

2023 HOUSE TRANSPORTATION

HB 1506

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1506
2/2/2023

A bill relating to a bicycle and a ridden animal being deemed a vehicle.

Chairman D. Ruby opened the hearing at 2:45PM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives K. Anderson, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Weisz, Dakane, Dobervich. **Members absent:** Representative Christensen.

Discussion Topics:

- Riding a bicycle or an animal while under the influence
- Designation of bicyclists and equestrians
- Definition of vehicles
- Penalties for driving under the influence

Representative Roers Jones introduced the bill in support (#18706, 18705) and proposed an amendment (#18703, 18704).

Jesse Walstad, North Dakota Association of Criminal Defense Lawyers, testified in support (#18733).

Representative Mock verbally testified in support.

Wade Kadrmas, Safety and Education Officer with the North Dakota Highway Patrol, testified in opposition (#18790).

Additional written testimony:

Luke Heck, Criminal Defense Attorney at Vogel Law Firm, testimony in support #18410.

Justin Kristan, Executive Director with Bike Walk North Dakota, neutral testimony #18839.

Chairman D. Ruby closed the hearing at 3:57PM.

Mary Brucker, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1506
2/3/2023

A bill relating to a bicycle and a ridden animal being deemed a vehicle.

Chairman D. Ruby opened the meeting at 11:14AM.

Members present: Chairman Ruby, Vice Chairman Grueneich, Representatives Anderson, Christensen, Dyk, Frelich, Hauck, Koppelman, Murphy, Timmons, Wagner, Dakane, Dobervich. **Members absent:** Representative Weisz.

Discussion Topics:

- Proposed amendment 23.1065.01002
- Committee vote

Chairman D. Ruby distributed a proposed amendment 23.1065.01002 (#19075 and #19254).

Representative Koppelman moved the proposed amendment 23.1065.01002.

Representative Christensen seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	AB

Motion carried 13-0-1

Representative Christensen moved a Do Pass as Amended.

Representative Dobervich seconded the motion.

Roll call vote:

Representatives	Vote
Representative Dan Ruby	Y
Representative Jim Grueneich	Y
Representative Karen A. Anderson	Y
Representative Cole Christensen	Y
Representative Hamida Dakane	Y
Representative Gretchen Dobervich	Y
Representative Scott Dyk	Y
Representative Kathy Frelich	Y
Representative Dori Hauck	Y
Representative Ben Koppelman	Y
Representative Eric James Murphy	Y
Representative Kelby Timmons	Y
Representative Scott Wagner	Y
Representative Robin Weisz	AB

Motion carried 13-0-1

Representative Dobervich is the bill carrier.

Chairman D. Ruby adjourned at 11:25AM.

Mary Brucker, Committee Clerk

JK
2-3-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1506

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 39-10.1 of the North Dakota Century Code, relating to bicycling under the influence of alcohol or drugs;"

Page 1, line 1, after "39-07-01" insert "and subsection 1 of section 39-10.1-01"

Page 1, line 2, after "vehicle" insert "; and to provide penalty"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 39-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. AnyExcept as provided in section 3 of this Act, a person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.

SECTION 3. A new section to chapter 39-10.1 of the North Dakota Century Code is created and enacted as follows:

Bicyclists under the influence of alcohol or drugs - Penalty.

An individual operating a bicycle on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public. An individual who violates this section must be assessed a fee of twenty dollars."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1506: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1506 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 39-10.1 of the North Dakota Century Code, relating to bicycling under the influence of alcohol or drugs;"

Page 1, line 1, after "39-07-01" insert "and subsection 1 of section 39-10.1-01"

Page 1, line 2, after "vehicle" insert "; and to provide penalty"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 39-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. ~~Any~~Except as provided in section 3 of this Act, a person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.

SECTION 3. A new section to chapter 39-10.1 of the North Dakota Century Code is created and enacted as follows:

Bicyclists under the influence of alcohol or drugs - Penalty.

An individual operating a bicycle on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public. An individual who violates this section must be assessed a fee of twenty dollars."

Renumber accordingly

2023 SENATE TRANSPORTATION

HB 1506

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1506
3/3/2023

Relating to bicycling under the influence of alcohol or drugs, relating to a bicycle and a ridden animal being deemed a vehicle; and to provide a penalty.
--

9:43 AM Chairman Clemens opens hearing.

Senators present: **Clemens, Conley, Larsen, Rummel, Paulsen.**

Discussion Topics:

- Bicycle definition
- Current law
- DUI fee
- UI definition

9:44 AM Representative Roers Jones introduced bill. #21878

9:56 AM Representative Mock, answered question.

9:59 AM Jesse Walstad, ND Association of Criminal Defense Lawyers, testified in favor. #21869

10:24 AM Wade Kadrmas, Safety and Education officer for the North Dakota Highway Patrol, testified neutral. #21839

10:35 AM Justin Kristan, Founder and Executive Director of Bike Walk North Dakota, testified neutral. #21771

10:44 AM Chairman Clemens adjourns hearing.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1506
3/9/2023

Relating to bicycling under the influence of alcohol or drugs, relating to a bicycle and a ridden animal being deemed a vehicle; and to provide a penalty.
--

9:58 AM Chairman Clemens opened hearing.

Senators present: **Clemens, Conley, Larsen, Rummel, Paulsen.**

Discussion Topics:

- Fine pricing
- Ridden animals
- Electric bicycles

Chairman Clemens reviewed the bill.

10:06 AM Chairman Clemens adjourned hearing.

Nathan Liesen, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

HB 1506
3/23/2023

Relating to bicycling under the influence of alcohol or drugs, relating to a bicycle and a ridden animal being deemed a vehicle; and to provide a penalty.

10:28 AM Chairman Clemens opened the meeting.

Senators present: **Clemens, Conley, Larsen, Rummel, Paulson.**

Discussion Topics:

- Amendment
- Committee action

10:28 AM Senator D. Larsen moved to adopt Amendment. "page 2 line 2 changing the amount of the fee from 20 dollars to 200."

10:52 AM Senator Conley seconded.

Roll call vote

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Passed 5-0-0

10:56 AM Senator Larsen moved to Reconsider.

10:56 AM Senator Conley seconded.

