

Senate Bill 2097
Senate Transportation Committee
Senator Clemens, Chairman
January 07, 2021

Chairman Clemens and members of the Senate Transportation Committee, my name is Trooper John Sova and I am the MCSAP, or Motor Carrier Safety Assistance Program, Coordinator with the North Dakota Highway Patrol. I serve in the southeast region of the state, and am stationed in Jamestown. I am here today to support and provide background information on Senate Bill 2097 which addresses laws relating to school buses, Commercial Motor Vehicle regulations and legal weights. I will provide information on the changes to each section of Century Code as affected by this bill.

Section 1: The update to the definition of a school bus is being proposed to create uniformity with the federal definition of a school bus. This change will also bring the definition in line with current school bus practices across the state. There are many school districts that utilize buses designed to carry between 10 to 15 passengers, including the driver. These buses are used to transport students from home to school and school to home. They are also used as activity buses to transport students to and from school related activities. This definition change does not require any additional modifications and it will not require drivers of these smaller buses to obtain a commercial drivers license.

Background for Sections 2, 3, 4 and 6

The State of North Dakota gives the Superintendent of the Highway Patrol the authority to adopt Commercial Vehicle Regulations under NDCC 39-21-46(3). The Superintendent has adopted these safety regulations under ND Administrative Code 38-04. The adoption of these safety regulations is necessary to remain compliant with the Federal Motor Carrier Safety Assistance Program (MCSAP) grant program. This program provides funding to ND Drivers License Division for Commercial Driver License (CDL) programs and the ND Highway Patrol for enforcement of the Federal Code of Regulations (CFR) under Title 49. To receive funding, states are required to either adopt Title 49 CFR or write equivalent state statute. North Dakota has chosen to adopt all necessary Parts of Title 49 under NDAC 38-04, except for Part 383. Part 383 contains the Federal Regulations pertaining to Commercial Driver Licenses. North Dakota Century Code 39-06.2 is meant to be equivalent to Part 383. Several of the requested

changes to Century Code are to address gaps between Part 383 and NDCC 39-06.2 regarding enforcement and the actions needed for NDCC 39-06.2 to be made equivalent to Part 383. The remaining requested changes bring uniformity to specific state and federal laws to reduce confusion for carrier compliance and overhead for the North Dakota Highway Patrol.

Section 2: This section seeks to add a penalty for CMV drivers that operate a vehicle in violation of an Out of Service order. There are two distinct reasons for adding this penalty. The first regards drivers who violate Out of Service orders. Hours of Service violations or Vehicle Equipment violations have specific regulation sections that can be cited based on the adoption of Title 49 CFR under NDAC 38-04 and are covered under subparagraph (c) of NDCC 39-06.1-06(6). Violations for driver qualifications, driving (including alcohol and drug violations), and CDL violations are covered under 49 CFR Part 383.37. As stated in the background information, North Dakota did not adopt Part 383 but instead uses NDCC 39-06.2. NDCC 39-06.2-10.9 is to be the equivalent to 383.37. An issue arises because a traffic citation cannot be written for a violation of NDCC 39-06.2-10.9 because there is no penalty section under NDCC 39-06.1. This can be resolved by adding 39-06.2-10.9 to Subsection 6, subparagraph (c). With this addition, Century Code would cover these violations and drivers would be treated consistently regarding operating in violation of an out of service order.

The second reason for this penalty is to preserve our CDL program equivalent to Title 49 CFR Part 383. Part 383, and NDCC 39-06.2, provide for a disqualification of a driver's CDL if the driver is convicted of operating in violation of a driver or vehicle out of service order. Without a penalty available for violations covered under NDCC 39-06.2-10.9, a conviction can never be obtained which would result in NDDOT being unable to disqualify the driver's CDL.

Section 3: This section seeks to define section 4 of this bill as a moving violation. Section 4, which is described below, would be a new section to the ND Century Code, but would need to be included within 39-06.1 to allow for a penalty for enforcement.

