

## JOURNAL OF THE HOUSE

## Fifty-eighth Legislative Assembly

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Bismarck, April 16, 2003

The House convened at 12:30 p.m., with Speaker Wentz presiding.

The prayer was offered by Rev. Art Scanson, McCabe Methodist Church, Bismarck.

The roll was called and all members were present except Representatives Boe, Kerzman, Mueller, Nottestad, Porter, Severson, and Weisz.

A quorum was declared by the Speaker.

## CORRECTION AND REVISION OF THE JOURNAL

**MADAM SPEAKER:** Your **Committee on Correction and Revision of the Journal (Rep. Kretschmar, Chairman)** has carefully examined the Journal of the Sixty sixth Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 1511, after line 45, insert:

"Page 17, line 14, after "dollars" insert "for a resident and four hundred dollars for a nonresident"

Page 17, line 15, after "dollars" insert "for a resident and four hundred dollars for a nonresident"

Page 17, line 16, after "dollars" insert "for a resident and two hundred dollars for a nonresident" and replace "a person" with "the individual"

Page 17, line 18, after "fee" insert "for a resident"

**REP. KRETSCHMAR MOVED** that the report be adopted, which motion prevailed.

## COMMUNICATION FROM GOVERNOR JOHN HOEVEN

This is to inform you that on April 15, 2003, I have signed the following: HB 1438.

## MOTION

**REP. BERG MOVED** that HB 1439 be moved to the bottom of the calendar, which motion prevailed.

## CONSIDERATION OF CONFERENCE COMMITTEE REPORT

**REP. RUBY MOVED** that the conference committee report on Engrossed HB 1047 be adopted.

## REQUEST

**REP. SCHMIDT REQUESTED** a recorded roll call vote on the motion to adopt the conference committee report on Engrossed HB 1047, which request was granted.

## ROLL CALL

The question being on the motion to adopt the conference committee report on Engrossed HB 1047, the roll was called and there were 41 YEAS, 47 NAYS, 0 EXCUSED, 6 ABSENT AND NOT VOTING.

**YEAS:** Berg; Bernstein; Boehning; Carlisle; Carlson; Clark; DeKrey; Delmore; Devlin; Drovda; Ekstrom; Galvin; Grande; Hawken; Headland; Iverson; Johnson, D.; Johnson, N.; Kasper; Kelsch, R.; Kempenich; Kingsbury; Klein, M.; Klemm; Koppelman; Maragos; Nelson; Nicholas; Norland; Pietsch; Potter; Price; Ruby; Svedjan; Thoreson; Tieman; Uglem; Warnke; Weisz; Wieland; Zaiser

**NAYS:** Aarsvold; Amerman; Bellev; Belter; Boucher; Brusegaard; Delzer; Dosch; Eckre; Froelich; Froseth; Glassheim; Grosz; Gullerson; Haas; Hanson; Herbel; Hunsford; Keiser; Kelsch, S.; Klein, F.; Kreidt; Kretschmar; Kroeber; Martinson; Meier; Metcalf; Monson; Niemeier; Onstad; Pollert; Rennerfeldt; Sandvig; Schmidt; Sitte; Skarphol; Solberg; Thorpe; Timm; Wald; Warner; Weiler; Wikenheiser; Williams; Winrich; Wrangham; Speaker Wentz

**ABSENT AND NOT VOTING:** Boe; Kerzman; Mueller; Nottestad; Porter; Severson

The conference committee report on Engrossed HB 1047 failed.

**MOTION**

**REP. BERG MOVED** that HB 1439 be placed at the top of the calendar, which motion prevailed.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1439, as engrossed:** Your conference committee (Sens. Trenbeath, Nething, Bercier and Reps. Weisz, Weiler, Zaiser) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1038-1041, adopt amendments as follows, and place HB 1439 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1038-1041 of the House Journal and pages 885-887 of the Senate Journal and that Engrossed House Bill No. 1439 be amended as follows:

Page 1, line 1, remove "create and enact a new paragraph to subdivision b of subsection 3 of"

Page 1, line 2, remove "section 39-06.1-10; to" and replace "sections" with "section 39-20-04"

