of the affidavit of affixation as provided in accordance with subsection 5 of section 47-10-27;
- (6) A sworn declaration by an attorney duly admitted to practice in this state or an agent of a title insurance company duly licensed to issue policies of title insurance in this state that the manufactured home is free and clear of, or has been released from, all recorded security interests, liens, and encumbrances; and
 - (a) Any facts or information known to that person that could affect the validity of the title of the manufactured home or the existence or nonexistence of any security interest in or lien on the manufactured home; or
 - (b) That no such facts or information are known to that person;
- (7) The name and mailing address of each person wishing written acknowledgment of surrender from the department;
- (8) The applicable fee for filing the application for surrender; and
- (9) Any other information and documents the department reasonably requires to identify the owner of the manufactured home and to enable the department to determine whether the owner satisfied the requirements of subdivisions a through c of subsection 6 of section 47-10-27 and the existence or nonexistence of security interests in or liens on the manufactured home.
- b. When satisfied of the genuineness and regularity of the application for confirmation of conversion of a manufactured home and upon satisfaction of the requirements of subdivision a, the department shall:
 - (1) Update its records in accordance with the provisions of section 39-05-22; and
 - (2) Provide written acknowledgment of compliance with the provisions of this subsection to each person identified on the application for confirmation of conversion under paragraph 7 of subdivision a.
- c. Upon satisfaction of the requirements of this subsection, a manufactured home must be conveyed or encumbered as provided in chapter 47-10. If the application for confirmation of conversion of a manufactured home is delivered to the department within sixty days of recording the related affidavit of affixation with the recorder in the county in which the real property to which the manufactured home is or will be affixed and the application is thereafter accepted by the department, the requirements of this subsection are deemed satisfied as of the date the affidavit of affixation was recorded.
- d. Upon written request, the department shall provide written acknowledgment of compliance with the provisions of this subsection.
4. The department may adopt rules to implement the provisions of this section.

CHAPTER 39-06 OPERATORS' LICENSES

39-06-01. Operators must be licensed - Additional licensing - Penalty.

1. An individual, unless 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 individual has a valid license as an operator under this chapter or a temporary operator's permit issued under chapter 39-20. An individual may not receive an operator's license or a nondriver identification card until that individual surrenders to the director all operator's licenses, permits, and nondriver photo identification cards issued to that individual by any state or country. If a license issued by another state is surrendered, the director shall notify the issuing state of the surrender. An individual may be issued either a valid operator's license or a nondriver identification card at any one time, but not both.
2. An individual licensed as an operator may exercise the privilege granted by the license on any highway in this state and may not be required to obtain any other license to exercise the privilege by any political subdivision having authority to adopt police regulations, except that municipalities may regulate occupations and may regulate the operation of taxicabs under subsection 27 of section 40-05-01.

39-06-01.1. Special provisions for minor operators.

1. The director shall cancel the operator's license 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 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.
2. The director shall cancel the operator's license of an individual who has committed an alcohol-related offense or a drug-related offense while operating a motor vehicle if:
 - a. The offense was committed while the individual was a minor;
 - b. The individual was found to have committed the offense by the official having jurisdiction, or pled guilty to, was found guilty of, or adjudicated to have committed the offense;
 - c. The offense created an imminent risk of injury to another individual;
 - d. A lesser penalty would be ineffective to prevent future risk to another individual; and
 - e. The official having jurisdiction orders the director to cancel the operator's license.
3. If an individual has had that individual's license to operate a motor vehicle canceled under subsection 1 or 2, the director shall deem that individual to have never have had any license to operate a motor vehicle and may not issue any license to operate a motor vehicle other than an instruction permit or a restricted instruction permit after the completion of any period of suspension or revocation. After the issuance of an instruction permit or restricted instruction permit, the director may not issue any other operator's license to that individual until that individual:
 - a. Meets the requirements of section 39-06-17. The driver education requirement may be met through either an internet course or successfully completing a course at an approved commercial driver training school meeting the requirements of chapter 39-25; and
 - b. Satisfies all other requirements that apply to that individual for that operator's license.

39-06-01.2. Anatomical gifting.

The application for nondriver photo identification cards and operator's licenses 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. In addition, identification of the applicant as a donor under chapter 23-06.6 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.

39-06-01.3. Compliance with federal selective service requirement.

1. Upon submission of an application for an initial, renewal, or duplicate instruction permit, operator's license, or a nondriver identification card by a man at least eighteen years of age and under the age of twenty-six, the department shall provide for the registration of the applicant with the selective service system.
2. The department shall provide language on the application informing the applicant his signature on the application serves as an acknowledgment the applicant already has registered with the selective service system or the applicant consents to registration.
3. An applicant who objects to registration for conscientious, religious, or other grounds may contact the selective service system for alternative options.
4. The department shall forward the applicant's necessary personal information to the selective service system for registration.

39-06-02. Individuals who are exempt from having an operator's license - Resident defined.

1. The following individuals are exempt from having an operator's license:
 - a. An employee of the United States government while operating a motor vehicle owned by or leased to that government and being operated on official business.
 - b. A nonresident who is at least sixteen years of age, who has in that individual's immediate possession a valid operator's license issued to that individual in that individual's home state or country.
 - c. A member of the armed forces of the United States while that individual is stationed in North Dakota, if that individual has a valid current operator's license from another state.
 - d. An individual over sixteen years of age who becomes a resident of this state and who has in possession a valid operator's license issued to that individual under the laws of some other state or country or by military authorities of the United States for a period of not more than sixty days after becoming a resident of this state.
 - e. A member of the North Dakota national guard operating any military vehicles as authorized by a national guard operator's license while on duty.
2. For purposes of this chapter, an individual is deemed a resident of this state when the individual has lived in the state for ninety consecutive days, unless the individual is a nonresident student, a tourist, or a member of the armed forces.

39-06-03. No operator's license to certain individuals.

The director may not issue an operator's license:

1. To an individual who is under the age of sixteen years, except that the director may issue an instructional permit under section 39-06-04, a restricted permit under section 39-06-05, or a license under section 39-06-17.
2. To an individual whose license has been suspended or revoked in this state or in any other state during the suspension, except under section 39-06.1-03 or 39-06.1-11, or to any person whose license has been revoked, except under sections 39-06-35, 39-06-36, and 39-06.1-11.
3. To an individual who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

4. To an individual who is required by this chapter to take an examination, unless the individual has successfully passed such examination.
5. To an individual who is required under the laws of this state to deposit security or file proof of financial responsibility and who has not deposited the security or filed the proof.
6. To an individual if the director has good cause to believe that the individual by reason of physical or mental disability would not be able to operate a motor vehicle with safety.
7. To an individual when the director has good cause to believe that the operation of a motor vehicle on the highways by that individual would be inimical to public safety or welfare.

39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.

1. The director shall issue a nondriver color photo identification card to any resident of this state 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 director may not withhold the issuance of a nondriver color photo identification card without reasonable cause. If the applicant 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 section 39-06-19, identification cards expire eight years from the date of issue and may be renewed. The application must contain other information as the director may require to improve identity security.
2. The director shall issue a nondriver color photo identification card to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The identification card must be designed in a manner to clearly make the card distinguishable from a similar card issued to a citizen of the United States and resident of this state. Upon the issuance of an identification card, the department of transportation shall provide a written notice that indicates the naturalized individual shall contact the department of transportation to update the individual's citizenship status. The individual shall update the citizenship status within forty-five days following naturalization. The director shall replace the card with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and any applicable replacement fee listed in section 39-06-49 is paid. For identification cards issued under this subsection before August 1, 2023, the department of transportation shall provide by mail to each cardholder a written notice that indicates within the forty-five days following naturalization, the naturalized individual shall contact the department of transportation to update the individual's citizenship status.
3. To confirm the identity, date of birth, and legal presence of the applicant, the director or examining officer shall require satisfactory evidence be provided by the applicant. Satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth, identification, and legal presence of the applicant by the director or examining officer. The director may require an applicant for an identification card to provide a social security card and proof of residence address.
4. The application fee is listed in section 39-06-49. Except for a duplicate or replacement card, the director may not charge a fee to provide a nondriver photo identification card to an eligible applicant.

5. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card may not be released unless allowed under section 39-16-03.
6. The director may advertise the availability and the use of the card.
7. Identification cards issued under this section are sufficient identification for all identification purposes.

39-06-04. Class D instruction permit.

1. Any resident of this state who is at least fourteen years of age may apply to the director for a class D instruction permit.
2. The director may issue a class D instruction permit that entitles the applicant while having the permit in the permittee's immediate possession to drive a motor vehicle upon the public highways, if the individual:
 - a. Has successfully passed a standard written rules of the road knowledge test prescribed by the director;
 - b. Has successfully passed a vision examination; and
 - c. Has the written approval of the individual's parent or legal guardian.
3. The permittee must be accompanied by an individual with a class A, B, C, or D license in a vehicle allowed to be operated with a class D license, who is at least eighteen years of age, who has had at least three years of driving experience, and who is occupying a seat beside the driver. An individual other than the supervising driver and the permitholder may not be in the front seat unless the vehicle has only a front seat, in which case, the supervising driver must be seated next to the permitholder.
4. An individual who is not yet eighteen years of age is not eligible for a class D license until that individual has had an instruction permit issued for at least six months or at least twelve months if under the age of sixteen. The director may recognize an instruction permit issued by another jurisdiction in computing the six-month or twelve-month instructional period.
5. The permittee may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

39-06-05. Restricted instruction permit - When instruction permit not required - Driver's training course.

1. The director upon receiving proper application may issue a restricted instruction permit effective for a school year or more restricted period to an applicant who is at least fourteen years of age and enrolled in a commercial driver training course that includes practice driving and which is approved by the director of the highway patrol under chapter 39-25. The restricted instruction permit entitles the permittee when the permittee has the permit in the permittee's immediate possession to operate a motor vehicle with an approved instructor occupying a seat beside the permittee and on a designated highway or within a designated area.
2.
 - a. Subject to subdivision b, any student enrolled in behind-the-wheel driver's training through a high school program approved by the superintendent of public instruction may operate a motor vehicle, under the supervision of a driver training instructor certified by the superintendent of public instruction, without a permit or license to operate a motor vehicle, if the school district sponsoring the driver's training program has an insurance policy covering any damage that may be done by a student while operating the vehicle and proof of coverage is filed with the superintendent of public instruction by the school district's insurance carrier. The insurance coverage must be in the amount required to establish proof of financial responsibility.
 - b. A student may not enroll in a driver's training course through a high school program approved by the superintendent of public instruction unless the student

will be at least fourteen years of age by the completion date of the classroom portion of the driver's training course. A student may not participate in the behind-the-wheel driver's training portion of the driver's training course until the student is at least fourteen years of age. A student must complete the driver's training course's required amount of behind-the-wheel driver's training before successfully completing the course.

39-06-06. Temporary operator's permit.

The director may issue a temporary operator's permit for the operation of a motor vehicle to an applicant for an operator's license pending an investigation and determination of facts relative to the applicant's right to receive an operator's license. The permit must be in the applicant's immediate possession while operating a motor vehicle and is invalid if the applicant's license has been issued or denied.

39-06-07. Application for operator's license.

1. An applicant for an operator's license must be made upon a form furnished by the director.
2. An applicant must state on the application 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 or the applicant provides an affidavit stating the applicant was not assigned a social security number, residence and mailing address, and provide a brief description of the applicant. By 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 fee listed in section 39-06-49. The application must contain any other information as the director may require to improve identity security. The director may require an applicant to provide a social security card and proof of residence address.
3. If an application is received from an individual previously licensed in another jurisdiction, the director may request a copy of the driver's record from the other jurisdiction. A copy of another jurisdiction's driving record becomes a part of the driving record in this state with the same force and effect as though entered on the driving record in this state in the original instance.

39-06-07.1. Proof of name, date of birth, legal presence, and citizenship for operator's license application - License difference for citizens and noncitizens - Primary source identity documents.

1. An applicant must verify the applicant's name, date of birth, and legal presence on any application by a certified birth certificate or any other documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, legal presence, and citizenship of the applicant. The license issued to a noncitizen of the United States must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States.
2. Primary source identity documents retained by the department are not public records.

39-06-07.2. Medical advice - Use by director - Driver's duty to report certain injuries.

1. The director is authorized to seek professional medical advice from a licensed medical care provider and to use that advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of an operator's license under this chapter. The director may receive advice in any manner.
2. In addition to advice sought and received under subsection 1, the director may consider information and advice received from an applicant's or motor vehicle operator's licensed health care provider. Any examination and report requested by the applicant, motor vehicle operator, or director under this chapter is at the expense of the applicant or motor vehicle operator.

3. Any licensed health care provider does not incur any liability for any opinion, recommendation, or advice provided to the director under subsection 1.
4. Advice and information received by the director under subsection 1 which relates to an individual applicant or motor vehicle operator is for the confidential use of the director 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 an operator's license.
5. In addition to other sources of information, general advice and information received by the director under this section may be used by the director in the adoption of administrative rules concerning medical criteria for driver licensing.
6. Before operating any motor vehicle the holder of an operator's license issued under this chapter who has suffered permanent loss of use of a hand, arm, foot, leg, or eye shall report the loss of use to the director who shall take reasonable action as may be proper under this chapter as to re-examination of the licensee to determine if the licensee is capable of operating vehicles for which the licensee is licensed.

39-06-08. Application of minors.

The application of any minor for an operator's license must be signed and verified before an individual authorized to administer oaths or the director, by the father, mother, or legal guardian, or if there is not a parent or legal guardian, then by another responsible adult who is willing to assume the obligation imposed under this chapter upon an individual signing the application of a minor. If the father, mother, or legal guardian is unable to appear, a father, mother, or legal guardian may designate, through a notarized document, an individual temporarily authorized to sign the application.

39-06-09. Liability for negligence of minor - General.

1. Subject to subsection 2, any negligence of a minor when driving a motor vehicle on a highway must be imputed to the individual who signed the application of the minor for an operator's license, or upon the father, mother, or legal guardian if signing authority has been temporarily transferred under section 39-06-08. This individual is jointly and severally liable with the minor for damages caused by the negligence, except as provided in section 39-06-10.
2. The negligence of a minor under subsection 1 may not be imputed to the individual who signed the application of the minor for an operator's license, or upon the father, mother, or legal guardian if signing authority temporarily has been transferred under section 39-06-08 for any injury or damage to that individual which was caused by the minor's negligence.

39-06-10. Liability for negligence of minor - Proof of financial responsibility.

If a minor provides proof of financial responsibility for the operation of a motor vehicle, then the director may accept the application of the minor.

39-06-11. Cancellation of minor's license or permit upon request.

An individual who has signed the application of a minor for a license may file with the director a verified written request to cancel the operator's license of the minor. Upon receipt of the request, the director shall cancel the operator's license of the minor and the individual who signed the application of the minor is relieved from the liability imposed under this chapter by reason of having signed the application on account of any subsequent negligence of the minor in operating a motor vehicle.

39-06-12. Cancellation of an operator's license of a minor upon death of applicant.

The director upon receipt of satisfactory evidence of the death of the individual who signed the application of a minor for an operator's license shall cancel the operator's license and may not issue a new license until a new application is made by the minor.

39-06-13. Examination of applicants.

1. Unless otherwise provided in this chapter, the director shall examine every applicant for an operator's license. The examination must include a test of the applicant's eyesight; ability to read and understand highway signs regulating, warning, and directing traffic; and knowledge of the traffic laws of this state. The director shall make any written portion of the examination, except writing on illustrations of signs, available to an applicant in any widely practiced language. The director may waive the written portion of the examination for an applicant who has successfully passed a written examination in another state and has an operator's license that is not or in the process of being revoked, suspended, or canceled.
2. The director shall establish a process to administer the written portion of an examination for an operator's license through an online electronic medium. The director shall charge an applicant a fee of ten dollars to access the online written examination. The online examination must:
 - a. Use personal questions about the applicant before the examination which the applicant is required to answer during the examination, to strengthen test security to deter fraud; and
 - b. Require the applicant's parent or legal guardian to certify to the department the parent or legal guardian monitored the applicant during the online written examination, before issuance by the department of a class D instruction permit to an applicant who has passed the online examination.
3. The examination must include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle unless waived for an applicant who has successfully passed an actual ability test in this or another state conducted by a state licensing authority or by a commercial driver training school meeting the driver education requirements prescribed by the director under chapter 39-25. A minor may operate a motor vehicle no matter how owned for the actual ability test.
4. In lieu of an eyesight test, the applicant may provide a statement of examination from a licensed physician or an optometrist stating the corrected and uncorrected vision of the applicant, if the examination was within six months of the application.
5. The director may require any other physical or mental examination.

39-06-13.1. Fee for examination of applicants.

1. An applicant for an operator's license who is required to be tested to determine the applicant's knowledge of highway signs, regulating, warning, and directing traffic and of the traffic laws of this state shall pay a fee listed in section 39-06-49.
2. An applicant for an operator's license who is required to be tested to demonstrate the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle shall pay a fee listed in section 39-06-49.

39-06-14. Licenses issued to operators - General - Classified operator's license.

1. Upon the payment of the application fee listed in section 39-06-49, the director shall issue to every qualified applicant an operator's license. An application for an operator's license must be made on a form furnished by the director. The operator's license must bear the full name, date of birth, residence address, and a brief description of the licensee.
2. The license must bear either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. An operator's license is not valid unless signed by the licensee with the licensee's usual signature. For purposes of verification, the director may require the licensee to write the licensee's signature in the presence of the director.
3. The operator's license must bear a distinguishing number assigned to the licensee. 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.

4. The operator's license must bear a color photograph of the licensee. The director may adopt rules relating to the manner in which photographs are to be obtained and placed on an operator's license. The photograph may be produced by digital imaging or other electronic means and is not a public record. 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.
5. The director shall issue an operator's license to any resident who at the time of application is not a citizen of the United States and who fulfills the requirements of this section. The license must be designed in a manner to distinguish the license clearly from a similar license issued to a citizen of the United States and resident of this state. Upon the issuance of a license, the department of transportation shall provide a written notice that indicates the naturalized individual shall contact the department of transportation to update the individual's citizenship status. The individual shall update the citizenship status within forty-five days following naturalization. The director shall replace the license with a card issued to a citizen of this country and resident of this state only when proof of United States citizenship is provided by the individual and the replacement fee listed in section 39-06-49 is paid. For licenses issued under this subsection before August 1, 2023, the department of transportation shall provide by mail to each licenseholder a written notice that indicates within the forty-five days following naturalization, the naturalized individual shall contact the department of transportation to update the individual's citizenship status.
6. Upon request and with adequate documentation, the director shall place an indicator on the face of an operator's license of a veteran. The veteran may make the request through the department of veterans' affairs.
7. An applicant holding a valid operator's license issued by this state and making application for renewal must be issued a class D license without being subjected to a written or actual ability examination. The director shall issue to any other applicant applying for issuance of an operator's license a classified license after a successful examination in the type of motor vehicle or combination of vehicles for the particular class of license and the particular license authorizes the holder to drive the particular class of vehicles as designated in section 39-06.2-09 or this chapter.
8. An individual with a class D license may operate:
 - a. A single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or this vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms] or a combination of vehicles with a gross combination weight or a gross combination weight rating in excess of twenty-six thousand pounds [11793.40 kilograms] if the individual is eighteen years of age or older, unless the individual is driving a farm vehicle and meets the requirements of subdivision e of subsection 7 of this section and subsection 3 of section 39-06.2-06.
 - b. A farm tractor towing another vehicle having a gross weight in excess of ten thousand pounds [4535.92 kilograms].
 - c. A truck towing a trailer in excess of ten thousand pounds [4535.92 kilograms] if the combined weight does not exceed twenty-six thousand pounds [11793.40 kilograms] gross combination weight rating.
 - d. A house car or a vehicle towing a travel trailer being used solely for personal purposes.
 - e. A two-axle or tandem-axle motor vehicle, a triple-axle motor vehicle, and a truck or truck tractor towing a trailer, semitrailer, or farm trailer if the individual is exempted from a commercial driver's license under subsection 3 of section 39-06.2-06, except the individual may not operate a double trailer or triple trailer and an individual under eighteen years of age may not operate a truck tractor or a bus designed to carry sixteen or more passengers, including the driver.

9. Any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to the holder is deemed to be driving a motor vehicle without being duly licensed. The holder of a classified license who desires to obtain a different class license must exchange or renew the license. The director may adopt rules on renewals or exchanges for the proper administration of this chapter.

39-06-14.1. Motorcycle operator's licenses and motorized bicycles.

1. A resident of this state who is at least fourteen years of age may apply to the director for a class M learner's permit. An individual holding a class M learner's permit for the operation of a motorcycle may not operate the motorcycle during the hours when the use of headlights are required under section 39-21-01 or carry or transport any passenger. Any learner's permit may be renewed or a new permit issued for an additional period.
2. An individual with a class M license may operate any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles and tractors.
 - a. The holder of a class A, B, C, or D license may receive a class M endorsement upon successful completion of an examination. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director.
 - b. An applicant sixteen years of age and older, who does not hold a current valid operator's license, may be issued a class M learner's permit after successful completion of a written examination. The class M license must be issued after the applicant has successfully completed a driver's examination. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director.
 - c. Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen years of age must hold an initial learner's permit for at least two months before applying for a class M operator's license, must have completed an approved motorcycle safety course, and must hold a valid motorcycle learner's permit at the time of application. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director. Any person under sixteen years of age who holds a permit or license may not operate a motorcycle powered with an engine in excess of five hundred ten cubic centimeters displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.
3. The director may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee as listed in section 39-06-49 and take a written examination of the applicant's knowledge of traffic laws and general rules of the road. If the applicant passes the written examination and the director is satisfied that the applicant has adequate eyesight, the director may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an instruction permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

39-06-14.2. Driver license central identity management.

1. The director shall provide central identity management for all state agencies for citizens who possess a nondriver photo identification card or driver's license using driver record data. Upon an individual's change in citizenship status under section

- 39-06-03.1 or 39-06-14, the director shall report to the secretary of state the individual's updated information as required under section 16.1-02-09.
2. The director will provide access for identity verification. The director may not allow entities to transfer or collect identification data from the driver's license database, but shall create processes and procedures that enable verification of data without direct release of the data, except as authorized in chapter 39-33.
 3. The director shall develop procedures to comply with this section.

39-06-14.3. Electronic operator's license.

1. The department shall implement a computerized licensing system that allows a licensed motor vehicle operator to provide electronic proof of valid licensing on an electronic communications device.
2. The electronic proof of valid licensing may be used:
 - a. When being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law; or
 - b. For identification purposes.
3. The electronic operator's license must be designed so that there is no need for the credential holder to relinquish possession of the device in which the electronic credential system is installed in order to present the credential, or for the individual to whom the credential is presented to access the verification system to confirm the validity of the credential.
4. The computerized licensing system may not transmit or transfer any information contained on an electronic operator's license without authorization from the licensed motor vehicle operator.
5. In case of a discrepancy between a physical and electronic credential, the electronic credential takes priority and is considered to provide the current information.
6. The electronic credential and verification systems must be designed to protect the credential holder's privacy, including the use of privacy enhancing technology or other appropriate methods. If the department enters an agreement with a third-party electronic credential system provider, the agreement must require the third-party electronic credential system provider to take appropriate measures to protect the credential holder's privacy.
7. In addition to the fees required by section 39-06-49 for an operator's license, a substitute operator's license, and an operator's license renewal:
 - a. An initial fee of five dollars is required from a licensed motor vehicle operator seeking to possess an electronic operator's license; and
 - b. The fee for an electronic operator's license renewal is five dollars.
8. The director may adopt rules necessary for the effective implementation of an electronic operator's licensing system.

39-06-15. Commissioner may appoint agents to issue licenses - Fees.

Repealed by S.L. 1967, ch. 292, § 21.

39-06-16. License to be carried and exhibited on demand.

An individual licensed to operate a motor vehicle shall have a physical or electronic operator's license in the individual's immediate possession at all times when operating a motor vehicle and shall physically surrender or electronically provide an operator's license, upon demand of any court, police officer, or a field deputy or inspector of the department. However, an individual charged with violating this section may not be convicted or assessed any court costs if the individual produces within fourteen days to the office of the prosecutor where the matter is pending, a valid operator's license issued to that individual that is not under suspension, revocation, or cancellation at the time of the individual's arrest.

39-06-17. Restricted licenses - Penalty for violation.

1. Upon issuing an operator's license or a temporary restricted operator's license under section 39-06.1-11, the director may impose restrictions suitable to a licensee's driving ability with respect to the type of motor vehicle, special mechanical control devices required on a motor vehicle that the licensee may operate, or any other restrictions applicable to the licensee as the director may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee. The director may either issue a special restricted class D license or may state the restrictions upon the usual license form. In the same manner, the director shall restrict licenses under section 39-16.1-09.
2. The director may issue a restricted class D license to operate the parent's, guardian's, grandparent's, sibling's, aunt's, or uncle's automobile to a minor, who is at least fifteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. A minor may operate a motor vehicle that is not the parent's or guardian's to take the actual ability test. The parent, guardian, grandparent, sibling, aunt, or uncle at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by a minor. A restricted class D license may not be issued to a minor unless the minor, accompanied by the parent or guardian, appears in person and satisfies the director that:
 - a. The minor is at least fifteen years of age;
 - b. The minor is qualified to operate an automobile safely;
 - c. It is necessary for the child to drive the parent's, guardian's, grandparent's, sibling's, aunt's, or uncle's automobile without being accompanied by an adult;
 - d. The minor has successfully completed an approved driver's education course that includes a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director or has successfully completed a course at an approved commercial driver training school; and
 - e. The minor has accumulated a minimum of fifty hours of supervised, behind-the-wheel driving experience in various driving conditions and situations that include night driving; driving on gravel, dirt, or aggregate surface road; driving in both rural and urban conditions; and winter driving conditions.
3. The provisions of subsection 2 do not authorize a minor to drive a commercial truck, motorbus, or taxicab except the holder of a restricted class D license may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] while used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.
4. A minor with a restricted class D license issued under subsection 2 may operate the type or class of motor vehicle specified on the restricted license under the following conditions:
 - a. A restricted licenseholder must be in possession of the license while operating the motor vehicle.
 - b. An individual holding a restricted class D license driving a motor vehicle may not carry more passengers than the vehicle manufacturer's suggested passenger capacity.
 - c. An individual holding a restricted class D license driving a motor vehicle may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.
 - d. An individual holding a restricted class D license may not operate a motor vehicle between the later of sunset or nine p.m. and five a.m. unless a parent, legal guardian, or an individual eighteen years of age or older is in the front seat of the motor vehicle or the motor vehicle is being driven directly to or from work, an official school activity, or a religious activity.

5. Upon receiving satisfactory evidence of any violation of the restrictions of a license, the director may suspend or revoke the license but the licensee is entitled to a hearing as upon a suspension or revocation under this chapter.
6. It is a class B misdemeanor for an individual to operate a motor vehicle in any manner in violation of the restrictions imposed under this section except for the restrictions in subsection 4.
7. If a temporary restricted license is 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. Upon receiving notice of the conviction the director shall revoke, without opportunity for hearing, the licensee's temporary restricted license and shall extend the underlying suspension for a like period of not more than one year.
8. If the conviction referred to in this section is reversed by an appellate court, the director shall restore the individual to the status held by the individual before the conviction, including restoration of driving privileges if appropriate.

39-06-18. Substitute operator's license.

If an operator's license or nondriver photo identification card issued under this chapter is lost, mutilated, or destroyed, or contains erroneous information due to a change in name, address, or for any other reason, the individual to whom the operator's license or identification card was issued may obtain a substitute, by providing documentation that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously completed or if there are changes to the information already on file, and upon payment of a fee listed in section 39-06-49.

39-06-19. Expiration of license - Renewal.

1. Every operator's license issued under this chapter or chapter 39-06.2 expires and is renewed according to this section.
2. The expiration date of a noncommercial operator's license for an individual whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the third subsequent year ending in an odd numeral, except for an individual who, at the time of renewal, is seventy-eight years of age or older is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of a noncommercial operator's license for an individual whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the third subsequent year ending in an even numeral, except for an individual who, at the time of renewal, is seventy-eight years of age or older is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral.
3. The expiration date of a commercial operator's license for an individual whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of a commercial operator's license for an individual whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral.
4. An individual who has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, a pending application for asylum in the United States, a pending or approved application for temporary protected status in the United States, approved deferred action status, or a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent residence status in the United States will be issued a temporary operator's license or nondriver photo identification card. The temporary operator's license or identification card is valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay,

a period of one year. The license or card may be renewed only upon presentation of valid documentary evidence that the status has been extended.

5. An applicant for renewal must present the application with the fee for renewal of license to the director not before ten months prior to the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. The director may require an applicant for renewal or a substitute to provide documentation that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously completed or if there are changes to the information already on file. 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.
6. The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order.
7. An applicant for renewal of an operator's license must provide a certificate of examination from the driver licensing or examining authorities or a statement as to the corrected and uncorrected vision of the applicant from a licensed physician or an optometrist, except as required under subsection 9. The director shall provide visual examination equipment at each location where a license may be renewed.
8. An individual submitting an application and the fee for renewal of license one year or more after the expiration of a license, except an applicant whose military service has terminated less than thirty days prior to the application, must be treated as an initial applicant.
9. A noncommercial applicant may apply by mail or electronically for renewal of a license during every other renewal cycle, except as otherwise provided by subsection 10. The director may use vision information provided by the applicant to meet vision requirements for applicants under seventy years of age and adopt procedures necessary to implement this subsection.
10. A noncommercial applicant for an operator's license may not renew by mail or electronically if the applicant is seeking a new photo or changes to the information on the face of the physical operator's license.

39-06-19.1. Extended term of license held by members of the armed forces - Limitations.

A valid operator's license issued under this chapter to a resident of this state who enters or is in the United States armed forces and serving on active duty continues in full force and effect so long as the active service continues and the licensee remains absent from this state, and for not to exceed thirty days following the date on which the holder of this license is honorably separated from this service or returns to this state, unless the license is sooner suspended, canceled, or revoked for cause. The license is valid only if in the immediate possession of the licensee while driving and the licensee has the licensee's discharge or separation papers, if the licensee has been discharged or separated from the service, or has documentation authorizing the licensee to be absent from the licensee's duty station in the licensee's immediate possession.

39-06-19.2. Renewal of license held by out-of-state individual.

The director may renew an operator's license issued to an individual who is a resident of this state or to a spouse who is a resident of this state, if the individual or spouse is out of state as a result of the employment of the individual or the other spouse with a governmental entity or a business organization, including the United States armed forces or foreign service. The director shall develop procedures and requirements for a renewal under this section.

39-06-20. Notice of change of address or name.

If an individual after applying for or receiving an operator's license or identification card moves from the address named on the license or identification card, or if the name is changed by marriage or otherwise, that individual within ten days after moving or the name change shall notify the director in writing or in person of that individual's old and new addresses or of the individual's former and new names and of the number of any operator's license or identification card then held by that person. An individual may obtain a corrected operator's license or identification card for address only changes, but must obtain a new operator's license or identification card for a name change, by making an application as provided for in section 39-06-18. The department may change the address based on information received from any authorized address correction service of the United States postal service. The department may also develop procedures for receiving notification of address changes by electronic means.

39-06-21. Filing application records.

The director shall file and maintain each application for a license with suitable indexes containing:

1. All applications denied and on each denied application note the reason for the denial;
2. All applications granted; and
3. The name of every licensee whose operator's license has been suspended, revoked, canceled, or restricted by the department and after each name state the reasons for such actions.

39-06-22. Driving records of licensees.

The director shall file all accident reports and abstracts of court records of convictions received by the director under the laws of this state and maintain convenient records or make suitable notations in order that each record of each licensee showing the convictions of the licensee and the traffic accidents in which the licensee has been involved is readily ascertainable and available for the consideration of the director.

39-06-23. Definition of suspension, revocation, and cancellation.

Repealed by S.L. 2013, ch. 291, § 62.

39-06-24. Authority to cancel licenses.

1. The director shall cancel any operator's license or nondriver photo identification card upon determining that the individual is not entitled to the issuance of the document or that the individual failed to give the required or correct information on the application or the fee was invalid. Invalid fees include being 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 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.
2. Upon cancellation, the holder shall surrender the nondriver photo identification card to the director or any police officer may take custody of the card.

39-06-25. Suspending privileges of nonresidents.

The privilege of driving a motor vehicle on the highways of this state given to a nonresident is subject to suspension or revocation by the director in like manner and for like cause as an operator's license issued in this title may be suspended or revoked.

39-06-26. Reporting convictions, suspensions, or revocations of nonresidents.

1. Upon receiving a record of the conviction or adjudication in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, or

an equivalent ordinance, the director may notify the licensing authority in the state in which the nonresident resides or is licensed.

2. If a nonresident's operating privilege is suspended or revoked under the law of this state, the director shall notify the licensing authority in the state in which the nonresident resides or is licensed.

39-06-27. Suspending licenses upon conviction, suspension, or revocation in another jurisdiction.

1. The director may suspend or revoke the operator's license of any resident of this state or the privilege of a nonresident to operate a motor vehicle in this state upon receiving notice of the conviction of that individual in a tribal court or in another state of an offense, which if committed in this state would be grounds for the suspension or revocation of an operator's license of an operator. The director may act on a report of a conviction in tribal court received from any tribal law enforcement agency. This section may not be construed as authorizing the assessment of points against a resident's driving record in accordance with chapter 39-06.1, except upon conviction of a resident driver for a criminal offense in a tribal court or in another state which is equivalent to one of those offenses defined in section 39-06.1-05. A suspension or revocation may not be imposed for convictions for driving under suspension or revocation on an Indian reservation or in another state if a valid operator's license from this state was in effect at the time of the violation. For purposes of this section, originals, photostatic copies, and electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence even if not certified copies.
2. Upon receipt of a certification that the operating privileges of a resident of this state have been suspended or revoked on an Indian reservation or in any other state under a law providing for the suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident if under circumstances that would require the director to suspend a nonresident's operating privileges had the accident occurred in this state, the director shall suspend the license of the resident if the resident was the driver of a motor vehicle involved in the accident. The suspension continues until the resident furnishes evidence satisfactory to the director of the resident's compliance with the laws of the Indian reservation or the other state relating to the deposit of security or payment of a judgment arising out of a motor vehicle accident, to the extent that compliance would be required if the accident had occurred in this state.

39-06-28. Courts to forward license to director upon certain convictions.

If an individual is convicted of any offense for which this chapter requires the revocation of the operator's license of that individual by the director, the court of the conviction shall require the surrender to the court of any operator's license then held by the convicted individual. The court shall then forward the operator's license and a record of the conviction to the director.

39-06-29. Courts to report records of certain convictions.

Repealed by S.L. 1981, ch. 386, § 3.

39-06-29.1. Authority to suspend licenses of juveniles.

Repealed by S.L. 1983, ch. 415, § 39.

39-06-30. Conviction - Meaning and effect.

Repealed by S.L. 2013, ch. 291, § 62.

39-06-31. Revocation of licenses.

1. A period of revocation is at least thirty days and not more than one year, unless otherwise provided by law.

2. The director shall revoke for a period of one year or for a period as may be recommended by the trial court, the operator's license of an individual upon receiving a record of the individual's conviction of any of the following offenses:
 - a. A felony in which a motor vehicle was used in the commission of the felony.
 - b. A misdemeanor resulting from the operation of a motor vehicle and causing serious bodily injury, as defined in section 12.1-01-04, to another individual.
 - c. The making of a false affidavit or statement under oath to the director under this chapter or under any other law relating to the ownership or operation of motor vehicles.
3. The revocation of the license under this section may be beyond any time of imprisonment or court-ordered addiction treatment.

39-06-32. Authority to suspend licenses.

The director may suspend the operator's license of an individual, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.
4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection, the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's driver's licensing authority are sufficient evidence of the refusal whether those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of an individual while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, if signing is required by law, in violation of section 39-06.1-04, willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.
7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's driver's licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's

licensing or other authority of the other jurisdiction are sufficient evidence whether they are certified copies.

8. Conviction of an offense under this title and it appears from the director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. A suspension may not be imposed if the individual has been sanctioned for the same offense under section 39-06-31.

39-06-32.1. Suspension of child's driving privileges.

Upon receipt of a copy of an order of a juvenile court ordering the suspension of a child operator's license, the director shall suspend the operator's license and make notation of the length of time of the suspension. During the time of the suspension, an application for a class D instruction permit may not be accepted from the child. For purposes of this section, "child" is defined by section 27-20.4-02.

39-06-33. Hearings on suspension or revocation.

1. If an operator's license is suspended or revoked under section 39-06-32 or 39-06.1-10 or chapter 39-16 or 39-16.1, the director shall give notice of intention to suspend to the licensee by mailing the notice to the licensee at the address of record in the department under section 39-06-20. Actual notice of the opportunity for a hearing under this section must be deemed to have occurred seventy-two hours after the notice is mailed by regular mail. The licensee has ten days after the date of mailing of the notice to request, in writing or by other means authorized by the director, a hearing on the intended suspension or revocation.
2. Any hearing conducted under this section and any appeal from the decision of the hearing must be conducted under chapter 28-32, except the hearing must be heard within sixty days of the receipt of the request for hearing and in the county of the licensee's residence, unless the parties agree to a different time and place for the hearing. A hearing under this section may be conducted by telephone, television, virtual online interface, or other electronic means with the consent of the licensee. At the hearing, the regularly kept records of the director may be introduced and are prima facie evidence of their content without further foundation.
3. The mailing of the decision and the resulting order by regular mail to the address recorded in the files of the director under section 39-06-20 is sufficient notice. If a suspension is ordered, a re-examination of the licensee may be required.
4. If a suspension is ordered under subsection 2 of section 39-06-32, the notice must include a specific description of the conditions which led to the conclusion that the licensee is incompetent to drive a motor vehicle. If during the suspension those conditions dissipate, the licensee may request another hearing on the issue of competence to drive a motor vehicle. The hearing must be held in the manner required under subsections 2 and 3 for the original suspension.

39-06-33.1. Authority to suspend licenses after traffic death or injury - Show cause order required.

Repealed by S.L. 1987, ch. 460, § 16; S.L. 1987, ch. 461, § 4.

39-06-34. Director may require re-examination.

In addition to any other power, the director, having good cause to believe that an individual with an operator's license is incompetent or otherwise not qualified for the operator's license, may upon written notice of at least five days to the individual require the individual to submit to such physical, mental, or driver's examination as may be deemed necessary by the director. If the director has good cause to believe that the individual presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license of the individual pending the examination. The notice of suspension must provide the individual with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested, the hearing must be conducted under section

39-06-33 and the hearing officer's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of the examination, the director shall take action as may be appropriate and may suspend or revoke the license of the individual or permit the individual to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. The director may suspend or revoke the operator's license of the individual for refusal or neglect of the individual to submit to an examination.

39-06-34.1. Court may require re-examination.

In addition to any other powers, the court, upon finding of a moving motor vehicle violation which leads the court to believe an individual with an operator's license is not qualified for the operator's license, may direct the director to require the individual to submit to re-examination under section 39-06-13. Written notice of at least five days must be given to the individual by the director of the re-examination. Upon the conclusion of the examination, the director shall take action as may be appropriate and may suspend or revoke the license of the individual or permit the individual to retain the operator's license, or may issue a license subject to restrictions as permitted under section 39-06-17. The director may suspend or revoke the operator's license of the individual for refusal or neglect of the individual to submit to the examination.

39-06-35. Period of suspension.

1. After the period of suspension imposed under this title, the operator's license of an individual that has been suspended remains suspended and may not be returned or reinstated until the individual pays to the director a reinstatement fee as listed in section 39-06-49. If applicable, the operator's license may not be returned until compliance with subsection 4 of section 39-06.1-10. Upon payment of the reinstatement fee the license must be returned to the individual. If the individual submits payment of the reinstatement fee with a check, credit card, or debit card and the individual stops payment on the transaction, the director shall reimpose the suspension until the director receives proper payment.
2. 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, re-examination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

39-06-36. Restoration of revoked licenses.

An individual whose operator's license has been revoked is not entitled to have the operator's license renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the revocation period the individual may make application for a new license, but the director may not then issue a new license unless the director is satisfied after investigation of the individual's driving records, driving habits, and driving ability of the individual that it will be safe to grant an operator's license to that individual. An individual whose operator's license has been revoked must pay to the director a revocation reinstatement fee as listed in section 39-06-49, in addition to any license renewal fee, for issuance of a new license. If the individual submits payment of a reinstatement fee with a check, credit card, or debit card and the individual stops payment on the transaction, the director shall reimpose a suspension until the director receives proper payment. A reinstatement fee is not required if a revoked license is reinstated due to the findings of a hearing, re-examination of hearing, or court or judicial review as provided under chapter 39-06, 39-06.1, or 39-20.

39-06-36.1. Restoration of revoked or suspended licenses - Successful completion of treatment court.

Upon an individual's successful completion of an approved adult treatment court program, if ordered by the district court, the director shall reinstate the driving privileges of the individual for any noncommercial license suspension or revocation imposed under law. A reinstatement fee is not required for reinstatement of driving privileges under this section.

39-06-37. Duration of multiple suspensions and revocations for separate violations.

1. A suspension, revocation, or cancellation ordered under this title must be deemed to have commenced when the order is delivered to the licensee at the address of record in the department under section 39-06-20. Constructive delivery under this section must be considered as occurring forty-eight hours after the order is mailed to the person by regular mail.
2. Unless otherwise specifically provided in this title, any suspension, revocation, cancellation, or denial of licensing ordered under this title must be in addition to, and run consecutive to, any other or existing suspension, revocation, cancellation, or denial of licensing ordered for a separate violation.

39-06-38. No operation under foreign license during suspension or revocation in this state.

Any resident or nonresident whose operator's license in this state has been suspended or revoked under this title may not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new operator's license is obtained when and as permitted under this title.

39-06-39. Review by court.

Repealed by S.L. 1987, ch. 461, § 4.

39-06-40. Unlawful use of license - Penalty.

1. It is a class B misdemeanor for an individual:
 - a. To display or cause or permit to be displayed or have in possession any canceled, revoked, fictitious, or fraudulently altered operator's license or nondriver photo identification card;
 - b. To lend that individual's operator's license or nondriver photo identification card to any other individual or knowingly permit the use of that individual's operator's license or nondriver photo identification card by another individual;
 - c. To display or represent as an individual's own any operator's license or nondriver photo identification card not issued to that individual;
 - d. To fail or refuse to surrender to the director upon demand any operator's license or nondriver photo identification card that has been suspended, revoked, or canceled;
 - e. To permit any unlawful use of an operator's license or nondriver photo identification card issued to that individual; or
 - f. To use a false or fictitious name in any application for an operator's license 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.
2. Within five days of receiving a record of conviction or other satisfactory evidence of the violation of this section, the director shall revoke the individual's operator's license or nondriver photo identification card. The director may set the period of revocation, not to exceed six months.

39-06-40.1. Reproducing operator's license - Penalty.

1. It is unlawful for an individual to print, photograph, photostat, duplicate, alter, or in any way reproduce any operator's license, nondriver photo identification card, or facsimile of an operator's license or card, or to print, photograph, photostat, duplicate, alter, or in any way reproduce any document used in the production of any operator's license or card or facsimile of an operator's license or card, in a manner that it would be mistaken for a valid license or document containing valid information, or to display or have in possession any print, photograph, photostat, duplicate, reproduction, or facsimile unless authorized by law.

2. It is unlawful for an individual to alter in any manner any operator's license or nondriver photo identification card or to display or have in possession an altered operator's license or nondriver photo identification card.
3. An individual violating this section is guilty of a class B misdemeanor.
4. Within five days of receiving a record of conviction or other satisfactory evidence of the violation of this section, the director shall revoke the operator's license or cancel the nondriver photo identification card of the individual. The director may set the period of revocation, not to exceed six months.

39-06-41. Making false affidavit perjury.

Repealed by omission from this code.

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

1. Except as provided in section 39-06.1-11, an individual who operates a 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 while an individual's operator's license is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second, or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A 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 four consecutive days' imprisonment and a fine as the court deems proper. The execution of sentence may not be suspended or the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02. 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. A court may dismiss a charge under this section upon motion by the defendant if the defendant's operator's license is reinstated within sixty days of the date of the offense and the defendant provides to the court satisfactory evidence of the reinstatement. Alternatively, upon motion, a court may grant a motion to amend a charge under this section to a violation of section 39-06-01.
4. 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 destroyed by the sheriff. If a period of suspension has been extended under subsection 6 of section 39-06-17, the court may order the number plates to be destroyed under this subsection. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the sheriff and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation.
5. A city may authorize, by ordinance, its municipal judge to order destruction of motor vehicle number plates by the office of the police officer that made the arrest in the manner provided in subsection 4.

39-06-43. Extension of license suspension or revocation.

1. The director upon receiving a record of the conviction of an individual upon a charge of driving a vehicle while the operator's license of the individual was suspended shall extend the period of that suspension for an additional:
 - a. Like period not to exceed ninety days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the individual's operator's license or privilege has not been suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;

- b. One hundred eighty days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the individual's operator's license or privilege has been once suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance; or
 - c. One year if the operator's record for the three-year period preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the individual's operator's license or privilege has been at least twice suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance.
- 2. If the original suspension was imposed for violation of section 39-08-01 or equivalent ordinance, the director shall extend the period of that suspension for at least six months. If the suspension of the operator's license resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension. Suspension periods for failure to appear or to post and forfeit bond on noncriminal traffic violations may be for an indefinite duration. If the conviction was upon a charge of driving while an operator's license was revoked, the director may not issue a new operator's license for an additional period of one year from and after the date the individual would otherwise have been entitled to apply for a new license. Upon a conviction of an individual 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 director shall extend the period of the underlying suspension in accordance with subsection 6 of section 39-06-17.

39-06-44. Permitting unauthorized minor to drive.

An individual may not cause or knowingly permit the individual's minor child or ward to operate a motor vehicle upon any highway if the minor is not authorized under this chapter or in violation of this chapter.

39-06-45. Permitting unauthorized individual to drive.

An individual may not authorize or knowingly permit a motor vehicle owned by the individual or under the individual's control to be operated upon any highway by any individual who is not authorized under this chapter or in violation of this chapter.

39-06-46. Renting motor vehicles - License of renter.

A person may not rent a motor vehicle to an individual unless the individual has an operator's license or, in the case of a nonresident, the individual has an operator's license under the laws of the state or country of the nonresident's residence except a nonresident whose home state or country does not require that an operator be licensed, or unless the renter certifies that the vehicle will be driven by an individual with an operator's license.

39-06-47. Renting motor vehicle - License inspection.

A person may not rent a motor vehicle to another individual until the lessor has inspected the operator's license of the individual to whom the vehicle is to be rented, or of the individual by whom the vehicle shall be driven, and compared and verified the signature on the operator's license with the signature of the individual written in the lessor's presence.

39-06-48. Renting motor vehicle - Records.

A person renting a motor vehicle to another person shall keep a record of the registration number of the motor vehicle so rented, the name and address of the lessee to whom the vehicle is rented, the number of the license of the lessee or the lessee's certified driver, and the date and place when and where said license was issued. This record must be open to inspection by any police officer or the director.

39-06-49. Fees - Deposit in state highway fund.

1. All money received under this chapter must be paid monthly into the highway fund in the state treasury.
2. The fee for:
 - a. An application for a nondriver photo identification card is eight dollars.
 - b. Written testing for an application for an operator's license is five dollars.
 - c. Online written testing for an application for an operator's license is ten dollars.
 - d. Actual ability testing for an application for an operator's license is five dollars.
 - e. An application for an operator's license is fifteen dollars.
 - f. An application for a motorized bicycle operator's permit is ten dollars.
 - g. A substitute operator's license is eight dollars unless the substitute is for erroneous information due to a change in name or address, then the fee is three dollars.
 - h. An operator's license renewal is fifteen dollars.
 - i. Reinstatement after suspension is fifty dollars unless the suspension was the result of a suspension under subsection 3, 4, or 6 of section 39-06-03 or subsection 2 of section 39-06-32, then the fee is twenty-five dollars, or unless the suspension was a result of a violation under section 39-08-01 or chapter 39-20, then the fee is one hundred dollars.
 - j. Reinstatement after revocation is fifty dollars, unless the revocation was imposed for a violation of subsection 6 of section 39-06-17 or section 39-06-31, 39-06-43, or 39-20-04, then the fee is one hundred dollars.
3. Any application for which there is a fee must be accompanied by the proper fee.

39-06-50. Short title.

Repealed by S.L. 2013, ch. 291, § 62.

39-06-51. License to carry warnings and convictions.

Repealed by S.L. 1975, ch. 338, § 1.

39-06-52. Veteran indicator on license.

Repealed by S.L. 2013, ch. 291, § 62.

CHAPTER 39-06.1 DISPOSITION OF TRAFFIC OFFENSES

39-06.1-01. Definitions.

As used in this title:

1. "Adjudication" and "admission" means an official determination, in the manner provided by law, that a traffic violation has been committed by a named driver.
2. "Equivalent ordinance" means an ordinance of a city, state, or other jurisdiction which is comparable to the cited statute and defines essentially the same offense, even if the language of the ordinance differs or procedural points or methods of proof differ.
3. "Official" means a municipal judge or a magistrate or other qualified individual appointed by the presiding judge of the judicial district to serve for all or part of the judicial district.
4. "Points" means the number of demerits assigned to particular types of traffic violations.

39-06.1-02. Traffic violations noncriminal - Exceptions - Procedures.

1. An individual cited, in accordance with sections 39-07-07 and 39-07-08, for a traffic violation under state law or municipal ordinance, other than an offense listed in section 39-06.1-05, is deemed to be charged with a noncriminal offense.
 - a. The individual may appear before the designated official and pay the statutory fee for the violation charged at or before the time scheduled for a hearing.
 - b. If the individual has posted bond, the individual may forfeit bond by not appearing at the designated time.
2. If the individual is cited for a traffic violation under state law and posts bond by mail, the bond must be submitted within fourteen days of the date of the citation and the individual cited shall indicate on the citation whether a hearing is requested. If the individual does not request a hearing within fourteen days of the date of the citation, the bond is deemed forfeited and the violation admitted. If the individual requests a hearing, the court for the county in which the citation is issued shall issue a summons to the individual requesting the hearing notifying the individual of the date of the hearing before the designated official in accordance with section 39-06.1-03.
3. Upon appearing at the hearing scheduled in the citation or otherwise scheduled at the individual's request, the individual may make a statement in explanation of the individual's action. The official may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the individual cited follows the foregoing procedures, the individual is deemed to have admitted the violation and to have waived the right to a hearing on the issue of commission of the violation.
4. The bond required to secure appearance must be identical to the statutory fee established by section 39-06.1-06.
5. Within ten days after forfeiture of bond or payment of the statutory fee, the official having jurisdiction over the violation shall certify to the director:
 - a. Admission of the violation; and
 - b. In speeding violations, whether the speed charged was in excess of the lawful speed limit by more than nine miles [14.48 kilometers] per hour and the miles [kilometers] per hour by which the speed limit was exceeded.
6. Under this section a citing police officer may not receive the statutory fee or bond.