Roll call vote

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Passed 5-0-0

10:57 AM Senator Larsen moved to Further Amend. LC 23.0165.02004 #26457

10:57 AM Senator Paulson seconded.

Roll call vote

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Passed 5-0-0

10:59 AM Senator Larsen moved Do Pass as Amended.

10:59 AM Senator Conley seconded.

Roll call vote

Senators	Vote
Senator David A. Clemens	Y
Senator Cole Conley	Y
Senator Doug Larsen	Y
Senator Bob Paulson	Y
Senator Dean Rummel	Y

Passed 5-0-0

Senator Paulson will carry the bill.

11:00 AM Chairman Clemens closed the meeting.

Nathan Liesen, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1506

Page 1, line 2, after "bicycling" insert "or riding an animal while"

Page 1, line 22, replace "**Bicyclists**" with "**Bicycling or riding an animal while**"

Page 1, line 23, after "bicycle" insert "or riding an animal"

Page 2, line 2, replace "twenty" with "two hundred"

Renumber accordingly

JA
3-23-23

REPORT OF STANDING COMMITTEE

HB 1506, as engrossed: Transportation Committee (Sen. Clemens, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1506 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 2, after "bicycling" insert "or riding an animal while"

Page 1, line 22, replace "**Bicyclists**" with "**Bicycling or riding an animal while**"

Page 1, line 23, after "bicycle" insert "or riding an animal"

Page 2, line 2, replace "twenty" with "two hundred"

Renumber accordingly

TESTIMONY

HB 1506

Phone: 701.237.6983
218 NP Avenue | PO Box 1389
Fargo, ND 58107-1389
lheck@vogellaw.com

January 30, 2023

VIA ELECTRONIC SUBMISSION ONLY

The Honorable Dan Ruby
Chair, ND House Transportation Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Testimony in Support of HB 1506.

Dear Chairman Ruby and members of the House Transportation Committee:

My name is Luke Heck, and I am a criminal defense attorney in Fargo, ND, and other than during law school, a lifelong North Dakotan. I submit this written testimony in full support to HB1506. Over the course of my defense practice, I've represented two to three individuals charged with DUI on a bicycle, with one going to trial and resulting in an acquittal by the jury. In short, HB1506 is a long overdue amendment to the archaic language currently outlined under N.D.C.C. § 39-07-01.

As currently constructed, N.D.C.C. § 39-07-01 requires bicycles and ridden animals be deemed vehicles for the purposes of N.D.C.C. §§ 39-08 through 39-13. This current construction creates significant practical absurdities based on the rest of the title. For instance, the term "vehicle," as defined under N.D.C.C. § 39-01-01(2)(a)(103), expressly excludes an "electric bicycle." Moreover, N.D.C.C. § 39-01-01(2)(a)(3) defines "bicycle" as "every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel." In other words, N.D.C.C. § 39-07-01 currently prohibits DUI on a bicycle, but otherwise allows driving under the influence on an electric bicycle, or non-electric (or electric) bicycle with training wheels. HB1506 addresses the absurdities with the state of this law.

Further, HB1506 addresses the true public policy purpose of preventing drunk driving. As one juror after my sole bicycle DUI trial put it, "I thought the whole point of the ads was to put your keys in the fishbowl and get home safely, like on a bike." DUI laws are designed to penalize those who get behind the wheel of a motor vehicle impaired. Currently, N.D.C.C. § 39-07-01 fails to recognize that, and instead seeks to prosecute and penalize those who are opting to take significantly safer way home. Moreover, while administratively the NDDOT does not suspend or revoke for bicycle or ridden animal DUI allegations administratively, a criminal conviction would result in the NDDOT being notified, and action likely taken on, for instance, a bicyclists North Dakota motor vehicle driving privileges. Such a consequence is inconsistent with both North Dakota law and public policy.

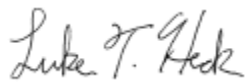
January 30, 2023

Page 2

Finally, if concerns arise regarding consequences for individuals in circumstances, for example, where a bicyclist damages another individual's property or motor vehicle, there are already protections in place to prosecute individuals for such damage. For instance, our state's criminal mischief laws would apply and could be utilized to prosecute a bicyclist in such a scenario under N.D.C.C. § 12.1-21-05, among other statutes. Put simply, revising the archaic language of N.D.C.C. § 39-07-01 is not a means for drunken bicyclists or equestrians to skirt responsibility for their actions. Instead, HB1506 is addressing the practical issues and absurdities in the current state of our law.

I respectfully ask this Committee to recommend a "do pass" of HB1506. Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Luke T. Heck".

Luke T. Heck

LTH:lh

23.1065.01001
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
January 30, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1506

Page 1, line 6, after "**deemed**" insert "**a**"

Page 1, line 7, remove the overstrike over "~~Før~~"

Page 1, line 8, remove "1. Except as provided in subsection 2, for"

Page 1, line 8, overstrike "the purposes of" and insert immediately thereafter "noncriminal traffic offenses specified in"

Page 1, remove lines 10 and 11

Renumber accordingly

23.1065.01001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1506

Introduced by

Representatives Roers Jones, Frelich, Mock, Motschenbacher, D. Ruby, Wagner
Senators Barta, Myrdal

1 A BILL for an Act to amend and reenact section 39-07-01 of the North Dakota Century Code,
2 relating to a bicycle and a ridden animal being deemed a vehicle.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 39-07-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **39-07-01. Bicycle or ridden animal to be deemed a vehicle.**

7 **For**

8 ~~1. Except as provided in subsection 2, for the purposes of noncriminal traffic offenses~~
9 specified in chapters 39-08 through 39-13, a bicycle or a ridden animal must be
10 deemed a vehicle.

11 ~~2. For purposes of section 39-08-01, a bicycle or ridden animal may not be deemed a~~
12 ~~vehicle.~~

Criminal Violations from Chapters 39-08 through 39-13

The chart below lists all criminal violations from Chapter 39-08 through Chapter 39-13. I have listed all offenses, including those arguably only applicable to a “motor vehicle.” I have also included the penalty provision. Finally, I have identified potential counterpart criminal statutes which would allow a prosecutor to prosecute the conduct at issue under the criminal code.

