

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2102

2005 SENATE TRANSPORTATION

SB 2102

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2102

Senate Transportation Committee

Conference Committee

Hearing Date 1/20/05

Tape Number	Side A	Side B	Meter #
1	x		0-2291

Committee Clerk Signature *Mary K Monson*

Minutes:

Chairman Trenbeath opened the hearing on SB 2102 relating to driving under the influence of intoxicating liquor repeat offenders and impounding motor vehicle license plates.

All members were present except Senator Mutch.

David Sprynczynatyk (Director, NDDOT) See attached testimony in favor of SB 2102. This a pre filed agency bill addressing repeat DUI offenders. This bill is a modified version of a bill that was addressed in the last legislative assembly.

Senator Bercier The tribes are working with the courts and the licensing department so when there is a DUI in their court system they can send the licenses into the state. However, this could be a hurdle to jump in that the tribes have a licensing division for license plates. Asked if there is a way to tweak the language to anticipate that position because the state would not have jurisdiction over pulling those plates.

David Sprynczynatyk said he thinks that could be done. What he would like to do is have the opportunity to sit down and take a look at the laws put in place by the Turtle Mountain Tribe and see how the two could work together.

Senator Espegard asked about the wording in the exception. If a farmer gets two of them and they pull the plates off all his trucks. What happens.

David Sprynczynatyk said the wording from line 14 on is intended to deal with that very situation. A farmer/family that has several vehicles and what the judge/court go do at the time of administering the law is they could grant exception for all but one vehicle, the primary vehicle driven by that individual. The plates would be retained on the other vehicles whether driven by other family members or, if a farm truck, used on the farm for agriculture.

Senator Espegard said the situation could happen where they pull the license plates from an old truck someplace and other cars are available to be driven by the repeat offender.

David Sprynczynatyk The court would try to determine which vehicle is primarily used by the individual for pleasure, socializing, or whatever the case may be.

Senator Espegard maybe it could be taken from the vehicle being driven when he got in trouble.

David Sprynczynatyk said that might be the first choice but, depending on the situation, it might not be the appropriate one.

Senator Espegard asked about a person driving a company vehicle.

David Sprynczynatyk said the courts would have to look at that. If it was a company, part of the penalty would be to pull the plates from the personal vehicle. The bill does make reference to the "vehicle owned and operated".....so if it was a company vehicle it probably would not fit into the category "owned and operated by the offender".

Senator Trenbeath asked about the list of compliance items from the Federal Government in this area.

David Sprynczynatyk said that as they visited with the Federal Government and reviewed the requirements in the Federal law, this is the last remaining one that the DOT sees the state is out of compliance with. If the legislature does concur that this is appropriate, that will free the state up from the burden now where the funds have to be shifted to hazard elimination or safety.

Senator Espgaard asked for clarification on being out of compliance and holding back the money.

David Sprynczynatyk said this is very specific. In order to be free from the required transfer of funds, some sort of repeat offender provision has to be in our law that discourages the individual from driving again after their second or third offense. A repeat offender is anyone who has had a second or more DUI within a five year period. (Meter 900)

Senator Trenbeath felt the only one this will apply to is the single person who owns one vehicle. (Meter 950) Then he asked about the problem of finding safety issues where they can use the funds.

David Sprynczynatyk said that they are constructing projects that are not a priority. It's not the best use of funds when they should be doing higher priority projects. They are spending the money that could be better used if they didn't have to spend it on the hazard elimination projects. That applies to the city and counties, also.

(Meter 1270) DOT is trying to do the minimum that is required by federal law to make compliance. That is the reason the exception is there. HB 1224 has been introduced in the house and is similar, but SB 2102 is less restrictive and just meets the bare minimum.

Senator Trenbeath asked if Sprynczynatyk had testified as to what the new transportation bill would look like with respect to this requirement.

David Sprynczynatyk didn't say anything specific in his testimony. They haven't heard if there would be any change in this particular provision in the federal law.

Senator Espegard asked about the guardrail work to be done on the highways because of the higher speed limits.