39-06.1-02.1. Notification of parents or guardians of juvenile traffic offenders.

The clerk of court shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation, the penalty attached to the offense, and the time and place of any court hearing on the matter.

39-06.1-03. Administrative hearing - Procedures - Appeals - Stay orders.

1. An individual cited for a traffic violation, other than an offense listed in section 39-06.1-05, who does not follow one of the procedures in section 39-06.1-02, may

request a hearing on the issue of commission of the charged violation. The hearing must be held at the time scheduled in the citation, at the time scheduled in response to the individual's request, or at some future time, not to exceed ninety days later, set at that first appearance.

2. At the time of a request for a hearing on the issue of commission of the violation, the individual charged shall deposit with the official having jurisdiction an appearance bond equal to the statutory fee for the charged violation.
3. If an individual cited for a traffic violation, other than an offense listed in section 39-06.1-05, has requested a hearing on the issue of the commission of the charged violation and appears at the time scheduled for the hearing, and the prosecution does not appear or is not ready to prove the commission of a charged violation at the hearing, the official shall dismiss the charge.
4. If the official finds that the individual had committed the traffic violation, the official shall notify the director of that fact, and whether the individual was driving more than nine miles [14.48 kilometers] per hour in excess of the lawful limit, stating specifically the miles [kilometers] per hour in excess of the lawful limit, if charged with a speeding violation, within ten days of the date of the hearing. The fact that an individual has admitted a violation, or has, in any proceeding, been found to have committed a violation, may not be referred to in any way, nor be admissible as evidence in any court, civil, equity, or criminal, except in an action or proceeding involving that individual's operator's license.
5.
 - a. An individual may not appeal a finding from a district judge or magistrate that the individual committed the violation. If an individual is aggrieved by a finding in the municipal court that the individual committed the violation, the individual may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the individual is again found to have committed the violation, there is no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the director upon receipt of that report.
 - b. The appellate court upon application by the appellant may:
 - (1) Order a stay of any action by the director during pendency of the appeal, but not to exceed a period of one hundred twenty days;
 - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the director to be effective for no more than one hundred twenty days; or
 - (3) Deny the application.An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the director may charge a fee of three dollars. Any order granting a stay or a temporary certificate must be immediately forwarded by the clerk of court to the director, who immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. An individual who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued under this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.
 - c. If the individual charged is found not to have committed the violation by the appellate court, the clerk of court shall report that fact to the director immediately. Unless the appropriate state's attorney consents to prosecute the appeal, if an

appeal under this subsection is from a violation of a city ordinance, the city attorney for the city wherein the alleged violation occurred shall prosecute the appeal. In all other cases, the appropriate state's attorney shall prosecute the appeal.

6. The state or the city, as appropriate, must prove the commission of a charged violation at the hearing or appeal under this section by a preponderance of the evidence. Upon an appeal under subsection 5, the court and parties shall follow, to the extent applicable, the North Dakota Rules of Civil Procedure. If on the appeal from the finding of the official the finding is affirmed, costs may be assessed at the discretion of the trial judge.

39-06.1-04. Failure to appear, pay statutory fee, post bond - Procedure - Penalty.

If an individual fails to choose one of the methods of proceeding in section 39-06.1-02 or 39-06.1-03, the individual is deemed to have admitted to commission of the charged violation, and the official having jurisdiction shall report the admission to the director within ten days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, if signing is required by law, or failure to appear without paying the statutory fee or posting and forfeiting bond is a class B misdemeanor. Failure to appear without just cause at the hearing is deemed an admission of commission of the charged violation.

39-06.1-05. Offenses excepted.

The procedures authorized under sections 39-06.1-02 and 39-06.1-03 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
2. Reckless driving or aggravated reckless driving in violation of section 39-08-03, or an equivalent ordinance.
3. A violation of chapter 12.1-16 resulting from the operation of a motor vehicle.
4. Leaving the scene of an accident in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.
5. Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.
6. Violating subdivision b or c of subsection 5 of section 39-24-09.
7. Operating an unsafe vehicle in violation of subsection 2 of section 39-21-46.
8. Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 5 of section 39-10-26.

39-06.1-06. Amount of statutory fees.

The fees required for a noncriminal disposition under section 39-06-01, 39-06.1-02, or 39-06.1-03 must be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of twenty dollars except for a violation of any traffic parking regulation on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars, excluding a violation of subsection 11 of section 39-01-15.
2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, or 39-10-42, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, a fee of twenty-five dollars.
 - d. A violation of subsection 1 of section 39-12-02, section 39-08-23, or section 39-08-25, a fee of one hundred dollars.

- e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.
- f. A violation of subsection 6 of section 39-04-37, a fee of one hundred dollars.
- g. A violation of subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.
- h. A violation of section 39-10-59, a fee of five hundred dollars.
- i. A violation of section 39-09-01, a fee of thirty dollars.
- j. A violation of section 39-09-01.1, a fee of thirty dollars.
- k. A violation of section 39-10-46 or 39-10-46.1, a fee of two hundred fifty dollars.
- l. A violation of subsection 1 of section 39-08-20, one hundred fifty dollars for a first violation and three hundred dollars for a second or subsequent violation in three years.
- m. A violation of section 39-10-24 or 39-10-44, a fee of forty dollars.
- n. A violation of section 39-10-50.1, a fee of fifty dollars.
- o. A violation of section 39-19-03, a fee of fifty dollars.
- p. A violation of section 39-10-71.1, a fee of one hundred dollars for a first violation, and five hundred dollars for a second or subsequent violation except as provided under section 39-10-71.1.
- q. A violation of section 39-21-33.1, a fee of fifty dollars.
- 3. For a violation of section 39-21-44 or a rule adopted under that section, a fee of two hundred fifty dollars.
- 4. Except as provided in subsection 6, for a violation of section 39-09-02, or an equivalent ordinance, a fee of twenty dollars, or three dollars for each mile per hour over the limit, whichever is greater. An additional fee of twenty dollars must be assessed for a violation of sixteen miles per hour or more over the limit.
- 5. For a violation of section 39-06.2-10.9 or subsection 3 of section 39-21-46, a fee established as follows:
 - a. Driving more than eleven hours since the last ten hours off duty, driving after fourteen hours on duty since the last ten hours off duty, driving after sixty hours on duty in seven days or seventy hours in eight days, no record of duty status or log book in possession, failing to retain previous seven-day record of duty status or log book, or operating a vehicle with four to six out-of-service defects, one hundred dollars;
 - b. False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;
 - c. Operating a vehicle after driver placed out of service, operating a vehicle with ten or more out-of-service defects, or operating a vehicle that has been placed out of service prior to its repair, five hundred dollars; and
 - d. All other violations of motor carrier safety rules adopted under subsection 3 of section 39-21-46, fifty dollars.
- 6. On a highway on which the speed limit is posted in excess of sixty-five miles [104.61 kilometers] an hour, for a violation of section 39-09-02, or equivalent ordinance, a fee of twenty dollars, or five dollars for each mile per hour over the limit, whichever is greater. An additional fee of twenty dollars must be assessed for a violation of sixteen miles per hour or more over the limit.
- 7. For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, a fee of forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section.
- 8. For a violation of a highway construction zone speed limit under subsection 2 of section 39-09-02, a fee of one hundred fifty dollars for one through ten miles per hour over the posted speed; and one hundred fifty dollars plus two dollars for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section. The fee in this subsection does not apply to a highway construction

zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee \$150".

9. For a violation of operating a motor vehicle while not being licensed under section 39-06-01, a fee of one hundred fifty dollars.

39-06.1-07. Notification to offenders - Duties of director.

1. The director shall prepare notification forms to be delivered to the charged individual with the uniform traffic summons and complaint under section 29-05-31. The notification form may be delivered to the individual in writing, by providing a website address, or providing a quick response code. The notification forms must contain language, approved by the attorney general, informing an individual charged with a traffic violation, other than offenses listed in section 39-06.1-05, of the procedures available to that individual under sections 39-06.1-02 and 39-06.1-03. The notification must contain a schedule of points to be charged against an individual'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 this chapter. A notification form separate from the uniform traffic summons and complaint may be delivered to an individual charged with a violation of subsection 3 of section 39-21-46.
2. The director shall prepare a temporary operator's permit under sections 39-20-03.1, 39-20-03.2, and 39-20-04. The temporary operator's permit must inform the driver of the procedures available under chapter 39-20 and must be issued in accordance with that chapter. The temporary operator's permit may not be delivered by mail or electronic means unless specifically authorized under chapter 39-20.

39-06.1-08. Nonmoving violation defined.

For the purposes of section 39-06.1-06, a "nonmoving violation" means:

1. A violation of section 39-04-02.1, subsection 6 of section 39-04-37, subsection 4 of section 39-06-17, and section 39-06-20, 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.
2. A violation, discovered at a time when the vehicle is not actually being operated, of section 39-21-03, 39-21-05, 39-21-13, 39-21-19, 39-21-32, 39-21-37, 39-21-39, or 39-21-44.2, or a violation of any municipal ordinance equivalent to the foregoing sections.

39-06.1-09. Moving violation defined.

For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-11, 39-04-22, subsection 1 of section 39-04-37, section 39-04-55, 39-06-04, 39-06-14, 39-06-14.1, 39-06-16, 39-06.2-07, 39-08-20, 39-08-23, 39-08-24, 39-08-25, 39-09-01, 39-09-01.1, 39-09-04.1, or 39-09-09, subsection 1 of section 39-12-02, section 39-12-04, 39-12-05, 39-12-06, 39-12-09, 39-19-03, 39-21-33.1, 39-21-45.1, 39-24-02, or 39-24-09, except subdivisions b and c of subsection 5 of section 39-24-09, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, 39-21, or 39-27, or equivalent ordinances, except subsection 5 of section 39-10-26, section 39-21-44, and subsections 2 and 3 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

39-06.1-10. Entries against driving record - Director duties - Hearings - Demerit schedule - Suspension.

1. If a report of a conviction of a traffic offense, or admission or adjudication of a traffic violation is received by the director, the director shall proceed to enter the proper points on the licensee's driving record. If the driving record shows that the licensee has accumulated a total of twelve or more points, assigned on the basis of the schedule contained in subsection 3, the director shall notify the licensee of the director's intention to suspend the operator's license under section 39-06-33. For the purposes

of this chapter, the director also may receive and act on reports of traffic offense convictions forwarded by federal, military, and tribal courts in this state.

2. If the director confirms, after hearing or opportunity for hearing, that the licensee's driving record has an accumulated point total of twelve or more points, the director shall suspend the licensee's operator's license according to the following schedule:

Accumulated Point Total:	Period of Suspension:
a. Twelve	7 days
b. Thirteen and above	7 days for each point over eleven

3. Points must be assigned and accumulated on the basis of the following schedule:

a. Noncriminal Violations

Noncriminal Adjudication or Admission of:	Points Assigned:
(1) Overtime and double parking in violation of city ordinances	0 points
(2) Failure to display license plates	1 point
(3) Permitting unauthorized minor to drive	2 points
(4) Permitting unauthorized person to drive	2 points
(5) Unlawful stopping, standing, or parking on open highway in violation of section 39-10-47	2 points
(6) Unlawful parking in prohibited place	1 point
(7) Leaving motor vehicle improperly unattended on an open highway	1 point
(8) Opening or leaving motor vehicle doors open when unsafe to do so	1 point
(9) Except as provided in sections 39-21-44 and 39-21-45.1, knowingly driving with defective, nonexistent, or unlawful equipment in violation of section 39-21-46, or equivalent ordinances	2 points
(10) Careless driving in violation of section 39-09-01, or equivalent ordinance	6 points
(11) Violating or exceeding restrictions contained in a restricted certificate issued pursuant to section 39-06.1-03	4 points
(12) Racing or drag racing motor vehicles in violation of section 39-08-03.1, or equivalent ordinance	10 points
(13) Exhibition driving in violation of section 39-08-03.1, or equivalent ordinance	3 points
(14) Failing to yield right of way in violation of section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, 39-10-44, or 39-10-72, or equivalent ordinances	2 points
(15) Disobeying an official traffic-control device in violation of section 39-10-04, 39-10-05, or 39-10-07, or equivalent ordinances	2 points
(16) Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or subsection 1, 2, or 3 of section 39-10-16, or equivalent ordinances	2 points
(17) Failing to dim headlights in violation of section 39-21-21, or equivalent ordinance	1 point
(18) Failing to stop at railroad crossing in violation of section 39-10-41 or 39-10-42, or equivalent ordinances	3 points
(19) Knowingly driving with defective brakes in violation of section 39-21-32 or 39-21-33, or equivalent ordinances	2 points
(20) Disregarding the lawful commands of a police officer in violation of section 39-10-02, or equivalent ordinance	2 points

(21)	Overtaking where prohibited or in an unsafe manner in violation of section 39-10-11, 39-10-12, 39-10-13, or 39-10-15, or equivalent ordinances	2 points
(22)	Overtaking and passing a schoolbus in violation of section 39-10-46, or equivalent ordinance	6 points
(23)	Operating a motor vehicle without a license in violation of section 39-06-01, or equivalent ordinance	0 points
(24)	Improperly operating or unlawfully carrying passengers or packages on a motorcycle in violation of section 39-10.2-02, or equivalent ordinance	2 points
(25)	Improperly operating a motorcycle in laned traffic in violation of section 39-10.2-03, or equivalent ordinance	2 points
(26)	Clinging to other vehicles while riding a motorcycle in violation of section 39-10.2-04, or equivalent ordinance	4 points
(27)	Carrying a passenger on a motorcycle not equipped with passenger footrests in violation of section 39-10.2-05, or equivalent ordinance	2 points
(28)	Operating a motorcycle without protective headgear in violation of subsection 1 of section 39-10.2-06, or equivalent ordinance	2 points
(29)	Failing to use the care required in section 39-09-01.1, or equivalent ordinance	2 points
(30)	Except as provided in paragraph 33, operating a motor vehicle in excess of speed limit in violation of section 39-09-02, or equivalent ordinance	
	6 - 10 mph over limit	0 points
	11 - 15 mph over limit	1 point
	16 - 20 mph over limit	3 points
	21 - 25 mph over limit	5 points
	26 - 35 mph over limit	9 points
	36 - 45 mph over limit	12 points
	46 + mph over limit	15 points
(31)	Driving in violation of section 39-08-18	2 points
(32)	Driving in violation of section 39-08-09	6 points
(33)	On a highway on which the speed limit is posted in excess of sixty-five miles [104.61 kilometers] an hour, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance	
	Miles per hour over lawful speed limit	Points
	1 - 5	0
	6 - 10	1
	11 - 15	3
	16 - 20	5
	21 - 25	7
	26 - 30	10
	31 - 35	12
	36 +	15
(34)	Failing to have a minor in a child restraint system or seatbelt in violation of section 39-21-41.2	1 point
(35)	Failure or refusal to comply with rules of the superintendent of the highway patrol in violation of subsection 3 of section 39-21-46	0 points
(36)	Violation of section 39-21-44 or any rule adopted under that section	2 points

(37)	Except as provided in paragraph 39, operating a motor vehicle without liability insurance, in violation of section 39-08-20	6 points
(38)	Except as provided in paragraph 39, operating a motor vehicle without liability insurance, in violation of section 39-08-20, if the driving record shows that the licensee has within the eighteen months preceding the violation previously violated section 39-08-20	12 points
(39)	Operating a motor vehicle without liability insurance, in violation of section 39-08-20, if the violation was discovered as the result of investigation of an accident in which the driver is the owner	14 points
(40)	Driving a modified motor vehicle in violation of section 39-21-45.1, or equivalent ordinance	1 point
(41)	Driving in violation of the conditions of an instructional permit.	2 points
- 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 section 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 ordinance | 18 points |
| (5) | Violating restrictions in a restricted license issued under section 39-06-17 and relating to the use of eyeglasses or contact lenses while driving | 3 points |
| (6) | Violating any restrictions other than those listed in paragraph 5, contained in a restricted license issued under section 39-06-17 or 39-06.1-11 | 4 points |
| (7) | Except as provided in paragraph 9 of subdivision a, knowingly operating an unsafe vehicle in violation of section 39-21-46, or equivalent ordinance | 2 points |
| (8) | Fleeing in a motor vehicle from a peace officer in violation of section 39-10-71, or equivalent ordinance | 24 points |
| (9) | Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 5 of section 39-10-26, or equivalent ordinance | 2 points |
4. a. If the director is informed by a court that an individual 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, shall suspend that individual's operator's license 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 driving privileges must be suspended and may be restored only after the offender 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. The offender must receive a temporary restricted license during the suspension period, in accordance with section 39-06.1-11.

5. If judicial disposition of a traffic violation includes an order or recommendation of suspension or revocation of an operator's license, the suspension or revocation runs concurrently with any suspension ordered under this section. After a conviction of an individual for violating section 39-08-01, the director, in suspending the individual's operator's license, shall 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.
6. A suspension must be deemed to have commenced twenty days after the order of suspension is delivered to the licensee at the licensee's address of record in the department. Constructive delivery under this section must be considered as occurring seventy-two hours after proper deposit in the mails.
7. Points assigned under this section must be recorded against an operator's driving record regardless of whether the operator has ever had an operator's license issued in this state, and the director shall maintain records on all violators regardless of licensure. Upon the assignment of twelve or more points, any unlicensed operator must be deemed to be driving under suspension if the operator has never had an operator's license or if the operator has failed to renew the operator's license.
8. The period of suspension imposed for a violation of section 39-08-01, 39-08-01.2, or 39-08-01.4 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the individual has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.
 - b. One hundred eighty days if the operator's record shows the individual has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. Three hundred sixty-five days if the operator's record shows the individual has once violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.
 - d. Two years if the operator's record shows the individual has at least once violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - e. Two years if the operator's record shows the individual has at least twice violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation.
 - f. Three years if the operator's record shows the individual has at least twice violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
9. If an individual has a temporary restricted driver's license with the restriction the individual participates in the twenty-four seven sobriety program under chapter 54-12, the individual may operate a motor vehicle during the suspension periods under this section.

39-06.1-10.1. Alternative disposition - Driver training course - Exceptions.

1. An individual issued a summons or notice to appear under section 39-07-07 may appear before the court and elect to attend a driver training course approved by the director in lieu of entry of points on the licensee's driving record. An individual who elects to attend the course must so notify the court at the time of posting the bond,

which is forfeited even though an election is made under this section. The individual who makes the election shall pay the driver training course fee to the driver training course sponsor. If an individual elects to attend the course, the point penalty of five points or fewer for the violation by section 39-06.1-10 may not be assessed if proof of completion of the course is presented to the department within thirty days after the individual notifies the court of the election. An individual may not make an election under this section if:

- a. That individual has made an election under this section within the twelve months preceding the date of issuance of the summons or notice to appear;
 - b. The offense is assigned six or more points; or
 - c. The offense is an offense listed in section 39-06.1-05.
2. An individual making an election under this section forfeits any point reduction option under section 39-06.1-13.

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

1. Except as provided under subsection 2 or 3, 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 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, but if the offender is participating in the twenty-four seven sobriety program under chapter 54-12, the director shall issue a temporary restricted license that takes effect after fourteen days of the suspension have been served if the driver is not subject to any unrelated suspension or revocation.
3. For any suspension or revocation imposed under the law, the director shall issue a temporary restricted license if the offender is participating in and compliant with the twenty-four seven sobriety program under chapter 54-12 or if the offender has not committed an offense for a period of one year before the date of the filing of a written application. The application must be accompanied by:
 - a. Proof of financial responsibility and a report from an appropriate licensed addiction treatment program and, if prescribed, proof of compliance with attendance rules in an appropriate licensed addiction treatment program; or
 - b. If the offender is participating in the twenty-four seven sobriety program, proof of program participation.
4. For a temporary restricted license under subsection 3, 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 require an ignition interlock device be installed in the offender's vehicle and may require the applicant to submit proof of attendance at a driver training course approved by the director. The director may impose additional conditions as reasonably necessary to ensure compliance.
5. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under section 39-06-31. 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.
6.
 - a. In addition to any restrictions authorized under section 39-06-17, the director may impose any of the following conditions upon the use of a temporary restricted license issued under this section for the use of a motor vehicle by the offender:
 - (1) To use during the licensee's normal working hours;

- (2) To use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court; or
 - (3) To use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender.
- b. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.
- c. This section does not limit the director's authority to cancel a temporary restricted license for good cause.
- 7. If an offender has been charged with, or convicted of, a second or subsequent violation of section 39-08-01 or equivalent ordinance, or if the offender's license is subject to suspension under chapter 39-20 and the offender's operator's license is not subject to an unrelated suspension or revocation in this state, the director shall issue a temporary restricted license to the offender upon the restriction the offender participate in the twenty-four seven sobriety program under chapter 54-12. The offender shall submit an application to the director for a temporary restricted license along with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program to receive a temporary restricted license.
- 8. If the director denies a temporary restricted license under this section, or denies a request for a hearing under subsection 4, the applicant may appeal within thirty days after the date of the decision by filing a notice of appeal in the district court in the county where the applicant resides and by serving the notice of appeal on the director. On appeal the district court shall review the application and may authorize presentation of additional evidence.
- 9. If an offender is participating in an approved treatment court program, the court may order issuance of a temporary restricted license. Upon application by the offender, the director shall issue a temporary restricted license to the participant subject to conditions specified by the court.
 - a. The application must be accompanied by proof of financial responsibility, the court's order, and the designated reinstatement fee.
 - b. For purposes of this subsection, "approved treatment court program" means a district court-supervised treatment program approved by the supreme court.
- 10. An individual who has a temporary restricted driver's license and commits a moving traffic violation is subject to the fee specified for the violation, plus an additional fee of one hundred dollars.
- 11. The director shall revoke an individual's temporary restricted license if the individual commits three moving traffic violations after being issued the temporary restricted license. A revocation under this subsection may only last a period of thirty days.

39-06.1-12. Completion of suspension - Reduction of point total.

If a licensee completes a period of suspension ordered under section 39-06.1-10 or as ordered or recommended by a court of competent jurisdiction, the director shall reduce the point total shown on the licensee's driving record to eleven points. A suspension must be ordered if that licensee's point total again reaches twelve or more points.

39-06.1-13. Reduction of point total - Other methods.

- 1. The director shall reduce the point total shown on any licensee's driving record by one point for each three-month period during which points are not recorded against the licensee's driving record for a moving violation or a violation listed in paragraphs 12 through 16 of subdivision a of subsection 3 of section 39-06.1-10. The three-month period must be calculated from the date of entry of the last points against that licensee's driving record.
- 2. The point total shown on a licensee's driving record must, during any twelve-month period, be reduced by three points when the licensee mails or delivers a certificate to the director indicating successful completion of instruction in a driver training course approved by the director. Successful completion of instruction must be certified to by

the sponsoring agency or organization of the driver training course. The reduction in points under this subsection must be solely from a point total accumulated before completion of the necessary hours of driver training instruction, and may not exceed nine points during any three-year period commencing on the date of entry of the last points against the individual's driving record. If on the date the director receives the certificate of completion of the driver training course from the licensee, that licensee's driving record contains twelve or more points or, as a minor, the licensee's driving record contains six points or more, the point reduction under this subsection must be applied after serving the period of suspension or cancellation required by the number of points on the licensee's record.

39-06.1-14. Delivery of license revocation.

Delivery of the order of revocation is deemed to have occurred seventy-two hours after the order is mailed by regular mail to the address of record in the department under section 39-06-20.

39-06.1-15. Diplomatic immunities and privileges.

1. This section applies only to an individual who displays an operator's license issued by the United States department of state to a police officer or who otherwise claims immunities or privileges under chapter 6 of title 22 of the United States Code with respect to the individual's violation of any law or ordinance that relates to the operation of a motor vehicle.
2. If a driver who is subject to this section is stopped by a police officer who has probable cause to believe that the driver has committed a violation, the police officer shall record all relevant information from any operator's license or identification card, including an operator's license or identification card issued by the United States department of state; as soon as practicable contact the United States department of state office in order to verify the driver's status and immunity, if any; and forward the following to the bureau of diplomatic security office of foreign missions of the United States department of state:
 - a. A vehicle accident report, if the driver was involved in a vehicle accident;
 - b. A copy of the citation or other charging document if a citation or other charging document was issued to the driver; and
 - c. A written report of the incident if a citation or other charging document was not issued to the driver.
3. This section does not prohibit or limit the application of any law to a criminal or motor vehicle violation by an individual who has or claims immunities or privileges under title 22 of the United States Code.

CHAPTER 39-06.2 COMMERCIAL DRIVER'S LICENSES

39-06.2-01. Uniform Commercial Driver's License Act.

The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570, 49 U.S.C. 2701, repealed] and Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106-159; 113 Stat. 1748; 49 U.S.C. 113 et seq.] and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

1. Permitting commercial drivers to hold only one license;
2. Disqualifying commercial drivers who have committed certain serious traffic violations or other specified offenses; and
3. Strengthening commercial driver's licensing and testing standards.

This chapter is a remedial law which should be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver's licensing provisions, this chapter prevails. Where this chapter is silent, the general driver's licensing provisions apply.

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 learner's permit" means a permit issued under 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 or gross combination weight is twenty-six thousand one pounds [11793.86 kilograms] or more, whichever is greater, provided the towed unit has a gross vehicle weight rating or gross vehicle weight of more than ten thousand pounds [4536 kilograms], whichever is greater;
 - b. If the vehicle has a gross vehicle weight rating or gross vehicle weight of more than twenty-six thousand pounds [11793.40 kilograms], whichever is greater;
 - 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 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.
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 an individual 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 individual'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. "Covered farm vehicle" means a straight truck or articulated vehicle:

- a. Registered in a state with a licensed plate or other designation issued by the state of registration which allows law enforcement officials to identify it as a farm vehicle;
 - b. Operated by the owner or operator of a farm or ranch or an employee or family member of an owner or operator of a farm or ranch;
 - c. Used to transport agricultural commodities, livestock, machinery, or supplies to or from a farm or ranch; and
 - d. Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of subdivisions a, b, and c of this subsection by a tenant pursuant to a crop share farm lease agreement to transport the landlord's portion of the crops under that agreement.
 - e. Meeting the requirements of subdivisions a, b, c, and d of this subsection:
 - (1) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, of twenty-six thousand one pounds [11793.86 kilograms] or less may utilize the exemptions in 40 CFR 390.39 anywhere in the United States; or
 - (2) With a gross vehicle weight or gross vehicle weight rating, whichever is greater, or more than twenty-six thousand one pounds [11793.86 kilograms] may utilize the exemptions in 40 CFR 390.39 anywhere in the state of registration or across the state lines within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.
10. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
11. "Downgrade" means:
- a. A state allows the driver to change the driver's self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 CFR part 391, as provided in 390.3(f), 391.2, 391.68, or 398.3;
 - b. A state allows the driver to change the driver's self-certification to intrastate only, if the driver qualifies under the state's physical qualification requirements for intrastate only;
 - c. A state allows the driver to change the driver's certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification; or
 - d. A state removes the commercial driver's license privilege from the driver's license.
12. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
13. "Driver" means an individual who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
14. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
15. "Drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and includes any controlled substance.
16. "Electronic device" includes a cellular telephone, personal digital assistant, pager, computer, or any other device used to input, write, send, receive, or read text.
17. "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 an individual to drive a commercial motor vehicle.
18. "Fatality" means the death of an individual as a result of a motor vehicle accident.
19. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
20. "Foreign commercial driver" means an individual licensed to operate a commercial motor vehicle by an authority outside the United States or a citizen of a foreign country who operates a commercial motor vehicle in the United States.
21. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.

22. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle. The gross vehicle weight rating of a combination or 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.
23. "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.
24. "Imminent hazard" means the existence of a condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately or a condition relating to hazardous materials which 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.
25. "Mobile telephone" means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the federal communications commission in 47 CFR 20.3. The term does not include two-way and citizens band radio services.
26. "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.
27. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.
28. "Nondomiciled commercial driver's license" means a commercial driver's license or a commercial learner's permit issued by a state to an individual domiciled in a foreign country meeting the requirements of 49 CFR 383.23(b)(1).
29. "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
30. "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 an individual 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 or commercial learner's permit;
 - e. Driving a commercial motor vehicle without a commercial driver's license or commercial learner's permit 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 or commercial learner's permit on the date the citation was issued, is not guilty of this offense;
 - f. Driving a commercial motor vehicle without the proper class of commercial driver's license, endorsement, or commercial learner's permit, for the specific vehicle group being operated or for the passengers or type of cargo being transported;
 - g. Violating a state or local law or ordinance prohibiting texting while driving; or
 - h. Violating a state law or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a commercial motor vehicle.

31. "State" means a state of the United States or the District of Columbia.
32. "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous material within one or more tanks having an individual rated capacity of more than one hundred nineteen gallons [450.46 liters] and an aggregate rated capacity of one thousand gallons [3785.41 liters] or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons [3785.41 liters] or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.
33. "Texting" means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes short message service, electronic mail, instant messaging, a command or request to access a worldwide web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone or engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include:
 - a. Pressing a single button to initiate or terminate a voice communication using a mobile telephone;
 - b. Inputting, selecting, or reading information on a global positioning system or navigation system; or
 - c. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smartphones, citizens' band radios, or music players, for a purpose that is not otherwise prohibited in 49 CFR part 383.
34. "Third-party skills test examiner" means an individual employed by a third-party tester who is authorized by the state to administer the skills tests in 49 CFR part 383, subparts G and H.
35. "Third-party tester" means a person, including another state, a motor carrier, a private driver training facility or other private institution, or a political subdivision authorized by the state to employ skills test examiners to administer the skills tests in 49 CFR part 383, subparts G and H.
36. "United States" means the fifty states and the District of Columbia.
37. "Use a hand-held mobile telephone" means using at least one hand to hold a mobile telephone to conduct a voice communication; dialing or answering a mobile telephone by pressing more than a single button; or reaching for a mobile telephone in a manner that requires a driver to maneuver so that the driver is no longer in a seated driving position, restrained by a seatbelt that is installed under 49 CFR 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

39-06.2-03. Limitation on number of driver's licenses.

No person who drives a commercial motor vehicle may have more than one driver's license.

39-06.2-04. Notification required by driver.

1. Notification of convictions.
 - a. To state: Any driver holding a commercial driver's license issued by this state who is convicted of violating any state or local ordinance relating to motor vehicle traffic control in any other state or any federal, provincial, territorial, or municipal law of Canada, other than parking violations, must notify the director in the manner specified by the director within thirty days of the date of conviction.
 - b. To employers: Any driver holding a commercial driver's license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state or any federal, provincial, territorial, or municipal law of Canada, other than parking violations, must notify the driver's employer in writing of the conviction within thirty days of the date of conviction.
2. Notification of suspensions, revocations, and cancellations. Any driver whose commercial driver's license is suspended, revoked, or canceled by any state, or who

loses the privilege to drive a commercial motor vehicle in any state for any period, including being disqualified from driving a commercial motor vehicle, or who is subject to an out-of-service order, must notify the employer of that fact before the end of the business day following the day the driver received notice of that fact.

3. Notification of previous employment. Any person who applies to be a commercial motor vehicle driver must provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:
 - a. A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;
 - b. The dates between which the applicant drove for each employer; and
 - c. The reason for leaving that employer.

The applicant must certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

39-06.2-05. Employer responsibilities.

1. Each employer shall require the applicant to provide the information specified in section 39-06.2-04.
2. No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:
 - a. In which the driver's commercial driver's license is suspended, revoked, or canceled by any state or in which the driver is currently disqualified from driving a commercial vehicle or subject to an out-of-service order in any state; or
 - b. In which the driver has more than one driver's license.

39-06.2-06. Commercial driver's license required.

1. Except when driving under a commercial learner's permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, an individual may not drive a commercial motor vehicle on the highways of this state unless the individual holds and is in immediate possession of a commercial driver's license with applicable endorsements valid for the vehicle the individual is driving. This subsection does not apply when the vehicle being driven:
 - a. Is a house car or a vehicle towing a travel trailer being used solely for personal rather than commercial purposes.
 - b. Constitutes emergency or firefighting equipment necessary to the preservation of life or property.
 - c. Is being driven for military purposes, subject to any limitations imposed by title 49, Code of Federal Regulations, part 383.3(c).
 - d. Is a covered farm vehicle as defined in this chapter.
2. An individual may not drive a commercial motor vehicle on the highways of this state while the individual's driving privilege is suspended, revoked, or canceled, while subject to a disqualification.
3. The provisions of this chapter do not apply to farm-to-market operations by farmers, but only with respect to those operators of a farm vehicle that is:
 - a. Controlled and operated by a farmer.
 - b. Used to transport agricultural products, including trees; farm machines; or farm supplies, to or from a farm.
 - c. Not used in the operations of a common or contract carrier.
 - d. Used within one hundred fifty miles [241.40 kilometers] of the individual's farm.
4. The provisions of this chapter do not apply to an individual employed by and operating a vehicle at the request of and within a political subdivision, with a population of less than three thousand, during an emergency declared by that political subdivision for the removal of snow and ice. This waiver only applies when the regularly employed driver is unavailable or the employing political subdivision determines additional assistance is required.
5. Pursuant to the limitations imposed by title 49, Code of Federal Regulations, part 383.3, the required knowledge and skills tests may be waived and a restricted

commercial driver's license issued for a single period of two hundred ten days or two periods of one hundred five days within a calendar year to employees of agrichemical businesses, custom harvesters, farm retail outlets and suppliers, including retailers and suppliers of trees, and livestock feeders.

6. Pursuant to the limitations imposed by title 49, Code of Federal Regulations, part 383.3, the holder of a class A commercial driver's license is exempt from the hazardous materials endorsement, if the licenseholder is:
 - a. Acting within the scope of the licenseholder's employment, and within the state of domicile, or another state with a hazardous materials enforcement exemption, as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and
 - b. Operating a service vehicle that is transporting diesel in a quantity of one thousand gallons [3785 liters] or less which is clearly marked with "flammable" or "combustible" placard, as appropriate.
7. In accordance with title 49, Code of Federal Regulations, part 384, section 230, the department may not issue a commercial driver's license to an individual who obtains a commercial learner's permit unless the individual complies with title 49, Code of Federal Regulations, part 380, subpart F.

39-06.2-07. Commercial driver's license qualification standards.

1. An individual may not be issued a commercial driver's license unless that individual is a resident of this state; has passed a knowledge and skills test that may include a skills test or knowledge test administered by another state or skills test or knowledge test results electronically submitted by another state, for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 CFR part 383, subparts G and H; and has satisfied all other requirements of state and federal law, including the Commercial Motor Vehicle Safety Act. The tests must be prescribed and conducted by the director. The applicant shall pay the fee listed in section 39-06.2-19 for each of the tests.
2. The director may authorize third-party testing, if:
 - a. The test is the same as that which would otherwise be administered by this state; and
 - b. The third party has entered an agreement with this state which complies with requirements of 49 CFR part 383.75.
3. The director may waive the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 CFR part 383.77.
4. A commercial driver's license or commercial learner's permit may not be issued to an individual while the individual is subject to a disqualification from driving a commercial motor vehicle or while the individual's driver's license is suspended, revoked, or canceled in any state. A commercial driver's license may not be issued to an individual who has a commercial driver's license issued by any other state unless the individual first surrenders all licenses from other states. The director shall notify the issuing state of the surrender of the license.
5. 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.
6.
 - a. A commercial learner's permit may be issued to an individual who holds a valid class D operator's license who has passed the vision and written tests required for an equivalent commercial driver's license.
 - b. The commercial learner's permit may not be issued for a period to exceed one year. After this initial period, the director may issue a letter of authority that authorizes the applicant to drive to a driver's license office, complete the road test, and return home, or the individual may retake the knowledge test and be issued another commercial learner's permit valid for one year. The holder of a permit, unless otherwise disqualified, may drive a commercial motor vehicle only when accompanied by the holder of a commercial driver's license valid for the

type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. A holder of a permit is not eligible for a license until that individual has had the permit issued for at least fourteen days.

7. A commercial learner's permitholder may not operate a commercial motor vehicle:
 - a. Transporting passengers requiring a passenger endorsement;
 - b. Transporting passengers requiring a schoolbus endorsement;
 - c. Requiring a tank vehicle endorsement unless the tank is empty and does not contain residue of hazardous materials; or
 - d. Transporting hazardous materials, regardless of need for hazardous materials endorsement.

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

1. The application for a commercial driver's license or commercial learner's permit must include the following:
 - a. The full name and current residence and mailing address of the applicant;
 - b. A physical description of the 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 nondomiciled commercial driver's license and the applicant is a resident of a foreign jurisdiction;
 - e. The applicant's signature;
 - f. The certifications including those required by 49 CFR part 383.71;
 - 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 listed in section 39-06.2-19. The application must contain any other information as the director may require to improve identity security. The director shall require an applicant for a commercial license or commercial learner's permit to provide documentary evidence that confirms to the satisfaction of the director the true identity, date of birth, and legal presence of the applicant and provide a social security card or other satisfactory evidence of a social security number and proof of residence address, if not previously provided or if there are changes to the information already on file.
3. When the holder of a commercial driver's license changes the holder's name or residence address, an application for a substitute license must be made under section 39-06-18.
4. Any individual who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, cancellation, or disqualification of the individual's commercial driver's license or pending application for a period of at least sixty consecutive days.

39-06.2-08.1. Commercial driver's license medical certification requirements.

1. The director may issue a commercial learner's permit or commercial driver's license to a North Dakota resident who meets the medical qualification and certification requirements pursuant to the limitations of 49 CFR parts 383 and 391.
2. Every individual who makes application for a commercial learner's permit or commercial driver's license shall certify that the individual meets the qualification requirements contained in 49 CFR part 391 or certify that the individual's commercial transportation is entirely in intrastate commerce and is not subject to 49 CFR part 391.
3. The application will contain the following categories to comply with the commercial driver's certification requirements:
 - a. Interstate and subject to 49 CFR part 391.
 - b. Interstate, but operating exclusively in transportation or operations excepted under 49 CFR part 390.3(f), 391.2, 391.68, or 398.3.
 - c. Intrastate and subject to state driver's qualification requirements.

- d. Intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification requirements.
4. Every individual who makes application for or holds a commercial learner's permit or commercial driver's license shall submit a copy of the individual's medical certificate to the director unless the commercial transportation is not subject to 49 CFR part 391.
5. The director will downgrade or remove the commercial driving privilege from the license if the medical certificate expires and the driver does not change the driver's certification if the driver is no longer subject to 49 CFR part 391.
6. If the driver provides a current medical certification, the director shall upgrade without retesting the license of a driver which was downgraded under this section.

39-06.2-08.2. Commercial driver's license drug and alcohol clearinghouse requirements.

1. The director shall query a federal drug and alcohol clearinghouse before issuing, renewing, upgrading, or transferring a commercial driver's license or commercial learner's permit and review the driver's information when notified by the clearinghouse of a status change.
2. The director shall downgrade or remove the commercial driving privilege from the license if the licensee is found to be in violation or noncompliance with the clearinghouse requirements and until the driver complies with the return-to-duty requirements.
3. If the driver complies with the return-to-duty requirements pursuant to the limitations of 49 CFR Part 392, subpart B, the director shall upgrade the license of a driver which was downgraded under this section.

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

1. The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. The license must include the following information:
 - a. The name and residential address of the individual;
 - b. The individual's color photograph;
 - c. A physical description of the individual, including sex, height, and eye color;
 - d. Date of birth;
 - e. A distinguishing number assigned to the individual;
 - f. The individual's signature;
 - g. The class or type of commercial motor vehicle or vehicles which the individual 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 nondomiciled commercial driver's license under the limitations of 49 CFR 383 including waiving the social security number requirement. The face of the license must be marked "nondomiciled" in accordance with 49 CFR 383.153(c).
3. 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 the operator of a farm vehicle if the 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 is not used in the operations of a common or contract carrier.
 - a. The classifications of commercial driver's licenses are:

- (1) A class A license. This license allows the operation of any combination of vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], if the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds [4535.92 kilograms].
 - (2) A class B license. This license allows the operation of a single vehicle with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], and this vehicle towing a vehicle not in excess of ten thousand pounds [4535.92 kilograms].
 - (3) A class C license. This license allows the operation of a single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or this 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 include:
 - (1) "H" that authorizes the driver to drive a vehicle transporting hazardous materials.
 - (2) "T" that authorizes driving double and triple trailers.
 - (3) "P" that authorizes driving vehicles carrying passengers.
 - (4) "N" that authorizes driving tank vehicles.
 - (5) "X" that authorizes driving combinations of tank vehicles and hazardous material vehicles.
 - (6) "S" that authorizes driving a schoolbus.
- c. Other restrictions may be placed upon a commercial driver's license, under section 39-06-17. The applicant shall pay a fee listed in section 39-06.2-19 for each endorsement.
4. 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 individual has been licensed.
5. 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 individual.
6. A commercial driver's license issued under this chapter expires in the manner provided for operator's licenses under section 39-06-19.
7. An individual applying for renewal of a commercial driver's license must complete the application form required by subsection 1 of section 39-06.2-08, and provide updated information and required certifications. For an applicant to retain a hazardous materials endorsement, the applicant must take and pass the written test for a hazardous materials endorsement.
8. A class A, B, or C license may not be issued to an individual under eighteen years of age, except a class A, B, or C type license specially restricted to use for custom harvest purposes must be issued to an individual at least sixteen years of age who satisfactorily completes the appropriate examinations.

39-06.2-09.1. Nondomiciled commercial license.

1. The department may issue a nondomiciled 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 nondomiciled 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 nondomiciled commercial license that has been expired for a duration not longer than one year.

2. The fee for a nondomiciled commercial driver's license is listed in section 39-06.2-19.

39-06.2-10. Disqualification and cancellation.

1. An individual is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:
 - a. Driving a commercial motor vehicle under the influence of alcohol or drugs;
 - b. Leaving the scene of an accident involving a commercial motor vehicle driven by the individual in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-09;
 - c. Using a commercial motor vehicle in the commission of any felony as defined in this chapter;
 - d. Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle; or
 - e. Driving or being in actual physical control of a commercial motor vehicle while the alcohol concentration of the individual's blood, breath, or urine is four one-hundredths of one percent or more by weight.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the individual is disqualified for a period of not less than three years.

2. An individual is disqualified for a period of not less than sixty days for providing false information to the department related to the issuance of a commercial permit or commercial license or for a period of not less than one year if convicted of fraud related to the issuance of a commercial driver's permit or license.
3. An individual is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, 8, 10, or 12, 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.
4. The director may adopt rules under section 39-06.2-14, establishing guidelines, including conditions, under which a disqualification for life under subsections 3, 9, 11, and 13 may be reduced to a period of not less than ten years.
5. An individual is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
6. An individual is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.
7. Disqualification for railroad-highway grade crossing violation:
 - a. A driver who is convicted of driving a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to any one of the following six offenses at a railroad-highway grade crossing is disqualified for the period of time specified in subdivision b:
 - (1) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
 - (2) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
 - (3) For drivers who are always required to stop, failing to stop before driving onto the crossing;
 - (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
 - (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; and

- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.
- b. Duration of disqualification for a railroad-highway grade crossing violation:
 - (1) A driver is disqualified for not less than sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.
 - (2) A driver is disqualified for not less than one hundred twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.
 - (3) A driver is disqualified for not less than one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.
8. For a first conviction of driving while under the influence of alcohol or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for one year.
9. For a second or subsequent conviction of driving while under the influence or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for life.
10. For a first conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for one year.
11. For a second or subsequent conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for life.
12. For a first conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for one year.
13. For a second or subsequent conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for life.
14. For a conviction for using a vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance while operating a commercial motor vehicle or a noncommercial motor vehicle, a holder of a commercial driver's license or learner's permit must be disqualified from operating a commercial motor vehicle for life.
15. An individual who is convicted of using a commercial motor vehicle in the commission of a felony involving an act or practice of severe forms of trafficking of persons as defined in the federal Trafficking Victims Protection Reauthorization Act of 2017 [Pub. L. 115-427, 132 Stat. 5503; 22 U.S.C. 7102] is disqualified permanently from driving a commercial motor vehicle, without the possibility of reinstatement.
16. For a second conviction of any combination of two serious traffic violations, in a separate incident within a three-year period while operating a noncommercial vehicle, a learner's permit or commercial driver's license holder must be disqualified from operating a commercial motor vehicle, if the conviction results in the revocation, cancellation, or suspension of the learner's permit or commercial driver's license holder's license or noncommercial driving privileges, for a period of sixty days.
17. For a third or subsequent conviction of any combination of serious traffic violations, in a separate incident within a three-year period while operating a noncommercial motor vehicle, a person required to have a learner's permit or commercial driver's license and a learner's permit or commercial driver's license holder must be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
18. Before suspending, revoking, or disqualifying a driver under this section, the director must provide the driver with notice of opportunity for hearing, in accordance with

section 39-06-33, and the hearing requested must be held in accordance with section 39-06-33.

19. After suspending, revoking, disqualifying, or canceling a commercial driver's license, the director shall update the director's records to reflect that action within ten days. After suspending, revoking, or canceling a nondomiciled commercial driver's privileges, the director shall notify the licensing authority of the state that issued the commercial driver's license or commercial learner's permit within ten days.
20. A foreign commercial driver is subject to disqualification under this section.

39-06.2-10.1. Prohibited alcohol offenses for commercial motor vehicle drivers.

Any person who drives or is in actual physical control of a commercial motor vehicle within this state with an alcohol concentration of at least four one-hundredths of one percent by weight must, in addition to any other sanctions which may be imposed under this code, be disqualified from driving a commercial motor vehicle under section 39-06.2-10.

39-06.2-10.2. Implied consent requirements for commercial motor vehicle drivers.

1. A person who drives or is in actual physical control of a commercial motor vehicle within this state is deemed to have given consent to take a test or tests of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs. The result of any test administered within two hours of driving or being in actual physical control of a commercial motor vehicle is that person's alcohol concentration. The test must be conducted pursuant to the provisions of section 39-20-07.
2. A test or tests may be administered at the direction of a law enforcement officer who, after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol or drugs in the driver's system.
3. A person requested to submit to a test as provided in subsection 1 or 5 must be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in that person being immediately placed out of service for a period of twenty-four hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year under section 39-06.2-10.
4. If the person refuses testing, or submits to a test that discloses an alcohol concentration of at least four one-hundredths of one percent by weight, the law enforcement officer must submit a certified report to the director certifying that the test was requested pursuant to subsection 1 or 5 and that the person refused to submit to testing, or submitted to a test under subsection 1 which disclosed an alcohol concentration of at least four one-hundredths of one percent by weight.
5. A person who drives or is in actual physical control of a commercial motor vehicle within this state is deemed to have given consent to an onsite alcohol screening test under section 39-20-14.
6. Upon receipt of the certified report of a law enforcement officer submitted under subsection 4, the director must disqualify the driver from driving a commercial motor vehicle under section 39-06.2-10.

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 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 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.

39-06.2-10.4. Action following test result or refusal of testing by nonresident driver.

If a driver licensed in another state refuses, in this state, a test provided under section 39-06.2-10.2 or submits to a test under section 39-06.2-10.2, and the test results show an alcohol concentration of at least four one-hundredths of one percent by weight, the following procedures apply:

1. When a breath sample test result, derived under section 39-20-07, reveals the driver to have alcohol concentration of at least four one-hundredths of one percent by weight, the halting officer, without taking possession of the person's out-of-state driver's license, shall inform the driver of the test results and issue an out-of-service order according to section 39-06.2-10.9 and a temporary driver's permit according to section 39-06.2-10.8.
2. When a urine or blood sample test result, derived under section 39-20-07, reveals an alcohol concentration of at least four one-hundredths of one percent by weight, the halting officer shall mail the person a temporary driver's permit issued according to section 39-06.2-10.8 and a notice as provided under section 39-06.1-07.
3. The law enforcement officer, within five days of issuing the temporary driver's permit, shall forward to the director a certified written report in the form required by the director and 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. If the person was issued a temporary driver's permit because of the person's refusal to submit to a test under sections 39-06.2-10.2 and 39-20-14, the report must include information as provided in section 39-06.2-10.3. 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.

39-06.2-10.5. Revocation of privilege to drive commercial motor vehicle upon refusal to submit to testing.

If a person refuses to submit to testing under section 39-06.2-10.2, the law enforcement officer shall immediately take possession of the person's driver's license and issue to that person a temporary driver's permit. The director, upon the receipt of that person's driver's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary driver's permit, showing 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 or, had 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 accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully detained, and that the person had refused to submit to the screening test under section 39-06.2-10.2, shall revoke that person's commercial driver's license or permit to drive and any nondomiciled commercial driver's privilege for the appropriate period under section 39-06.2-10, or if the person is a resident without a commercial driver's license or permit, the director shall deny to the person the issuance of a commercial driver's license or permit for the appropriate period under section 39-06.2-10 after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's driver's license the director shall give credit for time in which the person was without a driver's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary driver's permit.

39-06.2-10.6. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.
2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. 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 commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned 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 39-06.2-10.2, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-06.2-10.2 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 commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic

violation or was involved in a traffic accident as a driver, whether 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 and, whether the person refused to submit to the onsite screening test. Whether the person was warned that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.
5. 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 does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-06.2-10.2 or that the person had an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary driver's permit issued under this chapter. 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 director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.
6. 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 hearing officer'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. On the date for which the hearing is scheduled, the hearing officer shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-06.2-10.7.
7. A hearing under this section may be conducted in whole or in part by telephone, television, virtual online interface, or other electronic means with the consent of the licensee. A hearing officer may provide a notice, decision, or order under this section by mail or other means as authorized by the director.

39-06.2-10.7. Judicial review.

Any person whose commercial driver's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the hearing officer's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director 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 is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

39-06.2-10.8. Temporary driver's permit.

A temporary driver's permit extends driving privileges for twenty-five days, unless earlier terminated by the decision of a hearing officer under section 39-06.2-10.6. The law enforcement officer must sign and note the date of issuance on the temporary driver's permit. The temporary driver's permit serves as the director's official notification to the driver of the director's intent to revoke, suspend, or deny driving privileges in this state. No temporary driver's permit may be issued for the period covered by an out-of-service order.

