

January 7, 2021

Testimony to the **Senate Transportation Committee**

By Jackson Lofgren on behalf of the ND Association of Criminal Defense Lawyers

Testimony In Opposition to SB 2099

Chairmen Clemens and Committee Members:

My name is Jackson Lofgren and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers who dedicate at least a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process...” and “...promote the proper and fair administration of criminal justice within the State of North Dakota. We are **opposed** to SB 2099 and recommend a **DO NOT PASS** from this Committee.

Presently, when a law enforcement officer believes a driver is impaired the officer will ask for a chemical test. The vast majority of chemical tests performed in North Dakota are done using an Intoxilyzer 8000 which is a small machine about the size of an old IBM typewriter. Almost every police department and jail in North Dakota has one. The driver blows twice into a tube and the machine prints a report showing the driver’s alcohol concentration. The officer immediately provides the driver with a copy of the results along with a form notifying the driver the Department of Transportation intends to suspend the driver’s license. If the driver does not request a hearing within ten days of the form being issued the license is automatically suspended. There is nothing overly complicated or problematic about the way the form is currently issued. To that end SB 2099 is a solution looking for a problem.

Driving privileges are vital to most North Dakotans. The questions often asked by drivers facing suspension include: “Am I going to lose my job?” “How do I get my kids to school?” “Who is going to take my family members to their medical appointments?” Unfortunately, the DOT’s administrative process is confusing and strictly construed against the driver. Most people, including lawyers, do not understand it. I am often asked by potential clients “How did I lose my license, I haven’t even been to court yet?”

The changes proposed by SB 2099 are not good. A driver only has ten days from the date the notification form is issued to request an administrative hearing or the hearing is waived. If the officer places the notification form in the mail most or all of the ten day period will expire while the notification is in the mail. In many cases the driver will not get the notification form in time and will automatically lose their license even if there is a valid defense.

I cannot fathom how the notification form could be issued by providing the driver with a website or “QR” code which is also a change proposed by SB 2099. Most drivers would not know what to do with the web address or code. Drivers without a smart phone or computer would have no way to access the information. This flies in the face of due process.

For these reasons we urge a **DO NOT PASS** on SB 2099.

Thank You,

Jackson Lofgren