

**2021 HOUSE JUDICIARY**

**HB 1185**

# 2021 HOUSE STANDING COMMITTEE MINUTES

**Judiciary**  
Room JW327B, State Capitol

HB 1185  
1/20/2021

**Relating to liability for negligence of a minor driver and accident report forms; and to provide a penalty.**

**Chairman Klemin** called the hearing to order at 11:10 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

**Rep. K. Koppelman:** Introduced the bill. Testimony #1931 11:15

## **Discussion Topics:**

- Protection of a minors identity
- Liability of a minor driver

**Rep. Schauer:** In support 11:26

**Lisa Radtke, West Fargo:** Testimony # 1934 11:30

**Daniel Dunn, Attorney at Fargo, ND:** Testimony #1939

**Jack McDonald, Dakota Newspaper Association and ND Broadcasters Assoc:**  
Testimony # 1828 11:45

Chairman Klemin adjourned at 11:54AM.

DeLores D. Shimek  
Committee Clerk



## NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

**#1931**



### **Representative Kim Koppelman**

District 13  
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**Speaker of the House**

1-20-2020

## **Testimony in Support of HB 1185**

### **Before the House Judiciary Committee**

Mr. Chairman and Members of the Committee,

House Bill 1199 seeks to correct an unintended consequence in an old statute in the North Dakota Century Code and also to bring consistency to our treatment of minors in our state.

You may know that, when you sign the required document, as a parent or guardian, to allow your minor child to obtain a driver's permit, you are agreeing to accept liability for that minor's actions while driving. That makes complete sense because, typically, Mom or Dad are allowing their teenager to begin driving the family car and, of course, if there is an accident or if the young driver does any damage, it reverts to that parent and the family's auto insurance. That, however, is where the unintended consequence comes in.

The North Dakota Supreme Court, in the *Anderson v. Anderson* case determined that if the parent or guardian who signed that document is injured, as a result of the actions of the minor, the liability reverts back to that parent or guardian. In other words, because you can't sue yourself, the courts will not award damages for the injury or death of that adult which results from the actions of that young driver. This interpretation was probably logical, on its face,

reading the plain wording of the law, but it was tragic, particularly in an accident which occurred, involving my constituents a couple of years ago.

You'll hear more about that story from the mother and wife who endured it, Lisa Radtke, who is here to testify before you today, so I won't go into detail about it but, suffice it to say that this reading and understanding of our law, through court ruling, resulted in no coverage for Mrs. Radtke's husband's death. Their minor son was driving the car and was the sole survivor of a horrific crash which killed the occupants of another vehicle and his own father. There was coverage for the vehicles and for all the deaths, but one—Mr. Radtke.

As you know, insurance coverage for the death of a husband, parent and breadwinner is designed to make the family financially whole, providing for the income which the deceased parent would have earned in an expected lifespan, etc. My constituent's family was denied that because of how this law has been interpreted.

Another injustice which this same family suffered was the release of this young man's identity, which is currently part of the accident report which is a public document. I say that this was an injustice because, as you all know as a member of this committee, we go to great ends to protect the identity of minors in our juvenile justice system, yet we do nothing to protect the identity of minors who may be in a car accident. In the case of my constituent, as you'll hear, this has resulted in great distress and irreparable damage.

As most of you know, we've embarked upon a study of our juvenile justice system in North Dakota, this last interim. One of the hallmarks of that system is that the identity of juvenile offenders—those who actually commit crimes before they are adults—is protected. Their identities are carefully shielded from public disclosure for two major reasons.

- 1.) We understand that what one may do as a juvenile does not necessarily set a course for the rest of one's life. In other words, we believe in correction and redemption and attempt to set them on the right path.
- 2.) We're told that juveniles don't fully understand the gravity of their actions, because their brains are not fully developed until their 20's, etc., so we, in public policy, have made the

decision that their identity should not be made public so that the errors of their youth don't follow them for the rest of their lives.

Because only a few members of the media elected to make this young man's information very specific and very public, while others believed that the story could be told without doing so, his actions will, sadly, follow him for the rest of his life.

Consider, for a moment, that if a minor commits a crime, like robbery, assault, or something worse, our laws protect their identity from being made public and, furthermore, they are even spared adult consequences for juvenile offenses. Conversely, should that same minor simply happen to get into a vehicle accident, his or her identity, date of birth, address and, with a little digging, photos and countless other pieces of information can be made public. That is simply wrong.

