

**1999 HOUSE TRANSPORTATION**

**HB 1131**

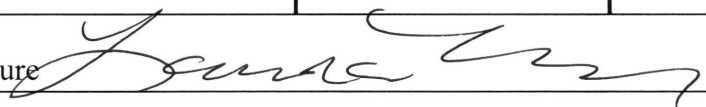
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1131

House Transportation Committee

Conference Committee

Hearing Date January 14, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-25.9
Committee Clerk Signature 			

Minutes:

CHAIRMAN KEISER OPENED THE HEARING ON HB 1131; A BILL RELATING TO PENALTIES FOR OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

KEITH MAGNUSON, Director, Office of Driver and Vehicle Services introduced the bill. (See attached testimony).

REP. KEMPENICH asked Keith if an individual is required to purchase the interlocks.

KEITH replied, yes, those are all at the expense of the violators. He said that no North Dakota companies now carry them but are willing to get them. They would cost about \$50 per month.

REP. KEMPENICH further asked about the Denver boots.

KEITH said that it is a clamp on the wheel used to immobilize the car until the fines are paid.

They are reusable.

Page 2

House Transportation Committee

Bill/Resolution Number 1-14 minutes

Hearing Date January 14, 1999

REP. WEISZ asked Keith about the two section added dealing with the immobilization and the interlocks.

KEITH replied that they are specifically mentioned in the federal law and regulations.

REP. MAHONEY asked Keith about the community service issue.

KEITH noted that the daily service is very seldom used, but that it would likely be based on an eight hour day.

REP. MEYER questioned the example of a one vehicle family.

KEITH said that this law is discretionary for that reason.

REP. JENSEN asked what the general public's reaction would be.

KEITH said that he thought that the public would be glad. If someone was getting their second DUI, they are probably subject to this.

REP JENSEN asked if it could be changed from two times in five years to two times in three years.

KEITH replied that five years has been the threshold. This leaves the window open for those two extra years.

REP. KEISER asked if this bill only coincided with federal law. It would not lose money?

KEITH said that no money would be lost, and any money involved is used for programs.

REP. KEISER asked how workers compensation comes into the community service area.

KEITH explained that it is in the law, and that some problems are created by this.

REP. MICKELSON asked annually how many repeat offenders there are in the state.

KEITH replied that he didn't have the statistics but would secure them.

JANET DEMARAIS SEAWORTH, Executive Director for the North Dakota Beer Wholesalers Association testified in support of HB 1131. (See attached testimony).

AL STENEHJEM, Executive Director of the North Dakota Hospitality Association testified in support of HB 1131. He noted that the Hospitality Association recognizes that there is a problem with repeat offenders in the state. Al mentioned that first time offenders are very seldom picked up again as they don't repeat the actions, but the people that do repeat need to be stopped and this bill would do that.

REP. SVEEN asked Al if he thought that the three year limit suggested by REP JENSEN would work better.

Al said that five years is a better window to catch second time offenders.

TIM BREHM, Program manager for North Dakota Department of Corrections and Rehabilitation answered some general questions in regard to insurance and community service. He said that in regards to insurance, the agencies that generally administer the community service are not for profit and community supported agencies in North Dakota. Workers compensation and volunteer insurance agencies offer their help. He also said that the days of community service are calculated into workdays.

REP. MAHONEY asked what happens when the people are put into their community service. He questioned how it works across the state.

TIM said that the policies and procedures are in place but that it is different throughout the state.

REP. KEISER further questioned the courts mandating the service. What would be your position about the courts assuming the workers comp. liability?

Page 4  
House Transportation Committee  
Bill/Resolution Number 1-14 minutes  
Hearing Date January 14, 1999

TIM answered that there are programs in place for that, but that it is primarily covered by workers comp. and volunteer insurance.

REP. SVEEN questioned the daily service.

TIM said that it may be spread over months or days, depending on the situation.

CHAD HAGEN, President of the Fraternal Order of Police addressed the issues in HB 1131, showing support from the Order. He noted that this bill addresses the issues well. Not a lot of public outcry would result from this, and that stiffer penalties for such crimes needed to be increased. He also mentioned that not a lot of immobilization would be seen. They were most concerned with the punishment.

LONNIE W. OLSON, President of the North Dakota State's Attorney's Association submitted testimony in support of HB 1131 via facsimile.

CHAIRMAN KEISER CLOSED THE HEARING ON HB 1131.

GENERAL DISCUSSION TOOK PLACE. Chairman Keiser, Representatives Lemieux, Mahoney, and Meyer participated.

COMMITTEE ACTION

REP. SVEEN moved to DO PASS on HB 1131. REP. SCHMIDT seconded the motion. The motion carried.

ROLL CALL - 14 YAE, 0 NAE, 1 ABSENT AND NOT VOTING

FLOOR ASSIGNMENT: REP. SVEEN

Date: 1/14/99  
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1131

House Transportation Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Sreen Seconded By Rep Schmidt

Representatives	Yes	No	Representatives	Yes	No
Representative Keiser, Chair	✓		Representative Thorpe		
Representative Mickelson, V. Ch.	✓				
Representative Belter	✓				
Representative Jensen	✓				
Representative Kelsch	✓				
Representative Kempenich	✓				
Representative Price	✓				
Representative Sveen	✓				
Representative Weisz	✓				
Representative Grumbo	✓				
Representative Lemieux	✓				
Representative Mahoney	✓				
Representative Meyer	✓				
Representative Schmidt	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Sveen

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

REPORT OF STANDING COMMITTEE (410)  
January 14, 1999 12:22 p.m.

Module No: HR-08-0616  
Carrier: Sveen  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1131: Transportation Committee (Rep. Keiser, Chairman) recommends DO PASS**  
(14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1131 was placed on the  
Eleventh order on the calendar.

**1999 SENATE TRANSPORTATION**

**HB 1131**



1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1131

Senate Transportation Committee

Conference Committee

Hearing Date February 12, 1999

Tape Number	Side A	Side B	Meter #
1	x		1,185-5440
March 12, 1999		x	2,955-End
2	x		1-375
March 19, 1999 - Tape 1	x		1,818-3530
March 23, 1999	x		950-1800
March 26, 1999 - Tape 1	x		672-1520
March 29, 1999	x		205
March 30, 1999	x		1-tape was bad
Committee Clerk Signature <i>Abbi A. Schaeffer</i>			

Minutes:

SENATOR B. STENEHJEM opened the hearing on HB 1131. Committee members present included: Sens. Bob Stenehjem, R. Schobinger, D. Mutch, D. Cook, D. O'Connell, and V. Thompson. Senator Bercier was absent.

KEITH MAGNUSSON, DEPARTMENT OF TRANSPORTATION testified in support of HB 1131 (see testimony).

SENATOR B. STENEHJEM Under T21, everything in this bill is the minimum or just Section 1.

KEITH MAGNUSSON Under T21, everything is the minimum and Section 1 is the minimum.

We meet the federal mandates for someone who goes beyond the second offense currently.

Section 2 is to add some language that gives our judges more tools that the federal law had. The amendments were added because they said we need to meet that. We can either impound, immobilize, or use interlocks.

SENATOR B. STENEHJEM Do we need to have Section 2 in the bill to meet the T21 requirements.

KEITH MAGNUSSON We need the part of Section 2 which makes it clear that a repeat offender is the second time and not a third time.

SENATOR B. STENEHJEM In the proposed amendments you're going to change it from the "person's vehicle" to "vehicle". Who's going to run around and figure out how many vehicles this person has?

KEITH MAGNUSSON That's within the federal law is all the vehicles and the court is going to have to order that person to come to us if nothing else we have the information on interlock.

SENATOR B. STENEHJEM Where is the fiscal note?

KEITH MAGNUSSON There really isn't going to be a cost to the Department of Transportation.

SENATOR B. STENEHJEM Someone will have to pay.

KEITH MAGNUSSON The owners of the vehicles will be responsible for putting the interlocks on under court order and they will have to pay.

SENATOR B. STENEHJEM Someone within the court will have to see that they are complying.

KEITH MAGNUSSON Yes, but we have ways and we know what vehicles are in their names.

SENATOR B. STENEHJEM What if I get caught and I put the vehicle under my wife's name?  
What if the person doesn't even own the vehicle?

KEITH MAGNUSSON Under the law it is the vehicle owned by that individual at the time that they get the court order.

SENATOR B. STENEHJEM If I get multiple suspensions, am I supposed to put interlocks on my car for 25 years until I get my license back.

KEITH MAGNUSSON Under these amendments, it is only after the suspension is over.

SENATOR B. STENEHJEM Where are we going to impound all of these cars?

KEITH MAGNUSSON Under this bill with the amendments, immobilization and impoundment are discretionary with the judge just as they are now. Interlocks will be mandatory. We were trying to figure out what would be the least burdensome for ND citizens.

SENATOR COOK Interlocks are discretionary, "may" is still there, correct?

KEITH MAGNUSSON In the amendments, we are asking that it be changed to "must".

SENATOR COOK On line 17, it appears that the court has some discretion to immobilize, impound, seize, forfeit the car or sell it. If they say they are going to immobilize, does that mean they must do it to all vehicles or does that requirement exist no matter what?

KEITH MAGNUSSON With our amendments, the only thing that is mandatory is the interlocks. We can police that because we will have their license.

