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2003 HOUSE TRANSPORTATION

HB 1439

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439

House Transportation Committee

Conference Committee

Hearing Date 2/7/03

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-7.9
Committee Clerk Signature <i>Lauren B. Zink</i>			

Minutes:

Chairman Weisz: We will open the hearing on HB 1439; A bill for an act to amend and reenact sections 39-06-32 and 39-06-35, subsection 7 of section 39.06.1-10, sections 39-08-01, 39-08-01.3, 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 and consequences for driving while under the influence.

Rep. Dave Weiler: I represent District 30 here in Bismarck. I am here to present HB 1439, it deals with fines and suspensions of driving under the influence, and also includes some provisions for a graduated blood alcohol content. There are others here that are going to go over the details of it.

Chairman Weisz: Thank you.

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John Olson, Philip-Morris Companies, Miller Brewing: Miller Brewing has been in business obviously a long time, and they know and have grown with the issues of abuse of alcohol. One of those serious abuses is, of course, driving while under the influence of alcoholic beverages and how to deal with the drunk driver on our highways. They have initiated a program called "Tough Laws-State Roads". As a result of that program, they have gone into each of the states and analyzed drunk driving laws and have matched them up against what they believe to be tough sanctions that are needed, remedies that are needed to address this really serious issue of drunk driving. I am going to introduce a representative of Miller Brewing, after I have gone through the bill. I just wanted to tell you how this bill got here today. Thanks to Rep. Weiler, we did that analysis and did that comparison and had the bill drafted accordingly. One of the things that happened, however, that I made a mistake in not communicating clearly to the legislative council on what our position on .08, and Miller's position is neutral. That is an issue that they believe better left to you to decide as a matter of public policy whether or not you want to reduce the blood alcohol content down to .08 instead of the current laws .10, in terms of establishing presumption or evidence of driving while under the influence of alcohol. So where all of those references are, and there are numerous references in the bill to .08, that we want you to understand that that is a decision that you must make and we're not either opposing or supporting the bill's position. The match up between the model legislation that Miller Brewing supports, and North Dakota law really results in a finding that North Dakota law basically is in conformity with the serious consequences that we afford to drunk driving and their recommendations. There are some gaps in that and that's what this bill tries to address. So you will see as we go through the bill increased fines, increased times for license suspension, we'll see forfeiture of

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automobiles, some changes there, and you'll see some jail time, and increase commitment times in jail, and see community service, that is one of the areas that Miller Brewing thinks that can be a remedy as an alternative sentence, and see the graduated BAC provision. There is also under current law, interlock ignitions, treatment services, and another area is law enforcement support. Some of the fines and money that comes from that, will be diverted into law enforcement support as well as into drug rehabilitation and alcohol evaluation and treatment. So those are just the general parameters. Beginning on page 3, there are provision there for surcharges to be made, on section 2, under suspensions the surcharges would be fined \$100 and that would be subject to the legislative appropriation for use to purchase law enforcement equipment. Section 3, for first offense, the first offense violation for license suspension would be 365 days, that could be reduced to a period of 120 days upon proof of the evaluation being made. The next provision is if there is a prior DUI offense, then the life of the suspension would be for 3 years, that could be reduced to 547 days, depending upon an evaluation and following any recommended treatment, and for subsequent violations within that five years, you would have the five year suspension of the drivers license provision. Going next to page 8, beginning in subsection 4, would increase the subsequent offenses to felonies for driving while under the influence going down to subsection 4 for a first offense, there would be imprisonment time, but all of it could be suspended if there were community service, except that there would be at least 24 hours of jail time mandated for that first offense. For the second offense, the 30 day mandatory commitment with community service, that mandatory commitment could be reduced to five days with the community service; so you would have first offense 24 hours in jail, the 2nd offense, 5 days in jail as a minimum, and the 3rd offense would be 30 days mandatory. On page 9, there would be

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a graduated BAC which would increase fines for repeat offenders and those are set out there.

