

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/19/2015**

Amendment to: HB 1416

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

see attachment

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

see attachment

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** John Halvorson

**Agency:** WSI

**Telephone:** 328-6016

**Date Prepared:** 01/21/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/19/2015**

Bill/Resolution No.: HB 1416

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

see attachment

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

see attachment

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** John Halvorson

**Agency:** WSI

**Telephone:** 328-6016

**Date Prepared:** 01/21/2015

**WORKFORCE SAFETY & INSURANCE  
2015 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1416**

**BILL DESCRIPTION: WSI Report to Legislative Management—Server Training**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

Section 3 of the proposed legislation requires WSI to report to legislative management during the 2015-16 interim whether there is an industry interest in using safety programs to provide grants to an industry association to provide alcohol server training to employees of bars and restaurants.

**FISCAL IMPACT:** In regards to Section 3 of the proposed legislation, no fiscal impact is anticipated.

**DATE: January 21, 2015**

**2015 HOUSE JUDICIARY**

**HB 1416**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1416  
2/11/2015  
23662

- Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

Relating to violations of alcohol retail licenses and also relating to liability for injuries related to intoxication; and to provide for a report to legislative management.

## Minutes:

Attachment #1 #2 #3 #4 #5

**Vice Chairman Karls:** Opened the hearing with testimony in support.

**Rep K. Koppelman:** Introduced the bill. This bill was an interesting work in progress to try to address the whole issue of alcohol server training in liquor establishments. Many of you know and it has been referenced this morning and certainly in our previous meetings that last session we took some pretty serious action with regard to our DUI laws in North Dakota. There is two ways you can address an issue and this phrase has been used quite a bit in this legislative session as well, you can use a carrot or you can use a stick. Last year we wheeled it a pretty heave stick. We hope that while there are ramifications to that the reason we did that was that there was recognition that in North Dakota we have a problem and this is that we have a culture that tolerates drinking and driving and we felt we needed to do something about that even though we have laws against it. It is a regular practice and it is sort of tolerated with a wink and a nod and I believe we are making real progress towards our culture, dynamic and that attitude. This session I decided to introduce this bill to bring a carrot before you rather than a stick. There is several ways we can address this but last session we purposely did not try to penalize those who serve alcohol, although it was suggested, because we felt they wanted to be responsible partners and this gives them an opportunity to do that. The whole idea of server training is something that is very common in many areas. As a condition of granting a liquor license the owners of those establishments must provide server training. What server training is, is simply training to recognize the signs of intoxication, to monitor the number of drinks individuals are served, etc. and to try to insure that people that are driving don't leave that establishment having drank too much. So again as a condition of licensure in many of our localities server training is required, but it isn't state wide. So what we see, and I'm not an expert, is that in a lot of our smaller communities and rural areas server training isn't required and therefore we might have people working in those establishments that don't really know how to watch for this and the cognizance of the important of it. Many of you have heard about a terrible accident and I believe some of the folks that are part of the

family that endured that are here today. During our last legislative session when we had our DUI bills and I investigated the facts of the horrific accident what I learned and just to recap the scenario it was a very drunk driver, who was a habitual offender, who was driving the wrong way on the interstate highway. He came across a little ridge and hit head on. So if you look at the impact of both vehicles going 75 miles an hour both ways the impact is 150 miles an hour impact. When I looked at the deaths that occurred it was very tragic. When I looked at the circumstances of that case I realized what a culture change we needed, because no law that we passed would have prevent or changed that. The perpetrator in that incident was already breaking the law. Any law change that we make is only a piece of the puzzle and culture and attitude change is really what this is about. I did not a couple of things that might have prevented that accident. This individual was in three different liquor establishments that evening, had any bartender said you have had enough I'm not going to serve you anymore perhaps that could have been prevented. Had anyone in the bar said friend you have had too much to drink I'm going to take your keys, I will call someone and get you a ride home it might have prevented that accident but that didn't happen. A call to law enforcement saying there is someone walking about of this establishment that is way too drunk to drive and they are getting behind the wheel that might have prevented that incident but that didn't happen. So those are mostly cultural issues but one piece of that puzzle is not. That is proper server training for those that serve alcohol. That is why I introduced this bill and that is why it is important. Just to walk through what the bill does, it is sort of a light touch it's not a big sweeping change, but it does a couple of things. First of all I'm going to go backwards, if you look at section 2 on the last page of the bill it basically deals with licensure and it says that for a first violation in 10 years taken against the trail licensee by a licensing authority they will accept as a mitigating factor the fact that that licensee provided server training for their employees. So it's just a little bit of a tweak but it says you know what if this owner is doing the right thing and providing server training and trying to make sure that the people that work in that establishment and serve alcohol know what those signs are, know how much is enough and are watchful of these things. Give them some credit for doing that. Then on the front page of the bill it deals with two other aspects, I actually visited with some of the insurance industry thinking if someone offers server training and you are the liability insurer for that alcohol establishment, wouldn't that be an incentive to say hey if you do server training we will lower your premiums. The answer I got was that may happen but we can't say that it would. It of course is a company decision. I am still hopeful that that could be the case. I certainly do urge a do pass on HB 1416.

**Rep. L. Klemin:** Section 2 only applies to serving alcohol to a minor. Should that be more inclusive?

**Chairman K. Koppelman:** Yes I think it should apply across the board and if that is the section involved we need to revisit that.

**Rep. Lois Delmore:** Are you familiar with the training that is offered. Tell us a little bit about the program?

**Chairman K. Koppelman:** The safety council is developing some training and I know that there is other training out there. I am not an expert on it I probably exhausted my knowledge already.

**Vice Chairman Karls:** We were given an example of the Valley City Newspaper on another issue and there was a story about how their local bartenders are attending this training and it was being given from someone by the sheriff's department. Does this bill instructs on who provides the training?

**Rep. K. Koppelman:** I don't believe it is specific about who provides it just as with the bill we moved this morning. We are careful about not trying to say that this must be a specific provider just that the training must be provided. Section 3 there is a provision that Workforce Safety (WSI) will investigate whether there is any interest in using safety programs to provide grants to industry associations to provide that training. What I have heard from WSI is that there interested in finding a way to help encourage and popularize this and then maybe offers incentives or stipends to help people attend this training.

**Rep. Lois Delmore:** Maybe you would want a later effective date just to give a chance for the programs to be in place for employers and employees to take advantage of it and so on?

**Rep. K. Koppelman:** I am not opposed to considering anything. If these pieces were in place they, themselves would be incentives for people to offer training. My understanding is there is training pretty readily available but then as another step as a WSI effort moves forward it would enhance the availability and use of those programs

**James Prochniak, Alcohol Education Coordinator, ND Safety Council:** (See testimony #1). The effective date, I couldn't have answered it better than Representative Koppelman. We are hoping that there is some leverage, incentive that if this bill gets enacted that the hospitality industry will take full advantage of that sooner rather than later. Programs are ready to go. There are several different programs. We want whoever provides it to get out there and get the training to the folks that need it. So the effective date, sooner rather than later, the programs are ready and hopefully people will take advantage of those with this bill. The minor language I think we addressed that. I think that is a real good catch. Once again we were trying to make sure that when it comes to serving a minor that an establishment isn't just off the hook.

