

1999 HOUSE TRANSPORTATION

HB 1389

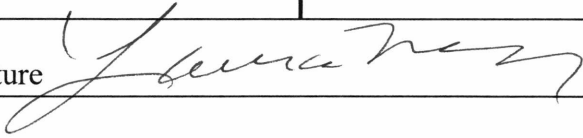
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1389

House Transportation Committee

Conference Committee

Hearing Date January 28, 1999

Tape Number	Side A	Side B	Meter #
2	x		0.6-32.4
(2/11/99) 1	x		
Committee Clerk Signature 			

Minutes:

CHAIRMAN KEISER OPENED THE HEARING ON HB 1389; A BILL RELATING TO RELEASE OF MOTOR VEHICLE OPERATOR RECORDS; TO PROVIDE FOR RETROACTIVE APPLICATION; AND TO DECLARE AN EMERGENCY.

BYRON CLARK, DIST. 44, introduced HB 1389. Basically HB 1389 deals with the fee and notification of checking your record. It would relate to the fee of \$3 involved in accessing records and the notification of the person whose records have been accessed.

KEITH MAGNUSON, Director, Office of Driver and Vehicle Services, testified in support of HB 1389. (See attached testimony).

THOMAS KELSCH, Attorney, testified in opposition to HB 1389. (See attached testimony).

REP. SVEEN noted that during last session, there was a bill relating to stalking and that this information shouldn't be released. Can you get that information or is it protected.

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House Transportation Committee

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TOM said that the Driver's Protection Act dealt with that situation. On the abstract the registration is masked. DUI's are exempted from the Act, but this legislation protects federal law.

CHAIRMAN KEISER generalized that this may work for one driver but if you want general numbers of DUIs - the price would be outrageous. Is that correct?

TOM said yes. Many times we want to check on a few of our drivers. We want to narrow in on those who are the problem drivers. Then they will pay higher costs of insurance rather than everyone.

CHAIRMAN KEISER asked if you would notify the customers coming in.

TOM said yes. If I got a copy from the local police department. There is a difference between a certified copy and an abstract. But they are notified in the police station, at the post office, in the newspaper.

REP. MEYER asked if there is anything that prohibits you from downloading the database and selling it.

TOM said that in states where electronic information comes across, we enter into a contract not to do that. Through the paper information we could probably create a database - but that is not our intent. We will not and cannot sell it. All that we can get is the individual records of the offenses. You could create a database if you want.

REP. PRICE asked how often you plan to utilize this. Once a year, twice a year, monthly?

TOM said that in our request we ask for a continuing right to get them.

JACK MCDOWELL, ND Newspaper Association, testified in opposition to HB 1389. He said that the news does use a lot of this information for stories. There is a difference between a

certified and an abstract. The difference is price related between a copy charge versus a fee. As far as using the database, we are doing that now. There are several agencies that pay the Secretary of State for lots of information. The legislature enters into contracts that sells laws. It is not uncommon that every abstractor has entered into contract with the Register of Deeds. They use it for private business purposes. It is a new entrepreneurial area.

REP. MEYER asked if anything is offered to use this database.

JACK said that each time Mr. Kelsch requests these records, a copy is printed for them.

CHAIRMAN KEISER noted that without this bill, the Supreme Court ruling is law and you have to provide this report.

CHAIRMAN KEISER CLOSED THE HEARING ON HB 1389.

February 11, 1999

COMMITTEE ACTION

CHAIRMAN KEISER introduced amendments to HB 1389. The amendments were presented by the Department of Transportation.

REP. KEMPENICH moved to ADOPT the AMENDMENTS. REP. BELTER seconded the motion. The motion carried.

ROLL CALL - 11 YEA, 1 NAE, 3 ABSENT AND NOT VOTING.

REP. KEMPENICH moved a DO PASS AS AMENDED. REP. SVEEN seconded the motion. The motion carried.

ROLL CALL - 10 YEA, 2 NAE, 3 ABSENT AND NOT VOTING.

FLOOR ASSIGNMENT - REP. KEMPENICH

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: Eng. HB 1389

Requested by Legislative Council _____ Date of Request: March 30, 1999

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process.

Narrative: We anticipate a loss of revenue; however, we are unsure of the amount. The expenditures will remain the same since we notify the drivers. According to the bill, the program would be at the expense (estimate \$5000) of the requestor. If the requestor would ask for prior years source document, temporary help would be needed.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	-0-	-0-	-0-	-0-	-0-	-0-
Expenditure	-0-	-0-	-0-	-0-	-0-	-0-

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: -0-
- b. For the 1999-2001 biennium: -0-
- c. For the 2001-03 biennium: -0-

4. **County, city, and school district** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-

Signed: *Marsha M. Lembke*

Typed Name: Marsha M. Lembke

Department: Drivers License and Traffic Safety

Phone Number: (701) 328-4865

Date Prepared: March 31, 1999

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ Amendment to: HB 1389

Requested by Legislative Council _____ Date of Request: 2-16-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

If amendments are not passed, there is a greater chance of loss of revenue without a corresponding reduction in expenditures. If the amendments are passed, we anticipate a loss of revenue and a reduction of expenditures. We are unable to accurately determine the loss of revenue or reduction of expenditures at this time.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	(See Narrative)		(See Narrative)		(See Narrative)	
Expenditures:	"	"	"	"	"	"

3. What, if any, is the effect of this measure on the appropriation for your agency or department:


- a. For rest of 1997-99 biennium: See Narrative
- b. For the 1999-2001 biennium: See Narrative
- c. For the 2001-03 biennium: See Narrative

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-

If additional space is needed, attach a supplemental sheet.

Signed *Marsha M. Lembke*

 Typed Name Marsha M. Lembke

Date Prepared: 2-16-99

Department Drivers License and Traffic Safety

Phone Number 328-4865

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1389 Amendment to: _____
 Requested by Legislative Council Date of Request: January 20, 1999

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts. Please provide breakdowns, if appropriate, showing salaries and wages, operating expenses, equipment, or other details to assist in the budget process.

Narrative: As the law currently stands, there would be no impact; however, if the ND Supreme Court rules against us in pending case, it could be a fiscal impact. Unable to determine that at this time.

2. State fiscal effect in dollar amounts:


	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures	-0-	-0-	-0-	-0-	-0-	-0-

3. What, if any, is the effect of this measure on the budget for your agency or department:

- a. For rest of 1997-99 biennium: -0-
 (Indicate the portion of this amount included in the 1999-2001 executive budget:) -0-
- b. For the 1999-2001 biennium: -0-
 (Indicate the portion of this amount included in the 1999-2001 executive budget:) -0-
- c. For the 2001-03 biennium: -0-

4. County, city, and school district fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-


 Signed: _____
 Typed Name: Marsha M. Lembke
 Department: Drivers License and Traffic Safety
 Phone Number: (701) 328-4865
 Date Prepared: January 21, 1999

PROPOSED AMENDMENTS TO HOUSE BILL 1389

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 39-16-03 of the North Dakota Century Code, relating to release of motor vehicle operator records; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-16-03 of the North Dakota Century Code is amended and reenacted as follows:

39-16-03. Abstract Driving records – Not admissible in evidence – Fee. 1. The director upon request shall furnish any person a certified abstract of the operating record of any person, source document therefor, or record of clearance, subject to the provisions of this ~~chapter title,~~ which ~~The abstract~~ must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. Any person, except the subject of the record and law enforcement or judicial officers functioning in their official capacity, requesting the abstract or record of clearance shall indicate in writing the reason for the request and shall identify the person or firm for whom or which the request is made and the intended recipient of the ~~abstract record.~~ Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. The director upon request shall furnish an operating record or complete operating record to the subject of the record, or law enforcement or judicial officers, subject to the provisions of this title.