Violation	Statute	Applicable	Penalty	Alternative Criminal Offenses
DUI or APC	39-08-01	Yes	B misdemeanor through C felony	Reckless Endangerment, N.D.C.C. § 12.1-17-03 ¹
Criminal Vehicular Homicide or Injury	39-08-01.2	Yes	C felony or A felony (mandatory prison of 1, 3 or 10 years)	Reckless Endangerment; Assault ² ; Aggravated Assault; ³ Manslaughter; ⁴ Negligent Homicide ⁵

¹ “A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.”

² Under N.D.C.C. § 12.1-17-01.1, “A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person” willfully causes substantial bodily injury to another human being.

³ Under N.D.C.C. § 12.1-17-02, it a class C felony to “willfully cause serious bodily injury” to another human being.

⁴ Under N.D.C.C. § 12.1-16-02, “A person is guilty of manslaughter, a class B felony, if he recklessly causes the death of another human being.”

⁵ Under N.D.C.C. § 12.1-16-03, “A person is guilty of a class C felony if he negligently causes the death of another human being.”

DUI or APC While Accompanied by a Minor	39-08-01.4	No (applies to “motor vehicle”)	A misdemeanor or C felony	Reckless Endangerment; Deprivation of a minor; ⁶ Neglect of a child; ⁷
Person conveying passengers not to engage drivers addicted to intoxicants	39-08-02	Yes	Infraction	
Reckless Driving	39-08-03	Yes	B misdemeanor or A misdemeanor	Reckless endangerment
Accidents involving death or personal injury	39-08-04	Yes	A misdemeanor, B misdemeanor, or C felony	Criminal mischief ⁸
Accidents involving damage to vehicle	39-08-05	Yes	B misdemeanor	Criminal mischief
Duty upon striking unattended vehicle	39-08-07	Yes	A misdemeanor	Criminal mischief
Duty upon striking highway fixtures or property	39-08-08	Yes	Infraction	Criminal mischief
Penalty for harassment of domestic animals	39-08-19	No (applies to “motor vehicles”)	B misdemeanor	N/A
Driving without liability insurance	39-08-20	No (applies to “motor vehicles”)	B misdemeanor	N/A
Operation of motor vehicle, tractor, or	39-10-65	Yes	B misdemeanor	

⁶ N.D.C.C. § 14-10-06 (1) provides: “Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.”

⁷ N.D.C.C. § 14-09-22.1 provides that a parent, guardian, or custodian who fails to provide proper parental control or care necessary for the child’s physical, mental, or emotional health or morals is guilty of an offense.

⁸ N.D.C.C. § 12.1-21-05 provides it is an offense to willfully damage tangible property of another. “Willfully” includes intentional, knowing, or reckless conduct. N.D.C.C. § 12.1-02-02(1)(e).

other vehicle prohibited on flood protective works				
Fleeing or attempting to elude a peace officer	39-10-71	No (applies to “motor vehicles”)	B misdemeanor	Refusing to halt ⁹
Assault while fleeing ¹⁰	12.1-17-12	Yes	A felony	

⁹ N.D.C.C. § 12.1-08-11 provides: “Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of” an offense.

¹⁰ It is a class A or class B felony to negligently cause death or injury to a police officer “while in violation of section 39-10-71.”

HB 1506 – Bicycle DUI
House Transportation
February 2, 2023
Rep. Shannon Roers Jones

Committee I'm going to give you the opportunity to choose your own adventure today. I'm going to present the original bill, and then an amendment, plus the rationale for each and then you can pick the approach you think works best.

First a little background. The bill as submitted was drafted by Rep. Mock as part of his work in developing the peddle-pub legislation you heard recently. As he was working through the process we were talking about the bill that I submitted, and passed through the house in 2019, which is the amendment you have before you. Rep. Mock suggested that since I had already worked this bill through the house once before that I should take another shot at it.

The original bill would solve the most glaring issue. Currently the law defines a bicycle or a ridden animal as a vehicle. The current bill would not allowing that definition to be used to cite someone with driving under the influence. Which is very important. It certainly isn't good policy to be able to suspend a person's driver's license for riding a bike or a horse under the influence when they don't need a driver's license to ride one sober.

However, the bill as submitted leaves several other oddities unresolved. My belief is that moving forward the amended bill will resolve several other incongruencies that exist in law.

North Dakota law provides a bicycle or ridden animal is deemed a "vehicle" for purposes of Chapters 39-08 through 39-13. The amended bill will only allow a bicycle or ridden animal to be defined as a vehicle for "noncriminal" traffic offenses in those chapters.

"Vehicle" and "motor vehicle" have distinct definitions under the code. Certain traffic regulations govern operation of all vehicles, while others govern only motor vehicles. North Dakota law prohibits driving or being in actual physical control of a "vehicle." Interestingly, by definition, "vehicle" "does not include an electric bicycle." So a person can be convicted of DUI for riding a bicycle while impaired, but not if the bicycle is also equipped with an electric motor. Moreover, as defined, a bicycle is a device powered solely by human power with two wheels. So a bicyclist who affixes training wheels, or a person riding a tricycle, is arguably beyond the reach of the DUI statute.

These anomalies, along with sufficient alternatives to prosecute crimes under the criminal code, warrant consideration of eliminating criminal violations from the definition of "vehicle."

I have handed out a chart that lists all criminal violations from Chapter 39-08 through Chapter 39-13. I have listed all offenses, including those arguably only applicable to a "motor vehicle." I have also included the penalty provision. Finally, I have identified potential counterpart criminal

statutes which would allow a prosecutor to prosecute the conduct at issue under the criminal code.

Other than two obscure offenses (driving on a flood protective work and employing drivers addicted to intoxicants), every criminal traffic offense committed by the operator of a bicycle or ridden animal which is punishable under the traffic code, is punishable under counterpart statutes contained in the criminal code.

Overall when you try to apply these criminal codes to a person on a bicycle or a horse you end up with a host of absurdities. In the rare instance where a bicyclist or horse rider is actually causing trouble there are other sections of law available to deal with those crimes.