**Rep. Lois Delmore:** First how much training do you look at through the safety council providing and what would the cost be? Are the programs all the same and how expensive are they?

**James Prochniak:** There are several different programs as I have mentioned. The cost, what we have tried to do is model our costs approach very much to the programs that are offered currently. There is funding currently available for this training. Department of Human Services received a large grant from the federal government to address these very types of issues. A lot of the local public health units identified server training as being an important program. We don't want to intrude on any of the successful programs that are out there. We will train the actual servers and we have three different server programs available for everyone. We are going to obviously focus on retired law enforcement to aid us in this training.

**Rep. L. Klemin:** On this section 2 that we talked about the minor part, but I have another question and that is that it says the first violation in 10 years. I don't understand the 10 years part.

**James Prochniak:** My understanding would be giving them a 10 year window.

**Rep. L. Klemin:** Let's say that the retail licensee has the first violation in his 11<sup>th</sup> year; this would not apply at all apparently.

**James Prochniak:** That is a good example. I think what we were trying to accomplish there for example some of the communities that have server training available now and if your institution has provided that server training, when that community has an ordinance that says ok you have been found in violation of that ordinance, that is your first time in a period of time the mitigating circumstance kicks in. They might not take your liquor license they may assess a fine or they may waive the fine, allow you to keep your liquor license but if in that window, three years or two years, if you have a situation again then all bets are off. So I think maybe the language could use some clarification.

**Rep. L. Klemin:** Base on what you just said if we delete the words in 10 years, but first violation this is what happens regardless of the time period.

**James Prochniak:** We can do something to that effect or get more specific. Break it down so it is very clear, but be sure server training still gets a benefit.

**Rep. L. Klemin:** Another way of looking at it is if you have 10 year increments you could have a violation in the 9<sup>th</sup> year and then you start over with a new 10<sup>th</sup> years, so if you had a violation in the 11<sup>th</sup> year it doesn't count as a second offense.

**James Prochniak:** I agree with that. We address maybe use language like consecutive or second in a period of a certain time then the penalty is either greater or reverts back to the original language.

**Rep. Mary Johnson:** As a former bar owner in Fargo this program is very well received. Do you think that the ten year provision on page 2 regards the responsibility shown by bar owners that don't have a penalty in the last ten years; if you don't have an infraction you are doing very well.

**James Prochniak:** Yes I agree with you. Even a few years with that type of labor force is quite an achievement and it's not that the train doesn't stick, but when it comes to getting false ID it is amazing the documents you can come up with on line.

**Rep. Lois Delmore:** I know the turnover in bars can be a lot. If I have already had the training in one place do I have to do it again?

**James Prochniak:** It is a three year certificate now. Safety Council will have a data base and not only who was trained and by what institution they work for.

**Rep. Lois Delmore:** Is it common for all the licensed establishments to have to have their servers and staff trained?

**James Prochniak:** Most states require server training. There are divisions that oversee this.

**Rep. K. Wallman:** This deals with liability for liquor establishments so if I were hiring an alcohol beverage server I would be covered if I acknowledge somehow that that server had the certificate. Or are we also certifying establishments and would that be kept in a date base as well?

**James Prochniak:** This language is reaching out to the owners of the bar itself. There is language in 501061. Which talks about the server and there is some liability there. The reason we did not specifically try to include that is because it is based off the old principle, you go after the largest check book. Often times a server is probably not going to be one that is going to be able to provide compensation in a case of an injury or tragic outcome, if that is something that should be considered. I think it could be, one thing that I would caution is there can be a situation where for example, I'm not of age yet and I know some people that are of age working at a place and so you have an individual server taking some inappropriate actions. There is a recourse for that obviously but we feel that that should come from the institution, the establishment as well as making them, aware that server, that there is still a punishment out there if they do that kind of behavior.

**Rep. K. Wallman:** The servers get the certificate; is there a certification for the establishment also?

**James Prochniak:** No not necessarily. The program was not developed that way. What we also talked about in server training arena and I saw we, those that offer it from other areas, a local establishment acknowledges not only their server training through advertisement within their establishment. For example you walk in the door and it has a sticker on there, we provide server training, we make it very clear and obvious that that institution is about that kind of safety.

**Rep. K. Wallman:** Section 2, line 8 it says serving alcohol beverages to a minor. You said that wasn't the purpose of this section. You wanted to stay with minors?

**James Prochniak:** We wanted to delineate that if a minor is over served. When we hear of tragedy involving a minor and has been consuming alcohol and has been in a terrible crash. That seems to really resonate the for the folks in our state and our communities. Oddly enough when it is an adult, maybe one person in a vehicle, maybe the on vehicle roll over, do you know what the mindset is? I'll share it with you; they kind of had that coming. What we wanted to try to do there is address that if it is a minor, an establishment server better be careful and knows what they are doing. By including that we hope that establishments will say, I better train my staff.

**Rep. Brabandt:** These RBSs (responsible beverage server) would they include barmaids, bartenders and people who work in a bottle shop.

**James Prochniak:** Absolutely. Off-sale, on-sale and it includes anyone who is that alcohol industry.

**Rep. Brabandt:** Are bars required to have dram shop insurance?

**James Prochniak:** North Dakota does have a law for dram shop. However that is a glaring omission. They are not required to have that insurance.

**Chairman K. Koppelman:** This idea which is touched upon on page 1 only applies to exemplary damages. If a liquor establishment is sued for actual damages, this does not come into play at all if it is punitive damages. So it is not letting anyone off the hook for real demonstrable damage. It just says if you are going after punitive damages then it could be considered to say well we offered server training we tried to do the right thing.

**Ruddy Martinson, Hospitality Industry:** We are in favor of this concept. We believe in safely and responsible alcohol consumption. So I think this will help incentivize folks to get their servers the training that will help makes that more possible. There are areas of the state that require this by ordinance already and there are a lot of owners who do this voluntarily already. There are some logistical issues with that in terms of geography in some areas of the state. I think this bill and this program will help resolve some of those issues and make it more widely available and I think you will see more owners engaging in this time of program

**Rep. Lois Delmore:** Do you know the percentage of people who are doing at least some type of training with their servers. That goes for off-sale and on-sale, would you have those figures for both?

**Ruddy Martinson:** I don't have the specifics but I do know that Grand Forks, Fargo and Wahpeton all require by local ordinance that in order to work in an establishment that serves alcohol you have to have gone through their local law enforcements training. That is becoming more wide spread as well.

**Rep. Lois Delmore:** What do you hear about the effectiveness, do they think it is making a difference that we are doing the training?

**Ruddy Martinson:** Yes, I have never heard anyone say a negative word about having sent their staff to training like this.

**Rep. L. Klemin:** So these bars have any difficulty getting dram shop insurance?

**Ruddy Martinson:** I haven't heard any complaints about getting it. It is sort of a specialized type of insurance. There are a limited number of insurers that underwrite those types of policies but there is more than one and less than a hundred. It is expensive but I haven't heard anyone complain about availability.

**Rep. L. Klemin:** A lot of establishments didn't have it because of the expense.

**Ruddy Martinson:** There are a couple different ways of dealing with that.

**Chairman K. Koppelman:** Are there also local licensing authorities that in addition to requiring server training also require that kind of insurance for establishments to be licensed.

