

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

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10/2/03  
Date

2003 HOUSE TRANSPORTATION

HB 1161

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1161

House Transportation Committee

Conference Committee

Hearing Date January 23, 2003

Tape Number	Side A	Side B	Meter #
3	x		14.0 to end
		x	4.6 to 39.9
Committee Clerk Signature <i>Lawrence Griffin</i>			

Minutes:

Rep. Weisz opened the hearing on HB 1161, a bill for an Act to amend and reenact section 39-06-32, subsection 1 of section 39-08-01, sections 39-20-03.1 and 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2 and 5 of section 39-20-05, and sections 39-20-07 and 39-20-09 of the North Dakota Century Code, relating to the level of alcohol concentration prohibited for motor vehicle operators.

Keith Magnusson: Deputy Director of Motor Vehicle and Driver Services speaking for Director David Sprynczynak who due to a family emergency could not be present. A copy of the Director's prepared testimony is attached.

Rep. Dosch: ( 20.7 ) The funds that the state is going to lose -- is that in conjunction with the anti-lock device or is it separate?

Keith Magnusson: These are all separate -- the anti-locking device, the BAC, CDL are all are separate and part of a package.

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Rep. Ruby: Would there have been the push across the nation to pass this if it weren't for the dollars?

Keith Magnusson: This started as an incentive program -- When that didn't work -- then they went to the mandates. Twenty one states had this before the incentive or the mandates.

Rep. Delmore: Isn't it true that right now some people are being convicted at .08 ?

Keith Magnusson: It is possible -- at .08 on the criminal side -- but it is not part of the per se law. What it is if there is enough other evidence of their driving conduct -- there are two parts to the DUI law -- the criminal -- the legal per se, right now at the 0.10 and the other part is based on their driving conduct -- the blood alcohol was only a part of that -- now for commercial drivers, it is .04 and for those under 21 , it is .02 --

Rep. Delmore: Would you see that changing if we went with the norm and we went with the .08 there would be people charged at .06?

Keith Magnusson: That's possible right now based on their driving conduct.

Rep. Galvin: You said some of the states went to a .08 before the federal mandate?

Keith Magnusson: Yes -- 21 out of the 37 jurisdictions that have it now went to the .08 before the federal mandate.

Col Hughes: ( 25.7 ) Superintendent of the North Dakota High Patrol. He appeared in support of this legislation. A copy of his prepared remarks are attached.

Rep. Weisz: You indicated you didn't think there would be an increase in the arrests -- do you feel there would be an increase in convictions?

Col Hughes: In North Dakota we have a pretty high conviction rate right now -- so I don't think there will be much change. It will be a deterrent.

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Rep. Price: On page 19 the text talks about road side testing and the standardize sobriety test, I have had someone state to me that the HGN was not effective or accurate below 0.10 - it isn't as accurate at .08 -- would you comment on that?

Col. Hughes: It is our belief is that in those cases they have been conducting field sobriety tests -- the officer when conducting those field tests, it is our training you gather the evidence and your determine whether the person is impaired or not prior to arresting him or not -- in those field test the officer doesn't know whether the BAC is .07 or .10 or what it is -- Those states who have the .08 they report they are using the same type of field tests and the portable breath tests, etc. --we still feel it is important that if the person is impaired we make that determination.

Rep. Delmore: In the fatal accidents -- do you have a breakdown of what the blood alcohol content is in those?

Col. Hughes: There is a breakdown -- that the State Toxicologist has -- it is more like 1.6 to 1.7 BAC.

Rep. Delmore: In alcohol related accidents -- it could be any person in the car and maybe not the driver who had a high BAC?

Col. Hughes: Right it could be any one -- it is an alcohol related accident if the fatality had a high BAC.

Rep. Thorpe: What is your opinion -- if the officers are out patrolling -- .08 -- in your consideration -- would that be fair to the driver?

Col. Hughes: I get asked frequently on radio talk shows and at gatherings -- person was picked up for drunk driving -- but when you go through the scenario -- what happens is that the officer stopped you because can not drive your car. You were weaving or some thing happened that

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drew his attention to you. The might have been a citizen complaint or a cell phone call or something -- but something caused him to stop you before he knew you were drinking.

Keith Ternes: Chief of Police , City of Fargo. I support passage of HB 1161. A copy of his written remarks are attached.

Rep. Ruby: ( 46.9 ) Your comment that after consuming any amount of alcohol, people shouldn't be driving. Why does every bar have a parking Lot? The other thing is that you mentioned that anybody operating a commercial vehicle is legally drunk at .04 -- is that anybody with at CDL license operating their own vehicle or do they have to be driving a commercial vehicle?

Chief Ternes: Operating a commercial vehicle according to the administrative rules.

Deb Jevne: She is a spokes person for the Cass County MADD and a member of the Red River Valley Safe Communities Coalition. A copy of her written remarks are attached.

Deb Jevne's testimony continued to the end of Tape 3 Side A and carries over to Side B.

Barry Maier: Representing the North Dakota Chiefs of Police rose to state their organization's support of this legislation and urged passage of HB 1161.

**Opposition testimony ( 4.6 )**

Patti Lewis: Executive Director of the North Dakota Hospitality Association spoke in opposition to HB 1161. A copy of her written remarks are attached.

Rep. Ruby: How do you compare the two studies -- the one you show and the one that MADD showed?

Patti Lewis: We are all aware of the fact you can make numbers do almost anything -- I don't know where they got their facts -- we do have a Board member here -- Harry Bushaw ( ? sp )

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who has done a lot of research on that , particularly on North Dakota crash data and he will talk about that. I can only provide you with what I have and that is from the National Highway Traffic Safety Administration and this is their data.

Rep. Weiler: Do you have any data -- I don't know how many years ago -- North Dakota had a .12 -- It was higher than .10 right ?

Patti Lewis: I don't remember those days. I did check on it and nobody seems to recall that.

Rep. Weiler: If it was never .12 then I don't have a question.

Dean Roth: I can answer that Mr. Chairman even though I am not at the podium Mr. Chairman. 'One O' was the first per se law in North Dakota.

Harry Bushaw ( ? sp ) I have never done this before so bear with me. He handed out a lot of materials and presented lengthy references back and forth between charts and tables citing statistics. A copy of those handouts are attached. ( 18.5 )

Terry Schantz: Stated that he did not represent any group but wanted to put a rural view on this. This bill is like the gun control laws -- it tries to scare people -- it makes people afraid because they don't know what .08 is but those who drink don't care.

Janet Seaworth: Representing the North Dakota Beer Wholesalers Association spoke against the bill on the basis of a recent North Carolina report which studied the effects of the .08 BAC law. A copy of her testimony and the referenced report are attached. ( end at 26.3 )

Jim McCabe: A Bismarck attorney who practices in Bismarck. He stated he had represented at least 200 people for DUI in the past 5 years. Their BAC were from .07 up to .38. What we are facing today is a mandate from the federal government. He reviewed the North Dakota

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