2. A fee of three dollars must be paid for each abstract of any operating record, operating record, complete operating record, or record of clearance, and a reasonable fee must be paid for each source document, except no fee will be assessed to law enforcement agencies or judicial officers. The director shall send an additional copy of the abstract or record of clearance to the driver whose ~~abstract record~~ was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the ~~abstract record,~~ and providing the reason for the request. No additional copy of the abstract or statement record of clearance may be sent to a driver where the request for the ~~driver's abstract record~~ was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency ~~of this state, or of its political subdivisions~~ or judicial officer.

3. A requester obtaining source documents in aggregate form from the department shall send an additional copy of each source document to the subject of the record, accompanied by a statement identifying the requester, and the reason the record was obtained. If the requester provides a source document, or any information therein, to any

other person or firm, the requester shall send the subject of the record a statement identifying the person or firm, identifying the source document, and a copy of any compilation derived from source documents provided to the person or firm. Any person or entity obtaining source documents in aggregate form under this section shall comply with the confidentiality and nondisclosure of information provisions of chapter 39-33 and sections 39-06-14, 39-06.1-10 and 39-16-03.1. No record compiled from source documents obtained in aggregate form under this section is admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. Any person violating this subsection is guilty of a class A misdemeanor.

4. As used in this section, "reasonable fee" includes the following:

a. The actual cost of making or mailing a copy of the source document, or both, including labor, materials, postage, and equipment.

b. Notwithstanding section 44-04-18(2), in response to a request for source documents in aggregate form, the cost associated with locating, reviewing, or providing access to the source document, and any cost associated with excising confidential or closed materials under section 44-04-18.8.

Section 2. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

Section 3. EMERGENCY. This Act is declared to be an emergency measure.

Renumber accordingly

VK
2/12/99
log2

House AMENDMENTS TO HOUSE BILL NO. 1389 HTRN 2/12/99

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 39-16-03 of the North Dakota Century Code, relating to release of motor vehicle operator records; to provide a penalty; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-16-03 of the North Dakota Century Code is amended and reenacted as follows:

39-16-03. ~~Abstract~~ Driving records - Not admissible in evidence - Fee - Penalty.

1. The director upon request shall furnish any person a certified abstract of the operating record of any person, source document therefor, or record of clearance, subject to ~~the provisions of this chapter which title.~~ The abstract must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. Any person, except the subject of the record and law enforcement or judicial officers functioning in their official capacity, requesting the abstract or record of clearance shall indicate in writing the reason for the request and shall identify the person or firm for whom or which the request is made and the intended recipient of the abstract record.

Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. Upon request and subject to the provisions of this title, the director shall furnish an operating record or complete operating record to the subject of the record or to law enforcement or judicial officers.

2. A fee of three dollars must be paid for each abstract of any operating record, operating record, complete operating record, or record of clearance, and a reasonable fee must be paid for each source document, except no fee ~~will~~ may be assessed to law enforcement agencies or judicial officers. The director shall send an additional copy of the abstract or record of clearance to the driver whose ~~abstract record~~ abstract record was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the ~~abstract record~~ abstract record, and providing the reason for the request. No additional copy of the abstract or statement record of clearance may be sent to a driver where if the request for the driver's abstract record was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions or judicial officer.
3. A requester obtaining source documents in aggregate form from the department shall send an additional copy of each source document to the subject of the record, accompanied by a statement identifying the requester and the reason the record was obtained. If the requester provides a source document, or any information therein, to any other person or firm, the requester shall send to the subject of the record a statement identifying the

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person or firm and the source document and a copy of any compilation derived from source documents provided to the person or firm. Any person or entity obtaining source documents in aggregate form under this section shall comply with the confidentiality and nondisclosure of information provisions of chapter 39-33 and sections 39-06-14, 39-06.1-10, and 39-16-03.1. A record compiled from source documents obtained in aggregate form under this section is not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. A person violating this subsection is guilty of a class A misdemeanor.

4. As used in this section, "reasonable fee" includes:
 - a. The actual cost of making or mailing a copy of the source document, or both, including labor, materials, postage, and equipment; and
 - b. Notwithstanding subsection 2 of section 44-04-18, in response to a request for source documents in aggregate form, the cost associated with locating, reviewing, or providing access to the source document and any cost associated with excising confidential or closed materials under section 44-04-18.8.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2/11
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1289

House Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Am.

Motion Made By Rep Kempenich Seconded By Rep Belter

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) 10 No 1

Absent 3

Floor Assignment _____

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

Date: 2/11
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1382

House Transportation Committee

- Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DP as amended

Motion Made By Rep Kempenich Seconded By Rep Sveen

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) 10 No 2

Absent 3

Floor Assignment Rep. Kempenich

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

REPORT OF STANDING COMMITTEE

HB 1389: Transportation Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). HB 1389 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 39-16-03 of the North Dakota Century Code, relating to release of motor vehicle operator records; to provide a penalty; to provide for retroactive application; and to declare an emergency.

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39-16-03. Abstract Driving records - Not admissible in evidence - Fee - Penalty.

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Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. Upon request and subject to the provisions of this title, the director shall furnish an operating record or complete operating record to the subject of the record or to law enforcement or judicial officers.

2. A fee of three dollars must be paid for each abstract of any operating record, operating record, complete operating record, or record of clearance, and a reasonable fee must be paid for each source document, except no fee ~~will~~ may be assessed to law enforcement agencies or judicial officers. The director shall send an additional copy of the abstract or record of clearance to the driver whose abstract record was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the abstract record, and providing the reason for the request. No additional copy of the abstract or statement record of clearance may be sent to a driver where if the request for the driver's abstract record was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions or judicial officer.
3. A requester obtaining source documents in aggregate form from the department shall send an additional copy of each source document to the subject of the record, accompanied by a statement identifying the requester and the reason the record was obtained. If the requester

provides a source document, or any information therein, to any other person or firm, the requester shall send to the subject of the record a statement identifying the person or firm and the source document and a copy of any compilation derived from source documents provided to the person or firm. Any person or entity obtaining source documents in aggregate form under this section shall comply with the confidentiality and nondisclosure of information provisions of chapter 39-33 and sections 39-06-14, 39-06.1-10, and 39-16-03.1. A record compiled from source documents obtained in aggregate form under this section is not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. A person violating this subsection is guilty of a class A misdemeanor.