Section 4: Section 4 would be a new section added to NDCC 39-06.2-07. ND Century Code 39-06.2 is written to adopt Federal Commercial Driver License standards for North Dakota residents. Section 4 will mirror title 49 Part 383.25, laying out limitations on the types of vehicles that can be operated by drivers possessing Commercial Learner's Permits with endorsements. For NDCC 39-06.2 to be equivalent to 49 CFR Part 383, the law needs to limit

the types of vehicles operated by these permit holders. Enaction of this law will further provide law enforcement with the necessary law to reference for enforcement and citation purposes.

Section 5: This section seeks to modify ND Century Code to remove the applicability of the exemption for shifting livestock from federal roads. The change will keep the exemption on state roads but the Federal Highway Administration (FHWA) does not allow the exemption on federal roads. Without this modification, North Dakota would not meet FHWA standards.

Section 6: Section 6 makes two additions to NDCC 39-32-02, Intrastate exemptions to the hours of service regulations. The first addition is under Section 1, subparagraph (b) and would include 9 to 15 passenger contract carrier vehicles in the intrastate hours of service regulations. These vehicles are currently exempted in the Intrastate Hours of Service and in NDAC 38-04 from following Title 49 CFR. ND Century Code requires the North Dakota Highway Patrol to adopt separate safety regulations and issue a permit for these carriers under NDAC 38-09. NDAC 38-09 requires these carriers to follow the same requirements as other Intrastate carriers of property or passengers that are subject to the federal rules already adopted under NDAC 38-04. The only difference is NDAC 38-09 requires the drivers of these 9-15 passenger vehicles to have a drug and alcohol testing program. This requirement on these vehicles poses issues as the same carrier operating in Interstate Commerce would not be required to have a Drug and Alcohol Testing program since the driver would not be required to have a CDL. A second issue that arises occurs due to a positive DOT-regulated test, as determined by 49 CFR Part 40, needs to be tracked in the Federal Drug and Alcohol Clearinghouse which prohibits a driver from operating a CMV until an evaluation and return to duty process was completed. This would disqualify a driver from operating in interstate commerce for a violation of Federal DOT Drug and Alcohol Testing regulations even though the driver was not subject to those regulations at the time of the test. An edit to NDAC 38-09 was considered to address this problem, but it makes more sense to make the 9-15 passenger contract carriers subject to intrastate hours of service and federal regulation adoption. This addition harmonizes the rules for these carriers when operating in intrastate and interstate commerce. The federal definition of a CMV already includes these carriers and vehicles. This change to NDCC would create uniformity in the rules for these carriers to follow and eliminate duplication of effort by rewriting regulation into administrative code. This change would subject the carriers to the same regulations while reducing burden on industry and would not affect MCSAP grant compliance.

The second part of this section relocates the Hours of Service exemption for Agricultural Operations from the CDL section to the Hours of Service section of the North Dakota Century Code. This Hours of Service exemption is currently located in 39-06.2-17. In addition to relocating the exemption in Century Code, it is recommended the radius of the exemption be changed from 100 air-miles to 150 air-miles, this increase in the radius size has been in effect for several years in federal regulation. The change harmonizes the radius with federal regulation and does not affect MCSAP grant compliance.

Section 7: This section repeals unneeded North Dakota Century Code.

- The implementation of Section 6 of this Bill results in there no longer being a need for NDCC 8-02-08. This section directed the North Dakota Highway Patrol to develop safety rules for smaller passenger carriers. These carriers will now be subject to the current rules without the need to rewrite rules in administrative code.
- NDCC 39-06.2-17 is relocated to NDCC 39-32-02 so it can be removed.
- NDCC 39-12-24 allowed for cooperative regional permit agreements. This program has been dissolved and is no longer active.
- NDCC 39-12-25 provided for a line of credit for the North Dakota Highway Patrol to establish an online permit system; the line of credit was no longer available as of June 30, 2015.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions.