

2009 SENATE JUDICIARY

SB 2196

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2196

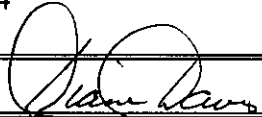
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7734

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Relating to recording of change of name or identity of mortgagee and the assignment, satisfaction, release, or authorization of foreclosure by a mortgagee and to provide for retroactive application.

Allen Austad – ND Association for Justice - Introduces the bill.

Rod Pagel – Attorney - See written testimony- In support of the bill.

Senator Nething – Stated currently and individual if in a license establishment and they serve a minor, they could lose their license and there could be a criminal penalty.

Pagel- Yes there are criminal penalties associated with contributing.

Senator Nething – But there is no civil responsibility, is that by court determination.

**Pagel** – In part because the courts interpret the statute saying there is no right to bring a claim explicitly excluded in, then there are exclusions. So the courts say there are exclusions that apply to the ability to bring that claim. Those exclusions currently include minor claims.

**Senator Schneider** – Could talk about how this would relate to ND contributory negligence laws. Presumably the minor may still bear some responsibility for becoming voluntarily intoxicated.

**Pagel** - It's not a 100% liability situation when he represents the parents of a minor killed.

Absolutely when he brings the claim against the person who has provided that alcohol, they still have the right and ability to say that minor was contributing to their own alcoholism and should bear the fault.

**Senator Nelson** – Brings up well publicized accidents involving fraternities and young people that have died in the Red River and some fraternities have been brought up on charges. Some of those have been in Minnesota. Is this compatible with Minnesota or how would it work together.

**Pagel** – This may bring it closer in line with Mn. Law. Mn. Law is broader and more social host responsibility and certainly this would carry over.

**Senator Nething** – The difference currently is if it were an adult there would be no limitation for bringing the action.

**Pagel** – Currently in the adult scenario, if I were an adult that is drinking or even if I were a passenger I would still have no right to bring that claim. This does nothing to change that. This simply says that a minor because of the age issue would have the right and the minor's representatives would have that right to bring that claim.

**Senator Olafson** – He was surprised to hear there is no responsibility for someone who provides alcohol to a minor. He thought that was already in place. Has this come up before?

**Pagel** – Said in his last 10 years dealing with the Legislature he has not dealt with this issue. To his knowledge it hasn't come up.

**Senator Olafson** – Is there anything in the bill that precludes a minor for filing a claim for civil responsibility against another minor?

**Pagel** – NO.

**Paul Sanderson** – Attorney –represents ND Insurers - See written testimony.

**Senator Nething** – Asks if there is any recourse if a 21 or 22 year old serving a 17 or 18 year old. If the 22 year old has an accident and the 18 year old is there, and is injured, there is no recourse against the person that served him the alcohol, under current law.

**Sanderson** – If the 18 year old is a passenger they are entitled to recourse under this, only adult passengers are prohibited from recourse against the intoxicated driver under the bill as it sits here today. Under current law if the minor is a passenger they would not be precluded under the statutes as they read today. He believes the only thing this bill does is to allow recovery by a minor who gets intoxicated and that minor to bring a claim. His position is that it is a voluntary action (choosing to get intoxicated). This bill would shift the responsibility and wipe out what is common law in this state.

**Senator Fiebiger** – Asks about minors getting intoxicated at someone's house, would there be any action he would have.

**Sanderson** – Replied correct.

**Senator Fiebiger** – Doesn't this follow public policy and doesn't this follow the capabilities Of those under 21 to drink to be able to legally drink, isn't there a conflict between these two public policies.

**Sanderson** – He believes this bill is direct conflict with the existing public policy behind both the dram shop statute and the ND common law. The responsibility for one's conduct should fall on that person; it's not the alcohol that provided the problem it's that person's decision to become intoxicated that is the approximate cause of the injury to that person.

Discussion follows on if an amendment would work on this issue and if then he would support it.

**Sanderson** – Says they still wouldn't support that amendment but they believe it would be better than what they have. Their opposition still is people need to be responsible for their own conduct.

**Senator Olafson** – He sees the existing law we have as being a conflict, saying if you're 21 you're responsible and have good judgment to use alcohol and those below that don't.

**Sanderson** – Even minors are responsible for their actions. The ND Dram Shop law does not allow any person whether they are over 21 or under to make a claim against the person who provided them alcohol if they were the intoxicated person. This bill would create that conflict.

**Senator Lyson** – Relates a scenario, maybe a bill like this would tell these people maybe we shouldn't be doing this.

**Sanderson** – Disagrees, he thinks he sends the opposite message.

**Senator Lyson** – He can't understand that rational.

**Sanderson** – Innocent people can still make a claim against the alcohol provider.

**Olafson** – Asks what method do we have to have some responsibility. Two wrongs don't make a right.

**Sanderson** - He agrees with that, he believes no matter what age should be responsible. Doesn't believe civil liability will solve the problem.

**Senator Nething** – Asks about those that drink from circumstances forcing you to, such as hazing on college campuses. If someone is killed there is no recourse under current law.

**Sanderson** – He understands the concern but it is the kid's choice to put themselves in that circumstance. It gets back to their own responsibility. He believes this bill sends the wrong message.