SENATOR SCHOBINGER How do we explain that to wife and kids that may rely on the vehicles that are impounded?

KEITH MAGNUSSON Right now, the judge has the power to actually seize and impound the vehicle under another section. It will still be discretionary. The interlocks would be mandatory.

SENATOR SCHOBINGER This is about the interlock, we don't need the other part of the bill.

KEITH MAGNUSSON At this point, with our amendments, after we heard back from NHTSA we picked what we thought was the least burdensome mandatory thing which is the interlocks. We still need to make sure under Section 2 that it is the second offense as a repeat offender.

SENATOR COOK What is an interlock and a Denver Boot?

KEITH MAGNUSSON An interlock is a device hooked up to the wheel of the car. It is a breathing device and if you have alcohol on your breath it won't let you start the vehicle. The Denver Boot is a clamped device on the wheel; it won't move.

SENATOR COOK Is adding Subsection E, is that required?

KEITH MAGNUSSON NHTSA went through the bill and said we're allowing suspensions of mandatory penalties under the situations we're deleting in Section 8. It's mandatory, we can't allow any exceptions.

SENATOR COOK Subsection 2 has nothing to do with the 0 tolerance.

KEITH MAGNUSSON No, nothing with the administrative process.

SENATOR B. STENEHJEM We will have this bill back after crossover. I'm thinking about the complexities of this bill. We will have this bill back in the committee for another hearing.

GINGER KJELLAND, CITIZEN testified in support of HB 1131. I'd like to speak with someone about making an amendment for the first offense. Many deaths occur on the first offense.

SENATOR B. STENEHJEM We will close the hearing on HB 1131.

March 12, 1999 - Hearing 2 - Tape 2

KEITH MAGNUSSON, ND DEPARTMENT OF TRANSPORTATION testified in support of HB1131 (see testimony).

SENATOR O'CONNELL Can you go through the amendments on Section 12.01-32?

KEITH MAGNUSSON The amendments add Section E which is the part of the DUI law that says if someone is convicted of lack of physical control or under 18, the judge can suspend part of the sentence. We were hoping they wouldn't go that far. That would delete the judge's power to suspend those when they say they're mandatory. The other part is taking out the language that we had that talked about impounding and interlocks. We're just cleaning that up and leaving that for another time. When the judge is looking at the discretionary power of immobilization or interlocks, that has to be on the second time.

SENATOR SCHOBINGER Do you know what Subsection A, C and D do?

KEITH MAGNUSSON That is in the Century Code. They are other parts of the DUI law. Originally, when I submitted this it had all of those in there but Legislative Council took them out when they drew up the bill.

SENATOR SCHOBINGER Previously some of those sentences may have been suspended or deferred in some form and I'd like to see what those Subsections say.

KEITH MAGNUSSON In Subsection E, it already says they can't suspend or defer. (He gave an example).

SENATOR B. STENEHJEM Here we're amending 39-08-01.3 but what is the amendment we're talking about?

KEITH MAGNUSSON 39-08-01 is the basic DUI statute.

SENATOR O'CONNELL The interlock is the one that you blow into and it won't start if you have alcohol on your breath.

KEITH MAGNUSSON Yes. There is a company that is willing to come into ND to help with that.

SENATOR COOK How much do interlocks cost? Who pays? Where do they go to get them?

KEITH MAGNUSSON The driver comes to us for information. They are responsible for getting and paying for the interlocks if they want to get their license back. They cost about \$60 a month. They have to give us proof from the company that the interlock was installed and we would give them their license back.

SENATOR COOK The judge would almost have to take the vehicle until they know that the interlocks are on.

KEITH MAGNUSSON Under suspension, they would not be allowed to drive and they can take the car at that time. After they get their license back the interlock makes sure they are on the straight and narrow.

SENATOR B. STENEHJEM How long would the interlock be in place?

KEITH MAGNUSSON It is up to the discretion of the judge after the one year period under NHTSA.

SENATOR B. STENEHJEM In our earlier hearing on line 23, page 1, you wanted "vehicle" changed to "vehicles" is that still needed?

KEITH MAGNUSSON That depends on which option you take. If you would take the option of mandatory interlocks then we should have "vehicles owned by the driver".

SENATOR B. STENEHJEM If we select option 3 then we don't have to do anything with that.

KEITH MAGNUSSON That is correct if you choose option 3 you would use the amendments that I presented.

There was some discussion.

SENATOR THOMPSON Option 3 would buy us some time.

SENATOR B. STENEHJEM I'm not opposed to keeping some drunk driver off of the road. We have to do something that can be reasonably done.

SENATOR SCHOBINGER How easy is it to transfer registration when putting interlocks on a car?

KEITH MAGNUSSON We would check on those in their name in the motor vehicle division. If they don't have one in their name then the federal law doesn't mandate that you have interlocks on it.

SENATOR SCHOBINGER There is nothing that says I can't sell that car whether I have it impounded or the interlocks on it. So I can sell it to my wife and have the registration transferred.

KEITH MAGNUSSON If it is an honest sale and they don't get another vehicle then there wouldn't be mandatory interlocks. There are provisions for those with a "hardship".

DICK PECK, ND PEACE OFFICERS ASSOCIATION testified in support of HB 1131. Our biggest concern was impounding the vehicles. We do not have the space to impound these vehicles. We are talking not just about cars but trucks, motor homes, and buses. Also, how about if you lease a car or rent a car, there are a lot of loop holes? Now, if you register a car that license plate is registered to you not necessarily the whole family. You may want to look at

impounding those license plates. I don't know if the courts will be happy with me because they can't suspend any of it.

SENATOR SCHOBINGER You would support the bill with the amendments as opposed to the original bill.

DICK PECK Yes.

SENATOR B. STENEHJEM We will close HB 1131.

SENATOR SCHOBINGER I move that we adopt the amendments presented by Keith Magnusson.

SENATOR O'CONNELL I second.

Amendment was adopted by a voice vote.

March 19, 1999 - Tape 1

SENATOR B. STENEHJEM These proposed amendments by Keith Magnusson bring us in line with that third option. ( There was discussion on those amendments already adopted.)

TOM DICKSON, CRIMINAL DEFENSE ATTORNEY proposed amendments pertain to DOT administrative hearing process. In the administrative hearings, the hearing officer is an employee of DOT and there has been a lot of debate whether hearings are fair. They are not fair because people are being punished without being convicted in the court of law. We propose that at these hearings the DOT should prove the person was driving the vehicle before they lose their driver's license. Right now, the arresting officer has to have reasonable belief that the person was driving or was an actual physical control. They may charge all three in the vehicle and if they believe that any of those might be driving, all of them may lose their license.



At these hearings the person is almost always automatically suspended. But because the DOT officer is the finder of fact, the Court, as a matter of law has to defer to the findings of fact to DOT. They can't look at records or second guess. The second amendment says that the District Court can look at the record denoba.

There are people losing their licenses and jobs and ultimately found not guilty by a jury. We think, if they are not convicted of driving under the influence their driving record should be cleared. (He gave an example). They will still serve the suspension but if the conviction doesn't happen, a truck driver, for example, should be allowed to drive truck. The driving record should be cleared. The law, as it reads now, is hard on the truck drivers/

SENATOR THOMPSON There is a problem and it is a valid point (he gave an example).

TOM DICKSON We're not talking about truck drivers who get arrested when they are on the job. This is about those who come who from wedding dance, etc.

SENATOR B. STENEHJEM Will you recap?

TOM DICKSON (He went through amendments again).

SENATOR B. STENEHJEM Are there cases when a person is suspended although they may not be driving?

TOM DICKSON Yes.

There was some committee discussion.

SENATOR COOK I can't imagine someone is having their license suspended even if they are not driving.

There is more committee discussion.

SENATOR O'CONNELL These are good amendments; I'd like to hear more.

SENATOR B. STENEHJEM We will set this aside for next Thursday.

SENATOR COOK I want to propose amendment 98248.0101. This will exclude "shot ladies" from the bars.

Senator Cook explained the amendment on prohibition of roving sales.

SENATOR B. STENEHJEM We will hold this bill.

MARCH 23, 1999

The amendments 98248.0103 were presented.

SENATOR COOK I am not found of Section 3. This applies when two people in a car are both intoxicated, they park the car and run and neither one will say who was driving. It is basically to evade arrest.

SENATOR O'CONNELL I didn't think it was fair when both are hauled and charged when only one was driving.

There was committee discussion.

SENATOR THOMPSON I do like Section 3 and Section 5 when they are not guilty by the administrative hearing until you are proven otherwise.

SENATOR B. STENEHJEM That is Section 6 of the bill.

This was committee discussion.

SENATOR O'CONNELL I move Section 6 of 98248.0103.

SENATOR COOK I second.

The amendment passed by a unanimous voice vote.

SENATOR COOK I'd like to get some amendments drawn up that would make it possible for the breath test to be used in a jury trial.

SENATOR COOK I move for amendments 98248.0101.

SENATOR SCHOBINGER I second.

SENATOR COOK Everyone has had some time to digest this; we know what it is and what it is meant to do.

The amendment passed (3 Yeas, 2 Nays and 2 Absent and Not Voting).

March 26, 1999 - Tape 1

SENATOR COOK I have concerns with Section 4. We passed it.