**Ruddy Martinson:** I don't know that.

**Brian Clifford, WSI:** We feel if we can somehow support this program and we can assist with safety we will do it. In the last seven years we have given out 35 million dollars for safety grants and safety programs. We work with the associations, by law that is what we have to do. If you look at our top ten list of numbers of claims filed hospitals are first. Restaurants and lounges are in the top ten. Whatever grants that we get we have to tie into WSI.

**Rep. L. Klemin:** Where to you get the money?

**Brian:** Its part of our continued appropriation.

**Rep. L. Klemin:** Section 3 which talks about WSI, doesn't require you to start providing you these grants just to investigate whether you should do it someday.

**Brian:** We are going to work with the hospital association to see if we can get some tie in. If we can get some tie in to workplace safety then we will look at some sort of grant to help the server training.

Neutral:

**Lynn Mickelson:** (handed out #2) I am the father of Allison Deutscher. I am here today to give my thoughts about the proposed bill, in which server training is brought to light. Originally I fully supported this bill and after studying through it and reading so much I started to have some mixed feelings on it. I like the first touch on the positive side of it. The photo I passed out is of a trailer that carries the very vehicle that our family was killed in, the Deutscher family from West Fargo on July 6, 2012. Each time I go out with that display to a school or other event I look at the display doors and as I open them, I look at that one door and I wonder why and how could and individual consume so much alcohol in such a small period of time. Instead of 3 hours in that picture it was actually 2.5 hours. The fellow that killed our family had stopped at a bar in a small town went in and had two beers, then walked across the street to another bar and consumed seven more beers, three shots of tequila, all within 2.5 hours. When he left he left the bar with two unopened cans of beer for the road. Approximately 20-25 minutes later at 7:18 in the evening the world had five deaths to talk about as a result. Four of those deaths were my family. How could a bar or any establishment, along with the server possibly serve that much alcohol in such a small period of time and feel good about it. Shouldn't they have been a little worried about the potential outcome? I have thought about that many times. Obviously there was no server training done at that bar. Look at this bill that is presented and section 3, I like that very well, where service and establishments could benefit greatly from the server training and as I understand it there is grant money out there for that. I would like to just touch a little bit on the negative side. It is somewhat difficult for a plain citizen like myself to

understand some of this legal language in these bills. I have read this over many times and there was time when I was wondering what do some of these words mean. I personally am not from the legal community or the political community. But when I see words like mitigating factor, palpability, and exemplary damages what do they mean. The way I understand it is instead of an establishment offered server training should a bad event occur after a person left that establishment, I'm reading it as if that establishment would be held to a lesser penalty if they had offered server training. My question is why? The bar still messed up. That employee to me is still part of that establishment. I speak from my person observations and my past. I have seen it in the bigger cities, bigger bars and supper clubs where the over serving a patron is watched very closely. In these small towns Colfax, ND, the bar owner himself is there 80 percent of the time along with one or two other servers and they will know who that particular individual is sitting there getting hammered. I just feel those establishments still need to be held accountable for the actions that take place there. Whether that server had training or not, that bar still messed up in my book. I think server training is a fantastic idea. In closing I just like to say that I liked parts of this bill and there are some parts that I just don't care for in it. At this point I'm pretty neutral on it.

Support:

**Tom Deutscher:** Father of Aaron Deutscher. I find it sort of ironic. I spent 35 years with the occupational safety and health administration when the accident happened I was the director of a two state region and I got to know a lot of these fine gentlemen here so I am very encouraged with any language that has to do with server training. I think training in its self is exceptional when it comes to raising awareness. It certainly doesn't guarantee compliance and the training is only as good as the giver and the receiver. So with that part of the bill I am really pleased with it. What I do bring into question section 8 of the bill, in reading through it and my concern is the section that talks about claim for relief of fault resulting in intoxication. I would just like some sort of assurance from this committee that we really are trying to insulate the bar owner from their reliability or responsibility and that is really my deepest concern with this. There certainly has to be some accountability. It is a working bill, certainly has room for improvement but I think we really need to look into that issue and give some sort assurances to the families in North Dakota that this doesn't then start another layer of insulation for bar owners from responsibility.

**Rep. D. Larson:** It seems to me by having in the bill that they may consider it as a mitigating factor and that maybe incentive for other bar owners to do the training so this might help give them incentive?

**Tom Deutscher:** It certainly has its value. It is a very transient workforce so how do you get that training out there. Any awareness training is good.

**Chairman K. Koppelman:** The idea is incentivizing server training. The sections you are talking about, when it talks about exemplary damages that again is punitive damages. So if you have case where let's say someone is injured in a car accident and they have a broken arm and a broken leg and you sue the liquor establishment because they over served. Your actual damages, lost time from work, hospital bills, and your damage to your vehicle. Those kinds of things are actual damages so you could sue for that and this wouldn't affect

that at all. But if you decided you really messed up my life and I'm going to sue you for 1 million dollars just because I want to that is punitive damages. That is where this would come into play and it doesn't mandate that you can't do that. It just says that the court can consider that it is a mitigating factor. The other side of that is we didn't want the people that offer server training to be used against them. So if someone sues somebody and says well you should have known better you had server training we didn't want that to be a black mark we wanted to encourage people to do server training. SO just to clarify that is kind of the effort of the language in the bill so you are clear and the committee is clear on that.

Opposition: None

Neutral:

**Pam Sagness, Department of Human Services:** (Handout #3, #4, #5) Went over the handout. I want to address the question on whether or not responsible beverage service is affective and I think its really good to note that when we look at the effectiveness of a program what we see is the most affective programs are actually a multifaceted approach. There is an enforcement component that is necessary so doing training is only one piece of this puzzle and that research has basically conclude that intensive high quality face to face server training when accompanied by strong and active management support is effective in reducing the level of intoxication and patrons. Owners and managers need to look at supporting the training.

**Rep. K. Wallman:** You testified there is 700 million dollars plus dollars for this specific purpose already in use at the local level, is that right?

**Pam Sagness:** There was 9.7 million dollars that was allocated to local programs not specifically for this strategy. It had to be part of a comprehensive, they needed to complete a needs assessment at a local level, identify where there areas of issues were and then they had to develop a strategic plan. Server training is one of the evidences based programs they could choose to implement. Some communities already have city ordinances so for them it is not a top priority.

**Rep. K. Wallman:** You said there are several components to making it affective and you mentioned that mandating a training and compliance checks are two of those components that have shown very positive outcomes at almost a 20 percent increase.

**Pam Sagness:** Yes that is correct.

**Rep. K. Wallman:** If there is already a well-funded, well researched program that is tackling the issue of compliance checks and also mandating training at the local level, then the only purpose for the bill is it does actually just providing owners the ability not to be accountable.

**Pam Sagness:** There are resources we can partner but at this point in time this is a voluntary program the need for incentives is important. I know there was testimony recently about larger communities that have taken this on. They provide things like beverage service training and they also do compliance checks.

**Rep. K. Wallman:** Would a state mandate to require training improve the ethnicity of the program?

**Pam Sagness:** When you look at this from a national perspective and you look at the outcomes that have been gained by other states, one of the questions asked earlier was how many states actually already have a current state law? There are 18 states who have mandatory; 23 that have voluntary and 15 have neither type. The states that have implemented those strategies also have what is called and ABC (alcohol beverage control agency). Of course in North Dakota that is not an agency that exists. So in those states we usually see lower underage drinking rates, lower drinking and driving rates and lower adult binge drinking rates.