39-06.2-10.9. Out-of-service order - Rules.

The director shall adopt rules for the issuance and enforcement of out-of-service orders. The rules must be in accordance with the standards and requirements of the federal Commercial Motor Vehicle Safety Act of 1986 [Pub. L. 99-570; 100 Stat. 3207-179; 49 App. U.S.C. 2708] and 49 CFR parts 383 and 392.

39-06.2-11. License reissuance - Class D license.

The director may issue a class D driver's license to a driver suspended, revoked, or disqualified under this chapter when:

1. The suspension, revocation, or disqualification arises from a violation under this chapter which would not require similar sanctions under chapter 39-06, 39-06.1, or 39-20.
2. The period of suspension, revocation, or disqualification imposed for a violation under this chapter is greater than that which could have been imposed under chapter 39-06, 39-06.1, or 39-20 for the same violation, and the period of suspension or revocation provided for under chapter 39-06, 39-06.1, or 39-20 has been satisfied under the existing suspension or revocation.

39-06.2-12. Notification of traffic convictions.

Within ten days after receiving a report of the conviction of any nondomiciled holder of a commercial driver's license for any violation of state or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the director shall notify the driver's licensing authority in the licensing state of the conviction.

39-06.2-13. Driving record information to be furnished.

Repealed by S.L. 1991, ch. 421, § 1.

39-06.2-13.1. Driving record information to be provided.

Notwithstanding any other provision of law and upon payment of a fee listed in section 39-06.2-19, the director shall provide full information regarding the driving record of an individual who has been issued a commercial driver's license to an employer or to a prospective employer if the individual has given written consent to the prospective employer for this information.

39-06.2-14. Rulemaking authority.

The director may, pursuant to chapter 28-32, adopt any rules necessary to carry out the provisions of this chapter.

39-06.2-15. Authority to enter agreements.

The director may enter into or make agreements, arrangements, or declarations to carry out the provisions of this chapter.

39-06.2-16. Reciprocity.

1. Notwithstanding any other provision of law, an individual may drive a commercial motor vehicle in this state if the individual has a valid commercial driver's license or commercial learner's permit issued by any state, province or territory of Canada, or licencia federal de conductor issued by Mexico in accordance with the minimum federal standards for the issuance of a commercial motor vehicle driver's license, if the individual's license or permit is not suspended, revoked, or canceled, and if the individual is not disqualified from driving a commercial motor vehicle.
2. The director must give all out-of-state convictions full faith and credit if the driver is licensed by this state at the time of the conviction or becomes licensed by this state at a later time and treat them for sanctioning purposes under this chapter as if they occurred in this state. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

39-06.2-17. Hours of service exemption - Transportation of agricultural commodities.

Repealed by S.L. 2021, ch. 280, § 7.

39-06.2-18. Imminent hazard disqualification - Records.

A disqualification imposed in accordance with the provisions of 49 CFR part 383.52 relating to notification from the federal motor carrier safety administration that the driver is disqualified from driving a commercial motor vehicle and is determined to constitute an imminent hazard becomes a part of the driver's record maintained by the director.

39-06.2-19. Fees - Deposit in highway fund.

1. All money received under this chapter must be paid monthly to the highway fund in the state treasury.
2. The fee for:
 - a. A commercial driver's license test is five dollars.
 - b. An application for a commercial driver's license or permit is fifteen dollars.
 - c. Each endorsement is three dollars.
 - d. A nonresident commercial driver's license is twenty dollars.
 - e. The driving record for an employer or prospective employer is three dollars.

CHAPTER 39-07 GENERAL REGULATIONS GOVERNING TRAFFIC

39-07-01. Bicycle or ridden animal to be deemed vehicle.

1. Except as provided in subsection 2, for the purposes of chapters 39-08 through 39-13, a bicycle or a ridden animal must be deemed a vehicle.
2. For purposes of section 39-08-01, a bicycle or ridden animal may not be deemed a vehicle.

39-07-02. Owner of property used for vehicular travel may prohibit or require additional conditions to use.

The provisions of chapters 39-08 through 39-13, and chapter 39-21, may not be construed to prevent the owner of real property used by the public for purposes of vehicular travel, by the permission of such owner and not as a matter of right, from prohibiting such use nor from requiring different or additional conditions other than those specified in such chapters or otherwise regulating such use as may seem best to such owner.

39-07-03. Through highways designated by director and local authorities - Stop and yield intersections.

The director with reference to state highways, and local authorities, with reference to highways under their jurisdiction, may, by proclamation, designate as through highways, any highway, street, or part thereof, and erect stop signs or yield signs at specified entrances thereto, or may designate any intersection as a stop intersection or as a yield intersection and erect stop signs or yield signs at one or more entrances to such intersection.

39-07-03.1. Uniform traffic lights prescribed by commissioner - Prohibition.

Repealed by S.L. 1953, ch. 177, § 120.

39-07-04. Powers of local authorities.

Repealed by S.L. 1975, ch. 349, § 41.

39-07-05. Persons working on highways - Exceptions.

Unless specifically made applicable, the provisions of chapters 39-08, 39-09, 39-10, and 39-12, except sections 39-08-01, 39-08-03, and 39-08-19, do not apply to persons, motor vehicles, and other equipment while actually engaged in work upon a highway, but do apply to such persons and vehicles when traveling to or from such work.

39-07-06. General penalty for violation of title.

Any person violating any of the provisions of this title for which another criminal penalty is not provided specifically is guilty of an infraction. As used in this section, the phrase "another criminal penalty" includes provision for payment of a fixed fee for violating another section in this title but does not include any other administrative sanction which may be imposed.

39-07-07. Halting an individual for violating traffic regulations - Duty of officer halting.

1. Whenever an individual 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 the individual, except as otherwise provided in section 39-07-09 and section 39-20-03.1 or 39-20-03.2, may:
 - a. Take the name and address of the individual;
 - b. Take the license number of the individual's motor vehicle; and
 - c. If a city ordinance or state criminal traffic violation, issue a summons or otherwise notify the individual in writing to appear at a time and place to be specified in the summons or notice or, if a state noncriminal traffic violation, notify the individual of the right to request a hearing when posting bond by mail.

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

39-07-07.1. Provision of envelopes for traffic and parking violations on state charitable or penal institution property or state capitol grounds.

Repealed by S.L. 2021, ch. 291, § 4.

39-07-08. Hearing - Time - Promise of defendant to appear - Failure to appear - Penalty.

The time to be specified in the summons or notice provided for in section 39-07-07 must be within thirty-five days after the issuance of the summons or notice or earlier if so ordered by the magistrate of the city or county having jurisdiction over the offense or if the person halted demands an earlier hearing. If the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. The hearing must be before a magistrate of the city or county in which the offense was committed. If an immediate hearing is demanded, a district judge serving the county, with the consent of the respective prosecuting attorneys, may order the hearing to be held in any of the counties in which the district judge has jurisdiction, rather than in the county where the offense was allegedly committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

39-07-09. Offenses under which person halted may not be entitled to release upon promise to appear.

Section 39-07-07 does not apply to a person if:

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with an offense listed in section 39-06.1-05 but not listed in subsection 2; or
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release the person upon a promise to appear and if the person has been halted and charged with any of the following offenses:
 - a. Reckless driving.
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
 - c. Driving while license or driving privilege is suspended or revoked for violation of section 39-06-42, or an equivalent ordinance.
 - d. Driving without liability insurance in violation of section 39-08-20.
 - e. Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials.
 - f. Operating an unsafe vehicle in violation of subsection 2 of section 39-21-46.

The halting officer forthwith shall take any person not released upon a promise to appear before the nearest or most accessible magistrate.

39-07-10. Officer violating provisions for arrest and notice of hearing to defendant may be removed from office.

Any officer violating section 39-07-07, 39-07-08, 39-07-09, 39-20-03.1, or 39-20-03.2 is guilty of misconduct in office and is subject to removal from office.

39-07-11. Magistrate to keep record of convictions of traffic violations - Records of conviction to be forwarded to licensing authority.

Every magistrate, as defined in section 29-01-14, shall keep a full record of every case brought before the magistrate in which a person is charged with a violation of chapter 12.1-16 resulting from the operation of a motor vehicle, or of any provision of chapters 39-05 through 39-13, 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 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. If the reported violation caused another person's serious bodily injury, as defined in section 12.1-01-04, the magistrate shall include that information in the report. 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 on the report. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is deferred under subsection 4 of section 12.1-32-02; 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.

39-07-12. Garages to report.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway patrol trooper, bearing information to show that the accident in which the vehicle was involved has been investigated. The police officer investigating any reportable accident shall attach a sticker to the window of any damaged vehicle showing that the accident in which such vehicle was involved has been investigated. If the vehicle does bear such a sticker, the garage or repair shop need not make the report this section requires and may begin repairs immediately. After repairs have been made and before the vehicle is released, the sticker provided herein must be removed.

39-07-13. Wrecker and towing services to report.

The person in charge or the operator of any commercial towing or wrecker service which causes any motor vehicle to be transported to a private residence or business other than a garage or repair shop which shows evidence of having been involved in a reportable accident as provided in section 39-08-09 or of being struck by any bullet shall report or cause a report to be made to a police officer within twenty-four hours after such motor vehicle is transported. The report must give the registration number, and the name and address of the owner, operator, or person in control of such vehicle with a description of the location and type of damage to the vehicle, or any missing parts, along with the location such vehicle was transported to, if the vehicle does not have a sticker on a window thereof issued by a police officer, sheriff, or highway patrol trooper, bearing information to show that the accident in which the vehicle was involved has been investigated. If the vehicle does bear such a sticker, the towing or wrecker service need not make the report this section requires.

CHAPTER 39-08
REGULATIONS GOVERNING OPERATORS

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

1. a. A person 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:
 - (1) That person has an alcohol concentration of at least eight 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 vehicle.
 - (2) That person is under the influence of intoxicating liquor.
 - (3) That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - (4) That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.
 - (5) That individual refuses to submit to any of the following:
 - (a) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (b) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.
 - (6) Paragraph 5 does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.
 - b. The fact any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section. It is an affirmative defense that a drug was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated paragraph 1, 2, 3, or 4 of subdivision a and paragraph 5 of subdivision a and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.
 - c. The driver of a multipassenger bicycle is subject to a violation of this section but a multipassenger bicycle passenger may not be charged with a violation of this section.
2. An individual who operates a 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 who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2 or 39-20-01, is guilty of an offense under this section.
 3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice

- of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
4. Upon conviction of a second or subsequent offense within seven years under this section or equivalent ordinance, the court may order the motor vehicle number plates of all of the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, or if the offender is participating in the twenty-four seven sobriety program.
 5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. (1) For a first offense, the sentence must include both a fine of at least five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
(2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars and at least two days' imprisonment.
 - b. For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
 - c. For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least three hundred sixty days' supervised probation; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
 - d. For a fourth or subsequent offense within fifteen years, the sentence must include at least one year and one day's imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
 - e. The imposition of sentence under this section may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.
 - f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the

defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court may require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the treatment court program as a condition of probation in accordance with rules adopted by the supreme court. The district court may terminate probation under this section when the defendant completes the drug treatment program. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

- g. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this section.
 - h. If the penalty mandated by this section includes imprisonment or placement 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 treatment at an appropriate licensed addiction treatment program under subsection 1 of section 12.1-32-02 and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.
 - i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any court-ordered period of probation, the court may order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.
 - j. If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under section 39-06.1-11, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.
6. As used in subdivisions b and c of subsection 5, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.

7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees. For purposes of this section, the twenty-four seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment.

39-08-01.1. 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.

39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol or any other drugs or substances - Penalty.

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or an equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class B felony. If an individual violates this subsection, the court shall impose at least one year and one day's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or an equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section. Whether an individual caused death or substantial or serious bodily injury must be determined in accordance with section 12.1-02-05.

39-08-01.3. Alcohol-related traffic offenses - Seizure, forfeiture, and sale of motor vehicles.

A motor vehicle owned and operated by an individual upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the individual is in violation of section 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent ordinance at least one other time within the seven years preceding the violation.

39-08-01.4. Driving while under the influence of alcohol or any other drugs or substances while being accompanied by a minor - Penalty.

1. It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle. If an individual has a previous conviction for a violation of section 39-08-01.4, a violation of this section is a class C felony.
2. The minimum sentence for an individual convicted of violating this section must include:
 - a. For a first offense, a fine of seven hundred fifty dollars, at least two days' imprisonment, an order for a substance abuse evaluation by an appropriate licensed addiction treatment program, at least three hundred sixty days of unsupervised probation, and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
 - b. For a second or subsequent offense within fifteen years, at least one year and one day's imprisonment, a fine of two thousand dollars, an order for a substance abuse evaluation by an appropriate licensed addiction treatment program, at least two years' supervised probation, and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

39-08-01.5. Partial suspension of sentence for treatment court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01:
 - a. All but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a treatment court program, mental health court program, or veterans treatment docket approved by the supreme court.
 - b. If the treatment court determines a defendant participating in a treatment court program has substantially complied with the requirements of the treatment court program, the treatment court may suspend the defendant's electronic alcohol monitoring and sobriety breath testing requirement under the twenty-four seven sobriety program for the six months preceding completion of the treatment court program.
2. Upon successful completion of a treatment court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to treatment court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to treatment court, mental health court, or veterans treatment docket and successfully completes a treatment court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2. The court also shall issue an order to the director to remove the conviction and suspension based on the conviction from the driving record of the defendant, unless doing so is prohibited by title 49, Code of Federal Regulations, section 383.51, or other federal or state law.

39-08-01.6. Criminal record - Seal - Exception.

1. The court shall seal an individual's criminal record in accordance with sections 12.1-32-07.1 and 12.1-32-07.2 which relates to a conviction under section 39-08-01, if the individual:
 - a. Has pled guilty or nolo contendere to, or has been found guilty of a violation under section 39-08-01 or an equivalent ordinance; and
 - b. Has not pled guilty or nolo contendere to, or has not been found guilty of a subsequent violation of section 39-08-01 or an equivalent ordinance, or any other

criminal offense, within seven years of the first violation under section 39-08-01 or an equivalent ordinance.

2. This section does not apply to an individual licensed as a commercial driver under section 39-06.2-10 or to a prosecutor's access to a prior offense for purposes of enhancement under subsection 3 of section 39-08-01 or an equivalent ordinance.

39-08-02. Person conveying passengers not to engage drivers addicted to intoxicants - Penalty.

No person owning or having the direction or control of any vehicle for the conveyance of passengers in this state may employ or continue in the person's employment as a driver of such vehicle any person who is known to the actor to be addicted to a controlled substance or given to the excessive use of controlled substances or intoxicating liquors. Any person violating the provisions of this section is guilty of an infraction and is liable for all damages sustained by reason of such violation.

39-08-03. Reckless driving - Aggravated reckless driving - Penalty.

Any person is guilty of reckless driving if the person drives a vehicle:

1. Recklessly in disregard of the rights or safety of others; or
2. Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another.

Except as otherwise herein provided, any person violating the provisions of this section is guilty of a class B misdemeanor. Any person who, by reason of reckless driving as herein defined, causes and inflicts injury upon the person of another, is guilty of aggravated reckless driving, and is guilty of a class A misdemeanor.

39-08-03.1. Exhibition driving and drag racing - Definitions - Penalty.

1. No person may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.
2. As used in this section:
 - a. "Drag race" means the operation of two or more vehicles from a point side by side by accelerating rapidly in a competitive attempt to cause one vehicle to outdistance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
 - b. "Exhibition driving" means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.
 - c. "Race" means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the racing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long-distance driving route.
3. Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

39-08-04. Accidents involving death or personal injuries - Penalty.

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop or return with the vehicle as close as possible to the scene of the accident and in every event shall remain at the scene of the accident until that driver has fulfilled the requirements of section 39-08-06. Every stop required by this section must be made without obstructing traffic more than is necessary.
2. Any person failing to comply with the requirements of this section under circumstances involving personal injury is guilty of a class A misdemeanor. Any person negligently failing to comply with the requirements of this section under circumstances involving serious personal injury is guilty of a class C felony. Any person negligently failing to comply with the requirements of this section under circumstances involving death is guilty of a class B felony.
3. The director shall revoke the license or permit to drive or nonresident operating privilege of a person convicted under this section.

39-08-04.1. Emergency care or services rendered - Liability.

Any person who is an unpaid volunteer, who in good faith, renders emergency care or services at or near the scene of an accident, disaster, or other emergency, or en route to a treatment facility, is not liable to the recipient of the emergency care or services for any damages resulting from the rendering of that care or services.

This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services. Further, liability is not relieved if the emergency care was rendered for remuneration or with the expectation of remuneration.

39-08-05. Crashes involving damage to vehicle - Penalty.

The driver of any vehicle involved in a crash resulting only in property damage to the driver's vehicle or any other vehicle shall immediately stop the vehicle at the scene of the crash or as close to the scene of the crash as possible but shall return to and remain at the scene of the crash until the driver has fulfilled the requirements of section 39-08-06 and 39-08-09. Every such stop must be made without obstructing traffic more than is necessary. Any person failing to stop or comply with the requirements in this section is guilty of a class B misdemeanor.

39-08-06. Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury to or the death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name and address, and the name of the motor vehicle insurance policy carrier of the driver and owner, as well as the registration number, of the vehicle. Upon request, and if available, the driver of any vehicle involved in the accident shall exhibit the driver's operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any other vehicle involved in the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the carrying is requested by the injured person.

39-08-07. Duty upon striking unattended vehicle - Penalty.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle of the name and address, as well as the name of the motor vehicle insurance policy carrier, of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address, as well as the name of the motor vehicle insurance policy carrier, of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances of the collision. Any person violating this section is guilty of a class A misdemeanor.

39-08-08. Duty upon striking highway fixtures or other property.

The driver of any vehicle involved in a crash resulting only in damage to highway fixtures or other property shall take reasonable steps to locate and notify the owner or person in charge of the property of the damage. The driver shall provide the driver's name, address, and registration number of the vehicle the driver is driving and shall upon request and if available exhibit the driver's, operator's, or chauffeur's license. The driver shall make report of the crash when and as required in section 39-08-09. The driver shall provide the name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, to the owner or person in charge of the damaged property or to the law enforcement officer investigating the crash.

39-08-09. Immediate notice of accident - Penalty.

1. The driver of a vehicle involved in an accident resulting in injury to or death of any individual, or property damage to an apparent extent of at least four thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. A driver who violates this section must be assessed a fine of fifty dollars. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five days of the accident the driver shall supply that information to the driver's license division in the form the division requires.
2. The director may suspend the license or permit to drive and any nonresident operating privileges of any person failing to comply with the duties as provided in sections 39-08-06 through 39-08-09 until those duties have been fulfilled, and the director may extend the suspension not to exceed thirty days.
3. The driver of a vehicle involved in an accident with an undomesticated animal resulting in property damage only to the driver's vehicle is exempt from the notice requirements of this section, regardless of the amount of damage to the driver's vehicle.

39-08-10. Officer to report.

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle crash required to be reported as provided in section 39-08-09 either at the time and at the scene of the crash or thereafter by interviewing the participants, or witnesses, shall make and promptly forward to the director a report of the crash in the format prescribed by the director. The report must contain all the information required therein unless the information is not available, and must be transmitted electronically to the department of transportation using the software prescribed by the director.

39-08-10.1. Investigating agency responsible to notify immediate family.

1. In the event of serious injury to or death of any person, under circumstances leading to the notification of a law enforcement agency, the investigating law enforcement agency shall, upon positive identification of the person or persons involved, be responsible for immediately notifying the immediate family of the person or persons seriously injured or deceased, or making arrangements to have the immediate family notified by clergy or other suitable person.
2. The investigating law enforcement agency may not release to the public the identity of the person or persons seriously injured or deceased until the first of the following events occurs:
 - a. A member of the immediate family has been notified and given an opportunity to notify other immediate family members; or
 - b. Twenty-four hours have elapsed from the time positive identification was made.

3. For purposes of this section, "immediate family" means spouse, parent, child, sibling, or any person who regularly resides in the household of the seriously injured or deceased person.

39-08-11. When driver unable to report.

1. A crash notice is not required from any person who is physically incapable of making the report during the period of such incapacity.
2. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of a crash and there was another occupant in the vehicle at the time of the crash capable of doing so, the occupant shall make or cause to be given the notice not given by the driver.
3. Whenever the driver is physically incapable of giving notice of a crash and the driver is not the owner of the vehicle, then the owner of the vehicle involved shall within five days after learning of the crash give the notice and insurance information not given by the driver.

39-08-12. False reports.

Repealed by S.L. 1975, ch. 106, § 673.

39-08-13. Crash report forms.

1. The director shall prepare and supply to law enforcement agencies, garages, and other suitable agencies or individuals forms for crash reports required by law, appropriate with respect to the purposes to be served. The reports to be made by investigating officers shall call for sufficiently detailed information to disclose the cause of a traffic crash, conditions then existing, persons and vehicles involved, and whether the requirements for the deposit of security under section 39-16-05 are applicable.
2. Every crash report required to be made to the director must be made in the format prescribed by the director and must contain all the information required therein unless not available.
3. Every law enforcement officer who investigates a vehicle crash for which a report must be made as required in this chapter shall forward a report of such crash to the department within ten days after the crash.
4. Except as provided in subsection 5, reports required to be forwarded by law enforcement officers and the information contained in the reports is not privileged or confidential. Crash reports held by a public entity other than the department of transportation and a law enforcement agency that contracts with service providers are exempt records. In addition, the following information contained in the report is an exempt record as defined in section 44-04-17.1 unless the requester is a party to the crash, a party's legal representative, the insurer of any party to the crash, the agent of that insurer, or the legal representative or insurer of an individual involved in defending or investigating a prior or subsequent claim or crash involving a party to the crash:
 - a. Driver identification number of a party in the report;
 - b. Telephone number of a party in the report;
 - c. Insurance company name and policy number of a party in the report; and
 - d. Day and month of birth of a party in the report.
5. Unless the requester is a party to the accident, a party's legal representative, the insurer of any party to the accident, the agent of that insurer, or the legal representative or insurer of an individual involved in defending or investigating a prior or subsequent claim or accident involving a party to the accident, the following information contained in the report is exempt:
 - a. The name of a minor party in the report;
 - b. Driver identification number of a minor party in the report; and
 - c. Telephone number uniquely owned by a minor party in the report.
6. Upon request from a party to the crash, a party's legal representative, the insurer of any party to the crash, the agent of the insurer, or the legal representative or insurer of

an individual involved in defending or investigating a prior or subsequent claim or crash involving a party to the crash, and upon payment of a fee of up to seven dollars, the director shall release a completed copy of the crash report to the entity requesting the information. The request must be made on the form prescribed by the director.

7. Upon request of any person and upon payment of a fee of up to seven dollars, the director may furnish to a requester a copy of an investigating officer's crash report which does not contain any exempt information that may not be disclosed, if the report shows that the crash is one for which a driver is required to file a report under section 39-08-09.
8. Copies of crash reports are not admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle crash.
9. The director, without a request under subsection 4, 5, or 6 may send a copy of a crash report to the registered owner of each vehicle involved as indicated by the report.

39-08-14. Public inspection of reports relating to crashes.

1. All crash reports made by persons involved in crashes or by garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use for the records for crash prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the department may disclose the identity of a person involved in a crash when such identity is not otherwise known or when such person denies the person's presence at such crash.
2. All crash reports and supplemental information filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility are confidential and not open to general public inspection, nor may copying of lists of such reports be permitted.
3. No written reports or written information mentioned in this section may be used as evidence in any trial, civil or criminal, arising out of a crash, except that the director shall furnish upon demand of any party to such trial, or upon demand of any court, a certificate showing that a specified crash report has or has not been made to the director in compliance with law.
4. Notwithstanding any other provisions of this chapter, any information compiled or otherwise made available to the department pursuant to this chapter must be transmitted to each and every duly authorized official or agency of the United States requesting such.

39-08-15. Director of the department of transportation to tabulate and analyze crash reports.

The director shall tabulate and may analyze all crash reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic crashes.

39-08-16. Any incorporated city may require crash reports.

Any incorporated city or other municipality may by ordinance require that the driver of a vehicle involved in a crash shall file with a designated city department a report of such crash or a copy of any report herein required to be filed with the director. All such reports must be for the confidential use of the city department and subject to the provisions of section 39-08-14.

39-08-17. Magistrates to report convictions to highway commissioner.

Repealed by S.L. 1981, ch. 386, § 3.

39-08-18. Open container law - Penalty.

1. A person may not drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when the vehicle is upon a public highway or in an

area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating this subsection must be assessed a fee of fifty dollars; however, the licensing authority may not record the violation against the person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.

2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.
3. The driver of a multipassenger bicycle may not:
 - a. Drink or consume alcoholic beverages, as defined in section 5-01-01, while operating the multipassenger bicycle on any public street, road, path, or highway or while in an area used principally for parking; or
 - b. Have in the driver's possession on the driver's person while operating the multipassenger bicycle on a public street, road, path, or highway or while in an area used principally for parking, any bottle or receptacle containing any alcoholic beverage which has been opened, or the seal broken, or the contents of which have been partially removed.

39-08-19. Penalty for harassment of domestic animals.

Any person operating a motorcycle, snowmobile, or other motor vehicle who willfully harasses or frightens any domestic animal, is, upon conviction, guilty of a class B misdemeanor. If injury or death results to the animal due to such action, such person is liable for the value of the animal and exemplary damages as provided in section 36-21-13.

39-08-20. Driving without liability insurance prohibited - Penalty.

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1.
2. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence, including written or electronic proof of insurance, of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this

section. If that person produces satisfactory evidence, including written or electronic proof of insurance, of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the office of the prosecutor where the matter is pending, that person may not be found in violation of subsection 1.

3. Notwithstanding section 26.1-30-18, a person may be in violation of subsection 1 for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle.
4. For a second or subsequent violation of subsection 1 or equivalent ordinance, the court shall order the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation to be impounded until that person provides proof of insurance and a twenty dollar fee to the court. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court. The court shall deliver the number plates to the office of the police officer that made the arrest and notify the department of the order. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.
5. For a violation of subsection 1 or equivalent ordinance, the person shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of one year and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
6. A person who has violated subsection 1 or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.
7. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

39-08-20.1. Uninsured motorist - Insurance deductible.

If a person causes damage to another or another's property with a motor vehicle while in violation of section 39-08-20, at minimum the court shall order that person to pay to the other person the amount of the deductible on that person's insurance.

39-08-20.2. Special mobile equipment and liability insurance - Report - Penalty.

Special mobile equipment is not subject to the requirement of a motor vehicle liability policy under section 39-08-20. However, special mobile equipment must be covered under a liability policy. Failure to provide satisfactory evidence of liability coverage required under this section within ten days after a police officer has requested evidence of liability coverage is an infraction punishable solely by a fine of one hundred fifty dollars for a first violation and is an infraction punishable solely by a fine of three hundred dollars for a second or subsequent violation in three years. A municipal court or district court shall make a report of a violation of this section to the secretary of state for any special mobile equipment owned or operated by a contractor licensed under chapter 43-07.

39-08-21. Medical qualifications exemption for intrastate drivers.

Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection 3 of section 39-21-46, the provisions of 49 CFR 391.41(b)(1)-(11) do not apply to a person who is qualified through a state medical waiver program to operate a commercial motor vehicle within the boundaries of this state or a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on March 26, 1991, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state; and
3. Has a medical or physical condition that:
 - a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, chapter III, subchapter B;
 - b. Existed on March 26, 1991, or at the time of the first required physical examination after that date; and
 - c. An examining physician has determined has not substantially worsened since March 26, 1991, or the time of the first required physical examination after that date.

39-08-22. Nonpayment for motor fuels - Penalty.

1. For a theft offense in violation of chapter 12.1-23 which involves a person who leaves the premises of an establishment at which motor fuel is offered for retail sale after motor fuel was dispensed into the fuel tank of a motor vehicle that that person drove away without having made due payment or authorized charge for the motor fuel dispensed, the court may:
 - a. Upon a person's second conviction, order the suspension of the person's driving privileges for up to three months; and
 - b. Upon a person's third or subsequent conviction, order the suspension of the person's driving privileges for up to six months.
2. As used in this section, "conviction" means a final conviction without regard to whether sentence was suspended or deferred or probation was granted after the conviction. Forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is equivalent to conviction.

39-08-23. Use of a wireless communications device prohibited.

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
2. Under this section:
 - a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes electronic mail, a text message, an instant message, a command or request to access a worldwide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:
 - (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
 - (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
 - (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
 - (4) Voice or other data transmitted as a result of making a telephone or cellular phone call;

- (5) Data transmitted automatically by a wireless communication device without direct initiation by an individual; or
 - (6) A wireless communications device used in a voice-activated, voice-operated, or any other hands-free manner.
- b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.
- 3. This section does not apply if a wireless communications device is used for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties.

39-08-24. Use of an electronic communication device by minor prohibited.

An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

39-08-25. Failure to maintain control.

- 1. An operator of a motor vehicle may not fail to maintain control of that motor vehicle. An individual is in violation of this section if that individual:
 - a. Commits an offense under this title and, at the time of the offense, the individual was engaged in the operation of a motor vehicle while distracted; or
 - b. Is determined to have been the operator of a motor vehicle that was involved in a reportable accident as defined in section 39-08-09 which resulted in property damage and, at the time the reportable accident occurred, the individual was engaged in the operation of a motor vehicle while distracted.
- 2. An individual may be issued a citation or summons for any other traffic offense that was committed by the individual in relation to the individual's commission of the traffic offense of failure to maintain control of a motor vehicle.
- 3. As used in this section, "operation of a motor vehicle while distracted" means the operation of a motor vehicle by an individual who, while operating the vehicle, is engaged in an activity that:
 - a. Is not necessary to the operation of the vehicle; and
 - b. Actually impairs, or would reasonably be expected to impair, the ability of the individual to safely operate the vehicle.

CHAPTER 39-09 SPEED RESTRICTIONS

39-09-01. Basic rule - Penalty for violation.

1. An individual may not drive a vehicle at a speed greater than is reasonable and prudent under the conditions and shall drive with regard to existing actual and potential hazards. An individual shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians, other traffic, weather, or highway conditions. An individual who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles in violation of the requirements or restrictions of this section is guilty of careless driving and must be assessed a fee of one hundred dollars.
2. An individual is guilty of an infraction if the individual violates subsection 1 of this section and:
 - a. Causes and inflicts injury on the person of an operator of snow removal equipment engaged in snow removal operations;
 - b. Causes and inflicts injury on the person of:
 - (1) A first responder acting within their official capacity and displaying a visible flashing, revolving, or rotating blue, white, or red light, or hazard warning signal, while stationary on the side of a roadway;
 - (2) The operator or occupant of an authorized emergency vehicle acting within their official capacity and displaying a visible flashing, revolving, or rotating blue, white, or red light, or hazard warning signal, while stationary on the side of a roadway; or
 - (3) An individual assisting another individual displaying a visible hazard warning light while stationary on the side of a roadway;
 - c. Causes damage in excess of four thousand dollars to snow removal equipment engaged in snow removal; or
 - d. Causes damage in excess of four thousand dollars to an authorized emergency vehicle.
3. As used in this section, "snow removal equipment" means a vehicle that is operated by an individual employed by or on behalf of an authority in charge of the maintenance of the highway to perform winter maintenance snow and ice removal, including plowing, hauling away, salting, and sanding.

39-09-01.1. Care required in operating vehicle.

Any person driving a vehicle upon a highway shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface, and width of the highway and other conditions then existing, and shall give such warnings as are reasonably necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway in a manner to endanger the life, limb, or property of any person.

39-09-02. Speed limitations.

1. Subject to the provisions of section 39-09-01 and except in those instances when a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:
 - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.

- b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
 - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.
 - d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].
 - e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
 - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane county and township highways if there is no speed limit posted, unless otherwise permitted, restricted, or required by conditions.
 - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways if posted for that speed, unless otherwise permitted, restricted, or required by conditions.
 - h. Seventy miles [112.65 kilometers] an hour on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
 - i. Eighty miles [128.75 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply. Differing limits may be established for different times of the day within highway construction zones which are effective when posted upon appropriate fixed or variable speed limit signs.
 3. The director may designate variable speed limit adjustment zones along the state highway system. The department may install variable speed limit signs in a variable speed limit adjustment zone. In each variable speed limit adjustment zone the director, in coordination with the superintendent of the highway patrol, may use real time intelligent transportation systems to adjust the speed limit when a speed limit adjustment would provide for the safe and efficient movement of motor vehicles.
 4. Except as provided by law, a person may not drive a vehicle on a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
 5. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

39-09-03. When local authorities may or shall alter maximum speed - Limits - Signs posted.

1. Whenever local authorities in their respective jurisdictions, on the basis of an engineering and traffic investigation, determine that the maximum speed permitted under this title is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:
 - a. Decreases the limit at intersections;
 - b. Increases the limit within an urban district but not to more than fifty-five miles [88.51 kilometers] per hour; or
 - c. Decreases the limit outside an urban district.
2. Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for arterial streets and shall declare a

reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under this chapter for an urban district.

3. Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.
4. Any alteration of maximum limits on state highways or extensions thereof in a municipality by local authorities may not be effective until such alteration has been approved by the director.
5. Not more than six such alterations as hereinabove authorized may be made per mile [1.61 kilometers] along a street or highway, except in the case of reduced limits at intersections, and the difference between adjacent limits may not be more than ten miles [16.09 kilometers] per hour.

39-09-04. Alteration of maximum speed limits on state highways.

The maximum speed limits specified in section 39-09-02 may be altered on all or any part of the state highway system by an administrative order by the director after holding a public hearing. The determination must be based on engineering and traffic investigations with primary consideration given to the establishment of reasonable and safe speeds, highway conditions, enforcement, and the general welfare. Speed limits established under this section are effective only when appropriate signs giving notice are erected and the maximum speed limits may be declared effective at all times or at the times indicated on the signs. Differing limits may be established by the director for different times of the day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds. Differing limits are effective when posted on appropriate fixed or variable signs. An administrative order is not required to lower maximum speed limits temporarily due to unsafe conditions.

39-09-04.1. Special speed limitations.

1. No person may drive any vehicle equipped with solid rubber tires at a speed greater than a maximum of ten miles [16.09 kilometers] per hour.
2. No person may drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained without hazard to such bridge or structure, when such structure is signposted as provided in this section.
3. The director or other authority having jurisdiction may conduct an investigation of any public bridge, causeway, or viaduct and if the director finds that such structure cannot safely withstand the traveling of vehicles at the speed otherwise permissible under this chapter, such director or other authority shall determine and declare the maximum speed of vehicles such structure can withstand. The director or other authority shall cause or permit signs to be erected and maintained at a distance of one hundred feet [30.48 meters] from each end of such structure. Such signs must state the maximum speed permissible over such structure. The findings and determination of the director or other authority are conclusive evidence of the maximum speed which can be maintained without hazard to any such structure.

39-09-05. Driving vehicle upon bridge, causeway, or viaduct at greater than maximum speed prohibited.

Repealed by S.L. 1975, ch. 348, § 17.

39-09-06. Speed limitations inapplicable to whom - Liability of exempt driver for reckless driving.

The speed limitations provided for in this chapter do not apply to class A authorized emergency vehicles. The exemptions provided for in this section do not protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

39-09-07. Speed zones on state highways.

Whenever the director with respect to highways and the superintendent of the North Dakota state highway patrol shall jointly determine upon the basis of an engineering and traffic investigation that the speed of vehicular traffic on a state highway is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of such highway to include streets within the corporate limits of any city, when such streets have been designated as part of any state highway, said officials acting jointly may determine and declare a reasonable and safe speed limit thereat not in excess of the maximum prescribed by law, which shall be effective at all times or during hours of daylight or darkness or at such other times as may be determined when appropriate signs giving notice thereof are erected at such intersections or other place or part of the highway.

39-09-07.1. Speed zones - Reduction limitation.

1. Except under subsections 2 and 3, a street, road, or highway in the state highway system or any other township, county, or state road or highway may not be posted in a manner which reduces the maximum speed limit on the street, road, or highway by more than twenty miles [32.19 kilometers] per hour between two signs posted in a speed zone.
2. The maximum speed limit reductions between two fixed or variable signs in a variable speed limit adjustment zone may exceed twenty miles [32.19 kilometers] per hour when speed limits are lowered temporarily by the director due to unsafe conditions.
3. The maximum speed limit reduction between two signs posted in a highway construction zone may not exceed thirty miles [48.28 kilometers] per hour.

39-09-08. Regulation of speed control signs.

Repealed by S.L. 1975, ch. 349, § 41.

39-09-09. Minimum speed limits.

1. An individual may not drive a motor vehicle at a reduced speed so as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.
2. If the director and the superintendent of the highway patrol, acting jointly, or a local authority within the authority's jurisdiction, determines on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the safe, normal, and reasonable movement of traffic, the director and superintendent or the local authority may determine and declare a minimum speed limit below which an individual may not drive a vehicle except when necessary for safe operation or in compliance with law, and that limit is effective when posted upon appropriate fixed or variable signs.

CHAPTER 39-10 GENERAL RULES OF THE ROAD

39-10-01. Provisions of title refer to vehicles upon the highways - Exceptions.

1. The provisions of this title relating to the operation of vehicles apply to the operation of vehicles upon highways or other places open to the public for the operation of vehicles except when a different place is specifically referred to in a given section.
2. The provisions of this title, or equivalent ordinances, relating to reporting of accidents, careless driving, exhibition driving, drag racing, reckless or aggravated reckless driving, driving while under the influence of intoxicating liquor or controlled substances, or fleeing or attempting to elude a peace officer apply upon highways and elsewhere.

39-10-01.1. Required obedience to traffic laws.

It is unlawful and, unless otherwise declared in this chapter or in chapter 39-06.1 with respect to particular offenses, it is a class B misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

39-10-02. Obedience to police officer or firefighter.

No person may willfully refuse to comply with any lawful order or direction of any police officer or firefighter invested by law with authority to direct, control, or regulate traffic.

39-10-02.1. Person riding animal or driving animal-drawn vehicle.

In addition to any special regulations, any person riding an animal or driving any animal-drawn vehicle upon a roadway must be granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions which by their very nature can have no application.

39-10-03. Class A authorized emergency vehicles.

1. The driver of a class A authorized emergency vehicle may:
 - a. Park or stand, irrespective of the provisions of this chapter.
 - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
 - c. Exceed the speed limit so long as the driver does not endanger life or property.
 - d. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a class A authorized emergency vehicle apply only:
 - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions.
 - b. When the class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death, or damage to property, and when giving adequate warning by use of an oscillating, rotating, revolving, or flashing red or combination red and white lights that are visible under normal atmospheric conditions for at least five hundred feet [152.4 meters] and if appropriate, giving audible signal by siren or airhorn. A firetruck, ambulance, or law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display an oscillating, rotating, revolving, or flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.
 - c. In any instance when the head of a law enforcement agency deems advisable within the area of that person's jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of an oscillating, rotating, revolving, or flashing red or combination red and white lights which are visible under normal atmospheric conditions for at least five hundred feet [152.4 meters]. A firetruck, ambulance, or law enforcement vehicle that is otherwise a class A authorized emergency vehicle may display an

oscillating, rotating, revolving, or flashing blue light in addition to and under the same conditions as the other colors allowed in this subdivision.

3. A class A authorized emergency vehicle may display a steady red or red and blue lamp that is visible under normal atmospheric conditions for at least five hundred feet [152.4 meters] when involved in an incident, emergency, or any other related activity.
4. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of section 39-01-01 having stopped another vehicle along a highway, and while still involved in that incident, or any other related activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet [152.4 meters], for the purpose of maintaining traffic flow.

39-10-03.1. Class B authorized emergency vehicles.

1. The driver of a class B authorized emergency vehicle may:
 - a. Park or stand, irrespective of the provisions of this chapter.
 - b. Exceed the speed limit so long as the driver does not endanger life or property during the time of a local or national disaster.
 - c. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions granted in this section to a class B authorized emergency vehicle apply only when the authorized emergency vehicle is displaying an amber and white light visible under normal atmospheric conditions for a distance of five hundred feet [152.4 meters] in any direction, and:
 - a. When it is necessary for the authorized emergency vehicle to use these exemptions for the immediate protection of life or property;
 - b. When an authorized emergency vehicle is stopped on a highway for the purpose of performing a duty as required of the driver; or
 - c. When traveling at a speed slower than the normal flow of traffic.
3. A class B authorized emergency vehicle may display a flashing blue light when the vehicle is stopped on a highway. A class B authorized emergency vehicle may not display a flashing blue light when transporting another vehicle or when traveling on a highway.

39-10-03.2. Class C authorized emergency vehicles.

All class B specifications apply to class C authorized emergency vehicles except that a blue flashing light must be displayed in place of an amber light as provided in section 39-10-03.1.

39-10-04. Obedience to and required traffic-control devices.

1. The driver of a vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.
2. A provision of this chapter for which traffic-control devices are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a state statute does not state that devices are required, the statute is effective even though no devices are erected or in place.
3. Whenever an official traffic-control device is placed in a position approximately conforming to the requirements of this title, the device must be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary is established by competent evidence.
4. Any official traffic-control device placed pursuant to the provisions of this title and purporting to conform to the lawful requirements pertaining to the device must be presumed to comply with the requirements of this title, unless the contrary is established by competent evidence.

5. The department may not remove or inactivate a traffic-control signal placed within the corporate limits of a city and within one thousand feet [304.8 meters] of a public or nonpublic elementary, middle, or high school without consulting with the city having jurisdiction of the location where the traffic-control signal is placed, except for temporary repair or routine maintenance.

39-10-05. Traffic-control signal legend.

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow may be used, except for special pedestrian signals carrying a word or legend, and said lights must indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indications:
 - a. Vehicular traffic facing a circular green indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
 - b. Vehicular traffic facing a green arrow indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
 - c. Unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.
2. Steady yellow indication:
 - a. Vehicular traffic facing a steady circular yellow or yellow arrow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic may not enter the intersection.
 - b. Pedestrians facing a steady circular yellow or yellow arrow indication, unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian may then start to cross the roadway.
3. Steady red indication:
 - a. Vehicular traffic facing a steady circular red indication alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided for in subdivision c.
 - b. Vehicular traffic facing a steady red arrow indication may not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another indication, must stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and must remain standing until an indication permitting the movement indicated by the red arrow is shown except as provided for in subdivision c.
 - c. Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red indication may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by subdivisions a and b. Such vehicular traffic shall yield the right of way to pedestrians lawfully within adjacent crosswalk and to other traffic lawfully using the intersection.

- d. Unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, pedestrians facing a steady circular red or red arrow indication alone may not enter the roadway.
4. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable, except as to those provisions which by their nature can have no application. Any stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any such sign or marking the stop must be made at the signal.

39-10-06. Pedestrian control signals.

Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" or the symbols of a walking person, symbolizing "Walk", or an upraised hand, symbolizing "Don't Walk" are in place, such signals must indicate as follows:

1. "Walk": Pedestrians facing such indication may proceed across the roadway in the direction of the indication and must be given the right of way by the drivers of all vehicles.
2. "Don't Walk" (steadily illuminated): A pedestrian may not start to cross the roadway in the direction of such indication.
3. "Don't Walk" (flashing): A pedestrian may not start to cross the roadway in the direction of the indication, but any pedestrian who has partially completed a crossing during the "Walk" signal must proceed in the direction of the indication to a sidewalk or safety island.

39-10-07. Flashing signals.

1. Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it requires obedience by vehicular traffic as follows:
 - a. Flashing red (stop indication). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.
 - b. Flashing yellow (caution indication). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such indication only with caution.
 - c. Flashing red arrow and flashing yellow arrow indications have the same meaning as the corresponding flashing circular indications, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.
2. This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings is governed by the requirements set forth in section 39-10-41.

39-10-07.1. Lane-direction-control signals.

When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but may not enter or travel in any lane over which a red signal is shown.

39-10-07.2. Display of unauthorized signs, signals, or markings.

1. No person may place, maintain, or display upon or in view of any highway, any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

2. No person may place or maintain nor may any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.
3. This section may not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.
4. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice when located on highway right of way.
5. No person may place, maintain, or display upon or within the right of way of any highway any sign, post, pole, mailbox, or signal which has a red lamp or red reflector visible to traffic. The provisions of this subsection do not apply to official traffic devices, lamps, or reflectors on motor vehicles or bicycles, or railroad signals or signs.
6. This section does not prohibit the use of portable battery-powered warning devices emitting a flashing red light placed upon a highway to alert oncoming traffic to a disabled or stopped motor vehicle.

39-10-07.3. Interference with official traffic-control device or railroad sign or signal.

A person may not, without lawful authority, attempt to or in fact alter, deface, injure, knock down, remove, or interfere with the operation of any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

39-10-08. Drive on right side of roadway - Exceptions.

1. Upon all roadways of sufficient width a vehicle must be driven upon the right half of the roadway, except as follows:
 - a. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
 - b. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;
 - c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
 - d. Upon a roadway restricted to one-way traffic.
2. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing must be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn in an intersection or into a private road or driveway.
3. Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle may be driven to the left of the centerline of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subdivision b of subsection 1. However, this subsection may not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road, or driveway.

39-10-09. Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

39-10-10. Use of multiple-beam road-lighting equipment.

Repealed by S.L. 1963, ch. 283, § 20.

39-10-11. Overtaking a vehicle on the left.

The following rules govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
2. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of that driver's vehicle until completely passed by the overtaking vehicle.

39-10-11.1. Overtaking and passing a bicycle.

The driver of a vehicle shall leave a safe distance when overtaking and passing a bicycle proceeding in the same direction on a roadway and shall maintain clearance until safely clear of the overtaken bicycle. "Safe distance" as used in this section means no less than three feet [0.91 meters] clearance.

39-10-12. When overtaking on the right is permitted.

1. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - a. When the vehicle overtaken is making or about to make a left turn; or
 - b. Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
2. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement may not be made by driving off the roadway.

39-10-13. Limitations on overtaking on the left.

No vehicle may be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable, and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet [60.96 meters] of any approaching vehicle.

39-10-14. Further limitations on driving on left of center of roadway.

1. No vehicle may be driven to the left side of the roadway under any of the following conditions:
 - a. When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.
 - b. When approaching within one hundred feet [30.48 meters] of or traversing any intersection or railroad grade crossing.
 - c. When the view is obstructed upon approaching within one hundred feet [30.48 meters] of any bridge, viaduct, or tunnel.
2. The foregoing limitations do not apply upon a one-way roadway, nor under the conditions described in section 39-10-08, nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

39-10-15. No-passing zones.

1. The director and local authorities are hereby authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.
2. Where signs or markings are in place to define a no-passing zone as set forth in subsection 1, no driver may at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.
3. This section does not apply under the conditions described in section 39-10-08 nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

39-10-16. One-way roadways and rotary traffic islands.

1. The director and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.
2. Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or at such times as shall be indicated by official traffic-control devices.
3. A vehicle passing around a rotary traffic island must be driven only to the right of such island.
4. After a vehicle enters a rotary traffic island, the vehicle may exit from any position within the rotary traffic island without giving a signal of intention to exit the rotary traffic island.

39-10-17. Driving on roadways laned for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith apply:

1. A vehicle must be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety.
2. Upon a roadway which is divided into three lanes and provides for two-way traffic, a vehicle may not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.
3. Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.
4. Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

39-10-18. Following too closely.

1. The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.
2. The driver of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another

- truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this does not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.
3. Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles must be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision does not apply to funeral processions.
 4. This section does not apply to the operation of a non-lead vehicle in a platoon.
 5. As used in this section and section 39-10-74, "platoon" means a group of motor vehicles using vehicle-to-vehicle communications to travel in a unified manner at close following distances on a multilane, limited-access, divided highway.

39-10-19. Driving on divided highway.

Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle must be driven only upon the right-hand roadway, unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle may be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection as established by public authority, unless such crossing is specifically prohibited and such prohibition is indicated by appropriate traffic-control devices.

39-10-20. Restricted access.

No person may drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

39-10-21. Restrictions on use of controlled-access roadway.

The director may by order, and local authorities may by ordinance, with respect to any controlled-access roadway under their respective jurisdictions, prohibit the use of any such roadway by any class or kind of traffic which is found incompatible with the normal and safe movement of traffic.

The director or the local authority adopting any such prohibition shall erect and maintain official traffic-control devices on the controlled-access roadway on which such prohibitions are applicable and when in place no person may disobey the restrictions stated on such devices.

39-10-21.1. Closing road because of hazardous conditions - Road closure notice - Entering closed road prohibited.

1. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions for the protection and safety of the public. If a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic-control devices to advise motorists of the closing.
2. If a road closure under subsection 1 has been announced to the public, an individual may not drive on the road.

39-10-22. Vehicle approaching or entering intersection.

1. If a vehicle approaches or enters an intersection that does not have an official traffic-control device and another vehicle approaches or enters from a different highway at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right. If the intersection is T-shaped and does not have an official traffic-control device, the driver of the vehicle on the terminating street or highway shall yield to the vehicle on the continuing street or highway.

2. If a vehicle approaches an intersection that has traffic-control signals that usually exhibit different colored lights and the signals are not lit, the driver of the vehicle shall stop and yield as required under subsection 2 of section 39-10-24.
3. The right-of-way rule declared in this section is modified at through highways and otherwise as stated in this chapter.

39-10-22.1. Entering freeways - Right of way.

A vehicle entering a freeway, as defined in section 24-01-01.1, from an acceleration lane, ramp, or any other approach road shall yield the right of way to a vehicle on the main roadway entering the merging area at the same time, regardless of whether the approach road is to the left or the right of the main roadway, unless posted signs indicate otherwise.

39-10-23. Vehicle turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

39-10-24. Stop signs and yield signs.

1. Preferential right of way may be indicated by stop signs or yield signs as authorized in section 39-07-03.
2. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways and shall yield the right of way to any other vehicle previously stopped for another stop sign at the intersection if the intersection is clear for each driver to proceed.
3. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if a driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision is deemed prima facie evidence of the driver's failure to yield the right of way.

39-10-25. Vehicle entering roadway.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.

39-10-26. Vehicle to stop or yield the right of way for authorized emergency vehicle or vehicle used for maintaining the state highway system - Penalty.

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any

- intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on the interstate system, or on a multilane highway outside the limits of a city, and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
 3. If a vehicle operated by or under the control of the director used for maintaining the state highway system is parked or stopped on the interstate system or on a multilane highway outside the limits of a city, and the vehicle is displaying a flashing, revolving, or rotating amber or white light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
 4. This section does not operate to relieve the driver of an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system from the duty to drive with due regard for the safety of all persons using the highway.
 5.
 - a. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.
 - b. An individual who violates subsection 3 and causes an accident with a vehicle operated by or under the control of the director used for maintaining the state highway system while the vehicle is displaying a visible flashing, revolving, or rotating amber or white light is guilty of an infraction.