There was committee discussion.

KEITH MAGNUSSON Section 4, basically if they are found not guilty at trial and they were already suspended administratively, it would wipe out the record of the administrative suspension. It starts tying the two systems together.

SENATOR THOMPSON How is it now; are they acted on separately?

KEITH MAGNUSSON The two systems are separate right now. The courts have said all along that because they have different sanctions there is no double jeopardy. If you tie them together it defeats the purpose of having an administrative hearing.

SENATOR COOK I move to reconsider our action on which we passed all of the amendments 98248.0102.

SENATOR O'CONNELL I second.

SENATOR B. STENEHJEM I will resist this motion. I am not convinced that I will be creating a problem. I have a problem when a person has his license suspended, it is on his administrative record and he does not have the opportunity to go to court. Or if he does go to court, he is found

innocent. There is still the DUI charge on his administrative record and his insurance company is informed.

SENATOR THOMPSON I would want to reconsider because this is different language than what we originally got.

The motion to reconsider was voted on (3 Yeas and 3 Nays). The motion failed.

SENATOR COOK I motion for a Do Pass as Amended.

SENATOR SCHOBINGER I second.

The roll call vote was taken (4 Yeas, 2 Nays and 1 Absent and Not Voting).

Senator Schobinger will carry HB 1131.

March 29, 1999

SENATOR COOK I ask that we bring HB 1131 back to the table. I'd like to put an emergency clause on the amendment dealing with prohibition of roving sales.

SENATOR COOK I move to reconsider our actions.

SENATOR O'CONNELL I second.

Amended bill was brought back to the committee by a voice vote.

SENATOR COOK I would move that we amend HB 1131 by putting the emergency clause on this bill.

The amendment was adopted by a voice vote.

March 30, 1999

SENATOR COOK I motion for a Do Pass as Amended.

SENATOR SCHOBINGER I second.

The roll call vote was taken (4 Yeas, 2 Nays and 1 Absent and Not Voting).

Page 13

Senate Transportation Committee

Bill/Resolution Number Hb1131

Hearing Date February 12, 1999

Senator Schobinger will carry HB 1131.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1131**

Page 1, line 1, replace “subdivision b” with “subdivisions b and e”

Page 1, after line 11, insert:

- “e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances:~~
  - ~~(1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.~~
  - ~~(2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.”~~

Page 1, line 17, remove “impounded or immobilized for the period of suspension or revocation”

Page 1, line 18, remove “of the offender’s driving privilege.”

Page 1, line 23, remove “after the conclusion of the”

Page 1, remove line 24

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1131

Page 1, line 1, replace "subdivision b" with "subdivisions b and e"

Page 1, after line 11, insert:

"e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances: (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance. (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.~~"

Page 1, line 17, remove "impounded or immobilized for the period of suspension or revocation"

Page 1, line 18, remove "of the offender's driving privilege"

Page 1, line 23, remove "after the conclusion of the"

Page 1, remove line 24

Renumber accordingly

Incorporate

98248.0102  
Title.0200

f2 TOGGLE - F3

Adopted by the Transportation Committee  
March 12, 1999

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1131

Page 1, line 1, after "to" insert "create and enact section 39-20-06.1 of the North Dakota Century Code, relating to administrative sanctions for driving while under the influence; and to" and replace "subdivisions b" with subdivisions b and e"

Page 1, after line 11, insert:

"e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances: (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance. (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.~~"

Page 1, line 17, remove "impounded or immobilized for the period of suspension or revocation"

Page 1, line 18, remove "of the offender's driving privilege"

Page 1, line 23, remove "after the conclusion of the"

Page 1, remove "suspension or revocation"

Page , after line 24, insert:

**SECTION 3.** Section 39-20-06.1 of the North Dakota Century Code is created and enacted as follows:

**39-20-06.1. Vacation of administrative sanction upon dismissal or acquittal.** Upon being informed by a court that the charges against a person at least twenty-one years of age of operating a motor vehicle in violation of section 39-08-01, or offense following trial, the director shall vacate any order entered in connection with the same offense suspending or denying that person's driving privileges for having an alcohol concentration of at least ten one-hundredths of one percent under section 39-20-04.1 or 39-20-05."

**Renumber accordingly**



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1131

Page 1, line 1, after "to" insert "create and enact section 39-20-06.1 of the North Dakota Century Code, relating to administrative sanctions for driving while under the influence; to" and replace the second "and" with a comma

Page 1, line 2, after "39-08-01.3" insert ", subsection 1 of section 39-20-04.1, subsections 2 and 3 of section 39-20-05, and section 39-20-06"

Page 1, after line 24, insert:

**"SECTION 3. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person ~~and~~; test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle; and the person was actually driving or in actual physical control of the vehicle, the director shall suspend the person's operator's license as follows:
  - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.
  - b. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.
  - c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

**SECTION 4. AMENDMENT.** Subsections 2 and 3 of section 39-20-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was actually driving or in actual physical control of the vehicle; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than ten one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was actually driving or in actual physical control of the vehicle; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

**SECTION 5. AMENDMENT.** Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-06. Judicial review.** Any person whose operator's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-20-05 may appeal within seven days after the date of the hearing under

section 39-20-05 as shown by the date of the hearing officer's decision, section 28-32-15 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. No additional evidence may be heard. The appeal must be heard de novo on the record made before the director or hearing officer. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer in which case the decision must be reversed. ~~The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.~~

*Adopted*

**SECTION 6.** Section 39-20-06.1 of the North Dakota Century Code is created and enacted as follows:

**39-20-06.1. Vacation of administrative sanction upon dismissal or acquittal.** Upon being informed by a court that the charges against a person at least twenty-one years of age of operating a motor vehicle in violation of section 39-08-01, or equivalent ordinance, have been dismissed or the person has been acquitted of that offense following trial, the director shall vacate any order entered in connection with the same offense suspending or denying that person's driving privileges for having an alcohol concentration of at least ten one-hundredths of one percent under section 39-20-04.1 or 39-20-05."

Renumber accordingly

# ACTION RECONSIDERED

98248.0102  
Title.0200

Adopted by the Transportation Committee  
March 23, 1999

903  
3/27/99  
1052

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1131

Page 1, line 1, after "to" insert "create and enact a new section to chapter 5-02 and section 39-20-06.1 of the North Dakota Century Code, relating to alcoholic beverage sales and to administrative sanctions for driving while under the influence; to", replace "subdivision" with "subdivisions", and after "b" insert "and e"

Page 1, after line 4, insert:

**"SECTION 1.** A new section to chapter 5-02 of the North Dakota Century Code is created and enacted as follows:

**Prohibition on roving sales.** An on-sale licensee shall keep, display, and store containers of distilled spirits in an area from which the public is excluded and, before a request to purchase a particular distilled spirit by a customer, may not move a distilled spirit into an area in which the public is allowed, unless the movement is neither part of nor intended to promote the sale of the distilled spirit."

Page 1, line 5, replace "Subdivision" with "Subdivisions" and after "b" insert "and e"

Page 1, line 6, replace "is" with "are"

Page 1, after line 11, insert:

"e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances:~~

(1) ~~Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.~~

(2) ~~If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.~~"

Page 1, line 17, remove "impounded or immobilized for the period of suspension or revocation"

Page 1, line 18, remove "of the offender's driving privilege."

Page 1, line 23, remove "after the conclusion of the"

Page 1, line 24, remove "suspension or revocation"

Page 1, after line 24, insert:

**"SECTION 4.** Section 39-20-06.1 of the North Dakota Century Code is created and enacted as follows:

2 of 2

**39-20-06.1. Vacation of administrative sanction upon dismissal or acquittal.** Upon being informed by a court that the charges against a person at least twenty-one years of age of operating a motor vehicle in violation of section 39-08-01, or equivalent ordinance, have been dismissed or the person has been acquitted of the offense following trial, the director shall vacate any order entered in connection with the same offense suspending or denying that person's driving privileges for having an alcohol concentration of at least ten one-hundredths of one percent under section 39-20-04.1 or 39-20-05."

Renumber accordingly

Date: March 26, 1999

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1131

Senate Transportation Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number 98248.0102

Action Taken Do Pass as Amended

Motion Made By Sen. Cook Seconded By Sen. Schobinger

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenejem-Chairman	X				
Sen. R. Schobinger-V. Chair	X				
Sen. Duane Mutch	X				
Sen. Dwight Cook	X				
Sen. David O'Connell		X			
Sen. Vern Thompson		X			
Sen. Dennis Bercier					

Total (Yes) 4 No 2

Absent 0

Floor Assignment Senator Schobinger

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

Date: 3-30-99  
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1131

Senate Transportation Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number 98248.0104

Action Taken No Pass as amended

Motion Made By Sen. Cook Seconded By Sen. Schobinger

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenejem-Chairman	✓				
Sen. R. Schobinger-V. Chair	✓				
Sen. Duane Mutch	✓				
Sen. Dwight Cook	✓				
Sen. David O'Connell		✓			
Sen. Vern Thompson		✓			
Sen. Dennis Bercier					

Total (Yes) 4 No 2

Absent 1

Floor Assignment Senator Schobinger

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

**REPORT OF STANDING COMMITTEE**

**HB 1131: Transportation Committee (Sen. B. Stenehjem, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1131 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 5-02 of the North Dakota Century Code, relating to alcoholic beverage sales; to"

Page 1, line 3, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, after line 4, insert:

**"SECTION 1.** A new section to chapter 5-02 of the North Dakota Century Code is created and enacted as follows:

**Prohibition on roving sales.** An on-sale licensee shall keep, display, and store containers of distilled spirits in an area from which the public is excluded and, before a request to purchase a particular distilled spirit by a customer, may not move a distilled spirit into an area in which the public is allowed, unless the movement is neither part of nor intended to promote the sale of the distilled spirit."