**Douglas Vandervilin, Pastor in Fargo:** I am in favor of training if that helps reduce these types of things happening. Listening to the testimonies several things came to my mind; in terms of a minor, it is already illegal to serve alcohol to a minor so why is bar still in business if it has served a minor especially if the minor is later in a crime? If a bar cannot or will not self-regulate itself in the serving of minors why would it self-regulate itself in terms of monitoring how much drinking is going on? False ID's are readily available and a problem. Another question that came to my mind is in reference to the gentlemen who lost their family, why was that person driving the car still on the road having been a multiple violator. Why wasn't he in some type of mandatory rehabilitation or prison? Rehab has much less cost involvement than the cost of a loss of life. It seems to me that if we are not going to be seriously enforcing the laws that are already in the books there is going to be a problem, while I really do commend the carrot that is here, there are sticks and if the sticks are not enforced the carrots are not going to help. I have a son who attends a major university in North Dakota, he lives in the dorms and has advised me that the school turns blind eyes to drinking in the dorms. That says to me that if the state legislature can holdout a carrot in terms of encouraging the universities to do training to students you want more money for professors or whatever, then let's see you actively involved in training young people to know how to appropriately handle alcohol. They are turning a blind eye to it and sometimes it would seem that the police departments around campuses have some type of noninvolvement policy in terms of enforcing the laws that you all write in terms of drinking. Certainly a college police officer on a college campus on a weekend would certainly fulfill his quota of ticket writing if he was actively involved in enforcing the laws. I want to say that this isn't just a behavior problem this is a moral issue. Laws while they can modify our behavior cannot change our hearts. A bartender doesn't get me drunk. Alcohol does not get me drunk. I get myself drunk. It isn't merely a behavior issue it is about knowing right or wrong and the character to do the right thing. When I think that this is helpful in terms of getting the bartenders to do the right thing, it has to be more broad based than that. I need when I walk into the bar to have the moral character to not only know the difference between when I'm drunk and not but the character to be able to say no I have had enough. While it is not the legislatures job to teach morality maybe that might open up so opportunities for the state to work with some faith based groups to help instill character. There seems to be a need. North Dakota I am told is number one in beer consumption per capita in the United States. I have been told that North Dakota is number one in the nation on binge drinking in ever age group, not sure if that's true but that's what I have been told. Which leads me back to it being a character issue not a behavior issue, we have a state wide problem and it shouldn't be put on the burden of the bartender or the owner of the bar

to cure that problem. I was very encouraged by the last person giving testimony that there was some evidence in the Grand Forks area that this has helped but this is what I have to close with, the previous person said there wasn't a negative word or complaint about the training. A negative word is not the same thing as up checked data that says this kind of thing is actually prevented something. If we will not aggressively enforce the laws that we already have passed and we will not promote moral character amongst our people it would seem to that this particular bill could end up being nothing more than symbolism over substance which I know is not the intention of this committee.

**Rep. K. Hawken:** I think it is important that you know that the colleges are taking an active role in trying to do what you propose. There is a great attempt to educate and solve the problem to help these college age groups. So don't think that it just isn't there.

**Douglas:** I appreciate your comment. The drinking age in North Dakota is 21 so to me every dorm should be alcohol free.

**Rep. Lois Delmore:** Many years ago there were still people who snuck alcohol in. The universities are really attempting to work on that. We have SADD organizations that are very active on our campuses, but you also talked about something called personal responsibility and that comes whether I'm 18, 16 or 65 that comes from me and hopefully I learned it from people like you at the church and my parents and I don't think there is any law we can pass that can change that but they are not alcohol allowed dorms on campus.

**Douglas:** They have signs but the signs have to be endorsed. The RA (resident assistant) is supplying the alcohol.

**Rep. Lois Delmore:** Then it is time for somebody who knows that is going on to say something. If someone has something to back that evidence up I trust you something will be done.

**Douglas:** That is where I think this legislature has the great opportunity to use the carrot. There is ways of tying that to the universities to be more enthusiastically looking for ways.

**Chairman K. Koppelman:** This is a carrot. If you had been here two years ago you would have seen the stick. One of the issues is ND has a cultural problem. We did toughen the DUI laws last session. What this committee based out is actually tougher than what ended up passing the legislature in general. The good news is it is being enforced and we need to look no farther than our prison folks who have been in here several times testifying about overcrowding.

**Douglas:** I am aware and I appreciate all that you are doing. If I am preaching to the choir I'd love to hear you all sing.

**Rep. K. Wallman:** Your concern with the bill has to do with enforcement was that really the gist of what you were saying?

**Douglas:** My gist is I am supportive over all. How can you argue against training? It's just that my point is I see these different things like the fake ID's, not addressing character and the fact that it is already illegal to serve alcohol to a minor and why is a bar still in business if a minor has been served and especially if that minor has committed a crime. The law to me should say there is a no tolerance policy if you serve a minor you are out of business.

Closed.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1416  
February 17, 2015  
23964

- Subcommittee  
 Conference Committee

Committee Clerk Signature



**Minutes:**

**Chairman K. Koppelman:** Opened the meeting on HB 1416. This is the bill on the issue of server training. I would recommend we amend the bill to take out on page 2, line 7 the words in ten years. This has to do with the licensing and I checked with Legislative Counsel where that came from and told the drafter of the bill put it in there for the purpose of discussion.

**Rep. Lois Delmore:** I do see the need for the education piece. The liability part gives me some trepidation of what they can be. I think it was explained pretty well that a lot of bars don't carry that liability of insurance because it makes them look liable.

**Chairman K. Koppelman:** Discussed regarding the liability issue regarding server training. Gave an example of how it would work. The fact that they offered server training couldn't be used either against them or in favor. It is a bill to encourage liquor establishments to offer server training than it ever will result on anything in a court personally.

**Rep. G. Paur:** If a person drinks too much and hits a tree and breaks his leg and the car is totaled he can sue the liquor establishment for giving them too much liquor.

**Chairman K. Koppelman:** They can do that now.

**Rep. Lois Delmore:** If someone is killed does that make this disallowed?

**Chairman K. Koppelman:** For damages they will look at actual loss and quantify that. If you then say you want to sock it to you, but all this says is this may be used as a mitigating factor.

**Rep. Maragos:** Some bars are not carrying grand shop insurances? I don't think they can under their license can they?

**Chairman K. Koppelman:** It depends on the liquor licensing laws in areas. In some of our smaller areas they don't. How do we try to train people who serve alcohol not to serve too much? A lot of it is covered in our major cities but like a lot of issues we deal with in the legislature it is not a statewide thing.

**Rep. L. Klemin:** Exemplary damages are not easy to get. First the law says you have to prove by clear and convincing evidence that a person was guilty of depression, fraud or actual malice. How that fits into this grand shop thing is difficult to prove. The two cases where we have been awarded exemplary damages they were very difficult cases to prove. When you have a claim you want to make for exemplary damages right away, you cannot make case in your complaint right away. You can only do it for compensatory damages. Then later you file a motion to amend the complaint to include a claim for exemplary damages. So when you get to the trial part of it the jury has to consider compensatory damages before you every talk about exemplary damages so you have to have a good case.