**Kent Olson** – Professional Insurance Agents of ND – They do not have an official position, they follow the Dram Shop. They may have an issue with the cost involved with liquor liability

through homeowner's policy. If you have more litigation or more claims, the premium is going to be adjusted accordingly. Currently almost every company offers the host social liquor liability in their homeowners programs. It's not expensive and sometimes the company just includes it.

Close the hearing on 2196.

Committee Work

2/2/09

Recorder # 8364 27:00 into it

Senator Lyson moves a do pass

Senator Schneider seconds

Vote – 4 yes 2 no

Senator Schneider will carry

Date: 2/2/09  
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES 2196  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman		X	Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson		X
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 4 (N) 2

Absent \_\_\_\_\_

Floor Assignment Sen. Schneider

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

**REPORT OF STANDING COMMITTEE**

**SB 2196: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2196 was placed on the  
Eleventh order on the calendar.



2009 TESTIMONY

SB 2196

N.D.C.C. §5-01-06.1

I. **Current law permits claims against persons or businesses which serve / provide alcohol to obviously intoxicated persons when those obviously intoxicated persons injure somebody else (so long as that somebody else is not a passenger in the drunk driver's vehicle).**

II. **One of the shortcomings of the current law is that it prevents minors and the families of minors who are injured or killed from bringing claims against persons who contributed to the minor's obvious intoxication.**

- A. Our state has established that those persons under 21 are too young to legally drink.
- B. It makes no sense to have laws establishing that persons under 21 are too young to make the adult decision whether to drink and how much to drink but then give them and their families no recourse whatsoever to hold persons who contribute to the intoxication of minors responsible for their actions.

III. **Currently, our social host liability is such that any adult can provide alcohol to minors and so long as that minor kills himself or herself as a result of that intoxication, there is no liability.**

Our social host liability is such that right now, I can

- advertise to minors that I am holding a party
- charge a fee at the door
- provide the food
- provide a band / entertainment
- provide the place to drink, and
- watch minors get intoxicated

I currently have no civil responsibility whatsoever for my actions when these minors, who our laws say are too young to make the decision on whether to drink or not, drive off my property and kill themselves.

Take that one step further, under current law I have no civil responsibility to these minors or their families when I actually provide the alcohol for them to drink.

The changes herein would provide that any person contributing to the intoxication of minors by providing alcohol should be held accountable if that minor is injured or killed or injures or kills another minor passenger.

TESTIMONY IN OPPOSITION OF SENATE BILL 2196

SENATE JUDICIARY COMMITTEE

JANUARY 26, 2009

Good morning Chairman Nething and Committee Members. My name is Paul Sanderson. I am an attorney with Zuger Kirmis & Smith in Bismarck. I represent the Association of North Dakota Insurers (ANDI) in opposition to Senate Bill 2196.

If passed SB 2196 would create a cause of action for an intoxicated minor, or the intoxicated minor's personal representatives, against the person who knowingly provides alcoholic beverages to the minor. We believe this bill is contrary to the long standing common law in North Dakota, is contrary to the public policy rationale supporting the dram shop cause of action, and will result in an increase in litigation.

This bill is contrary to long-standing North Dakota common law. The North Dakota Supreme Court has held on numerous occasions that there is no tort liability for providing alcohol to able-bodied persons, because it is the drinking of the alcohol, not the furnishing of it, which is the proximate cause of the subsequent injury. See e.g., Stewart v. Ryan, 520 N.W.2d 39 (N.D. 1994). The rationale behind this rule is that it is the intoxicated person who makes the voluntary choice to become intoxicated. The intoxicated person puts their own

safety at risk by choosing to become intoxicated. Because the intoxicated person chose to accept the dangers of intoxication, it is the intoxicated person who should be responsible for the consequences. It is illogical to allocate the risk of harm to the person who provided the alcohol to that person.

SB 2196 is also contrary to the public policy rationale behind North Dakota's dram shop statute. If passed, SB 2196 would allow an intoxicated minor to bring a claim against the person who provided alcohol to that minor. North Dakota's dram shop statute was never intended to create a cause of action on behalf of the intoxicated person. This is clearly evidenced by the plain language of the exclusion contained in the statute which specifically precludes claims on behalf of the intoxicated person. The underlying public policy rationale is that the intoxicated person should be responsible and accountable for their actions. This bill is contrary to that underlying public policy of responsibility and accountability for the intoxicated person's actions. There is no public policy rationale supporting an exception to allow a 20 year old who chooses to get intoxicated to bring a lawsuit against the person who provided the 20 year old with alcohol.

The Association of North Dakota Insurers also fears the consequence of passing this bill will result in increased litigation and addition strain on judicial resources. We do not believe this bill will result in an increase of claims against bars and their employees, as we do not believe this is a significant problem in North Dakota. However, we believe the increased litigation will be in the area of social

host liability. North Dakota's dram shop statute permits claims by injured parties against social hosts who provide alcohol to intoxicated persons or minors, with the exception that the intoxicated person was barred from bringing a claim. This bill would now allow minors who consumed alcohol to bring a claim against the person who provided the alcohol to the minor. The factual scenario can now arise where a 17 year old who was injured in an accident can now sue his 17 year old friend who gave him some alcohol at a party. We believe creating a cause of action for these circumstances will result in an increase in litigation and a greater strain on our judicial resources.

For the foregoing reasons, we oppose SB 2196 and urge a Do Not Pass on this bill.