Page 1, after line 24, insert:

**"SECTION 4. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly



**1999 HOUSE TRANSPORTATION**

**HB 1131**

**CONFERENCE COMMITTEE**


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1131

House Transportation Committee

Conference Committee

Hearing Date April 6, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-30
2 (April 6, 1999)	x		0-20
1 (April 9, 1999)	x		0-10
1 (April 12, 1999)	x		0.2-5.5
2 (April 12, 1999)	x		0-3.0
Committee Clerk Signature 			

Minutes:

CHAIRMAN MICKELSON OPENED THE HEARING ON HB 1131; A BILL RELATING TO THE PENALTIES FOR OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AND TO PROVIDE A PENALTY.

CHAIRMAN MICKELSON said that the House's biggest problem with the Senate amendments was the "roving sales" area. He said that the Department of Transportation has a problem with it as well.

REP. KELSCH said that she did not like the amendment because of how it affected business people. It would essentially crash on sales.

REP. MAHONEY agreed with the Representative Kelsch. He noted that he is a strong promoter of DUI laws and responsible drinking, but getting involved in free enterprise is the wrong way to

go. The bartenders have a responsibility to watch to see if their patrons are drinking too much or too little and to know when to cut people off. He didn't see that this was something that would accomplish what they wanted it too.

SEN. COOK said that he didn't think that it was interfering with the local enterprise because they live with restrictions. We aren't out of line by offering restrictions with more merit than the first issue. Our concern is that it doesn't stop anyone from going into the bar to drink, but it does stop binge drinking. He thought that the Senate had some concerns and it was very divided. He suggested that maybe it should go to the House floor and be divided out if so said.

REP. KELSCH asked if the amendment was germane to bill.

REP. MICKELSON asked where the amendment came from.

SEN. COOK said that his interest in the germanus to the bill is what brought it forth. What's germane is a matter of anyone's opinion. The North Dakota Hospitality Association knew that they were looking at this amendment and they didn't complain.

REP. MAHONEY said that he appreciated the amendment and understood where it was coming from, and that all of the people working in the bar are responsible, but they are in fact there to push the alcohol. They have a responsibility and an obligation to say when too much is too much, but they also have the responsibility to sell.

SEN. COOK mentioned that a lot have gotten a lot more responsible about their businesses, but he would be surprised to see how many aren't carrying insurance to protect against this.

REP. KELSCH asked how many bars are dealing with roving shots.

SEN. COOK said that there are two in Bismarck and one in Mandan. The one in Mandan also has live music on Saturday night.

SEN. STENEHJEM said that he liked the amendment and didn't like the restrictions either, but pushing drinks on people is bad. The North Dakota Hospitality Association is fully aware of this and they have not heard any communication about it so it isn't a big problem. The city also liked it.

REP. MICKELSON mentioned that if it is such an effective piece of legislation, they why aren't cities enacting this. Why isn't it part of the city ordinance?

SEN. STENEHJEM did not answer.

REP. MICKELSON asked if this is why DUIs are at the same level.

SEN. STENEHJEM said that it is possible.

REP. KELSCH explained that she had three problems with the bill with the Senate amendments.

First, the restrictions on the business owners are wrong. Second, this puts into law what should be dealt with on the local level. Third, people are adults - treat them that way. This won't put restrictions on young people but it will on the bars. There is not that much difference between this and when a barmaid actually comes to the table and takes an order.

REP. MICKELSON echoed Rep. Kelsch's question.

SEN. STENEHJEM said that if you have seen these shots, that you will realize that there is no place to set them down. You have to actually drink it before you can lay it down on the table.

REP. MICKELSON asked what the temptation is in this case.

SEN. COOK said that when you are sitting and drinking you likely won't order another drink until you need it or are getting close. The difference with shots is that they are taken on top of the other drinks or with them. You take it so fast that you don't worry about waiting until you are finished and when it is gone, you continue on drinking.

SEN. COOK verified that the Representatives have all been to a place that sells roving shots.  
They all said yes.

COMMITTEE ACTION

REP. KELSCH moved that the Senate recede from their amendments and further amend the bill.

REP. MAHONEY seconded the motion.

ROLL CALL - 4 YEA, 2 NAE, 0 ABSENT AND NOT VOTING.

The motion failed.

April 8, 1999

CHAIRMAN MICKELSON REOPENED THE HEARING ON HB 1131.

REP. KELSCH explained that Section One is really causing the Representatives to not move the bill. She has done some checking and said that they will take it back to the House and kill it if the amendments are not removed. This bill is important to the people and the Department of Transportation, the conference committee will surely be defeated.

SEN. COOK said that if that is the case and that the conference committee is defeated, they would come back and take the amendments off. He believes that it is good legislation and thought that the floor should have a stab at it.

REP. MAHONEY stated his feelings that delayed bills are bad, and that putting on something like this amendment that is unrelated to the purposes of the first bill. Taking it to the floor to be defeated is a waste of time, and it is bad to bring a bill up to the floor that no one on the Committee supports just to see it fail. This is a bill that did not receive a fair hearing and if heard, should have been done in Industry, Business, and Labor. I have a hard time with the concept of bringing up a conference committee report that we don't favor. We have an

obligation to get things done in an orderly manner, I don't think that this is the right course. The purpose of the conference committees is to solve this before taking it to the floor. We need to take care of the purpose of this bill and hopefully local jurisdictions will look at this in ordinances. Our job is not to muddy the waters in legislation.

SEN. COOK mentioned that the germanus to the bill has already been debated and I think that this is so, it will keep the streets and highways safer. It will definitely have an impact and I am not afraid to let the entire house vote on it rather than letting this committee of six say no all together.

REP. MICKELSON brought up the comments of Senators Stenehjem and Cook from the last hearing. Both Senators said that they had not heard any complaints from those in the hospitality business, but when he called bars around the area - they were unaware and upset. Tacking this amendment on the bill was a good way to hide it and I am not comfortable trying to sell this. It is important to the state and the DOT. People need to know what is going on and be able to speak their thoughts. It deserves a fair hearing.

SEN. COOK said that it isn't a secret amendment and has been made clear to the parties involved.

SEN. COOK moved that the HOUSE ACCEDE TO THE SENATE AMENDMENTS. SEN. STENEHJEM seconded the motion. The motion failed.

ROLL CALL - 3 YEA, 3 NAE, 0 ABSENT AND NOT VOTING.

SEN. THOMPSON mentioned that he would have no problems with trying the report on the floor and seeing what happens. He believed that there would be enough people that will say no and send it back.

REP. MAHONEY expressed concerns with the amendment not receiving a full hearing and the regulation of the businesses. It puts the entire bill at risk.

REP. KELSCH took the discussion a step further and noted that the legislators have a responsibility to have the bills in take best form when it is taken up on the floor. It is a huge waste of time to take it up to the floor and kill it.

SEN. COOK said that it might me foolish and a waste of time to do this to them, but not to all of the House. The will of the people is at stake.

SEN. THOMPSON said that he and Sen. Cook disagreed on the floor and that he himself had argued for micro managing.

REP. MICKELSON agreed that they as legislators have a responsibility to a fair hearing which this did not have. It is their duty and responsibility to make this amendment public.

April 9, 1999

CHAIRMAN MICKELSON opened the hearing on HB 1131. He said that if the Senate didn't recede from their amendments, they would take it up to the floor and kill the entire bill.

SEN. STENEHJEM said that it was fine with him. He had no problem killing the bill; it is not his bill and he didn't care what happened to it.

REP. KELSCH said that she would not accept the conference committee report simply to take it to the House floor and kill it. I don't vote like that.

REP. MAHONEY agreed with Rep. Kelsch.

CHAIRMAN MICKELSON said that he didn't like the bill either, and the establishments don't like it, but he feels that they are being left with no other options.

SEN. COOK noted that they laid the other option on the table yesterday.

CHAIRMAN MICKELSON said that it is not fair of the Senators to ask them to take something up to the House floor that is completely not germane to the bill and let them bounce it around.

We are down to days now and we don't have time to monkey around like this.

SEN. COOK said that it is not monkeying around, it is all a part of the political process.

REP. MAHONEY clarified that you can't divide the amendment from the bill once it is out of committee.

REP. KELSCH said that she doesn't support the amendment and cannot support the conference committee report. She stated that she can't be that hypocritical to sign on to a bill in conference committee that she is going to vote against on the floor.

SEN. THOMPSON said that he did not support Section One of the amendment in committee or on the floor, but that he now felt that he had a responsibility as a conference committee member to the entire Senate.

REP. MAHONEY mentioned that he probably has voted one way in committee and the other way in chambers before, and that maybe he might consider voting to accede to the amendments and dealing with it on the floor just to move forward. It is going to be an emotional battle on the floor, not one that he would like to get into, but he would do it.