**Chairman K. Koppelman:** I think that is true. To the untrained eye it looks like immunity and it is not so that was their concern. In the accident with the Deutscher family the DUI would not have changed anything because this guy was already breaking the law. What might have made a difference is this. If one bartender had server training and said this guy has had too much.

**Rep. P. Anderson:** I heard there were a few bars in the smaller community that had been over serving this man day after day. I don't think we need this bill at all. It doesn't mandate server training and workforce people said we aren't sure that we can use our money for this; maybe we can as long as we talk about safety. I wrote they were unsure.

**Chairman K. Koppelman:** The WSI folks were brought into the discussion just as the bill was being drafted and they said they want to do this. But what they need to do is find a linkage to workforce safety. Working with the hospitality association in particular where they want to get them on board and jointly offer this kind of training.

**Rep. P. Anderson:** They can do it without a statue.

**Chairman K. Koppelman:** It isn't readily available in all corners of the state and in these rural areas is where the need is the greatest.

**Rep. P. Anderson:** They could do it now without a bill.

**Chairman K. Koppelman:** If we don't give them an incentive in terms of licensure and a little bit of liability I am not sure there is a big incentive to do it.

**Rep. L. Klemin:** I think we should amend this bill in section 2. The in ten years that doesn't seem to make a lot of sense. Also this language in line 8, to a minor, then it only applies this to minors; then delete the last sentence in that section of lines 12 & 13.

**Rep. L. Klemin moved to amend this bill as stated; Seconded by Rep. Maragos**

**Chairman K. Koppelman:** So the motion is to remove in ten years on line 7; to remove to a minor on line 8 and to remove the sentence beginning on line 12 and ending on line 13.

**Rep. Mary Johnson:** So for a first violation this would suggest this is applicable only for a first violation.

**Chairman K. Koppelman:** Correct; within ten years.

**Rep. D. Larson:** I think the part to a minor should remain. The reason is because this server training part of what they teach is how to examine a driver's license to determine whether it is altered so they know if they are serving to a minor or an adult so part of that training has to do with serving to the appropriate age.

**Rep. L. Klemin:** Taking the words to a minor out doesn't mean that minors are not considered here. It just broadens it to include minors over serving to others so it is more encompassing. The way this is the violations for first offenses only in the event of service to a minor which I think is too narrow.

**Rep. G. Paur:** Wouldn't it be more effective to just make the requirement of server training for anyone who sells or serves alcohol to get a license.

**Chairman K. Koppelman:** Some would argue that is a mandate.

**Voice vote carried.**

**Do Not Pass Motion As Amended Made by Rep. K. Wallman: Seconded by Rep. P. Anderson:**

**Rep. K. Wallman:** I am in favor of responsible beverage server training, but in the testimony I found the Department of Human Services Pam Sagness passed out this server training. There is already funding and trainings in place and they understand there needs to be an enforcement component and it is more of a holistic approach to this and there is no reason why this can't be made available in our smaller communities where there seems to be the most hang up.

**Rep. D. Larson:** I think establishments that serve alcoholic beverages need to be encouraged to provide this training regularly to their employees because they are not equipped to teach all of the things that they should be teaching to their servers whereas someone who is trained knows how to come in and give the appropriate training so they know how to examine the driver's license appropriately and they know how to tell how many drinks are going to make you intoxicated and how much time so for there to be incentive for the establishment to want to have their service people trained I think it is a good idea especially since Rep. Klemin mentioned that it is very difficult to get those exemplary damages just to have that written into their stuff they have to look at if they are going to be an owner is going to make them say this can be considered so I want to be

make sure that the people I am hiring know what they are doing so I personally think this is a good step.

**Chairman K. Koppelman:** Sagness testified neutral because that is the normal for agencies of government. On visiting with her afterwards and what I gleaned from her testimony also is they are very much in favor of this. I thought her statistic said 18 have mandatory server training; 23 have voluntary server training and 15 have neither so I think it is something to advance.

**Rep. Mary Johnson:** I agree with Rep. Larson that this is a good first step because this will encourage this. I think as a step this will allow workforce safety to provide programs; probably on line, for that. If you engage in these programs and get a certain credit off your premium and I think that is a way to reach the rural areas. Fargo has a marvelous server training program and I would like to see that on line and get to these rural communities.

**Chairman K. Koppelman:** I was impressed the hospitality association's support of this and willingness to work with workforce safety and others.

**Rep. Mary Johnson:** Once these programs are developed the state has something to mandate eventually.

**Rep. K. Wallman:** I haven't felt this bill does as much as we would want or really does much at all to compel people to go out and educate their servers. Maybe if you want this to happen you should just make it part of licensing.

**Roll Call Vote: 2 Yes 11 No 0 Absent Failed.**

**Do Pass As Amended Motion Made by Rep. Maragos; Seconded by Rep. L. Klemin:**

**Roll Call Vote: 11 Yes 2 No 0 Absent Carrier: Rep. G. Paur**

2/17/15

February 17, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1416

Page 2, line 7, remove "in ten years"

Page 2, line 8, remove "to a minor"

Page 2, line 12, remove "This section does not apply if the sale to a minor"

Page 2, remove line 13

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. HB 1416**

House JUDICIARY Committee

- Subcommittee  Conference Committee

Amendment LC# or Description: 15.0755.01001.02000

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. L. Klemin: \_\_\_\_\_ Seconded By Rep. Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment: \_\_\_\_\_

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

**VOICE VOTE CARRIED**

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL NO. HB 1416**

House JUDICIARY Committee

- Subcommittee  Conference Committee

Amendment LC# or Description: 15.0755.01001.02000

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider

Motion Made By Rep. K. Wallman: Seconded By Rep. P. Anderson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman		X	Rep. Pamela Anderson	X	
Vice Chairman Karls		X	Rep. Delmore		X
Rep. Brabandt		X	Rep. K. Wallman	X	
Rep. Hawken		X			
Rep. Mary Johnson		X			
Rep. Klemin		X			
Rep. Kretschmar		X			
Rep. D. Larson		X			
Rep. Maragos		X			
Rep. Paur		X			

Total (Yes) 2 No 11

Absent 0

Floor Assignment: \_\_\_\_\_

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

**FAILED**

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL NO. HB 1416**

House   **JUDICIARY**   Committee

Subcommittee  Conference Committee

Amendment LC# or Description:   15.0755.01001.02000  

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By   Rep. Maragos   Seconded By   Rep. L. Klemin:  

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson		X
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman		X
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes)   11   No   2  

Absent   0  

Floor Assignment:   Rep. G. Paur  

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

**REPORT OF STANDING COMMITTEE**

**HB 1416: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1416 was placed on the Sixth order on the calendar.

Page 2, line 7, remove "in ten years"

Page 2, line 8, remove "to a minor"

Page 2, line 12, remove "This section does not apply if the sale to a minor"

Page 2, remove line 13

Re-number accordingly

**2015 SENATE JUDICIARY**

**HB 1416**

# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1416  
3/10/2015  
24537

- Subcommittee  
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on HB 1416.