4. As used in this section, "reasonable fee" includes:
 - a. The actual cost of making or mailing a copy of the source document, or both, including labor, materials, postage, and equipment; and
 - b. Notwithstanding subsection 2 of section 44-04-18, in response to a request for source documents in aggregate form, the cost associated with locating, reviewing, or providing access to the source document and any cost associated with excising confidential or closed materials under section 44-04-18.8.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

1999 SENATE TRANSPORTATION

HB 1389

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1389

Senate Transportation Committee

Conference Committee

Hearing Date March 5, 1999

Tape Number	Side A	Side B	Meter #
1	x		4,812-End
1		x	1-5129
March 25, 1999 - Tape 1		x	3,946-End
March 26, 1999 - Tape 1	x		1-671 1662-2190
Committee Clerk Signature	<i>Doni A. Schaeffer</i>		

Minutes:

SENATOR B. STENEHJEM opened the hearing on HB 1389. Committee members present included: Sens. Bob Stenehjem, R. Schobinger, D. Mutch, D. Cook, D. O'Connell, V. Thompson, and D. Bercier.

REPRESENTATIVE BYRON CLARK, DISTRICT 44 testified in support of HB 1389. This is a bill that came to my attention from former Representative Freier.

MARSHALL MOORE, DIRECTOR OF ND DEPARTMENT OF TRANSPORTATION testified in support of HB 1389 (see testimony).

SENATOR SCHOBINGER We now have a box that we can check if we don't want our records disclosed when we go and get our driver's license, right?

MARSHALL MOORE Yes, but that is not this record. This is under open records.

SENATOR SCHOBINGER My address and phone number and everything is on that not just my citation.

ANDREW MORAGHAN, ATTORNEY GENERAL FOR ND DOT testified in favor of HB 1389. Senator Schobinger, what you are referring to is the Driver and Motor Vehicle Record Privacy Act which is found in Chapter 39.33 of the Century Code. Under that the residents of the state can keep some information from being disclosed by the Department of Transportation but they have to make a request that that information not be disclosed. That is Subsection 6 of 39-03.01, the information is a photograph, social security number, driver identification number, name, address, telephone number and medical and disability information. Currently under ND law, the open records law, you are not able to charge for excising confidential enclosed materials.

This would allow DOT to charge a reasonable fee for excising personal information for an individual who does not want this personal information provided. The citation or source document would still be disclosed to a company such as Explorer but some of the information on it would be excised or blocked off. They would still get a record of the violation; the social security number, etc. would be excised only if the individual requested that. DOT sends out notices with the motor vehicle license plates, you are given a notice that you could opt out and request that personal information not be provided by DOT. Otherwise it would be available.

SENATOR B. STENEHJEM Is this the minimum in the engrossed bill HB 1389 that the state can get by with. Are we going beyond what the district court says we absolutely have to do in there ruling?

ANDREW MORAGHAN HB 1389 is not more liberal than the court ruling. Currently we have a situation as a result of a decision with Explorer. They originally wanted all the violations

including the 0,1 and 2 pointers also but they are not documents that go on a person's abstract.

There is an argument that a company like Explorer could make is that they are entitled to all of the documents including the 0, 1 and 2 pointers. The law says they can get the citations but not the 0, 1 and 2 pointers. A company could come in and make a request to have all of the citations and then they would have more material than they are entitled to. DOT argued that they should charge the \$3.00 fee to Explorer because they are building an abstract in large part. The Supreme Court said no because there are some differences with what's on an abstract and all of these individual citations and the way the law is written right now you can't charge \$3.00 for this information. DOT wants to make sure if this information is requested in bulk form that the residents will get notice that their record is given out. Because of the Supreme Court's decision, there really is no obligation for DOT to give the residents of the state notice that this information is given out. DOT wants to have the law amended so there is a mechanism to notify the residents of the state when the information is given out in bulk form. This will not change the law if someone were to come in and ask for an individual citation.

SENATOR B. STENEHJEM If someone hasn't checked the box, could we have the state, in our law, block out all driver's license numbers if it is a bulk request?

ANDREW MORAGHAN You could.

SENATOR SCHOBINGER If I choose not to have my social security number as my driver's license, can I have another number issued to me?

ANDREW MORAGHAN Yes.

SENATOR COOK Did Explorer get the information?

ANDREW MORAGHAN They have not started receiving the information yet.

SENATOR COOK Under the court decision, what would they have to pay?

ANDREW MORAGHAN The Department of Transportation can't charge anything for excising the information.

SENATOR COOK If these amendments on HB 1389 were existing law, would the Supreme Court decision have been different?

ANDREW MORAGHAN We wouldn't have had a case.

SENATOR THOMPSON Is it fair to say that the Supreme Court may have said that \$3.00 is too much but the language in this proposal the consumers would have been notified that these records are being accessed? This addresses what is a reasonable fee. We also want to make sure the people are notified.

ANDREW MORAGHAN They were looking at what the request was for whether it was an abstract or was not quite an abstract.

SENATOR BERCIER How far back does the retroactive application?

ANDREW MORAGHAN It is a response to the Explore case. There is no other request for bulk information other than this one.

TOM KELSCH, EXPLORE INFORMATION SERVICES testified in opposition to HB1389 (see testimony and proposed amendments). This is a complete hog house from the original bill. This bill as amended is a lot better than the original bill. It would require Explore or any company like us to give notice to everybody when we receive these records. Our company works like this. We receive records of convictions from DOT and there may possibly 3,000 records in one month that would fit under this category. American Family may only have 400 of those 3,000. We would send only those 300 records that our client is interested in. This bill

requires us to send out 3,000 notices and copies of those records plus when we actually use the record we would have to send out those notices again. The first amendment will let us send a notice if we use the record or an insurance company give notice if they use the record. The second amendment will keep the cost of open records the same throughout the state. With those two amendments we could support the bill.

SENATOR SCHOBINGER I could have State Farm but get a notice from All State?

TOM KELSCH Right now, yes. But with the amendments you would not get the notice and we would not use your record.

SENATOR SCHOBINGER But I would still get the one notice when you get the record.

TOM KELSCH Yes, right now.

SENATOR COOK Right now as the bill is I would get two notices. When it goes from DOT to Explore and when it goes from Explore to American Family?

TOM KELSCH Yes.

SENATOR COOK How often does American Family check any of their drivers' records or does DOT automatically notify American Family if someone gets a six point violations?

TOM KELSCH I don't know.

SENATOR COOK Every three years I think they check on our records. How often would you be getting the abstract from DOT?

TOM KELSCH On a monthly basis, we would cross check those with American Family or any other company and send them to the company if we get hits.

SENATOR COOK The one benefit is that they would stay more current and probably save money.

TOM KELSCH It would be more efficient by targeting people who are having problems.

SENATOR B. STENEHJEM Is it possible that you could use it for insurance companies but also sell it for surveys?

TOM KELSCH We are limited with what we can do with that information and we would not be getting everybody's abstract.

SENATOR MUTCH How much do you assume the cost will be?

TOM KELSCH Because we can't narrow down, we'd have to ask for all convictions from March 1999 but we don't know what the reasonable cost will be. We would only use the ones that we have clients with.

SENATOR SCHOBINGER Nothing says you can't contact another insurance company?

TOM KELSCH Yes.

SENATOR BERCIER Why don't you just get State Farm's list of drivers and ask for those?

TOM KELSCH DOT is going to sift through the list and find those with State Farm Insurance. We can do the cross checking.

SENATOR THOMPSON Why do you want to eliminate the reasonable?

TOM KELSCH The fee is reasonable now under the open records law. This would expand it for strictly DOT.

JACK MCDONALD, ND NEWSPAPER ASSOCIATION testified for the amendments proposed by Tom Kelsch.

LEROY ERNST Are these records handled differently between private versus commercial?

LYNN HEINERT, SUPERVISOR OF SUSPENSIONS AND RECORD FOR ND DOT, answered questions. When an employer does a record check on a driver they get a limited abstract. They only get violations that are 3 pts. or greater.

SENATOR B. STENEHJEM If I change my driver's license number does that change the previous records.

LYNN HEINERT Yes.

SENATOR B. STENEHJEM We will close the hearing on HB 1389.

March 25, 1999

ANDREW MORAGHAN, ASST. ATTORNEY GENERAL FOR DOT proposed amendments.

Under HB 1389, as it is currently written, the responsibility of giving notice out to the subjects of citations when they are requested in aggregate form would be on the requester. The amendments propose that the responsibility to notify those drivers would fall on the DOT. Then DOT would be able to charge a reasonable fee to the requester for the making of the copy. The first amendment makes it clear that the insurance support organization would need to give a reason why they are requesting the record and who is requesting the record. The second amendment would require the director to send a copy of the record to the subject with an explanation of why it was given out. The third one basically gives DOT the authority to charge a reasonable fee for the copy of the record. The fourth amendment removes on page 2 lines 11-24 which is subsection 3 of section 1 of the bill. That whole subsection relates to the insurance organization giving out the notice to the subject of the record. That is no longer necessary (he explained more about the amendments).

SENATOR B. STENEHJEM This works in harmony with the amendments of Mr. Kelsch.

ANDREW MORAGHAN Yes.

SENATOR B. STENEHJEM When you take the penalty section out, where do we find the penalty for whoever did these records and gives out the information.

ANDREW MORAGHAN Currently, if an open record is requested, there is nothing in the law that really addresses the use of that record by the requester.

SENATOR B. STENEHJEM I could publish your abstract in the Tribune tomorrow.

ANDREW MORAGHAN Sure, that is an open record. Once I require your record, there is really no limitation on what I do with your record.

SENATOR SCHOBINGER What effect does the retro activity have?

ANDREW MORAGHAN It still has an effect because Explore has requested information going back into the past. We could apply these amendments to that request. His proposed amendment would also be part of that retro activity too.

TOM KELSCH proposed amendments. The intent of this was to try to narrow the list of our request down. This would allow the requester to provide the department with a list of names of drivers and request any source document relating to those drivers for a set time period. (He gave an example). This is a good compromise because it limits the names.

SENATOR COOK You are going to give DOT a list of names and DOT will give you the abstracts on a monthly or quarterly basis.

TOM KELSCH They would give us a list of convictions for those people in a given month.

SENATOR COOK You are going to pay the department the fee for them to give it to you in aggregate form and you are going to pay the department the \$3 for them to notify.

TOM KELSCH The abstract is \$3 but the notification fee would not be \$3.

Page 9

Senate Transportation Committee

Bill/Resolution Number Hb 1389

Hearing Date March 5, 1999

SENATOR COOK How important is the retroactive application?

TOM KELSCH It is fine.

SENATOR COOK What if it wasn't on the bill?

TOM KELSCH We would probably do what is on the bill anyway.

SENATOR COOK My concern is that part of the law will apply to anyone else requesting, should that be a concern.

TOM KELSCH If it was pending request.

KEITH MAGNUSSON We would feel more comfortable if retro activity was in there because the department is under the order from the Supreme Court to provide those things. We'd like to do it under the rules set out with this amendment. We ask that you keep the emergency clause and the retro activity on there.

SENATOR B. STENEHJEM Are you in agreement with both of these clauses on there?

KEITH MAGNUSSON Yes.

March 26, 1999 - Tape 1

DOT and Explore proposed combined amendments 98322.0201.

ANDREW MORAGHAN Because of the next amendment which follows below that. The record that will go out to Explore and any insurance organization is not technically a source document.

DOT will create a record from the source document so it will actually be an abstract. Our proposed amendment is trying to get the point across that whatever record goes to the insurance agency will be copied and sent to the driver whether it is technically a source document or not.

SENATOR COOK Would you have a concern with the way it is right now?

ANDREW MORAGHAN My only concern is that it reads "source document" and it really is not quite a source document.

There was more explanation given.

KEITH MAGNUSSON We would prefer our language. We are concerned if someone says we aren't giving them a source document.

#1682

ANDREW MORAGHAN explained the proposed amendments 98322.0202.

SENATOR O'CONNELL I move the amendments 98322.0202.

SENATOR COOK I second.

There was committee discussion.

The amendment was adopted by a voice vote.

SENATOR SCHOBINGER I motion for a Do Pass as Amended.

SENATOR MUTCH I second.

The roll call vote was taken (6 Yeas, 0 Nays, 1 Absent and Not Voting).

Senator Bob Stenehjem will carry HB 1389.

Tom
Kelsch

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1389

Page 2, replace lines 25 through 30 with

~~4~~
3

A requestor may provide the department with a list of names of drivers and may request any source documents from the department relating to the listed drivers for a set time period. The department shall provide this information in hard copy form or by electronic means. If, in order to provide the information by electronic means the department sets up a computer program, the department may charge a requestor a reasonable charge for a set up fee. This reasonable charge may not exceed the actual cost to set up the computer program. If a requestor obtains information on source documents by electronic form or otherwise, the requestor must comply with the requirements set out in Section 3."

Page 3, remove lines 1 through 2

Renumber accordingly

Andy
Att. General

PROPOSED AMENDMENTS TO HOUSE BILL 1389

Page 1, line 14 after "abstract" insert "source documents in aggregate form."

Page 2, line 2 after "abstract" insert ", source document when requested in aggregate form."

Page 2, line 6 after the period insert "A requester of source documents in aggregate form shall pay the director a reasonable fee for making and mailing an additional copy of the same record to the driver whose record was requested."

Page 2, remove lines 11 through 24

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1389

Page 1, line 14, after "abstract" insert ", source documents in aggregate form,"

Page 2, line 2, after "abstract" insert ", source document if requested in aggregate form,"

Page 2, line 11, replace "obtaining source documents in aggregate form from the department" with "may provide the department with a list of names of drivers and may request any source documents from the department relating to the listed drivers for a set time period. The department shall provide this information in hard copy or electronic format. If in order to provide the information by electronic format the department sets up a computer program, the department may charge a requester a reasonable charge for a setup fee. This charge may not exceed the actual cost to set up the computer program. A requester of source documents in aggregate form shall pay the director a reasonable fee for making and mailing to the driver whose record was requested an additional copy of the document as it relates to that driver."

Page 2, remove lines 12 through 30

Page 3, remove lines 1 and 2

Renumber accordingly

Date: March 26, 1999

Roll Call Vote #: /

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HR 1389

Senate Transportation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number 98322.0202

Action Taken Do Pass as Amended

Motion Made By Sen. Schobinger Seconded By Sen. Mutch

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) 6 No 0

Absent 1

Floor Assignment Senator B. Stenejem

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

REPORT OF STANDING COMMITTEE

HB 1389, as engrossed: Transportation Committee (Sen. B. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1389 was placed on the Sixth order on the calendar.

Page 1, line 14, after "abstract" insert ". source documents in aggregate form."

Page 2, line 2, after "abstract" insert ". source document if requested in aggregate form."