I am a former journalist and I firmly believe in the freedom of the press and the people's right to know, but I also understand that, as a legislator, we need to balance this with fairness and consistency in law. In this case, the greater concern is that minors should be protected, while all pertinent information should be publicly available. This bill will accomplish that, while also making the minor's identity to those who need to know it, such as the parties in the accident, the Court, and the insurance companies involved.

House Bill 1185 is a good bill which will make good changes in our law. I respectfully encourage you to give it a "Do Pass" recommendation.

Thank you.

### Written Testimony of Lisa Radtke in support of House Bill 1185

On July 15, 2018, my life was tipped upside down. My son, then age 15, who after a year of having his permit, had just received his official drivers license, and my husband, left our home in West Fargo and headed for a quick day trip to South Dakota. Around 11 a.m. I received the phone call that no one expects or wants to get... "There's been an accident". My son miraculously survived but unfortunately my husband and father to our 3 incredible children passed away on scene.

The minutes, days and weeks thereafter proved to be challenging not just emotionally but mentally and financially as well whereby so much unfairness of what happened continued to surface.

As I share my story, this bill touches on and supports 2 key areas that impacted my family.

- Minor privacy on accident report forms
- Liability for negligence of a minor driver

Once the formal accident report was filed, it didn't take long to land front page of the paper and 6 p.m. news, whereby one media outlet even went out our social media pages and used a handful of non-private photos for their article/story.

Because the current law views driving as an "adult" activity, minors information is fully published within the accident report and becomes a public document. As a result, while most media outlets were responsible and sensitive to the situation, despite being only 15, the media had full access to my son's name, address, Date of Birth and now a picture of which was used to "tell the story" with or without our permission. In any other situation where a minor is involved in a crime, their information is protected and we as the public are none the wiser. Why does the activity of driving change the requirements of protecting a minor's information from public knowledge?

Today because of the release of my son's information, a simple Google search of his name now and forever will bring back the story along with images of him and the accident utilized by the media.

As time passed and we entered into legal and insurance claims, we encountered more questions and unfairness resulting from the current law.

Due to my husband signing our son's license application, the current law imputed all damages to him as our son was deemed at fault. As a result, despite the fact that our son was fully insured per law, I could not legally claim on my husband's death through our auto/accident insurance policy. Additionally, I later discovered that had I signed the application, I could have legally claimed,

I shudder to think what would have happened to our family financially had my husband survived and needed long term care as we could not have drawn on our accident policy nor the little life insurance that was left.

In conclusion, while the past events of our story cannot be changed, I am hopeful that the proposed changes within House Bill 1185, will prevent and protect other families from having to bear additional hardships resulting from an already life changing experience.

Regards, Lisa Radtke

TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE  
IN SUPPORT OF HB 1185

Wednesday, January 20, 2021  
Daniel J. Dunn

HB 1185 is intended to “fix” an apparent unintended consequence contained in the original statute, N.D.C.C. § 39-06-09. Specifically, the amendment is designed to prevent a situation where an injured party (i.e., the individual who signed the application for the minor’s operating license) is prevented from recovering damages related to the minor’s negligence. Although this is a very rare and unique situation, it occurred to one of my clients.

As it currently exists, N.D.C.C. § 39-06-09 imputes the negligence of a minor to the individual who has signed the application for the minor’s operator’s license. The statute is understandably intended to extend financial responsibility for the minor’s negligence beyond the minor, presumably to his/her parent or legal guardian. However, the statute prevents any recovery if the individual who signed the operator’s license application is the injured party, typically as a passenger in the vehicle operated by the minor.

The apparent flaw in the statute was raised by the North Dakota Supreme Court in Anderson v. Anderson ex. rel. Anderson, 591 N.W.2d 138 (N.D. 1991). In that case, Toni Anderson (Derrick Anderson’s mom) was injured while riding as a passenger in a vehicle driven by her 14 year old son, Derrick. At the time of the accident, Derrick was operating the vehicle with an instructional permit issued upon an application signed by Toni. Following the accident, Toni filed an injury claim against the family’s liability insurance company, Milbank Mutual, for her injuries and damages.