Rep. K. Koppelman: Sponsor, support. We have an issue with DUI's and our cultural reaction to them that we tend to think they are sort of accepted culturally and as I said, we greet them with a wink and a nod, or a sigh of relief that it wasn't us that got caught. Last session we got pretty tough on DUI's and I know you sent us a bill which we just heard it last week, tweaking some of those laws a little bit, which I think are good changes. HB 1416 looks at this issue from another perspective. It deals specifically with the issue of server training and recognizing that the way to solve a problem is not only to pass tougher laws to deal with the problem, but also to encourage positive behavior. I think the bill we passed last time, did some of that. I think another thing that can have a big influence on that is teaching the folks that serve alcohol in establishments that serve it, to be trained to know when someone has had enough to drink, when you shouldn't serve them more, etc. Many of our liquor establishments in ND already do that. In fact, many of them do it voluntarily. Many are required to do it in our major cities where often times that requirement is tied to liquor license procedures. I know in West Fargo, for example, and many of the other larger cities around the state, to get a liquor license that the proprietor has to train staff in these kinds of techniques. However, in a lot of our state, that doesn't exist, like in the rural areas and smaller towns. So the effort is to broaden that to make it a statewide, not a requirement, incentive. The incentives in the bill are on page 1, line 15 that if server training is offered that fact could be a mitigating factor in any proceeding involving the license of an alcohol establishment. The fact that an establishment offers server training could be a mitigating factor only against exemplary damages (punitive damages including pain and suffering); not against actual damages. It also can't be used as reason for greater damage,

such as saying you offered server training so your servers should have known better and the guy left and he was legally over the limit and he drove. The idea is to give the establishment a little bit of relief. Punitive damages in ND are very rare to begin with. Actual damages are fine. To put this in a practical view, let's say an establishment over-served someone and they are being sued because there was an accident and someone lost a leg. Now they are suing the establishment for over-serving. The actual damages would not be affected by this bill. The other part of this is dealing with the potential for Workforce Safety and training programs, a process whereby they can subsidize or make more training available in more areas of the state that might benefit employees to the degree that this delves into employee safety; they feel that they can deal with some of those issues. The ND Safety Council and James Prochniak, who works for them, they are actually the ones that came up with this idea. They are very active in wanting to offer these types of training around the state.

Ch. Hogue: Thank you. Further testimony in support.

James Prochniak, ND Safety Council: Support (see attached #1).

Sen. Luick: Do you have an idea what the costs might be in this program.

James Prochniak: Currently, with the grant dollars, the cost to the industry for a period of time would be zero. However, with any grant, they don't last forever. I checked with Workforce Safety to see if there was a tie-in after grant dollars subsidies that Workforce Safety could entice the beverage industry to take a look at this training and continue it on an on-going basis. Where's the connection to the employee safety. If we recall, that a couple of months ago in the Fargo area, there was a bartender that was severely beaten after hours by a couple of guys that had too much to drink. He suffered some head injuries and his colleagues took up a medical fund to help him. There is a direct tie to the employees of those bars to know how to properly serve, know when to say no, and to avoid a situation where they walk out and can get severely beaten. The grant dollars last for a couple of years, and then we are hoping maybe some more incentive through the Workforce Safety initiative.

Sen. Luick: What is the extent of the training per person, how much of a cost is there going to be. Is there a program in effect right now that you are mirroring, or starting from scratch?

James Prochniak: There is a program is "Alive and well". We are training trainers out there which are predominantly law enforcement, whether current or retired to go out to the communities and create the program in each town/ city and train the servers. As far as what type of program, we not only took a look at the Safety Council for programs that are currently available throughout the US, but also in our own backyard. There are several communities that have mandatory server training. We modeled it after that. The servers would get a couple of hour's session in how to recognize when somebody is over the limit or intoxicated. How to recognize youth when they are trying to get in under-aged, how to identify the person, with false identification. The ND Safety Council is involved in several training options whether it be driving, OSHA, all kinds of employee safety. We modeled our costs after much of the costs that we have when it comes to typical training. Up to 10 servers would be a \$590.00 fee that covers the travel portion, trainer, and the administrative costs. We will have to keep a database of those that take this server training that lasts for 3 years. They get a certificate and then they have to renew it after that.

Sen. Grabinger: The insurance companies that are involved with the beverage industry are they already providing some incentives to go ahead with a program like this. Are they involved with this at all?

James Prochniak: Insurance companies will consider breaks based off of the example in the Fargo area, where they do require server training and in discussing this program and some of the advantages for those folks. The hospitality industry also has a program where they encourage that industry to get involved in server training. We just want to be a part of that.

Ch. Hogue: Thank you. Further testimony in support.

Rudie Martinson, Executive Director, ND Hospitality Association: Support. We are in favor of safe, legal and responsible alcohol consumption. I think this bill will provide an incentive for the type of training that makes that even more widespread. As previous speakers have alluded to, there are a couple of larger communities that do require this by city ordinance and oftentimes the local law enforcement agency does that particular training. I see this as an incentive and a reason to help make that more widespread and move it just beyond the major metro hubs and out into the more rural communities. The easiest answer to that question is that it depends on the insurance company. I'm not aware of any insurance company that actually conducts the training, but when it comes to your premiums for your business liability and dram shop

insurance often times you can get a discounted premium if you can demonstrate that you have done the server training for your employees.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing. What are the committee's wishes in regard to HB 1416?

Sen. Armstrong: I move a Do Pass.

Sen. Casper: Second the motion.

Sen. Grabinger: I know this is an incentive plan here to try and get them trained, but for those companies who don't give the training, is this going to be counted against them.

Ch. Hogue: I think the answer is not so far. This is a very narrow bill, when it comes into play. You would have a dram shop case and typically the person who was intoxicated oftentimes they are in more than one establishment but they become intoxicated, they get in their vehicle and go out and hurt somebody. The injured person will present a claim against not just the intoxicated person but also the establishment that sold the alcohol to the intoxicated person. The claim that they have to establish with respect to the liquor establishment is that when the alcohol was sold to that driver, that driver was obviously intoxicated. That's the evidentiary standard. This bill says, if you the plaintiff that was injured and you're going to seek damages for your injuries and lost wages, damage to your vehicle, if in addition to all those, you are going to claim exemplary damages or punitive damages, this bill allows the jury to consider the fact when they are awarding punitive damages if they decide to do that, it allows them to consider as a mitigating factor that the establishment had alcohol training. So it's very narrow about when it will apply. This doesn't set anybody up for failure in the sense that you didn't have the training.

Sen. Nelson: How often would you have this training? It seems to be a pretty good turnover in some bars of whether or not they have had the training or not; and did they get the training at one restaurant and now are working at another location. Do they keep track of that in a database?

James Prochniak: The database that I was referring to, that the NDSC is, in essence, part of the fee that we are charging does keep track of that. The three year certification that they receive is a traveling certification. It's not

issued to the bar; it is issued to the server. So if someone wants to go to a bar X after working at bar Y because there are greater tips there or better clientele, they can certainly do that. It may be attractive that they are already certified in server training for that owner or manager.

Ch. Hogue: Does the training focus on recognizing a person who is impaired or is there some component that focuses on false ID's and not having the proper driver's license.

James Prochniak: The three main topics are false ID's, invalid identification; over-serving (over-consumption), so when an average person can tell someone has had too much to drink; and for minors. The last two, the over-service and the minors, if you take a look at our state and how over the past several years we have received way too much notoriety for people binge drinking and for minors in consumption. That's the crux of this program, to try and have an impact on that.