David Sprynczynatyk said some have been done with reconstruction projects in the area. They haven't had a significant problem on the interstate with the guardrails. The guardrails aren't all at the 75 mph design limits but they don't feel there is a hazard or high enough priority to do them at this point.

Senator Nothing had a question on the testimony that indicated the hazard elimination is an exception to the current law and, in some versions of the reauthorization, that exception is to be removed if they were to adopt what is in front of the committee.

David Sprynczynatyk said that at one point there was discussion about taking money away from the states much the same as what is in place for the .08 blood alcohol content threshold. But there never was anything actually put into writing and put into the bill discussed on either the House or Senate side of the Congress. There was nothing that was discussed in the Conference Committee. He doesn't expect that to change.

Senator Nothing pointed out that the bill says currently the judge has the option to take plates and asked if there was a process set up to handle this.

David Sprynczynatyk said yes and they have the means and mechanisms in place to handle them.

(Meter 1790) Discussion on the number of plates that might be taken away and the length of suspension. Second time is a one year suspension. The lower threshold is a .08. If it is a higher bac exceeding .18 it is a two year suspension.

Senator Nething asked if passage of this bill would release federal funds.

David Sprynczynatyk replied that when the bill goes into effect as a law they would have the ability to demonstrate to the federal government that changes have been made in the law and they would release the requirement on the funds.

(Meter 1985) Discussion on funding and what it would cost ND to do whatever it liked with the laws that are mandated now by the Federal Government with respect to highway funding.

John Olson (ND Peace Officers Association) Appeared in support of SB 2102.

There was no opposition to SB 2102.

The hearing on SB 2102 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2102

Senate Transportation Committee

Conference Committee

Hearing Date 1-27-05

Tape Number	Side A	Side B	Meter #
1	x		1220-2095
Committee Clerk Signature <i>Mary K. Manson</i>			

Minutes:

Chairman Trenbeath opened SB 2102 for discussion.

Senator Nething said he didn't know how good it would be but did know it would free up \$5 million.

Senator Trenbeath said that was true. The only thing he liked about it was the fact that they do leave some discretion to a court.

Senator Nething motioned a **Do Pass**. Seconded by **Senator Mutch**.

(Meter1345) Discussion followed concerning highway safety funds and updating the guardrails on the interstate system.

Senator Bercier said he couldn't support this bill. Tribes are working on turning over DUI offenses to the state. Turtle Mountain and Spirit Lake both issue their own license plates. If this were in place, there is no jurisdiction for the DOT to pull those plates. It would be unfair to

citizens of ND who get their plates pulled if this were to pass and for the tribal members who don't have an agreement yet with DOT to pull them.

(Meter 1545) Discussion indicated that several members would be inclined to vote against this bill but also felt that they needed to come out of committee with a recommendation.

Senator Espegard said he had a hard time believing that DOT has done everything possible in the state for safety and still has all that money left.

Senator Trenbeath reported that a similar bill in the House has been heard but not acted on. He felt the committee should take action on SB 2102 because, if it passes, it would send a message to the House.

Senator Bercier asked what was in the HB that isn't in the SB.

Senator Trenbeath said there was something about unenforceable language that would take the drivers license away for appreciable periods of time for being a habitual drunkard. They define habitual drunkard as anyone who has ever been convicted of any sort of alcohol related driving offense.

Roll call vote 4-2-0. **Passed.** Floor carrier is **Senator Nething.**

Date: 1-27-05
Roll Call Vote #: _____

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2102

Senate TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Nething Seconded By Sen. Mutch

Senators	Yes	No	Senators	Yes	No
Senator Espegard	✓		Senator Bercier		✓
Senator Mutch	✓		Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman		✓			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Nething

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 27, 2005 1:39 p.m.

Module No: SR-18-1220
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2102: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO PASS
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2102 was placed on the
Eleventh order on the calendar.

2005 HOUSE TRANSPORTATION

SB 2102

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2102

House Transportation Committee

Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
2	X		1.9-21.8
Committee Clerk Signature <i>Debra Lou Alshenk</i>			

Minutes:

Chairman Weisz opened the hearing on SB 2102 A Bill for an Act to amend and reenact subsection 3 of section 39-08-01 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor repeat offenders and impounding motor vehicle license plates.