39-10-26.1. Highway construction and maintenance.

1. The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic-control devices.
2. The driver of a vehicle shall yield the right of way to any authorized vehicle obviously and actually engaged in work upon a highway wherever such vehicle displays flashing lights meeting the requirements of section 39-21-28.

39-10-26.2. Permitting use of vehicle to violate section 39-10-26 prohibited - Presumption of permission - Defense - Dual prosecution prohibited.

The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 39-10-26. If a motor vehicle is seen violating section 39-10-26, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 39-10-26, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 39-10-26. Violation of this section is not a lesser included offense of violation of section 39-10-26.

39-10-26.3. Vehicle to yield the right of way for stationary motor vehicles.

1. If a motor vehicle is stopped, standing, or parked along the interstate system, or a multilane highway outside the limits of a city, with flashing hazard warning signals, the driver of an approaching or passing vehicle shall proceed with caution and yield the right of way by moving to a lane not adjacent to the stationary motor vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
2. This section does not relieve the driver of a stationary motor vehicle from the stopping requirements and restrictions provided under section 39-10-47 or from the lamp restrictions provided under section 39-21-26.

39-10-27. Pedestrian obedience to traffic-control devices and traffic regulations.

1. A pedestrian shall obey the instructions of any official traffic-control device specially applicable to the pedestrian, unless otherwise directed by a police officer.
2. Pedestrians are subject to traffic-control and pedestrian-control signals as provided for in sections 39-10-05 and 39-10-06.

39-10-28. Pedestrian's right of way in crosswalk.

1. When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.
2. No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.
3. Subsection 1 does not apply under the conditions stated in subsection 2 of section 39-10-29.
4. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the highway, the driver of any other vehicle approaching from the rear may not overtake and pass such stopped vehicle.

39-10-29. Crossing at other than crosswalk.

1. Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.
2. Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.
3. Between adjacent intersections at which traffic-control devices are in operation, pedestrians may not cross at any place except in a marked crosswalk.
4. No pedestrian may cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

39-10-30. Driver to exercise due care.

Notwithstanding other provisions of this chapter or the provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused, incapacitated, or intoxicated person.

39-10-31. Protection of blind or incapacitated pedestrians.

Repealed by S.L. 1975, ch. 347, § 25.

39-10-32. Pedestrians to use right half of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

39-10-33. Pedestrian on roadway.

1. Where a sidewalk is provided and its use is practicable, it is unlawful for any pedestrian to walk along and upon an adjacent roadway.
2. Where a sidewalk is not available, any pedestrian walking along and upon a highway shall walk only on a shoulder, as far as practicable from the edge of the roadway.
3. Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk only on the left side of the roadway.
4. Except as otherwise provided for in this chapter, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

39-10-33.1. Pedestrian's right of way on sidewalk.

The driver of a vehicle shall yield the right of way to any pedestrian on a sidewalk.

39-10-33.2. Pedestrian to yield to authorized emergency vehicles.

1. Upon the immediate approach of an authorized emergency vehicle making use of an audible signal by bell, siren, or exhaust whistle and displaying a visible flashing, revolving, or rotating blue, white, or red light, every pedestrian shall yield the right of way to the authorized emergency vehicle.
2. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian.

39-10-33.3. Blind pedestrian right of way.

The driver of a vehicle shall yield the right of way to an individual who is blind or visually impaired and carrying a clearly visible white cane or to an individual with a disability who is accompanied by an assistance dog.

39-10-33.4. Pedestrian under influence of alcohol or drugs.

A pedestrian who is under the influence of alcohol or any drug to a degree which renders the pedestrian a hazard may not walk or be upon a roadway.

39-10-33.5. Bridge and railroad signals.

No pedestrian may pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed.

39-10-34. Pedestrian soliciting ride or business.

1. No person may stand in a roadway for the purpose of soliciting a ride.
2. No person may stand in a roadway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.
3. No person may stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

39-10-35. Required position and method of turning.

The driver of a vehicle intending to turn shall do so as follows:

1. Right turns. Both the approach for a right turn and a right turn must be made as close as practicable to the right-hand curb or edge of the roadway.
2. Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Whenever practicable, the left turn must be made to the left of the center

of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered.

3. The director and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and when such devices are so placed, no driver of a vehicle may turn it other than as directed and required by such devices.

39-10-36. Limitations on turning around.

1. The driver of any vehicle may not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.
2. No vehicle may be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet [152.4 meters].

39-10-37. Starting parked vehicle.

No person may start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

39-10-38. Turning movements and required signals.

1. No person may turn a vehicle, move right or left upon a roadway, or merge into or from traffic unless and until such movement can be made with reasonable safety without giving an appropriate signal in the manner hereinafter provided.
2. A signal of intention to turn, move right or left, or merge into or from traffic must be given continuously during not less than the last one hundred feet [30.48 meters] traveled by the vehicle before turning, moving right or left, or changing lanes.
3. No person may stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.
4. The signals required on vehicles by subsection 2 of section 39-10-39 may not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

39-10-39. Signals by hand and arm or signal lamps.

1. Any stop or turn signal when required herein must be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection 2.
2. Any motor vehicle in use on a highway must be equipped with, and required signals must be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four inches [60.96 centimeters], or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet [4.27 meters]. The latter measurement applies to any single vehicle and to any combination of vehicles.

39-10-40. Method of giving hand-and-arm signals.

All signals herein required given by hand and arm must be given from the left side of the vehicle in the following manner and such signals must indicate as follows:

1. Left turn: hand and arm extended horizontally.
2. Right turn: hand and arm extended upward.
3. Stop or decrease speed: hand and arm extended downward.

39-10-41. Obedience to signal indicating approach of train or other on-track equipment.

1. When a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad, and may not proceed until the driver can do so safely. These requirements apply when:
 - a. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or other on-track equipment;
 - b. A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train or other on-track equipment;
 - c. A railroad train or other on-track equipment approaching within approximately one thousand three hundred twenty feet [402.34 meters] of the highway crossing emits a signal audible from such distance and such railroad train or other on-track equipment, by reason of its speed or nearness to such crossing, is an immediate hazard; or
 - d. An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to such crossing.
2. A person may not drive a vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed. A person may not drive a vehicle past a human flagman at a railroad crossing until the flagman signals that the way is clear to proceed.

39-10-42. All vehicles must stop at certain railroad grade crossings.

The department of transportation and local authorities, with respect to highways under their respective jurisdiction, are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad and shall proceed only upon exercising due care.

39-10-43. Certain vehicles must stop at all railroad grade crossings.

1. The driver of a bus carrying passengers, or of a schoolbus, or of a vehicle carrying chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below two hundred degrees Fahrenheit [93.33 degrees Celsius], cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track of a railroad, shall stop the vehicle within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of the railroad and while stopped shall listen and look in both directions along the track for any approaching train or other on-track equipment, and for signals indicating the approach of a train or other on-track equipment and may not proceed until the driver can do so safely. After stopping as required and upon proceeding when safe to do so, the driver of the vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing the crossing and the driver may not shift gears manually while crossing the track.
2. A stop is not required at a crossing if traffic is controlled by a police officer. For the purposes of this section, a United States marshal is considered a police officer.
3. A stop is not required at a crossing that the director has designated as an out-of-service or exempt crossing and which is clearly marked by signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
4. The director shall notify the road authority and any railway company of a crossing under the jurisdiction of that railway company which the director has designated as an out-of-service crossing under this section and the road authority shall erect signs

bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.

5. All signs must conform to the manual on uniform traffic-control devices as provided under section 39-13-06.

39-10-44. Stop signs and yield signs.

1. Preferential right of way at an intersection may be indicated by stop signs or yield signs as authorized in section 39-07-03.
2. Every stop sign and every yield sign must be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as near as practicable to the nearest line of the intersecting roadway.
3. Except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.
4. The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

39-10-45. Emerging from alley, driveway, private road, or building.

The driver of a vehicle emerging from an alley, driveway, private road, or building within a business or residence district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road, or driveway, or in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon.

39-10-46. Overtaking and passing schoolbus.

1. The driver of a vehicle meeting or overtaking from either direction any schoolbus stopped on the highway shall stop the vehicle before reaching the schoolbus when there is in operation on the schoolbus the flashing red lights or the stop sign on the control arm specified in section 39-21-18, and the driver may not proceed until the schoolbus resumes motion, the driver is signaled by the schoolbus driver to proceed, or the flashing red lights and the stop sign on the control arm are no longer actuated.
2. Every schoolbus must bear upon the front and rear thereof plainly visible signs containing the word "SCHOOLBUS" in letters not less than eight inches [20.32 centimeters] in height. When a schoolbus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for a school-sanctioned activity, all markings thereon indicating "SCHOOLBUS" must be covered or concealed.
3. The operator of a schoolbus equipped with amber caution lights may activate those lights at a distance of not less than three hundred feet [91.44 meters] nor more than five hundred feet [152.4 meters] from the point where schoolchildren are to be received or discharged from the bus.
4. Every schoolbus must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of section 39-21-18, which may only be actuated by the driver of the schoolbus whenever the vehicle is stopped on the highway to receive or discharge schoolchildren.
5. The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a schoolbus which is on a different roadway or when upon a controlled-access highway and the schoolbus is stopped in a loading zone which is a

part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

6. Every schoolbus must bear on the rear of the bus a plainly visible sign containing the words "THIS SCHOOLBUS STOPS AT ALL RAILROAD CROSSINGS".

39-10-46.1. Permitting use of vehicle to violate section 39-10-46 prohibited - Presumption of permission - Defense - Dual prosecution prohibited.

The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 39-10-46. If a motor vehicle is seen violating section 39-10-46, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 39-10-46, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 39-10-46. Violation of this section is not a lesser included offense of violation of section 39-10-46.

39-10-47. Stopping, standing, or parking outside of business or residence districts.

1. An individual may not stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of any highway if it is practicable to stop, park, or so leave the vehicle off the paved or main-traveled part of the highway. There must be an unobstructed width of the highway of not less than twelve feet [3.66 meters] opposite a standing vehicle left for the free passage of other vehicles and a clear view of any stopped vehicle must be available from a distance of not less than two hundred feet [60.96 meters] in each direction upon the highway.
2. Unless the vehicle is blocking the highway or is otherwise endangering public safety, this section and sections 39-10-49 and 39-10-50 do not apply to the driver of a vehicle which is disabled while on the paved or main-traveled portion of a highway, if stopping and temporarily leaving the disabled vehicle is unavoidable.
3. Without the consent of the owner or driver of a vehicle and if a vehicle or any personal property or cargo spilled from the vehicle is blocking the highway or is otherwise endangering public safety, a police officer may:
 - a. Remove the vehicle or cause the vehicle to be removed from the highway; and
 - b. Remove or cause to be removed any personal property or cargo that may have been spilled from the vehicle onto the highway.
4. If reasonable care is used in the removal process, a police officer and the police officer's employing agency, the department of transportation or an employee of the department of transportation, or a political subdivision or employee of a political subdivision authorized by a police officer is not liable in civil damages for loss or damage to any vehicle or to any personal property or cargo that may have spilled from a vehicle that is removed from a highway under this section.
5. The decision and method used to remove a vehicle or any personal property, or cause a vehicle or any personal property to be removed, is a discretionary decision under this section. In the event of a public necessity, a police officer, an employee of the department of transportation, or an employee of a political subdivision authorized by a police officer may take an action that may damage a vehicle or property removed under this section.

39-10-48. Officer authorized to remove illegally stopped vehicle.

1. If a police officer finds a vehicle standing upon a highway in violation of section 39-10-47, the officer may remove the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the paved or main-traveled part of the highway to a place where the vehicle does not block the highway or otherwise endanger public safety.

2. If a police officer finds a vehicle unattended upon any highway and the vehicle may obstruct traffic or otherwise endanger public safety, the officer may have the vehicle moved to a location where it may be securely held.
3. A police officer may remove or cause to be removed any vehicle found upon a highway and move the vehicle to any location where the vehicle may be securely held if:
 - a. A report has been made the vehicle has been stolen or taken without the consent of its owner;
 - b. The owner or driver of the vehicle is unable to provide for its custody or removal; or
 - c. The individual driving or in control of the vehicle is arrested for an offense and taken into custody and another individual is not available to lawfully operate the vehicle.
4. If a police officer finds a vehicle standing, stopped, or parked in a dangerous location or in violation of any official traffic-control device prohibiting or restricting the stopping, standing, or parking of any vehicle on state property, the officer shall place a written warning on the vehicle for the first offense and issue a traffic citation for a subsequent violation. However, a traffic citation may not be issued for a violation of this subsection occurring on the state capitol grounds during a legislative session.
5. A police officer and the police officer's employing agency, the department of transportation or an employee of the department of transportation, or a political subdivision or employee of a political subdivision authorized by a police officer is not liable in civil damages for loss or damage to any vehicle removed from a highway or state property under this section, so long as reasonable care is used in the removal process.
6. The decision and method used to remove a vehicle or any personal property, or cause a vehicle or any personal property to be removed, is a discretionary decision under this section. In the event of a public necessity, a police officer, an employee of the department of transportation, or an employee of a political subdivision authorized by a police officer may take an action that may damage a vehicle or property removed under this section.

39-10-49. Stopping, standing, or parking prohibited in specified places.

No person may stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within ten feet [3.05 meters] of a fire hydrant.
5. On a crosswalk.
6. Within ten feet [3.05 meters] of a crosswalk at an intersection.
7. Within fifteen feet [4.57 meters] upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway.
8. Between a safety zone and the adjacent curb or within fifteen feet [4.57 meters] of points on the curb immediately opposite the ends of a safety zone, unless the department or local authority indicates a different length by signs or markings.
9. Within fifteen feet [4.57 meters] of the nearest rail of a railroad crossing.
10. Within twenty feet [6.10 meters] of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet [22.86 meters] of said entrance when properly signposted.
11. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic.
12. On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
13. Upon any bridge or other elevated structure upon a highway or within a highway tunnel.
14. At any place where official signs prohibit stopping.

No person shall move a vehicle not lawfully under the person's control into any such prohibited area or away from a curb such distance as is unlawful.

39-10-50. Additional parking regulations.

1. Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway must be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve inches [30.48 centimeters] of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.
2. Except where otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway must be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches [30.48 centimeters] of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve inches [30.48 centimeters] of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.
3. Local authorities may by ordinance permit angle parking on any roadway, except that angle parking is not permitted on any federal-aid or state highway without first obtaining the written authorization of the director.
4. The department with respect to highways under its jurisdiction may place official traffic-control devices prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person may stop, stand, or park any vehicle in violation of the restrictions indicated by such devices.
5. The department, with respect to streets, roadways, and parking areas of any state charitable or penal institution and on the state capitol grounds, may authorize the purchase and placement by the supervisory agency of official traffic-control devices prohibiting or restricting the stopping, standing, or parking of vehicles. The placement of signs pursuant to this section must be done when, in the department's opinion, the stopping, standing, or parking is dangerous or would unduly interfere with the free movement of traffic, especially the free flow of traffic required for proper fire protection. No person may stop, stand, or park any vehicle in violation of the restriction indicated by any official traffic-control device. Any registered owner must be presumed to have been the operator of a vehicle that is parked in violation of any official traffic-control device prohibiting or restricting the stopping, standing, or parking of vehicles on any highway, state charitable or penal institution property, or on the state capitol grounds. This presumption may be rebutted by a showing of clear and convincing evidence to the contrary. However, no traffic citation may be issued for a violation of this subsection occurring on the state capitol grounds during a legislative session, except that a written warning must be placed on any vehicle for such a violation.

39-10-50.1. Electric vehicle parking stalls or spaces - Unauthorized parking or obstructing.

1. If a public or private entity designates a parking space for charging an electric vehicle, the reserved space must be indicated by a sign approved by the director. The sign must be consistent with the manual of uniform traffic control devices authorized under section 39-13-06, and indicate:
 - a. Use of the reserved space is for charging electric vehicles only; and
 - b. Unauthorized use of the spaces is a nonmoving violation for which a fee of fifty dollars must be imposed.
2. An individual may not park or leave standing a vehicle in a stall or space designated for charging and parking a vehicle, unless the individual's vehicle is connected for electric charging purposes.
3. An individual may not obstruct, block, or otherwise bar access to a space designated for charging a vehicle.

39-10-51. Unattended motor vehicle.

Repealed by S.L. 2019, ch. 318, § 2.

39-10-51.1. Parking violations - Lessor responsibility.

The registered owner of a motor vehicle stopped, stood, or parked in violation of this chapter or section 39-01-15 or an equivalent ordinance is not responsible for the violation if the owner furnishes an affidavit indicating that the vehicle was at the time of the violation in the care, custody, or control of another person pursuant to a lease or rental agreement. The affidavit must contain the name, address, and operator's license number of the person to whom the vehicle was leased or rented at the time of the violation and must be submitted to the appropriate clerk of court within thirty days of notification to the owner of the violation. The owner is responsible for the violation and the payment of any fees or fines if the affidavit is not submitted within the thirty-day period.

39-10-52. Limitations on backing.

1. The driver of a vehicle may not back the same unless such movement can be made with safety and without interfering with other traffic.
2. The driver of a vehicle may not back the same upon any shoulder or roadway of any controlled-access highway.

39-10-52.1. Driving upon sidewalk.

No person may drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

39-10-52.2. Riding in housetrailer.

No person may be on or inside a housetrailer while it is being moved upon a public highway. Such prohibition does not apply to fifth-wheel vehicles, which are defined as mobile homes, mounted on single or tandem axles, coupled by a fifth-wheel hitch to and pivoting on a mount located immediately above or in front of the rear axle of a motor vehicle other than a passenger car.

39-10-53. Riding on motorcycles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-54. Obstruction to driver's view or driving mechanism.

1. No person may drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.
2. No passenger in a vehicle may ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

39-10-54.1. Opening and closing vehicle door.

No person may open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor may any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

39-10-55. Driving on mountain highways.

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, except when driving entirely to the right of the center of the roadway, shall give audible warning with the horn of such motor vehicle upon approaching any curve

where the view is obstructed within a distance of two hundred feet [60.96 meters] along the highway.

39-10-56. Coasting prohibited.

1. The driver of any motor vehicle when traveling upon a downgrade may not coast with the gears or transmission of such vehicle in neutral.
2. The driver of a truck or bus when traveling upon a downgrade may not coast with the clutch disengaged.

39-10-57. Following emergency vehicle too closely prohibited - Stopping by emergency vehicle.

The driver of a vehicle other than one on official business may not follow closer than five hundred feet [152.4 meters] behind an emergency vehicle displaying the appropriate light for that vehicle in an emergency. A driver of a vehicle other than one on official business may not stop the vehicle within two hundred feet [60.96 meters] of any emergency vehicle stopped in answer to a 911 emergency.

39-10-58. Crossing firehose.

No vehicle may be driven over any unprotected hose of a fire department when laid down on any street, private road, or driveway to be used at any fire or alarm of fire without the consent of the fire department official in command.

39-10-59. Garbage, glass, rubbish, and injurious materials on highway prohibited.

1. An individual may not deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other litter. In addition, an individual may not deposit upon a highway any other substance likely to injure a person, animal, or vehicle.
2. An individual who deposits, or permits to be deposited, upon a highway a destructive or injurious material shall immediately remove or cause to be removed the material.
3. An individual removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from the vehicle.

39-10-60. Riding on bicycles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-61. Clinging to vehicles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-62. Riding on roadways and bicycle paths.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-63. Carrying articles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-63.1. Lamps and other equipment on bicycles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-64. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone.

39-10-65. Operation of motor vehicle, tractor, or other vehicle prohibited on flood protective works - Exception - Penalty.

1. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor, or other vehicle upon or across any flood protective works, including any dike or flood protective works constructed by a state or federal agency, or by any municipality or local subdivision of the state.

2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a class B misdemeanor.

39-10-66. Vehicle approaching a yield right of way sign.

Repealed by S.L. 1963, ch. 283, § 20.

39-10-67. Moving heavy equipment at railroad grade crossing.

1. No person may operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles [16.09 or less kilometers] per hour or a vertical body or load clearance of less than one-half inch per foot [12.7 millimeters] of the distance between any two adjacent axles or in any event of less than nine inches [22.86 centimeters], measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.
2. Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet [4.57 meters] nor more than fifty feet [15.24 meters] from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and may not proceed until the crossing can be made safely.
3. No such crossing may be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing must be under the flagman's direction.

39-10-68. Stop when traffic obstructed.

No driver may enter any intersection or a marked crosswalk or drive onto a railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains notwithstanding any traffic-control signal indication to proceed.

39-10-69. Charging violation and proving negligence in civil action.

1. In every charge of violation of any speed regulation, the complaint and the summons or notice to appear must specify the speed at which the defendant is alleged to have driven and also the maximum speed applicable within the district or at the location.
2. The provision in this title declaring maximum speed limitations may not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of the accident.

39-10-70. Racing on highways.

Repealed by S.L. 1981, ch. 392, § 6.

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
 - a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
 - b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or

- c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
- 2. A signal complies with this section if the signal is perceptible to the driver and:
 - a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
 - b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

39-10-71.1. Motor vehicle owner's responsibility regarding a driver who flees a peace officer - Exceptions.

- 1. The owner of a motor vehicle involved in a violation of section 39-10-71 is presumed to have violated this section.
- 2. A peace officer may proceed in accordance with this section instead of pursuing the driver of a motor vehicle who flees or attempts to elude the peace officer after being given a visual or audible signal to bring the vehicle to a stop in violation of section 39-10-71.
 - a. A peace officer may investigate the violation and prepare a traffic citation under this section.
 - b. A peace officer may issue a traffic citation under this section in accordance with the North Dakota Rules of Civil Procedure to the motor vehicle owner within ninety-six hours after observing the violation.
- 3. A motor vehicle owner may not be found to have violated this section if:
 - a. The driver operating the motor vehicle at the time of the violation of section 39-10-71 has been charged with a violation of section 39-10-71.
 - b. The motor vehicle was reported stolen before the violation occurred or within a reasonable time after the violation occurred.
 - c. The motor vehicle owner assists or cooperates with a peace officer to demonstrate the owner was not the one who operated the motor vehicle at the time and place of the violation of section 39-10-71.
 - d. The motor vehicle owner provides information that demonstrates the owner was not the driver of the motor vehicle at the time of the offense.
- 4. A motor vehicle owner may not be found to have violated this section, and the lessee is presumed to have violated this section, if the motor vehicle owner is a lessor of vehicles and at the time of the violation of section 39-10-71 the motor vehicle was in the possession of a lessee, and the lessor provides a peace officer with the motor vehicle's registration number and the name, address, and operator's license number of the individual renting or leasing the motor vehicle.
- 5. An individual may not be charged both with violating this section and section 39-10-71 for acts arising out of the same incident or occurrence.
- 6. This section may not apply to a motor vehicle rental company that rents motor vehicles to customers for a period of ninety days or less.

39-10-72. Funeral processions - Traffic regulations.

- 1. Notwithstanding any traffic-control device, a law enforcement officer leading a funeral procession may proceed through any intersection or make any turns or other movements necessary while leading the procession. The officer, without regard to any traffic-control device, may direct other drivers not in the funeral procession to stop, turn, proceed, or make other movements. When leading the funeral procession, the officer must be in a marked patrol vehicle and the vehicle's lighted headlamps, taillamps, and top-mounted and grill-mounted signal lamps must be displayed at all times during the procession.
- 2. Notwithstanding any traffic-control device or provision governing the right of way, whenever a law enforcement officer leading a funeral procession enters an

- intersection, the remainder of the vehicles in the funeral procession may follow through the intersection. Each vehicle in the procession, however, must exercise reasonable care toward any other vehicle or pedestrian on the roadway.
3. Notwithstanding any traffic-control device or provision governing rights of way and subject to the following conditions, vehicles in a funeral procession have the right of way.
 - a. All vehicles in a funeral procession must display lighted headlamps, taillamps, and flashing emergency lamps.
 - b. All vehicles in a funeral procession must follow the preceding vehicle in the procession as closely as is safe and practicable.
 - c. The driver of a vehicle in a funeral procession shall yield the right of way to an approaching emergency vehicle when directed to do so by a law enforcement officer or when the vehicle is giving an audible or visual signal.
 - d. A vehicle that becomes separated from the funeral procession and the law enforcement escort, so that the procession is no longer continuous, must proceed to its destination in a safe and prudent manner obeying all traffic signals and general rules of the road.
 4. Other vehicles shall conform to the following rules:
 - a. The driver of a vehicle may not drive between the vehicles comprising a funeral procession while those vehicles are in motion, except when authorized to do so by a law enforcement officer or when such vehicle is an emergency vehicle giving an audible or visible signal.
 - b. The driver of a vehicle not part of a funeral procession may not join a funeral procession for the purpose of securing the right of way granted under subsection 3.
 - c. The driver of a vehicle not in a funeral procession may not pass vehicles in such a procession on a two-lane highway or roadway.
 - d. The driver of a vehicle may pass a funeral procession on its left side on any multiple-lane highway whenever such passing can be done safely, unless the procession is in the farthest left lane, in which case passing is permissible on the right.
 - e. When a funeral procession is proceeding through a red signal as permitted by subsection 3, a vehicle that is not in the procession may not enter the intersection unless it can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is still within the intersection, a vehicle facing a green signal may proceed, but the funeral procession has the right of way.

39-10-73. Flashing green lights.

An authorized emergency vehicle may not display a flashing green light unless the vehicle is used as a command center in an emergency.

39-10-74. Motor vehicle platoons.

1. The department, in coordination with the state highway patrol superintendent, shall develop an operational plan that provides guidelines for operating a platoon. The plan must include operational information that must be provided by a platoon technology provider or commercial motor vehicle operator. The department may restrict platooning operations in accordance with the guidelines or the operational information provided in the plan.
2. A platoon may not operate unless the platoon technology provider or the commercial motor vehicle operator files an operational plan with the department and the plan is approved for general platoon operations. If the department does not approve the plan, the department shall inform the platoon technology provider or commercial motor vehicle operator of the reason for the disapproval and provide guidance on how to resubmit the plan to obtain approval.

3. A person operating a motor vehicle in a platoon without an approved plan must be assessed a fee of one hundred dollars.
4. A person operating a motor vehicle in violation of the guidelines in an operational plan must be assessed a fee of one hundred dollars.

CHAPTER 39-10.1 BICYCLES

39-10.1-01. Effect of chapter - Penalty for violation.

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. Except as provided in section 39-10.1-10, a person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.
2. The parent of any child and the guardian of any ward may not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.
3. These provisions applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

39-10.1-02. Traffic laws apply to persons riding bicycles.

Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this title, except as to special regulations in this title and except as to those provisions of this title which by their nature can have no application.

39-10.1-03. Riding on bicycle.

1. A person propelling a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto.
2. No bicycle may be used to carry more persons at one time than the number for which it is designed and equipped.

39-10.1-04. Clinging to vehicle.

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle may attach the same or the person's self to any vehicle upon a roadway, except a sled being pulled by a snowmobile.

39-10.1-05. Riding on roadway and bicycle path.

1. An individual operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
2. A group of individuals riding bicycles upon a roadway may not ride more than two abreast, except on paths or parts of roadways set aside for the exclusive use of bicycles.

39-10.1-05.1. Yielding and stopping while operating a bicycle on a roadway.

1. An individual operating a bicycle who is approaching a stop sign at an intersection with a roadway having three or more lanes for moving traffic shall come to a complete stop before entering the intersection.
2. An individual operating a bicycle who is approaching a stop sign at an intersection where a vehicle is stopped in the roadway at the same stop sign shall come to a complete stop before entering the intersection.
3. An individual operating a bicycle who is approaching a stop sign at an intersection with a roadway having two or fewer lanes for moving traffic shall reduce speed and, if required for safety, stop before entering the intersection. After slowing to a reasonable speed or stopping, the individual shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the individual is moving across or within the intersection, except that an individual, after slowing to a reasonable speed and yielding the right of way if required, cautiously may make a turn or proceed through the intersection without stopping.

4. An individual operating a bicycle who is approaching an intersection shall yield the right of way to any vehicle that already has entered the intersection.
5. When an individual operating a bicycle and a vehicle enter an intersection from different roadways at approximately the same time, the operator of the vehicle or bicycle on the left shall yield the right of way to the vehicle or bicycle on the right.
6. If the individual operating a bicycle is involved in a collision with a vehicle in the intersection or junction of roadways after proceeding past a stop sign without stopping or past a steady red traffic-control light, the collision is deemed prima facie evidence of the individual's failure to yield the right of way.

39-10.1-06. Carrying article.

No person operating a bicycle may carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebars.

39-10.1-07. Lamps and other equipment on bicycles.

1. Every bicycle when in use at nighttime must be equipped with a lamp on the front which emits a white light visible from a distance of at least five hundred feet [152.4 meters] to the front and with a red reflector on the rear of a type approved by the department. A lamp emitting a red light visible from a distance of five hundred feet [152.4 meters] to the rear may be used in addition to the red reflector.
2. Every bicycle must be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

39-10.1-07.1. Motorized bicycle - Age of operator.

Repealed by S.L. 1983, ch. 414, § 6.

39-10.1-08. Point system not applicable.

Any violation of this chapter, or any moving violation as defined in section 39-06.1-09, or any nonmoving violation as defined in section 39-06.1-08 when committed on a bicycle, an electric bicycle, or a multipassenger bicycle, as defined in section 39-01-01, is not cause for the licensing authority to assess points against the driving record of the violator pursuant to section 39-06.1-10. Any other legally authorized penalty for a criminal traffic offense or noncriminal traffic violation is applicable to bicyclists.

39-10.1-09. Electric bicycles.

1. Beginning January 1, 2022, any person that manufactures or distributes an electric bicycle in this state shall affix a permanent label to the electric bicycle which contains the following information in at least nine-point Arial font:
 - a. The designated class of the electric bicycle;
 - b. The maximum assisted speed of the electric bicycle; and
 - c. The wattage of the electric bicycle's motor.
2. Any electric bicycle equipment and manufacturing must be in accordance with the requirements for bicycles provided under 16 CFR part 1512.
3. An electric bicycle must be equipped so the electric motor can be disengaged or cease to function when the individual operating the electric bicycle stops pedaling or when the brakes are applied.
4. A person may not tamper with or modify an electric bicycle to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification required under subsection 1 is replaced after modification.
5. Unless otherwise prohibited by a governmental entity having jurisdiction, an individual may operate an electric bicycle on any bicycle path or multi-use path.
6. An individual operating a class 3 electric bicycle shall ensure the bicycle is equipped with a functioning speedometer.
7. An individual under the age of eighteen may not operate a class 3 electric bicycle unless the individual is wearing a safety helmet.

**39-10.1-10. Bicycling or riding an animal while under the influence of alcohol or drugs
- Penalty.**

An individual operating a bicycle or riding an animal on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public. An individual who violates this section must be assessed a fee of two hundred dollars.

39-10.1-11. Multipassenger bicycles.

Unless otherwise allowed by a governmental entity having jurisdiction, a multipassenger bicycle may not be operated on any bicycle path or multi-use path.

CHAPTER 39-10.2 MOTORCYCLES

39-10.2-01. Traffic laws apply to person operating motorcycle or motorized bicycle.

Every person operating a motorcycle or motorized bicycle is granted all of the rights and is subject to all of the duties applicable to the driver of any other vehicle under this title, except as to special regulations in this chapter and except as to those provisions of this title which by their nature can have no application. For purposes of this chapter, the term "motorcycle" means motorcycles and motorized bicycles.

39-10.2-02. Riding on motorcycle.

1. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator may not carry any other person nor may any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.
2. A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.
3. No person may operate a motorcycle while carrying any package, bundle, or other article which prevents the person from keeping both hands on the handlebars.
4. No operator may carry any person, nor may any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

39-10.2-03. Operating motorcycles on roadways laned for traffic.

1. All motorcycles are entitled to full use of a lane and no motor vehicle may be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection does not apply to the operation of motorcycles two abreast in a single lane as authorized in subsection 4.
2. The operator of a motorcycle may not overtake and pass in the same lane occupied by the vehicle being overtaken.
3. No person may operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.
4. Motorcycles may not be operated more than two abreast in a single lane.
5. Subsections 2 and 3 do not apply to police officers in the performance of their official duties.

39-10.2-04. Clinging to other vehicle.

No person riding upon a motorcycle may attach the person's self or the motorcycle to any other vehicle on a roadway.

39-10.2-05. Footrests.

Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, must be equipped with footrests for such passenger.

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 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 a safety helmet, any passenger must also wear 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 a safety helmet as provided in subsection 1.

39-10.2-07. Other applicable law.

All of the provisions of chapter 39-06.1 pertaining to the disposition of traffic offenses apply to this chapter.

CHAPTER 39-10.3 EXPERIMENTAL VEHICLES

39-10.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Chase vehicle" means a motor vehicle that accompanies an experimental vehicle while operating on a highway.
2. "Experimental vehicle" means a vehicle with an unladen weight of six thousand pounds [2721.55 kilograms] or less which may be equipped with any configuration of axles and wheels and which is primarily powered by some source other than a combustion engine, muscle, or an animal.

39-10.3-02. Applicability.

An experimental vehicle is a motor vehicle under this title, except:

1. Chapter 39-22 does not apply to experimental vehicles.
2. Registration of an experimental vehicle is governed by this chapter.
3. The governing body of a political subdivision may regulate, restrict, or prohibit the use of an experimental vehicle operating within the political subdivision's corporate limits in areas under the jurisdiction of the political subdivision.

39-10.3-03. Experimental vehicle registration - Application - Issuance - Fees - Renewal.

1. An individual may not operate an experimental vehicle unless the vehicle has been registered in accordance with this chapter.
2. The department shall design and furnish an application that must be used to register an experimental vehicle. The registration must state the name and address of every owner of the experimental vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
3. On receipt of an application and the appropriate fee, the department shall register the experimental vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding name and address of the owner.
4. The fee for registration of an experimental vehicle is fifty dollars for each registration cycle of one year ending on March thirty-first. The department may prorate the initial registration fee. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
5. To renew a registration, the owner of an experimental vehicle shall follow the procedure adopted by the department and pay the registration fee.
6. The department may adopt rules for the registration of experimental vehicles and the display of registration numbers.

39-10.3-04. Exemption from fees.

Payment of fees is not required of an experimental vehicle owned and used by the United States, a state or any of its agencies, institutions, or political subdivisions; an experimental vehicle registered in a foreign country and temporarily used in this state; or an experimental vehicle validly licensed in another state and which has not been in this state for more than thirty consecutive days.

39-10.3-05. Transfer or termination of experimental vehicle ownership - Change of address of owner.

Within fifteen days of a transfer of any ownership interest in an experimental vehicle, other than a security interest, the destruction or abandonment of any experimental vehicle, or a change of address of the owner as listed with the application for registration, written notice of

the fact must be given by the last registered owner to the director in the form the director requires.

39-10.3-06. Rules of operation.

A person may not operate an experimental vehicle on a highway without being accompanied by a chase vehicle. The chase vehicle must follow the experimental vehicle at a safe-driving distance.

39-10.3-07. Equipment.

An experimental vehicle must be equipped with a horn, front and rear turn signal lamps, stop lamps, a balanced and coreactive dual-braking system, a windshield, a safety belt installed at each seating position, an exterior mirror mounted on the operator's side of the vehicle, a roll cage that encompasses the entire driver, fresh air intake vents or wheel openings, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.

39-10.3-08. Penalty.

A violation of this chapter for which there is no penalty in this title is a class B misdemeanor.

CHAPTER 39-12

SIZE, WIDTH, AND HEIGHT RESTRICTIONS

39-12-01. State and local authorities may classify highways as to weight and load capacities.

The director, the board of county commissioners, and other appropriate bodies having control of roads, may classify public highways and roads under their respective jurisdictions and limitations as to the weight and load of vehicles thereon for such respective classifications must be enforced as provided in section 39-12-07.

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.

1.
 - a. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. A permit may designate the route to be traversed and may contain other restrictions or conditions deemed necessary by the body granting the permit. The permit must be carried in the vehicle to which it refers in printed or electronic format and must be opened to inspection by a peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for a person to violate the terms or conditions of the permit. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
 - b. Each township in a county that participates in a uniform truck permitting system for authorization of oversized or overweight vehicle movements shall participate in the same system.
 - c. When fee changes are proposed, a uniform permit system shall provide public notice of the date, hour, and place at which the public may comment on the proposed fee changes.
 - d. Notwithstanding any other provision of this chapter, a city, county, or township having control of roads may not impose additional fees for the use of roads beyond the fees established under a uniform permit program. A city, county, or township may issue a penalty to a person that violates a posted road restriction. If a permit is denied, a person may receive an additional fee or condition from the city, county, or township in exchange for authorization to move an oversized or overweight vehicle on a road under the jurisdiction of the city, county, or township.
2. Upon an application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to a person for issuing a permit in violation of this subsection.
3. An appropriate charge must be made for a permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department. Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system. Publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:
 - a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.

- b. The fee for an interstate permit is ten dollars per trip, fifty dollars per month for fees paid on a monthly basis, or three hundred dollars for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first or for a twelve-month period beginning the date of purchase.
 - c. The fee for special mobile equipment is twenty-five dollars per trip.
 - d. The fee for engineering is twenty-five dollars per trip.
 - e. The fee for faxing a permit is five dollars.
 - f. The fee for a single trip permit is twenty dollars per trip.
 - g. The fee for a bridge length permit is thirty dollars per trip, fifty dollars per month for fees paid on a monthly basis, or one hundred fifty dollars for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first, or for a twelve-month period beginning the date of purchase.
 - h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.
 - i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip, fifty dollars per month for fees paid on a monthly basis, or one hundred fifty dollars for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first or for a twelve-month period beginning the date of purchase. The fee for a vehicle that is a noncommercial fishhouse trailer being moved by the owner is twenty dollars per twelve-month period.
 - j. The fee for an overlength vehicle or load that is one hundred twenty feet [36.58 meters] or less is twenty dollars per trip, fifty dollars per month for fees paid on a monthly basis, or one hundred fifty dollars for unlimited trips in an annual period. Annual permits may be purchased for the period beginning January first and ending December thirty-first, or for a twelve-month period beginning the date of purchase.
 - k. The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fee of up to fifteen dollars for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.
- 4. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.
 - 5. Permits issued for overdimensional movements of vehicles not exceeding twelve feet [3.66 meters] in total width, including load, are valid for travel during the day and night with proper lighting. Permits issued for overdimensional movements of vehicles not exceeding one hundred twenty feet [36.58 meters] in total length, including load, are valid for travel during the day and night with proper lighting.
 - 6. There is created in the state treasury a fund known as the motor carrier electronic permit transaction fund. All money in the fund is appropriated on a continuing basis to the highway patrol to defray the costs of establishing and maintaining an online electronic permit system for permitting and routing oversize and overweight vehicles in this state. The highway patrol may contract with a private entity to establish, operate, and maintain an online electronic permit system. The online electronic permit system includes the issuance of permits under this section and an automated routing system. The automated routing system must include integration of department of transportation traveler information system information, all other data required for the automated routing system, and integration of the highway patrol computer-aided dispatch system.

39-12-03. Director or local authorities may limit use of vehicles on highways - Exception for inclement weather.

- 1. Whenever a highway will be seriously damaged or destroyed by reason of deterioration, rain, snow, or other climatic conditions unless the use of vehicles is

prohibited or the weight of the vehicle thereon is limited, the director or employees authorized by the director by an order, and local authorities by ordinance or resolution, may prohibit the operation of vehicles upon such highway or may impose weight restrictions on vehicles. The director or employees making the order and local authorities enacting the ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the order, ordinance, or resolution. The signs must be erected and maintained at each end of the portion of highway affected, and the order, ordinance, or resolution is not effective until the signs are erected and maintained. The operation of trucks or other commercial vehicles or limitations as to the weight of vehicles on designated highways may be prohibited or limited in the same manner.

2. In instances of inclement weather, as determined by the local authorities, changes may be made to existing posted restrictions on a portion of a highway if the local authority:
 - a. Gives public notice of the change in the posted restrictions on any portion of a highway by publishing the inclement weather restriction on the local authority's website and a uniform county permit system or similar permit system within one hour after the initial determination of inclement weather; and
 - b. Within five days of the first date of inclement weather, erects and maintains a sign at each end of the portion of the highway affected by the inclement weather restriction.

39-12-04. Width, height, and length limitations on vehicles - Exceptions.

1. Vehicles operated on a highway in this state may not exceed a total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
 - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
 - b. Implements of husbandry being moved by resident farmers, ranchers, governmental entities, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, governmental entities, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
 - c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
 - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, commercial movement of forage harvesters, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those

- designed specifically for hauling haystacks. This seasonal permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.
- e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
 - f. Any non-load-carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load-carrying structures, support members, and structural fasteners.
 - g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.
2. Vehicles operated on a highway in this state may not exceed a height of fourteen feet [4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not fourteen feet [4.27 meters] in height. This limitation does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:
 - a. The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.
 - b. The trip is at most sixty miles [96.56 kilometers].
 - c. The trip is between sunrise and sunset.
 - d. None of the trip is on an interstate highway.
 3. A vehicle operated on a highway in this state may not exceed the following length limitations:
 - a. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
 - b. A combination of two units including the load thereon may not exceed a length of seventy-five feet [22.86 meters].
 - c. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.
 - d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.
 - e. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.5 meters] except that trailers and semitrailers titled and registered in North Dakota before July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].
 4. Length limitations do not apply to:
 - a. Building moving equipment.
 - b. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
 - c. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
 - d. Structural material of telephone, power, and telegraph companies.
 - e. Truck-mounted haystack moving equipment, provided the equipment does not exceed a length of fifty-six feet [17.07 meters].
 - f. A truck tractor and semitrailer or truck tractor, semitrailer, and the trailer when operated on the interstate highway system or parts of the federal aid primary

system as designated by the director, only when federal law requires the exemption.

- g. Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles. Length exclusive devices are appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer.
5. Motor homes, house cars, travel trailers, fifth-wheel travel trailers, camping trailers, and truck campers may exceed eight feet six inches [2.59 meters] in width if the excess is attributable to an appurtenance that extends beyond the body of the vehicle no more than six inches [15.24 centimeters] on either side of the vehicle. For purposes of this subsection, the term appurtenance includes a shade awning and its support hardware, and any appendage that is intended to be an integral part of a motor home, house car, travel trailer, fifth-wheel travel trailer, camping trailer, or truck camper.

39-12-05. Weight limitations for vehicles on interstate system.

A person may not operate on a highway which is part of the interstate system any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width except that such limits may not be applied to tires on the steering axle. Steering axle weights are limited to twenty thousand pounds [9071.85 kilograms] or the axle rating established by the manufacturer, whichever is lower. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, on axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{L^N}{N-1} + 12N + 36 \right)$$

where W equals maximum weight in pounds carried on any group of more than one axle; L equals distance in feet between the extremes of any group of consecutive axles; and N equals number of axles in the group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds [15422.14 kilograms] each, providing the overall distance between the first and last axles of the consecutive sets of tandem axles is at least thirty-six feet [10.97 meters]. The gross weight may not exceed eighty thousand pounds [36287.39 kilograms].

39-12-05.1. Weight limitations for vehicles on designated highways.

Repealed by S.L. 1983, ch. 441, § 3.

39-12-05.2. Interstate weight limitations if permitted by the Congress of the United States.

If congressional action occurs authorizing a greater gross weight on the interstate system than allowed under section 39-12-05, a person may operate on an interstate highway a vehicle the gross weight of which is at most the weight allowed by the congressional action.

39-12-05.3. Weight limitations for vehicles on highways other than the interstate system.

1. A person may not operate on a highway that is not part of the interstate system any vehicle with a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms].

kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed nineteen thousand pounds [8618.26 kilograms] per axle, with a maximum of thirty-four thousand pounds [15422.14 kilograms] gross weight on a tandem axle and a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.

2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, a person may not operate on a highway that is not part of the interstate system any vehicle the gross weight of which exceeds that determined by the formula of:

$$W = 500 (LN + 12N + 36)$$

$$N-1$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. a. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing:
 - (1) A farmer's farm vehicle or a motor carrier hired by a farmer to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854 kilograms]. The permits must provide only for the movement of agricultural products:
 - (a) From the field of harvest to the point of initial storage or to the first point of sale and transfer of possession during harvest; or
 - (b) From the point of initial storage to the first point of sale and transfer of possession during the current year's harvest; or
 - (2) A specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854 kilograms]. The permits must provide only for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh.
- b. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in

excess of one hundred five thousand five hundred pounds [47854 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

6. The director may issue a permit for a truck with a gross weight that exceeds one hundred five thousand five hundred pounds [47854 kilograms], not to exceed one hundred twenty nine thousand pounds [58513.41 kilograms]. The monthly permit fee is one hundred dollars per month or seven hundred dollars annually. Annual permits may be purchased for the period beginning January first and ending December thirty-first or for a twelve-month period beginning the date of purchase. Vehicle weight under this subsection is determined according to the formula under subsection 2 of section 39-12-05.
7. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled fertilizer spreader if the weight of a single axle does not exceed twenty-two thousand pounds [9973.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled agricultural chemical applicator if the weight of a single axle does not exceed twenty-two thousand pounds [9973.03 kilograms] and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The highway patrol shall issue a seasonal permit for the commercial movement of vehicles exempted by this subsection. The seasonal permit issued under this subsection or under subdivision d of subsection 1 of section 39-12-04 entitles an individual with the permit to operate a vehicle as allowed by either of these provisions. A seasonal permit issued under this subsection is subject to the requirements of subdivision d of subsection 1 of section 39-12-04.
8. The weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption but the weight limitations in section 39-12-05 do apply to that equipment. For every vehicle approved for exemption, the highway patrol shall issue a nontransferable bridge length permit valid for a single trip or a calendar year.
9. The axle weight limitations in subsection 1 do not apply to movements of implements of husbandry or equipment with pneumatic tires used for construction which is used by an agricultural producer while using the equipment for the producer's agricultural, horticultural, or livestock operations if the maximum wheel load does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width and if the gross weight limitation in this section is not exceeded.

39-12-06. Limitations on extending of load beyond side of motor vehicle.

No motor vehicle carrying any load beyond the lines of the left fenders of such vehicle nor extending more than twelve inches [30.48 centimeters] beyond the line of the fenders on the right side of such vehicle may be operated on the highways, except as permitted by section 39-12-04. The department of transportation or the highway patrol shall have authority to revoke permits when such holder violates or abuses the privilege or conditions of permit.

39-12-07. Peace officers may weigh vehicle to determine load - Decreasing gross weight of vehicle.

Every police officer, including members of the state highway patrol, having reason to believe that the weight of a vehicle and the load carried thereon is unlawful, may weigh such vehicle and load or have the same weighed either by means of portable or stationary scales, and for that purpose the officer may require the vehicle to be driven to the nearest scales. Such officer may require the driver of such vehicle immediately to unload such portion of the load as may be necessary to decrease the gross weight to the maximum allowed by the provisions of this chapter.

39-12-08. Penalty for violation of chapter.

A person operating a motor vehicle or the owner of the motor vehicle being operated without a permit as specified in this chapter must be assessed a fee of one hundred dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of twenty dollars. Violating the conditions of any permit type automatically voids the permit. For a permit allowed under this chapter, if the violation is of a permit issued by a county under a home rule ordinance or any city, including a home rule city, the statutory fee is for a violation of state law in an amount provided by this section.

39-12-09. Unlawful to violate provisions governing size, weight, or construction of vehicles - Size and weight specified in this chapter lawful through state - Penalty.

It is unlawful for any person to drive or move, or for the owner to cause or knowingly to permit to be driven or moved, on any highway, any vehicle or vehicles which are not constructed as required in this chapter nor according to the rules and regulations of the director adopted pursuant to the provisions of this chapter. The maximum size and weight of vehicles specified in this chapter are lawful throughout this state, except as they may be limited by virtue of specifications made pursuant to the other provisions of this chapter. Any person who violates any of the provisions of this section must be assessed a fee of twenty dollars.

39-12-10. Flag or light to be displayed at end of load.

Repealed by S.L. 1963, ch. 283, § 20.

39-12-11. Impounding overweight vehicle.

Any vehicle found to have been moved or used upon any highway, street, or road in this state at a weight exceeding the limitations as specified in any order, ordinance, or resolution issued under section 39-12-03, exceeding the limitations imposed by 39-12-05.3, or as limited by section 39-12-05 may be impounded by any peace officer and taken to a warehouse or garage for storage.

39-12-12. Impounding receipt - Information.

A receipt must be given by the officer impounding the vehicle, to the driver or person in charge of such vehicle. Such receipt must identify as nearly as possible, the owner of the vehicle and cargo, the driver or person in charge of such vehicle, the cargo, the place the vehicle is to be stored during impoundment, the weight of the loaded vehicle and the name and address of the impounding officer. Information as to the owner of the vehicle and cargo must be obtained from the driver or person in charge of the vehicle.

39-12-13. Impounding notice - Perishables.

The impounding officer shall notify the owner or owners, if they can be found, by wire or telephone, of the impoundment and the charges involved. If the cargo consists of perishables, the impounding officer shall use reasonable diligence in assisting the operator or owner in finding suitable storage facilities for such perishables, but all risk of loss or damage to such perishables must be upon the owner, operator, or lessee of such vehicle.

39-12-14. Civil complaint.

The state's attorney of the county where such vehicles are impounded, shall, if no settlement is made under section 39-12-14.1, immediately prepare and file a civil complaint on behalf of the authority having jurisdiction of the road whereon the violation occurred, for the purpose of recovering charges for the extraordinary use of the highways, streets, or roads of this state.

39-12-14.1. Voluntary settlement of extraordinary road use fee charges.

Before the complaint is issued under section 39-12-14, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under section

39-12-17, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, is presumed to be voluntary. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the authority having jurisdiction over the road on which the violation occurred. The extraordinary road use fees for a violation on an interstate or on a state highway must be deposited with the state treasurer to be credited to the state highway fund. Extraordinary road use fees for a violation that did not occur on an interstate or a state highway must be deposited in the general fund of the jurisdiction having authority over the road on which the violation occurred and must be used for the support of the road system of that jurisdiction.

39-12-15. Mailing complaint.

A copy of the complaint must be served upon the driver or person in charge of the vehicle and a copy must be sent by registered or certified mail to the owner of the vehicle, if the address of such owner is known.

39-12-16. Cash bond - Holding.

