

**CHAPTER 37-10-01
OUT-OF-SERVICE ORDER VIOLATIONS**

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37-10-01-01. Out-of-service order - Driving of commercial motor vehicle prohibited - Alcohol-related offenses.

1. Prohibited alcohol offenses for commercial motor vehicle drivers. Notwithstanding any other provision of law, a person may not drive, operate, or be in actual physical control of a commercial motor vehicle within this state while having any measurable or detectable amount of alcohol in the person's system.
2. In addition to any other sanctions that may be imposed under law a person who drives, operates, or is in actual physical control of a commercial motor vehicle within this state must be placed out of service for twenty-four hours if the person:
 - a. Has any measurable or detectable amount of alcohol in the person's system;
 - b. Has a blood-alcohol concentration of at least four one-hundredths of one percent by weight; or
 - c. Refuses to submit to an alcohol test under North Dakota Century Code section 39-06.2-10.
3. The out-of-service order must show the halting officer's reason for stopping or detaining the commercial motor vehicle driver and must show that the halting officer had reasonable grounds to believe the person was driving or in actual physical control of a commercial motor vehicle, that the person was lawfully detained, and that the person:
 - a. Had any measurable or detectable amount of alcohol in the person's system;
 - b. Had a blood-alcohol concentration of at least four one-hundredths of one percent by weight; or
 - c. Refused to submit to an alcohol test under North Dakota Century Code section 39-06.2-10.

Any out-of-service order must be issued prior to the end of the detention of the driver. The law enforcement officer shall sign and note the time and date of the issuance on the out-of-service order.

4. The out-of-service order prohibits the person named in the order from driving a commercial motor vehicle for a period of twenty-four hours from the time of the issuance of such order. The driving of a commercial motor vehicle while subject to an out-of-service order is a violation of North Dakota Century Code section 39-06-42.

History: Effective October 1, 1993; amended effective January 1, 2006.

General Authority: NDCC 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9

37-10-01-02. Penalty for violating out-of-service order.

A person convicted of violating an out-of-service order issued under section 37-10-01-01 is deemed to have committed the offense of driving under suspension under North Dakota Century Code section 39-06-42. The suspension periods for driving a commercial motor vehicle in violation of the out-of-service order are:

1. For a first violation, the driver must be suspended for a period of one hundred eighty days;
2. For a second violation within ten years arising from separate incidents, the driver must be suspended for a period of two years; and
3. For a third or subsequent violation within ten years arising from separate incidents, the driver must be suspended for a period of three years.

If the violation occurred while transporting hazardous material required to be placarded or while operating a motor vehicle designed to transport sixteen or more passengers including the driver, the suspension period must be one hundred eighty days for a first violation and three years for each subsequent violation arising from a separate incident during a ten-year period.

History: Effective June 1, 1998; amended effective July 1, 2009.

General Authority: NDCC 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9; 49 CFR 383.51

37-10-01-03. Out-of-service order - Driving of commercial motor vehicle prohibited.

1. Notwithstanding any other provision of law, a person may not drive or operate a commercial motor vehicle within this state when the driver has been placed out of service, the commercial motor vehicle has been placed out of service, or the motor carrier operation has been placed out of service.
2. No employer may knowingly allow, require, permit, or authorize a driver to operate a commercial motor vehicle during any period in which the driver, the commercial motor vehicle the individual is driving, or the motor carrier operation is subject to an out-of-service order.

History: Effective January 1, 2006.

General Authority: NDCC 39-06.2-05, 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9; 49 CFR 383.37

37-10-01-04. Extension of commercial license suspension or revocation for violating an out-of-service order.

The director, who shall follow the administrative hearing procedures provided in North Dakota Century Code section 39-06.2-10, upon receiving a record of the conviction of any person upon a charge of driving a commercial motor vehicle while the commercial driver's license or commercial driving privileges of the person, the commercial motor vehicle, or the motor carrier operation were placed out of service, shall extend the period of that suspension or revocation for:

1. A period of ninety days for a conviction of a first violation of an out-of-service order;
2. A period of one year for a second conviction within ten years in a separate incident of violating an out-of-service order;

3. A period of three years for a third or subsequent conviction within ten years in separate incidents of violating an out of service order;
4. A period of one hundred eighty days, if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded, or while operating a commercial motor vehicle designed to transport sixteen or more passengers, including the driver; or
5. A period of three years, if the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded, or while operating commercial motor vehicles designed to transport sixteen or more passengers, including the driver.

History: Effective January 1, 2006.

General Authority: NDCC 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9; 49 CFR 383.51

37-10-01-05. Extension of commercial license suspension or revocation.

The director, who shall follow the administrative hearing procedures provided in North Dakota Century Code section 39-06.2-10, upon receiving a record of the conviction of any person upon a charge of driving a commercial motor vehicle while the commercial driver's license or commercial driving privileges of the person are suspended, revoked, or canceled shall extend the period of that suspension, revocation, or cancellation or otherwise disqualified for:

1. A period of one year if the operator's record shows the person's commercial driver's license or commercial driving privileges have not previously been suspended, revoked, canceled, or otherwise disqualified;
2. Lifetime if the operator's record shows the person's commercial driver's license or commercial driving privileges have previously been suspended, revoked, canceled, or otherwise disqualified for any of the major offenses under 49 CFR 383.51(b); or
3. A period of three years, if the driver is convicted of a first violation of driving while privileges are suspended, revoked, canceled, or otherwise disqualified while transporting hazardous materials required to be placarded, or while operating commercial motor vehicles designed to transport more than sixteen passengers, including the driver.

History: Effective January 1, 2006; amended effective July 1, 2009.

General Authority: NDCC 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9; 49 CFR 383.51

37-10-01-06. Certain disqualifications to run concurrently.

Any suspension ordered by the administrator under 49 CFR 383.52 must run concurrently with any other existing suspension, revocation, cancellation, or denial of licensing.

History: Effective January 1, 2006.

General Authority: NDCC 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9; 49 CFR 383.52

37-10-01-07. Civil penalty for driver conviction of out-of-service order.

Any driver who is convicted of violating an out-of-service order in which the driver, the vehicle, or the motor carrier operation has been placed out of service, is subject to a civil penalty of not less than two thousand five hundred dollars for a first conviction and not less than five thousand dollars for a

second or subsequent conviction. Prior to a civil penalty being imposed, a driver has a right to an administrative hearing as provided for in North Dakota Century Code section 39-06.2-10.

History: Effective January 1, 2006; amended effective July 1, 2009.

General Authority: NDCC 39-06.2-10.9

Law Implemented: 49 CFR 383.53

37-10-01-08. Civil penalty for employer conviction of out-of-service order.

Any employer who is convicted of knowingly allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle during any period in which the driver is subject to an out-of-service order, the commercial motor vehicle the driver is operating is subject to an out-of-service order, or the motor carrier operation is subject to an out-of-service order, is subject to a civil penalty of not less than two thousand seven hundred fifty dollars and not more than twenty-five thousand dollars. Prior to a civil penalty being imposed, an employer has a right to an administrative hearing as provided for in North Dakota Century Code section 39-06.2-10.

History: Effective January 1, 2006; amended effective July 1, 2009.

General Authority: NDCC 39-06.2-14

Law Implemented: NDCC 39-06.2-10.9; 49 CFR 383.53