Keith Magnusson:(2.2) In support of the bill. (See attached testimony #1) Passed out of the Senate 41-5. See attached amendment.

Chairman Weisz(6.6) So if you have a sole partnership business are all those vehicles impounded?

Keith Magnusson:If there are in that persons name they either are going to be impounded or they will have to use the hardship clause of the bill.

Chairman Weisz(7.1) The language says the hardship clause. But no including the offender himself.

Keith Magnusson: You are correct; it can't apply to the offender. It can apply to a co-owner if they have a co-owner. If it is a sole partnership it will apply to those vehicles. They may have an incentive there to change the titles on the vehicles.

Rep. Delmore(7.9) As we look at this provision from the court, is it defined in code what an undo hardship is; what completely dependent would be and what the necessities of life are? Those are really board terms and they could be very narrowly construed so that no body else in the family may have excess to that vehicle to bring their children to school, for the wife or husband to get to work. None of those things would be allowable unless we have some definitions of those terms.

Keith Magnusson: (8.3) In vehicle codes these terms are not defined. They are not defined in the federal law or regulations that allows a hardship. I think the definition would be up to the court.

Rep. Delmore Last year when we increased the speeding limits. One of the concerns from your department and some what from the highway patrol as well; was the length of the guard rail. Going 75 miles and hour on the interstate was not safe. Looking at these things; have we done anything to fix those guard rails, or to make that safety factor come into play?

Keith Magnusson:(9.0) I don't work on the highway side, but I know they have been using it for allot of different hazard litigation; whether it is guard rail, T intersections or a run off to road slopes, and they have done the rumble strips on the side of the road. They are using it for all those different things.

Rep. Bernstein(9.3) How many more mandates are out there that we are going to have to do? From what you just said allot of this stuff is being done with the dollars that go to the highway.

Seems to me we had a blood alcohol to get this money back to the highways. So how many more mandates do we have?

Keith Magnusson:(9.8) This is the last one that I know of right now. We are going to have some mandates on drivers license security.

Rep. Bernstein(10.8) How much money is in the highway safety fund right now? Where this money goes if we don't do this mandate? It says it would have to go into some kind of safety fund?

Keith Magnusson: That is money that would have to go into dealing with drinking and driving and alcohol? Can you tell me how much Dawn, we spend a year right now?

Dawn Olson: That is based on a percentage. Last year was about 4.5 million dollars. We put part \$300,000 and the remaining goes back into highway construction part. That will continue to stay at about that level.

Keith Magnusson:(11.8) We don't have allot of separate funds for dealing with drinking and driving. Probably \$350,000/year. All of these, if congress would close the lope hole this year that would all have to go to drinking and driving.

Rep. Thorpe(12.1) How do you handle this on joint ownership?

Keith Magnusson: If the persons name is on there the plates would be impounded unless they fit under the hardship clause. A co-owner could ask for a hardship. This doesn't cover farm tractors and commercial vehicles do not have to be covered in this.

Rep. Ruby(12.6) Was there some discussion about the funds that are transferred because we don't have the mandate on the breath interlock device?

Keith Magnusson: All the law talked about is that we have to have one of those, either mobilization, impoundment or the interlocks.

Rep. Ruby (13.6) How long is the average offenders license suspended?

Keith Magnusson: These are at least second offenders so it would be at least one year. We have about 1500 new repeat offenders a year.

Rep. Iverson(13.9) The impoundment plates have to go to the director. Do they go to somebody in Langdon? Their plates are taken off the car and sent to Bismarck or the local DMV office up there.

Keith Magnusson: That would be sent to our office in Bismarck.

Rep. Schmidt(14.5) You said this has been in affect two years?

Keith Magnusson: It actually has been in affect over four years.

Rep. Schmidt Have you got a record of how many states have adopted this?

Keith Magnusson: I don't have that with me. I have another whole file folder. I think we are talking about 30 some states that have complied in one way or another with the repeat offender law.

Rep. Kelsch(15.5) Upon conviction and transfer of title is there some time so they could transfer their ownership to another owner?