SEN. COOK said that he respected Rep. Mahoney's comments, and that he thought that he hit it right on the nail. It is obviously a black and white issue.

SEN. COOK moved that the HOUSE ACCEDE to the Senate amendments.

SEN. THOMPSON seconded the motion. The motion failed.

ROLL CALL - 3 YEA, 3 NAE, 0 ABSENT AND NOT VOTING.

CHAIRMAN MICKELSON closed the hearing on HB 1131.



April 12, 1999

CHAIRMAN MICKELSON opened the hearing on HB 1131. He made a motion that the House accede to the Senate amendments.

SEN. COOK seconded the motion.

REP. MICKELSON stated before the roll call that he wanted to comment, that in doing some checking on the shot provision, the shots that they bring around to the tables in those test tubes, are only three quarters of what they are when you order them from the bar.

REP. MAHONEY stated that he would vote for the motion, but would vote against the Conference Committee report on the House floor. The reason being not that the amendment didn't have some merit, but it did not have a full hearing, and it was not germane to the bill and its regulations of business.

SEN. COOK commented, regarding the three fourths of a shot, I don't think it will encourage people to drink more, I think it will reduce the number of shots that are sold. I would hope when this gets to the floor, you will allow a good debate and that you reconsider and support it. I believe passage of this bill will have a big impact on the number of drivers on the roads who have more to drink than what they should have.

SEN. STENEHJEM stated that he thought this was sound public policy. We regulate all kinds of dishonest practices, corrupt insurance practices, crooked consumer practices. This is an industry pushing drinks to people that have a drink in front of them.

REP. MAHONEY responded, by stating, regulating businesses and corrupt practices - I don't see any comparison to this business. What are bars in the business of - they are in the business of selling alcoholic beverages, they have signs everywhere, beer signs, alcohol specials, two for

one, all to promote the sale of alcoholic beverages. That is how they make their money. They also have liability exposure as well as the responsibility to see that people do not get too much to drink, they cut people off, I have done it myself as a bartender. I see a lot more responsibility drinking in bars than I did 15 or 20 years ago.

SEN. STENEHJEM said that his probably not necessarily because of what the bar owners themselves have done, but what the legislators have done with DUI laws in the state. If we don't want to regulate the bars, why don't we do away with Sunday closing and the time the bars close and let them be open 24 hours a day. There are all kinds of things we could do to lessen the restrictions we have on the liquor industry. I don't think this is an undue hardship. This is a practice that seems to have appeared in just the last short period of time. I never heard of this before. It wouldn't be so bad if they would set it down in a glass, which you could set on the table. You can hardly even set this thing down, with a rounded bottom tube. It has only one purpose, we don't need to overly encourage this kind of thing.

CHAIRMAN MICKELSON addressed two of the comments made - regarding the test tube being rounded at the bottom, it is more of a marketing scheme than anything. Shots or shooters are designed to take them, I don't know anyone who sips out of a shot glass. The alcohol content in the shooters, the actual liquid itself is smaller, and the shots that are in there, are not the high content of alcohol, they are generally the sweeter drinks, the flavored ones, that have the smaller percent of alcohol. He also addressed the comment about the shots being pushed upon the people, you have the ability to say no. I have never bought the argument that, somebody made me do it.

ROLL CALL - 5 YEA, 1 NAE, 0 ABSENT AND NOT VOTING.

Page 10  
House Transportation Committee  
Bill/Resolution Number cc 1131  
Hearing Date April 6, 1999

CHAIRMAN MICKELSON closed the hearing on HB 1131.

THE HOUSE REFUSED TO CONCUR WITH THE CONFERENCE COMMITTEE REPORT.

April 12, 1999

CHAIRMAN MICKELSON opened the hearing on HB 1131.

SEN. COOK moved that the Senate recede from the Senate amendments and remove Sections  
One and Four.

ROLL CALL - 6 YEA, 0 NAE, 0 ABSENT AND NOT VOTING.

VR  
4/13/99

CONFERENCE

AMENDMENTS TO HOUSE BILL NO. 1131 4/13/99

That the Senate recede from its amendments as printed on pages 1092 and 1093 of the House Journal and pages 953 and 954 of the Senate Journal and that House Bill No. 1131 be amended as follows:

Page 1, line 1, replace "subdivision" with "subdivisions" and after "b" insert "and e"

Page 1, line 5, replace "Subdivision" with "Subdivisions" and after "b" insert "and e"

Page 1, line 6, replace "is" with "are"

Page 1, after line 11, insert:

"e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances:~~

(1) ~~Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.~~

(2) ~~If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02."~~

Page 1, line 17, remove "impounded or immobilized for the period of suspension or revocation"

Page 1, line 18, remove "of the offender's driving privilege."

Page 1, line 23, remove "after the conclusion of the"

Page 1, line 24, remove "suspension or revocation"

Renumber accordingly

(Bill Number) 1131 (, as (re)engrossed):

VOTES 123

Your Conference Committee

For the Senate:	4/6	4/8	4/9
<del>Steenhjem</del> ✓	✓	✓	✓
<del>COOK</del> ✓	✓	✓	✓
Thompson ✓	✓	✓	✓

For the House:	4/6	4/8	4/9
Kelsch ✓	✓	✓	✓
Mahoney ✓	✓	✓	✓
Mickelson ✓	✓	✓	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724 725/726 S724/H726 S723/H725  
the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

and place 1131 on the Seventh order.  
727

, adopt (further) amendments as follows, and place  
1131 on the Seventh order:

having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

DATE: \_\_\_/\_\_\_/\_\_\_

CARRIER: \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

VOTES

Sens. Stenholm

	1	2	3						
Sens. Stenholm	N	Y	Y						
Cook	N	Y	Y						
Thompson	N	Y	Y						

Cook

Thompson

Rep. Kelsch

	1	2	3						
Rep. Kelsch	Y	N	N						
Mahoney	Y	N	N						
Mickelson	Y	N	N						

Mahoney

Mickelson

① Senate recede

② House accede

③ House accede

(Bill Number) HB 1131 (, as (re)engrossed):

*Vote 4*

Your Conference Committee

For the Senate:	YES	NO	For the House:	YES	NO
<i>P</i> SEN. COOK	✓		<i>P</i> REP. MICKELSON	✓	
<i>P</i> SEN. B. STENEHJEM	✓		<i>P</i> REP. KELSCH		✓
<i>P</i> SEN. THOMPSON	✓		<i>P</i> REP. MAHONEY	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724 725/726 5724/H726 5723/H725  
the (Senate/House) amendments on (SJ/HJ) page(s) 1092 - 1093

and place HB 1131 on the Seventh order.  
727

, adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) HB 1131 was placed on the Seventh order of business on the calendar.

DATE: 4/12/99

CARRIER: Mickelson

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

(Bill Number) HB 1131 (, as (re)engrossed):

VOTES

Your Conference Committee

For the Senate:	YES	NO
SEN. COOK	✓	✓
SEN. B. STENEHJEM	✓	✓
SEN. THOMPSON	✓	✓

For the House:	YES	NO
REP. MICKELSON	✓	✓
REP. R. KELSCH	✓	✓
REP. MAHONEY	✓	✓

recommends that the (SENATE) (HOUSE) (ACCEDE to) (RECEDE) from) the (Senate)/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_

and place \_\_\_\_\_ on the Seventh order.

, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

by removing Sec 1 & Sec 4

having been unable to agree, recommends that the committee be discharged and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: 4/12/99

CARRIER: \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.



Insert LC: .

**REPORT OF CONFERENCE COMMITTEE**

**HB 1131:** Your conference committee (Sens. Cook, B. Stenehjem, Thompson and Reps. Mickelson, R. Kelsch, Mahoney) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1092-1093 and place HB 1131 on the Seventh order.

HB 1131 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

HB 1131

C

**HOUSE TRANSPORTATION COMMITTEE**  
**January 14, 1999**

**North Dakota Department of Transportation**  
**Keith Magnusson, Director, Office of Driver and Vehicle Services**

**HB 1131**

---

Chairman Keiser and members of the committee: the North Dakota Department of Transportation prefiled HB 1131 as an agency bill. This bill concerns repeat DUI offenders.

Specifically, HB 1131 conforms North Dakota law -- concerning repeat offenders who operate a vehicle while under the influence of drugs or alcohol -- to recent federal mandates by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) Restoration Act. That new law and subsequent federal regulations mandate certain sanctions for repeat offenders. Fortunately, North Dakota's criminal laws (the mandate applies only to convictions and not to administrative proceedings) do not need much work to meet the federal requirements.

If North Dakota law does not conform to federal law and regulations on repeat offenders, certain highway funds will be transferred to safety programs and may not be used for road construction or maintenance, only for drinking-and-driving programs.

On October 1, 2000, and October 1, 2001, there would be a transfer of 1 ½ percent of several categories of federal funds, amounting to \$2,081,000 and \$2,120,000, respectively. On October 1, 2002, the transfer penalty would increase to three percent and amount to \$4,332,000. This three-percent transfer penalty would apply to every year thereafter, until we conformed our state law to federal mandates.

With this federal sanction in mind, we propose the following changes to our DUI laws.