The issue in the Anderson case was whether the negligence of the minor driver (Derrick) was imputed to the injured passenger (Toni) under N.D.C.C. § 39-06-09, when the injured passenger (Toni) is the parent who signed the minor's driver's application for the instructional permit. The Anderson court, in a split decision, ruled that the parent (Toni) was unable to make a claim for her injuries based upon N.D.C.C. § 39-06-09. In arriving at its decision, the Anderson court stated:

We believe the plain language of N.D.C.C. § 39-06-09 imputes Derrick Anderson's negligence to his mother, Toni Anderson. ... Section 39-06-09, N.D.C.C., specifically provides that "*any negligence* of a minor...must be imputed to the person who has signed the application of such minor for a permit or license..." (emphasis added). Not only does the statute include the words "any negligence," but the statute does not contain any language limiting its scope.

Id. at 140. As part of its analysis, the Anderson court acknowledged that other jurisdictions ruled that similar statutes do not impute the negligence of a minor to the parent or guardian who signed the license/permit application. (The Anderson court referenced "persuasive policy arguments on both sides of the issue.") However, the Anderson court stated:

Under the circumstances of this case, we need not decide which line of authority is the most persuasive because, by its terms, N.D.C.C. § 39-06-09 requires the imputation of all negligence, not solely financial liability, to the signing parent or guardian. Despite Toni Anderson's urging, we follow the line of cases imputing only financial responsibility, our established rules of statutory interpretation require we not go beyond the expressed language of the statute where the legislature's intent is clear from the face of the statute.

Accordingly, we conclude the plain language of N.D.C.C. § 39-06-09 requires Derrick Anderson's negligence be imputed to his mother, Toni Anderson, who signed the permit application, barring her claim for injuries sustained in the accident. (Emphasis added).

Id. at 140.

In a later case involving an insurance policy issued to divorced parents, the North Dakota Supreme Court in State Far Mut. Auto. Ins. Co. v. Gruebele, 846 N.W.2d 745 (N.D.



2014), reaffirmed the ruling in the Anderson case. Id. at 748. In Gruebele, the mother signed the minor's driver's license application and assumed financial responsibility for the minor's negligent acts arising from the language set forth in N.D.C.C. § 39-06-08 and 39-06-09. Id. The Gruebele court stated:

Under North Dakota's statutory structure (**which we invite the legislature to examine**), negligence imputed to a parent after signing their minor child's driver's license application sponsorship form is a separate consideration than the scope of coverage under the signing parent's insurance contract. (Emphasis added.)

Id. at 751.

Based upon the applicable statutes and case law, it appears it would be impossible for a parent to make a claim against his/her child if the injured parent signed the application for the minor's driver's license. (Specifically, any negligence of the minor driving a motor vehicle is imputed to the parent who signed the minor's application for the driver's license.) In the context of a wrongful death case, because a parent cannot make a negligence claim against him/herself and the negligence of the parent is attributed to the parent's representative, the statute appears to preclude a surviving spouse from making a successful claim. That is what happened in my client's case.

The practical consequence of the existing law resulted in my client being prevented from recovering any damages for the death of her husband, either for her benefit or the benefit of their children. (On the other hand, the occupants of the other vehicle involved in the collision collected \$2,500,000 in compensation for their injuries and wrongful death claims.) The legislature can address this apparent unintended consequence by adopting the language contained in HB 1185.

Wednesday, January 20, 2021

House Judiciary Committee HB 1185
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REP. KLEMIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We oppose the portion of this bill – Subsection 5 beginning on page 2, line 29, through line 11 on page 3 - that allows closing a record that has been open for more than 65 years.

We believe that open records serve the public well and, unless there is a groundswell of support for closure, we believe that records that are open should remain open. We do not detect such a ground swell in this instance.

It is not good public policy to change long standing statutes based on a single incident.

Therefore, we respectfully request that you accept our proposed amendments below.

PROPOSED AMENDMENTS TO HB 1185

On page 2, delete lines 29 through 31

On page 3, delete lines 1 through 11

And renumber accordingly.

Thank you for your time and consideration. I'd be happy to answer any questions.

# 2021 HOUSE STANDING COMMITTEE MINUTES

**Judiciary**  
Room JW327B, State Capitol

HB 1185  
2/9/2021

Relating to liability for negligence of a minor driver and accident report forms; and to provide a penalty.
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**Chairman Klemin** called the meeting to order at 3:00 PM

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Buffalo, Jones, Magrum, Paulson, Paur, Satrom, and Vetter. Absent: Roers Jones

## Discussion Topics:

- Proposed amendment 21.0583.02003 and changes.