Keith Magnusson: Under our current law, that is possible. It may take along time for a conviction.

Rep. Ruby With your amendment you said you put or subsequent after second. Did you think of doing what we have in 1224 putting the third and fourth in seven years?

Keith Magnusson: We thought about that, but I didn't want to change the bill any more than we had to give some one else and excuse to kill the bill. We do have allot of other safety concerns, but it does start to answer those concerns.

Rep. Meyer To get this passed, have your department talked at all about the jurisdictional we have with our native american tribes, where if the license is impounded, they just go an get a set of tribal license?

Keith Magnusson: We talked about that and I know Senator Mercy has concern about those type of things. We would work with those tribes to try and get them to do the same thing that we do.

Rep. Meyer You have no jurisdiction there?

Keith Magnusson:(18.3) Your correct, we have no jurisdiction there. If they are eligible for a tribal plate they can go get a tribal plate. Most of them don't require insurance, but we require insurance. Don Olson mentioned to me, there are 14 states that have not complied. There are a couple of others who haven't done the open container law, which we have had for years.

Montana is one of those.

Rep. Thorpe(19.0) Of those 14 states are you aware of any information. Do those 14 states have a higher ratio of incidents than the others.

Keith Magnusson: Every state is kind of unique with their culture and their problems they have. We don't have the problems allot of other states have.

Rep. Thorpe Even though those funds, if we don't adopt this bill, go into a highway safety fund. ND has allot of roads that are hazardous. My area ran out of funds for hazardous roads.

Keith Magnusson: We are using them as best we can. Federal highway administration has a narrow definition of what is hazard mediation and you can't just put it on the road somewhere.

Page 6
House Transportation Committee
Bill Number SB 2102
Hearing Date February 10, 2005

Hazardous road may be one is too narrow; we don't have enough money and it doesn't fit into the highway classification plan to go and rebuild that whole road.

Chairman Weisz No further questions. Anyone else here in support of SB 2102? Any one in opposition of SB 2102?

Hearing closed (21.8)

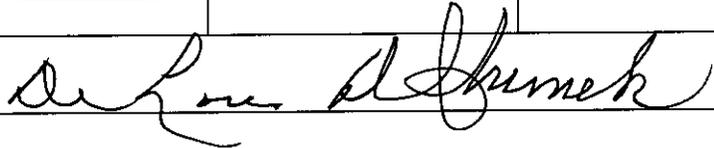
2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2102

House Transportation Committee

Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
2		X	17.9-19.6
Committee Clerk Signature 			

Minutes:

Chairman Weisz reopened the hearing on SB 2102 for discussion. My understanding is it has not come out of committee yet. There is not allot of support for the interlock device. If we want we can hold this one to see if they do. We like the interlock bill on the house side better and the house does. If they happen to pass the interlock we can kill this one. It is up to the committee. We decided to hold this one. (19.5)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2102

House Transportation Committee

Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
2	X		18.9-27.6
Committee Clerk Signature <i>DeLoe H. Humeck</i>			

Minutes:

Chairman Weisz: reopened hearing on SB 2102. Just for the committees information I did visit with the senate this morning and they haven't done anything with HB1224, which is the interlock one that we passed out. Some think it might pass and some think it is going no where so not sure what will happen.

Rep. Ruby(20.3) My thoughts on this bill has language that I like too so I don't mind if either one passes.

Motion Made by Rep. Price Seconded by Rep. Owens to approve the amendment

Chairman Weisz to insure that the impound would apply to every multiple offense and not just the second offense.

Rep. Meyer In discussing the bill. I can not imagine why they would not want a breath interlock. They work and every state has shown they work. It keeps it from driving. My problem with this bill is you still have a vehicle there even if you take off the license plate their

going to get in it and drive it. Like the breath interlock, it doesn't go anywhere and yet it still lets the whole family use the vehicle.

Chairman Weisz I think the house doesn't disagree with you because we have passed the interlock twice. What I can do is if the committee turns this out with a do pass, I can hold it and see what the senate does and we can kill the bill on the floor if they pass that one. I think the interlock does make more sense from the sense of being more effective.