Committee, if you pass the bill as originally drafted, you will solve the most significant issue of a bicycle or a horse being defined as a vehicle for driving under the influence or actual physical control, but if you choose to pass the amendments you will also resolve the remainder of the crimes on the list that you could be charged if a bicycle or horse continue to be defined as a vehicle. While I recommend passing the amended version of the bill, the choice is up to you!

February 1, 2023

Testimony to the **House Transportation Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B 1506**

Chairmen and Members of the House Transportation Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1506** and recommends a **DO PASS** from the House Transportation Committee.

Currently, N.D.C.C. § 39-07-01 incorporates pedal bicycles and ridden animals into the definition of vehicles for the purposes of Sections 39-08 through 39-13. As you know, Title 39 governs the safe and efficient operation of vehicles on our public roadways. So, at first blush, it makes sense that bicyclists and equestrians traveling on public roadways should obey the rules of the road contained in that body of law. However, that body of law also contains the DUI statute, Section 39-08-01, which states, “[a] person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if” they are under the influence. As a result, a person operating a bicycle or riding a horse after consuming alcohol will be charged and likely convicted of DUI in the state of North Dakota. I suspect that was not the intent when the Legislature made the rules of the road applicable to bicyclists and equestrians, but that has been the practical effect.

But it becomes even more confusing when you consider that under N.D.C.C. § 39-01-01(2)(a)(103), the definition of a “vehicle” specifically excludes electric bicycles, thereby excluding electric bicycles from the DUI law. In that same statute a bicycle is defined as “every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel.” *See* N.D.C.C. § 39-01-01(2)(a)(3). The consequence of this labyrinth of definitions is that in North Dakota it is a criminal offense to ride a two wheeled bicycle after consuming alcohol, so long as it is manually powered. A tricycle would be fine, and an electric bike would be ok, but a pedal bike lacking training wheels would be a crime. But there is a further layer of absurdity. If convicted of DUI for operating a bike or a horse, a record of conviction would be sent to the NDDOT resulting in a Motor Vehicle licenses suspension – despite the fact that no motor vehicle was involved. The DUI would become part of the driver’s abstract, relied upon by insurance companies to require high risk insurance at substantially elevated premiums. Similarly, if the person also had a CDL, necessary to their employment, they would be disqualified from holding the license and likely terminated from their job. All this despite the fact that the operator may have been purposefully avoiding operation of a motor vehicle, relying on their commonsense belief that it would safer and logically legal to drive their bike home. H.B. 1506 seeks to alleviate our statutory scheme of this present absurdity.

Aside from the fact that the current conflicting definitions produce an absurd result, there is a legitimate policy question surrounding whether it would be just to criminally punish this conduct. DUI laws are designed to penalize those who get behind the wheel of a motor vehicle while impaired. The societal harm caused each year by the unlawful operation of motor vehicles while intoxicated has been examined, documented, and quantified. There is no denying the legitimate interest our government has in discouraging it. But what evidence do we have to suggest that operating a bicycle or riding a horse produces demonstrable harm to society worthy of criminal and administrative punishment? In a drunk driving auto accident, there is often substantial property damage and injury. Fatalities are not uncommon. The data is readily available. The highway patrol could tell you with precision how many accidents, injuries, and fatalities were caused in North Dakota by drunk motorists in any given day, month, or year. But I am unaware of any study or data that would

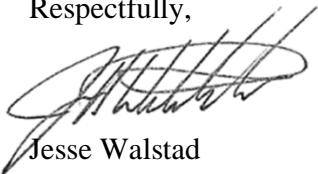
suggest operation of bicycle or a horse while intoxicated results in measurable societal harm in North Dakota. Loss of life, injury to others, substantial property damage, all the societal ills the implied consent law is designed to punish and prevent are absent in the context of operation of a bicycle after consuming alcohol.

One could speculate that a person may crash a bike resulting in injury to themselves, most likely nonlife threatening, or minimal damage to the property of another. But to the extent minor property damage were to result, the law provides abundant civil remedies to restore the moderately harmed property owner. The criminal law, in the form of criminal mischief under N.D.C.C. § 12.1-21-05 could also be used to punish and discourage intoxicated bicycle operation at the same B misdemeanor level of a DUI without the incongruent consequences of drivers license suspensions or high-risk insurance.

Beyond the lack of demonstrable societal harm, and the alternative remedies already in place, there is also a noteworthy policy incongruence in discouraging individuals from driving a car drunk while simultaneously punishing them for rationally choosing a low-risk alternative transportation in the form of a bike. Countless public policy advertisements, state and federal, compellingly deter drunk driving – as they should. When we watch the Super Bowl in a couple weeks, we will see commercials of grim scenes of car accidents, DUI stops, and ambulances. But I am unaware of any public ad campaign extolling the dangers of driving a bike intoxicated. Indeed, some may offer it as a safe alternative transportation. Certainly, a reasoning person could logically conclude that it would be both safer and law abiding to ride their bike home, rather than drive a car. What sense would it make to criminally punish the well-intentioned citizen choosing the low-risk alternative if what we want is to keep drunk motorists off the road to protect the public.

If adopted, H.B. 1506 would take necessary steps towards ending this absurd maze of conflicting definitions. The bill would ensure that bicyclists and equestrians would still be required to abide the rules of the road, but would specifically exclude the criminal DUI sanctions contained under N.D.C.C. § 39-08-01. In doing so it would eliminate statutory mixed messaging and bring the law into harmony with public policy. For the aforementioned reasons, the NDACDL strongly urges a **DO PASS** on H.B 1506.

Respectfully,



Jesse Walstad



68th Legislative Assembly
Testimony in **Opposition** of
House Bill No. 1506
House Transportation Committee
February 2, 2023

TESTIMONY OF

Sergeant Wade Kadrmas, Safety and Education Officer

Good afternoon, Chairman Ruby and members of the committee. My name is Wade Kadrmas, and I serve as the safety and education officer for the North Dakota Highway Patrol. I am here to provide testimony in opposition to House Bill 1506.

This bill amends North Dakota Century Code (NDCC) 39-07-01 by removing a bicycle and a ridden animal from being deemed a vehicle and, therefore, excludes those modes of transportation from being subject to NDCC 39-08-01, driving under the influence.

House Bill 1506 would erode our state's impaired driving laws and foster a culture that is accepting of impaired driving. By not considering bicycles and ridden animals as vehicles for the purpose of enforcing 39-08-01, there could be inadvertent consequences.

