

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1193

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D. M. Hall
Operator's Signature

10/2/03
Date

2003 HOUSE TRANSPORTATION

HB 1193

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Dorena Holbrook
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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1193

House Transportation Committee

Conference Committee

Hearing Date February 6, 2003

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|--------------|
| 1 | x | | 1.4 to 6.4 |
| | x | | 27.3 to 29.0 |
| Committee Clerk Signature <i>Laurenz Ford</i> | | | |

Minutes:

Rep. Weisz, Chairman opened the hearing on HB 1293, a bill for an Act to amend and reenact section 39-21-41.1 of the North Dakota Century Code, relating to the use of safety belts.

Rep. Klemin, representing District 47 introduced this legislation which makes not substantive change in current law relating to the use of safety belts. What it does is to clarify when this particular statute can be used in legal proceedings. Dave Schweigert, my partner in our law practice will explain the reasons for this proposed legislation.

Dave Schweigert: A copy of his written testimony is attached.

Rep. Weisz, Chairman (5.3) Are you aware of any case in the state where this would come into play under the current law?

Dave Schweigert: Yes -- they way it is typically used is that the attorney will agree that if you had been belted, your injuries would have been less -- therefor you were contributarily negligent.

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Doreen Bell
Operator's Signature

10/2/03
Date

Page 2
House Transportation Committee
Bill/Resolution Number HB 1193
Hearing Date February 6, 2003

The the jury instruction -- which you have in front of you -- would be given that says if you were in violation of the law --- you are contributorily negligent.

Rep. Hawken: If we did during this session -- change the law to make the seat belt law mandatory instead of a secondary offense, -- would this just go along with that.

Dave Schweigert: Rep. Hawken, that is correct .

There being no further testimony either for or against HB 1193, the Chairman closed the hearing.

End (6.4)

Action (27.3)

Rep. Hawken, Vice Chairman Opened the discussion for action on HB 1193.

Rep. Zaiser: Moved a Do Pass Motion for HB 1193. Rep. Ruby seconded the motion.

On a roll call vote the motion carried 10 Ayes 0 Nays 3 Absent and not voting.

Rep. Dosch was designated to carry HB 1193 on the floor.

End (29.0)

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Operator's Signature

10/2/03
Date

FISCAL NOTE
 Requested by Legislative Council
 01/16/2003

Bill/Resolution No.: HB 1193

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

| | 2001-2003 Biennium | | 2003-2005 Biennium | | 2005-2007 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | \$0 | | \$0 |
| Appropriations | | | | | | |

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

| 2001-2003 Biennium | | | 2003-2005 Biennium | | | 2005-2007 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

No fiscal impact.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

| | | | |
|---------------|--------------|----------------|-----------------|
| Name: | Jo Zschomler | Agency: | Risk Management |
| Phone Number: | 328-6510 | Date Prepared: | 01/17/2003 |

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Deanna Ballbach
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1/21/03
 Date

Date: 2-06-03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HR 1193

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 30209.0100

Action Taken Do Pass

Motion Made By Rep. Zaiser Seconded By Rep. Ruby

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|------------------|-----|----|
| Robin Weisz - Chairman | A | | Lois Delmore | ✓ | |
| Kathy Hawken - Vice Chairman | ✓ | | Ario E. Schmidt | ✓ | |
| LeRoy G. Bernstein | ✓ | | Elwood Thorpe | ✓ | |
| Mark A. Dosch | ✓ | | Steven L. Zaiser | ✓ | |
| Pat Galvin | A | | | | |
| Craig Headland | ✓ | | | | |
| Clara Sue Price | ✓ | | | | |
| Dan J. Ruby | ✓ | | | | |
| Dave Weiler | A | | | | |
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| | | | | | |

Total Yes 10 No 0

Absent 3

Floor Assignment Rep. Dosch

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

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Deanna Ballantyne 10/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 11:52 a.m.

Module No: HR-23-1828
Carrier: Doech
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1193: Transportation Committee (Rep. Weisz, Chairman) recommends DO PASS
(10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1193 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-23-1828

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Dorinda Baller
Operator's Signature

10/2/03
Date

2003 SENATE JUDICIARY

HB 1193

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Dorinda Hall
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1193

Senate Judiciary Committee

Conference Committee

Hearing Date 03/12/03

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-------------|
| 1 | X | | 32.9 - 44.0 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Maria L Solberg</i> | | | |

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony in Support of HB 1193

Representative Larry Klemin - Dist #47, Introduce the bill (meter 34.9) I along with Senator Thomas L. Trenbeath cosponsored this Bill. This makes no substantive change to bill. Violation to this law is not in and of itself evidence of negligence. Fact of a violation is not admissible in any proceeding than one charging the violation.

Dave Schweigert - Attorney in Bismarck, Read Testimony (meter 35.6) Attachment #1

Discussion of cases where this is used and how often used. If you violate the section-that alone in of itself is negligent it doesn't prohibit the "seat belt" defense (failure to wear a seat belt could have lessened or mitigated damages had you'd of been wearing them). It says the fact that you violated the statute is not in itself negligent.