Unless a cash bond is furnished in an amount sufficient to cover the charges for extraordinary use of highways, streets, and roads, as provided in section 39-12-18, together with the costs which may be collectible under any subsequent settlement made pursuant to section 39-12-14.1, said vehicle must be held until a trial of the case can be had before the district court.

39-12-17. Trial - Charges.

At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of section 39-12-03 or 39-12-05.3, or as limited by the provisions of section 39-12-05, charges for the extraordinary use of the highways, streets, or roads must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge must be assessed as follows:
 - 1 to 1,000 pounds [.45 to 453.59 kilograms] of excess weight = \$20
 - 1,001 to 2,000 pounds [454.05 to 907.18 kilograms] of excess weight = \$40
 - 2,001 to 3,000 pounds [907.64 to 1360.78 kilograms] of excess weight = \$60
 - 3,001 to 4,000 pounds [1361.23 to 1814.37 kilograms] of excess weight = \$140
 - 4,001 to 5,000 pounds [1814.82 to 2267.96 kilograms] of excess weight = \$220
 - 5,001 to 6,000 pounds [2268.41 to 2721.55 kilograms] of excess weight = \$305
 - 6,001 to 7,000 pounds [2722.01 to 3175.14 kilograms] of excess weight = \$380
 - 7,001 to 8,000 pounds [3175.60 to 3628.74 kilograms] of excess weight = \$495
 - 8,001 to 9,000 pounds [3629.19 to 4082.33 kilograms] of excess weight = \$575
 - 9,001 to 10,000 pounds [4082.78 to 4535.92 kilograms] of excess weight = \$655
 - 10,001 to 11,000 pounds [4536.37 to 4989.51 kilograms] of excess weight = \$1,100
 - 11,001 to 12,000 pounds [4989.97 to 5443.10 kilograms] of excess weight = \$1,200
 - 12,001 to 13,000 pounds [5443.56 to 5896.70 kilograms] of excess weight = \$1,300
 - 13,001 to 14,000 pounds [5897.15 to 6350.29 kilograms] of excess weight = \$1,680
 - 14,001 to 15,000 pounds [6350.74 to 6803.88 kilograms] of excess weight = \$1,800
 - 15,001 to 16,000 pounds [6804.33 to 7257.47 kilograms] of excess weight = \$1,920
 - 16,001 to 17,000 pounds [7257.93 to 7711.06 kilograms] of excess weight = \$2,550

17,001 to 18,000 pounds [7711.52 to 8164.66 kilograms] of excess weight = \$2,700
 18,001 to 19,000 pounds [8165.11 to 8618.25 kilograms] of excess weight = \$2,850
 19,001 to 20,000 pounds [8618.70 to 9071.84 kilograms] of excess weight = \$3,000
 20,001 to 21,000 pounds [9072.29 to 9525.43 kilograms] of excess weight = \$4,200
 21,001 to 22,000 pounds [9525.89 to 9979.02 kilograms] of excess weight = \$4,400
 22,001 to 23,000 pounds [9979.48 to 10432.62 kilograms] of excess weight = \$4,600
 23,001 to 24,000 pounds [10433.07 to 10886.21 kilograms] of excess weight = \$4,800
 24,001 to 25,000 pounds [10886.66 to 11339.80 kilograms] of excess weight = \$5,000
 25,001 to 26,000 pounds [11340.25 to 11793.40 kilograms] of excess weight = \$5,200
 26,001 to 27,000 pounds [11793.86 to 12246.99 kilograms] of excess weight = \$5,400
 27,001 to 28,000 pounds [12247.45 to 12700.59 kilograms] of excess weight = \$5,600
 28,001 to 29,000 pounds [12701.04 to 13154.18 kilograms] of excess weight = \$5,800
 29,001 to 30,000 pounds [13154.63 to 13607.77 kilograms] of excess weight = \$6,000
 An additional charge of \$200 for every 1,000-pound [453.59-kilogram] increase over 30,000 pounds [13607.77 kilograms] consistent with the above formula.

39-12-18. Payment of charges - Confiscation - Sale.

If the charges and costs as provided in section 39-12-17 are not paid immediately from a cash bond previously posted or other cash payment, the judge shall order the vehicle confiscated and sold by the sheriff of the county at a public sale to the highest bidder and the proceeds applied to the payment of the charges and costs assessed under the provisions of sections 39-12-11 through 39-12-22.

39-12-19. Payment - Effect.

The payment of charges may not be construed as a payment for the future use of highways, streets, or roads by vehicles carrying excess loads.

39-12-20. Proceeds of sale - Continuing appropriation.

The proceeds of sale must be deposited with the state treasurer. For a violation on an interstate or a state highway, the state treasurer shall deposit in the state highway fund an amount equal to the amount of the charges assessed under section 39-12-17 after paying the costs to the county. For any violation, an amount equal to the costs of the proceedings, including attorney's and witness fees and costs, is appropriated on a continuing basis out of the funds collected to the county of prosecution for the purpose of defraying the costs of prosecution. From the proceeds of sale for a violation that did not occur on an interstate or a state highway, the amount of charges assessed under section 39-12-17 is appropriated on a continuing basis and must be deposited in the general fund in the jurisdiction in which the violation occurred and must be used for the support of the road system of that jurisdiction. The balance of the proceeds of any sale after the payment of costs and charges is appropriated on a continuing basis out of the funds collected to be paid to the person entitled to the proceeds as determined by the court or must be deposited with the clerk of court for payment to that person.

39-12-21. Penalty.

Any driver of a vehicle who refuses to stop and submit the vehicle and load to a weighing when directed to do so by any police officer or any agent of this state having police powers relating to motor vehicles is guilty of a class B misdemeanor.

39-12-22. Permissible loads - Exceptions.

When any motor truck, truck tractor, or trailer is operated upon the public highways of this state carrying a load in excess of the maximum prescribed under the provisions of sections 39-12-03, 39-12-05, and 39-12-05.3 or other maximum weight limitations prescribed by law, the load must be reduced or shifted to within such maximum limitations before being permitted to operate on any public highway of this state; provided, however, that any such vehicle carrying a load of livestock is exempt from the limitations prescribed in section 39-12-05.3, relating to the carrying capacity of any wheel, tire, axle, or group of axles when excessive weight is caused by a shifting of the weight of the livestock. All material unloaded as required by this section must be cared for by the owner or operator of such vehicle at the risk of such owner or operator.

39-12-23. Governor's order authorizing excess limits.

The governor of this state is hereby authorized, by order of general application, to permit and prescribe definite excess limitations as to size and weight for the operation of motor vehicles in emergencies and to meet unusual conditions for the general welfare of the public.

The operation of such vehicles, in accordance with the governor's order, does not constitute a violation of the statutes relative to limitations on sizes and weights.

39-12-24. Authority for cooperative regional permit agreements on excess size or weight vehicles.

Repealed by S.L. 2021, ch. 280, § 7.

39-12-25. Bank of North Dakota - Line of credit.

Repealed by S.L. 2021, ch. 280, § 7.

CHAPTER 39-13 TRAFFIC SIGNS

39-13-01. Uniform marking and erection of signs on highway.

Repealed by S.L. 1953, ch. 177, § 120.

39-13-02. Local traffic signs.

Repealed by S.L. 1975, ch. 353, § 4.

39-13-03. Local parking regulations not enforceable where sign illegible or not in proper position.

Local parking and other special regulations are not enforceable against an alleged violator if, at the time and place of the alleged violation, an appropriate sign giving notice thereof is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

39-13-04. Traffic signs erected by unauthorized persons prohibited - Traffic signs containing advertising prohibited.

Repealed by S.L. 1975, ch. 347, § 25.

39-13-05. Injuring signs prohibited.

No person may deface, injure, knock down, or remove any sign posted as provided in this chapter.

39-13-06. Authority to adopt manual on uniform traffic-control devices.

The director shall adopt a manual and specifications for a uniform system of traffic-control devices, consistent with the provisions of law, for use upon all highways and streets in this state. Such uniform system must correlate with and so far as possible conform to the system set forth in the most recent edition of the manual promulgated as a national standard by the federal highway administrator.

39-13-07. Uniform traffic-control devices on all streets and highways.

No traffic-control devices, including markings, signs, and signals, may be used on any street or highway which do not conform to the standards of design and location as prescribed in the manual and specifications for a uniform system of traffic-control devices. The director and local authorities, on streets and highways under their respective jurisdiction, shall place such devices as are deemed necessary to regulate, warn, and guide traffic.

39-13-08. No traffic-control device to be manufactured or sold which does not conform.

No person, firm, corporation, or limited liability company may sell or offer for sale to street and highway authorities, and no such authorities may purchase or manufacture any traffic-control device which does not conform to the manual unless specifically approved by the director.

39-13-09. Tourist-oriented directional signs.

1. In this section:
 - a. "Tourist-oriented directional sign" means a sign providing identification of and directional information for tourist-related businesses, services, or activities.
 - b. "Tourist-related business, service, or activity" means rural agricultural business and tourism attractions, including recreation, historical sites, festival and cultural events, lodging and food services which are singularly and uniquely related to historical, cultural, or recreational tourist attractions, and guide services, but does not include any business operated under a franchise agreement. The term includes a business that derives a major portion of income or visitors from individuals who do not reside in the immediate area of the business. The

immediate area of the business is within the city limits in which the business is located, or within one mile [1.61 kilometers] from the business if located outside city limits.

2. Notwithstanding section 24-01-12, the department shall establish by rule standards for the erection and maintenance of tourist-oriented directional signs. The rules must conform to federal standards for tourist-oriented directional signs adopted under 23 U.S.C. 131(q) as of July 1, 1991, and with the manual adopted by the department under section 39-13-06 except that the rules must provide that logos may not be used on tourist-oriented directional signs.
3. Upon the request of any person, a local authority that has adopted an ordinance permitting the erection of tourist-oriented directional signs may authorize their erection within the right of way of any highway under the jurisdiction of the local authority except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. A tourist-oriented directional sign may not be erected unless it is erected in compliance with rules adopted by the department for such signs.
4. The permit applicant shall engage a qualified contractor for the erection, installation, and maintenance of tourist-oriented directional signs within the right of way of any highway under the jurisdiction of the department except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. A tourist-oriented directional sign may not be erected unless it is erected in compliance with rules adopted by the department for such signs.

CHAPTER 39-16

FINANCIAL RESPONSIBILITY OF OWNERS AND OPERATORS

39-16-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" or "director" means the director of the department of transportation of this state as provided by section 24-02-01.3, acting directly or through authorized agents.
2. "Driver" means every person who is in actual physical control of a motor vehicle whether or not licensed as a driver under the laws of this state.
3. "Judgment" means any judgment which has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state of the United States, upon a claim for relief arising out of ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a claim for relief on an agreement of settlement for such damages.
4. "License" means any license, temporary instruction permit, or temporary license issued under the law of this state pertaining to the licensing of persons to operate motor vehicles.
5. "Motor vehicle" includes every self-propelled vehicle, including trailers and semitrailers designed for use with these vehicles. The term does not include special mobile equipment or an electric bicycle.
6. "Nonresident" means every person who is not a resident of this state.
7. "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation in this state by that person of a motor vehicle, or the use of a motor vehicle owned by that person.
8. "Owner" means a person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor must be deemed the owner for the purposes of this chapter.
9. "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

39-16-02. Rules - Notice of proposed suspension.

The director shall have the powers and perform the duties imposed by this chapter and may make rules for that purpose. Notice of a proposed suspension under this chapter must be given under section 39-06-33.

39-16-03. Driving records - Not admissible in evidence - Fee.

1. The director upon request shall furnish any person a certified abstract of the operating record of any individual, source document for the abstract entry, or record of clearance, subject to this title. The abstract must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of an individual's operator's license. Any person, except the subject of the record, a law enforcement agency, a judicial officer, or another licensing jurisdiction functioning in that person's official capacity, requesting the abstract, source documents in aggregate form, or record of clearance shall indicate in writing the reason for the request and shall identify the person for whom or which the request is made and the intended recipient of the record.

2. Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. Upon request and subject to the provisions of this title, the director shall furnish an operating record or complete operating record to the subject of the record or to law enforcement or judicial officers.
3. A fee of three dollars must be paid for each abstract of any operating record, operating record, complete operating record, or record of clearance. A reasonable fee must be paid for each source document. The director may not assess a fee to a law enforcement agency, a judicial officer, or another licensing jurisdiction. The director shall send an additional copy of the abstract, source document if requested in aggregate form, or record of clearance to the driver whose record was requested, accompanied by a statement identifying the person making the request, identifying the person for whom or which the request is made, identifying the intended recipient of the record, and providing the reason for the request. An additional copy of the abstract or record of clearance may not be sent to a driver if the request for the record was made by the federal bureau of investigation or the United States central intelligence agency, or agents, or by any law enforcement agency or judicial officer.
4. A requester may provide the department with a list of names of drivers and may request any source documents from the department relating to the listed drivers for a set time period. The department shall provide this information in hard copy or electronic format. If in order to provide the information by electronic format the department sets up a computer program, the department may charge a requester a reasonable charge for a setup fee. This charge may not exceed the actual cost to set up the computer program. A requester of source documents in aggregate form shall pay the director a reasonable fee for making and mailing to the driver whose record was requested an additional copy of the document as it relates to that driver.

39-16-03.1. Entries on driver's record abstract confidential.

Notwithstanding any other provision of this chapter, the following entries on a driver's record or abstract are not available to the public, except for statistical purposes, other than by order of a court of competent jurisdiction accompanied by a fee of twenty-five dollars:

1. An entry more than three years old.
2. After the period of suspension ceases, an entry concerning a suspension under subsection 3, 4, 5, or 6 of section 39-06-03 or subsection 2, 5, or 6 of section 39-06-32.
3. An entry concerning a suspension as the result of a person under twenty-one years of age who has an alcohol concentration of at least two one-hundredths of one percent but under eight one-hundredths of one percent by weight within two hours after driving or being in actual physical control of a vehicle.

39-16-04. Suspension of license for neglect to report accident.

The director may suspend the license, or any nonresident's operating privilege, of any person who willfully fails, refuses, or neglects to make report of a traffic accident as required by the laws of this state.

39-16-05. Suspension of license and when not applicable.

1. The director, within ninety days after the receipt of a report of a motor vehicle accident within this state for which a driver is required to file a report under section 39-08-09, shall suspend the license or nonresident operating privilege of each driver of each vehicle in any manner involved in the accident unless the driver deposits security as provided in sections 39-16-09 and 39-16-10 in a sum which is sufficient in the judgment of the director to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against such driver. Notice of suspension and opportunity for hearing must be sent by the director to the driver not less than ten days prior to the effective date of the suspension and must state the amount required as security. However, if a driver, either resident or nonresident, involved in the accident

purchases an insurance policy with at least the amount of coverage required by this section, and files proof and satisfies financial responsibility requirements thereof with the director, that driver may retain the license or privilege until the driver has accepted responsibility for the accident or agreed to a settlement of claims arising from the accident or until a court of this state has determined that the driver was negligent or responsible for the accident in whole or in part. If the driver is found negligent or responsible for the accident, in whole or in part, the license or privilege must be suspended and will not be returned until the driver complies with this chapter.

2. This section does not apply under the conditions stated in section 39-16-06, or:
 - a. To a driver, if the driver is the owner of the motor vehicle involved in the accident and had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in the accident, affording substantially the same coverage as is required for proof of financial responsibility under chapter 39-16.1.
 - b. To a driver, if not the owner of the motor vehicle, if there was in effect at the time of the accident an automobile liability policy or bond with respect to the driver's operation of the motor vehicle, affording substantially the same coverage as required for proof of financial responsibility under chapter 39-16.1.
 - c. To a driver, if the liability of the driver for damages resulting from the accident is, in the judgment of the director, covered by any other form of liability insurance policy or bond or certificate of self-insurance under section 39-16-32.
3. No such policy or bond is effective under this section unless by an insurance carrier or surety company authorized to do business in this state, except that if the motor vehicle was not registered in the state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, the policy or bond is not effective under this section unless the insurance carrier or surety company, if not authorized to do business in this state, shall execute a power of attorney authorizing the director to accept service, on its behalf, of notice or process in any action upon the policy or bond arising out of the accident; provided, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property to a limit of at least twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of notice of the accident, the insurance carrier or surety company which issued the policy or bond shall furnish for filing with the director a written notice that the policy or bond was in effect at the time of the accident, or the department may rely upon the accuracy of the information and the required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous.

39-16-06. When requirements as to security and suspension do not apply.

The requirements as to security and suspension in section 39-16-05 do not apply:

1. To the driver of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such driver.
2. To the driver of a motor vehicle if at the time of the accident the vehicle was stopped, standing, or parked and whether attended or unattended, except that the requirements of this chapter apply in the event the director determines that any such stopping, standing, or parking of the vehicle was illegal or that the vehicle was not equipped as required by the laws of this state and that any such violation contributed to the accident.
3. If prior to the date that the director would otherwise suspend a license or nonresident's operating privilege under section 39-16-05, there must be filed with the director evidence satisfactory to the director that the person who would otherwise have to file

security has been released from liability or been finally adjudicated not to be liable or has executed a confession of judgment, payable when and in such installments as the parties have agreed to, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

39-16-07. Release from suspension of license.

The license or nonresident's operating privilege suspended as provided in section 39-16-05 must remain so suspended and may not be renewed nor may any such license be issued to such person until:

1. Such person deposits or there is deposited on the person's behalf the security required under section 39-16-05;
2. One year has elapsed following the date of such accident and no evidence satisfactory to the director has been filed with the director that during such period an action for damages arising out of such accident has been instituted; or
3. Evidence satisfactory to the director has been filed with the director of a release from liability, or a final adjudication of nonliability, or a confession of judgment, or a duly acknowledged written agreement, in accordance with subsection 3 of section 39-16-06; provided, in the event there is any default in the payment of any installment under any confession of judgment, then upon notice of such default, the director shall forthwith suspend the license or nonresident's operating privilege of such persons defaulting which may not be restored unless and until the entire amount provided for in said confession of judgment has been paid; and provided further, that in the event there is any default on the payment of any installment under any duly acknowledged written agreement, then, upon notice of such default, the director shall forthwith suspend the license or nonresident's operating privilege of such person defaulting which may not be restored unless and until such person deposits and thereafter maintains security as required under section 39-16-05 in such amount as the director may then determine, or one year has elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this state.

39-16-08. Requirements of one not licensed.

In case the driver or the owner of a motor vehicle involved in an accident within this state has no license, the person may not be allowed a license until the person has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, the person had held a license.

39-16-09. Director may fix, reduce, or increase requirement.

The security required under this chapter must be in such form and amount as the director may require but in no case in excess of the limits specified in section 39-16-05 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person in whose behalf the deposit is made, and at any time while such deposit is in the custody of the director or state treasurer, the person depositing it may in writing amend the specification of the person on whose behalf the deposit is made to include an additional person; provided, that a single deposit of security shall be applicable only on behalf of a person required to furnish security because of the same accident. The director may reduce or increase the amount of security ordered in any case if, in the director's judgment, the amount ordered is excessive or inadequate. In case the security originally ordered has been deposited, the excess deposited over the reduced amount must be returned to the depositor or the depositor's personal representative forthwith, notwithstanding the provisions of section 39-16-10.

39-16-10. Deposit of security with Bank of North Dakota - Release - How payment made.

1. Security deposited in compliance with the requirements of this chapter must be placed by the director in the custody of the Bank of North Dakota and must be applied as in subsection 2 only to the payment of a judgment rendered against the person on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subsection 3 of section 39-16-07, and such deposit or any balance thereof must be returned to the depositor or the depositor's personal representative, when evidence satisfactory to the director has been filed with the director that there has been a release from liability, or a final adjudication of nonliability, or a confession of judgment, or a duly acknowledged agreement, in accordance with subsection 3 of section 39-16-06, or whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under subsection 3 of section 39-16-07, the director is given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid. Upon certification by the director, the Bank of North Dakota shall return any security deposited with the director under the provisions of this chapter to the person entitled thereto except as provided for in subsection 3.
2. Such deposit must be held by the Bank of North Dakota to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against the person for whom such deposit was made, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle in the accident which resulted in the requirement for the deposit of such security. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution arises out of a suit for damages as aforesaid.
3. All payments and refunds made from cash deposits in the Bank of North Dakota under this chapter must be made upon a warrant-check issued by the department of transportation after submission of a duly authorized voucher.

39-16-11. Record not admissible as evidence.

Neither the report required, the action taken by the director pursuant to this chapter, the findings, if any, of the director upon which action is based, nor the security filed, nor the insurance carried or furnished as provided in this chapter may be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages.

39-16-12. Notice of failure to satisfy judgment.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-13. Suspension of license - Temporary release.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-14. Satisfaction of judgment.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-15. Installment payments.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-16. Revocation of license for reasons other than provisions of this chapter.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-17. Proof of financial responsibility.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-18. Proof by showing insurance coverage.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-19. Nonresident owner.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-20. Motor vehicle liability policy.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-21. Notice of proposed cancellation of policy by insurer.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-22. Other laws requiring insurance.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-23. Financial responsibility may be evidenced by bond.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-24. Deposit of cash with state treasurer.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-25. Employment or family connection in lieu of proof of financial responsibility.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-26. Release of bond or deposit on making other proof of responsibility.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-27. Procedure on failure of proof on file.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-28. Cancellation of bond or return of deposit.

Repealed by S.L. 1967, ch. 313, § 3.

39-16-29. Seizure or return of operator's license.

Repealed by S.L. 2009, ch. 328, § 8.

39-16-30. Operating while under suspension or revocation - Penalties.

Repealed by S.L. 2005, ch. 330, § 8.

39-16-31. Federal, state, or municipal ownership.

This chapter does not apply with respect to any motor vehicle owned and operated by the United States, this state, or any political subdivision of this state or any municipality therein.

39-16-32. Who may be self-insurer.

1. Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the director as provided in subsection 2.
2. The director may, upon the application of any person, issue a certificate of self-insurance when the director is satisfied that the person is possessed and will continue to be possessed of ability to pay any judgment obtained against the person.

3. Upon not less than five days' notice and a hearing pursuant to such notice, the director may cancel a certificate of self-insurance if the director is satisfied that the person is not possessed or will not continue to be possessed of ability to pay any judgment obtained against the person. Failure to pay any judgment within thirty days after such judgment has become final constitutes a reasonable ground for the cancellation of a certificate of self-insurance.

39-16-33. Effect on certain laws.

Repealed by omission from this code.

39-16-34. Not retroactive.

Repealed by omission from this code.

39-16-35. May rely on other process.

Repealed by omission from this code.

39-16-36. Citation.

Repealed by omission from this code.

39-16-37. Effective date.

Repealed by omission from this code.

CHAPTER 39-16.1

PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

39-16.1-01. Application.

The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, apply with respect to any person who has been convicted of or forfeited bail for certain offenses under motor vehicle laws or who has failed to pay judgments upon claims for relief arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of this state.

39-16.1-02. Proof of financial responsibility defined.

Repealed by S.L. 2013, ch. 291, § 62.

39-16.1-03. Notice of failure to satisfy judgment.

When any person fails within thirty days to satisfy any judgment, it is the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the director immediately after the expiration of said thirty days, a certified copy of such judgment or a certified copy of the docket entries in an action resulting in a judgment for damages or a certificate of facts relative to a judgment on a form provided by the director. If the judgment debtor is a nonresident, the director shall transmit a certified copy of the judgment to the official in charge of the issuance of drivers' licenses of the state of which the judgment debtor is a resident.

39-16.1-04. Suspension of license - Temporary release.

1. The director, upon receipt of a certified copy of a judgment or a certified copy of the docket entries in an action resulting in a judgment for damages or a certificate of facts relative to a judgment on a form provided by the director, shall forthwith suspend the license or operating privilege, of any person against whom such judgment was rendered except as hereinafter otherwise provided in this section and in section 39-16.1-06.
2. If the judgment creditor consents in writing, in such form as the director may prescribe that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the director for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 39-16.1-06 provided the judgment debtor furnishes proof of financial responsibility.
3. Any person whose license or nonresident's operating privilege has been suspended or is about to be suspended or will become subject to suspension under this chapter may be relieved from the effect of the judgment as prescribed in this chapter by filing with the director an affidavit stating that at the time of the accident upon which the judgment has been rendered the affiant was insured, that the insurer is liable to pay the judgment, and the reason, if known, why the insurer has not paid the judgment. That person shall also file the original or a copy of the insurance policy, if available, and any other documents the director may require to show that the loss, injury, or damage for which the judgment was rendered, was covered by the insurance policy. If the director is satisfied from such papers that the insurer was authorized to issue the insurance policy at the time and place of issuing the policy and that the insurer is liable to pay the judgment, at least to the extent and for the amounts required in this chapter, the director may not suspend the license or nonresident's operating privilege, or if already suspended shall reinstate them.
4. A license or nonresident's operating privilege must remain suspended and may not be renewed, nor may any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent hereinafter provided and until the said

person gives proof of financial responsibility subject to the exemptions stated in sections 39-16.1-04 and 39-16.1-06.

39-16.1-05. Satisfaction of judgment.

Judgments herein referred to must, for the purpose of this chapter only, be deemed satisfied:

1. When twenty-five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;
2. When, subject to such limit of twenty-five thousand dollars because of bodily injury to or death of one person, the sum of fifty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or
3. When twenty-five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of damage to or destruction of property of others as a result of any one accident. Payments made in settlement of any claims because of bodily injury, death, or property damages arising from a motor vehicle accident must be credited in reduction of the amounts provided for in this section.

39-16.1-06. Installment payments.

1. A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.
2. The director may not suspend a license, or a nonresident's operating privilege, suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.
3. In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the director shall forthwith suspend the license, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied as provided in this chapter.

39-16.1-07. Revocation or suspension of license for reasons other than provisions of this chapter.

1. Whenever the director under any other law of this state, except sections 39-06-40 and 39-06-40.1, revokes the license of any person, the license must remain revoked and may not be renewed nor shall any license be issued to such person, unless the person gives and maintains proof of financial responsibility.
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 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.

39-16.1-08. Proof of financial responsibility.

Proof of financial responsibility when required under this chapter may be given by filing:

1. A certificate of insurance as provided in sections 39-16.1-09 and 39-16.1-10;
2. A bond as provided in section 39-16.1-14; or

3. A certificate of deposit of money or securities as provided in section 39-16.1-15.

39-16.1-09. Proof by showing insurance coverage.

1. Proof of financial responsibility may be furnished by filing with the director the written or electronically transmitted certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate must give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and must designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is an operator's policy.
2. When a certificate is filed showing that a policy or policies have been issued covering certain described motor vehicles or a limited operator's policy but not insuring such person when operating all other motor vehicles, the director shall designate suitable restriction upon the driver's license of such person authorizing the operation of only such vehicles as are covered by the certificate. It is unlawful for such person to operate any motor vehicle not covered by such certificate. In the event a person desires to be relieved of the foregoing restriction and to be permitted to operate any motor vehicle, the person may have such restriction removed upon filing a certificate showing that there has been issued to the person a motor vehicle liability policy insuring the person against liability arising out of the use of any motor vehicle.

39-16.1-10. Nonresident owner.

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the director a written or electronically transmitted certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in the certificate is registered, or if the nonresident does not own a motor vehicle, then in the state in which the insured resides, provided the certificate otherwise conforms to the provisions of this chapter, and the director shall accept the same upon condition that the insurance carrier complies with the following provisions with respect to the policies so certified:
 - a. The insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.
 - b. The insurance carrier shall agree in writing that the policies conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.
2. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any undertaking or agreement, the director may not thereafter accept as proof any certificate of the carrier whether filed up to that time or thereafter tendered as proof, so long as the default continues.
3. Notwithstanding the requirement of subsection 1, the nonresident owner of a motor vehicle not registered in this state may file proof of future financial responsibility of an insurance company or other state-authorized entity providing insurance and authorized or licensed to do business in the nonresident's state of residence as long as such proof of future financial responsibility is in the amounts required by this state.

39-16.1-11. Motor vehicle liability policy.

1. A "motor vehicle liability policy" as said term is used in this chapter means an owner's or an operator's policy of liability insurance, certified as provided in sections 39-16.1-09 and 39-16.1-10 as proof of financial responsibility, and issued, except as otherwise provided in section 39-16.1-10, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.
2. Such owner's policy of liability insurance:

- a. Must designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and
 - b. Must insure the person named therein and any other person, as insured, using such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.
3. Such operator's policy of liability insurance must insure the person named as insured therein against loss from the liability imposed upon the person by law for damages arising out of the use by the person of any motor vehicle, either unlimited, or limited by excluding certain classes or types of motor vehicles, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.
4. Such motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and must contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.
5. Such motor vehicle liability policy need not insure any liability under any workforce safety and insurance law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.
6. Every motor vehicle liability policy is subject to the following provisions, which need not be contained in the policy:
 - a. The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute if injury or damage covered by the motor vehicle liability policy occurs; the policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; and a statement made by the insured or on the insured's behalf and a violation of the policy do not defeat or void the policy. This subdivision does not restrict the ability of an insurance carrier to void a motor vehicle liability policy for which an application was made after injury or damage occurred and does not obligate the insurance carrier to pay a claim on account of injury or damage that occurred before the application was made.
 - b. The satisfaction by the insured of a judgment for injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.
 - c. The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of that settlement is deductible from the limits of liability specified in subdivision b of subsection 2 for the accident out of which the claim arose.
 - d. The policy, the written application of the policy, if any, and any rider or endorsement that does not conflict with the provisions of this chapter constitute the entire contract between the parties.
7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage is not subject to

the provisions of this chapter. With respect to a policy which grants such excess or additional coverage, the term "motor vehicle policy" applies only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.
9. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.
10. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.
11. Any binder issued pending the issuance of a motor vehicle liability policy must be deemed to fulfill the requirements for such policy.

39-16.1-12. Notice of cancellation of policy by insurer.

When an insurance carrier has certified a motor vehicle liability policy under sections 39-16.1-09 and 39-16.1-10, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

39-16.1-13. Other laws requiring insurance.

1. This chapter does not apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.
2. This chapter may not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on the insured's behalf of motor vehicles not owned by the insured.

39-16.1-14. Financial responsibility may be evidenced by bond.

1. Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate not exempt from execution of a value twice the amount of such bond, which real estate must be scheduled in the bond approved by a judge of a court of record, and recorded in the office of the recorder of each county in which such real estate is situated, which said bond must be conditioned for payment of the amounts specified in section 39-16.1-02. Such bond must be filed with the director and is not cancelable except after ten days' written notice to the director. Such bond constitutes a lien in favor of the state upon the real estate so scheduled of any surety, which lien exists for the benefit of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond is recorded.
2. If such judgment rendered against the principal on such bond is not satisfied within sixty days after it has become final, the judgment creditor may, for the judgment creditor's own use and benefit and at the judgment creditor's sole expense, bring an action or actions in the judgment creditor's own name against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond.

39-16.1-15. Deposit of cash with the Bank of North Dakota.

1. Proof of financial responsibility may be evidenced by the certificate of the Bank of North Dakota that the person named therein has deposited with it twenty-five thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of twenty-five thousand dollars. The Bank of North Dakota may not accept any such deposit and issue a certificate therefor and the director may not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.
2. Such deposit must be held by the Bank of North Dakota to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of damages to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited are not subject to attachment or execution unless such attachment or execution arises out of a suit for damages as aforesaid.

39-16.1-16. Employment or family connection in lieu of proof of financial responsibility.

Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the director shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The director shall designate the restrictions imposed by this section on the face of such person's license.

39-16.1-17. Release of bond or deposit on making other proof of responsibility.

1. The director shall consent to the cancellation of any bond or certificate of insurance or the director shall direct and the Bank of North Dakota shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.
2. The director may not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within one year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the applicant has been released from all of the applicant's liability, or has been finally adjudicated not to be liable, for such injury or damage, is sufficient evidence thereof in the absence of evidence to the contrary in the records of the director.

39-16.1-18. Procedure on failure of proof on file.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the director shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license or the nonresident's operating privilege upon failure to file such other proof as required.

39-16.1-19. Cancellation of bond or return of deposit.

1. The director shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the director shall direct and the Bank of North Dakota shall return to the person entitled thereto any money or securities deposited pursuant to this

chapter as proof of financial responsibility, or the director shall waive the requirement of filing proof, in any of the following events:

- a. At any time after one year from the date such proof was required when, during the one-year period preceding the request, the director has not received record of a conviction or a forfeiture of bail which would require the revocation of the license or operating privilege, or both, of the person by or for whom such proof was furnished.
 - b. The death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle.
 - c. The surrender of the person's license to the director by the person who has given proof.
2. The director may not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has, within one year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the applicant has been released from all of the applicant's liability, or has been finally adjudicated not to be liable, for such injury or damage, is sufficient evidence thereof in the absence of evidence to the contrary in the records of the director.
 3. Whenever any person whose proof has been canceled or returned under subdivision c of subsection 1 applies for a license within a period of one year from the date proof was originally required, the application must be refused. The person's operator's license and driving privileges remain under suspension or revocation until the applicant re-establishes proof for the remainder of the one-year period.

39-16.1-20. Seizure or return of operator's license.

Repealed by S.L. 2007, ch. 325, § 7.

39-16.1-20.1. Verification of liability insurance.

No operator's license may be returned to an individual unless that person files with the director a verified statement confirming the person's insurance coverages as required by section 39-08-20. The verified statement must include the name of the insurance carrier and the effective dates of the policy. Upon the request of the director, the insurance carrier will verify the information contained in the verified statement. The director shall suspend the operator's license of any person upon receiving satisfactory evidence that the verified statement contains false or fraudulent information. The period of suspension may not exceed six months. Any suspension must be initiated under section 39-06-33. An operator whose license is suspended under this section is not eligible for a temporary operator's permit.

39-16.1-21. Operating under suspension or revocation - Penalties.

Repealed by S.L. 2005, ch. 330, § 8.

39-16.1-22. Federal, state, or municipal ownership.

This chapter does not apply with respect to any motor vehicle owned and operated by the United States, this state, or any political subdivision of this state or any municipality therein.

39-16.1-23. Who may be self-insurer.

1. Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the director as provided in subsection 2.

2. The director may, upon the application of any person, issue a certificate of self-insurance when the director is satisfied that such person is possessed and will continue to be possessed of ability to pay any judgment obtained against the person.
3. Upon not less than five days' notice and a hearing pursuant to such notice, the director may cancel a certificate of self-insurance if the director is satisfied that such person is not possessed or will not continue to be possessed of ability to pay any judgment obtained against the person. Failure to pay any judgment within thirty days after such judgment has become final constitutes a reasonable ground for the cancellation of a certificate of self-insurance.

CHAPTER 39-16.2

GAS TRANSPORTER FINANCIAL RESPONSIBILITY

39-16.2-01. Definitions.

As used in this chapter:

1. "Dealer" means any person in the business of handling liquefied petroleum gas who delivers or sells any liquefied petroleum gas to any retail dealer or user of liquefied petroleum gas.
2. "Liquefied petroleum gas" includes any material that is composed predominantly of any of the following hydrocarbons or mixtures of the following hydrocarbons: propane, propylene, butanes (normal butane and isobutane), and butylenes.

39-16.2-02. Liquefied petroleum gas transporters - Financial responsibility requirements.

A dealer who owns or operates a vehicle used for the transportation of liquefied petroleum gas shall maintain motor vehicle liability insurance of:

1. At least five million dollars for the transportation of liquefied petroleum gas transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities of three thousand five hundred water gallons [13248.94 liters] or more.
2. At least one million dollars for the transportation of liquefied petroleum gas transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities of less than three thousand five hundred water gallons [13248.94 liters].

39-16.2-03. Maintenance and certification of financial requirements - Verification.

A dealer subject to the financial responsibility requirements of this chapter shall maintain the liability insurance prescribed in section 39-16.2-02 which obligates the dealer to pay compensation for injuries to persons and for loss or damage to property by reason of the ownership, maintenance, or use of the covered vehicle. The director may require dealers subject to the financial responsibility requirements of this chapter to certify the existence of financial responsibility in the form and at the times required by the director. The director may forward the certification to the named insurer to determine if the certification is correct. No civil liability may accrue to the insurer or any of its employees for reports made to the director if the reports are made in good faith based upon the most recent information to the insurer.

39-16.2-04. Self-insurance.

The director may allow a dealer to fully or partially self-insure motor vehicles as required by this chapter if the dealer provides financial data the director requires and the director determines that the financial data demonstrates that the dealer is sufficiently stable and solvent to fully or partially self-insure. The director shall authorize self-insurance subject to reasonable provisions for the filing of periodic financial statements demonstrating no substantial deterioration of financial stability.

39-16.2-05. Penalties.

A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter is guilty of a class B misdemeanor. A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter if the vehicle is involved in an accident is guilty of a class A misdemeanor. The department may refuse to issue the registration for a vehicle or may cancel the registration of a vehicle owned or operated by a person who does not comply with the requirements of this chapter.

CHAPTER 39-18

MOBILE HOME DEALER REGULATION

39-18-01. Mobile home and manufactured home dealer's license - Fees - Dealer's plates - Penalty.

1. A person may not engage in the business of buying, selling, or exchanging of mobile homes, manufactured homes, or travel trailers, or advertise or hold that person out to the public as being in the business of buying, selling, or exchanging of mobile homes, manufactured homes, or travel trailers without first being licensed.
2. Application for a dealer's license and renewal license must be made to the department on forms the department prescribes and furnishes, and the application must be accompanied by an annual fee of thirty-five dollars for which must be issued one dealer plate. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license.
3. A mobile home or manufactured home dealer's license must be issued only to those who will maintain a permanent office and place of business, and an adequate service department, during the licensing year, and will abide by all the provisions of law pertaining to mobile home or manufactured home dealers.
4. In addition, the dealer shall maintain that person's business records in one central location.
5. Upon the payment of the fee of ten dollars for each additional plate, the department shall register and issue dealer's license plates for use on any mobile or manufactured homes owned by the licensed dealer, and the mobile and manufactured homes bearing the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by the dealer, and the dealer's agents and servants, during the year of the registration. A dealer's license plates expire on December thirty-first of each year.
6. The term "mobile home" as used in this chapter includes and has the same meaning as "housetrailer", and both terms have the meaning prescribed in section 39-01-01. The terms "travel trailer" and "manufactured home" as used in this chapter have the meaning as prescribed in section 39-01-01.
7. Any mobile home or manufactured home dealer licensed under this chapter may sell house cars without being licensed under chapter 39-22. A mobile home or manufactured home dealer plate displayed on a house car must be displayed on the rear of the vehicle.
8. Any dealer violating this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a mobile home or manufactured home dealer licensed under this chapter if a third or subsequent violation of this chapter occurs within five years of the first violation.

39-18-02. Bond required.

Before the issuance of a mobile home or manufactured home dealer's license, the applicant for the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within this state. The bond must be in the amount of fifty thousand dollars, and be conditioned upon the faithful compliance by the applicant as a dealer, if the license is issued to the dealer, that the dealer will comply with all the laws of this state pertaining to the business, and regulating or being applicable to the business of the dealer as a dealer in mobile homes or manufactured homes, and indemnifying any person dealing or transacting business with the dealer in connection with any mobile home or manufactured home from any loss or damage occasioned by the failure of the dealer to comply with the provisions of the laws of this state. This includes the furnishing of a proper and valid certificate of title to the vendee of a mobile home within fifteen days of the sale of a mobile home, and to the vendee of a travel trailer as defined by section 57-55-01 within fifteen days of

the sale of a travel trailer. In addition, this includes furnishing to the vendee of a manufactured home within fifteen days of the sale of a manufactured home an affidavit of affixation that is obtained from the county recorder in the county where the real property is affixed, a letter of confirmation, and a bill of sale that includes a statement as to whether there are any liens or encumbrances on the manufactured home. The bond must be filed with the director before the issuance of the license provided for under this chapter. The aggregate liability of the surety to all persons for all losses or damages may not exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any proceeding. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

39-18-02.1. Disposition of fees.

Fees from registration of dealers must be deposited with the state treasurer and credited to the highway tax distribution fund.

39-18-03. Titling and licensing of mobile homes, housetrailer, and travel trailers - License fee.

The owner of a travel trailer, housetrailer, or mobile home, who sells or transfers the title to such vehicle shall endorse an assignment and warranty of title upon the certificate of title for such vehicle, along with a statement as to whether there are liens or encumbrances thereon. The owner shall deliver the certificate of title to the purchaser within fifteen days after such sale if title passes to the purchaser. If the legal title does not pass to the purchaser under the contract for sale of the vehicle, the legal title owner shall endorse thereon a statement that the owner holds the lien, the date thereof, and the name of the purchaser, and shall send the certificate of title to the department with an application of the purchaser for a new certificate of title showing the name of the legal owner, the registered owner, the date of the lien of the legal owner, which certificate of title when issued must be returned by the department to the legal title owner; who shall retain the same in the owner's possession until the terms of the contract are complied with by the purchaser, and thereupon, after showing that the lien has been paid and satisfied the owner shall deliver the certificate of title properly assigned to the purchaser. The purchaser or transferee shall present the endorsed and assigned certificate to the department, within thirty days after the receipt thereof, accompanied by a transfer fee of five dollars, and shall make an application for and obtain a new certificate of title for such vehicle. A penalty of not more than ten dollars may be imposed by the director for failure to present the certificate of title to the department as required by this section. Except when transported by a drive-away transporter duly registered and licensed under the laws of this state, no person may haul a mobile home, housetrailer, or travel trailer unless the same is first registered with and titled by the department, a certificate of title has been issued, and it displays a number plate issued by and under such regulations as the director may prescribe. The annual fee for such licensing is twenty dollars for mobile homes and housetrailer and twenty dollars for travel trailers.

The registration required hereunder must be on a calendar-year basis.

If such mobile home, housetrailer, or travel trailer enters the state carrying the current number plate of another state, no number plates may be required by the state of North Dakota for a period of thirty days.

The annual license fee provided for in this section does not preclude the taxation of certain mobile homes pursuant to chapter 57-55.

If such mobile home, housetrailer, or travel trailer remains stationary or parked within the state of North Dakota for a period of one year, no license may be required for that year, provided that nothing in this chapter permits the use of a dealer's plate on such mobile home, housetrailer, or travel trailer after the same has been sold by the dealer to whom such plate was issued.

39-18-03.1. Park model trailer fee.

Expired under S.L. 1997, ch. 344, § 4.

39-18-03.2. Park model trailer fee.

1. The owner of a park model trailer, as defined in subsection 2 of section 57-55-10, shall pay the department a fee of twenty dollars per calendar year to qualify for the exemption under section 57-55-10. The department shall issue a receipt for payment of the fee but payment of the fee does not confer any rights to the owner of a park model trailer which are not otherwise provided by law.
2. In lieu of subsection 1, upon the request of an owner of a park model trailer, as defined in subsection 2 of section 57-55-10, the department shall register the trailer as a travel trailer for a registration fee of twenty dollars per calendar year. The payment of the fee qualifies the trailer for an exemption under section 57-55-10. The department shall issue a number plate upon payment of the registration fee.
3. Fees collected under this section must be deposited in the highway tax distribution fund.

39-18-04. Safety devices and requirements.

Any new mobile home sold in the state of North Dakota and licensed under the provisions of this chapter must be equipped with combination taillight and stoplight controlled and operated from the driver's seat of the propelling vehicle; such mobile home must further be equipped with brakes approved by the department, designed and capable of bringing to a stop such vehicle and mobile home within a distance of fifty feet [15.24 meters] when operated at a speed of twenty miles [32.19 kilometers] per hour. No person may drive any mobile home on the highways of this state unless the propelling vehicle is able to stop within the distance and in the manner prescribed herein.

Any new mobile home sold in the state of North Dakota and licensed under the provisions of this chapter must be equipped with a hitch or coupler which will comply with the regulations as established by the interstate commerce commission.

39-18-05. Width, length, and height of mobile home operated in the state of North Dakota - Oversize permits.

Repealed by S.L. 1985, ch. 440, § 5.

39-18-06. Suspension or revocation of dealer's license.

The department may suspend or revoke any dealer's license for failure of the licensee to comply with any of the laws of this state governing mobile home or manufactured home dealers, or for failure to comply with the reasonable rules and regulations of the department set up under chapter 28-32, but an order suspending or revoking a dealer's license may not be made before a hearing at which the licensee must be given an opportunity to be heard.

39-18-07. Penalty.

Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of a class B misdemeanor.

39-18-08. Sales by real estate broker or salesperson of used mobile home or manufactured home - Penalty.

Notwithstanding any other provision of law, a person licensed as a real estate broker or salesperson may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any used mobile home or manufactured home. For the purposes of this section, a used mobile home is a mobile home which has been previously sold by a mobile home dealer and a used manufactured home is a manufactured home that has been previously sold by a manufactured home dealer. Any person, including a person licensed as a real estate broker or salesperson, who obtains a listing for the sale or exchange of a used mobile home or manufactured home that is located in a mobile

home park, as defined in section 23-10-01, shall provide notice of the listing within seven days after the listing is obtained, in writing, to the owner or operator of the mobile home park.

A real estate broker who engages in the activities authorized by this section may not maintain any place of business where two or more mobile homes are displayed and offered for sale by the broker, unless the broker is also licensed as a mobile home or manufactured home dealer under this chapter. A person who violates this section is guilty of an infraction.

CHAPTER 39-19

RECIPROCITY AGREEMENTS, ARRANGEMENTS, OR DECLARATIONS

39-19-01. Director - Reciprocity powers.

The director may execute agreements, arrangements, or declarations involving the reciprocal use of the highways of this state by vehicles excepted in part or in full from registration requirements or mile tax payments in lieu thereof, or involving reciprocity between this state and any other state on matters relating to drivers' licensing, financial responsibility, traffic law enforcement, vehicle sizes and weights, and vehicle inspection.

39-19-02. Secretary to commission.

Repealed by S.L. 1971, ch. 382, § 3.

39-19-03. Reciprocal use of highways.

No person may operate a vehicle upon the highways of this state unless the driver is licensed to operate a motor vehicle in this state or under a reciprocal agreement, arrangement, or declaration, has paid the mile tax in lieu of registration, or has complied with the requirements of a reciprocity agreement, arrangement, or declaration executed as provided in section 39-19-01.

39-19-04. International registration plan - Multistate reciprocal agreement - Change of state agency.

The department, or the designated agency of the department acting directly or through the department, which has joined the international registration plan and multistate reciprocal agreement shall transfer such membership to the department. The department is authorized to expend the necessary fees required for membership. The provisions of the international registration plan, including any amendment to the plan, as agreed to by the department, are applicable to those vehicles engaged in interstate travel which are apportioned in North Dakota. The department may enforce and collect all penalties and fines allowed by the provisions of the international registration plan.

39-19-05. Agreements for joint operation of ports of entry.

The director may negotiate and enter into bilateral agreements with the appropriate officials of adjacent states, as provided herein:

1. The agreements may provide for the manning and operation of jointly occupied ports of entry, for the collection of highway user fees, registration fees, permit fees, fuel taxes, and any other fees and taxes which may be prescribed by law or rule.
2. The agreements may further provide for the collection of these fees and taxes by either party state at jointly occupied ports of entry before authorization is given for a vehicle to legally operate within that state or jurisdiction, and for the enforcement of safety, size and weight laws, and rules of the respective states.

39-19-06. Unified carrier registration system.

The director may adopt all rules necessary to enable this state to participate in the unified carrier registration system. Any moneys derived from participation in the unified carrier registration program must be deposited in the highway fund.

39-19-06.1. Single state insurance registration system.

Repealed by S.L. 2013, ch. 288, § 4.

CHAPTER 39-20
CHEMICAL TEST FOR INTOXICATION, IMPLIED CONSENT

39-20-01. Implied consent to determine alcohol concentration and presence of drugs.

1. Any individual who operates a 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 is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, oral fluid, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, oral fluid, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.
2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual under arrest for violation of section 39-08-01 or an equivalent offense. For the purposes of this chapter, the taking into custody of a child under section 27-20.4-05 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used.
3.
 - a. The law enforcement officer shall inform the individual North Dakota law requires the individual to take a chemical test to determine whether the individual is under the influence of alcohol or drugs and refusal of the individual to submit to a test directed by the law enforcement officer may result in a revocation of the individual's driving privileges for a minimum of one hundred eighty days and up to three years.
 - b. If an individual refuses to submit to testing under this section, proof of the refusal is not admissible in any administrative proceeding under this chapter if the law enforcement officer fails to inform the individual as required under subdivision a.
4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

39-20-01.1. Chemical test of driver in serious bodily injury or fatal crashes.

1. If the driver of a vehicle is involved in a crash resulting in the death of another individual, and there is probable cause to believe that the driver is in violation of section 39-08-01, a law enforcement officer shall request the driver to submit to a chemical test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both.
2. If the driver of a vehicle is involved in a crash resulting in the serious bodily injury, as defined in section 12.1-01-04, of another individual, and there is probable cause to believe that the driver is in violation of section 39-08-01, a law enforcement officer shall request the driver to submit to a test or tests of the driver's blood, breath, or urine

- to determine the alcohol concentration or the presence of other drugs or substances, or both.
3. If the driver refuses to submit to a chemical test or tests of the driver's blood, breath, or urine and exigent circumstances are not present, the law enforcement officer shall request a search warrant to compel the driver to submit to a chemical test or tests of the driver's blood, breath, or urine to determine the alcohol concentration or the presence of other drugs or substances, or both.
 4. The approved methods of the director of the state crime laboratory or the director's designee must be followed in collecting and preserving a sample of the driver's blood, breath, or urine and conducting a chemical test or tests to determine the alcohol concentration or the presence of other drugs or substances, or both.

39-20-02. Individuals qualified to administer test and opportunity for additional test.

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The individual tested may have an individual of the individual's choosing, who is medically qualified to draw blood, 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 individual charged. The failure or inability to obtain an additional test by an individual does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood or urine sample test taken at the direction of the law enforcement officer must be made available to that individual by the law enforcement agency that administered the test or tests.

39-20-03. Consent of person incapable of refusal not withdrawn.

Repealed by S.L. 2017, ch. 268, § 9.

39-20-03.1. Action following test result for a resident operator.

If a person submits to a test under section 39-20-01 or 39-20-02 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two 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 vehicle, the following procedures apply:

1. The law enforcement officer shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 was by urine sample or by drawing blood as provided in section 39-20-02 and the individual 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 urine or blood from the director of the state crime

laboratory or the director's designee and if the analysis shows that individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.