Rep. Ruby(23.7) There are some loop holes with either one. That is why we have repeat offenders.

Voice vote carried.

Motion Made by Rep. Ruby Seconded By Rep. Iverson

Do Pass As Amended 11 Yes 3 No 1 Absent Carrier: Rep. Iverson

done(27.6)

58141.0101
Title.0200

Adopted by the Transportation Committee
March 17, 2005

House Amendments to SB 2102 - Transportation Committee 03/18/2005

Page 1, line 7, after "second" insert "or subsequent"

Renumber accordingly

Date: 3-17-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2102

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Ruby Seconded By Rep. Iverson

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore		✓
Rep. Hawken - Vice Chair.	<u>absent</u>		Rep. Meyer		✓
Rep. Bernstein	✓		Rep. Schmidt		✓
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Iverson	✓				
Rep. Kelsch	✓				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	✓				
Rep. Vigasaa	✓				
Rep. Weiler	✓				

Total (Yes) 11 No 3

Absent 1

Floor Assignment Rep. Iverson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 18, 2005 1:36 p.m.

Module No: HR-50-5468
Carrier: Iverson
Insert LC: 58141.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2102: Transportation Committee (Rep. Weisz, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). SB 2102 was placed on the Sixth
order on the calendar.

Page 1, line 7, after "second" insert "or subsequent"

Renumber accordingly

2005 TESTIMONY

SB 2102

SENATE TRANSPORTATION COMMITTEE
January 20, 2005

North Dakota Department of Transportation
David A. Sprynczynatyk, Director

SB 2102

The North Dakota Department of Transportation prefiled SB 2102 as an agency bill. This bill concerns repeat DUI offenders who operated a vehicle while under the influence of drugs or alcohol. It is intended to conform North Dakota law to the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act. That law and subsequent federal regulations mandate certain sanctions for repeat offenders. The mandate applies only to convictions and not to administrative proceedings.

This is a safety issue, aimed at drivers who drink and drive and have not been, or will not be affected by other laws, most of which are intended to prevent serious problems from developing in the first place (such as 0.08 BAC threshold).

In previous sessions you've considered repeat offender bills. All federally mandated provisions have been added to North Dakota law except for mandatory impoundment, immobilization, or interlocks. We have had a running disagreement with the National Highway Traffic Safety Administration on interpretation of those mandatory provisions, but we have not prevailed.

As long as North Dakota law does not conform to the federal laws and regulations on repeat offenders, certain highway funds will be transferred to safety (drinking and driving) and it may not be used for road construction or maintenance (except for "hazard elimination"). On October 1, 2000, there was a transfer of 1.5 percent of several categories of federal funds, amounting to about \$2 million, and an identical transfer on October 1, 2001. On October 1, 2002, the transfer penalty increased to three percent and amounted to about \$4 million. That percentage has been transferred on each October 1 since then and it amounts to about \$5.3 million this year (it will go up with increased federal highway funds). The three percent transfer penalty will be applied every year until we conform our state law to the federal mandate.

The amendment found in SB 2102 would require that the judge order the motor vehicle number plates (license plates) of all the motor vehicles owned and operated by the offender to be impounded for the period of suspension or revocation. The court has always had the discretion to do this; this amendment would make it mandatory. Current law does set up a procedure for the court to send these to the department for retention during the time of suspension or revocation. This would comply with federal law as a form of immobilization. In the past, we have considered impoundment or interlocks, but neither has been deemed satisfactory. The federal rules allow a hardship exception to

the license plate impoundment and such an exception has been included in SB 2102. This provision is taken right out of the federal rules and, if it is retained, probably would not comply unless we use this language.

When federal funds are transferred away from highways and into the safety account, it is cumbersome finding ways to put as much as possibly on the highways (using the "hazard elimination" exception) and still comply with the transfer law. We find ourselves doing "hazard elimination" on many projects where there would really be nothing done to the roadway for several years and then we would come in and often rebuild, tearing up the "hazard elimination" work that was done several years before. If Congress removes the exception, which has been in some versions of the federal highway reauthorization, putting these funds back in highway construction will become all but impossible. At first, it was fairly easy to use these transfer funds for "hazard elimination," but it is becoming increasingly difficult to use them wisely.