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Danna Holbrook
Operator's Signature

10/2/03
Date

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1193
Hearing Date 03/12/03

Testimony in Opposition of HB 1193

None

Testimony Neutral to HB 1193

None

**Motion Made to DO PASS HB 1193 by Senator Stanley W. Lyson, Vice Chairman and
seconded by Senator Thomas L. Trenbeath**

Roll Call Vote: 6 Yes. 0 No. 0 Absent

Motion Passed

Floor Assignment: Senator Thomas L. Trenbeath

Senator John T. Traynor, Chairman closed the hearing

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Thomas L. Trenbeath
Operator's Signature

12/103
Date

REPORT OF STANDING COMMITTEE (410)
March 12, 2003 1:01 p.m.

Module No: SR-44-4555
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1193: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1193 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-44-4555

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Dorena Ballin
Operator's Signature

10/2/03
Date

2003 TESTIMONY

HB 1.193

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10/2/03
Date

**House Bill No. 1193
Testimony of David D. Schweigert
House Transportation Committee
February 6, 2003**

Mr. Chairman and Members of the House Transportation Committee:

My name is David Schweigert and I am here to testify in support of House Bill 1193. This bill amends Section 39-21-41.4 to provide that a violation of the safety belt law is not, in itself, evidence of negligence and is not admissible in any proceeding, other than the one charging the violation. This proposed language is identical to the language contained in Section 39-21-41.2, which requires the use of child restraints in motor vehicles. (Attached as Ex. A is a copy of N.D.C.C. § 39-21-41.2.) This bill would make the language of both sections consistent.

To understand the rationale of this bill a little better, an example will help demonstrate why it is needed.

Assume you are involved in a head on collision with a drunk driver who crossed over the centerline as you were pulling away from the local hardware store on your way to the grocery store. You are injured because of this accident and you sue the drunk driver. Ultimately, your claim ends up before a jury at a trial. The typical North Dakota jury instruction regarding ordinary negligence states that if the standard of care is prescribed by the laws of this state, the failure to obey the law is evidence of negligence. Since there is a statute requiring you to wear a safety belt, the drunk driver's attorney can argue that your failure to obey the safety belt law is, in itself, evidence that you too were negligent, or comparatively at fault for the accident, even though you did nothing wrong. (Attached as Ex. B is a copy of the standard jury instruction as given by a Ward County judge).

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Operator's Signature

10/2/03
Date

House Bill 1193 would prohibit this argument by the drunk driver. However, it does not prohibit the drunk driver from arguing that your injury would have been less had you worn your safety belt. It just prevents him from using this statute itself as evidence of negligence. Montana, South Dakota and Minnesota all have similar provisions in their mandatory safety belt laws.

In conclusion, I urge the committee to give a "do pass" recommendation to House Bill 1193. I would be happy to answer any questions that you may have.

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Doreen G. [Signature]
Operator's Signature

10/2/03
Date

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Operator's Signature
12/10/03
DATE

3-20-12

MOTOR VEHICLES

evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

Source: S.L. 1959, ch. 286, § 7; 1961, ch. 29, § 3; 1965, ch. 281, § 1; 1969, ch. 357, § 1; 1969, ch. 358, § 1; 1975, ch. 359, § 1; 83, ch. 415, § 29; 1983, ch. 444, § 5; 1985, ch. 429, § 19; 1989, ch. 461, § 5; 1993, ch. 5, § 8; 1993, ch. 383, § 14; 1993, ch. 387, § 6; 1997, ch. 334, § 7; 1997, ch. 345, § 1; 97, ch. 346, § 1; 1999, ch. 278, § 63; 1999, ch. 358, § 8; 2001, ch. 120, § 1.

made in section 63 of chapter 278, S.L. 1999, and section 8 of chapter 358, S.L. 1999.

"Fairly Administered".

—Not Shown. Where the wrong date appeared on the Intoxilyzer test results, and there was no expert testimony on the effect, if any, of the incorrect test date on the accuracy of the blood-alcohol test results or whether the testing operator deviated from the approved method, the test results were inadmissible. Ringsaker v. Director, N.D. DOT, 1999 ND 127, 596 N.W.2d 328 (1999).

Effective Date. The 1999 amendment of this section by section 63 of chapter 278, S.L. 1999 became effective January 1, 2001, pursuant to section 6 of chapter 278, S.L. 1999.

The 1999 amendment of this section by section 8 of chapter 358, S.L. 1999 became effective August 1, 1999.

Collateral References. Authentication of blood sample taken from human body for purposes of determining blood alcohol content, 76 A.L.R.5th 1. Authentication of organic nonblood specimen taken from human body for purposes of analysis, 78 A.L.R.5th 1.

