

2019 SENATE JUDICIARY

SB 2206

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2206
1/16/2019
#30855 (25:46)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 5-02 of the North Dakota Century Code, relating to alcohol breath analyzers; to provide a penalty; and to provide an effective date.

Minutes:

1 Attachment

Chair Larson opens the hearing on SB 2206.

Kathy Hogan, District 21 Senator, testifies in favor of the bill (see attachment #1)

Senator Hogan: We've had animated discussions about business mandates. This would be a business mandate, we recognize that, but it's an idea we should think about.

(4:07) Chair Larson: I appreciate you bringing the idea forward. It would be nice if more bars would do that. I'm concerned about the a 20-minute wait. You may be drinking heavy alcohol and breathalyze while your BAC is still raising from that moment.

Senator Hogan: There's a big sign that will inform them of this. I don't drink, but I went into the Comfort Inn bar and had a 20 people table discussion about this. It was interesting to me to hear the average people talking about this issue. It's an opportunity. If this bill dies, I think the awareness of the opportunity for bar owners to consider doing this voluntarily is worth it.

Senator Myrdal: I cosigned this bill and although I'm generally loathed to do any mandates on private businesses, it is a concern that should be addressed. As soon as a person leaves that business, they have a vast impact on the safety of our roadways. Especially in rural areas where we don't have enough law enforcement yet every small town has a bar. We see the same 15 pickups at the local bar that went there at 5:30pm and are still there at midnight and I have my daughter driving to a movie- there's just a lot of drunk driving going in North Dakota. Though I agree with Senator Larson and do not want to put more mandates on business, I think we do put mandates on a lot of businesses and areas in society when it has to with the general public safety. That's why I support this.

Vice Chairman Dwyer: When you said they would get their investment back you mean when the bar buys the equipment then charges for using it?

Senator Hogan: Correct, even if they bought the personal ones. I don't want to put an undue burden on a business. There are 40 behavioral health substance use disorder issues that we will be talking about. This is just one more piece at also raising awareness of that substance use issue. This is a prevention activity as I see it.

(8) Senator Luick: I don't drink that much either. Who would initiate this practice of doing this breathalyzer test?

Senator Hogan: When I was in the bar doing my survey last night, this part of the discussion was interesting. Several people claimed they sometimes have too much to drink. It could be initiated by yourself or by a friend. They said they would buy one for a friend. It was an interesting discussion. It's awareness more than anything else.

Senator Luick: Would the owner have the right to say you need to do this or would it all be on the goodness of the people in the bar?

Senator Hogan: A number of people said if this was available, I would probably use it. They also thought maybe they should have a personal one for themselves. It's an awareness issue. It could be self-initiated or friend-initiated. We have no expectations that owners would have that responsibility.

Senator Bakke: This bill is saying that the bar owner has an obligation to provide these devices, but the patrons of the bar are not required to use it. It's just there as an option. By making it "shall", you're saying the bar has to have it rather than making it "may".

Senator Hogan: Correct. They may do it now, and perhaps they will after the discussion.

Chair Larson closes the hearing on SB 2206.

(11:02) Senator Osland: The intentions in this bill are tremendous. In reality, I'm not sure. Senator Hogan admitted she is not a drinker and has never been in bars. I think the people who need to blow in this are going to side step it anyhow.

Senator Luick moves for a Do Not Pass motion.

Senator Osland: Seconds.

Senator Myrdal: I think the sponsor has very small expectations that it will pass. I signed on as a cosponsor because this issue needs to be discussed. Senator Osland has a point. Drunk drivers aren't going to do it anyway. However, I'm willing to put my name on a bill like this and vote for it just because I think it's urgent. We're seeing one of the highest drug and alcohol use among youth and DUIs.

Senator Bakke: At high school dances, they now have breathalyzers as the kids come in to see if they've been drinking prior to coming to the event. I do think we have an epidemic of alcoholism in our state which is unfortunate, but I don't know if this will solve the problem. The ones who need to breath into these machines are the ones who will walk right past it. I have some problems with "shall". I wish bar owners would make that decision independently. It would be another thing if we were paying for the cost of the machine we're requiring them to have in their bar, but it's an unfunded mandate. I don't know how I will vote on this.