Rep K Hanson moved to adopt amendment 02003 and on Page 3 Line 2 change the word "confidential" to "exempt"; strike Lines 6,7,8; Page 1 line 18 replace the first "the" with "that". Seconded by Rep. Vetter . Voice vote, motion carried.

Motion to further amend on page 3 line 11 replace "C felony" with "B misdemeanor" by Rep. Vetter, seconded by Rep. Christensen. Voice vote. Motion carried.

Rep Satrom moved a Do Pass as Amended , seconded by Rep Vetter.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	AB
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

Motion carried. 13 – 0 – 1 Rep. Christensen is carrier.

## Additional written testimony:

Rep K Koppelman #6142

3:27 PM hearing closed.  
DeLores D. Shimek  
Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1185

Page 1, line 18, replace the first "the" with "that"

Page 3, line 5, replace "of" with "uniquely owned by"

Page 3, line 6, after "report" insert "if the policy number contains any of the minor's identifying information"

Renumber accordingly

February 9, 2021

De 2/4/21  
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1185

Page 1, line 18, replace the first "the" with "that"

Page 3, line 2, replace "confidential" with "exempt"

Page 3, line 4, after the underscored semicolon insert "and"

Page 3, line 5, replace "of" with "uniquely owned by"

Page 3, line 5, remove the underscored semicolon

Page 3, remove lines 6 and 7

Page 3, line 8, remove "(5) Day and month of birth of a minor party in the report"

Page 3, line 11, replace "C felony" with "B misdemeanor"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1185: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1185 was placed on the Sixth order on the calendar.

Page 1, line 18, replace the first "the" with "that"

Page 3, line 2, replace "confidential" with "exempt"

Page 3, line 4, after the underscored semicolon insert "and"

Page 3, line 5, replace "of" with "uniquely owned by"

Page 3, line 5, remove the underscored semicolon

Page 3, remove lines 6 and 7

Page 3, line 8, remove "(5) Day and month of birth of a minor party in the report"

Page 3, line 11, replace "C felony" with "B misdemeanor"

Renumber accordingly

21.0583.02003  
Title.

Prepared by the Legislative Council staff for  
Representative K. Koppelman  
January 21, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1185

Page 1, line 18, replace the first "the" with "that"

Page 3, line 5, replace "of" with "uniquely owned by"

Page 3, line 6, after "report" insert "if the policy number contains any of the minor's identifying information"

Re-number accordingly

**2021 SENATE JUDICIARY**

**HB 1185**



# 2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Peace Garden Room, State Capitol

HB 1185  
3/16/2021

Relating to liability for negligence of a minor driver and accident report forms; and to provide a penalty
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Hearing called to order, [10:00] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

### Discussion Topics:

- Minor privacy on accident report
- Liability for negligence of a minor driver

Representative K. Koppelman, [10:00] introduced HB 1185  
Lisa Radtke, West Fargo, ND [10:10], provided Oral testimony in favor  
Daniel Dunn, West Fargo, ND [10:20] Attorney], provided Oral testimony

Senator Myrdal [10:24] motioned to amend HB 1185 with emergency clause  
Senator Dwyer [10:25] seconded the motion

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jason G Heitkamp	Y
Senator Robert O Fors	Y
Senator Jonell A Bakke	Y
Senator Diane Larson	Y

Motion carries 7-0-0

Senator Luick [10:26] motioned to pass HB 1185 as amended  
Senator Myrdal [10:26] seconded the motion

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jason G Heitkamp	Y
Senator Robert O Fors	Y
Senator Jonell A Bakke	Y
Senator Diane Larson	Y

The motion passes 7-0-0 [10:27]

Senator Luick [10:27] carries HB 1185

Hearing adjourned [10:28]

*Jamal Omar, Committee Clerk*

March 16, 2021

SL  
3/16  
1881

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1185

Page 1, line 2, remove the second "and"

Page 1, line 3, after "penalty" insert "; and to declare an emergency."

Page 3, after line 25, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1185, as engrossed: Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1185 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 3, after "penalty" insert "; and to declare an emergency."

Page 3, after line 25, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Re-number accordingly