For example, in 2018 the highway patrol responded to a call of a bicycle operator causing a traffic hazard on Interstate 94 in the Fargo area on a busy summer afternoon. Thankfully, one of our officers arrived on scene and was able to prevent a tragedy from occurring. The bicycle operator had a blood alcohol concentration (BAC) of 0.26% and was arrested for DUI. Although this intoxicated individual was arrested for committing a violation of state law, it did not come without a price. As a result of this person's behavior, a crash resulted from other motorists slowing down and stopping to avoid hitting the bicycle operator. Although this event resulted in an arrest and a minor crash, not all impaired bicyclists are so lucky.

Again in 2018, our agency responded to a report of an injury crash north of Fargo. A female was riding her bicycle on the shoulder of a county road during peak travel time. She attempted to cross the roadway without looking behind her and was struck by an SUV. One of our troopers arrived on scene within a few minutes of the call, just in time to see the failed attempts by the paramedics to save her life. Our officer immediately began to assess the crash scene and document all pertinent facts. After learning that the deceased female lived only a few houses away from the crash, a state trooper delivered the death notification to her husband and her adult sons. It was later learned that her BAC was 0.10%.

These two examples illustrate the hazards created by riding a bicycle while impaired, and it is highly likely that similar incidents would increase if this bill were to pass because riding a bicycle impaired would no longer be a violation.

To further complicate matters, an "electric bicycle" or e-bike is still considered a "bicycle," and, therefore, would not be subject to 39-08-01 if this bill were to pass.

There are three classes of electric bicycles in North Dakota. A class 3 electric bicycle allows for a maximum speed of 28 miles per hour before the motor ceases to provide additional power. With further modifications, it is hard to tell how fast an electric bicycle may be able to travel. Placing this electric bicycle on a walking path, sidewalk, or roadway under the control of an intoxicated operator could certainly have devastating consequences.

According to NDCC 39-10-33.4, "A pedestrian who is under the influence of alcohol or any drug to a degree which renders the pedestrian a hazard may not walk or be upon a roadway." If creating a hazard while walking on a roadway intoxicated is unlawful, why would riding a bicycle upon a roadway while intoxicated be acceptable?

According to NDCC 39-10.1-02, "Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this title..." This is important to point out because bicycles have the same rights on the roadways as do motor vehicles, and therefore, there are laws in place to govern the safe operation of those bicycle operators.

A similar bill to this was introduced during the 2019 legislative session. I reviewed some past video and would like to address a few questions that were raised during the Senate floor debate.

- ***Can you be arrested for a DUI while walking alongside your bicycle and pushing it down the street while intoxicated?***
 - As NDCC 39-08-01 states, "A person may not drive or be in actual physical control of any vehicle..." Therefore, an argument could be made that you are technically in actual physical control of the bicycle and could subsequently be arrested for DUI.
 - I have never heard of an officer arresting anyone for this, but to alleviate that fear, an amendment could be made to the current language of NDCC 39-07-01 by stating, "For the purposes of chapters 39-08 through 39-13, a ridden bicycle or a ridden animal must be deemed a vehicle."
- ***Can you be arrested for DUI while walking alongside a horse holding the reins while intoxicated?***
 - No, this person would not be subject to a DUI since the horse is not "ridden."
- ***Are there other options for criminal charges for riding a bicycle or animal on a roadway while intoxicated?***
 - It had been suggested that NDCC 39-10-33.4, pedestrian under the influence of alcohol or drugs, would be applicable. However, a "pedestrian" is defined in century code as any person afoot. Thus, the act of riding a bicycle or riding an animal would not apply, and the use of this century code would not be applicable.
- ***Can you be charged with DUI for riding a bicycle or a horse while intoxicated on your own private property?***
 - No, according to NDCC 39-08-01, "A person may not drive... any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use..." A DUI would not be applicable on private land where the public does not have a right of access for vehicular use.

Alcohol and drug-related crashes are 100% preventable, yet 203 people have died in alcohol-related crashes in North Dakota over the past five years. Driving under the influence of alcohol or drugs is a dangerous behavior that law enforcement and many other Vision Zero partners are working to prevent.

Personal responsibility is a critical element in eliminating impaired driving crashes, and this bill would send the wrong message by allowing individuals to operate a bicycle while intoxicated. A bicycle is a faster form of transportation compared to walking, and bicycles would likely rise in popularity as a violation-free alternative while intoxicated.

This concludes my testimony. I am happy to answer any questions you may have.

Neutral Testimony for House Bill 1506

Mr. Chair and members of the House Transportation Committee thank you for allowing me to share neutral testimony for House Bill 1506.

My name is Justin Kristan, I am the Executive Director of Bike Walk North Dakota (formerly the North Dakota Active Transportation Alliance), North Dakota's statewide advocacy organization for bicycling and walking.

The board of directors for Bike Walk North Dakota was not sure whether to support this bill or not thus a neutral stance on this bill. It is the belief of Bike Walk North Dakota that doing anything while in an intoxicated state is not a good idea. The outcomes from using a hammer, a vacuum, or even walking while intoxicated (depending on the extent of intoxication) can end badly for the intoxicated person and those around them. With that said, being intoxicated while operating a bicycle or a horse instead of an automobile may, and I emphasize may, provide a less damaging outcome. Doing anything while intoxicated is simply not a good idea.

The intention of this bill appears to seek to reduce injury and death by allowing a person to opt to use a bicycle or horse if they plan to drink alcoholic beverages for an evening etc. Can a drunken bicyclist or equestrian cause a damaging or fatal crash? Certainly. What are the odds of this happening versus operating a motor vehicle while intoxicated? Statistics may help bear this out.

Bike Walk North Dakota trusts that the House Transportation Committee will scrutinize this bill and make the right decision for North Dakotans and its visitors. First and foremost, North Dakota roadways should be as safe as possible for all roadway users.

Thank you for allowing me the opportunity to provide neutral testimony for House Bill 1506.

Respectfully,

Justin Kristan

Executive Director,

Bike Walk North Dakota

Section 1 is HB 1506 with amendment 23.1065.01001a

SECTION 1. AMENDMENT. Section 39-07-01 of the North Dakota Century Code is amended and reenacted as follows:

39-07-01. Bicycle or ridden animal to be deemed vehicle.