Vice Chairman Dwyer: Senator Hogan wants to start the discussion. We can amend to say a person who violates this section is guilty of “an infraction” which would be a fine and not a criminal offense. This is similar to the seatbelt law with the government deciding what people should or shouldn’t do and individual rights, business owners in this case or drivers, deciding what they should or shouldn’t do. In both cases you’re trying to save lives and decrease societal cost, damages and injury. If the bill goes forward we should amend it as an infraction.

Chair Larson: There are a lot of people with a high tolerance. They won’t even look drunk, and those are the ones especially that shouldn’t be driving. They have a “I can drive better when I’m drunk” mentality. I’ve heard these comments in the classes I’ve taught on alcohol and drug prevention in the schools. I worry that this is not going to really impact the people who should be using it and who it will impact is business owners in having to stock something that people may or may not use. This isn’t requiring the people to use them, this is requiring the business to provide them. I hate drunk driving, but that isn’t the issue in this bill for me.

Senator Luick: Vice Chairman Dwyer took my smoke here to amend, but North Dakota is a drunkard state; we have a problem. We’re pushing different programs throughout the years great for individual entrepreneurship, but we still have this problem. The people who need them won’t be using them. I too would have a problem voting either way on this because I want to see safe roads, but I don’t think this is going to do much for this.

(19:50) Senator Osland: I’ve never seen a breathalyzer in a bar, but I think there are some in Fargo. It would be interesting to get testimony from them regarding this. Maybe we can do some education or a bill of that nature. This is kind of forcing somebody to do something they’re not going to do anyway.

Senator Luick: I would like to withdraw my motion for the purpose of an amendment. Senator Osland withdraws Second.

Senator Luick: I would like to amend guilty of “an infraction” rather than “a class B misdemeanor”.

Senator Bakke: What penalty is an infraction?

Senator Luick: I don’t know if it’s standard amounts. Class B misdemeanor is stiff. My intent is if this bill passes, it’s our obligation to get it into its best form.

Vice Chairman Dwyer: An infraction maximum is \$1,000. Class B misdemeanor is \$1,500

UND Intern Joe Jensen: Under the Criminal Code section 12.1-33-01 subsection 7, an infraction carries a maximum fee of \$1,000. Any person convicted of an infraction who has within 1 year prior to the commission of that infraction who has been previously convicted of an offense classified as an infraction, may be sentenced as though convicted of a class B misdemeanor.

Chair Larson: Subsequent offense would put it up to a class B misdemeanor.

Senator Myrdal: It is notable that nobody business and industry is here to oppose this bill.

Chair Larson: It is. Also there have been several times I've noticed that businesses haven't necessarily been alerted until the last minute and haven't been able to appear.

Senator Luick: Moves to Adopt the Amendment.
Vice Chairman Dwyer: Seconds.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.

Senator Osland: Moves a Do Not Pass as Amended.
Senator Luick: Seconded.

A Roll Call Vote Was Taken: 4 yeas, 2 nays, 0 absent. Motion carries.

Senator Luick will carry the bill.

January 16, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2206

Page 1, line 10, remove "a"

Page 1, line 11, replace "class B misdemeanor" with "an infraction"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2206: Judiciary Committee (Sen. D. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2206 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "a"

Page 1, line 11, replace "class B misdemeanor" with "an infraction"

Re-number accordingly

2019 TESTIMONY

SB 2206

TESTIMONY

Senate Judiciary Committee Services SB 2206

January 16, 2019

Senator Kathy Hogan

Chairman Larson and members of the Senate Judiciary Committee, my name is Kathy Hogan. I represent District 21 the heart of Fargo.

SB 2206 is an idea that is being discussed in local and state jurisdictions in several areas. Utah has implemented this legislation and I have attached a copy of their law. Several cities have implemented this idea.