Page 1, line 3, remove "39-08-01 and 39-09-02"

Page 1, line 4, remove "speed limits and"

Page 1, line 5, replace "a penalty" with "for a legislative council study"

Page 1, remove lines 7 through 13

Page 1, line 21, replace "sixteen" with "eighteen"

Page 1, line 22, remove ". The director shall waive the"

Page 1, remove line 23

Page 2, remove line 1

Page 2, line 2, remove "vehicle"

Page 2, line 5, remove the second "last"

Page 2, line 6, replace "sixteen" with "eighteen"

Page 2, line 9, remove "last"

Page 2, line 10, replace "sixteen" with "eighteen"

Page 2, line 13, remove "last"

Page 2, line 14, replace "sixteen" with "eighteen"

Page 2, line 17, remove "last"

Page 2, line 18, replace "sixteen" with "eighteen"

Page 2, line 22, remove the second "last"

Page 2, line 23, replace "sixteen" with "eighteen"

Page 2, replace lines 24 through 30 with:

**"SECTION 2. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.**

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:
  - a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - c. ~~Three~~ Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination ~~thereof~~ of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under ~~this section~~ subsection a of subsection 1 if all of the following criteria are met:
  - a. ~~No~~ An administrative hearing is not held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;

- (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
  - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
  - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; ~~and~~
  - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
  - f. The person has never been convicted under section 39-08-01.
- 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing."

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 26

Page 11, line 15, replace "sixteen" with "eighteen"

Page 11, line 16, remove ". The director shall waive the suspension if the alcohol concentration"

Page 11, remove line 17

Page 11, line 18, remove "was not operating a commercial motor vehicle"

Page 11, line 22, replace "sixteen" with "eighteen"

Page 11, line 28, replace "sixteen" with "eighteen"

Page 12, line 1, overstrike the second ", or"

Page 12, overstrike line 2

Page 12, line 3, overstrike "resulted from at least two separate arrests" and remove "with the last violation or"

Page 12, line 4, remove "suspension" and replace "sixteen" with "eighteen"

Page 12, line 11, replace "sixteen" with "eighteen"

Page 12, line 19, replace "sixteen" with "eighteen"

Page 12, after line 20, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUGS OR SUBSTANCES NOT TO OPERATE VEHICLE.** The legislative council shall consider studying, during the 2003-04 interim, the administrative and criminal laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, as well as other general deterrents to driving under the influence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Engrossed HB 1439 was placed on the Seventh order of business on the calendar.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**REP. WEILER MOVED** that the conference committee report on Engrossed HB 1439 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1439, as amended, was placed on the Eleventh order.

#### **SECOND READING OF HOUSE BILL**

**HB 1439:** A BILL for an Act to amend and reenact subsection 7 of section 39-06.1-10, section 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to consequences for driving while under the influence; and to provide for a legislative council study.

#### **ROLL CALL**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 68 YEAS, 20 NAYS, 0 EXCUSED, 6 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Bellew; Belter; Berg; Bernstein; Boehning; Boucher; Carlisle; Carlson; Clark; DeKrey; Delmore; Devlin; Dosch; Drovda; Eckre; Ekstrom; Froseth; Grande; Gulleon; Haas; Hanson; Hawken; Herbel; Hunskor; Johnson, D.; Johnson, N.; Keiser; Kelsch, R.; Kelsh, S.; Kingsbury; Klein, M.; Klemin; Koppelman; Kretschmar; Maragos; Martinson; Meier; Metcalf; Monson; Nelson; Nicholas; Niemeier; Norland; Onstad; Pietsch; Potter; Price; Rennerfeldt; Ruby; Sandvig; Schmidt; Sitte; Skarphol; Solberg; Svedjan; Tieman; Uglem; Warner; Warnke; Weiler; Weisz; Wieland; Wikenheiser; Williams; Zaiser; Speaker Wentz

**NAYS:** Brusegaard; Delzer; Froelich; Galvin; Glassheim; Grosz; Headland; Iverson; Kasper; Kempenich; Klein, F.; Kreidt; Kroeber; Pollert; Thoreson; Thorpe; Timm; Wald; Winrich; Wingham

**ABSENT AND NOT VOTING:** Boe; Kerzman; Mueller; Nottestad; Porter; Severson

Engrossed HB 1439, as amended, passed and the title was agreed to.