~~For~~

1. Except as provided in subsection 2, for the purposes of chapters 39-08 through 39-13, a bicycle or a ridden animal must be deemed a vehicle.

2. For purposes of section 39-08-01, a bicycle or ridden animal may not be deemed a vehicle.

SECTION 2. AMENDMENT. 39-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. Except as provided in Section 3 of this Act, aAny person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.

SECTION 3. A new section to chapter 39-10.1 of the North Dakota Century Code is created and enacted as follows:

Bicyclists under the influence of alcohol or drugs.

An individual operating a bicycle on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public.

23.1065.01002
Title.02000

Adopted by the House Transportation
Committee

February 3, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1506

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 39-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to do any act forbidden or fail to perform any act required in this chapter. Any ~~Except as provided in Section 3 of this Act,~~ a person who violates any of the provisions of this chapter may be assessed a fee not to exceed five dollars.

SECTION 3. A new section to chapter 39-10.1 of the North Dakota Century Code is created and enacted as follows:

Bicyclists under the influence of alcohol or drugs.

An individual operating a bicycle on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public."

Renumber accordingly

Neutral Testimony for House Bill 1506

Mr. Chair and members of the Senate Transportation Committee thank you for allowing me to share neutral testimony for House Bill 1506.

My name is Justin Kristan, I am the Founder and Executive Director of Bike Walk North Dakota (formerly the North Dakota Active Transportation Alliance), North Dakota's statewide advocacy organization for bicycling and walking. First and foremost, North Dakota roadways should be as safe as possible for all roadway users.

The board of directors for Bike Walk North Dakota did not come to consensus on supporting or opposing this bill. It is the belief of Bike Walk North Dakota that doing anything while in an intoxicated state is not a good idea. The outcomes from using a hammer, a vacuum, or even walking while intoxicated (depending on the extent of intoxication) can end badly for the intoxicated person and those around them. With that said, being intoxicated while operating a bicycle or a horse instead of an automobile may, and I emphasize may, provide a less damaging outcome. Doing anything while intoxicated is simply not a good idea.

The intention of this bill appears to seek to reduce injury and death by allowing a person to opt to use a bicycle, horse or other rideable animal if they plan to drink alcoholic beverages for an evening etc. Can a drunken bicyclist or equestrian cause a damaging or fatal crash? Certainly. What are the odds of this happening versus operating a motor vehicle while intoxicated? I'm unaware of any statistics that speak to these odds. Common sense speaks volumes. Best not to drink and drive anything.

Bike Walk North Dakota trusts that the Senate Transportation Committee will scrutinize this bill and make the right decision for North Dakotans and its visitors.

Thank you for allowing me the opportunity to provide neutral testimony for House Bill 1506.

Respectfully,

Justin Kristan

Executive Director,

Bike Walk North Dakota



68th Legislative Assembly
Testimony in **Neutral** of
House Bill No. 1506
Senate Transportation Committee
March 3, 2023

TESTIMONY OF

Sergeant Wade Kadrmas, Safety and Education Officer

Good afternoon, Chairman Clemens and members of the Senate Transportation Committee. My name is Wade Kadrmas, and I serve as the Safety and Education officer for the North Dakota Highway Patrol. I am here to provide neutral testimony on House Bill 1506.

I want to start out by thanking the bill sponsors for taking into consideration the initial concerns the patrol expressed regarding this bill. We appreciate the bill being limited to only exempting bicycles and ridden animals from North Dakota Century Code (NDCC) 39-08-01 instead of all the other sections listed under NDCC 39-07-01.

The new section created in 39-10.1 is the proper location to address an individual operating a bicycle on a roadway, or an area the public has access to, while the bicycle rider is under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public. The patrol would like the committee to look at increasing the deterrent to something greater than twenty dollars. The current penalty for riding a bicycle under the influence is a class B misdemeanor. A twenty dollar fine doesn't adequately address the dangers a bicycle rider, who is under the influence of alcohol or drugs, can create on our roads or in public areas.

According to NDCC 39-10.1-02, "Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this title..." This is important to point out because bicycles have the same rights on the roadways as do motor vehicles, and therefore, there are laws in place to govern the safe operation of those bicycle operators. Bicycle riders should not face a driver's license suspension if they are arrested and convicted of riding a bicycle while intoxicated, but they should face a more serious penalty than a twenty dollar fine.

For example, in 2018 the highway patrol responded to a call of a bicycle operator causing a traffic hazard on Interstate 94 in the Fargo area on a busy summer afternoon. Thankfully, one of our officers arrived on scene and was able to prevent a tragedy from occurring. The bicycle operator had a blood alcohol concentration (BAC) of 0.26% and was arrested for DUI. Although this intoxicated individual was arrested for committing a violation of state law, it did not come without a price. As a result of this person's behavior, a crash resulted from other motorists slowing down and stopping to avoid hitting the bicycle operator. Although this event resulted in an arrest and a minor crash, not all impaired bicyclists are so lucky.

Again in 2018, our agency responded to a report of an injury crash north of Fargo. A female was

riding her bicycle on the shoulder of a county road during peak travel time. She attempted to cross the roadway without looking behind her and was struck by an SUV. One of our troopers arrived on scene within a few minutes of the call, just in time to see the failed attempts by the paramedics to save her life. After learning that the deceased female lived only a few houses away from the crash, a state trooper delivered the death notification to her husband and her adult sons. It was later learned that her BAC was 0.10%. These two examples illustrate the hazards created by riding a bicycle while impaired.

To further complicate matters, an "electric bicycle" or e-bike is considered a "bicycle" but, not a "vehicle" according to the definitions under NDCC 39-09-01. There are three classes of electric bicycles defined under subsection nineteen of section 39-01-01 of the North Dakota Century Code. Paragraph (c) of that subsection defines a class 3 electric bicycle, which allows for a maximum speed of 28 miles per hour before the motor ceases to provide additional power. With further modifications, it is hard to tell how fast an electric bicycle may be able to travel. Allowing the rider of an e-bike to be under the influence of alcohol or drugs while on a walking path, sidewalk, or roadway could have devastating consequences considering they can travel just as fast as traffic in a 25 mph zone.