**6 YES 0 NO 0 ABSENT DO PASS**

**CARRIER: Ch. Hogue**

Date: 3/10/2015

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE

BILL/RESOLUTION NO. 1416

Senate

**JUDICIARY**

Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Sen. Armstrong    Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Sen. Hogue

**REPORT OF STANDING COMMITTEE**

**HB 1416, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1416 was placed on the Fourteenth order on the calendar.**

**2015 TESTIMONY**

**HB 1416**

#1  
HB 1416  
2-11-15

**Testimony – House Bill 1416**  
**House Judiciary Committee**  
**Submitted by**  
**James Prochniak, North Dakota Safety Council**

February 11, 2015

Good morning, Mr. Chairman, and members of the House Judiciary Committee. My name is James Prochniak, Alcohol Education Coordinator for the North Dakota Safety Council. I'm here today to testify in support of HB 1416.

The North Dakota Safety Council's mission is to save lives by preventing injuries and deaths at work, on roads, and in our homes and communities. Equally important, we feel that creating good policy isn't necessarily about fines and punishment. Rather, it's about creating incentives for private and public entities to develop safer work practices through quality training.

When the North Dakota Safety Council began its Responsible Beverage Server training program a review of the current law 5-01-06.1 **Claim for relief for fault resulting from intoxication**, we noticed an opportunity for increased safety by placing an emphasis on working with the alcohol industry to promote safer communities.

Responsible Beverage Server (RBS) training can prevent injuries and death in our communities. RBS aims to reduce alcohol related problems by educating business establishments on the proper service and sales of alcohol. It is designed to educate owners, managers, servers and sellers at alcohol establishments about strategies to avoid illegally selling of alcohol to underage youth and intoxicated customers.

The updates and additions addressed in HB 1416 creates incentives for those involved in the liquor industry. However, those that do not participate incur no punishment or fines.

The following considerations can leverage interest in providing preventative education;

- 1) As addressed in HB 1416, if a liquor establishment provides server training for its employees that training can act as a mitigating circumstance for the establishment if named in a lawsuit.
- 2) By providing such training, an establishment cannot be held more culpable.
- 3) If a minor is served, and server training has been provided a lesser punishment must be considered.
- 4) Lastly, this law asks Workforce Safety Insurance to look at the potential for grant incentive funding to assist with providing server training to those involved with the alcohol industry.

Responsible Beverage Server is important to any alcohol establishment. Being a part of a business, employee or employer, grants you the responsibility to be educated in preventing alcohol abuse and underage drinking. It protects the establishment from liability concerns and the customers from the dangers of irresponsible alcohol consumption.

I believe an even greater result can occur. RBS can address the very issues ND struggles with, I.E. underage drinking and over consumption. We can positively impact community safety, motoring public, and reward those establishments that train their staff by offering a cheaper cost of doing business all in the name of prevention.

/

I respectfully request your consideration of HB 1416 for the safety of our communities and for the safety of the alcohol industry.

This concludes my testimony. I'd be glad to answer any questions.

#2  
HBI 416  
2-11-15



9 Beers  
3 Tequilas  
+ 3 Hours  

---

5 Deaths

deadlycrash.org



In Memory of  
Aaron - Allison - Brielle - Baby Deutscher  
July 6, 2012

UXT



# *"Brielle's Law"*

**HB-1302**

***A Change in Drunk Driving Laws***

**Lynn & Donna Mickelson**

*Parents of Allison Deutscher*

16930 69th St. SE

Colfax, ND 58018

701-372-3860

moparnut@rrt.net

[www.deadlycrash.org](http://www.deadlycrash.org)



# WHY SERVER TRAINING?

#3  
LB 1416  
2-11-15

Server Training (Responsible Alcohol Sales (RAS) or Responsible Beverage Service (RBS)) is a training program created to assist employees and managers in understanding North Dakota state laws, company policies, and procedures for alcohol sales and service. This type of training provides the best line of liability defense for alcohol sales and service providers.

When fully implemented, this training program will help reduce alcohol sales and service to underage youth and intoxicated individuals over the age of 21. It has also been shown to reduce incidences of drinking and driving, alcohol related fatalities, and alcohol related crime.

## Why is this training important for our community?

### Benefits:

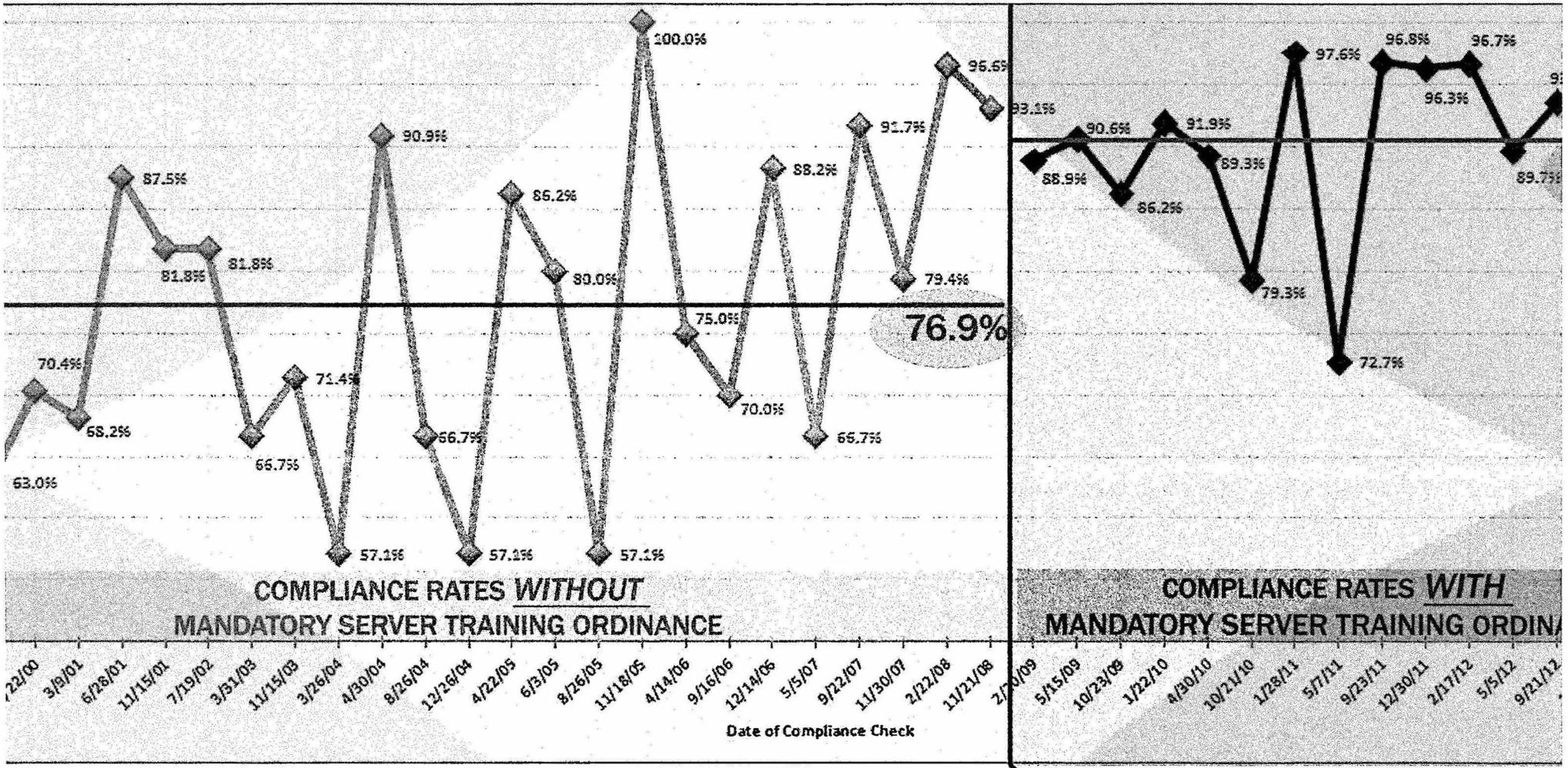
1. Promotes public health by not serving minors and preventing impaired driving.
2. Improves the business practices of licensed establishments.
3. Improves the public's perception of the establishment.
4. Reduces civil liability exposure for licensees and their employees.
5. Reduces risk of administrative and criminal penalties for licensees and employees.
6. Helps to promote consistent practices in an industry with a traditionally high employee turnover.
7. Reduces risks to insurers, which helps provide affordable insurance to licensees.
8. Maintains revenues and even helps to increase profits.
9. Helps empower employees to be able to obey laws and maintain control over customers despite customer demands.
10. Many incentives exist in various communities including:
  - Reduced insurance premiums
  - Reduced civil liability
  - Reduced administrative liability
  - Tiered license fees
  - Compliance with training laws
  - Compliance with increased enforcement of alcohol regulations