Page 2, line 11, replace "obtaining source documents in aggregate form from the department" with "may provide the department with a list of names of drivers and may request any source documents from the department relating to the listed drivers for a set time period. The department shall provide this information in hard copy or electronic format. If in order to provide the information by electronic format the department sets up a computer program, the department may charge a requester a reasonable charge for a setup fee. This charge may not exceed the actual cost to set up the computer program. A requester of source documents in aggregate form shall pay the director a reasonable fee for making and mailing to the driver whose record was requested an additional copy of the document as it relates to that driver."

Page 2, remove lines 12 through 30

Page 3, remove lines 1 and 2

Renumber accordingly

1999 TESTIMONY

HB 1389

14

HOUSE TRANSPORTATION COMMITTEE
January 28, 1999

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

HB 1389

Chairman Keiser and members of the committee, the North Dakota Department of Transportation asked Representative Clark to introduce HB 1389 on behalf of the department. This bill concerns how, and at what cost, driver records are released to the public.

HB 1389 is a reaction to a lawsuit which is now pending a decision of the North Dakota Supreme Court. The department lost at the District Court and we appealed that decision to the Supreme Court, which held oral argument in early December and should come out with the decision any day. We could not wait until that decision to bring this matter to the legislature -- in fact, the Supreme Court expressed a desire to have the legislature take care of this problem.

HISTORY

The legislature's intent, over the years, has been that when someone requests information on a person's driving record, the driver should be informed about it. Section 39-16-03 of the North Dakota Century Code makes it clear that the driving record is public (with the exception of entries more than three years old, entries resulting from a zero-, one-, or two-point violation, and certain other situations). The person making the request, however, must indicate in writing the reasons for the request and identify the person or firm for whom the request is made and the intended recipient of the abstract. We are now also able to provide this information electronically. For each abstract, the requestor pays \$3 and the department sends a copy of the requested information to the driver. One reason the \$3 fee is in the statute is to cover the cost of notifying the driver. (These procedures and fees do not apply to law enforcement agencies or the courts.)

Requests usually come from insurance companies, but credit bureaus and individuals also ask for driver information. There have been attempts to get around the law. At one point, insurance agents had drivers request a complete operating record, not just an abstract. That wasn't mentioned in the law, but the 1995 Legislature plugged that loophole. The 1997 Legislature defeated a bill that would have allowed someone -- in that case a commercial entity -- to buy our entire data base for much less than the \$3-per-record cost. However, the issue has resurfaced.

CURRENT PROBLEM

An out-of-state company that provides driver license information to insurance companies and other entities is attempting to get information on North Dakota drivers without following the procedures of Section 39-16-03, at a much reduced fee, enabling them to undercut their competition. This attempt has been going on for several years, and they're trying to do the same thing in many other states. The company proposed various schemes to get the information from us at less than the \$3-per-record cost. They told us that driver notification was our problem, not theirs.

After we turned down several proposals, they made an open records request for every citation that we receive from the courts in this state -- 30,000 per year -- at a price of 5¢ each for copying. Their reasoning was that the citation is an open record and available from the courts, but they would have to go to all the courts, whereas we have all the information in one place. They wanted to form their own driving record for North Dakota drivers at a cost of only five cents per record.

We also turned this request down, because we thought it was against the intent of the law. These citations form the basis for the driving record or abstract of driving record covered by 39-16-03.

The company sued the department for not complying with the open records law. The District Court ruled against the department and said that these citations are not covered by Section 39-16-03. On the other hand, because our case had not been frivolous, the District Court ruled that we did not have to pay the plaintiff's attorney fees. They also declined to rule on the 5¢ fee.

That brought about our appeal to the Supreme Court, which we learned January 27 had been decided against us.

Because we hope this problem can be permanently resolved by the Legislature, we have drawn HB 1389 broadly in order to cover any possible future situations. We have added an emergency clause because any court ruling will come well before the August 1 normal effective date. There is also a retroactive application clause. The request for citations and the District Court's decision go back to February 1997, and it would be ludicrous to provide copies for the past two years and then not for the future.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
1999 ND 19

Robot Aided Manufacturing, Inc.,
dba Explore Information Services,

Plaintiff and Appellee

v.

Marshall Moore, Director of
the North Dakota Department
of Transportation,

Defendant and Appellant

Civil No. 980267

Appeal from the District Court for Burleigh County, South
Central Judicial District, the Honorable Thomas J. Schneider,
Judge.

AFFIRMED.

Opinion of the Court by Kapsner, Justice.

Thomas D. Kelsch, Kelsch, Kelsch, Ruff & Kranda, Collins
and Main, P.O. Box 785, Mandan, ND 58554, for plaintiff and
appellee.

Andrew Moraghan, Assistant Attorney General, Attorney
General's Office, 900 East Boulevard Avenue, Bismarck, ND 58505-
0041, for defendant and appellant.

Robot Aided Mfg., Inc. v. North Dakota Dep't of Transp.

Civil No. 980267

Kapsner, Justice.

[¶1] The Department of Transportation (the Department) appeals from a judgment granting a writ of mandamus ordering the Department to open reports of traffic offense convictions, admissions, and adjudications for inspection and copying by Robot Aided Manufacturing, Incorporated, doing business as Explore Information Services (Explore). We conclude the trial court did not abuse its discretion in issuing the writ of mandamus. We therefore affirm the judgment of the trial court.

[¶2] Explore is an insurance support organization with its principal place of business in Red Wing, Minnesota. In a December 1996 letter to the Department of Transportation, Explore proposed to pay a negotiated fee to enable the Department to create a computer citation file which would accumulate traffic citations reported to the Department each month. Explore requested that each month the Department send to Explore, in an electronic format, the driver's "license number, the date of conviction, and violation description for each violation occurring within the past 30 days."

[¶3] In the alternative, Explore requested the Department send Explore a list each month of drivers' license numbers and names of all persons cited for a traffic violation during the previous month. Explore offered to pay a fee for each name included in the list. Explore informed the Department it was not requesting

certified abstracts governed by N.D.C.C. § 39-16-03. Explore noted, however, that it may, based upon information received from either of these methods, later request abstracts of the operating record of specifically identified drivers.

[¶4] In February 1997, the Department responded, concluding the request should be treated as a request for a certified abstract of a driver's operating record under N.D.C.C. § 39-16-03. The Department indicated complying with the request would require a fee of three dollars and notification to each driver whose name appeared in the information provided.

[¶5] In March 1997, Explore sent the Department a detailed request:

Explore requests that the Department of Transportation make copies of every report of a conviction or traffic offense or admission or adjudication of a traffic violation which the Department has received during the month of February 1997. Please let me know the amount of the reasonable fee for copies or how it will be calculated. . . .

This request includes copies of any paper reports of convictions of a traffic offense, or admission of an adjudication of a traffic violation as well as copies of any electronic reports of a conviction of a traffic offense or admission of adjudication of a traffic violation received by the Department in February 1997.

Explore is not requesting a certified abstract of the operating record pursuant to N.D.C.C. § 39-16-03.

Explore's letter indicated this was a "continuing request" for each month's records to be provided to Explore on or about the 15th day of the following month. The Department denied the request.

[¶6] In September 1997, Explore filed a petition for a writ of mandamus requesting the trial court:

order DOT to open for inspection the records sought in report of a conviction or a traffic offense or admission or adjudication of a traffic violation which DOT has received during the month of February 1997 and for each month thereafter, and further to permit Explore to copy such records.