**SECTION 1** of this bill amends the sentence for a second DUI offense within five years to raise the imprisonment from four to five days and the community service from 10 to 30 days.

**SECTION 2** deals with the motor vehicle of a repeat offender. It makes it clear that the repeat offender is someone who is convicted for the second time within five years, not the third time as in the current law. We are also adding language to more closely follow the federal law and regulations. This also gives the judge authority to impound or immobilize the vehicle, short of seizing, forfeiting, or selling it. This is all discretionary with the court.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1131**

Page 1, line 1, replace “subdivision b” with “subdivisions b and e”

Page 1, after line 11, insert:

- “e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances:~~
- ~~(1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.~~
  - ~~(2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.”~~

Page 1, line 22, overstrike “may also” and insert immediately thereafter “must”

Page 1, line 22, after “in” insert “all”

Page 1, line 23, overstrike “vehicle” and insert immediately thereafter “vehicles”

Renumber accordingly

Ramsey County , North Dakota  
**Office of States Attorney**

Lonnie W. Olson  
*States Attorney*

Telephone: 662-7077  
Devils Lake, ND 58301

4th Ave. # 16

January 14, 1999

George J. Keiser  
House Transportation Committee Chairman

RE: House Bill 1131 and 1134

Dear Honorable Representative Keiser:

As President of the North Dakota State's Attorney's Association, for 1998-1999, I have read with interest House Bills 1131 and 1134. House Bill 1131 provides for an increase of imprisonment for a second DUI conviction within five years from four days to five days imprisonment, and increases the alternative of community service in lieu of the imprisonment from ten days to 30 days of community service. North Dakota State's Attorney's Association is wholeheartedly in agreement to this bill. We understand that there is some rumblings about the reduction of the DUI for a first time DUI offense coming from Bismarck. We have not seen any bill drafts in regard to this, however have heard rumors of a bill to decriminalize first offense driving under the influence convictions. As an association, we oppose any reduction in first offense DUI penalties. The demographics that we have seen are such that often times the first time offender on a DUI has driven a number of times under the influence prior to the first conviction. In light of that, we believe that any weakening of first offense DUI's is contradictory to good public policy.

In reviewing House Bill 1134, which provides for reducing the per se alcohol concentration level for motor vehicle operators from .10 to .08, we have a number of concerns. It is fairly common for low alcohol readings for the defendants to have fairly good field sobriety tests. Tests such as the horizontal gaze nystagmus may be difficult show the possibility that an individual's alcohol concentration would be at a .08. Of bigger concern, we recognize the reluctance of some juries, particularly in western North Dakota, to convict individuals of DUI with low blood alcohol concentration levels. We are aware of a number of counties, again particularly in western North Dakota, where juries are very reluctant to convict people for DUI's of less of a .14 or .15. In those cases where a person has a blood alcohol concentration of a .08 or .09, or some cases less, yet are effected in a greater way by the alcohol, juries have convicted these individuals of driving under the influence. A number of years ago, former state's attorney of Benson County, Mike Steffan, obtained a jury conviction of DUI for someone who had an alcohol concentration of .07. The ability to get the conviction for driving under the influence was under the alternative pleading of "a person under the influence of alcohol". As you know, our DUI law actually provides two alternative, that being the per se statute, namely the .10 blood alcohol concentration, and "driving under the influence", wherein under the influence is defined as a person not possessing that clearness of intellect that they would ordinarily possess. The political

ramifications of lowering the BAC level to .08 could have a backlash effect on all DUIs. If there are a number of cases which go to a jury for the lower BAC level of .08 or .09, and juries become reluctant to convict on those, the backlash could have an effect on the DUIs above .10. It further could contribute to a greater number of cases going to a jury trial since the defendant would feel they have a better chance.

Other options would be to increase the suspension period for driving under the influence convictions, or even lowering the BAC level for the purposes of drivers license suspensions. As you know, the suspension of driving privileges is entirely administrative, and has nothing to do with the criminal conviction. Under the administrative hearing procedure, the respondents are not afforded the right to a jury trial, since the administrative hearing process and administrative suspensions pertain to public safety. Thus under the administrative hearing suspension procedure, there could be no jury backlash.

I appreciate the opportunity to voice our concerns.

Respectfully submitted,



Lonnie W. Olson  
Ramsey County State's Attorney  
President, ND State's Attorney Assoc.

LWO/cj

# SENATE TRANSPORTATION COMMITTEE

March 11, 1999

**North Dakota Department of Transportation**  
**Keith Magnusson, Director, Office of Driver and Vehicle Services**

## HB 1131

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Chairman Stenehjem and members of the committee: NDDOT prefiled HB 1131 as an agency bill. This bill concerns repeat DUI offenders.

Specifically, HB 1131 is intended to conform North Dakota law -- concerning repeat offenders who operate a vehicle while under the influence of drugs or alcohol -- to recent federal mandates by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) Restoration Act. That new law and subsequent federal regulations mandate certain sanctions for repeat offenders. The mandate applies only to convictions and not to administrative proceedings.

If North Dakota law does not conform to federal law and regulations on repeat offenders, certain highway funds will be transferred to safety programs and may not be used for road construction or maintenance, only for drinking-and-driving programs. On October 1, 2000, and October 1, 2001, there would be a transfer of 1 ½ percent of several categories of federal funds, amounting to \$2,081,000 and \$2,120,000, respectively. On October 1, 2002, the transfer penalty would increase to 3 percent and amount to \$4,332,000. This three-percent transfer penalty would apply to every year thereafter, until we conformed our state law to federal mandates. With this federal sanction in mind, we propose the following changes to our DUI laws.

**SECTION 1** of this bill amends the sentence for a second DUI offense within five years to raise the imprisonment from four to five days and the community service from 10 to 30 days.

**SECTION 2** deals with the motor vehicle of a repeat offender. It makes it clear that the repeat offender is someone who is convicted for the second time within five years, not the third time as in the current law. We are also adding language to more closely follow the federal law and regulations. This also gives the judge authority to impound or immobilize the vehicle, short of seizing, forfeiting, or selling it. This is all discretionary with the court.

**AMENDMENTS.** At the February 12 hearing on HB 1131, we proposed amendments to further comply with federal law and regulations. One amendment would make the use of interlocks mandatory, rather than discretionary, on all of a repeat offender's vehicles. This would be the least burdensome option under TEA-21. (The other options are impoundment or immobilization for at least one year.) Another amendment makes it clear that the mandatory sentences under 39-08-01 may not be suspended under any circumstances.

Both amendments were in response to a review of HB 1131 by the National Highway Traffic Safety Administration (NHTSA). They looked at our existing law and at HB 1131 to determine compliance with TEA-21. We received NHTSA's response just before the February 12 hearing.

Today, we have also prepared amendments which change HB 1131 so that it includes only those items we absolutely agree with. NDDOT continues to disagree with NHTSA's opinion that we are required to have either mandatory immobilization, impoundment, or interlocks for repeat offenders. There is a risk to these new amendments. If NHTSA does not change their position, and if Congress doesn't change it for them, the funds could be transferred involuntarily. Then we would have to come back to the next legislature (which starts a little more than three months after the mandate), asking for help to prevent the threatened transfer. Or, we could sue over our disagreement!

To summarize the options:

1. Do nothing ("kill" HB 1131). This would probably guarantee transfer of the funds.
2. Pass HB 1131 with mandatory immobilization, impoundment, or interlocks (see amendments offered on February 12). This would fully comply with the NHTSA opinion and prevent a transfer.
3. Pass HB 1131 with the amendments offered today (described above). This has an element of risk that may have to be addressed later.





U.S. Department  
of Transportation

National Highway  
Traffic Safety  
Administration

Region VIII  
Colorado, Montana  
North Dakota, South Dakota  
Utah, Wyoming

555 Zang Street, Room 430  
Lakewood, Colorado 80228-1010  
(303) 969-6917 Voice  
(303) 969-6294 Fax

February 1, 1999.

Mr. Marshall Moore, Director  
Department of Transportation  
608 East Boulevard Avenue  
Bismark, North Dakota 58505-0700

Dear Mr. Moore:

The Office of Chief Counsel (OCC) has completed a review of North Dakota's **Repeat Offender** proposed legislation. A copy of the memo including the OCC opinion and commentary is attached for your review.

In the opinion of the OCC, the proposed legislation if enacted without change, would not be considered to be in compliance with Federal requirements. If not brought in to compliance by October 1, 2000, North Dakota would be subject to the transfer of funds. {Section 164, 23 U.S.C. Transportation Equity Act for the 21st Century (T-21)}.

Refer to the attached OCC memo for specific areas needing attention. Please contact Bill Watda or John Balser of my staff if you need assistance (303) 969-6917.

Sincerely,

Louis R. DeCarolis, Ph.D.  
Regional Administrator

attachments (1)

cc: Ms. Marsha Lembke



U.S. Department  
of Transportation

**National Highway  
Traffic Safety  
Administration**

# Memorandum

Subject: North Dakota Repeat Intoxicated Drivers  
Legislation, under Section 164

Date: JAN 27 1999

From: *Heidi L. Coleman*  
Heidi L. Coleman  
Assistant Chief Counsel  
for General Law

Reply to  
Attn. of:

To: Adele Derby  
Associate Administrator for  
State and Community Services

This is in response to your request that the Office of Chief Counsel (OCC) review proposed legislation that would amend certain portions of North Dakota's repeat intoxicated drivers law. You requested OCC's opinion concerning whether enactment of this proposed legislation would conform North Dakota's law to the requirements of the Section 164 program, 23 U.S.C. §164, which was established in the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). You also requested that we review several existing portions of North Dakota repeat intoxicated drivers law.