The idea is simple - it would require that a business with a retail alcoholic beverage licensee would be required to have available for sale alcohol breath analyzers or breath - alcohol test systems.

When I introduced this, I knew very little about Breathalyzer, but I have learned a bit this week. There are a range of personal Breathalyzers ranging in cost from \$2 to \$150. To have full calibration the lowest cost Breathalyzer I found was \$15.00. There are also Breathalyzer Vending machines available ranging in cost from \$1500 to 2000.

The idea behind the bill is simply to assure that individuals who have been using alcohol and are uncertain if they are over the legal limit for consumption would be able to self-test themselves before driving.

Thank you, Madam Chair, I would be more than willing to answer any questions.

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1 **BREATHALYZER AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory H. Hughes**

5 Senate Sponsor: Deidre M. Henderson

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses use of breathalyzers.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms; and
- 13 ▶ addresses installation or provision of breathalyzers.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 ENACTS:

20 32B-5-311, Utah Code Annotated 1953

22 *Be it enacted by the Legislature of the state of Utah:*

23 Section 1. Section **32B-5-311** is enacted to read:

24 **32B-5-311. Use of breathalyzers.**

25 (1) As used in this section:

26 (a) "Breathalyzer" means:

27 (i) a device that uses electromechanical fuel cell sensor technology in the blood alcohol
28 content testing process; or

29 (ii) a single-use, disposable alcohol breath tester that is cleared with the United States

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30 Food and Drug Administration as a Class 1 medical device with at least 99.8% accuracy and
31 having a detection cut-off of 0.08 relative percent blood alcohol concentration.

32 (b) "Calibration" means the manual setting of specific levels on a breathalyzer by a
33 person trained to reset the device to ensure as accurate results as possible.

34 (c) (i) "Financial transaction card" means a card, code, or other means of access to a
35 person's account issued to a person that allows the person to obtain, purchase, or receive goods,
36 services, money, or anything else of value.

37 (ii) "Financial transaction card" includes:

38 (A) a credit card;

39 (B) a credit plate;

40 (C) a bank services card;

41 (D) a banking card;

42 (E) a check guarantee card;

43 (F) a debit card;

44 (G) a telephone credit card; or

45 (H) a device for access as defined in Section 7-16a-102.

46 (2) If a retail licensee voluntarily installs, or sells or otherwise provides, a breathalyzer
47 on its premises:

48 (a) the breathalyzer may not store financial transaction card data or associate
49 breathalyzer results with financial transaction card data;

50 (b) for a breathalyzer described in Subsection (1)(a)(i):

51 (i) the breathalyzer shall collect data that can be downloaded by a third-party that
52 performs the calibration of the breathalyzer, except that the downloaded information may not
53 be used for any purpose other than calibration;

54 (ii) the retail licensee shall ensure that a breathalyzer installed inside of the licensed
55 premises is calibrated by a third-party the sooner of every:

56 (A) 30 days; or

57 (B) 300 uses;

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58 (iii) the owner of the breathalyzer shall annually report to the department compliance
59 with the calibration requirements of this section for the breathalyzer; and

60 (iv) the breathalyzer may be able to be shut down remotely; and

61 (c) the retail licensee shall post in a conspicuous location by the breathalyzer:

62 (i) a notice to the user of the breathalyzer that the timing of when a breathalyzer test is
63 taken may affect the results of the breathalyzer test; and

64 (ii) a notice that states: "The National Transportation Safety Board has found that crash
65 risk is consistently and significantly elevated by the time an individual reaches a blood alcohol
66 content of 0.05."

67 (3) Data from a breathalyzer installed in the licensed premises of, or sold or otherwise
68 provided by, a retail licensee may not be used for enforcement purposes.

69 (4) If a retail licensee or owner of the breathalyzer violates this section, the department
70 may require the retail licensee to remove the installed breathalyzer described in Subsection
71 (1)(a)(i) or not sell or otherwise provide a breathalyzer described in Subsection (1)(a)(ii).