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#1

HOUSE TRANSPORTATION COMMITTEE
February 10, 2005

North Dakota Department of Transportation
Keith C. Magnusson, Deputy Director for Driver and Vehicle Services

SB 2102

The North Dakota Department of Transportation prefiled SB 2102 as an agency bill. This bill concerns repeat DUI offenders who operated a vehicle while under the influence of drugs or alcohol. It is intended to conform North Dakota law to the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act. That law and subsequent federal regulations mandate certain sanctions for repeat offenders. The mandate applies only to convictions and not to administrative proceedings.

This is a safety issue, aimed at drivers who drink and drive and have not been, or will not be affected by other laws, most of which are intended to prevent serious problems from developing in the first place (such as 0.08 BAC threshold).

In previous sessions you've considered repeat offender bills. All federally mandated provisions have been added to North Dakota law except for mandatory impoundment, immobilization, or interlocks. We have had a running disagreement with the National Highway Traffic Safety Administration on interpretation of those mandatory provisions, but we have not prevailed.

As long as North Dakota law does not conform to the federal laws and regulations on repeat offenders, certain highway funds will be transferred to safety (drinking and driving) and it may not be used for road construction or maintenance (except for "hazard elimination"). On October 1, 2000, there was a transfer of 1.5 percent of several categories of federal funds, amounting to about \$2 million, and an identical transfer on October 1, 2001. On October 1, 2002, the transfer penalty increased to three percent and amounted to about \$4 million. That percentage has been transferred on each October 1 since then and it amounts to about \$5.3 million this year (it will go up with increased federal highway funds). The three percent transfer penalty will be applied every year until we conform our state law to the federal mandate.

The amendment found in SB 2102 would require that the judge order the motor vehicle number plates (license plates) of all the motor vehicles owned and operated by the offender to be impounded for the period of suspension or revocation. The court has always had the discretion to do this; this amendment would make it mandatory. Current law does set up a procedure for the court to send these to the department for retention during the time of suspension or revocation. This would comply with federal law as a form of immobilization. In the past, we have considered impoundment or interlocks, but neither has been deemed satisfactory. The federal rules allow a hardship exception to

14 States not applied

the license plate impoundment and such an exception has been included in SB 2102. This provision is taken right out of the federal rules and, if it is retained, probably would not comply unless we use this basic language.

After SB 2102 was heard in the Senate, the National Highway Traffic Safety Administration (NHTSA) reviewed this bill for compliance with federal law and regulations. The only negative comment was that it was not clear that the bill applied to third and subsequent DUI offenses. We have prepared an amendment to make this clear and bring the bill into federal compliance.

When federal funds are transferred away from highways and into the safety account, it is cumbersome finding ways to put as much as possible on the highways (using the "hazard elimination" exception) and still comply with the transfer law. We find ourselves doing "hazard elimination" on many projects where there would really be nothing done to the roadway for several years and then we would come in and often rebuild, tearing up the "hazard elimination" work that was done several years before. If Congress removes the exception, which has been in some versions of the federal highway reauthorization, putting these funds back in highway construction will become all but impossible. At first, it was fairly easy to use these transfer funds for "hazard elimination," but it is becoming increasingly difficult to use them wisely.

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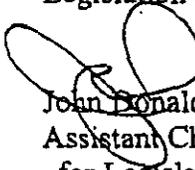


U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

Memorandum

Subject: North Dakota Repeat Intoxicated Driver Law and
Legislation (Senate Bill 2102 / House Bill 1224)

Date: JAN 26 2005

From:  John Donaldson
Assistant Chief Counsel
for Legislation and General Law

Reply to
Attn. of:

To: Marlene Markison
ICOR, Associate Administrator

This is in response to your request that the Office of Chief Counsel (OCC) review two legislative bills, Senate Bill (SB) 2102 and House Bill (HB) 1224, from North Dakota. Specifically, you have requested that OCC determine whether the bills would enable the State to comply with the repeat intoxicated driver requirements of 23 USC § 164 and its implementing regulations, 23 CFR Part 1275. The legislative proposals that were submitted focus only on one aspect of the federal requirements. However, this review also includes analysis of the relevant portions of North Dakota's existing laws to determine compliance with the other requirements of Section 164.

