

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

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10/2/03  
Date

2003 HOUSE TRANSPORTATION

HB 1114

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1114

House Transportation Committee

Conference Committee

Hearing Date January 17, 2003

Tape Number	Side A	Side B	Meter #
1	x		1.0 to 48.8

Committee Clerk Signature *Laurenth J. [Signature]*

Minutes:

Rep. Weisz, Chairman opened the hearing on HB 1114, a bill for an Act to amend and reenact section 39-20-3.1 of the North Dakota Century Code, relating to the action following a test to determine the alcohol content of the blood of a resident motor vehicle operator.

Keith Magnuson, Deputy Director for Driver and Vehicle Services for the North Dakota DOT appeared in support of this Department sponsored legislation. A copy of his written testimony is attached. He clarified that this legislation came at the request of the State's attorneys who were having the problem with the non-service aspects of the process. Also the drafting was incomplete as there some words left out in the bill draft. His request was for the committee to hold the bill for a week or so to allow time for them to get together with the state's attorneys for the wording of an amendment.

Rep. Weisz, Chairman ( 5.4 ) To clarify, the intent of the new language is to personally issue the temporary permit they would have to personally contact your office within twenty days?

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Keith Magnuson: That is correct -- there is no real magic in the 20 days -- but we did want to have a balance in there -- where the driver would have time to contact the office -- the real intent is to get the notice and report forms in. May be the mail-in is the best way to go.

Rep. Delmore: Are you assuming guilt on that person without having the blood alcohol test information? If someone signs that they could be giving up their rights.

Keith Magnuson: You are right -- but at the time our intent was that they could choose between the two but I think with new language we can make it more clear so that doesn't happen.

Rep. Dosch: What is the significance of this report?

Keith Magnuson: This form -- this report really starts the administrative process -- it tells them what they have done -- what their blood alcohol content was -- if they failed the test -- what their rights are -- what they need to do to ask for a hearing -- so many days after a hearing -- all of those types of things. All of those things are on there, if they read it --or they may want to go see an attorney -- If it is never given to them the process never starts.

Rep. Headland: What would happen in the case where a person decide not to sign it -- just refused to sign it?

Keith Magnuson: Right now if they take a breath test or refuse to take a blood test and refuse to sign it -- that is noted by the law enforcement officer -- that starts the administrative process. Its not like getting certified mail -- a lot of people never sign for certified mail -- because they are suspicious -- that's why in certain parts of the law they have gotten around that by having a process serve make service. But they cannot get out of the process by refusing to sign.

Rep. Price: ( 8.2 ) This never starts unless the have had a test that shows they had a blood alcohol content -- is that correct?

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Keith Magnuson: This process doesn't start and the report and notice form is no completed for the normal adult where our standard of .10 -- unless they have a .10 or higher BAC. Or if they refuse the test. These two things will start the process. If their test comes out a .05 -- they are never shown this form.

Ladd Erickson: McLean County State's Attorney -- I have three brief points to make -- this bill came about -- When the Mandan police were complaining about the stacks of notices not served and complaints --I asked for a Law School students research project to find out what other states are doing in this area. We are one of a very few who still have the personal service. I believe there are 39 states that have the direct mail of notice. The state lab a couple of years ago said that about 1 % of the tests that came back were below the legal limit -- so the police officers are doing

the job in the field. There are 3 basic problems with current law; they are some unfairness because if a person is offered a breathalyzer test the officer gives, if the test is above the legal limit they are immediately given a report and notice; if they are given the breath test they are not --what happens then is if there is problem with service, the people that are taking an intoxilyzer go through the administrative process but the people who a take blood test -- there is the margin of error where they don't get served. Thus there is the unfairness. The second problem, the amount of time the law enforcement officer spend in search of these people to try to get service. It is particularly troubling when people from Bismarck get a DUI in Mandan -- the paper work has to be sent over to the Bismarck PD and then they have to go over try and get service in Mandan. The third , is the cagey defendant -- the person that has repeat DUI's and know that they are process is not going to start unless they are served that notice --- therefore take great

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efforts to avoid service -- then they go to an attorney -- there is what is known as the Rule 43 process -- that makes it possible for them to not have to appear in court until the jury trial date -- so that the officer's can't catch them in court ( at a preliminary hearing ) and make service there -- so there is a problem there in how these things are handled with the cagey defendant. I am concerned the language in this bill -- one is too have the person agree in writing --? when he is drunk? I would refer that they be given a notice so that when they sober up the can read it. They then can within the next 20 days -- they will get the results of the blood test -- do what ever they are going to do but in any event in 20 days they are going to be mailed notice to their address -- they can claim they didn't get notice best if was handed to them at the time.

Rep. Weisz, Chairman: ( 12.8 ) Please go through the procedure currently when one is stopped -- go through the steps --- so that we know how this would fit in.

Ladd Erickson: He deferred the response to one of the Law Enforcement officers present so that the response would be right on point.

Bob Benson: Bismarck police office since 1991. ( 13.6 ) He explained the procedures and the options of the person arrested and the options of the police officer under the law presently -- he covered the roadside tests - the saliva, urine, blood and breath tests the time required for various reports, the time required in the personal service of notice, and what happens for a person from out of town some distance away --- how service is made, etc.

Rep. Weiler: (18.2) 2 questions -- you stop someone for reason -- they need to go to the hospital -- you can do a breath test right there can't you ? on site? Answer: Yes we can. -- if this process continues on and you go to the hospital and the BAC test comes out to be less than a .10 say a 0.06 - 0.07 then what happens? Are they set free or are they charge with anything?

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**Robert Benson:** A lot is determined by the facts in the case -- if he was swerving and he hit a couple of vehicles -- he does terrible on the field test -- say he was under the effects of something else -- the urine test or the saliva test is about the only other thing you are going to get from this individual. The administrative process does not kick in as the BAC was below legal limits but there is still the criminal aspects to be followed through. Here the other aspect support that he was driving impaired. He can still be convicted under the DUI law.

**Rep. Weiler:** If there is nothing else in their system and the BAC was 0.06 -- then what?

**Robert Benson:** If I have arrested him -- it is then up to the States Attorney to look at the facts -- it is out of my hands.

**Rep. Weiler:** ( 21.1 ) When these papers are mailed -- the report and notice -- when they are mailed to these people and they claim they don't get them, then what happens?

**Robert Benson:** Currently we don't mail them -- they are personally served. Personally I would like to see these mailed out the defendant -- the duty is on him and not the Law Enforcement Officer.

**Rep. Delmore:** Under the scenario where the blood test came in under the .10 -- say .06 would he still have to come and talk to you?

**Robert Benson:** No -- the service is over.

**Rep. Delmore:** ( 24.8 ) So we do have a BAC minimum -- if the .06 or .08 at which you can prosecute them ?

**Robert Benson:** yes -- but remember there is still the criminal process if warranted. The .10 is the per se law where anything above that you are presumed intoxicated. The criminal side goes to impairment.

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