At the end of my testimony is a proposed amendment the patrol would like the committee to consider. The amendment would remove this sentence, "The term does not include an electric bicycle.", from the definition of a vehicle under subsection 103 of section 39-01-01 of the North Dakota Century Code. Section one of HB 1506 is meant to exempt bicycle riders from being arrested and charged with a DUI according to NDCC 39-07-01. If you look at line eleven on page one of the bill it states that "for the purposes of chapters 39-08 through 39-13, a bicycle or ridden animal must be deemed a vehicle.". Also, as I mentioned before, NDCC 39-10.1-02, grants bicycle riders all the rights and subjects them to all of the duties applicable to the driver of a vehicle under Title 39 of the NDCC. Bicycles are considered vehicles in other parts of century code and having this statement at the end of the definition of a "vehicle" causes confusion. I could not find any reason this sentence needs to be at the end of the definition of a "vehicle".

Alcohol and drug-related crashes are 100% preventable, yet 203 people have died in alcohol-related crashes in North Dakota over the past five years. Driving under the influence of alcohol or drugs is a dangerous behavior that law enforcement and many other Vision Zero partners are working to prevent. Allowing bicycle riders, the ability to use public roadways while under the influence of alcohol or drugs is a recipe for disaster, especially when they create a hazard.

Personal responsibility is a critical element in eliminating impaired driving crashes, whether the person is driving a motor vehicle or riding a bicycle, the responsibility falls on the operator of that vehicle to ensure they are in the proper condition to safely operate that vehicle.

This concludes my testimony. I am happy to answer any questions you may have.

PROPOSED AMENDMENT TO House Bill No. 1506

Page 1, after line 6 add "**Section 1. AMENDMENT.** Subsection 103 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

103. "Vehicle" includes every device in, upon or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. ~~The term does not include an electric bicycle.~~

Page 1, line 7, after "**SECTION**" replace "**1**" with "**2**"

Page 1, line 15, after "**SECTION**" replace "**2**" with "**3**"

Page 1, line 20, after "**SECTION**" replace "**3**" with "**4**"

39-07-01. Bicycle or ridden animal to be deemed vehicle.

For the purposes of chapters 39-08 through 39-13, a bicycle or a ridden animal must be deemed a vehicle.

39-01-01. Definitions.

In this title, unless the context or subject matter otherwise requires:

3. "Bicycle" means every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel. The term includes an electric bicycle.

19. "Electric bicycle" means a bicycle equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of seven hundred fifty or fewer watts which meets the requirements of one of the following three classes:

a. A class 1 electric bicycle if the motor provides assistance only when the individual is pedaling and the motor ceases to provide assistance when a speed of twenty miles [32 kilometers] per hour is achieved.

b. A class 2 electric bicycle if the motor is capable of propelling the bicycle without the individual pedaling and the motor ceases to provide assistance when a speed of twenty miles [32 kilometers] per hour is achieved.

c. A class 3 electric bicycle if the motor provides assistance only when the individual is pedaling and the motor ceases to provide assistance when a speed of twenty-eight miles [45 kilometers] per hour is achieved.

103. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks. The term does not include an electric bicycle.

39-07-01. Bicycle or ridden animal to be deemed vehicle.

For the purposes of chapters 39-08 through 39-13, a bicycle or a ridden animal must be deemed a vehicle.

39-10.1-02. Traffic laws apply to persons riding bicycles.

Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this title, except as to special regulations in this title and except as to those provisions of this title which by their nature can have no application.

March 2, 2023

Testimony to the **Senate Transportation Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Support of H.B 1506**

Chairmen and Members of the Senate Transportation Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **supports H.B. 1506** in its current form and recommends a **DO PASS** from the Senate Transportation Committee.

First, I would like to thank Representatives Shannon Roers-Jones and Corey Mock, and the other sponsors of this bill who have put a lot of work into crafting and refining this piece of common-sense legislation. In particular, I would like to thank and recognize Sgt. Wade Kadrmas from the State Highway Patrol for his effort in refining this bill, his valuable insight has been a tremendous help.

Before digging into the bill, let’s look at the state of the law. Currently, N.D.C.C. § 39-07-01 incorporates pedal bicycles and ridden animals into the definition of vehicles for the purposes of Sections 39-08 through 39-13. As you know, Title 39 governs the safe and efficient operation of vehicles on our public roadways. So, at first blush, it makes sense that bicyclists and equestrians traveling on public roadways should obey the rules of the road contained in that body of law. However, that body of law also contains the DUI statute, Section 39-08-01, which states, “[a] person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if” they are under the influence. As a result, a person operating a bicycle or riding a horse after consuming alcohol will be charged and likely convicted of DUI in the state of North Dakota. Because it results in a DUI conviction, under the same statute that regulates motor vehicles, a conviction for operating a bicycle or a horse under the influence carries a collateral consequence of driver’s licenses suspension. I suspect that was not the intent when the Legislature made the rules of the road applicable to bicyclists and equestrians, but that has been the practical effect.

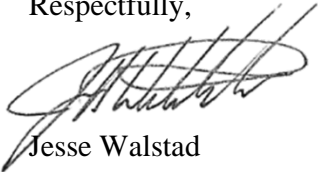
In that same statute a bicycle is defined as “every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel.” See N.D.C.C. § 39-01-01(2)(a)(3). The consequence of this labyrinth of definitions is that in North Dakota it is a criminal offense to ride a two wheeled bicycle after consuming alcohol, so long as it is manually powered. A tricycle would be fine, and an electric bike would be ok, but a pedal bike lacking training wheels would be a crime. But there is a further layer of absurdity. If convicted of DUI for operating a bike or a horse, a record of conviction would be sent to the NDDOT resulting in a Motor Vehicle licenses suspension – despite the fact that no motor vehicle was involved. The DUI would become part of the driver’s abstract, relied upon by insurance companies to require high risk insurance at substantially elevated premiums. Similarly, if the person also had a CDL, necessary to their employment, they would be disqualified from holding the license and likely terminated from their job. All this despite the fact that the operator may have been purposefully avoiding operation of a motor vehicle, relying on their commonsense belief that it would safer and logically legal to drive their bike home. H.B. 1506 seeks to alleviate our statutory scheme of this present absurdity.