3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual 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 individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall 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.
5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may elect to participate in the twenty-four seven sobriety program under chapter 54-12 in lieu of the administrative hearing under this chapter if the individual's driver's license is not subject to an unrelated suspension or revocation. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer. The director shall issue a temporary restricted driver's license with the restriction the individual participate in the twenty-four seven sobriety program upon application by the individual with submission of proof of financial responsibility and proof of participation in the twenty-four seven sobriety program under chapter 54-12.

39-20-03.2. Action following test result or on refusing test by 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 or 39-20-02 and the test results show the person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, 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 notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.
2. If the test was administered by urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the individual a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, 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 must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and 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. If the individual was issued a temporary operator's permit because of the individual's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the individual 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 individual was lawfully arrested, that the individual was tested for alcohol concentration under this chapter, and that the results of the test show that the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing 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 or, for purposes of section 39-20-14, had 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 accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, 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 that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director 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 director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One hundred eighty days if the person's driving record shows that within the seven years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. Two years if the person's driving record shows that within the seven years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. Three years if the person's driving record shows that within the seven years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation if all of the following criteria are met:
- a. An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges.

3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

39-20-04.1. Administrative sanction for driving or being in physical control of a vehicle while having certain alcohol concentration.

1. After the receipt of the certified 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 law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's driving privileges as follows:
 - a. For ninety-one days if the person's driving record shows that, within the seven 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 or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.
 - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the seven years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. For three hundred sixty-five days if the person's driving record shows that, within the seven years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
 - d. For two years if the person's driving record shows that within the seven years preceding the date of the arrest, the person's operator's license has once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the seven years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
 - e. For three years if the operator's record shows that within the seven years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

2. In the suspension of the person's operator's license the director shall give credit for the time the person was without an operator's license after the day of the offense, except that the director may not give credit for the time the person retained driving privileges through a temporary operator's permit issued under section 39-20-03.1 or 39-20-03.2.

39-20-05. Administrative hearing on request - Election to participate in the twenty-four seven sobriety program.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. Upon completion of the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, and if the individual has not provided the director with written notice of election to participate in the twenty-four seven sobriety program under chapter 54-12, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein.
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 must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 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 in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether 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 and, whether the person refused to submit to the onsite screening test.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator;
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website; and
 - c. Any copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.
5. 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 does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. 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 had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. 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 director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. 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 hearing officer'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. The hearing officer shall, on the date for which the hearing is scheduled,

mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

7. A hearing under this section may be conducted in whole or in part by telephone, television, virtual online interface, or other electronic means with the consent of the licensee. A hearing officer may provide a notice, decision, or order under this section by mail or other means as authorized by the director.

39-20-06. Judicial review.

Any person whose operator's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the hearing officer's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director 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 is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

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 individual while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol concentration or presence of other drugs, or a combination thereof, in the individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, or urine is admissible. For the purpose of this section:

1. An individual having, at that time, an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor. This presumption has no application to the administration of chapter 39-06.2.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol concentration in an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the individual was under the influence of intoxicating liquor.
3. An individual having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight 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. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.
5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the

test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the individual requested to take the chemical test.

6. The director of the state crime laboratory or the director's designee 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 director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certificate of the director of the state crime laboratory designating the director's designees.
 - e. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
 - f. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6 that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood or urine analysis referred to in subsection 5 and which is issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.
9. Superseded by N.D.R.Ev., Rule 707.
10. A law enforcement officer who has witnessed an individual who is medically qualified to draw the blood sample for testing may sign a verified statement that the law enforcement officer witnessed the individual draw the blood sample and the individual followed the approved methods of the director of the state crime laboratory or the director's designee. Further foundation is not required to establish that the blood sample was drawn according to the approved method of the director of the state crime laboratory or the director's designee.

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 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, drugs, or a combination thereof.

39-20-09. Effect of evidence of chemical test.

This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test results show an alcohol concentration of at least eight one-hundredths of one percent or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the purpose of such evidence must 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.

39-20-10. Notice to other states.

When it has been finally determined under the procedures of this chapter that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the director shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which the person has a license.

39-20-11. Application to prosecutions under municipal ordinances.

The provisions of this chapter also apply to prosecutions for the violation of municipal ordinances prohibiting the driving or control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof.

39-20-12. Liability.

Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of said act except for gross negligence.

39-20-13. State crime laboratory to examine specimens of fatalities in accidental deaths involving a motor vehicle - Record use.

In cases of death resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that specimens of blood, urine, and vitreous humor be withdrawn from the body of the decedent within twenty-four hours after the decedent's death by a coroner, coroner's physician, or other qualified person, prior to embalming. The specimens must be collected and preserved by methods and techniques established by the director of the state crime laboratory or the director's designee. The specimens so drawn must be sent to the director of the state crime laboratory or the director's designee for analysis for alcohol, carbon monoxide, and other drug content. The director of the state crime laboratory or the director's designee shall keep a record of all such examinations to be used for statistical purposes. The records must be made available to the director for use by the national highway traffic safety administration in analyzing fatal accidents. The information in the possession of the director may be obtained from the director of the state crime laboratory or the director's designee only as provided in this section. Except as provided, the results of the examinations referred to in this section must be used only for statistical purposes, except that the results must be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. The cumulative results of the examinations, without identifying the individuals involved, must be disseminated to interested state and local officials and made public by the director of the state crime laboratory or the director's designee. Any person drawing the specimens and any person making any examination under the terms of this section are immune from all liability, civil or criminal, that might otherwise be incurred or imposed.

39-20-14. Screening tests.

1. Any individual 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 individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or a violation under section 39-08-01 or an equivalent offense, 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 individual's body contains alcohol.
2. An individual 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 individual'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.
3. 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 individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol and that refusal of the individual to submit to a screening test may result in a revocation for at least one hundred eighty days and up to three years of that individual's driving privileges. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is admissible in a court proceeding if the individual was arrested in violation of section 39-08-01 and did not take any additional chemical tests requested by the law enforcement officer. Such refusal is sufficient cause to revoke such individual'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.
4. The director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident.
5. 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.
6. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

39-20-15. Restricted license upon twenty-four seven sobriety program participation.

Any driver suspended under this chapter may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The director may issue a temporary restricted license that takes effect after fourteen days of the suspension have been served provided that the driver is not subject to any unrelated suspension. Notwithstanding any other provision of law, an individual may not receive a temporary restricted operator's license until after fourteen days after the administrative hearing on the offense under this chapter has been waived or held, or after fourteen days of the final appeal, whichever is longer.

CHAPTER 39-21 EQUIPMENT OF VEHICLES

39-21-01. When lighted lamps are required.

Subject to the exceptions for parked vehicles, every vehicle upon a highway within this state must display lighted headlamps, taillamps, and illuminating devices as required in this chapter for different classes of vehicles as follows:

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;
2. At any time when it is raining, snowing, sleeting, or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead; or
3. At any other time when visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead.

Stoplights, turn signals, and other signaling devices must be lighted as prescribed for the use of these devices.

39-21-02. Visibility distance and mounted height of lamps.

1. Whenever requirement is hereinafter declared as to distance from which certain lamps and devices must render objects visible or within which such lamps or devices must be visible, said provisions apply during the times stated in section 39-21-01 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.
2. Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it means from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

39-21-03. Headlamps on motor vehicle.

1. Every motor vehicle must be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps must comply with the requirements and limitations set forth in this chapter.
2. Every headlamp upon every motor vehicle must be located at a height measured from the center of the headlamp of not more than fifty-four inches [137.16 centimeters] nor less than twenty-four inches [60.96 centimeters] to be measured as set forth in subsection 2 of section 39-21-02.

39-21-04. Taillamps.

1. Every motor vehicle, trailer, semitrailer and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, must be equipped with at least one taillamp mounted on the rear, which, when lighted as hereinbefore required, must emit a red light plainly visible from a distance of one thousand feet [304.8 meters] to the rear, provided that in the case of a train of vehicles only the taillamp on the rearmost vehicle need actually be seen from the distance specified. Every such above-mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after January 1, 1964, must be equipped with at least two taillamps mounted on the rear, on the same level and as widely spaced laterally as practicable, which, when lighted as herein required, comply with the provisions of this section.
2. Every taillamp upon every vehicle must be located at a height of not more than seventy-two inches [182.88 centimeters] nor less than fifteen inches [38.1 centimeters].
3. Either a taillamp or a separate lamp must be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from

a distance of fifty feet [15.24 meters] to the rear. Any taillamp or taillamps, together with any separate lamp for illuminating the rear registration plate, must be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

39-21-05. New motor vehicle to be equipped with reflectors.

1. Every new motor vehicle hereafter sold and operated upon a highway other than a truck tractor must carry on the rear, either as a part of the taillamps or separately, two or more red reflectors, meeting the requirements of this section, except that vehicles of the type mentioned in section 39-21-08 must be equipped with reflectors as required in applicable sections.
2. Every such reflector must be mounted on the vehicle at a height not less than fifteen inches [38.1 centimeters] nor more than sixty inches [152.4 centimeters] measured as set forth in subsection 2 of section 39-21-02, and must be of size and characteristics and so mounted as to be visible as required in section 39-21-11.

39-21-06. Stop lamps and turn signals required on new motor vehicle.

1. A person may not sell, offer for sale, or operate on the highways any motor vehicle registered in this state and manufactured or assembled after January 1, 1964, unless it is equipped with at least two stop lamps that are in good working order when lighted, are mounted on the rear on the same level and as widely spaced laterally as practicable, and meet the requirements of section 39-21-19 and this section, except that a truck tractor manufactured or assembled after January 1, 1964, must be equipped with at least one stop lamp meeting the requirements of section 39-21-19.
2. A person may not sell, offer for sale, or operate on the highways any motor vehicle, trailer, or semitrailer registered in this state and manufactured or assembled after January 1, 1952, unless it is equipped with electrical turn signals in good working order which meet the requirements of section 39-21-19. This subsection does not apply to any trailer or semitrailer of less than three thousand pounds [1360.78 kilograms] gross weight.
3. A stop lamp on a vehicle must be located at a height of not more than seventy-two inches [182.88 centimeters] nor less than fifteen inches [38.10 centimeters] from the ground.

39-21-06.1. Additional lighting equipment.

1. Any motor vehicle may be equipped with one or more backup lamps either separately or in combination with other lamps, but the backup lamp or lamps may not be lighted when the vehicle is in a forward motion.
2. Any vehicle may be equipped with one or more side marker lamps which may be flashed in conjunction with turn signals or vehicular hazard warning signals.

39-21-07. Application of succeeding sections.

Those sections of this chapter which follow immediately, including sections 39-21-08, 39-21-09, 39-21-10, 39-21-11, and 39-21-12, relating to clearance and marker lamps, reflectors, and stoplights, apply as stated in said sections to vehicles of the type therein enumerated, namely passenger buses, trucks, truck tractors, and certain trailers, semitrailers and pole trailers, respectively, when operated upon any highway, and said vehicles must be equipped as required and all lamp equipment required must be lighted at the times mentioned in section 39-21-01, except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet [152.4 meters].

39-21-08. Additional equipment required on certain vehicles.

In addition to other equipment required in this chapter, the following vehicles must be equipped as herein stated under the conditions stated in section 39-21-07:

1. On every bus, truck, trailer, or semitrailer there must be the following:

- a. On the rear, two reflectors, one at each side, and one stoplight.
 - b. A trailer or semitrailer which is not so loaded or of such dimensions as to obscure the stoplight on the towing vehicle, need not be equipped with a stoplight.
2. On every bus, truck, trailer, or semitrailer eighty inches [203.2 centimeters] or more in overall width there must be the following:
 - a. On the rear, two reflectors, one at each side, two clearance lamps, one at each side, and one stoplight.
 - b. On the front, two clearance lamps, one at each side.
3. On every truck tractor there must be the following:
 - a. On the front, two clearance lamps, one at each side.
 - b. On the rear, one stoplight.
4. On every pole trailer there must be the following:
 - a. On the rear of the pole trailer or load, two reflectors, one at each side.
 - b. In addition, on pole trailers exceeding three thousand pounds [1360.78 kilograms] gross weight, there must be on each side one side marker lamp and one clearance lamp which may be in combination, to show to the front, side, and rear.

39-21-09. Color of clearance lamps, side marker lamps, backup lamps, and reflectors.

1. Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle must display or reflect an amber color.
2. Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle must display or reflect a red color.
3. All lighting devices and reflectors mounted on the rear of any vehicle must display or reflect a red color, except that the light illuminating the license plate must be white and the light emitted by a backup lamp must be white or amber.
4. Any person who violates this section must be assessed a fee of ten dollars for each offense.

39-21-10. Mounting of reflectors, clearance lamps, and side marker lamps.

1. Reflectors when required by section 39-21-08 must be mounted at a height not less than fifteen inches [38.1 centimeters] and not higher than sixty inches [152.4 centimeters] above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than fifteen inches [38.1 centimeters] the reflector must be mounted as high as that part of the permanent structure will permit. The rear reflectors on a pole trailer may be mounted on each side of the bolster or load. Any required red reflector on the rear of a vehicle may be incorporated with the taillamp but must meet all the other reflector requirements of this chapter.
2. Clearance lamps must be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

39-21-11. Visibility of reflectors, clearance lamps, and marker lamps.

1. Every reflector upon any vehicle referred to in section 39-21-08 must be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred feet [182.88 meters] to one hundred feet [30.48 meters] from the vehicle when directly in front of lawful lower beams of headlamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1970, must be measured in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle must reflect the required color of light to the sides, and those mounted on the rear must reflect a red color to the rear.
2. Front and rear clearance lamps must be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet [152.4 meters] from the front and rear, respectively, of the vehicle.

3. Side marker lamps must be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet [152.4 meters] from the side of the vehicle on which mounted.

39-21-12. Obstructed lights not required.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this does not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination must be lighted.

39-21-13. Lamp or flag on projecting load.

Whenever the load upon any vehicle extends to the rear four feet [121.92 centimeters] or more beyond the bed or body of the vehicle there must be displayed at the extreme rear end of the load, at the times specified in section 39-21-01, a red light or lantern plainly visible from a distance of at least six hundred feet [182.88 meters] to the sides and rear. The red light or lantern required under this section must be in addition to the red rear light required upon every vehicle. At any other time there must be displayed at the extreme rear end of a load a red flag or cloth not less than twelve inches [30.48 centimeters] square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

39-21-14. Lamps on parked vehicle.

1. Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of one thousand feet [304.8 meters] upon such street or highway, no lights need be displayed.
2. Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of one thousand feet [304.8 meters] upon such highway, the vehicle must be equipped with at least one lamp displaying a white or amber light visible from a distance of one thousand feet [304.8 meters] to the front of the vehicle. The same lamp or at least one other lamp must display a red light visible from a distance of one thousand feet [304.8 meters] to the rear of the vehicle, and the location of the lamp or lamps must always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. Local authorities may provide by ordinance that no lights need be displayed upon any motor vehicle when parked upon a highway where the speed limit in effect does not exceed thirty miles [48.28 kilometers] per hour in accordance with local ordinances or where there is sufficient light to reveal any person within a distance of two hundred feet [60.96 meters] upon such highway.
3. Any lighted headlamps upon a parked vehicle must be depressed or dimmed.

39-21-15. Lamps, reflectors, and reflective materials on farm tractors, farm equipment, and implements of husbandry.

1. Every farm tractor, self-propelled unit of farm equipment, or towed implement of husbandry, manufactured or assembled after January 1, 1980, must at all times, and every farm tractor, self-propelled unit of farm equipment, or towed implement of husbandry must, when operated upon the highways of this state during the times mentioned in section 39-21-01, be equipped as follows:
 - a. Tractors and self-propelled units of farm equipment must be equipped with two single-beam or multiple-beam headlamps meeting the requirements of section 39-21-20 or 39-21-22; provided, that a tractor or self-propelled unit of farm

equipment which is not equipped with an electrical system must be equipped with at least one lamp displaying a white light visible when lighted from a distance of not less than one thousand feet [304.8 meters] to the front of the vehicle. Every tractor and self-propelled unit of farm equipment must be equipped with at least one lamp displaying a red light visible when lighted from a distance of one thousand feet [304.8 meters] to the rear of the vehicle. In addition, every tractor and every self-propelled unit of farm equipment must be equipped with two red reflectors visible from all distances from six hundred feet [182.88 meters] to one hundred feet [30.48 meters] to the rear when directly in front of lawful lower beams of headlamps.

- b. Every towed unit of farm equipment or implement of husbandry must be equipped with at least one lamp displaying a red light visible when lighted from a distance of one thousand feet [304.8 meters] to the rear or two red reflectors visible from all distances within six hundred feet [182.88 meters] to one hundred feet [30.48 meters] to the rear when directly in front of lawful lower beams of headlamps. In addition, if the extreme left projection of a towed unit of farm equipment or implement of husbandry extends beyond the extreme left projection of the towing tractor or vehicle, the unit or implement must be equipped with at least one amber lamp or reflector mounted to indicate as nearly as practicable the extreme left projection and visible from all distances within six hundred feet [182.88 meters] to one hundred feet [30.48 meters] to the front when illuminated by the lower beams of headlamps and at least one red lamp or reflector so mounted and visible from the same distances to the rear.
2. The lamps and reflectors required by this section must be so positioned as to show from front and rear as nearly as practicable the extreme projection of the vehicle carrying them on the side of the roadway used in passing the vehicle. If a farm tractor or a unit of farm equipment, whether self-propelled or towed, is equipped with two or more lamps or reflectors visible from the front or two or more lamps or reflectors visible from the rear, the lamps or reflectors must be so positioned that the extreme projections both to the left and to the right of the vehicle must be indicated as nearly as is practicable. If all other requirements are met, reflective tape or paint may be used in lieu of the reflectors required in subdivision b.

39-21-16. Lamps on other vehicles and equipment.

Every vehicle, including animal-drawn vehicles and vehicles referred to in subsection 4 of section 39-21-46, not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, must at all times specified in section 39-21-01 be equipped with at least one lamp displaying a white light visible from a distance of not less than one thousand feet [304.8 meters] to the front of the vehicle, and must also be equipped with two lamps displaying red light visible from a distance of not less than one thousand feet [304.8 meters] to the rear of the vehicle, or two red reflectors visible for distances of one hundred feet [30.48 meters] to six hundred feet [182.88 meters] to the rear when illuminated by the lower beams of headlamps.

39-21-17. Spot lamps and auxiliary lamps.

1. Spot lamps. Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp must be so aimed and used so that no part of the high-intensity portion will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.
2. Fog lamps. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than twelve inches [30.48 centimeters] nor more than thirty inches [76.2 centimeters] above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet [7.62 meters] ahead project higher than a level of four inches [10.76 centimeters] below the level of the center of the lamp from which it

comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in subsection 2 of section 39-21-20.

3. Auxiliary passing lamps. Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches [60.96 centimeters] nor more than forty-two inches [106.68 centimeters] above the level surface upon which the vehicle stands. The provisions of section 39-21-20 apply to any combination of headlamps and auxiliary passing lamps.
4. Auxiliary driving lamps. Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps. Any auxiliary driving lamp mounted at a height of less than sixteen inches [40.64 centimeters] or more than forty-two inches [106.68 centimeters] above the level surface upon which the vehicle stands may not be lighted when the vehicle is used upon a highway. The provisions of section 39-21-20 apply to any combination of headlamps and auxiliary driving lamps.

39-21-18. Audible and visual signals on vehicle.

1. Every authorized emergency vehicle must, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren, exhaust whistle, or bell capable of causing a minimum sound intensity level of eighty-five decibels. The siren or signal must be mounted outside of the vehicle or in front of the radiator.
2. Any authorized emergency vehicle may be equipped with safety strobe lights.
3. A police vehicle when used as an authorized emergency vehicle may be equipped with alternately flashing red lights specified herein and a vehicle designated for the use of the adjutant general or the assistant adjutant general may be equipped with a siren, exhaust whistle, or bell specified herein.
4. Every schoolbus, except vehicles with a seating capacity of less than sixteen students, must be equipped with:
 - a. Signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet [152.4 meters] in normal sunlight;
 - b. A stop sign on a control arm that can be activated by the bus driver. The stop sign on the control arm must be located on the left side of the bus, be equipped with a flashing red light, and when activated, extend out from the bus at approximately a ninety-degree angle; and
 - c. Safety strobe lights if the schoolbus was manufactured after July 31, 1998. Older schoolbuses may have safety strobe lights installed.

39-21-18.1. Flashing signals on rural mail vehicle - Standards.

Notwithstanding any other provision of law, it is lawful for any vehicle regularly used as a rural mail delivery vehicle to display two simultaneously flashing amber lamps mounted on top of such vehicle while it is being used to deliver mail. The light assembly must consist of two lamps mounted on top of the vehicle with one lamp being as near as is practicable to each side of the vehicle, displaying an amber light not less than four inches [10.16 centimeters] in diameter and visible under normal atmospheric conditions for a distance of at least five hundred feet [152.4 meters] to the front and to the rear of such vehicle. The lamp assembly must include a sign at least seven inches [17.78 centimeters] in height containing the words "U.S. MAIL" in black letters not less than four inches [10.16 centimeters] in height and of not less than three-quarters of an inch [1.905 centimeters] in width of stroke, upon a white background. The sign must be constructed so as to permit folding down out of the line of vision when not in use. The lamps must be equipped with a device to cause them to flash on and off, and such lamps must be so wired as to cause both lamps to flash simultaneously. In lieu of the light assembly permitted by this section, a vehicle may display one revolving amber light placed on top of the vehicle and accompanied by a sign placed on the rear of the vehicle and containing the words "U.S. MAIL". The light and sign must comply with the requirements applicable to the amber

lights and sign used with a light assembly permitted by this section. Amber lights permitted by this section may only be operated for the purpose of discharging official duties and must not be in operation except during the actual performance of duty delivering mail.

39-21-19. Signal lamps and signal devices.

1. Any motor vehicle may be equipped and when required under this chapter must be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red light visible from a distance of not less than three hundred feet [91.44 meters] to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may, but need not, be incorporated with one or more other rear lamps.
2. Any motor vehicle may be equipped and when required under this chapter must be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. The lamps showing to the front must be located on the same level and as widely spaced laterally as practicable and when in use display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than three hundred feet [91.44 meters] to the front in normal sunlight, and the lamps showing to the rear must be located at the same level and as widely spaced laterally as practicable and when in use display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than three hundred feet [91.44 meters] to the rear in normal sunlight. Any motor vehicle or combination of vehicles eighty inches [20.32 decimeters] or more in overall width, and manufactured or assembled after January 1964, must be equipped with the lamps required by this subsection mounted and spaced in the same manner but visible from a distance of not less than five hundred feet [152.4 meters] to the front and rear in normal sunlight. When actuated the lamps must indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made. Turn signal lamps may, but need not, be incorporated in other lamps on the vehicle.
3. No stop lamp or signal lamp may project a glaring light.

39-21-19.1. Vehicular hazard warning signals.

1. Any vehicle may be equipped with lamps for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing.
2. After January 1, 1980, every bus, truck, truck tractor, trailer, semitrailer, or pole trailer eighty inches [20.32 decimeters] or more in overall width or thirty feet [9.14 meters] or more in overall length must be equipped with lamps meeting the requirements of this section.
3. Vehicular hazard warning signal lamps used to display warning to the front must be mounted at the same level and as widely spaced laterally as practicable, and must display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display warning to the rear must be mounted at the same level and as widely spaced laterally as practicable, and must show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights must be visible from a distance of not less than five hundred feet [152.4 meters] in normal sunlight.

39-21-20. Multiple-beam road-lighting equipment.

Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles must be so arranged that the driver may select at will between distributions of light projected to different elevations and these lamps may, in addition, be so arranged that selection can be made automatically, subject to the following limitations:

1. There must be an uppermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least four hundred fifty feet [137.16 meters] ahead for all conditions of loading.
2. There must be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred fifty feet [45.72 meters] ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam may be directed to strike the eyes of an approaching driver.
3. Every new motor vehicle, registered in this state, which has multiple-beam road-lighting equipment must be equipped with a beam indicator, which must be lighted whenever the uppermost distribution of light from the headlamps is in use, and may not otherwise be lighted. The indicator must be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

39-21-21. Use of multiple-beam road-lighting equipment.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 39-21-01, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

1. Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet [152.4 meters], such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in subsection 2 of section 39-21-20 must be deemed to avoid glare at all times, regardless of road contour and loading.
2. Whenever the driver of a vehicle follows another vehicle within three hundred feet [91.44 meters] to the rear, the driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in subsection 1 of section 39-21-20.

39-21-22. Single-beam road-lighting equipment.

Headlamps arranged to provide a single distribution of light are permitted on motor vehicles manufactured and sold prior to one year after July 1, 1963, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

1. The headlamps must be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet [7.62 meters] ahead project higher than a level of five inches [12.7 centimeters] below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches [106.68 centimeters] above the level on which the vehicle stands at a distance of seventy-five feet [22.86 meters] ahead.
2. The intensity must be sufficient to reveal persons and vehicles at a distance of at least two hundred feet [60.96 meters].

39-21-23. Lighting equipment on motor-driven cycles.

Repealed by S.L. 1979, ch. 431, § 37.

39-21-24. Arrest for improperly adjusted headlamps or improper bulbs - Certificate of conformance a defense.

The driver of any motor vehicle equipped with approved headlamps, auxiliary driving lamps, rear lamps, or signal lamps who is arrested upon the charge that such lamps are adjusted improperly or are equipped with bulbs of a candle power not approved for use therewith, must be allowed forty-eight hours within which to bring such lamps into conformance with the

requirements of this chapter. It is a defense to any such charge that the person arrested produces in court or submits to the state's attorney a certificate showing that within forty-eight hours after such arrest such lamps have been made to conform with the requirements of this chapter.

39-21-25. Number of driving lamps required or permitted.

1. At all times specified in section 39-21-01 at least two lighted lamps must be displayed, one on each side at the front of every motor vehicle, except when a vehicle is parked subject to the regulations governing lights on parked vehicles.
2. Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle may be lighted at any one time when upon a highway.

39-21-26. Special restrictions on lamps.

1. Any lighted lamp or illuminating device on a motor vehicle, other than headlamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and schoolbus warning lamps, which projects a beam of light of an intensity greater than three hundred candlepower must be directed so that no part of the high-intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet [22.86 meters] from the vehicle.
2. A person may not drive or move any vehicle or equipment on any highway with a lamp or device displaying a red or green light visible from directly in front of the center of the vehicle or equipment. This section does not apply to a vehicle upon which a red light visible from the front is expressly authorized or required by this chapter.
3. Flashing lights are prohibited except on:
 - a. An authorized emergency vehicle;
 - b. A schoolbus;
 - c. Snow-removal equipment;
 - d. A vehicle owned by a funeral home, which may display a flashing purple light only while used for the purpose of escorting a funeral procession; or
 - e. Any vehicle as a means of indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

39-21-27. Special lighting and warning equipment on schoolbuses.

1. The superintendent of public instruction, in cooperation with the director, is authorized to adopt standards and specifications applicable to lighting equipment and special warning devices, including the stop sign on a control arm specified in section 39-21-18, to be carried by schoolbuses and other vehicles transporting children to school for compensation, consistent with the provisions of this chapter, but supplemental thereto. The standards and specifications must correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.
2. It is unlawful to operate any flashing warning signal light or the stop sign on the control arm specified in section 39-21-18 on a schoolbus except when the schoolbus is stopped on a highway for the purpose of permitting schoolchildren to board or alight from the schoolbus.
3. Schoolbuses equipped with safety strobe lights pursuant to subsection 4 of section 39-21-18 must have the safety strobe light in operation whenever the schoolbus is being operated upon a highway for purposes of transporting children either to or from school or for a school-sanctioned activity. It is unlawful to operate a safety strobe light on a schoolbus when the schoolbus is used for any other purpose.

39-21-27.1. Schoolbus standards - Equipment and color regulations.

Only motor vehicles which have been designed by the manufacturer for the purpose of carrying passengers may be used as schoolbuses. The superintendent of public instruction may adopt reasonable regulations, consistent with the provisions of this chapter, relating to the construction, design, operation, equipment, and color of schoolbuses and shall prepare and publish standards for North Dakota schoolbuses which must set forth the regulations. The superintendent of public instruction may issue an order prohibiting the operation on public streets, highways, and elsewhere of any schoolbus which does not comply with the regulations, and school districts operating buses which do not meet the regulations will not be eligible to receive state reimbursement for vehicular transportation. If a schoolbus is purchased for a purpose or purposes other than the public transport of schoolchildren, the purchaser shall change the color of the vehicle and deactivate or remove the warning signal lights and the stop sign on the control arm.

Highway patrol officers and all peace officers are authorized to make necessary investigations relating to compliance with the regulations adopted by the superintendent of public instruction and to make reports of their findings to the office of the superintendent of public instruction.

39-21-28. Standards for lights on snow-removal or other hazardous equipment.

1. The director shall adopt standards and specifications applicable to headlamps, clearance lamps, identification and other lamps on snow-removal or other hazardous equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section must correlate with and, so far as possible, conform with those approved by the American association of state highway officials.
2. It is unlawful to operate any snow-removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

39-21-29. Selling or using lamps or equipment.

1. No person may have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, pole trailer, or semitrailer, or use upon these vehicles any headlamp, auxiliary, or fog lamp, rear lamp, signal lamp, or required reflector, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been approved by the department. The provisions of this subsection do not apply to equipment in actual use or replacement parts when this section is adopted.
2. No person may have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, pole trailer, or semitrailer any lamp or device mentioned in this section which has been approved by the department unless the lamp or device bears the trademark or name under which it is approved so as to be legible when installed.
3. No person may use upon any motor vehicle, trailer, pole trailer, or semitrailer any lamps mentioned in this section unless the lamps are mounted, adjusted, and aimed in accordance with instructions of the department.

39-21-30. Authority of department.

1. The department may approve or disapprove any lighting devices or other safety equipment, component, or assembly, even though the device is of a type for which approval is not specifically required in this chapter. The department may issue and enforce regulations establishing standards and specifications for the approval of the lighting devices, safety equipment, components, or assemblies, their installation, adjustment and aiming, and adjustment when in use on motor vehicles. The

- regulations must correlate with and, so far as practicable, conform to the then current applicable standards and specifications of the society of automotive engineers.
2. The department shall approve or disapprove any lighting device or other safety equipment, component, or assembly, of a type on which approval is specifically required in this chapter, within a reasonable time after the device has been submitted.
 3. The department may set up the procedure which must be followed when approval is sought for any lighting device or safety equipment, component, or assembly. The procedure may provide for submission of the device, equipment, component, or assembly to the American association of motor vehicle administrators, the society of automotive engineers, or other appropriate testing agency as the agent of the department and for the issuance of an approval certificate by the testing agency in the name of the department in lieu of submission of the device, equipment, component, or assembly to the department. Approval by the testing agency has the same force and effect as if it had been issued by the department.
 4. The department upon approving any device, equipment, component, or assembly shall issue to the applicant a certificate of approval together with any instructions determined by the department. The department shall maintain lists of all devices, components, or assemblies which it has approved.

39-21-30.1. Duration of approval.

Approvals of lighting devices or other safety equipment, components, or assemblies remain valid unless revoked under section 39-21-31 or unless the department requires them to be renewed by regulation.

39-21-31. Revocation of certificate of approval.

When the department has reason to believe that an approved lighting device or other safety equipment, component, or assembly being sold commercially does not comply with the requirements of this chapter, the department may, after giving thirty days' previous notice to the person holding the certificate of approval for the device in this state, conduct a hearing upon the question of compliance of the approved device. After the hearing, the department shall determine whether the approved device meets the requirements of this chapter. If the device does not meet the requirements of this chapter, the department shall give notice to the person holding the certificate of approval for the device in this state of its intention to revoke the approval.

If at the expiration of ninety days after notice the person holding the certificate of approval for the device has failed to satisfy the department that the approved device to be sold meets the requirements of this chapter, the department shall suspend or revoke the approval issued for the device. The department may require that devices sold after the notification following the hearing be replaced with devices that do comply with the requirements of this chapter and shall require the withdrawal of those devices from the market.

When an approval has been suspended or revoked pursuant to this section, the device may not again be approved unless and until it has been submitted for approval and it has been demonstrated, in the same manner as in an application for an original approval, that the device meets the requirements of this chapter. The department may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of the approved devices, and if the device upon retest fails to meet the requirements of this chapter, the department may refuse to renew the certificate of approval of the device. The department may require that all previously approved devices be effectively recalled and removed from the market as a condition for reapproval.

39-21-32. Brake equipment required.

1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway must be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means must be effective to apply the brakes to at least two

- wheels. If these two separate means of applying the brakes are connected in any way, they must be so constructed that failure of any one part of the operating mechanism does not leave the motor vehicle without brakes on at least two wheels.
2. Every farm tractor, motorcycle, and motor-driven cycle, when operated upon a highway, must be equipped with at least one brake, which may be operated by hand or foot.
 3. Every trailer or semitrailer when operated upon a highway at a speed in excess of twenty-five miles [40.23 kilometers] per hour must be equipped with safety chains or brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes must be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes are automatically applied.
 4. One of the means of brake operation must be parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes must be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power-assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes must be so designed that when once applied they remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brakedrums, brakeshoes and lining assemblies, brakeshoe anchors, and mechanical brakeshoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes.

39-21-33. Maintenance of brakes.

All brakes must be maintained in good working order and must be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

39-21-33.1. Engine compression brake device - Prohibited - Posting.

1. An operator of a commercial motor vehicle may not use an engine compression brake device that creates a noise disturbance in a zone posted as prohibiting the use of an engine compression brake device.
2. Subsection 1 does not apply to the use of an engine compression brake device during an emergency situation.
3. A city or county may adopt an ordinance prohibiting the use of an engine compression brake device in a designated zone and may post the prohibition in the designated zone.

39-21-34. Brakes on motor-driven cycles.

Repealed by S.L. 1979, ch. 431, § 37.

39-21-35. Hydraulic brake fluid.

Repealed by S.L. 2025, ch. 372, § 1.

39-21-36. Horn and warning device.

1. While being operated upon a highway, every motor vehicle must be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet [60.96 meters], but no horn or other warning device may emit an unreasonably loud or harsh sound or a whistle. Whenever reasonably necessary for safe operation, the driver of a motor vehicle upon a highway shall give audible warning with the vehicle's horn, but may not otherwise use the vehicle's horn while upon a highway.

2. No vehicle may be equipped with nor may any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.
3. Any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.
4. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet [152.4 meters] and of a type approved by the department, but the siren may not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of approaching vehicles.

39-21-37. Muffler - Prevention of noise and smoke.

1. Every motor vehicle must at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person may use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.
2. The engine and power mechanism of every motor vehicle must be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

39-21-38. Mirror.

On and after January 1, 1964, every motor vehicle, operated singly or when towing any other vehicle, must be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet [60.96 meters] to the rear of such motor vehicle.

39-21-39. Windshield - Must be unobstructed and equipped with wipers - Tinted windows.

1. A motor vehicle must be equipped with a windshield. An individual may not drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersecting highway.
2. The windshield on a motor vehicle must be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which must be constructed as to be controlled or operated by the driver of the vehicle.
3. The windshield wiper upon a motor vehicle must be maintained in good working order.
4. An individual may not operate a motor vehicle with any object, material, or tinting displayed, affixed, or applied on the front windshield or any window unless the object, material, or tinting in conjunction with the windshield upon which it is displayed, affixed, or applied has a light transmittance of at least seventy percent or the object, material, or tinting in conjunction with a window other than the windshield upon which it is displayed, affixed, or applied has a light transmittance of at least thirty-five percent. This subsection does not apply to windows behind the operator if the motor vehicle is equipped with outside mirrors on both sides which meet the requirements of section 39-21-38.
5. Subsection 4 does not apply to nonreflective sunscreening or window tinting material above the AS-1 line or within the top five inches [12.7 centimeters] of the windshield.

39-21-39.1. Windshield impairing vision of drivers.

A windshield may not be shattered or in such a defective condition that the windshield materially impairs or obstructs the driver's clear view.

39-21-40. Restrictions as to tire equipment.

1. Every solid rubber tire on a vehicle must have rubber on its entire traction surface at least one inch [2.54 centimeters] thick above the edge of the flange of the entire periphery.
2. No person may operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.
3. No tire on a vehicle moved on a highway may have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it is permissible to use tire chains of reasonable proportions. It is also permissible to use, from October fifteenth to April fifteenth, pneumatic tires which have metal studs which do not project more than one-sixteenth of an inch [1.59 millimeters] beyond the tread of the traction surface of the tire, except that it is permissible to use such tires on schoolbuses at any time during the year.

39-21-41. Safety glazing material in motor vehicles.

1. No person may sell any new motor vehicle, nor may any new motor vehicle be registered, unless it is equipped with safety glazing material of a type approved by the department wherever glazing material is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and schoolbuses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartment.
2. The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.
3. The department shall maintain a list of types of glazing material by name approved by it as meeting the requirements of this section and may not register after January 1, 1964, any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and it shall thereafter suspend the registration of any motor vehicle subject to this section which it finds is not equipped until it is made to conform to the requirements of this section. The requirements of this section do not apply to antique automobiles licensed under chapter 39-04.

39-21-41.1. Safety belts.

1. Every passenger car manufactured or assembled after January 1, 1965, must be equipped with lapbelt assemblies for use in the driver's and one other front seating position.
2. All motor vehicles manufactured after January 1, 1968, must be equipped with any lapbelt or shoulder belt required at the time the vehicle was manufactured by standards of the United States department of transportation. Nothing in this subsection affects the requirement in subsection 1 for a lapbelt in the driver's seating position.
3. The department may except specified types of motor vehicles or seating positions within any motor vehicle from the requirements imposed by subsections 1 and 2 when compliance would be impractical.
4. No person may install, distribute, have for sale, offer for sale, or sell any belt for use in motor vehicles unless it meets current minimum standards and specifications of the United States department of transportation.
5. Every owner shall maintain belts and assemblies required by this section in proper condition and in a manner that will enable occupants to use them.

39-21-41.2. Child restraint devices - Evidence.

1. If a child, under eight years of age, is present in a motor vehicle, that motor vehicle must be equipped with at least one child restraint system for the child. However, a child under the age of eight who is at least fifty-seven inches [1.45 meters] tall is not required to use a child restraint system, but must be correctly buckled in a safety belt. The child restraint system must meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, the child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of eight through seventeen years of age who is in the motor vehicle must be in an approved child restraint system in accordance with the manufacturer's instructions or correctly buckled in a safety belt. Use of child restraint systems and safety belts is not required in motor vehicles that were not equipped with safety belts when manufactured. If a child is being transported in an emergency situation, this section does not apply.
2. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

39-21-41.3. Use of safety belts required in certain motor vehicles - Enforcement.

Deleted by R.M. December 5, 1989.

39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence.

A driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or safety belt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician, physician assistant, or advanced practice registered nurse states in a signed writing the nature of the condition and the reason restraint is inappropriate; to an occupant who is an emergency medical services personnel, during the provision of direct patient care; or when all safety belts are in use by other occupants. A physician, physician assistant, or advanced practice registered nurse who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

39-21-41.5. Secondary enforcement.

Repealed by S.L. 2023, ch. 362, § 2.

39-21-42. Certain vehicles to carry flares or other warning devices.

1. No person may operate any motor truck, passenger bus, or truck tractor, or any motor vehicle towing a housetrailer, upon any highway outside the corporate limits of municipalities at any time from a half hour after sunset to a half hour before sunrise unless there is carried in the vehicle the following equipment except as provided in subsection 2:
 - a. At least three flares or three red electric lanterns or three portable red emergency reflectors, each of which must be capable of being seen and distinguished at a distance of not less than six hundred feet [182.88 meters] under normal atmospheric conditions at nighttime. No flare, fusee, electric lantern, or cloth warning flag may be used for the purpose of compliance with the requirements of this section unless it is of a type which has been submitted to the department and

approved by it. No portable reflector unit may be used for the purpose of compliance with the requirements of this section unless it meets the requirements of the national highway traffic safety administration motor vehicle safety standard number 125 or unless it is so designed and constructed as to include two reflecting elements one above the other, each of which must be capable of reflecting red light clearly visible from all distances within six hundred feet [182.88 meters] to one hundred feet [30.48 meters] under normal atmospheric conditions at night when directly in front of lawful lower beams of headlamps, and unless it is of a type which has been submitted to the department and approved by it.

- b. At least three red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.
 - c. At least two red-cloth flags, not less than twelve inches [30.48 centimeters] square, with standards to support such flags.
2. No person may operate at the time and under conditions stated in subsection 1 any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there is carried in the vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection 1, and there shall not be carried in the vehicle any flare, fusee, or signal produced by flame.

39-21-43. Display of warning devices when vehicle disabled.

1. Whenever any truck, bus, truck tractor, trailer, semitrailer, or pole trailer eighty inches [20.32 decimeters] or more in overall width or thirty feet [91.44 decimeters] or more in overall length is stopped upon a roadway or adjacent shoulder, the driver shall immediately actuate vehicular hazard warning signal lamps meeting the requirements of this chapter. The lamps need not be displayed by a vehicle parked lawfully in an urban district, or stopped lawfully to receive or discharge passengers, or stopped to avoid conflict with other traffic or to comply with the directions of a police officer or an official traffic-control device, or while the devices specified in subsections 2 through 8 are in place.
2. Whenever any vehicle of a type referred to in subsection 1 is disabled, or stopped for more than ten minutes, upon a roadway outside of an urban district at any time when lighted lamps are required, the driver of the vehicle shall display the following warning devices except as provided in subsection 3:
 - a. A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector must immediately be placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.
 - b. As soon thereafter as possible but in any event within the burning period of the fusee (fifteen minutes), the driver shall place three liquid-burning flares (pot torches), or three lighted red electric lanterns, or three portable red emergency reflectors on the roadway in the following order:
 - (1) One, approximately one hundred feet [30.48 meters] from the disabled vehicle in the center of the lane occupied by the vehicle and toward traffic approaching in that lane.
 - (2) One, approximately one hundred feet [30.48 meters] in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.
 - (3) One at the traffic side of the disabled vehicle not less than ten feet [30.48 decimeters] rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph 1, it may be used for this purpose.
3. Whenever any vehicle referred to in this section is disabled, or stopped for more than ten minutes, within five hundred feet [152.4 meters] of a curve, hillcrest, or other obstruction to view, the warning device in the direction must be so placed as to afford

ample warning to other users of the highway, but in no case less than one hundred feet [30.48 meters] nor more than five hundred feet [152.4 meters] from the disabled vehicle.

4. Whenever any vehicle of a type referred to in this section is disabled, or stopped for more than ten minutes, upon any roadway of a divided highway during the time lighted lamps are required, the appropriate warning devices prescribed in subsections 2 and 3 must be placed as follows: one at a distance of approximately two hundred feet [60.96 meters] from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one at a distance of approximately one hundred feet [30.48 meters] from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; one at the traffic side of the vehicle and approximately ten feet [30.48 decimeters] from the vehicle in the direction of the nearest approaching traffic.
5. Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed gas is disabled, or stopped for more than ten minutes, at any time and place mentioned in subsection 2, 3, or 4, the driver of the vehicle shall immediately display red electric lanterns or portable red emergency reflectors in the same number and manner specified in subsection 2, 3, or 4. Flares, fusees, or signals produced by flame may not be used as warning devices for vehicles of the type mentioned in this subsection nor for vehicles using compressed gas as a fuel.
6. The warning devices described in subsections 2 through 5 need not be displayed where there is sufficient light to reveal persons and vehicles within a distance of one thousand feet [304.8 meters].
7. Whenever any vehicle described in this section is disabled, or stopped for more than ten minutes, upon a roadway outside of an urban district or upon the roadway of a divided highway at any time when lighted lamps are not required by section 39-21-01 the driver of the vehicle shall display two red flags as follows:
 - a. If traffic on the roadway moves in two directions, one flag shall be placed approximately one hundred feet [30.48 meters] to the rear and one flag approximately one hundred feet [30.48 meters] in advance of the vehicle in the center of the lane occupied by the vehicle.
 - b. Upon a one-way roadway, one flag must be placed approximately one hundred feet [30.48 meters] and one flag approximately two hundred feet [60.96 meters] to the rear of the vehicle in the center of the lane occupied by the vehicle.
8. When any vehicle described in this section is stopped entirely off the roadway and on an adjacent shoulder at any time and place mentioned in this section, the warning devices must be placed, as nearly as practicable, on the shoulder near the edge of the roadway.
9. The flares, fusees, red electric lanterns, portable red emergency reflectors, and flags to be displayed as required in this section must conform with the applicable requirements of section 39-21-42.

39-21-44. Vehicle transporting explosives or hazardous materials - Administrative procedure and judicial review.

Any person operating any vehicle transporting any explosive or hazardous material as a cargo or part of a cargo upon a highway shall comply with this section.

1. The vehicle must be equipped with at least one fire extinguisher, filled and ready for immediate use, and placed at a convenient point on the vehicle.
2. The superintendent of the state highway patrol shall adopt rules for the safe transportation of hazardous materials. Rules must duplicate or be consistent with current hazardous materials regulations of the United States department of transportation. The superintendent of the state highway patrol may adopt the hazardous materials regulations by reference and any adoption must be construed to incorporate amendments as may be made from time to time.

39-21-44.1. Vehicle to be constructed to prevent sifting or leaking loads.

No vehicle may be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway. No person may operate on any highway any vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

39-21-44.2. Drawbar or connection between vehicles - Precautions required.

The drawbar or other coupling device between vehicles, one of which is towing or drawing the other on a highway, must include safety chains connecting the vehicles. The drawbar or other coupling device, and the safety chains, must be of a design, strength, and construction so as to prevent the unintentional uncoupling of the vehicles. The safety chain requirement of this section does not apply to:

1. A fifth-wheel coupling device; or
2. A vehicle towing an implement of husbandry or an implement of husbandry towing a vehicle, when operated at a speed not exceeding twenty-five miles [40.23 kilometers] per hour.

39-21-45. Air-conditioning equipment.

1. The term "air-conditioning equipment", as used or referred to in this section, means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.
2. Air-conditioning equipment must be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public and may not contain any refrigerant which is toxic to persons or which is flammable, unless the refrigerant is included in the list published by the United States environmental protection agency as a safe alternative motor vehicle air-conditioning substitute for chlorofluorocarbon-12, pursuant to 42 U.S.C. 7671k(c).
3. The department may adopt and enforce safety requirements, rules, and specifications consistent with the requirements of this section applicable to equipment which must correlate with and, so far as possible, conform to the current recommended practice or standard applicable to air-conditioning equipment approved by the society of automotive engineers.
4. No person may have for sale, offer for sale, sell, or equip any motor vehicle with any air-conditioning equipment unless it complies with the requirements of this section.
5. No person may operate on any highway any motor vehicle equipped with any air-conditioning equipment unless the equipment complies with the requirements of this section.

39-21-45.1. Modification of motor vehicle.

1. An individual who operates a registered motor vehicle on a highway may not modify that vehicle unless the modification meets the following requirements:
 - a. Any modifying equipment must meet any other requirement applicable to a vehicle under chapter 39-21.
 - b. If tires placed on a motor vehicle have a diameter greater than that of the tires on the motor vehicle as manufactured, those tires must be branded with a United States department of transportation tire identification number.
 - c. The maximum body height permitted for a motor vehicle is forty-two inches [106.68 centimeters]. Measurement of body height is made from a level ground surface to the floor of the cargo area.
2. An individual may not operate a registered motor vehicle on a highway unless the motor vehicle is equipped with front and rear bumpers. The height of the bumper must not exceed twenty-seven inches [68.58 centimeters] and this measurement is made

from a level ground surface to the highest point on the bottom of the bumper. A horizontal drop bumper may be used to comply with this subsection and must be at least three inches [7.62 centimeters] in vertical width; extend the entire horizontal body width; and be horizontal, load bearing, and attached to the vehicle frame to effectively transfer impact when engaged.

3. Vehicles owned by law enforcement agencies, the military, firefighting agencies, and ambulances may be modified without regard to this section.
4. The director may adopt rules to implement this section.

39-21-46. Scope and effect of equipment requirements - Penalty.

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter for which a fee or penalty for its violation is not otherwise provided.
2. A person who drives or moves, or any owner who causes or knowingly permits to be driven or moved upon a highway, any vehicle or combination of vehicles which that person knows is in such unsafe condition as to endanger a person is guilty of an infraction.
3. The superintendent of the state highway patrol shall, under chapter 28-32, adopt necessary rules concerning the safe operation of motor vehicles and when and how motor carrier audits or inspections will be conducted. The rules must duplicate or be consistent with current motor carrier safety regulations of the United States department of transportation. The superintendent of the state highway patrol may adopt the motor carrier safety regulations by reference, and any adoption must be construed to incorporate amendments as may be made from time to time. A violation of rules adopted under this subsection is a noncriminal violation. A person who fails or refuses to comply with these rules must be assessed a fee in the amount set forth in section 39-06.1-06 for each violation.
4. Nothing contained in this chapter may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.
5. The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as specifically made applicable.
6. The provisions of this chapter with respect to equipment required on vehicles do not apply to motorcycles or motor-driven cycles, except as specifically made applicable.
7. The provisions of this chapter and regulations of the department do not apply to vehicles moved solely by human power, except as specifically made applicable.

39-21-47. Distress signals for handicapped drivers - Penalty for misuse.

Repealed by S.L. 1975, ch. 106, § 673.

39-21-48. Crash helmets required for operators of and passengers on motorcycles.

Repealed by S.L. 1975, ch. 348, § 17.

39-21-49. Number of riders on motorcycles limited.

Repealed by S.L. 1975, ch. 348, § 17.

39-21-50. Slow-moving vehicles required to display identification emblem - Penalty.

All implements of husbandry, as defined in section 39-01-01, and machinery, including all road construction machinery, designed for operation at a speed of twenty-five miles [40.23 kilometers] an hour or less, must display either a triangular slow-moving vehicle emblem or a

rotating or flashing amber light, as authorized for class B emergency vehicles, whenever traveling along the roadway on any county, state, federal highway, or city street in the state of North Dakota. The emblem or light must be mounted so as to be visible from a distance of not less than five hundred feet [152.4 meters] to the rear. The director shall adopt standards and specifications for the design and position of mounting the slow-moving vehicle emblem and light. The standards and specifications for slow-moving vehicle emblems referred to in this section must correlate with and, so far as possible, conform with those approved by the American society of agricultural engineers. No vehicle, other than those specified in this section, must display a slow-moving vehicle emblem, and its use on any type of stationary object is prohibited. Any person who fails or refuses to comply with the provisions of this section must be assessed a fee of twenty dollars for each offense.

39-21-51. Alteration of odometers or other mileage recorders, hour meters on tachometers, or other hour recorders - Penalty.