In accordance with the agency's implementing regulations, 23 CFR Part 1275, which were published in an interim final rule on October 19, 1998 (63 FR 55796), to avoid a transfer of highway construction funds under the Section 164 program, a State must have a law that requires for all repeat intoxicated drivers:

1. A mandatory minimum one-year hard driver's license suspension;
2. A mandatory impoundment or immobilization of, or the installation of an ignition interlock system on, all motor vehicles registered to the repeat intoxicated driver;
3. An assessment of the degree of alcohol abuse and treatment as appropriate; and
4. A mandatory minimum sentence of not less than 5 days imprisonment or 30 days community service for a second offense; and not less than 10 days imprisonment or 60 days community service for a third or subsequent offense.



SAFETY BELTS SAVE LIVES

Under the statute and the implementing regulations, a "repeat intoxicated driver" is a person who has been convicted previously of driving while intoxicated or driving under the influence within the past five years.

It is this office's opinion, based on the materials provided, that the proposed legislation, if enacted without change, and current law, would enable North Dakota to meet one of the four requirements.

Requirement 1 - Mandatory minimum one-year hard driver's license suspension.

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

The proposed legislation does not amend current provisions of North Dakota law concerning mandatory license suspension. North Dakota's current law provides for a mandatory minimum 365-day license suspension for second offenders within a period of five years and a mandatory minimum 2-year license suspension for third or subsequent offenders within a five-year period. Section 39-06.1-10(7).

Accordingly, North Dakota meets the mandatory license suspension requirement.

Requirement 2 - Mandatory impoundment or immobilization of, or the installation of an ignition interlock system on, all motor vehicles registered to the repeat intoxicated driver.

To meet this requirement, the State must provide for either the impoundment or immobilization of vehicles for a period of time during the one-year driver's license suspension, or for the installation of an ignition interlock system for a period of time after the end of the one-year minimum suspension period. In addition, the State must require that at least one of these three sanctions is imposed on all motor vehicles owned by all repeat intoxicated drivers. The agency's implementing regulation provides that "impoundment or immobilization" includes ... the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration. Current North Dakota law does not meet this requirement.

Section 39-08-01.3 of the proposed legislation would provide that upon the second or subsequent conviction of an individual for driving while under the influence of alcohol, the court

may order the offender's vehicle to be "impounded or immobilized for the period of suspension or revocation of the offender's driving privilege, seized, forfeited and sold or otherwise disposed of ..."

This section would further provide that the court may require an ignition interlock device to be installed in the repeat offender's vehicle for a period of time "after the conclusion of the suspension or revocation." Section 39-08-01.3

Although these provisions would authorize the impoundment and immobilization of vehicles and the installation of ignition interlock devices, they would not require these sanctions, and the agency is unable to determine whether they would apply to all vehicles owned by the offender.

The proposed legislation also would provide that the court may order "the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege..." Section 39-08-01(3). Although this provision would authorize impoundment of vehicle license plates, it would not require it. In addition, this provision clearly would apply only to the vehicle used in commission of the offense, not to all vehicles owned by the offender.

For these reasons, North Dakota's proposed legislation would not meet this requirement.

Requirement 3 - An assessment of the degree of alcohol abuse and treatment as appropriate.

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

North Dakota's proposed legislation, if enacted without change, would provide for an assessment of alcohol use and/or abuse for second or third offenders. Specifically, sections 39-08-01(4)(b) and (c) of the proposed legislation would require all second and third offenders to undergo an "addiction evaluation by an appropriate licensed addiction treatment program." In addition, section 39-08-01(4)(g) of the proposed legislation would authorize treatment. It provides that, "if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program..." The proposed legislation would

not, however, require an assessment for alcohol use and/or abuse for fourth or subsequent offenders.

For this reason, North Dakota would not fully meet the assessment and treatment requirement.

Requirement 4 - A mandatory minimum sentence of not less than 5 days imprisonment or 30 days community service for a second offense; and not less than 10 days imprisonment or 60 days community service for a third or subsequent offense.

To meet this requirement, the State must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service for second offenders and not less than ten days of imprisonment or 60 days of community service for third or subsequent offenders. Under the agency's regulations, the term "imprisonment" means confinement in a jail, minimum security facility, community corrections facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

The proposed legislation, if enacted without change, would provide for a mandatory minimum term of 5 days of imprisonment or 30 days of community service for a second offense within 5 years, 60 days of imprisonment for a third offense within 5 years and 180 days of imprisonment for a fourth or subsequent offense within 7 years. Section 39-08-1-4(b)-(d). These provisions meet the mandatory minimum sentence requirement.

However, the proposed legislation also would provide that the mandatory minimum penalties may be suspended if the offender is convicted of being in actual physical control of (as opposed to driving) a motor vehicle while under the influence of alcohol. Section 39-08-01(4)(e)(1). In addition, the proposed legislation would provide that the mandatory minimum sentence may be suspended if the repeat offender is under eighteen years of age except that such offender must be sentenced to a term of 48 hours of imprisonment or 10 days of community service. Section 39-08-01(4)(e)(2). These exceptions are not permitted under the agency's implementing regulation.

For this reason, North Dakota would not fully meet the mandatory sentencing requirement.

Transfer of Funds

Any State that has not been determined to be in compliance with the Section 164 requirements by October 1, 2000, will be subject to a transfer of funds. In order to avoid this transfer of funds, North Dakota must either enact conforming amendments to its statutes or submit additional information, such as additional sections of its statutes, regulations, court cases or binding policy directives (such as an Attorney General's opinion), that demonstrates that North Dakota's laws comply with each element of the Repeat Intoxicated Driver requirements contained in 23 U.S.C. 164 and 23 CFR Part 1275.

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

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**Testimony of Janet Demarais Seaworth**  
**Executive Director**  
**North Dakota Beer Wholesalers Association**

**HB 1131**  
**House Transportation Committee**

Mr. Chairman, members of the committee, my name is Janet Seaworth. I am the Executive Director of the North Dakota Beer Wholesalers Association. Our association is comprised of twenty family-owned and operated beer distributors in North Dakota. Our beer wholesalers, along with their brewers, have been involved in the fight against drunk driving for a long time. And today, we appear in support of HB 1131.

It appears to us, that despite the progress we have made in the fight against drunk driving, a significant problem remains. That problem can be attributed to drivers with very high blood alcohol levels, who tend to have a history of alcohol related traffic offenses. In 1991, a study funded by Anheuser-Busch, and conducted by the Traffic Injury Research Foundation of Canada, and based on U.S. data, confirmed that an effective anti-drunk driving program should focus on the segment of the population that poses the greatest risk - that is, the high-BAC, repeat offender. The study found that high-BAC drivers are causing the vast majority of drunk driving fatalities (some 80% of fatally injured drunk drivers have a BAC of .15 percent or higher). And unfortunately, while these high-BAC drivers are causing the majority of problems, they are not reached by conventional education and awareness efforts.

The study suggested that an overall strategy to target these abusers might include a tiered-BAC approach, which ties the sanction to the BAC of the driver; increased assessment, treatment and rehabilitation; and possible technological approaches to prevent or limit the opportunity to drink and drive. These technological approaches included alcohol ignition interlocks, which have been shown to be an effective means of preventing drunk driving, even among repeat offenders; and impounding and immobilizing vehicles was found to be an efficient and effective means of preventing repeat DUI. We are encouraged that HB 1131 contemplates both of those approaches.

We believe that the state should focus on the most efficient solutions to drunk driving. And it makes good sense to concentrate efforts - and money - on those who are causing the problems - the repeat offender, high-BAC driver. Targeting these offenders, and dealing directly with the drunk driving problem, is fair and sensible, and we support it. We encourage your favorable consideration of HB 1131.

Thank you.

*For more information, contact the North Dakota Beer Wholesalers Association, P.O. Box 7401, Bismarck, ND 58507; (701)258-8098.*

**DEALING WITH  
THE HARD CORE  
DRINKING DRIVER**

**H.M. Simpson, D.R. Mayhew and D.J. Beirness**

**Traffic Injury Research**



## SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

This report re-examines the problem of the *hard core drinking driver* -- those individuals who repeatedly drive after drinking, especially with high blood alcohol concentrations (BACs) and who seem relatively resistant to changing this behaviour.

It shows that there has been virtually no change in the magnitude of the problem since the release of our previous report in 1991. Although hard core drinking drivers are a relatively small group in the total driving population, they continue to account for a very substantial proportion of drinking-driving problems, including fatal and injury-producing crashes. To illustrate, hard core drinking drivers account for only 1% of all drivers on the road at night during the weekend, but they represent nearly half of all the fatal crashes at that time. They also account for almost one-third (27%) of all fatally injured drivers and about two-thirds (65%) of all fatally injured drivers who are drinking.