Aside from the fact that the current conflicting definitions produce an absurd result, there is a legitimate policy question surrounding whether it would be just to criminally punish this conduct. H.B. 1506 seeks to bring the law and policy into harmony. DUI laws are designed to penalize those who get behind the wheel of

a motor vehicle while impaired. The societal harm caused each year by the unlawful operation of motor vehicles while intoxicated has been examined, documented, and quantified. There is no denying the legitimate interest our government has in discouraging it. In a drunk driving auto accident, there is often substantial property damage and injury. Fatalities are not uncommon. The data is readily available. The highway patrol could tell you with precision how many accidents, injuries, and fatalities were caused in North Dakota by drunk motorists in any given day, month, or year. I am not suggesting the operating a bicycle or a horse after consuming alcohol is a safe activity that should be encouraged. It is a risky behavior that merits regulation. However, the societal harm related to operating bicycle or a horse while intoxicated is substantially less than operating a motor vehicle, both in frequency and harm to persons and property.

If adopted, H.B. 1506 would take necessary steps towards ending this absurd maze of conflicting definitions. The bill would ensure that bicyclists and equestrians would still be required to abide the rules of the road, but would specifically exclude the criminal DUI sanctions contained under N.D.C.C. § 39-08-01. In doing so it would eliminate statutory mixed messaging and bring the law into harmony with public policy. For the aforementioned reasons, the NDACDL strongly urges a **DO PASS** on H.B 1506.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse Walstad", is written over a printed name.

Jesse Walstad

HB 1506 – Bicycle DUI
Senate Transportation
March 3, 2023
Rep. Shannon Roers Jones

HB 1506 resolves a legal absurdity related to driving under the influence in North Dakota. Under current law someone who is riding a bike or a horse under the influence would be cited with DUI.

North Dakota law provides a bicycle or ridden animal is deemed a “vehicle” for purposes of Chapters 39-08 through 39-13. The amended bill will not allow a bicycle or ridden animal to be defined as a vehicle for purposes of Section 39-08-01, which is the section related to driving a vehicle under the influence of drugs or alcohol. Which is very important. It certainly isn’t good policy to be able to suspend a person’s driver’s license for riding a bike or a horse under the influence when they don’t need a driver’s license to ride one sober.

“Vehicle” and “motor vehicle” also have distinct definitions under the code. Certain traffic regulations govern operation of all vehicles, while others govern only motor vehicles. North Dakota law prohibits driving or being in actual physical control of a “vehicle.” So as currently written a person could be charged with actual physical control of a vehicle if they are simply walking their bicycle while intoxicated. Moreover, as defined, a bicycle is a device powered solely by human power with two wheels. So a bicyclist who affixes training wheels, or a person riding a tricycle, is arguably beyond the reach of the DUI statute.

Being charged with a DUI has significant consequences such as automatic suspension of a person’s driver’s license, onerous requirements, like taking defensive driving courses and paying fees to get a license reinstated, as well as increased insurance premiums. Stated another way, you don’t need to have a driver’s license to ride a bicycle, but the consequences of riding a bike under the influence will affect your ability to maintain your driver’s license.

That’s not to say that driving a bicycle under the influence is safe, or a good idea. Certainly, there is still the possibility to injury yourself, others, or to damage property. There should be a penalty for driving a bike under the influence, but losing your driver’s license is neither justified nor proportional.

The House Transportation Committee added Section 3 which includes a fine for operating a bicycle on the roadway or in a public location where that person is a hazard to themselves, or the public. The House committee made that a \$20 fine. There will likely be those who come after me who will suggest that \$20 is not a high enough fine for the risk created. I am not opposed to increasing that fine level, but I would ask the committee to leave the penalty as a fine-only offense and to not make it an infraction. For reference, an infraction is a criminal offense, that would create a criminal record, and a person who is convicted of two infractions in a year would have their charge elevated to a misdemeanor.

For many, driving a bike after they’ve had a couple of drinks may be a much safer alternative to getting behind the wheel. For those who are too intoxicated to safely operate a bike, there would be not only the fine-only offense created in Section 3, but there are also criminal charges available if the conduct is significantly dangerous or destructive, such as disorderly conduct or criminal mischief.

For all these reasons, I ask the committee to send the bill to the floor with a strong do pass recommendation.

23.1065.02003

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1506

Introduced by

Representatives Roers Jones, Frellich, Mock, Motschenbacher, D. Ruby, Wagner
Senators Barta, Myrdal

1 A BILL for an Act to create and enact a new section to chapter 39-10.1 of the North Dakota
2 Century Code, relating to bicycling or riding an animal while under the influence of alcohol or
3 drugs; to amend and reenact section 39-07-01 and subsection 1 of section 39-10.1-01 of the
4 North Dakota Century Code, relating to a bicycle and a ridden animal being deemed a vehicle;
5 and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 39-07-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **39-07-01. Bicycle or ridden animal to be deemed vehicle.**

10 For

11 1. Except as provided in subsection 2, for the purposes of chapters 39-08 through 39-13,
12 a bicycle or a ridden animal must be deemed a vehicle.

13 2. For purposes of section 39-08-01, a bicycle or ridden animal may not be deemed a
14 vehicle.

15 **SECTION 2. AMENDMENT.** Subsection 1 of section 39-10.1-01 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 1. It is unlawful for any person to do any act forbidden or fail to perform any act required
18 in this chapter. ~~Any~~Except as provided in section 3 of this Act, a person who violates
19 any of the provisions of this chapter may be assessed a fee not to exceed five dollars.

20 **SECTION 3.** A new section to chapter 39-10.1 of the North Dakota Century Code is created
21 and enacted as follows:

1 | **Bicyclists****Bicycling or riding an animal while under the influence of alcohol or drugs -**
2 | **Penalty.**

3 | An individual operating a bicycle or riding an animal on a roadway, or an area the public has
4 | access to, may not be under the influence of alcohol or any drug to a degree which renders the
5 | individual a hazard to themselves or the general public. An individual who violates this section
6 | must be assessed a fee of twentyfive hundred dollars.