A person may not willfully, as defined in section 12.1-02-02, alter a motor vehicle odometer or other mileage recorder, hour meter on tachometer, or other hour recorder, or offer for sale or sell a motor vehicle knowing the odometer or other mileage recorder has been altered, for the purpose of deceiving another. Violation of this section is a class C felony if the person has previously been convicted of violating this section, or if the person has violated this section with respect to more than one vehicle, and a class B misdemeanor in all other cases.

39-21-52. Exemption for certain street rod, collector, or special interest motor vehicles.

The provisions of this chapter or chapter 37-12-02 of the North Dakota Administrative Code relating to bumpers, tires, and fenders do not apply to street rod, collector, or special interest motor vehicles. However, a street rod, collector, or special interest vehicle must have all equipment, in operating condition, which was specifically required by law as a condition for its sale when it was first manufactured. For purposes of this section "street rod, collector, or special interest vehicle" means a modernized motor vehicle which was manufactured by a recognized manufacturer and which retains the general appearance and original body configuration as manufactured or a motor vehicle designed and manufactured to resemble such a motor vehicle, which is at least forty years old. A street rod, collector, or special interest vehicle may have improved modifications to the body, chassis, engine, brakes, power train, steering, and suspension systems either by modifying the original equipment or replacing original parts with fabricated parts or those taken from other existing vehicles. The director may adopt rules to implement this section.

39-21-53. Retractable axle control requirements.

1. For a motor vehicle manufactured after July 31, 2005, variable load suspension or retractable axles, or both, raised or lowered by air, hydraulic, or other pressure must have the lock or pressure regulator valve, or both, positioned outside the cab and inaccessible from the driver's compartment if there is more than one variable load suspension axle or retractable axle, or a combination of each.
2. The control to lift and lower a retractable or variable load suspension axle may be accessible in the driver's compartment, but also may not function as the pressure control device unless allowed by subsection 1.

39-21-54. Requirement for steerable, castering, or pivoting axles.

A single unit vehicle or any vehicle in combination may not be equipped with more than four axles unless the additional axles are steerable, castering, or pivoting axles.

39-21-55. Exemption from rear-end protection requirements.

Repealed by S.L. 2009, ch. 341, § 1.

39-21-56. Definitions - Prohibition on counterfeit and nonfunctional airbag - Penalty.

1. As used in this section:
 - a. "Airbag" means an inflatable occupant restraint system device in a motor vehicle which is part of a supplemental restraint system.
 - b. "Counterfeit supplemental restraint system component" means a replacement supplemental restraint system component that displays a mark identical, or substantially similar to, the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle without authorization from that manufacturer or supplier.
 - c. "Nonfunctional airbag" means a replacement airbag that:
 - (1) Was previously deployed or damaged;
 - (2) Has an electric fault that is detected by the motor vehicle's airbag diagnostic systems when the installation procedure is completed and the motor vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;
 - (3) Includes a part or object, including a supplemental restraint system component, which is installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing a functional airbag has been installed; or
 - (4) Is subject to the prohibitions of 49 U.S.C. 30120(j).
 - d. "Supplemental restraint system" means a passive inflatable motor vehicle crash protection system designed for use in conjunction with active restraint systems as defined in title 49, Code of Federal Regulations, part 571, section 208, which includes one or more airbags and all components required to ensure an airbag works as designed by the motor vehicle manufacturer including:
 - (1) Operating as designed in the event of a crash; and
 - (2) Is designed in accordance with federal motor vehicle safety standards of the specific make, model, and year of the motor vehicle in which the airbag is or will be installed.
2. A person may not intentionally or knowingly:
 - a. Manufacture, import, install, reinstall, distribute, sell, or offer for sale any device intended to replace a supplemental restraint system component in any motor vehicle if the device is a counterfeit supplemental restraint system component, nonfunctional airbag, or a device that does not meet the federal motor vehicle safety standards as provided under title 49, Code of Federal Regulations, part 571, section 208.
 - b. Sell, install, or reinstall in a motor vehicle, any device that causes the motor vehicle's diagnostic systems to fail to warn when the motor vehicle is equipped with a counterfeit supplemental restraints system component or nonfunctional airbag, or when an airbag is not installed.
3. Subsection 2 does not prohibit a motor vehicle dealer, repair facility, manufacturer, or other entity from taking action to collect and dispose of used or recalled supplemental restraint system components in accordance with federal law.
4. A person that violates subsection 2 is guilty of a class A misdemeanor.

CHAPTER 39-22

MOTOR VEHICLE DEALER LICENSING

39-22-01. Dealer defined.

Repealed by S.L. 1987, ch. 439, § 2.

39-22-02. Motor vehicle dealer's license - Fees - Additional number plates.

Repealed by S.L. 2001, ch. 337, § 19.

39-22-03. Motorcycle dealer's license - Fees.

Repealed by S.L. 1983, ch. 451, § 2.

39-22-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.

The director may deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license after it has been granted for making any material misstatement by an applicant in the application for the license; willfully failing to comply with the provisions of this chapter or with any rule adopted by the director; knowingly permitting any person to sell or exchange, or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom the person is employed; willfully violating a law relating to the sale, distribution, or financing of motor vehicles; having ceased to have an established place of business; or having violated any state or federal law relating to alteration of odometers or vehicle identification number.

39-22-05. Bond required.

Before the issuance of a motor vehicle dealer's license, as provided by law, the applicant for the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company, licensed and qualified to do business within the state of North Dakota, which bond must run to the state of North Dakota, be in the amount of twenty-five thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer, if the license is issued to the dealer, that such dealer will comply with all of the statutes of the state of North Dakota regulating or being applicable to the business of the dealer as a dealer in motor vehicles, and indemnifying any person dealing or transacting business with the dealer in connection with any motor vehicle from any loss or damage occasioned by the failure of the dealer to comply with any of the provisions of this title, including the furnishing of a proper and valid certificate of title to the motor vehicle involved in any such transaction, and that the bond shall be filed with the director prior to the issuance of license provided by law. The aggregate liability of the surety of all persons, however, may in no event exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to the proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond until the effective date of the cancellation.

39-22-05.1. Disposition of fees.

Fees from registration of dealers and fees collected from dealers found in violation of this chapter must be deposited with the state treasurer, credited to the dealer enforcement fund, and used exclusively for enforcement of this chapter.

39-22-05.2. When bid bonds not required in bids to state or political subdivisions.

A person who submits a bid to the state, any of its agencies, or any of its political subdivisions to sell any type of motor vehicle is not required to submit a bidder's bond or a certified or cashier's check if that person is already bonded pursuant to section 39-22-05. If the

buyer requires a performance bond, then within ten days of the awarding of the contract, the successful bidder shall submit a performance bond to the appropriate state agency or political subdivision in an amount equal to the contract price.

39-22-06. Motor vehicle lots - Location.

A licensed dealer may establish secondary motor vehicle lots in the conduct of the dealer's business within five miles [8.05 kilometers] of the dealer's established place of business. Secondary lots must be identified as a part of the licensed dealer's operation with a sign displaying the name and telephone number of the licensed dealer. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. A licensed dealer may not display vehicles except on the dealer's primary and secondary lots or as otherwise permitted in this chapter. The department may assess a person violating this section a one hundred dollar fee for a first violation and a two hundred dollar fee for a second violation within two years of the first violation. The department shall assess a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation.

39-22-07. Dealer permitting license to be used by another dealer - License revoked - Penalty.

Repealed by S.L. 2001, ch. 337, § 19.

39-22-07.1. Motor vehicle sales prohibited on Sunday - Penalty.

A motor vehicle dealer may not sell a motor vehicle on Sunday. A violation of this section is a class B misdemeanor.

39-22-08. Dealers to furnish information to director.

Repealed by S.L. 2001, ch. 337, § 19.

39-22-09. Dealer to file list of used motor vehicles with registrar - Fees paid on used cars by dealer - Delinquency - Penalty.

Repealed by S.L. 1977, ch. 369, § 1.

39-22-10. Powers of the director.

In addition to other powers provided by law, the director has the following powers and duties which must be exercised in conformity with this chapter:

1. To cancel, revoke, or suspend a dealer's license as provided for in section 39-22-04.
2. To prescribe rules and regulations not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of dealer's licenses.
3. To employ and pay such persons as the director may deem necessary to inspect dealers in this state, investigate dealers for the information of the director, to procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

39-22-11. Examination of books and records.

The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed motor vehicle dealer or any other person relating to any complaint made against such dealer or person and held to be in violation of any of the provisions of this title. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

39-22-12. Officers to administer chapter - House car dealer, manufacturer, and distributor exemption.

The director and any duly authorized representative are responsible for the administration of this chapter. This chapter does not apply to house car dealers, manufacturers, and distributors.

39-22-13. Penalty for violation of chapter.

Any person violating any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

39-22-14. Motor vehicle dealer license - Fees - Penalty.

1. A person may not engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license. A person may not advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer license or used motor vehicle dealer license.
2. The motor vehicle dealer license fee is one hundred dollars per year and for which the department shall issue one dealer plate. The applicant for an initial new or used motor vehicle dealer license shall submit with the application a nonrefundable fee of one hundred dollars for the initial inspection. The applicant shall provide the business's federal employer identification number or, in the case of an application from an individual, the individual's social security number.
3. A motor vehicle dealer licensed under this chapter may buy, sell, or exchange:
 - a. A motor-powered recreational vehicle if the dealer maintains a surety bond that fulfills the requirements of section 39-22.3-05 and collects and timely transmits any applicable snowmobile safety and off-highway safety fees; and
 - b. A trailer if the dealer maintains a surety bond that fulfills the requirements of section 39-22.1-02.
4. A vehicle sold under subsection 3 does not count toward the minimum sales requirement under section 39-22-18.
5. The department may assess a person violating this section a one hundred dollar fee for a first violation, a two hundred dollar fee for a second violation within two years of the first violation, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation. Any person not licensed as a dealer under this section who has been previously found to be in violation of this section, and assessed the fees specified, is guilty of a class B misdemeanor if a third or subsequent violation occurs.

39-22-15. Established place of business - Penalty.

1. A dealer license may not be issued until the applicant furnishes proof satisfactory to the director that the applicant has, does, and will continue to maintain in North Dakota an established place of business adjacent to the primary motor vehicle display lot maintained by the dealer. An established place of business means a permanent enclosed building of at least two hundred fifty square feet [23.22 square meters] either owned, rented, or leased at which a permanent business of bartering, trading, and selling of motor vehicles will be conducted and does not mean a residence, tents, temporary stands, or other temporary quarters. The established place of business and primary motor vehicle display lot must cover at least two thousand five hundred square feet [232.26 square meters] and be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The established place of business must be adequately heated and lighted so as to be comfortable for customers and employees and be equipped with standard office equipment necessary for the conduct of the business. All records related to the business, including titles or other documents showing ownership of the vehicles, must be kept and maintained at the established place of business, or if multiple dealer licenses are held by a person, records may be kept and maintained at one established place of business for that person.

2. An established place of business must have a telephone publicly listed in the name of the dealership, be open to the public during normal business hours, and have a sign identifying the business to the public as a motor vehicle dealership. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. A business sign approved by a motor vehicle manufacturer may be used in lieu of the sign requirements of this section.
3. If the licensee desires to move from the established place of business occupied when the license was granted to a new location, the licensee shall first secure from the director permission to do so. The licensee must furnish proof satisfactory to the director that the premises to which the licensee proposes to move conform with the requirements of this section.
4. The department may assess a person violating this section a one hundred dollar fee for a first violation or a two hundred dollar fee for a second violation within two years of the first violation. The department may suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

39-22-16. Application for new motor vehicle dealer license - Franchise required - Selling vehicles without a franchise - Penalty.

1. In an application for a new motor vehicle dealer license, the applicant shall furnish proof satisfactory to the director that the applicant has a bona fide contract or franchise in effect with a manufacturer or distributor of the new motor vehicle or motor vehicles in which the dealer proposes to deal. A new motor vehicle dealer license entitles the holder to deal in both used motor vehicles and in those new motor vehicles only for which the dealer has a bona fide contract or franchise in effect with a manufacturer or distributor. A used motor vehicle dealer license entitles the holder to deal in used motor vehicles only.
2. New motor vehicle dealers who have been issued surrounding communities as a part of their dealer area of responsibility may be issued additional new motor vehicle dealer licenses if the manufacturer provides the department written approval of additional sites for display and sale of motor vehicles. Applicants for additional new car dealer licenses must meet all of the requirements of this chapter.
3. If a motor vehicle dealer purchases or holds for sale a new motor vehicle for which the dealer does not have a bona fide contract or franchise in effect with a manufacturer or distributor, the new motor vehicle becomes, at the time of purchase or possession, subject to the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, and the motor vehicle excise tax provisions of chapter 57-40.3.
4. The department may assess a person violating this section a two hundred fifty dollar fee for a first violation or a five hundred dollar fee for a second violation within two years of the first violation. The department may suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

39-22-17. Additional dealer plates - In-transit plates - Demonstration plates - Fees - Use of dealer plates - Penalty.

1. Additional dealer number plates must be issued to the dealer upon payment of a fee of twenty dollars each. A dealer number plate may be used on any vehicle owned by the dealership and used in the direct functions of demonstrating, buying, or selling vehicles. Dealer plates may not be used on a service vehicle or a vehicle used in other functions of the business, sold units in the possession of the purchaser, by family members not residing at the dealer's residence, or by a person not directly involved in the operation of the dealership.
2. A dealer plate displayed on a vehicle must be visibly displayed on the rear of the vehicle.

3. The department may assess a person violating this section a one hundred dollar fee for a first violation, a two hundred dollar fee for a second violation within two years of the first violation, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation.

39-22-18. Renewal of dealer license - Fees - Minimum sales requirement - Penalty.

A dealer license issued under this chapter expires on December thirty-first of each year. A licensed dealer may apply for renewal of the dealer's license on forms prescribed by the department and payment of the dealer license and dealer plate fees required by this chapter. The department may not renew the dealer license of any applicant who has made less than eight retail motor vehicle sales during the previous year. The department may adopt administrative rules to limit the number of dealer plates available to an applicant based on the applicant's motor vehicle sales history. Any dealer who fails to submit a renewal application before the expiration of the dealer's current license, in addition to all other fees due, shall pay a one hundred dollar fee at the time the dealer's license is renewed. For purposes of this section, "retail motor vehicle sales" means the sale of a motor vehicle that requires titling and registration in order to operate on the roads.

39-22-19. Garage liability insurance requirement.

Before the issuance of a motor vehicle dealer license, the applicant must provide proof to the department of a continuous policy of liability insurance for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as is appropriate to the business operation. The insurance company that issued the policy must notify the department of any cancellation, suspension, or revocation of the coverage. Any motor vehicle dealer who fails to maintain the insurance coverage required by this section shall return the dealer license and dealer number plates to the department on or before the effective date of the cancellation, suspension, or revocation. Failure to return the dealer license or dealer number plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer license or dealer number plates not returned to the department as required in this section. The department shall reinstate the dealer license and dealer number plates only when proof of insurance coverage is received.

39-22-20. Display and sale of vehicles by out-of-state dealers - Offsite display and sale by instate dealers - Penalty.

1. An out-of-state motor vehicle dealer who possesses a current motor vehicle dealer license from the dealer's home jurisdiction may participate in bona fide North Dakota automobile shows and sales promotions after obtaining a permit from the department. The permit must be issued upon the payment of a fee of one hundred dollars and is valid for a period of time, not to exceed seven days, to be determined by the department.
2. A motor vehicle dealer licensed under this chapter may participate in bona fide automobile shows and sales promotions in this state after obtaining a permit from the department. The permit must be issued upon the payment of a fee of twenty-five dollars and is valid for a period of time, not to exceed seven days, to be determined by the department.
3. The department shall deny an application for a permit if it determines the applicant does not intend to participate in a bona fide show or promotion.
4. The department may assess a person violating this section a one hundred dollar fee for a first violation, a two hundred dollar fee for a second violation within two years of the first violation, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation.

39-22-21. Consignment vehicles - Penalty.

1. A motor vehicle dealer may sell a motor vehicle consigned to the dealer by a motor vehicle owner, except when the owner is a licensed motor vehicle dealer, under the terms of a consignment contract between the owner and the dealer. However, a motor vehicle dealer may sell a collector motor vehicle consigned to the dealer by an owner that is a licensed motor vehicle dealer. The consignment contract form must specify the terms of the agreement between the owner and the dealer, specify the location of the motor vehicle certificate of title, and must be approved by the department.
2. The department may assess a person violating this section a one hundred dollar fee for a first violation, a two hundred dollar fee for a second violation within two years of the first violation, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation.

39-22-22. Operators of motor vehicle display lots - Permit required - Fee - Records required - Penalty.

1. A person not licensed as a motor vehicle dealer may operate display lots on which the owner of a vehicle may display the vehicle for sale. The display lot must be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The display lot operator must obtain an annual permit from the department to operate the lot. The annual fee for the permit is fifty dollars.
2. The display lot operator must provide the department with proof of a liability insurance policy with a minimum coverage of three hundred thousand dollars. The display lot must have a prominent sign identifying the business and the telephone number of the business owner. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the display lot operator in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street.
3. The display lot operator, before providing space to a vehicle owner, must verify that the person renting the space is the owner of the displayed vehicle and keep records for at least one year after the rental of a space verifying compliance with this requirement. A licensed motor vehicle dealer may not operate a display lot on property that is part of the licensed dealership. The department may inspect the records of the display lot operator related to any complaint made against the operator.
4. The department may assess a person violating this section a one hundred dollar fee for a first violation, a two hundred dollar fee for a second violation within two years of the first violation, or a fee of at least five hundred dollars but not more than two thousand dollars for a third or subsequent violation within five years of the first violation.

39-22-23. Auto auction operators - License required - Records required - Penalty.

1. A person may not operate a wholesale or retail auto auction business without being licensed as a motor vehicle dealer. An auto auction operator must keep records related to the seller and purchaser of all vehicles sold through the operator's business for at least two years and make those records available to the director or an authorized representative of the director upon reasonable request.
2. The department may assess a person violating this section a one hundred dollar fee for a first violation and a two hundred dollar fee for a second violation within two years of the first violation. The department may suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

39-22-24. Factory store prohibited - Penalty.

A manufacturer, importer, or distributor of new motor vehicles, or a subsidiary thereof, may not own, operate, or control a motor vehicle dealership in this state. This section does not apply if:

1. The ownership and operation is for a temporary period not to exceed one year during the transition from one owner or operator to another;
2. The dealership is being sold under a bona fide contract or purchase option to the operator of the dealership, or a contract exists under which the operator of the dealership can expect to acquire full ownership of or a controlling interest in the dealership, and after the transfer of ownership is completed the dealership will not be owned, operated, or controlled by the manufacturer, importer, or distributor, or a subsidiary thereof; or
3. The department determines there is no prospective independent dealer available to own or operate the dealership in a manner consistent with the public interest and meeting the requirements of this chapter.

Any person violating this section is guilty of a class A misdemeanor.

39-22-25. Direct manufacturer sales prohibited - Penalty.

A manufacturer or franchiser may not offer to sell directly or sell indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line make covering the new motor vehicle. This section does not apply to manufacturer or franchiser sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer or franchiser. Any person violating this section is guilty of a class A misdemeanor.

39-22-26. Brokering of motor vehicles prohibited - Penalty.

A person may not act as, offer to act as, or hold out to be a motor vehicle broker. As used in this section, a broker is a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale or exchange of a motor vehicle, and who is not:

1. A dealer or a bona fide agent or employee of a dealer;
2. A representative or a bona fide agent or employee of a manufacturer;
3. The bona fide owner of the motor vehicle involved in the transaction; or
4. A bona fide auctioneer conducting an auction involving motor vehicles not owned by the auctioneer.

Any person violating this section is guilty of a class A misdemeanor.

39-22-27. Collector motor vehicle auctions.

1. A person may engage in the business of conducting a collector motor vehicle auction without obtaining a motor vehicle dealer's license as otherwise required by this chapter if:
 - a. Each motor vehicle sold or offered for sale at the auction is a collector, antique, or special interest vehicle;
 - b. The sale is open to the public;
 - c. The person conducts no more than two collector motor vehicle auctions per year;
 - d. The site of the auction is located on property zoned or otherwise approved for this purpose by the appropriate zoning authority; and
 - e. The auction lasts no more than two days.
2. Collector motor vehicle auctions that comply with this section may be conducted any day of the week and sections 39-22-07.1 and 39-22-20 do not apply to motor vehicle dealers who participate in collector motor vehicle auctions.
3. A collector motor vehicle is a vehicle that is at least twenty-five years old; an antique motor vehicle is a vehicle that is at least forty years old; and a special interest vehicle is a vehicle that has an appreciating value because of rarity, originality, or limited production of an anniversary edition.

CHAPTER 39-22.1

TRAILER DEALER'S LICENSING AND BONDING

39-22.1-01. Trailer dealer's license - Fees - Plates - Definition.

1. A person may not engage in the business of buying, selling, or exchanging of trailers, or advertise or hold out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed.
2. Application for dealer's license and renewal license must be made to the director on forms as the director prescribes and furnishes, and the application must be accompanied by an annual fee of thirty dollars for which must be issued one dealer plate. The applicant for an initial trailer dealer license shall submit a nonrefundable fee of one hundred dollars for the initial inspection with the application. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license. Any dealer who fails to submit a renewal application before the expiration of the dealer's current license, in addition to all other fees due, shall pay a one hundred dollar fee at the time the dealer's license is renewed.
3. A trailer dealer's license may be issued only to those who will maintain a primary established place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain that person's business records in one central location.
4. Upon the payment of a fee of ten dollars for each additional plate, the director shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and the trailers bearing the dealer's license plates may be lawfully operated upon the public highways of this state by the dealer during the year of the registration, in the direct functions of demonstrating, buying, selling, or transporting trailers. A dealer's license plates expire on December thirty-first of each year.
5. The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

39-22.1-01.1. Primary established place of business - Penalty.

1. If the licensee desires to move from the primary established place of business occupied when the license was granted to a new location, the licensee shall notify the director.
2. A licensed dealer may establish secondary trailer display lots in the conduct of the dealer's business. Secondary lots must be identified as a part of the licensed dealer's operation.
3. The department may assess a person violating this section a one hundred dollar fee for a first violation or a two hundred dollar fee for a second violation within two years of the first violation. The department may suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

39-22.1-02. Bond required.

Before the issuance of or the renewal of a trailer dealer's license, as provided by law, the applicant for the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by the applicant as a dealer, if the license be issued to the applicant, that the dealer will comply with all the laws of this state pertaining to the business, and regulating or being applicable to the business of the dealer as a dealer in trailers, and indemnifying any person dealing or transacting business with the dealer in connection with any trailer from any loss or damage occasioned by the failure of the dealer to comply with the laws of this state, including the furnishing of a proper and valid certificate of title to the vendee of a trailer within fifteen days of the sale of the trailer, and that the bond shall be filed with the

director before the issuance of the license. However, the aggregate liability of the surety to all persons for all losses or damages may not exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any proceedings. Any applicant bonded under chapter 39-18 or 39-22 may not be required to furnish the surety bond provided for in this section if the bond issued under chapter 39-18 or 39-22 is written to include the requirements of this section. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability arising after that thirty days. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

39-22.1-02.1. Disposition of fees.

Fees from registration of dealers must be deposited with the state treasurer and credited to the highway tax distribution fund.

39-22.1-03. Suspension, denial, revocation, or cancellation of dealer's license - Penalty.

The director may deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license after it has been granted for making any material misstatement by an applicant in the application for a license; willfully failing to comply with this chapter; willfully violating a law relating to the sale, distribution, or financing of trailers; ceasing to have a primary established place of business; or failing to comply with the reasonable rules and regulations of the director as established under chapter 28-32, but no order suspending or revoking a dealer's license may be made without a hearing at which the licensee must be given an opportunity to be heard. Any dealer violating any provision of this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of the chapter occurs within five years of the first violation.

39-22.1-04. Examination of books and records.

The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed trailer dealer or any other person relating to any complaint made against the dealer or person and held to be in violation of this chapter. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

39-22.1-05. Powers of the director.

In addition to other powers provided by law, the director may:

1. Cancel, revoke, or suspend a dealer's license as provided for in section 39-22.1-03.
2. Adopt rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of dealer's licenses.
3. Employ and pay any person as the director determines necessary to inspect dealers in this state or investigate dealers for information for the director to procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

39-22.1-06. Penalty.

Any person who violates this chapter is guilty of a class B misdemeanor.

CHAPTER 39-22.3

MOTOR-POWERED RECREATIONAL VEHICLE DEALERS

39-22.3-01. Motor-powered recreational vehicle dealer's license - Fees - Additional number plates.

A person may not engage in the business of buying, selling, or exchanging of motor-powered recreational vehicles without possessing a current motor-powered recreational vehicle dealer's license. A person may not advertise or hold out to the public as engaging in the buying, selling, or exchanging of motor-powered recreational vehicles for resale without possession of a current motor-powered recreational vehicle dealer's license. The motor-powered recreational vehicle dealer's license fee is twenty-five dollars per year and with which must be issued one dealer's plate. Additional dealer's plates are ten dollars each. A dealer plate may be displayed on any motor-powered recreational vehicle owned by the dealer.

39-22.3-02. Application required.

A license may not be granted unless a completed application has been made in the form prescribed by the director.

39-22.3-03. Issuance of license - Conditions - Penalty.

A license may not be issued until the applicant furnishes proof satisfactory to the director that the applicant has and will continue to maintain an established place of business. An established central place of business means a permanent enclosed building or structure either owned or leased with a stated periodic rental, at which a permanent business of bartering, trading, and selling of motor-powered recreational vehicles, the repair, maintenance, and servicing of motor-powered recreational vehicles and the storage of parts and accessories of motor-powered recreational vehicles will be carried out in good faith and not for the purpose of evading this section, and where the business books, records, and files must be maintained, and does not mean a residence, tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement. The central place of business may consist of several buildings or structures, but a building or structure may not be located beyond one thousand feet [304.8 meters] from any other buildings or structures of the central place of business. The central place of business must be located within this state. The licensee must be permitted to use unimproved lots and premises for sales, storage, or display of motor-powered recreational vehicles. A nonrefundable fee of fifty dollars will be charged for each inspection and must accompany each initial application for a motor-powered recreational vehicle dealer's license. Any dealer violating this chapter must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor-powered recreational vehicle dealer licensed under this chapter if a third or subsequent violation of this chapter occurs within five years of the first violation.

39-22.3-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.

The director may deny an application for a dealer's license or suspend, revoke, or cancel the license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.
2. For any willful failure to comply with this chapter or with any rule adopted by the director.
3. For knowingly permitting any salesperson to sell or exchange, or offer or attempt to sell or exchange, any motor-powered recreational vehicle except for the licensed motor-powered recreational vehicle dealer by whom the salesperson is employed, or to offer, transfer, or assign any sale or exchange that they may have negotiated to any other dealer.
4. For having violated any law relating to the sale, distribution, or financing of motor-powered recreational vehicles.

5. For having ceased to have an established place of business.
6. For failure to collect and timely transmit the snowmobile safety and off-highway safety fees.

39-22.3-05. Bond required.

The license applicant shall furnish a continuous surety bond executed by a surety company, licensed and qualified to do business within this state and the bond must run to the state of North Dakota in the amount of ten thousand dollars and be conditioned upon the faithful compliance by the applicant with all the statutes of this state, regulating or being applicable to a dealer in motor-powered recreational vehicles, and indemnifying any person having a motor-powered recreational vehicle transaction with the dealer from any loss of damage occasioned by the failure of the dealer to comply with any statutory requirement of the transaction. The bond must be filed with the director before the issuance of a license. The aggregate liability of the surety of all persons may not exceed the amount of the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party of any proceedings. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any subsequent liability. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

39-22.3-06. Disposition of fees.

Fees from registration of dealers must be deposited with the state treasurer and credited to the dealer enforcement fund to be used exclusively for enforcement of this chapter.

39-22.3-07. Dealer permitting license to be used by another dealer - License revoked - Penalty.

A dealer who permits any other dealer to use that first dealer's license, or permits the use of the license for the benefit of any other dealer, is guilty of an infraction. The director shall revoke the license of any dealer who violates this section.

39-22.3-08. Dealers to furnish information to director.

All dealers engaged in the sale of motor-powered recreational vehicles in this state shall furnish the director with information as to models, specifications, selling prices, and other data requested by the director as may be necessary in carrying out this chapter.

39-22.3-09. Powers of the director.

In addition to other powers provided by law, the director in conformity with this chapter:

1. May cancel, revoke, or suspend a dealer's license as provided for in this chapter;
2. May prescribe rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of a dealer's license; and
3. May employ and pay persons necessary to inspect dealers in this state, investigate dealers for the information of the director, and procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

39-22.3-10. Examination of books and records.

The director or the director's duly authorized representative may inspect the books, letters, records, and contracts of any licensed motor-powered recreational vehicle dealer relating to any specific complaint made against the dealer and held to be in violation of any provision of this title.

39-22.3-11. Officers to administer the provisions of chapter.

The director and the director's appointees are responsible for the administration of the provisions of this chapter.

39-22.3-12. Penalty for violation of provisions of chapter.

Any person violating any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

CHAPTER 39-24

REGULATION AND REGISTRATION OF SNOWMOBILES

39-24-01. Definitions.

For the purposes of this chapter:

1. "Collector snowmobile" means a snowmobile that is twenty-five years old or older, was originally produced as a separate identifiable make by a manufacturer, and is owned and operated solely as a collector's item.
2. "Dealer" means a person engaged in the business of buying, selling, or exchanging snowmobiles, who advertises or holds out to the public as being engaged in the buying, selling, or exchanging of snowmobiles, or who engages in the buying of snowmobiles for resale.
3. "Operate" means to ride in or on and control the operation of a snowmobile.
4. "Operator" means every person who operates or is in actual physical control of a snowmobile.
5. "Owner" means a person, other than a lienholder, having the property in or title to a snowmobile and who is entitled to the use or possession of that snowmobile.
6. "Register" means the act of assigning a registration number to a snowmobile.
7. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel.
8. "Snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow, having a curb weight of not more than one thousand two hundred pounds [544.31 kilograms], driven by track or tracks in contact with the snow, steered by a ski or skis in contact with the snow, and which is not wider than forty-eight inches [121.92 centimeters].

39-24-02. Snowmobile registration - Title certificate - General requirements.

Except as hereinafter provided, no person may operate any snowmobile unless the snowmobile has been registered in accordance with the provisions of this chapter.

Any snowmobile purchased after July 1, 1973, must be titled under the provisions of chapter 39-05 in order to be operated under the provisions of this section. Any snowmobile purchased prior to July 1, 1973, may be titled under the provisions of chapter 39-05.

39-24-03. Registration - Application - Issuance - Fees - Renewal.

1. Application for registration must be made to the department in a form as the department shall prescribe and furnish and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.
2. Upon receipt of the application and the appropriate fee, the department shall register a snowmobile and assign a registration number and a certificate of registration. The registration number must be at least one and one-half inches [3.81 centimeters] in height and of a reflectorized material and must be securely affixed on each side of the snowmobile in a position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner. The fee for registration of each snowmobile must be five dollars for any portion of the registration period and the registration period is for two years beginning October first of each odd-numbered year. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed five dollars. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of forty-five dollars.
3. Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

4. Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

39-24-03.1. Snowmobile safety fees.

Upon the sale of a new or used snowmobile and in addition to other fees and taxes imposed under section 39-24-03, a dealer shall collect a five dollar safety fee from the buyer. Within fifteen days after the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of snowmobiles sold during that calendar quarter and includes fees collected from the buyer. Fees imposed under this section must be deposited in the state snowmobile fund established under section 39-24-05. The parks and recreation department may use these funds solely for snowmobile safety education and promotion. The parks and recreation department shall report to the director within thirty days of the end of each calendar quarter the motor-powered recreational vehicle dealers that submitted a safety fee report and the number of vehicles sold, and shall identify every dealer not collecting or transmitting snowmobile safety fees.

39-24-04. Exemption from registration - Exemption from fees.

1. A registration number must be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.
2. No registration or fees may be required of:
 - a. Snowmobiles owned and used by the United States or another state or its political subdivisions.
 - b. Snowmobiles registered in a country other than the United States and temporarily used within this state.
 - c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.
 - e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.
 - f. Collector snowmobiles. The director may issue a special permit to a person to operate in a parade; organized group outings, including races, rallies, or other promotional events; and for up to ten days each year for personal transportation. The director may impose a reasonable restriction of a permittee and may revoke, amend, suspend, or modify a permit for cause.
3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2, the owner is required to purchase an out-of-state public trails and lands access permit received upon payment of a twenty-five dollar per year fee.
 - a. The permit must be displayed on the snowmobile when the snowmobile is operated on public lands within the state.
 - b. For up to five business days after purchasing an out-of-state public trails and lands access permit, an online receipt or printed receipt may be presented in lieu of the official permit until the official permit is received.
 - c. Dealers or other agents authorized by the director of the parks and recreation department that sell out-of-state public trails and lands access permits may retain one dollar of the twenty-five dollar per year fee and the remainder of the fees collected under this subsection must be deposited in the state snowmobile fund.

39-24-05. Disposition of registration fees and trail tax - Transfer from highway tax distribution fund.

Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the highway tax distribution fund. The snowmobile trail tax must be deposited in a

state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on forty gallons [151.42 liters] of motor vehicle fuel multiplied by the number of collector snowmobiles and snowmobiles registered under this chapter must be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities and programs.

39-24-06. Transfer or termination of snowmobile ownership or change of address of owner.

Within fifteen days after the transfer of ownership, or any part thereof, other than a security interest, or the destruction or abandonment of any snowmobile, or a change of address of the owner as listed with the application for registration, written notice thereof must be given by the owner to the director in such form as must be prescribed by the director.

39-24-07. Licensing by political subdivisions.

No political subdivision of this state may require licensing or registration of snowmobiles subject to the provisions of this chapter.

39-24-08. Rules and regulations.

Pursuant to this code and this chapter, rules for the regulation and use of snowmobiles must be adopted as follows:

1. The director shall adopt rules for the registration of snowmobiles and display of registration numbers.
2. The director has the authority in the interest of public health, welfare, and safety to regulate, restrict, or prohibit, by rule, the operation of snowmobiles on those highways under the director's jurisdiction. The director's authority to prohibit the use of snowmobiles is limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in section 39-08-03.1, the director may, on a case-by-case basis, permit organized and bona fide snowmobile races on the ditch bottoms, backslopes, and the top of the backslopes of the highway rights of way under the director's jurisdiction. The planning, organization, route selection, and safety precautions of any such race are the sole responsibility of the permittee. It is expressly provided that the director, and the department and the employees thereof, shall incur no liability whatsoever for permitting such races.
3. The director of the parks and recreation department shall adopt rules for regulating use of snowmobiles in state parks and other state-owned land under the supervision of the director of the parks and recreation department.
4. The governing bodies of political subdivisions shall promulgate rules and regulations for regulating use of snowmobiles in recreation and other appropriate areas under their jurisdiction. The governing bodies of cities may, by ordinance, regulate, restrict, and prohibit the use of snowmobiles when operated within the exclusive jurisdiction of cities.

39-24-09. Rules for operation of snowmobiles.

1. No person may operate a snowmobile upon the roadway, shoulder, or inside bank or slope of any road, street, or highway in this state except as provided pursuant to this chapter. No snowmobile may be operated at any time within the right of way of any interstate highway within this state except as provided in this section.
2. A snowmobile may make a direct crossing of a noninterstate street or highway provided:

- a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.
3. No snowmobile may be operated unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director pursuant to the authority vested in the director by this code and this chapter.
4. The emergency conditions under which a snowmobile may be operated other than as provided by this chapter must be such as to render the use of an automobile impractical under such conditions at such period of time and location.
5. It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
 - c. While under the influence of intoxicating liquor or a drug as defined in section 39-24.1-01, or a combination thereof.
 - d. Without a lighted headlamp and taillamp when required for safety.
 - e. In any tree nursery or planting in a manner which damages or destroys growing stock.
 - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
 - g. Upon any private land where the private land is posted by the owner or tenant prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs must be readable from the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed lands.
6. It is unlawful for any person to operate a snowmobile pursuant to chapter 39-24 without having in possession a valid driver's license, except as provided by section 39-24-09.1.
7. If a snowmobile is operated within the right of way of any road, street, or highway of this state under this chapter, during times or conditions that warrant the use of lights, the snowmobile operator shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile. An operator of a snowmobile traveling on a snowmobile trail maintained by the parks and recreation department which is within the right of way of any road, street, or highway of this state is exempted from this rule. The operator shall wait for all traffic to clear the roadway before crossing bridges and other similar structures.
8. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 38 of section 24-01-01.1 between April first and November first of any year.
9. No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid, or other vehicle, unless the sled, skid, or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.

10. No person under the age of eighteen years may operate, ride, or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.
11. A person may not operate a snowmobile, and an owner of a snowmobile may not knowingly permit the snowmobile to be operated, upon any property maintained, leased, or owned by the state parks and recreation department to which the public has a right of access for snowmobile or other vehicular use, without a policy of liability insurance which insures the person named, and any person using the snowmobile with the express or implied permission of the person named, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the snowmobile within this state, subject to the following limits, exclusive of interest and costs, with respect to each snowmobile: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon request of a law enforcement officer, a person operating a snowmobile shall provide proof of liability insurance to that officer within twenty days.
12. A snowmobile may not be operated within the right of way of any interstate highway within this state except:
 - a. For emergency purposes; or
 - b. Across an interstate highway on an overpass or underpass, except where otherwise prohibited by law or by signing, provided the snowmobile crosses on the extreme right side of the overpass or underpass.

39-24-09.1. Operation by individuals - Minimum age.

1. An individual under the age of ten may not operate a snowmobile unless the individual operates the snowmobile on private land. An individual ten or eleven years of age may not operate a snowmobile unless the individual operates the snowmobile on private land or the individual is in the presence of a parent or guardian pursuant to chapter 30.1-27, has completed a snowmobile safety training course as prescribed by the director of the parks and recreation department pursuant to chapter 28-32, and has received the appropriate snowmobile safety certificate issued by the director of the parks and recreation department.
2. An individual twelve years of age and over may not operate a snowmobile unless the individual is in possession of a valid driver's license, operates the snowmobile on private land, or unless the individual has completed a snowmobile safety training course as prescribed by the director of the parks and recreation department pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the director of the parks and recreation department.
3. The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce this chapter is presumptive evidence that the individual is not the holder of the certificate.
4. Fees collected from each individual receiving certification must be deposited into the snowmobile fund for purposes of establishing snowmobile safety programs.

39-24-10. Enforcement.

Peace officers of this state and their respective duly authorized representatives are hereby authorized to enforce the provisions of this chapter.

39-24-11. Penalties.

1. Any person who violates:
 - a. Subsection 12 of section 39-24-09 must be assessed a fee of one hundred dollars;

- b. Subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor;
 - c. Subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39-24.1-07;
 - d. Subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars; and
 - e. Any other provision of section 39-24-09 must be assessed a fee of twenty dollars.
- 2. Any person, unless specifically exempted, who fails to register or fails to display a decal or permit as required by sections 39-24-02 and 39-24-04 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one-half.
 - 3. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

CHAPTER 39-24.1 SNOWMOBILE OPERATOR REGULATION

39-24.1-01. Implied consent to determine alcohol concentration and presence of drugs.

An individual who operates a snowmobile on any public land or private land with public access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the individual, except individuals mentioned in section 39-24.1-04, under arrest and informing that individual that the individual is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20.4-05 satisfies the requirement of an arrest. The law enforcement officer shall also inform the individual charged that refusal of the individual to submit to the chemical test determined appropriate will result in that individual being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

39-24.1-02. Chemical test of operator in serious bodily injury or fatal accident.

Notwithstanding section 39-24.1-01 or 39-24.1-06, when the operator of a snowmobile is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of subdivision c of subsection 5 of section 39-24-09, the operator may be compelled by a law enforcement officer to submit to a chemical test.

39-24.1-03. Individuals qualified to administer chemical test and opportunity for additional test.

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The individual tested may have an individual of that individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the individual charged. The failure or inability to obtain an additional chemical test by an individual does not preclude the admission of the chemical test taken at the direction

of a law enforcement officer. Upon the request of the individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood or urine sample test taken at the direction of the law enforcement officer must be made available to that individual by the law enforcement agency that administered the chemical test.

39-24.1-04. Consent of person incapable of refusal not withdrawn.

Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal is deemed not to have withdrawn the consent provided by section 39-24.1-01 and the chemical test may be given.

39-24.1-05. Action following chemical test result for a snowmobile operator.

If a person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the test shows that person to have the presence of a drug in that person's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a snowmobile, the test is evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.

39-24.1-06. Revocation of privilege to operate snowmobile upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-24.1-01, no chemical test may be given, but the law enforcement officer immediately shall issue to that person a summons or otherwise notify that person in writing to appear at the time and place specified in the summons or notice. The hearing and any appeal must be conducted as provided in section 39-06.1-03. If the person requests a hearing at a time and date other than as stated in the summons or notice, that person must post an appearance bond as required by subsection 2 of section 39-06.1-03. Upon establishing at the hearing by a preponderance of the evidence that the officer had probable cause to believe the person had been operating a snowmobile while in violation of subdivision c of subsection 5 of section 39-24-09 or had observed that the snowmobile was operated in a negligent, reckless, or hazardous manner as defined by the director by rule, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 39-24.1-01, the court shall prohibit the person from operating a snowmobile on all public land or private land with public access for the appropriate period under this section, and shall impose a noncriminal statutory fee of five hundred dollars. A violation of this section must be reported to the parks and recreation department. The department shall keep a record of all reported violations. The period for which a person is prohibited from operating a snowmobile under this section is:
 - a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.
 - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has once been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.
 - c. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a snowmobile under this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09 and the prohibitions resulted from at least two separate arrests.
2. A person may not be prohibited from operating a snowmobile under this section if:
 - a. The person files an affidavit with the court before the time set for hearing in the summons or notice, or, with the permission of the court, within five days after the hearing. The affidavit must state that the person:

- (1) Intends to voluntarily plead guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense;
 - (2) Agrees that the person may not operate a snowmobile for the appropriate period defined in section 39-24.1-07;
 - (3) Acknowledges the right to a section 39-06.1-03 administrative hearing and section 39-06.1-03 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person may not operate a snowmobile for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within thirty days after the date of the offense, or the court does not accept the guilty plea, or the guilty plea is withdrawn; and
- b. The person pleads guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense.

39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug concentrations.

Upon conviction of a violation of subdivision c of subsection 5 of section 39-24-09, the court shall impose the following minimum penalties:

1. Notwithstanding subsection 7 of section 12.1-32-01, if the person's record indicates that, within the five years preceding the date of the offense, the person has not violated subdivision c of subsection 5 of section 39-24-09 or the person has not been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of two hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for sixty days within the snowmobile season that runs from December first through April first.
2. If the person's record indicates that, within the five years preceding the date of the offense, the person has one violation of subdivision c of subsection 5 of section 39-24-09 or the person has once been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.
3. If the person's record indicates that, within the five years preceding the date of the offense, the person has had at least two violations of subdivision c of subsection 5 of section 39-24-09 or the person has at least twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

39-24.1-08. Interpretation of chemical tests.

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any individual while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol concentration or presence of other drugs, or a combination thereof, in the individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, or urine is admissible. For the purpose of this section:

1. An individual having a drug in that individual's body or an 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 operating a snowmobile is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a snowmobile.

2. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the individual requested to take the chemical test.
4. The director of the state crime laboratory or the director's designee 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 director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
 - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4 that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website must be admitted as prima facie evidence of the matters stated in the records.
6. A certified copy of the analytical report of a blood or urine test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
7. Superseded by N.D.R.Ev., Rule 707.
8. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

39-24.1-09. Proof of refusal admissible in any action or proceeding.

If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof.

39-24.1-10. Effect of evidence of chemical test.

This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show a drug or an alcohol concentration of at least ten one-hundredths of one percent, the purpose of the evidence must 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.

39-24.1-11. Liability.

Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of the act except for gross negligence.

39-24.1-12. Operation of snowmobile during period of prohibition - Penalty.

Any person who operates a snowmobile on any public land or private land with public access during the period the person is prohibited from operating a snowmobile under this chapter is guilty of a class A misdemeanor.

39-24.1-13. Fleeing or attempting to elude a peace officer.

1. Any driver of a snowmobile who willfully fails or refuses to bring the snowmobile to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the snowmobile to a stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal complies with this section if the signal is perceptible to the driver and:
 - a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
 - b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
2. Any sentence imposed under this section must include a minimum fine of at least five hundred dollars.

CHAPTER 39-25

REGULATION OF COMMERCIAL DRIVER TRAINING

39-25-01. Definitions.

1. "Commercial driver training school" or "school" means a business enterprise conducted by a person for the education and training of individuals, either practically or theoretically, or both, to operate or drive a motor vehicle, and for which accepts consideration or charges tuition for the service.
2. "Instructor" means an individual, whether acting on that individual's own behalf as an operator of a commercial driver training school or for a school for compensation, who teaches, conducts a class for, gives demonstrations to, or supervises practice of, an individual learning to operate or drive a motor vehicle.
3. "Certificate of course completion" means documentation signed by one or more driver education programs indicating the driver has met the classroom instruction and behind-the-wheel instruction requirements prescribed by the director.

39-25-02. Duties of director - Regulations.

1. The director shall adopt and prescribe regulations concerning the administration and enforcement of this chapter which are necessary to protect the public. The director shall inspect the school facilities, equipment of applicants and licensees, and examine applicants for instructor's and examiner's licenses or certifications.
2. The director shall administer and enforce this chapter and shall adopt regulations for the administration and enforcement of this chapter.

39-25-02.1. Waiver of skill test.

The director may waive the skill portion of the driver's license examination if the applicant has successfully completed the classroom instruction and behind-the-wheel instruction requirements prescribed by the director. The director shall adopt and prescribe regulations concerning criteria for the classroom instruction and behind-the-wheel instruction requirements. A certificate of course completion must accompany the driver's application as evidence that the applicant for a class D license has satisfactorily completed the classroom instruction and behind-the-wheel instruction requirements prescribed by the director.

39-25-03. School - License required - Contents of application for license.

1. A commercial driver training school may not be established nor may any existing school continue to operate unless the school applies for and obtains from the director a license in the manner and form prescribed by the director.
2. The application for license must include a statement of the location of the school, the equipment, courses of instruction, instructors, previous records of the school and instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, and any other matter as the director may prescribe for the protection of the public.

39-25-04. Instructor - License required - Contents of application for license.

1. An individual may not act as an instructor unless the individual applies for and obtains a license in the manner and form prescribed by this chapter.
2. The regulations must state the requirements for an instructor's license, including requirements concerning residency, language, moral character, physical condition, knowledge of the courses of instruction, motor vehicle laws and safety principles, previous personal and employment records, and any other matter as the director may prescribe for the protection of the public.

39-25-05. Expiration and renewal of licenses - Fees.

A license expires on the last day of the calendar year and may be renewed upon application to the director as prescribed by the director's regulations. Each application for an original or

renewal school license must be accompanied by a fee of twenty-five dollars, and each application for an original or renewal instructor's license must be accompanied by a fee of ten dollars. These fees must be deposited in the state treasury in the state highway fund. License fees may not be refunded in the event any license is rejected, suspended, or revoked.

39-25-06. Refusal, suspension, or revocation of license.

The director may refuse to issue, or may suspend or revoke a license in any case when the director finds the applicant or licensee has violated any of the provisions of this chapter or the regulations adopted by the director. A suspended or revoked license must be returned to the director by the licensee.

39-25-07. Exclusions - Free instruction - Colleges, universities, and high schools.

This chapter does not apply to any person giving driver training lessons without charge, to employers maintaining driver training schools without charge solely for that employer's employees, nor to a school or a class conducted by a college, a university, or a high school for a regularly enrolled full-time or part-time student as a part of a normal program of the institution, except that a public driver education program may provide a certificate of course completion to be used by a driver to waive the skill portion of the driver's license examination under section 39-25-02.1.

39-25-08. Violations and penalties.

Any person who violates section 39-25-03 or 39-25-04 is guilty of a class B misdemeanor.

CHAPTER 39-27 MOTORCYCLE EQUIPMENT

39-27-01. Purpose.

It is the purpose of this chapter to establish performance and equipment requirements for the manufacture, sale, and safe operation of a motorcycle upon public highways and to furnish administrators with a guide for registration eligibility and continued conformity as related to motorcycles.

39-27-02. Manufacturer's or distributor's certification.

1. The manufacturer or distributor shall provide a certification of the fact that a motorcycle or class of motorcycles is designed and manufactured for use upon public highways and complies with the performance and equipment requirements of this chapter and the rules and regulations promulgated hereunder.
2. The certificate must be incorporated on the manufacturer's statement of origin upon transfer of vehicle ownership.

39-27-03. Frame-chassis requirements.

1. The motorcycle frame-chassis, including the suspension components and engine mountings, must be of substantial construction, capable of supporting the combined weight of all vehicle components and riders for which the vehicle is designed, and withstand normal road shocks and operational stresses without constituting a hazard to the riders or other users of the highway.
2. The wheelbase may not be less than forty inches [101.6 centimeters].

39-27-04. Brakes.

1. Every motorcycle must have either a split service brake system or two independently actuated service brake systems in accordance with rules adopted by the director pursuant to chapter 28-32. Brakes must act on the front and rear wheels.
2. Every motorcycle must meet the requirements for brake system effectiveness, fade, and partial systems as specified in rules adopted by the director pursuant to chapter 28-32.
3. All linkage, cables, pivots, and bearings must be free of excess (high) friction, with the front wheel brake cable so located and secured as not to become pinched between fork and frame members when wheel is turned completely to the right or left.
4. Brake actuating devices must be in an accessible location, unencumbered by vehicle components, and so positioned that adequate leverage and safe operation is ensured. Service brake system controls and operation requirements must be in accordance with rules adopted by the director pursuant to chapter 28-32. A suitable mechanism must be provided for the purpose of automatically returning the actuating devices to normal position upon release.
5. Motorcycle brakes must be capable of being adjusted automatically or manually with means provided to prevent unintentional adjustment.
6. Each three-wheel motorcycle must be equipped with a parking brake of a friction type with a solely mechanical means to retain engagement.

39-27-04.1. Brakes on motor-driven cycles.

The department may require an inspection of the brake on any motor-driven cycle and may disapprove any brake which is not so designed or constructed as to ensure reasonable and reliable performance in actual use.

39-27-05. Tires, wheels, and rims.