On January 24, 2005, the agency received two pieces of legislation, SB 2102 and HB 1224, for review. We have determined that neither bill, if enacted without change, would allow the State to meet the "impoundment, immobilization or installation" requirement of Section 164.

In accordance with the agency's implementing regulations, 23 CFR Part 1275, to avoid a transfer of highway construction funds under the Section 164 program, a State must have a law that requires for all repeat intoxicated drivers:

1. A mandatory minimum one-year hard driver's license suspension;
2. A mandatory impoundment or immobilization of, or the installation of an ignition interlock system on, all motor vehicles registered to the repeat intoxicated driver;
3. An assessment of the degree of alcohol abuse and treatment as appropriate; and
4. A mandatory minimum sentence of not less than five days imprisonment or 30 days community service for a second offense; and not less than ten days imprisonment or 60 days community service for a third or subsequent offense.



Requirement 1 – Driver’s License Suspension

To meet this requirement, the State must provide for a mandatory minimum one-year hard driver’s license suspension for all repeat intoxicated drivers.

Under current law, the State provides a driver’s license suspension of at least one year for repeat DUI offenses occurring within a five-year period. An individual convicted of a repeat DUI offense with an alcohol concentration level under eighteen one-hundredths of one percent by weight (.18) is subject to a license suspension of 365 days. (N.D. CODE § 39-06-10(7)(c)). If the alcohol concentration level for the repeat DUI offense is eighteen one-hundredths of one percent by weight or higher, the license suspension period is increased to two years. (*Id.* § (7)(d)). Depending on the level of alcohol concentration, third and subsequent DUI offenses result in license suspensions of either two or three years. (*Id.* § (7)(d), (e)).

SB 2102 and HB 1224 would not alter these sections. Accordingly, we have determined that North Dakota law currently meets the “driver’s license suspension” requirement of Section 164.

Requirement 2 – Impoundment, Immobilization or Installation

To meet this requirement, the State must provide for either the impoundment or immobilization of vehicles for a period of time during the one-year driver’s license suspension, or for the installation of an ignition interlock system for a period of time after the end of the one-year suspension period. In addition, the State must require that at least one of these sanctions be imposed on all motor vehicles owned by these offenders.

Under current law, State courts may order the impoundment of the license plates of the motor vehicle owned and operated by the repeat offender at the time of the offense. (*Id.* § 39-08-01(3)). After an order of impoundment, the plates are held by the State licensing authority for the duration of the offender’s license suspension period. The court may also at its discretion order the forfeiture of the repeat offender’s vehicle or the installation of an ignition interlock. (*Id.* § 39-08-01.3). Because the impoundment of license plates is ordered at the discretion of the court and only applies to the vehicle owned and operated by the offender at the time of the offense, the vehicle sanction does not meet the Section 164 requirement.

SB 2102 would alter the current law to require that “upon conviction of a second offense within five years [for DUI] . . . the court must order the motor vehicle number plates of all of motor vehicles owned and operated by the offender” to be impounded for the duration of the suspension of driving privileges. (*Id.* § 39-08-01(3), as amended by SB 2102). The legislation would also include a hardship exemption to the impoundment for a family members or vehicle co-owners, but not including the repeat offender. This exemption for hardship is acceptable under the agency’s regulation, which allows a State to enact a hardship provision for individuals who are completely dependent on the motor vehicle for the necessities of life, but not including the offender. (23 CFR § 1275.4(b)(1)). It is not clear,

however, that these provisions apply to third and subsequent DUI offenses. Without additional language in the legislation that makes it clear that the impoundment sanction applies to all repeat offenders, the proposal would not meet the Section 164 requirement.