The Department initially contended the documents sought by Explore were not open records.

[¶7] In March 1998, Explore moved for summary judgment arguing the conviction and violation reports were open records and N.D.C.C. § 39-16-03 did not provide a specific exception to the "reasonable fee" requirement of N.D.C.C. § 44-04-18(2). The Department asserted the trial court should grant summary judgment in its favor because Explore was "attempting to piece together records virtually identical to abstracts for every licensed operator in the state." The Department argued Explore's request was subject to the three dollar fee requirement for abstracts under N.D.C.C. § 39-16-03.

[¶8] In April 1998, the Department moved for leave to file an amended answer. The amended answer eliminated the Department's assertion the documents sought by Explore were not open records. The Department contended the only remaining issue was whether N.D.C.C. § 39-16-03 was an exception to the "reasonable fee" requirement of N.D.C.C. § 44-04-18(2).

[¶9] In July 1998, the trial court issued its order granting Explore's petition for a writ of mandamus. Although Explore's request for monthly copies of the records was intended to be

continuous, the trial court decided Explore must periodically submit written requests for the documents sought. The court ordered:

1. That the [Department] shall open for [Explore's] inspection, and furnish [Explore] with copies of, the reports of convictions of traffic offenses, and admissions or adjudications of traffic violations, excluding those to which zero, one, and two points are assigned, for the period from February of 1997 to the present.

2. That the [Department] shall open for [Explore's] inspection, and furnish [Explore] with copies of, the reports of convictions and traffic offenses, and admissions or adjudications of traffic violations, excluding those to which zero, one, and two points are assigned, that are received by [the Department] in the future upon receiving periodic, written requests from [Explore] for the same.

3. That [the Department] shall set the fee, manner of payment, and procedures for implementing an orderly distribution of the records.

[¶10] On appeal the Department argues the trial court erred in issuing the writ of mandamus and erred by not granting summary judgment in its favor. North Dakota Century Code § 32-34-01 governs the issuance of a writ of mandamus:

The writ of mandamus may be issued by the supreme and district courts to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is precluded unlawfully by such inferior tribunal, corporation, board, or person.

"A party seeking a writ of mandamus bears the burden of demonstrating a clear legal right to the performance of the particular acts sought to be compelled by the writ." Krabseth v. Moore, Director, North Dakota Dep't of Transp., 1997 ND 224, ¶ 6, 571 N.W.2d 146. The petitioner must demonstrate a clear and complete legal right to the performance of particular acts sought to be compelled. Id. Issuance of the writ is left to the sound discretion of the trial court; this court will not reverse the trial court's issuance of a writ unless it should not have been issued as a matter of law, or the trial court abused its discretion. Id. "The trial court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner." Id.

[¶11] The parties do not dispute the documents sought by Explore are open records. See N.D.C.C. § 44-04-18(1) (1993) (explaining all records of public or governmental bodies are public records unless "otherwise specifically provided by law"). The parties disagree about the statute governing the fee the Department of Transportation may charge for copies of the records. Explore argues the records are subject to N.D.C.C. § 44-04-18(2), not N.D.C.C. § 39-16-03 as asserted by the Department. We agree with the trial court's conclusion the Department's reliance on N.D.C.C. § 39-16-03 was misplaced because the statute "applies to certified abstracts, which are not the records sought by [Explore]."

[¶12] Interpretation of a statute is a question of law. Feist v. North Dakota Workers Comp. Bureau, 1997 ND 177, ¶ 8, 569 N.W.2d 1. "The primary goal when interpreting a statute is to ascertain

the legislative intent." State v. Hafner, 1998 ND 220, ¶ 10, 587 N.W.2d 177. When interpreting a statute we first look to the language of the statute itself and determine whether it is unambiguous. Id. If the statutory language is unambiguous, we apply the plain language of the statute. Id. "Words and phrases must be construed according to the context and the rules of grammar and the approved usage of the language." N.D.C.C. § 1-02-03. If the language is ambiguous, we look to extrinsic aids, such as legislative history, to determine the intent of the legislature. State v. Eldred, 1997 ND 112, ¶ 19, 564 N.W.2d 283.

[¶13] The Department of Transportation argues legislative intent mandates Explore's request is subject to the three dollar fee requirement of N.D.C.C. § 39-16-03, and not the "reasonable fee" requirement of N.D.C.C. § 44-04-18(2). However, the plain language of the statutes is clear and therefore we do not need to examine legislative intent. Under N.D.C.C. § 44-04-18(2) (1993)¹:

Upon request for a copy of specific public records, any entity subject to [N.D.C.C. § 44-04-18(1)] shall furnish the requestor one copy of the public records requested. The entity may charge a reasonable fee for making the copy.

Under N.D.C.C. § 39-16-03:

The director upon request shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter which must include the

¹ North Dakota Century Code § 44-04-18 was amended effective August 1, 1997, to include several more provisions. Because Explore's original request occurred December 18, 1996, we refer to the rule effective on that date.

convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. . . .

. . . .

A fee of three dollars must be paid for each abstract of any operating record, complete operating record, or record of clearance, except no fee will be assessed to law enforcement agencies.

The plain language of these statutes permits the Department to charge a "reasonable fee" for the records sought by Explore, unless the documents are abstracts subject to the three dollar fee requirement of N.D.C.C. § 39-16-03.

[¶14] Explore requested monthly copies of "every report of a conviction or traffic offense or admission or adjudication of a traffic violation," excluding those to which zero, one, and two points were assigned, which were received by the Department of Transportation during the prior month. Based on evidence submitted to the trial court, the Department itself recognized at least four distinctions between the documents requested by Explore and abstracts:

the only information that appears on an abstract that would not appear on the citations requested by Explore would be first, any restrictions on a driver; second, the expiration date of the driver's license; third, the status of the license; and fourth, the notations on those suspensions, revocations, and cancellations that do not automatically result from the conviction or adjudication of a single traffic offense.

In addition, the information provided to Explore would not be certified by the Department to be the compiled driving records of

specifically identified persons. Therefore, consistent with the evidence introduced by the Department and the plain language of the statutes, Explore did not request abstracts subject to the three dollar fee and driver notification requirements of N.D.C.C. § 39-16-03.

[¶15] The Department argues providing Explore with the requested records at a reasonable fee renders N.D.C.C. § 39-16-03 superfluous because, after accumulating records for three years, Explore would have the information necessary for Explore to create an abstract on all individual drivers. The Department suggests Explore could compile the information received from the Department into a document containing information similar to an abstract by sorting the records by individual drivers. The Department acknowledges Explore would not have received information about drivers who had no violations during the three years, but urges this court that absence of violations would put Explore "on notice that there are no violations on the abstracts" for such drivers. Neither the information sought by Explore nor the assumptions Explore might make, based upon lack of information, serve the purpose of N.D.C.C. § 39-16-03, which is certification by the Department of the operating record of a specific driver. Further, the possibility Explore could manipulate the information at some time in the future does not make the records an abstract at the time of Explore's request.