### Components of Server Training Include:

- How to check ID thoroughly and recognize fake IDs
- Clear understanding of North Dakota alcohol laws and liabilities
- How to deal with hostile customers
- Procedures for incidents that include right to refuse sales and how to cut off an overly intoxicated person
- How to avoid illegal sales and service to minors

#21  
 HB 1416  
 2-11-15

# GRAND FORKS COMPLIANCE RATES FROM 2000 to 2013



On average, compliance rates (establishments NOT selling to minors) increased 13.5 percentage points (76.9% up to 90.4%) when mandatory server training ordinance went into effect.

#5  
KB 1416  
2-11-15

**NDLA, H JUD - Shimek, Delores**

---

**From:** Sagness, Pamela T.  
**Sent:** Thursday, February 12, 2015 11:10 AM  
**To:** NDLA, H JUD - Shimek, Delores  
**Subject:** RE: testimony  
**Attachments:** Server Training Ordinance and Compliance Rates.jpg

Thank you Delores,

Below are the primary points of discussion from my testimony.

“Why Server Training?” handout was provided.

**Is server training effective?** “Intensive, high quality, face-to-face server training, when accompanied by strong and active management support, is effective in reducing the level of intoxication in patrons.” Effective strategies must be multi-faceted. Best practices in server training require specific curriculum, trainer, policy, enforcement and ongoing training requirements.

**Is server training occurring in North Dakota?**

Yes. Cities with local ordinances include: West Fargo, Dickinson, Fargo, Watford City, Wahpeton, and Grand Forks. Communities with voluntary server training include Carrington, Grafton, and Williston.

The Department of Human Services provided funding through the Department of Justice’s Enforcement of Underage Drinking Laws block grant to the Safety Council for the development of a server training curriculum and program.

The Department of Human Services received a \$9.7 million grant for local communities to develop and implement strategic plans relating to underage drinking and adult binge drinking. 25 Local Public Health Units and Tribes in North Dakota received funding. 20 of those 25 grants are currently working on server training initiative.

The Department of Human Services provides training and technical assistance to communities and grantees across the state working on substance abuse prevention initiatives.

Nationally 18 states have mandatory server training laws, 23 have voluntary server training laws, and 15 have neither type of law. In most states an ABC (Alcohol Beverage Control) agency oversee the effective and efficacy of the programs and enforce their use. North Dakota does not have an ABC agency.

Attached is the local outcome data from the Grand Forks Police Department. I showed this visual but it was not distributed to all committee members.

Please let me know if you need anything further.

Thank you,

Pamela

**Pamela Sagness, LAC**  
**Program Administrator, Substance Abuse Lead**  
**Division of Mental Health & Substance Abuse Services**  
**Department of Human Services**  
**1237 West Divide Ave Suite 1C**  
**Bismarck, ND 58501**

701.328.8824  
[psagness@nd.gov](mailto:psagness@nd.gov)  
[www.nd.gov/dhs/prevention](http://www.nd.gov/dhs/prevention)

---

**From:** NDLA, H JUD - Shimek, Delores  
**Sent:** Wednesday, February 11, 2015 2:18 PM  
**To:** Sagness, Pamela T.  
**Subject:** testimony

I was just wanting written testimony on the hearing this morning that you spoke at so please email what you can. This was regarding HB 1416...thanks.

**Testimony – House Bill 1416**  
**Senate Judiciary Committee**  
**Submitted by**  
**James Prochniak, North Dakota Safety Council**

March 10, 2015

Good morning, Mr. Chairman, and members of the Senate Judiciary Committee. My name is James Prochniak, Alcohol Education Coordinator for the North Dakota Safety Council. I'm here today to testify in support of HB 1416.

The North Dakota Safety Council's mission is to save lives by preventing injuries and deaths at work, on roads, and in our homes and communities. Equally important, we feel that creating good policy isn't necessarily about fines and punishment. Rather, it's about creating incentives for private and public entities to develop safer work practices through quality training.

When the North Dakota Safety Council began its Responsible Beverage Server training program a review of the current law 5-01-06.1 **Claim for relief for fault resulting from intoxication**, we noticed an opportunity for increased safety by placing an emphasis on working with the alcohol industry to promote safer communities.

Responsible Beverage Server (RBS) training can prevent injuries and death in our communities. RBS aims to reduce alcohol related problems by educating business establishments on the proper service and sales of alcohol. It is designed to educate owners, managers, servers and sellers at alcohol establishments about strategies to avoid illegally selling of alcohol to underage youth and intoxicated customers.

The updates and additions addressed in HB 1416 creates incentives for those involved in the liquor industry. However, those that do not participate incur no punishment or fines.

1-2  
3/10/15

The following considerations can leverage interest in providing preventative education;

- 1) As addressed in HB 1416, if a liquor establishment provides server training for its employees that training can act as a mitigating circumstance for the establishment if named in a lawsuit.
- 2) By providing such training, an establishment cannot be held more culpable.
- 3) If a minor is served, and server training has been provided a lesser punishment must be considered.
- 4) Lastly, this law asks Workforce Safety Insurance to look at the potential for grant incentive funding to assist with providing server training to those involved with the alcohol industry.

Responsible Beverage Server is important to any alcohol establishment. Being a part of a business, employee or employer, grants you the responsibility to be educated in preventing alcohol abuse and underage drinking. It protects the establishment from liability concerns and the customers from the dangers of irresponsible alcohol consumption.

I believe an even greater result can occur. RBS can address the very issues ND struggles with, I.E. underage drinking and over consumption. We can positively impact community safety, motoring public, and reward those establishments that train their staff by offering a cheaper cost of doing business all in the name of prevention.

I respectfully request your consideration of HB 1416 for the safety of our communities and for the safety of the alcohol industry.

This concludes my testimony. I'd be glad to answer any questions.