HB 1224 would alter the current law to require that for a second, third, or fourth DUI offense "the court shall order the department to impound the motor vehicle number plates of the motor vehicle operated by the offender and in which the offender has any interest as an owner on the certificate of title . . ." (N.D. CODE § 39-08-01(3), as amended by HB 1224). The impounded plates would be retained by the State licensing department for the duration of the offender's license suspension period. After a fifth DUI conviction, the vehicle of the offender would be forfeited to the State and sold or disposed of by other means. (Id. § 39-08-1.3(2), as added by HB 1224). It is unclear, however, from the language of this legislation whether the impoundment sanction would apply to each of the repeat offender's vehicles. (The language would seem to limit the impoundment requirement to a single vehicle that meets the condition of being both owned and operated by the offender.) A plate impoundment requirement that applied to less than all vehicles owned by the repeat offender would not be compliant. Without language in the legislation that makes it clear that the impoundment of the plates applies to all vehicles owned by the repeat offender, the proposed legislation would not meet the Section 164 requirement.

Accordingly, we have determined that North Dakota law does not currently meet the "impoundment, immobilization or installation" requirement of Section 164. We have also determined that SB 2102 and HB 1224, if enacted into law without change, would not enable the State to meet this requirement.

Requirement 3 – Assessment and Treatment

To meet this requirement, the State must provide for a mandatory assessment of alcohol use and/or abuse and authorize the imposition of treatment as appropriate.

Under current law, DUI offenses include a court order for "addiction evaluation by an appropriate licensed addiction treatment program." (Id. § 39-08-01(4)(a)-(d)). If the evaluation has indicated that the repeat offender needs treatment, "the court may order the [repeat offender] to undergo treatment at an appropriate licensed treatment program . . ." (Id. § (4)(g)). In addition, under sentencing alternatives provided for in State law, a court may order a repeat offender to commitment in a public or private institution for treatment of alcoholism. (Id. § 12.1-32-02(g)). We have determined that these provisions provide for an assessment of all repeat offenders and allow for treatment to be provided as appropriate.

SB 2102 and HB 1224 would not alter these sections. Accordingly, we have determined that North Dakota law currently meets the "assessment and treatment" requirement of Section 164.

Requirement 4 – Mandatory Sentencing

To meet this requirement, the State must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service for second offenders and

not less than ten days of imprisonment or 60 days of community service for third or subsequent offenders. Under the agency's regulations, the term "imprisonment" means confinement in a jail, minimum security facility, community corrections facility, or inpatient rehabilitation or treatment center, or other facility, or house arrest with electronic monitoring provided the individual under confinement is in fact being detained.

Under current law, the sentence for a second DUI offense must include "at least five days' imprisonment or thirty days' community service." (*Id.* § 39-08-01(4)(b)). The sentence for a third DUI offense must include "at least sixty days' imprisonment" of which the court may suspend all but ten days provided the repeat offender completes a substance abuse treatment and rehabilitation program. (*Id.* § (4)(c), (e)). The sentence for a fourth or subsequent offense must include one hundred eighty days of imprisonment. (*Id.* § (4)(d)). For second DUI offenders, imprisonment time may be served under house arrest, which "include[s] a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol." (*Id.* § (5)). House arrest with electronic monitoring is permitted as alternative to imprisonment under the agency's regulation. (23 CFR § 1275.3(h)). These provisions provide for sentences that meet the minimum requirements of Section 164.

SB 2102 and HB 1224 would not alter these sections. Accordingly, we have determined that North Dakota law currently meets the "mandatory sentencing" requirement of Section 164.

Transfer of Funds

Any State that has not been determined to be in compliance with the Section 164 requirements by October 1, 2005 will be subject to a transfer of funds. In order to avoid this transfer of funds, North Dakota must either enact (and make effective) conforming amendments to its statutes or submit additional information, such as additional sections of its statutes, regulations, court cases or binding policy directives (e.g., an Attorney General's opinion), before October 1, 2005, establishing that North Dakota's laws comply with each element of the federal repeat intoxicated driver laws requirements contained in 23 USC § 164 and 23 CFR Part 1275.

If you have any questions or need additional assistance regarding this matter, please contact me at 6-1834.

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