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#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**REP. NELSON MOVED** that the conference committee report on Engrossed HB 1050 as printed on HJ pages 1099-1100 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1050, as amended, was placed on the Eleventh order.

#### **SECOND READING OF HOUSE BILL**

**HB 1050:** A BILL for an Act to create and enact sections 20.1-03-36.1, 20.1-03-36.2, 20.1-03-38, 20.1-03-39, and 20.1-03-40 of the North Dakota Century Code, relating to the licensing of guides and outfitters; to amend and reenact sections 20.1-01-02, 20.1-02-05, 20.1-03-07.1, 20.1-03-11.2, 20.1-03-12, 20.1-03-36, and 20.1-03-37 of the

North Dakota Century Code, relating to guides and outfitters and nonresident waterfowl hunters; to provide a penalty; to provide for application; and to provide an effective date.

#### ROLL CALL

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 68 YEAS, 20 NAYS, 0 EXCUSED, 6 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Bellew; Belter; Berg; Bernstein; Boehning; Boucher; Carlisle; Carlson; Clark; DeKrey; Delmore; Devlin; Dosch; Drovdal; Eckre; Ekstrom; Galvin; Grande; Guleson; Haas; Hanson; Hawken; Headland; Herbel; Hunskor; Iverson; Johnson, D.; Johnson, N.; Kasper; Kelsch, R.; Kelsh, S.; Kingsbury; Klein, F.; Klein, M.; Klemin; Koppelman; Kreidt; Kretschmar; Kroeber; Maragos; Meier; Nelson; Nicholas; Niemeier; Norland; Onstad; Pietsch; Pollert; Potter; Price; Sandvig; Schmidt; Solberg; Svedjan; Thoreson; Thorpe; Uglem; Wald; Warner; Weiler; Wieland; Wikenheiser; Williams; Winrich; Zaiser; Speaker Wentz

**NAYS:** Brusegaard; Delzer; Froelich; Froseth; Glassheim; Grosz; Keiser; Kempenich; Martinson; Metcalf; Monson; Rennerfeldt; Ruby; Sitte; Skarphol; Tieman; Timm; Warnke; Weisz; Wrangham

**ABSENT AND NOT VOTING:** Boe; Kerzman; Mueller; Nottestad; Porter; Severson

Engrossed HB 1050, as amended, passed and the title was agreed to.

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#### MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: HB 1050, HB 1439.

#### MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

**MR. PRESIDENT:** The House has not adopted the conference committee report: HB 1047.

#### MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

**MR. PRESIDENT:** The Speaker has signed and your signature is respectfully requested on: HB 1009, HB 1264, HB 1372, HB 1397, HB 1469.

#### MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

**MR. PRESIDENT:** The Speaker has signed and your signature is respectfully requested on: HCR 3037.

#### MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

**MR. PRESIDENT:** The Speaker has signed and your signature is respectfully requested on: HB 1245.

#### DELIVERY OF ENROLLED BILLS AND RESOLUTIONS

The following bills were delivered to the Governor for approval on April 16, 2003: HB 1037, HB 1079, HB 1086, HB 1092, HB 1116, HB 1190, HB 1197, HB 1223, HB 1236, HB 1255, HB 1269, HB 1291, HB 1292, HB 1309, HB 1391, HB 1414, HB 1425, HB 1461, HB 1486.

#### MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: HB 1245.

#### MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: HB 1179.

#### MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2030, SB 2403.

#### MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

**MR. SPEAKER:** The President has signed: HB 1037, HB 1079, HB 1086, HB 1092, HB 1116, HB 1190, HB 1197, HB 1223, HB 1236, HB 1255, HB 1269, HB 1291, HB 1292, HB 1309, HB 1391, HB 1414, HB 1425, HB 1461, HB 1486.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**  
**MR. SPEAKER:** The President has signed and your signature is respectfully requested on: SB 2148, SB 2149, SB 2150, SB 2188, SB 2235, SB 2363, SB 2384.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**  
**MR. SPEAKER:** The President has signed: HB 1245.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bill was delivered to the Governor for approval on April 16, 2003: HB 1245.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1295, as engrossed:** Your conference committee (Sens. Flakoll, G. Lee, Christenson and Reps. Hawken, Nelson, Mueller) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1224-1226, adopt amendments as follows, and place HB 1295 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1224-1226 of the House Journal and pages 1068-1070 of the Senate Journal and that Engrossed House Bill No. 1295 be amended as follows:

Page 1, line 8, overstrike "provide" and insert immediately thereafter "report" and remove the overstrike over "~~the following information~~"

Page 1, line 10, remove ", the total amount paid or provided as"

Page 1, replace line 23 and 24 with:

- "a. The number of days each was employed during the preceding school year.
- b. The base salaries.
- c. The amount of compensation provided for extended contracts.
- d. The amount of compensation provided for cocurricular activities.
- e. The amount expended for contract buyouts.
- f. The amount of compensation provided in lieu of salaries.
- g. The amount paid for signing bonuses.
- h. The amount of compensation provided for substitute teaching and workload adjustment.
- i. The amount of compensation provided for any other purposes.
- j. The amount expended for health insurance benefits.
- k. The amount expended for dental, vision, and cancer insurance benefits.
- l. The amount expended for life and long-term disability insurance benefits.
- m. The amount of retirement contributions and assessments, including individual shares if paid by the district.
- n. The district's share of Federal Insurance Contributions Act taxes.
- o. The amount of dues or membership fees paid by the district.
- p. Any other benefits provided by the district."

Page 2, remove lines 1 through 12

Page 2, line 15, remove "individual"

Page 2, line 17, remove "individual"

Page 2, line 18, remove "employed as a" and replace "or as an" with "and"

Page 2, line 29, replace "provided in" with "of"

Renumber accordingly

Engrossed HB 1295 was placed on the Seventh order of business on the calendar.

#### REPORT OF CONFERENCE COMMITTEE

**SB 2030, as engrossed:** Your conference committee (Sens. Krebsbach, Nething, Every and Reps. Monson, Rennerfeldt, Gulleon) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1064-1065, adopt amendments as follows, and place SB 2030 on the Seventh order:

That the House recede from its amendments as printed on pages 1064 and 1065 of the Senate Journal and page 1174 of the House Journal and that Engrossed Senate Bill No. 2030 be amended as follows:

Page 1, line 15, after "section" insert "of up to one hundred thirty thousand dollars per biennium"

Page 1, line 16, after the period insert "Any additional amounts deposited in the operating fund during a biennium under this section may be spent pursuant to legislative appropriations or with budget section approval. The department shall report annually to the budget section of the legislative council regarding moneys spent under this section."

Renumber accordingly

Engrossed SB 2030 was placed on the Seventh order of business on the calendar.

#### REPORT OF CONFERENCE COMMITTEE

**SB 2403, as engrossed:** Your conference committee (Sens. Wardner, Dever, Fairfield and Reps. Kasper, Tieman, Amerman) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1065, adopt amendments as follows, and place SB 2403 on the Seventh order:

That the House recede from its amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be amended as follows:

Page 2, line 17, after the second "a" insert "fair market value"

Page 2, line 19, after "reimbursed" insert "by a payment of money"

Page 12, line 21, replace "to" with ". Money in the fund must" and after "used" insert "exclusively"

Page 12, line 29, replace "expenses paid" with "expenditures made"

Page 12, line 30, after the underscored period insert "Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection."

Renumber accordingly

Engrossed SB 2403 was placed on the Seventh order of business on the calendar.

#### MOTION

**REP. MONSON MOVED** that the absent members be excused, which motion prevailed.

#### MOTION

**REP. MONSON MOVED** that the House be on the Fifth, Seventh, Ninth, Twelfth, and Sixteenth orders of business and at the conclusion of those orders, the House stand adjourned until 12:30 p.m., Thursday, April 17, 2003, which motion prevailed.

The House stood adjourned pursuant to Representative Monson's motion.

**BRADLEY C. FAY, Chief Clerk**