[¶16] We agree with the trial court's conclusion the three dollar fee requirement under N.D.C.C. § 39-16-03 does not apply and

the Department of Transportation must set an appropriate "reasonable fee" for the documents sought by Explore. Furthermore, although Explore's request for the records was intended to be continuous, we agree with the trial court's decision Explore must periodically submit written requests for specific records.

[¶17] Explore had a clear legal right under N.D.C.C. § 44-04-18 to the documents sought in the petition for a writ of mandamus. We therefore hold the trial court did not abuse its discretion in issuing the writ. We affirm the decision of the trial court.

[¶18]

Carol Ranning Kasper
Mary Muelken Marney
William
Dan Sanderson
Arnold W. Vandewalle, C.J.

15

Testimony of Explore Information Services
North Dakota House of Representatives
Transportation Committee
Thursday, January 28, 1999

Explore Information Services assists insurance companies in twenty states to identify problem drivers before they are involved in accidents which not only affect the bottom line for insurance companies but also the public safety. As part of our service to identify bad drivers for auto insurance companies we have been attempting to secure traffic conviction information from the North Dakota Department of Transportation since 1995. We have always expressed a commitment to keeping the Department's revenues from the sale of abstracts whole while purchasing the conviction information we have requested. In the States of Florida, Nebraska and Wisconsin, we have negotiated revenue neutral arrangements to purchase traffic convictions while ensuring driving abstract revenues are kept whole. However, even when we presented a similar proposal in North Dakota, the DOT refused to negotiate with us.

Therefore, we had no choice but to file suit against the DOT for a violation of the state's constitutional open records provisions. In the summer of 1998 the District Court in Mandan agreed with Explore's contention that the DOT's intransigence was a violation of the North Dakota constitution. The Supreme Court recently affirmed the decision in favor of Explore. We believe that the Legislature should allow the Court's decision to stand. Voting a "do pass" out of this committee would overturn the Court's decision.

North Dakota has a fine tradition of providing open records at the cost of reproduction. The DOT's bill before you asks that an individual traffic conviction be priced at \$3.00 per conviction while at the same time the fee for a three year abstract of a driving history, many times containing multiple convictions, should be priced at the same rate. We believe this is illogical and that this is an attempt by the DOT to make legitimate public record requests such as ours cost prohibitive. The DOT continually informed the District and Supreme Courts that it is Explore's intent to purchase traffic convictions for three years and compile a driving abstract after three years of our public records request for each month's traffic convictions. This has never been Explore's intent, and we would agree to a contract or a legislation that would prohibit us from doing so.

This bill does not only affect Explore's service to auto insurance companies. We would also submit the press and the educational communities would also be adversely affected.

For example, if the Grand Forks Herald, Fargo Forum or any other news organization in the state wanted write a story on the problem of drunk driving and as part of this story requested one year's worth of drunk driving convictions from the DOT, this bill would require that they pay \$3.00 for each and every conviction. The fee increase in this bill would make the research necessary for such a story cost prohibitive. Similarly, if a student at the University of North Dakota or North Dakota State, in doing research for a term paper, requested a month's worth of speeding convictions to determine what age

group or sex was more likely to be convicted of a speeding ticket, he or she would have to pay \$3.00 per conviction. Again, this would be cost prohibitive for a student.

\$3.00 per driving abstract makes sense, \$3.00 per conviction does not. Abstracts contain three years worth of conviction and suspension and revocation data and the person's license status and restrictions. Convictions contain none of this information. Our public record request asks the DOT to provide us with a copy of what each court sends them each month. Beyond this, there is no work for the DOT. This is not true of an abstract that the DOT must enter into their computers and maintain for three years.

Explore is not opposed to informing the citizens of North Dakota when a conviction of a citizen has been purchased by Explore. We are willing to work with the Legislature and the DOT to find a way to accomplish the Legislature's intent in previous legislation to inform the public when public record information is gathered by the private sector at the DOT.

We are asking the Legislature to maintain the State's fine tradition of constitutionally protecting the right to access public records at the cost of reproduction. We provide our traffic conviction service without undue interference with personal privacy in twenty states. We ask that you preserve our right to run a legitimate and needed business in North Dakota and not allow the DOT to overturn a Supreme Court decision.

For all of these reasons we ask that the committee vote this bill out with a "do not pass" recommendation on it.

DOT

HOUSE BILL 1389

Ramifications of North Dakota Supreme Court's decision in Robot Aided Manufacturing, Inc. d/b/a/ Explore Information Services v. Marshall Moore, 1999 N.D. 14, if HB 1389 is defeated:

1) Explore Information Services ("Explore"), an insurance support organization, made an ongoing monthly bulk records request to the DOT for copies of all citations and records of convictions ("source documents") for all traffic violations to which more than two points are assigned received by the DOT since February of 1997. It is estimated that the request made by Explore would amount to copies of more than 100,000 source documents if it continues for a three-year period.

2) A DOT abstract of a person's driving record lists each traffic violation less than three years old to which more than two points are assigned. Upon obtaining copies of all source documents for traffic violations to which more than two points are assigned for a three-year period, a requester would have a list of all violations on the abstracts of all North Dakota licensed drivers. For any North Dakota licensed driver for whom that requester does not receive a copy of a source document for the three-year period, the requester would be on notice that the driver has no violation on his or her abstract. The requester, hence, could create a database, in large part the functional equivalent of an abstract, for all North Dakota licensed drivers.

3) It is at least arguable that the Department also would be required to comply with a request for copies of source documents for violations to which zero, one, and two points are assigned. N.D.C.C. § 39-06.1-10(1) prohibits the DOT from listing those violations on a separate record (i.e. abstract) that is available to the public. Hence, providing copies of those source documents to a requester would disclose violations that are never listed on an abstract. Including violations to which zero, one, and two points are assigned, the DOT processed a total of approximately 400,000 source documents during the three-year period from 1996 through 1998.

4) When a request for an actual abstract is made, N.D.C.C. § 39-16-03 requires the DOT charge a \$3.00 fee and send the subject of the abstract a copy of the abstract, accompanied by a statement identifying the person making the request, the person or firm for whom or which the request was made, and the intended recipient of the abstract, and providing the reason given for the request. However, the DOT would have no authority to require the requester to disclose this information, or to provide this notification to the subject of the citation, in response to a bulk records request seeking, in large part, the functional equivalent of an abstract or, in the case of a bulk records request that also seeks source documents for zero, one and two point violations, a list of more violations than is on an abstract. The requester could sell this database to anyone for any purpose without giving the driver notice or an opportunity to protest or correct mistakes.

5) N.D.C.C. § 44-04-18(2) would authorize the DOT to charge a "reasonable fee" for making copies of the source documents in response to a bulk records request. However, N.D.C.C. § 44-04-18(2) currently would prohibit the DOT from charging for the cost associated with locating, reviewing, or providing access to source documents in response to a bulk records request, or any cost associated with excising confidential or closed material.