Going to page 10, that deals with the licensure or the vehicle forfeiture provision, right now there are forfeiture provisions and there would be a mandatory forfeiture if the conviction came at a time when there had been a suspension of the license for a previous DUI conviction. The interlock device would be mandated on repeat offenses. That would be the same there. Going next to page 14, this deals with the drivers license suspension. Again, I think that those provisions track with what I said earlier, the first offense would be 365 days and that could be reduced to four months, the second offense would be three years which could be reduced to 547 days depending on the compliances with the treatment programs after the evaluation, and a third offense would be for a straight 5 years. That really concludes the overview of what the bill does, I will tell you right now, after this bill came in, we wanted it to conform to the Tough Laws-State Roads program, but I believe you should amend that first offense, for a couple of reasons. I think you should take out those stiff penalties on the first offense, particularly where it increased beyond the jurisdiction of city's courts that have class B misdemeanor jurisdiction right now. A maximum penalty that could be imposed in the cities is a 30 day jail sentence, or \$500 fine. I don't think it's good for ND to have a carte blanche transfer of all those first offense cases into the district court. That would prevent that from happening. If you reduce that first offense down to that level. The second offense is more serious and I think there are some people that would argue that even on the second offense we don't have the kind of jail commitment that would require the state district court to get involved to impose jail time up to 1 year. That's something I think you should look at. I am not prepared to say to you today, that I back off of that. Because I think if we're going to seriously address this, maybe there are situations where you want the

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district court to be involved in those repeat offenses starting with the second offense. But you need to look at that and see what the impact of that would be on the system. The first offense, reduce it, get it back to the city courts, and they will deal with it there. There are other provisions that may cause some heartburn, particularly lawyers dealing with forfeiture. There are situations where you forfeit an automobile that is subject to dual ownership and maybe a lien, and maybe some of that needs to be worked out and further language crafted. We can work on that if you are interested in pursuing that in that direction. There are other provisions here that I know that you study and discuss and have changes on. We're here to work with you to do that. We don't believe one size fits all in this country. We do believe that North Dakota is unique, and we can proceed with the law we have making those changes that you think are necessary. We're willing to work with you. We should be proud in North Dakota of what we have done, we have some pretty good drunk driving laws in the state. I think we need some improvements and I think we need to really attack that repeat offender, and I think that this bill does that.

Chairman Weisz: On page 9, with the repeat offender, are you aware if there are any restriction on the Feds. on far as doing the graduated on the repeat offender part. I was somewhat under the impression that we had to have one size fits all on the repeat offender, as far as the graduated.

Mr. Olson: I am not aware of the federal requirements on that issue.

Chairman Weisz: Are you aware of what other states have, do they have this exact provision about repeat offenders.

Mr. Olson: I don't know about that, maybe Dianne Markut of Miller Brewing can answer that question. I know that this effort on graduated BAC is a recent effort. I know it's being proposed in other states, I don't know if it has been adopted.

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Rep. Thorpe: Going through the fiscal note, I've seen the revenue increases predicted were considerable, and I can understand that if we raise the fines; but wouldn't there also be an impact on the correctional people, wouldn't there be a cost related to that for incarceration.

Mr. Olson: That's a good question, I think the answer would be that there would be an impact on corrections, either local jails or beyond. I don't know what that impact would be. It's hard to predict that.

Rep. Thorpe: Maybe we could find out.

Chairman Weisz: Thank you. Further testimony in support of HB 1439.

Diane Markut, Government Affairs Program Manager for Miller Brewing Company:

Support (see attached testimony).

Chairman Weisz: Are you aware of any other states that has a graduated on the repeat offender part.

Ms. Markut: Wisconsin was one of the states that did that, the threshold was .16

Chairman Weisz: Thank you for appearing.

Keith Magnusson, Deputy Director of the Driver Vehicle Services, NDDOT: We here in support of HB 1439. We do like the .08 provision that is in there, because that is one of the things we've talked about before, on safety. Our basic mission in the DOT, is safety in many different ways. This bill has the .08, the repeat offender aspect and has something new which we haven't had in the bill before, and we call them enhanced sanctions for higher BAC. On the question of the repeat offender, the federal mandate that we've adopted in North Dakota, except for the interlock device that you passed out a bill dealing with that. That's all the farther the federal mandates on repeat offender go. The concept that they are looking at in many states, and

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