1. Motorcycle tires must be of pneumatic design with a minimum width of two and twenty-five hundredths inches [57.15 millimeters] designed for highway use.

2. Tires on two-wheel motorcycles and the 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.
3. Wheel rim diameters may not be less than ten inches [25.4 centimeters] or otherwise comply with title 49, Code of Federal Regulations, part 571, Federal Motor Vehicle Safety Standards, and must otherwise comply with applicable state standards, as promulgated by the director. Two-wheel motorcycles using low pressure tires are exempt from this subsection if the inflated height of the tire is twenty inches [508 millimeters] or greater.

39-27-06. Steering and suspension systems.

1. Motorcycle steering and suspension systems must be designed and engineered to provide the operator with the means of safely controlling vehicle direction under all maneuvers required for normal and safe operation.
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 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.
3. The steering head must be provided with a bearing or similar device that will allow the steering shaft to turn freely in rotational motion only.
4. All motorcycles, except three-wheel motorcycles, must meet the following specifications in relationship to front wheel geometry:
 - MAXIMUM: Rake: 45 degrees - Trail: 14 inches
[35.56 centimeters] positive
 - MINIMUM: Rake: 20 degrees - Trail: 2 inches
[5.08 centimeters] positiveManufacturer's specifications must include the specific rake and trail for each motorcycle or class of motorcycles and the terms "rake" and "trail" must be defined by the director by rules adopted pursuant to chapter 28-32.
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. The handlebars must provide a minimum of eighteen inches [45.72 centimeters] between grip after final assembly.
6. Handlebars must be equipped with handgrips consisting of a material and surface pattern to ensure firm, nonslip gripping for the driver.
7. Every motorcycle must be equipped with a suspension system and such suspension system must be applicable to at least the front wheel. The suspension system must be effective in reducing road shock and designed for the purpose of maximizing vehicle stability.

39-27-07. Fuel system.

1. All fuel system components, including the tank, pump, tubing, hoses, clamps, and other components, must be securely fastened to the motorcycle so as not to interfere with vehicle operation and be leakproof when the vehicle is in its normal operating attitude.
2. Fuel lines must be positioned in a manner to prevent their contact with the engine head, manifold, exhaust system, or other high temperature surfaces, or moving components. The fuel system must be adequately vented and provided with a fuel shutoff valve located between the fuel supply and the engine.

39-27-08. Exhaust system - Prevention of noise.

Motorcycles must be equipped with an exhaust system incorporating a muffler or other mechanical device for the purpose of effectively reducing engine noise. Cutouts and bypasses in the exhaust system are prohibited. The system must be leakproof and all components must be securely attached to the vehicle and located so as not to interfere with the operation of the motorcycle. Shielding must be provided to prevent inadvertent contact with the exhaust system by the operator or passenger during normal operation. In addition, all motorcycles operating on streets and highways must meet the noise decibel limitations as established by the environmental protection agency. No person may sell, offer for sale, or install any noise suppressing system or device which will produce noise in excess of the maximum allowable decibel limitations of this section.

39-27-09. Mirror.

Every motorcycle must be equipped with at least one mirror of unit magnification, securely affixed to the handlebar and capable of adjustment within a range that will reflect an image that includes at least the horizon and the road surface to the rear of the motorcycle. Such mirror must consist of a minimum reflective surface of ten square inches [64.52 square centimeters]. All mirrors shall not contain sharp edges or projections capable of producing injury.

39-27-10. Fenders.

Each wheel of a motorcycle must be equipped with fenders or otherwise covered by the body configuration. Fenders must be securely mounted and of sufficient size and strength to minimize water or other road surface substances from coming in contact with the vehicle riders, or throwing the road substances unreasonably to the rear of the vehicle. Fender design must be effective in reducing side spray.

39-27-11. Seat or saddle.

A seat or saddle securely attached to the vehicle must be provided for the use of the operator. The seat or saddle may not be less than twenty-five inches [63.5 centimeters] above a level road surface when measured to the lowest point on top of the seat or saddle cushion with the operator seated in a driving position. The seat or saddle adjustment locking device must prevent relative movement of the seat from its selected and secured position under all normal vehicle operating conditions.

39-27-12. Chain guard.

Any drive chain on a motorcycle must be equipped with a chain guard or covering device to prevent chain or chain sprocket contact with any rider.

39-27-13. Vehicle stand.

All motorcycles designed with two wheels must be equipped with a retracting vehicle stand to permit the vehicle to remain in an upright stored position without outside assistance. The stand may be of a side or center type and must be of substantial construction to hold the vehicle so equipped.

39-27-14. Glazing.

When equipped, all motorcycle windscreens and windshields must meet the following standards:

1. The glazing material must comply with the standards promulgated by rule of the director.
2. The metal support must be of a material which bends rather than fragments under impact.
3. Covering material, other than glazing, must be beaded at the edges to prevent fraying.

39-27-15. Horn.

Every motorcycle must be equipped with an operative horn in good working order as described by subsection 1 of section 39-21-36. The horn must operate from a control device located on the left handlebar.

39-27-16. Speedometer and odometer.

Every motorcycle must be equipped with a properly operating speedometer and odometer calibrated in miles [kilometers] per hour and miles [kilometers] respectively and must be fully illuminated when the headlamp is activated.

39-27-17. Lighting equipment.

1. A motorcycle must be equipped with lamps, reflective devices, and associated equipment as required by and in compliance with standards adopted by rule of the director.
2. A gearbox indicator light, if provided, must be located within the operator's field of vision.
3. A headlamp beam indicator light must be located within the operator's field of vision and illuminated automatically when the high beam of the headlamp is actuated.
4. A motorcycle must be equipped with at least one taillamp in accordance with section 39-21-04.
5. A motorcycle must be equipped with a stop lamp in accordance with subsection 1 of section 39-21-19.

39-27-17.1. Headlamps on motorcycles.

1. The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type.
2. Every headlamp or headlamps on a motor-driven cycle must be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet [30.48 meters] when the motor-driven cycle is operated at any speed less than twenty-five miles [40.23 kilometers] per hour and at a distance of not less than two hundred feet [60.96 meters] when the motor-driven cycle is operated at a speed of twenty-five or more miles [40.23 or more kilometers] per hour, and at a distance of not less than three hundred feet [91.44 meters] when the motor-driven cycle is operated at a speed of thirty-five miles [56.33 kilometers] per hour.
3. In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam must meet the minimum requirements set forth above and may not exceed the limitations set forth in subsection 1 of section 39-21-20 and the lowermost beam must meet the requirements applicable to a lowermost distribution of light as set forth in subsection 2 of section 39-21-20.
4. In the event the motor-driven cycle is equipped with a single-beam lamp or lamps the lamp or lamps must be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet [7.62 meters] ahead, projects higher than the level of the center of the lamp from which it comes.

39-27-18. Passenger seat.

Motorcycles designed to carry more than one person must be equipped with a securely mounted seat for each passenger located to the side or rear of the driver such that the passenger seat does not interfere with the driver's control or operation of the vehicle. In the case of a two-wheel vehicle, the passenger seat must be located on the longitudinal centerline of the motorcycle.

39-27-19. Handhold.

Repealed by S.L. 1985, ch. 451, § 1.

39-27-20. Footrests.

Footrests must be provided for each designated seating position. Each footrest for a passenger must be so designed and constructed to support a static weight of two hundred fifty pounds [113.40 kilograms] applied at the center of the foot pedal. Footrests must be so located to provide reasonable accessibility for the passenger's feet. Footrests must fold rearward or upward when not in use if the footrest protrudes beyond the width of the handlebars.

39-27-21. Highway bars.

If a motorcycle is so equipped, highway bars must have a maximum width of twenty-six inches [66.04 centimeters], must be located less than fifteen inches [38.1 centimeters] from the foot controls, and may not interfere with the operation of the foot controls.

39-27-22. Equipment approval.

All motorcycle lighting devices, electrical systems, brake components, glazing materials, and exhaust systems, incorporating a muffler or other mechanical exhaust device, required or optional, must be approved by the department before they will be available for use within the state.

CHAPTER 39-28

MOTORCYCLE SAFETY EDUCATION

39-28-01. Additional fees for motorized bicycle and motorcycle registration.

In addition to the fees required by section 39-04-19 for motorized bicycle and motorcycle registration, a motorcycle safety education fee of ten dollars is required at the time of registration of each motorized bicycle and motorcycle.

39-28-02. Director to establish standards for motorcycle safety courses.

The director shall establish requirements for instructional standards, course approval, and teacher certification standards for motorcycle safety courses required by this chapter. Motorcycle safety courses may be offered by public schools and by approved organizations which meet instruction, course, and teacher certification requirements. The director may adopt rules governing the operation of motorcycle safety courses, administer moneys pursuant to this chapter, conduct audits and otherwise examine the records and accounts of approved motorcycle safety courses, and require other information as may be necessary to monitor the quality of motorcycle safety courses.

39-28-03. Reimbursement for motorcycle safety courses.

The director shall reimburse public schools and organizations offering approved motorcycle safety courses for the actual cost of the courses. The amount of reimbursement for each student may not exceed the actual per-pupil cost for the motorcycle safety program.

39-28-04. Motorcycle safety promotion.

The director, in cooperation with other state agencies, shall promote safety and awareness in the use and operation of motorcycles through advertising and other appropriate means, as provided by this chapter. The general public may provide input to improve motorcycle safety and education.

39-28-05. Disposition of fees.

Any fee collected pursuant to this chapter must be deposited by the director with the state treasurer and credited to a special motorcycle safety education fund in the state treasury.

CHAPTER 39-29 OFF-HIGHWAY VEHICLES

39-29-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Dealer" means any person engaged in the business of buying, selling, or exchanging off-highway vehicles or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of off-highway vehicles, or who engages in the buying of off-highway vehicles for resale.
2. "Off-highway vehicle" means any motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain. The term includes a motorized vehicle converted to operate on snow. The term does not include an electric bicycle. An off-highway vehicle must be classified into one of the following categories:
 - a. Class I off-highway vehicle is a vehicle that does not qualify as road capable under chapters 39-21 and 39-27, has a seat or a saddle designed to be straddled by the operator, and has handlebars for steering control of two wheels.
 - b. Class II off-highway vehicle is fifty inches [1270.00 millimeters] or less in width, weighs one thousand two hundred pounds [544.31 kilograms] or less, and travels on three or more nonhighway tires; or is sixty-five inches [1651 millimeters] or less in width, weighs two thousand pounds [907.19 kilograms] or less, and travels on four or more nonhighway tires.
 - c. Class III off-highway vehicle weighs less than eight thousand pounds [3628.74 kilograms]; travels on skis, runners, tracks, or four or more tires; has a seat; has a wheel, handlebars, or steering for steering control; and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, but does not include a vehicle registered by the department under chapter 39-04 or 39-24.
3. "Operate" means to ride in or on and control the operation of an off-highway vehicle.
4. "Operator" means an individual who operates or is in actual physical control of an off-highway vehicle.
5. "Owner" means a person, other than a lienholder, having the property in or title to an off-highway vehicle and entitled to its use or possession.
6. "Peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.
7. "Register" means the act of assigning a registration number to an off-highway vehicle.

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee.

Upon the sale of a new or used off-highway vehicle, a dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of off-highway vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the off-highway vehicle fund established under section 39-29-05. The fees may be used only by the parks and recreation department and only for off-highway vehicle safety education and promotion. The parks and recreation department shall report to the director within thirty days of the end of each calendar quarter the motor-powered recreational vehicle dealers that submitted a safety fee report and the number of vehicles sold, and shall identify every dealer not collecting or transmitting the safety fee.

39-29-02. Off-highway vehicle registration.

Except as provided in this chapter, an individual may not operate an off-highway vehicle unless it has been registered under this chapter.

39-29-03. Registration - Application - Issuance - Fees - Renewal.

1. Application for registration must be made to the department of transportation in the form the department prescribes and furnishes. The registration must state the name and address of every owner of the off-highway vehicle and be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
2. On receipt of an application and the appropriate fee, the department shall register the off-highway vehicle and assign a registration number and a certificate of registration. In addition, the department shall issue a decal made of reflectorized material which contains the registration number or the department shall issue one distinctive number plate upon the request of the owner. The operator of an off-highway vehicle shall securely affix and display the decal or the plate in a position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
3. The fee for registration of each off-highway vehicle is five dollars for a registration period of two years. For a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars. For each off-highway vehicle registered under this chapter, there is an off-highway vehicle trail tax of fifteen dollars.
4. The owner of an off-highway vehicle shall renew the registration in the manner the department prescribes and pay the registration fees and applicable tax provided in subsection 3.
5. On application for registration as prescribed in subsection 2, and on payment of the amounts prescribed in subsection 3, an off-highway vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's registration numbers may be used only on off-highway vehicles owned by the dealership.

39-29-04. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:
 - a. Off-highway vehicles owned and used by the United States or any state or its political subdivisions.
 - b. Off-highway vehicles registered in a foreign country and temporarily used in this state.
 - c. Off-highway vehicles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. Off-highway vehicles used exclusively on private lands.
 - e. Off-highway vehicles used exclusively in organized track racing events.
2. If an off-highway vehicle is exempt from registration under subdivision b or c of subsection 1, the owner shall purchase an out-of-state public trails and lands access permit received upon payment of a ten dollar per-year fee. Dealers or other agents authorized by the director of the parks and recreation department who sell out-of-state public trails and lands access permits may retain one dollar of the ten dollar per-year fee. The remainder of the fees collected under this subsection must be deposited in the off-highway vehicle fund.

39-29-05. Disposition of registration fees and trail tax.

1. Fees from registration of off-highway vehicles must be deposited with the state treasurer and credited to the highway tax distribution fund.
2. The off-highway vehicle trail tax must be deposited in the off-highway vehicle fund in the state treasury. The parks and recreation department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing off-highway vehicle facilities, use areas, and safety and education programs, and on enforcement of this chapter. The department may also use the fund to make grants to political subdivisions, governmental agencies, and nonprofit organizations for the purpose of developing and improving off-highway vehicle facilities and use areas and on

promoting off-highway vehicle safety and education. The department may also use the fund to make grants to law enforcement agencies for the purpose of enforcing laws applicable to off-highway vehicles and to the use of off-highway vehicle facilities and use areas.

39-29-06. Transfer or termination of off-highway vehicle ownership - Change of address of owner.

Within fifteen days after the transfer of any ownership interest in an off-highway vehicle, other than a security interest, or the destruction or abandonment of any off-highway vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the new owner to the director in the form the director requires.

39-29-07. Licensing by political subdivisions.

Political subdivisions of this state may not require licensing or registration of off-highway vehicles.

39-29-08. Rules.

1. The department shall adopt rules for the registration of off-highway vehicles and display of registration numbers.
2. The director, in the interest of public health, welfare, and safety, may regulate, by rule, the operation of off-highway vehicles on state highways. The director's authority to prohibit the use of off-highway vehicles is limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in section 39-08-03.1, the director may, on a case-by-case basis, permit organized and bona fide off-highway vehicle races on the ditch bottoms, backslopes, and the top of the backslopes of the state highway rights of way. The planning, organization, route selection, and safety precautions of any race are the sole responsibility of the person obtaining the permit. The director, the department, and the department's employees do not incur any liability for permitting races.
3. The director of the parks and recreation department shall adopt rules to regulate use of off-highway vehicles in state parks and other state-owned land under the supervision of the director of the parks and recreation department.
4. The governing bodies of political subdivisions may adopt rules to regulate use of off-highway vehicles in areas under their jurisdiction. The governing body of a city or county may, by ordinance, regulate, restrict, and prohibit the use of off-highway vehicles operated in the city limits or within the county in areas under the exclusive jurisdiction of the city or county.

39-29-09. Operation of off-highway vehicles.

1. An individual may not operate an off-highway vehicle on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in this chapter. Except in emergencies, an individual may not operate an off-highway vehicle within the right of way of any controlled-access highway. An individual may operate a registered off-highway vehicle on a gravel, dirt, or loose surface roadway. An individual may operate a registered off-highway vehicle on a paved highway designated and posted at a speed not exceeding fifty-five miles [88.51 kilometers] per hour. A licensed driver over sixteen years of age may operate a registered class III off-highway vehicle on a paved highway designated and posted at a speed not exceeding sixty-five miles [104.61 kilometers] per hour. An individual may not operate an off-highway vehicle on a paved highway if the vehicle is unable to attain a speed, on a paved level surface, of at least thirty miles [48.28 kilometers] per hour.
2. The operator of an off-highway vehicle may make a direct crossing of a street or highway only if:

- a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The off-highway vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c. The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d. In crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway.
3. Unless an individual is operating a class I off-highway vehicle, an individual may not operate an off-highway vehicle unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director, except when under the direct supervision of an off-highway vehicle instructor teaching a certified off-highway vehicle safety training course, the requirement for a headlamp and taillamp may be waived.
4. The emergency conditions under which an off-highway vehicle may be operated other than as provided by this chapter are only those that render the use of an automobile impractical under the conditions and at the time and location in question.
5. An individual may not operate an off-highway vehicle in the following ways, which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to another person or the property of another person.
 - c. While under the influence of intoxicating liquor or a controlled substance.
 - d. Without a lighted headlamp and taillamp except when used by an off-highway vehicle instructor during a certified off-highway vehicle safety training course.
 - e. In any tree nursery or planting in a manner that damages growing stock.
 - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the off-highway vehicle's exhaust system.
 - g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of these signs at or on all gates through the fence or enclosure.
6. Except as provided in section 39-29-10, an individual may not operate an off-highway vehicle without having in possession a valid driver's license or permit.
7. When an off-highway vehicle is operated within the right of way of any road, street, or highway, during times or conditions that warrant the use of lights by other motor vehicles, the off-highway vehicle must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the off-highway vehicle.
8. An individual may not operate an off-highway vehicle within the right of way of any highway while towing a sled, skid, or other vehicle, unless the object towed is connected to the off-highway vehicle by a hinged swivel and secure hitch.
9. An individual under the age of eighteen years may not operate, ride, or otherwise be propelled on an off-highway vehicle unless the person wears a safety helmet meeting United States department of transportation standards.
10. An operator of an off-highway vehicle may not carry a passenger while operating the vehicle unless the off-highway vehicle is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.

11. Unless otherwise provided by law, an off-highway vehicle may be operated on an aggregate road surface only when designated as part of an active off-highway vehicle trail by the managing entity.
12. A person who is performing pest control or survey work for a political subdivision may operate an all-terrain vehicle on the bottom, backslope, inside slope, and shoulder of a highway other than a controlled-access highway.

39-29-09.1. Equipment.

To operate an off-highway vehicle on a paved highway or gravel, dirt, or loose surface roadway under subsection 1 of section 39-29-09, the off-highway vehicle must be equipped with a mirror in compliance with section 39-27-09, a horn in compliance with section 39-27-15, a speedometer and odometer in compliance with section 39-27-16, a brake light, a lighted headlamp in compliance with section 39-27-17.1, and a motor of at least three hundred fifty cubic centimeters.

39-29-10. Operation by persons under age sixteen.

Except as otherwise provided in this section, an individual under sixteen years of age who is not in possession of a valid operator's license or permit to operate an off-highway vehicle may not, except upon the lands of the individual's parent or guardian or as a participant in an organized sporting event that involves the use of off-highway vehicles, operate an off-highway vehicle. An individual at least twelve years of age may operate an off-highway vehicle if the individual has completed an off-highway vehicle safety training course prescribed by the director of the parks and recreation department and has received the appropriate off-highway vehicle safety certificate issued by the director of the parks and recreation department. The failure of an operator to exhibit an off-highway vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold a certificate. Fees collected from each individual receiving certification must be deposited in the off-highway vehicle trail tax fund for off-highway vehicle safety education and training programs.

39-29-11. Enforcement.

Only peace officers of this state and their respective duly authorized representatives may enforce this chapter.

39-29-12. Penalties.

Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of fifty dollars must be assessed. Violation of section 39-29-02 or subsection 2 of section 39-29-04 is an infraction, for which a fee of fifty dollars must be assessed. If the individual provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of twenty dollars must be assessed.

CHAPTER 39-29.1 LOW-SPEED VEHICLES

39-29.1-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved level surface, of more than twenty miles [32 kilometers] per hour in one mile [1.6 kilometers] and not more than twenty-five miles [40 kilometers] per hour in one mile [1.6 kilometers] and may not exceed three thousand pounds [1361 kilograms] in weight when fully loaded with passengers and any cargo.
2. "Operate" means to ride in or on and control the operation of a low-speed vehicle.
3. "Register" means the act of assigning a registration number to a low-speed vehicle.

39-29.1-02. Applicability.

A low-speed vehicle is a motor vehicle under this title, except:

1. Chapter 39-22 does not apply to low-speed vehicles.
2. Registration of a low-speed vehicle is governed by this chapter.
3. A political subdivision may not require licensing or registration of low-speed vehicles.
4. The governing body of a city may regulate, restrict, or prohibit the use of low-speed vehicles operating in the city limits in areas under the jurisdiction of the city.

39-29.1-03. Low-speed vehicle registration - Application - Issuance - Fees - Renewal.

1. An individual may not operate a low-speed vehicle unless the vehicle has been registered in accordance with this chapter.
2. The department shall design and furnish an application that must be used to register a low-speed vehicle. The registration must state the name and address of every owner of the low-speed vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
3. On receipt of an application and the appropriate fee, the department shall register the low-speed vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
4. The fee for registration of a low-speed vehicle is twenty dollars for each registration cycle of two years ending on March thirty-first. The department may prorate the initial registration fee. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
5. To renew a registration, the owner of a low-speed vehicle shall follow the procedure adopted by the department and pay the registration fee.
6. The department may adopt rules for the registration of low-speed vehicles and the display of registration numbers.

39-29.1-04. Low-speed vehicle dealers.

A low-speed vehicle dealer does not need a motor vehicle dealer's license. Upon application and on payment of a twenty dollar fee, a low-speed vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's numbers may be used only on low-speed vehicles owned by the dealership.

39-29.1-05. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:
 - a. A low-speed vehicle owned and used by the United States or another state or its political subdivisions.
 - b. A low-speed vehicle registered in a foreign country and temporarily used in this state.

- c. A low-speed vehicle validly licensed in another state and which has not been in this state for more than thirty consecutive days.
 - d. A low-speed vehicle used exclusively for work on private agricultural land or on an industrial jobsite on private land.
2. A low-speed vehicle owned by this state or any of its political subdivisions are exempt from registration fees for low-speed vehicles.

39-29.1-06. Transfer or termination of low-speed vehicle ownership - Change of address of owner.

Within fifteen days of a transfer of any ownership interest in a low-speed vehicle, other than a security interest, the destruction or abandonment of any low-speed vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the last registered owner to the director in the form the director requires.

39-29.1-07. Rules of operation.

A person may not operate a low-speed vehicle on a highway on which the speed limit exceeds thirty-five miles [56.33 kilometers] per hour. The operator of a low-speed vehicle may make a direct crossing of a highway on which the speed limit exceeds thirty-five miles [56.33 kilometers] per hour if the crossing is made so the operator can continue on a highway on which the speed limit does not exceed thirty-five miles [56.33 kilometers] per hour.

39-29.1-08. Equipment.

A low-speed vehicle must be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, red reflex reflectors on each side as far to the rear of the vehicle as practicable and one red reflector on the rear, brakes, a parking brake, a windshield, a vehicle identification number, a safety belt assembly installed at each designated seating position, an exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.

39-29.1-09. Penalty.

A violation of this chapter for which there is no civil or criminal penalty in this title is a class B misdemeanor.

CHAPTER 39-29.2 UNCONVENTIONAL VEHICLES

39-29.2-01. Definitions.

As used in this chapter unless the context otherwise requires:

1. "Identifying number" means the vehicle identification numbers and letters if any assigned by the manufacturer or by the department for the purpose of identifying a vehicle. The term includes any numbers or letters assigned by the manufacturer for the purpose of identifying a part of a vehicle or any number placed on a part in accordance with this chapter or rules of the department for the purpose of identifying the vehicle.
2. "Unconventional vehicle" means a motor vehicle that is designed to travel on at least three wheels in contact with the ground, has an unladen weight of at least three hundred pounds [136.08 kilograms] but less than eight thousand pounds [3628.7 kilograms], has a permanent upright seat that does not require the operator to straddle or sit astride it, has a steering device for front wheel steering control, is capable of speeds in excess of sixty-five miles [104.61 kilometers] per hour, complies with equipment listed in chapter 39-21 or 39-27, as appropriate, and has an identifying number. The term does not include motor vehicles that otherwise may be registered under this title.

39-29.2-02. Certificate of title for unconventional vehicle.

The department shall issue a certificate of title for an unconventional vehicle in accordance with section 39-05-05.

39-29.2-03. Registration of unconventional vehicle.

1. Registration of an unconventional vehicle is governed by this chapter.
2. An individual may not operate an unconventional vehicle on public roadways unless the vehicle has been registered under this chapter.
3. The department shall design and furnish an application that must be used to register an unconventional vehicle. The registration must state the name and address of every owner of the unconventional vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
4. On receipt of an application and the appropriate fee, the department shall register an unconventional vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, identifying number, and name and address of the owner.
5. The fee for registration of an unconventional vehicle is fifty dollars per year. For a duplicate or replacement registration number plate or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
6. To renew a registration, the owner of an unconventional vehicle shall follow the procedure adopted by the department and pay the registration fee.
7. The department shall issue a plate in the same manner as a plate is issued to a motorcycle. Whenever the ownership of an unconventional vehicle registered under this chapter is transferred or assigned, the plates must be handled in accordance with subsection 1 of section 39-04-36.
8. Funds collected from registration must be deposited in the motor vehicle registration fund.
9. Every unconventional vehicle is subject to the motor vehicle body damage disclosure requirement of section 39-05-17.2.

39-29.2-04. Operation of unconventional vehicle.

To operate an unconventional vehicle on a highway, the operator must be a class D licensed driver. An operator may operate an unconventional vehicle on any highway.

39-29.2-05. Equipment.

Operators and passengers in an unconventional vehicle shall comply with seatbelt use laws.

39-29.2-06. Manufacturer's or distributor's certification.

1. The manufacturer or distributor shall certify that an unconventional vehicle is designed and manufactured for use upon public highways and complies with the rules adopted under this chapter. An individual who manufactures an unconventional vehicle for personal use does not have to meet the certification requirements of this section, but shall comply with the rules adopted under this chapter.
2. The certificate must be incorporated on the manufacturer's statement of origin upon transfer of vehicle ownership.

CHAPTER 39-30

MOTOR VEHICLE CHOP SHOPS

39-30-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chop shop" means any building, lot, or other premises where one or more persons knowingly, as defined by section 12.1-02-02, engage in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle, or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to either:
 - a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part; or
 - b. Sell or dispose of the motor vehicle or motor vehicle part.
2. "Motor vehicle" includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and includes any and all other land-based devices that are self-propelled but which are not designed for use upon a highway, including farm machinery and construction equipment.
3. "Person" includes a natural person, company, corporation, limited liability company, unincorporated association, partnership, professional corporation, professional limited liability company, and any other legal entity.
4. "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.
5. "Vehicle identification number" means a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof, used by the manufacturer or the department of transportation for the purposes of uniquely identifying a motor vehicle or motor vehicle part. The term includes a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof.

39-30-02. Violations and penalties.

1. It is a class B felony if any person knowingly, as defined in section 12.1-02-02, and with intent that a violation of subsection 2 be committed:
 - a. Owns, operates, or conducts a chop shop;
 - b. Transports any motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or
 - c. Sells, transfers, purchases, or receives any motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.
2. Any person who knowingly, as defined in section 12.1-02-02, alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a vehicle identification number, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part, is guilty of a class B felony.
3.
 - a. Any person who buys, disposes, sells, transfers, or possesses a motor vehicle or motor vehicle part, with knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, is guilty of a class B felony.

- b. The provisions of subdivision a do not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part prior to or during any such processing.
 - c. The provisions of subdivision a do not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or when the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to or has been reported to law enforcement authorities. It is presumed that law enforcement authorities have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed, when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.
4. No prosecution may be brought, and no person may be convicted, of any violation under this section, if acts of the person otherwise constituting a violation were done in good faith in order to comply with the laws or regulations of any state or territory of the United States or of the federal government of the United States.
 5. The sentence imposed upon a person convicted of any violation of this section may not be reduced to less than four years imprisonment for a second conviction of any violation of this section, or less than eight years for a third or subsequent conviction of any violation of this section, and no sentence imposed upon a person for a second or subsequent conviction of any violation of this section may be suspended or reduced until the person has served the minimum period of imprisonment provided in this section. A person convicted of a second or subsequent violation of this section is not eligible for probation, parole, furlough, or work release.
 6.
 - a. In addition to any punishment, a person who violates this section, must be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or vehicles or the stolen motor vehicle part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

As used in this section, "financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. As used in this section, "lawful owner" includes an innocent bona fide purchaser for value of a stolen motor vehicle part who does not know that the motor vehicle or part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value.
 - b. The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In any such case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

39-30-03. Seizure of equipment.

1. Any tool, implement, or instrumentality, including a motor vehicle or motor vehicle part, used or possessed in connection with any violation of section 39-30-02 may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.
2. Seizure of property described in subsection 1 may be made by a member of a state or local law enforcement agency without process:
 - a. If in accordance with any applicable law or regulation;
 - b. If the seizure is incident to inspection under an administrative inspection warrant;
 - c. If the seizure is incident to search made under a search warrant;

- d. If the seizure is incident to a lawful arrest;
 - e. If the seizure is made pursuant to a valid consent to search;
 - f. If the property seized has been the subject of a prior judgment in favor of the state in a criminal proceeding or in an injunction or forfeiture proceeding under section 39-30-05; or
 - g. If there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.
3. When property is seized under this section, the seizing agency may:
- a. Place the property under seal; or
 - b. Remove the property to a place selected and designated by the seizing party.

39-30-04. Forfeiture of property.

1. The following are subject to forfeiture unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located:
 - a. Any tool;
 - b. Any implement; or
 - c. Any instrumentality, including any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of section 39-30-02 or to promote or facilitate a violation of section 39-30-02.
2. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section if the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of section 39-30-02.
3. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission that the owner proves to have been committed or omitted without the owner's knowledge or consent.
4.
 - a. Seizing agencies shall utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in it. In its reasonable identification and owner location attempts, the seizing agency shall cause the stolen motor vehicle files of all law enforcement agencies to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.
 - b. If a motor vehicle or motor vehicle part has an apparent value in excess of one thousand dollars:
 - (1) The seizing agency shall consult with an expert of the type specified in subsection 4 of section 39-30-01; and
 - (2) The seizing party shall request searches of the online and offline files of the national crime information center and the national automobile theft bureau when files have been searched with negative results.
5. A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.
6. Property, described in subsection 1, seized and held for forfeiture, is not subject to replevin and is subject only to the order and judgments of a court of competent jurisdiction hearing the forfeiture proceedings.
7.
 - a. A state's attorney in the county where the seizure occurs shall bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action must be brought within sixty days from the date of seizure except when the state's attorney in the sound exercise of discretion determines that no forfeiture action should be brought because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.

- b. The state's attorney shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record maintained in the department of transportation, or any other department of the state, or any other state or territory of the United States, or of the federal government if the property is required to be registered in any such department.
- c. Notice of the proceeding must be given to any other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.
- d. The owner of the property, or any person having or claiming right, title, or interest in the property may within sixty days after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.
- e. The state's attorney must show at a forfeiture hearing, by a preponderance of the evidence, that the property was used in the commission of a violation of section 39-30-02 or was used or possessed to facilitate such violation.
- f. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.
- g. Unless the state's attorney makes the required showing, the court shall order the property released to the owner. If the state's attorney has made such a showing, the court may order:
 - (1) The property be destroyed by the agency that seized it or some other agency designated by the court;
 - (2) The property be delivered and retained for use by the agency that seized it or some other agency designated by the court; or
 - (3) The property be sold at public sale.
- 8. A copy of a forfeiture order must be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department with which the property is required to be registered. The order, when filed, constitutes authority for the issuance to the agency to which the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.
- 9. Proceeds from the sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, must be paid to the general fund of the county of seizure.
- 10. No motor vehicle, either seized under section 39-30-03 or forfeited under this section, may be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either assigned or replacement vehicle identification number plates as may be appropriate under laws of this state.
- 11. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number may be disposed of upon forfeiture except by destruction. This subsection does not apply to any motor vehicle part that is assembled with and constitutes part of a motor vehicle.
- 12. No motor vehicle or motor vehicle part may be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part that is unidentifiable must be the subject of a written report sent by the seizing agency to the department of transportation. The report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.
- 13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty days or more after the notice to the department of transportation specified in

subsection 12 has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale must be posted in a conspicuous place for at least thirty days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.

14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of one thousand dollars or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition may be made less than sixty days after the date of seizure.
15. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part must be deposited in the general fund of the state or other governmental unit after deduction of any reasonable and necessary towing and storage charges.
16. Seizing agencies shall utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. The owner of a motor vehicle or a motor vehicle part may not be required to pay more than the minimum reasonable costs of towing and storage.
17. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made, until the state's attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination, which may not exceed fourteen days from the date of service upon the defense of the notice of request for return of property, the property must be released to the person making such request after satisfactory proof of the person's entitlement to possession. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.
18. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one year from the date of the transaction.
19. When an applicant for a certificate of title or salvage certificate presents to the department of transportation proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the department of transportation shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

39-30-05. Civil proceedings and remedies.

1. The attorney general, any state's attorney, or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of any provision of this chapter. If the plaintiff in such a proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including:
 - a. Ordering any defendant to be divested of any interest in any property;
 - b. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;

- c. Ordering the suspension or revocation of a license, permit, or prior approval granted by any public agency or any other public authority;
 - d. Ordering the surrender of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked; or
 - e. Ordering the surrender of the certificate of organization of a limited liability company organized under the laws of the state or the revocation of a certificate authorizing a foreign limited liability company to conduct business within the state upon finding that the board of governors or a managerial agent acting on behalf of the limited liability company, in conducting the affairs of the limited liability company, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires that the certificate of organization of the limited liability company be surrendered and the limited liability company dissolved or the certificate revoked.
2. In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.
 3. Any person injured, directly or indirectly, by conduct constituting a violation by any person of section 39-30-02, in addition to any other relief, has a cause of action for threefold the actual damages sustained by the person.
 4. A final judgment or decree rendered against the defendant in any civil or criminal proceeding estops the defendant in any subsequent civil action or proceeding brought by any person as to all matters to which the judgment or decree would be an estoppel between the parties to the civil or criminal proceeding.
 5. Notwithstanding any other provision of law providing a shorter period of limitations, a civil action under this section may be commenced at any time within five years after the conduct made unlawful under section 39-30-02 terminates or the cause of action accrues or within any longer statutory period that may be applicable. If any action is brought by a state's attorney to punish, prevent, or restrain any activity made unlawful under section 39-30-02, the running of the period of limitations is suspended during the pendency of such action and for two years following its termination.
 6. Personal service of any process in any action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of section 39-30-02 in this state. The person is deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this provision.
 7. Obtaining any civil remedy under this section does not preclude obtaining any other civil or criminal remedy under either this chapter or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

39-30-06. Venue.

A criminal prosecution for any violation may be commenced in any county without regard to place of occurrence.

CHAPTER 39-31 COMMON HOUSEHOLD GOODS CARRIERS

39-31-01. Common household goods carrier defined.

In this chapter, unless the context otherwise requires, "common household goods carrier" means any person that holds oneself out to the public as willing to undertake for hire to transport by motor vehicle from place to place the household goods of others who may choose to employ that person.

39-31-02. Application of chapter to intrastate commerce.

This chapter applies to persons and motor vehicles engaged in intrastate commerce only to the extent permitted by the constitution and laws of the United States and this state.

39-31-03. Carriers must operate in accordance with law and rules.

It is unlawful for any common household goods carrier to transport persons or property for hire unless:

1. The carrier has obtained a household goods carrier permit required by this chapter; and
2. The carrier complies with this chapter and any applicable rules adopted by the department.

39-31-04. Regulation of common household goods carriers by the department.

The department may regulate common motor carriers of household goods except for transportation provided wholly within a city in this state or within a distance beyond the corporate limits of a city as determined by the department and shall supervise the relations between common household goods carriers and the public to comply with the provisions of this chapter.

39-31-05. Household goods carriers - Transportation of commodities.

Repealed by S.L. 2015, ch. 277, § 8.

39-31-06. Household goods carrier - Household goods carrier permit application.

A common household goods carrier may not operate within this state without having obtained from the department a household goods carrier permit. An application must be upon the form prescribed by the department. The application must contain proof of registration with the secretary of state, and either proof of workers compensation insurance coverage or an affidavit of nonemployment. The department shall deny issuing a household goods carrier permit if the applicant submits an incomplete application.

39-31-07. Notice of opportunity for comment on application.

Repealed by S.L. 2015, ch. 277, § 8.

39-31-08. Factors to be considered by department in granting certificate.

Repealed by S.L. 2015, ch. 277, § 8.

39-31-09. Testimony - Issuance of certificate of permit - Conditions.

Repealed by S.L. 2015, ch. 277, § 8.

39-31-10. Reasonable rates to be made by household goods carriers.

Repealed by S.L. 2015, ch. 277, § 8.

39-31-11. Permits duration - Transfer.

Household goods carrier permits issued to carriers by the department under this chapter remain in force subject to this chapter. Those permits are transferable only upon approval by the department.

39-31-12. Fees - Household goods carrier.

Every household goods carrier operating in this state, when applying for a household goods carrier permit, shall pay a fee of one hundred dollars. The nonrefundable fee for an application for transfer of a household goods carrier permit is one hundred dollars. The annual filing fee for maintaining a household goods carrier permit is thirty-five dollars.

39-31-13. Regulations furnished to holder of permit.

The department shall mail each holder of a household goods carrier permit under this chapter the rules the department adopts to implement this chapter.

39-31-14. Insurance required of carrier - Liability of insurer.

The department, before granting a household goods carrier permit to any common motor carrier, shall require the owner or operator to procure public liability insurance. The conditions of the liability insurance must guarantee the payment of any loss or damage to property or on account of the death or injury to any person resulting from the negligence of the carrier. The carrier shall file the insurance policy with the department and the policy must be kept in full force. The carrier must provide proof the policy is in full effect annually in a form prescribed by the department. Upon failure of a carrier to maintain insurance required by this section, the department shall cancel the permit. A permit of any company authorized to write liability or property damage insurance in the state, in a form approved by the department and certifying that there is in effect a liability insurance policy required by this section, may be filed instead of the policy.

39-31-15. Deposit of fees.

The department shall deposit monthly all fees collected under this chapter in the highway fund in the state treasury.

39-31-16. Enforcement of chapter.

Any law enforcement officer may make an arrest for any violation of this chapter, and the state's attorney of the county in which the offense was committed shall prosecute the offender. The highway patrol shall enforce this chapter in any part of the state. Upon written request of the department or the highway patrol, the attorney general shall prosecute or assist in the prosecution of any person alleged to have violated this chapter or any rule adopted to implement this chapter.

39-31-17. Penalty.

Any person who willfully violates this chapter, or any order or rule issued or adopted under this chapter, is guilty of an infraction.

CHAPTER 39-32

INTRASTATE COMMERCIAL DRIVER HOURS OF SERVICE

39-32-01. Definition of intrastate driver.

As used in this chapter, "intrastate driver" means a driver who will be operating a commercial motor vehicle within this state for a seven-consecutive-day period.

39-32-02. Intrastate exemptions from hours of service regulations.

1. The following intrastate drivers are not subject to hours of service regulations:
 - a. A driver of an authorized emergency vehicle;
 - b. A driver who operates a motor vehicle in intrastate commerce if the gross vehicle weight, gross vehicle weight rating, gross combination weight, and gross combination weight rating are less than twenty-six thousand one pounds [11793.86 kilograms] unless the vehicle is used to transport hazardous materials requiring a placard, the vehicle is designed to transport more than eight passengers, including the driver, for compensation, or the vehicle is designed or used to transport sixteen or more people, including the driver not for compensation; or
 - c. A driver of a tow truck operating at the request of a law enforcement officer.
2. Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:
 - a. More than twelve cumulative hours following ten consecutive hours off duty;
 - b. For any period after the end of the sixteenth hour after coming on duty following ten consecutive hours off duty; or
 - c. After having been on duty for seventy hours in any period of seven consecutive days.
3. Hours of service limitations do not apply to an intrastate driver operating a commercial vehicle to provide emergency relief during an emergency declared by the governor. Under this subsection, an emergency is the result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.
4. Hours of service limitations do not apply to an intrastate driver transporting agricultural commodities or farm supplies, including farm equipment or machinery, for agricultural purposes in this state during planting and harvesting seasons from January first through December thirty-first, if the transportation is limited to an area within a one hundred fifty air-mile radius from the source of the commodities or the distribution point for the farm supplies.
5. An intrastate driver is exempt from maintaining a record of duty status if:
 - a. The driver operates within a one hundred fifty air-mile radius from the driver's normal work-reporting location or from the official worksite of the vehicle;
 - b. The driver, except for a driver salesperson, returns to the work-reporting location and is released from work within fourteen consecutive hours;
 - c. At least ten consecutive hours off duty separate each fourteen hours on duty; and
 - d. The motor carrier maintains and retains for a period of six months accurate time records showing the time the driver reports for duty and is released from duty each day.

CHAPTER 39-33

DRIVER AND MOTOR VEHICLE RECORD PRIVACY

39-33-01. Definitions.

As used in this chapter:

1. "Department" means the department of transportation or an authorized agent or contractor of the department responsible for compiling and maintaining motor vehicle records.
2. "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person by any means of communication.
3. "Express consent" means consent in writing, including consent conveyed electronically which bears an electronic signature as defined by law.
4. "Highly restricted personal information" means an individual's photograph or image, social security number, and medical or disability information.
5. "Individual record" means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request.
6. "Motor vehicle record" means any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials. A record includes all books, papers, photographs, photostats, cards, films, tapes, recordings, electronic data, printouts, or other documentary materials regardless of physical form or characteristics.
7. "Person" does not include an agency of this state.
8. "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information. The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, and operator's license or registration status.

39-33-02. Disclosure and use of personal information from department records prohibited.

1. Notwithstanding any other provision of law, except as provided in sections 39-33-03, 39-33-04, and 39-33-05, the department may not knowingly disclose personal information about any person obtained by the department in connection with a motor vehicle record.
2. Notwithstanding any other provision of law, except as provided in subsections 1, 4, 6, and 9 of section 39-33-05, the department may not knowingly disclose highly restricted personal information about any person without the express consent of the person to whom such information pertains. This does not in any way affect the use of organ donation information on an individual's operator's license or affect the administration of organ donation initiatives in the state.

39-33-03. Required disclosures.

Personal information referred to in section 39-33-02 must be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers in accordance with federal law.

39-33-04. Disclosure with consent.

Personal information referred to in section 39-33-02 may be disclosed to any requester, if the requester demonstrates in the form and manner prescribed by the department that the requester has obtained the written consent of the person who is the subject of the information.

39-33-05. Permitted disclosures.

The department may disclose personal information referred to in section 39-33-02 to any person, on proof of the identity of the person requesting a record and representation by the requester that the use of the personal information will be strictly limited to one or more of the following:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions.
2. For use in connection with matters of motor vehicles or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors:
 - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. If the information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
4. For use in connection with any proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.
5. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.
7. For use in providing notice to the owner or lienholder of a towed or impounded vehicle.
8. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section.
9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license which is required under the Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570].
10. For use in connection with the operation of private toll transportation facilities.
11. For any use specifically authorized by law that is related to the operation of a motor vehicle or public safety.
12. For any other use in response to requests for individual motor vehicle records if the department has obtained the express consent of the person to whom such personal information pertains.
13. For bulk distribution for surveys, marketing, or solicitations if the department has obtained the express consent of the person to whom such personal information pertains.

39-33-06. Fees.

Disclosure of personal information required or permitted under sections 39-33-03, 39-33-04, and 39-33-05 is subject to payment by the requesting person to the department of all fees for the information required by law, or the terms of any contract with the requesting person, on the terms for payment as may be required or agreed.

39-33-07. Additional conditions.

Before the disclosure of personal information under sections 39-33-03, 39-33-04, and 39-33-05, the department may require reasonable assurance concerning the identity of the requesting person, the use to be only as authorized, and the consent of the person who is the

subject of the information to be obtained. These conditions may include the making and filing of a written application in a form and containing information and certification requirements as the department may prescribe.

39-33-08. Resale or redisclosure.

1. An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 39-33-05.
2. The department shall require any authorized recipient who resells or rediscloses personal information to maintain for a period of not less than five years records as to the person receiving the information and the permitted use for which it was obtained and to make these records available for inspection by the department upon request.

39-33-09. Regulations and waiver procedure.

Upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 39-33-03, 39-33-04, and 39-33-05, the department may mail a copy of the request to each individual who is the subject of the information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive the individual's rights to privacy under this chapter.

39-33-10. Penalty for false representation.

Any person requesting the disclosure of personal information from department records who misrepresents that person's identity or makes a false statement to the department on any application required to be submitted pursuant to this chapter is guilty of a class A misdemeanor.

CHAPTER 39-34

TRANSPORTATION COMPANY NETWORKS

39-34-01. Agent.

The transportation network company or delivery network company must maintain a registered agent with the secretary of state for service of process in this state.

39-34-02. Fare or fee charged for services.

The transportation network company or delivery network company shall provide passengers or customers with the applicable rates being charged and the option to receive an estimated fare or fee before the passenger enters the transportation network company driver's vehicle or before the customer finalizes the delivery request.

39-34-03. Transportation driver requirements.

1. Before permitting an individual to act as a transportation network company driver on its digital platform, the transportation network company shall:
 - a. Require the individual to submit an application to the transportation network company, which includes information regarding the individual's address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the transportation network company;
 - b. Conduct, or have a third party conduct, a local and national criminal background check for each applicant that must include:
 - (1) Multistate and multijurisdiction criminal records locator or other similar commercial nationwide database with validation; and
 - (2) National sex offender registry database; and
 - c. Obtain and review a driving history research report for the individual.
2. The transportation network company may not permit an individual to act as a transportation network company driver on its digital platform who:
 - a. Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including attempting to evade the police, reckless driving, or driving on a suspended or revoked license;
 - b. Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, a sexual offense, use of a motor vehicle to commit a felony, a crime involving property damage, theft, an act of violence, or an act of terror;
 - c. Is a match in the national sex offender registry database;
 - d. Does not possess a valid driver's license;
 - e. Does not possess proof of registration for the motor vehicle used to provide transportation network company services;
 - f. Does not possess proof of automobile liability insurance for the motor vehicle used to provide transportation network company services; or
 - g. Is not at least twenty-one years of age.

39-34-03.1. Transportation network company driver - Independent contractor.

1. As used in this section:
 - a. "Transportation network company" means a person that:
 - (1) Maintains a digital network to facilitate services by transportation network company drivers to a person seeking those services; and
 - (2) Accepts requests from the public only through the organization's digital network and not by telephone, facsimile, or in person at a retail location.
 - b. "Transportation network company driver" does not include a person transporting freight, sealed or closed envelopes, boxes, parcels, or other similar sealed or closed containers for compensation. The term means a person that:
 - (1) Enters a written agreement with a transportation network company to use the transportation network company's digital network to connect with an

- individual seeking services offered by the transportation network company driver;
 - (2) Performs services for a person through a transportation network company's digital network in exchange for compensation or payment; and
 - (3) Does not perform services at a physical business location operated by the transportation network company in the state.
2. A transportation network company driver is an independent contractor and not an employee of a transportation network company if the transportation network company:
- a. Enters an agreement with the transportation network company driver that the transportation network company driver is an independent contractor and not an employee of the transportation network company.
 - b. Does not unilaterally prescribe specific hours during which the transportation network company driver must be available to accept service requests submitted through the transportation network company's digital network.
 - c. Does not prohibit the transportation network company driver from engaging in outside employment or performing services through other transportation network companies except while the transportation network company driver is engaged in performing services through the transportation network company's digital network.
 - d. May not terminate the contract of the transportation network company driver for a driver's refusal to accept a specific transportation service or delivery service request.
 - e. Does not prohibit the transportation network company driver from using a vehicle with an internal combustion engine.

39-34-04. Personally identifiable information.

A transportation network company or delivery network company may not disclose any personally identifiable information of a transportation network company passenger or delivery network company customer, except pursuant to the publicly disclosed terms of the transportation network company's or delivery network company's privacy policy. For any other disclosure not governed by the privacy policy, the transportation network company or delivery network company must obtain the passenger's consent before the company may disclose the passenger's or customer's personally identifiable information.

39-34-05. Transportation network company reporting requirements - Legislative management report - Penalty.

Repealed by S.L. 2021, ch. 301, § 1.

39-34-06. Controlling authority.

- 1. Notwithstanding any other provision of law, transportation network companies and transportation network company drivers are governed exclusively by this chapter, chapter 26.1-40.1, and any rules adopted consistent with this chapter and adopted by the insurance commissioner under chapter 26.1-40.1.
- 2. A political subdivision may not impose a tax on, or require a license for, a transportation network company, transportation network company driver, delivery network company, or a delivery network company driver or subject a transportation network company or delivery network company to the political subdivision's rate, entry, operational, or other requirements.
- 3. This chapter may not be construed to limit the ability of a commercial service airport or the governing body of a commercial service airport to enter an operating agreement with a transportation network company which authorizes operational access to the commercial service airport. An operating agreement entered under this subsection may provide guidelines for entry, pick-up, drop-off, fees, and other airport operational procedures required by the commercial service airport for the transportation network company to be allowed operational access to the commercial service airport. As used

in this subsection, "commercial service airport" means a public airport that has at least two thousand five hundred passenger boardings per calendar year and receives scheduled passenger aircraft service.

39-34-07. Delivery network driver - Independent contractor.

1. As used in this chapter:
 - a. "Delivery network company" has the same meaning as provided under section 26.1-40.2-01.
 - b. "Delivery network driver" has the same meaning as provided under section 26.1-40.2-01.
2. A delivery network driver is an independent contractor and not an employee of a delivery network company if the delivery network company:
 - a. Enters an agreement with the delivery network driver that the delivery network driver is an independent contractor and not an employee of the delivery network company;
 - b. Does not unilaterally prescribe specific hours during which the delivery network driver must be available to accept service requests submitted through the delivery network company's digital network; and
 - c. Does not prohibit the delivery network driver from engaging in outside employment or performing services through other delivery network companies except while the delivery network driver is engaged in performing services through the delivery network company's digital network.
3. A delivery network company may not terminate the contract of the delivery network company driver for a driver's refusal to accept a specific delivery request.