OPPOSITION TO HOUSE BILL 1389

- 1) HB 1389 was introduced at the request of DOT as a result of DOT losing a Supreme Court decision. Explore Information Services requested records of conviction from DOT. The Court held that the DOT could charge a reasonable fee for copies of the records as provided for in § 44-04-18 (Access to Public Records) which defines reasonable fee as the actual cost to the public entity for making and mailing a copy including labor, material, postage, and equipment but excludes the cost of locating, reviewing or providing access to records.
- 2) Explore and the Newspaper Association opposed the Bill at the Committee Hearing. DOT then introduced a Hog House Amendment to the original Bill that Explore was not able to respond to.
- 3) The purpose of the original HB 1389 and Amended HB 1389 is to make it too costly for private businesses like Explore Information Services to obtain individual records of conviction of traffic offense from the DOT and sell this information to insurance companies.
- 4) Amended HB 1389 requires Explore to provide written notice to each driver of any conviction it would receive even if Explore did not provide that information to any insurance company. DOT currently only provides notification to a driver if it releases a complete abstract to a third party.
- 5) Amended HB 1389 provides a higher cost for public record requests than currently provided for all other government, state agencies, counties, cities, school districts, etc. This restricts public records access and will encourage other government agencies to come in to seek to increase fees as well.
- 6) HB 1389 as amended is not needed. It attempts to address a problem that does not exist.
- 7) Current safeguards are sufficient. Explore can not disclose personal information about a driver except for use by an insurer (NDCC 39-33).
- 8) Under current law, North Dakota drivers license pictures are not public records and are not available to the public. HB 1389 as amended does not affect this.
- 9) Explore Information Services sought the records of convictions and has offered to pay for the cost of setting up a computer program to receive the records of convictions electronically and to pay a negotiated price to DOT so that there would be no revenue loss to DOT.

From
Explore Information Services

WE URGE A DO - NOT- PASS RECOMMENDATION

SENATE TRANSPORTATION COMMITTEE

March 5, 1999

North Dakota Department of Transportation
Marshall W. Moore, Director

HB 1389

Mr. Chairman and members of the committee: NDDOT asked Rep. Clark to introduce HB 1389 on behalf of the department. This bill concerns how driver records are released to the public.

BACKGROUND

Explore Information Services ("Explore"), an insurance support organization, made an ongoing monthly bulk records request to NDDOT for copies of all citations and records of convictions ("source documents") for all traffic violations to which more than two points are assigned received by NDDOT since February of 1997. It is estimated that the request made by Explore would amount to copies of more than 100,000 source documents if it continues for a three-year period.

An NDDOT abstract of a person's driving record lists each traffic violation less than three years old to which more than two points are assigned. Upon obtaining copies of all source documents for traffic violations to which more than two points are assigned for a three-year period, a requester would have a list of all violations on the abstracts of all North Dakota licensed drivers. For any North Dakota licensed driver for whom that requester does not receive a copy of a source document for the three-year period, the requester would be on notice that the driver has no violation on his or her abstract. The requester, hence, could create a database, in large part the functional equivalent of an abstract, for all North Dakota licensed drivers.

It is at least arguable that the Department also would be required to comply with a request for copies of source documents for violations to which zero, one, and two points are assigned. N.D.C.C. § 39-06.1-10(1) prohibits NDDOT from listing those violations on a separate record (i.e. abstract) that is available to the public. Hence, providing copies of those source documents to a requester would disclose violations that are never listed on an abstract. Including violations to which zero, one, and two points are assigned, NDDOT processed a total of approximately 400,000 source documents during the three-year period from 1996 through 1998.

When a request for an actual abstract is made, N.D.C.C. § 39-16-03 requires that NDDOT charge a \$3.00 fee and send the subject of the abstract a copy of the abstract, accompanied by a statement identifying the person making the request, the person or firm for whom or which the request was made, and the intended recipient of the abstract, and providing the reason given for the request. However, NDDOT would have no authority to require the requester to disclose this information, or to provide this notification to the subject of the citation, in response to a bulk records request seeking, in large part, the functional equivalent of an abstract or, in the case of a bulk records request that also seeks source documents for zero, one and two point violations, a list of more violations than is on an abstract. The requester could sell this database to anyone for any purpose without giving the driver notice or an opportunity to protest or correct mistakes.

N.D.C.C. § 44-04-18(2) would authorize NDDOT to charge a "reasonable fee" for making copies of the source documents in response to a bulk records request. However, N.D.C.C. § 44-04-18(2) currently would prohibit NDDOT from charging for the cost associated with locating, reviewing, or providing access to source documents in response to a bulk records request, or any cost associated with excising confidential or closed material.

CHANGES INCLUDED IN HB 1389

Section 1 of the bill proposes that section 39-16-03 be broken up into four subsections. The amendments proposed in subsections 1 and 2 would not result in any substantive change to section 39-16-03. The amendments would not change the way section 39-16-03 is being implemented by NDDOT right now.

The substantive changes are in subsections 3 and 4, which is the proposed response to the North Dakota Supreme Court's decision last month in Robot Aided Manufacturing, d/b/a Explore Information Services v. Marshall Moore. Under section 39-16-03, when NDDOT releases a copy of a person's driving record abstract, which includes a compilation of traffic violations for a three year period, NDDOT charges a \$3.00 fee and sends notice to the subject of the record that the abstract has been released. Explore, a Minnesota insurance support organization, has made an ongoing monthly bulk records request for all traffic citations or source documents that are recorded on the abstracts of all North Dakota licensed drivers. The supreme court decided that NDDOT may not charge a \$3.00 fee for these records, even though the requester stands to obtain, in large part, the functional equivalent of abstracts. As a result of the Explore decision, persons or firms may, through bulk records requests, piece together records that would be, in large part, the functional equivalents of abstracts without any notice being provided to the subjects of these records.

HB 1389 would not change the law with respect to the disclosure of an individual traffic citation or source document. For example, a person still would be able to obtain a copy of an individual citation for a "reasonable fee," as that term is defined in the open records law. In addition, neither NDDOT nor the person obtaining an individual citation would be required to give notice to the subject of the individual citation that a copy of the citation has been obtained.

HB 1389 would change the law with respect to requests for traffic citations or source documents in aggregate form. For example, a requester obtaining citations in aggregate form would be required to give the same sort of notice to the subject of each citation that someone requesting an abstract currently must give the subject of the abstract. In addition, if the requester provides or sells any of the information that the requester obtained in aggregate form to another person or firm, the original requester would have to give the subject of the information notice.

There also is some language in subsection 3 of Section 1 of the bill that attempts to make several confidentiality and nondisclosure statutes in Title 39 applicable to the requesters obtaining citations in aggregate form. Subsection 3 also provides that no record compiled from source documents obtained in aggregate form would be admissible as evidence in a civil or criminal trials arising out of a motor vehicle accident. This provision would mirror a provision that already is in section 39-16-03 that makes NDDOT's abstract inadmissible in such trials.

Responsibility for giving the notice to the subject of the citations must be put on either NDDOT or the requester. HB 1389 would put that responsibility on the requester. The question becomes what, if anything, would be the consequence of the requester not providing the notice or not

adhering to the confidentiality and nondisclosure provisions of state law that would apply to NDDOT. HB 1389 proposes that the consequence be a criminal charge.

Subsection 4 of Section 1 of the bill would define the term reasonable fee as used in section 39-16-03. The only change to current law that is proposed here is subsection 4(b), which, with respect to only requests for citations or source documents in aggregate form, would permit NDDOT to charge for some costs that state law currently would not permit. This proposed change would be in recognition of the added burden on NDDOT in responding to these massive records requests. These additional costs would be the "cost associated with locating, reviewing, or providing access to the source documents, and any cost associated with excising confidential or closed materials . . . "