The report focuses on a variety of measures that offer promise for dealing efficiently and effectively with hard core drinking drivers. It recommends:

*The use of an efficient method for identifying and processing hard core drinking drivers when they enter the legal /administrative system.*

- ◆ The efficiency and effectiveness of identifying and processing offenders could be increased by the introduction of a tiered-BAC system, which uses the BAC at the time of arrest as a criterion for determining the sanctions imposed.

*Assessment of DWI offenders to identify the problems they present, particularly those related to alcohol dependence.*

- ◆ Assessment -- or at least some type of screening -- should be required of all DWI offenders. In practice, however, it may be more efficient to require assessment only of repeat offenders and first offenders with high BACs -- i.e., those most likely to be harmfully involved with alcohol and at greatest risk of committing a subsequent DWI offence.

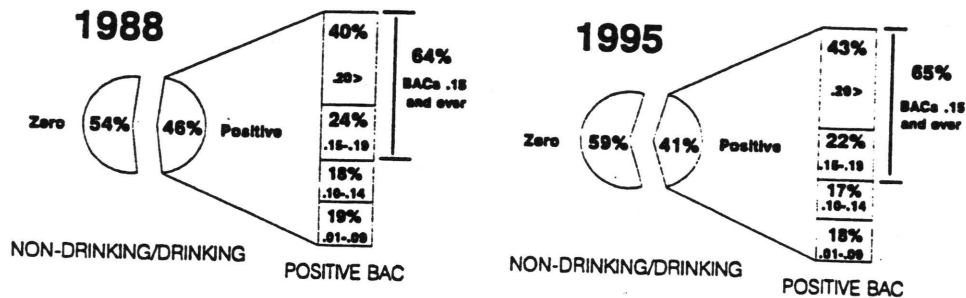
*Treatment and rehabilitation programs should be viewed as an essential and viable part of any strategy designed to deal with the problem of the hard core drinking driver.*

- ◆ a variety of treatment programs should be available so that offenders are diverted to the most appropriate program (treatment matching).

*Programs are needed to prevent or limit the opportunity of the "hard core" to drink and drive prior to, during, and even following treatment. Some of these programs -- such as licence suspension -- can be targeted directly at the offender; others can be directed at the offender's vehicle.*

- ◆ Administrative licence suspension is an effective DWI countermeasure and should continue to be promoted. Despite its effectiveness, a significant proportion of those with a suspended license continue to drive. Although this does not negate the beneficial effect of licence suspension, a greater impact might be realized if all suspended drivers could be kept off the road but especially the hard core. To increase the impact of licence suspension, measures are needed to enhance the detection of unlicensed drivers and a wider range of sanctions are needed to reduce the numbers of those who ignore their suspension.
- ◆ Very brief jail terms appear to be effective with first-offenders but it is not yet known whether this applies to hard core offenders.
- ◆ Despite the relatively weak evidence that lengthy jail terms have any beneficial safety impact, for various reasons, such as punishment and retribution, jail and prison sentences will continue to be used.
- ◆ Electronically monitored home confinement of DWI offenders appears to be a viable, effective and less costly alternative to incarceration.
- ◆ Intensive supervised probation is an effective means of ensuring that offenders comply with treatment recommendations.
- ◆ Alcohol ignition interlocks have been extensively evaluated and proven to be an effective means of preventing driving after drinking, even among repeat offenders. Their widespread use should be encouraged.
- ◆ Devices such as autotimers and fuel locks appear promising and warrant further study -- these have not yet been evaluated, so it is unknown how and for whom they might be most effective.
- ◆ Administrative impoundment and immobilization of vehicles being operated by suspended drivers appears to be an efficient and effective means of bolstering licence suspensions and preventing repeat DWI behaviour.

## BACs Among Fatally Injured Drivers in the United States

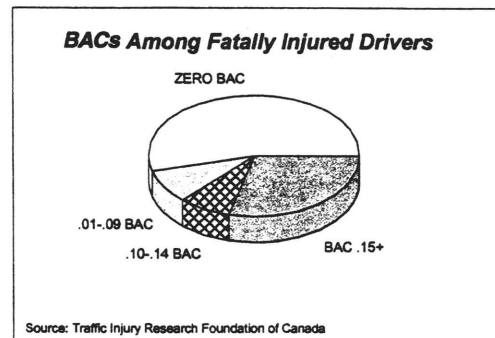


# The Hard-Core Drinking Driver

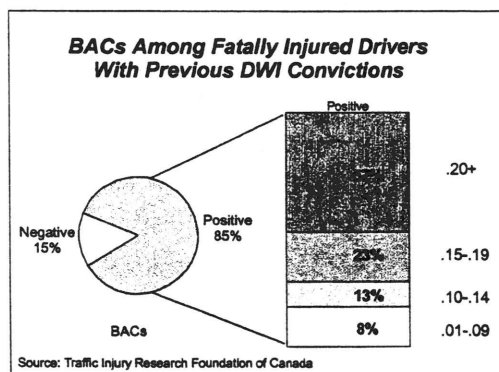
## *Profile of a Typical Drunk Driving Fatality*

Evidence indicates that a large proportion of the drunk driving problem appears to be concentrated among a small percentage of drivers. A study of U.S. federal government data by the Traffic Injury Research Foundation of Canada, offers some good direction on where the nation should focus attention in the fight against drunk driving. The study found:

**High-BAC drivers are causing the vast majority of the drunk driving fatalities.** While education and awareness and law enforcement have persuaded many social drinkers not to drive drunk, it appears the hard-core drinking drivers have not yet heard the message. Almost 80 percent of drunk drivers killed in 1991 had a blood alcohol content (BAC) of .15 or above – the equivalent of about six drinks in an hour for a 160 pound person. Over one-half of all drunk drivers killed had a BAC of .20 or above. That's twice the legal limit in most states. And, about 8,500 of these hard core drivers are killed on U.S. roads each year – not counting their victims. This is almost one-third of all drivers killed – drinking or nondrinking.



**A very small percentage is causing most of the problem.** The study also found that while these drivers make up only one percent of drivers on the road on weekend nights, they constitute half of all drivers killed.



**“Hard-core” are most likely problem drinkers or alcoholics.** The study found that these drivers are more likely to have a history of drunk driving convictions and driver's license suspension related to drunk driving. In fact, the study found that 80 percent of fatally injured drinking drivers with previous DWI convictions had BACs of .15 and above.

**High-BAC drivers are hard to reach.** Based on the findings about high-BAC drivers, the report suggests that an overall strategy to target these abusers might include: a tiered-BAC approach, which ties the sanc-

tion to the BAC of the driver so that minor impairment and severe drunkenness are treated differently; increased assessment, treatment and rehabilitation; and possible technological approaches.

The public demands that government zero-in on the most cost-efficient solutions to society's problems. It is increasingly evident that the “hard-core” are causing an extremely high proportion of traffic fatalities. By targeting these alcohol abusers, the nation can continue to make further progress in reducing drunk driving.

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## Targeting “High-BAC” Repeat Offenders

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Despite the great deal of progress which has been made in the fight against drunk driving, the challenge is not over. While social drinkers appear to have heard the message about drunk driving, there remains a very small percentage who repeatedly drive with extremely high blood alcohol levels. If we are going to continue the progress, many experts believe we must target the high-BAC repeat offender – these “hard-core” drinking drivers – for further sanctions. Consider this:

- **The “hard-core” drinking driver is not reached by conventional messages.** A 1991 study by the Traffic Injury Research Foundation (TIRF) found that still today some 80 percent of fatally injured drunk drivers have a blood alcohol content of .15 percent or higher. That is the equivalent of about six drinks in an hour for a 160-pound man. In addition, the study found that more than one-half of drunk drivers killed may have a blood alcohol content of .20 or above. Education and awareness efforts appear to be ineffective with this group.
- **Promising approaches to reaching the “hard-core” do exist.** The TIRF study suggests that an overall strategy to address the high-BAC driver might include: tiered-BAC systems that tie the level and type of sanction to the BAC of the driver, so that minor impairment and severe drunkenness are treated differently; assessment, treatment and rehabilitation coupled with sanctions, and the employment of certain technological approaches, like the alcohol ignition interlock.
- **Alcohol ignition interlocks, for example, may keep convicted drunk drivers from driving drunk again and again.** Alcohol ignition interlocks are essentially small breath-testing units installed in the offender’s car and linked to the vehicle’s ignition system. In order to start the vehicle, the driver must “blow” a breath sample below a certain level. BACs in excess of that level cause the ignition to lock, preventing the offender from operating the vehicle. Studies have shown that these devices work in keeping the abuser from driving drunk. And, coupled with counseling and treatment, ignition interlock devices may have longer-term benefits as well.
- **Measures shouldn’t penalize all drinkers for the problems caused by a few.** With government’s limited resources, it makes good sense to concentrate efforts – and money – on those who are causing the problems ... the high-BAC drivers. Measures like the interlock devices fit the bill because they are highly targeted toward offenders and deal directly with the drunk driving problem. Such approaches are inherently more fair and sensible than other approaches that inconvenience and punish all consumers in order to address the problems created by the few.

According to many researchers, like those at the world-renowned Traffic Injury Research Foundation, keeping repeat “high-BAC” offenders off the road will go a long way toward solving the remaining drunk driving problem. The TIRF suggestions for targeting the “hard-core,” like the alcohol ignition interlock device, aim carefully at the problem and are worth serious consideration.

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