Effective Date. Section 39-20-07 was amended twice by the 99 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to memorialize and give effect to the changes

39-20-12. Liability. Any individual medically qualified to draw blood any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of said act except for gross negligence.

Source: S.L. 1961, ch. 269, § 4; 1987, ch. § 24; 1999, ch. 358, § 9.

section 9 of chapter 358, S.L. 1999 became effective August 1, 1999.

Effective Date. The 1999 amendment of this section by

39-20-14. Screening tests.

Admissibility. Where the defendant conceded the arrest-officer had probable cause to arrest him driving under the influence, evidence that defendant consented to take the

A.L.E.R.T. test and a breath test was irrelevant and inadmissible. City of Fargo v. Erickson, 1999 ND 145, 598 N.W.2d 787 (1999).

CHAPTER 39-21
EQUIPMENT OF VEHICLES

Section 39-21-46. Scope and effect of equipment requirements — Penalty — Evidence.

Section 39-21-46. Scope and effect of equipment requirements — Penalty.

EQUIPMENT OF VEHICLES

39-21-46

39-21-03. Headlamps on motor vehicle.

Probable Cause. Traffic violation observed by the officer, driving with only one functioning headlight, provided probable cause for stopping vehicle

prior to the defendant's reaching checkpoint. Wheeling v. Director of N.D. DOT, 1997 ND 193, 569 N.W.2d 273 (1997).

39-21-41.1. Safety belts.

Collateral References. Nonuse of seatbelt as reducing amount of damages recoverable, 62 A.L.R.5th 537.

39-21-41.2. Child restraint devices — Penalty — Evidence.

1. If a child, under four years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one child restraint system for each such child. The child restraint system must meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of four through seventeen years of age who is in the motor vehicle must be in an approved child restraint system in accordance with the manufacturer's instructions or correctly buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle or if a child is being transported in an emergency situation, this section does not apply.
2. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Source: S.L. 1983, ch. 445, § 1; 1985, ch. 444, § 1; 1987, ch. 482, § 1; 1991, ch. 431, § 1; 1991, ch. 432, § 1; 1999, ch. 344, § 3.

section 3 of chapter 344, S.L. 1999 became effective August 1, 1999.

Effective Date. The 1999 amendment of this section by

39-21-41.5. Secondary enforcement.

Lawful Stop of Driver. Because the deputy lawfully stopped the driver to investigate a possible registration violation, the deputy could properly detain and ticket the driver for a seatbelt violation

he observed while verifying that the driver had a valid and properly displayed registration sticker. United States v. Peltier, 217 F.3d 608 (8th Cir. 2000).

39-21-46. Scope and effect of equipment requirements — Penalty.

1. a. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on a highway a motor vehicle

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ORDINARY NEGLIGENCE

"Ordinary negligence" is the lack of ordinary care and diligence required by the circumstances. Ordinary care or diligence means such care as a person of ordinary prudence usually exercises about his own affairs of ordinary importance.

Negligence involves a lack of such concern for the probable consequences of an act or failure to act as a person of ordinary prudence would have had in conducting his affairs. It is the lack of such care as persons of common sense and ordinary prudence usually exercise under the same or similar circumstances.

Negligence is a relative term. Whether a certain act or failure to act is negligence depends upon the facts and circumstances of each particular case.

The duty to use care is based upon knowledge of danger. The care that a person must exercise in a particular situation is in proportion to the degree of danger or injury to himself or to others in the act to be performed. The care necessary to constitute the ordinary care required of a person upon any particular occasion is measured by reference to the circumstances of danger known to him at the time or which reasonably he should have foreseen. The greater danger the greater is the care required.

A person is presumed to have performed his duty and to have exercised ordinary care, unless the contrary is shown by the greater weight of the evidence. The mere fact that a mishap occurred, considered alone, is not in itself evidence of negligence on the part of any of the people involved. You have no right to assume that the mishap was caused by negligence or other wrongful conduct of anyone.

If the standard of care required in any given situation is prescribed by the laws of this state, a failure to observe that standard is evidence of negligence.

District Court Chambers
Minot, North Dakota

EX.2

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Deanna O'Connell 10/2/03
Operator's Signature Date

Att #1

**House Bill No. 1193
Testimony of David D. Schweigert
Senate Judiciary Committee
March 12, 2003**

Mr. Chairman and Members of the Senate Judiciary Committee:

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To understand the rationale of this bill a little better, an example will help demonstrate why it is needed.

Assume you are involved in a head on collision with a drunk driver who crossed over the centerline as you were pulling away from the local hardware store on your way to the grocery store. You are injured because of this accident and you sue the drunk driver. Ultimately, your claim ends up before a jury at a trial. The typical North Dakota jury instruction regarding ordinary negligence states that if the standard of care is prescribed by the laws of this state, the failure to obey the law is evidence of negligence. Since there is a statute requiring you to wear a safety belt, the drunk driver's attorney can argue that your failure to obey the safety belt law is, in itself, evidence that you too were negligent, or comparatively at fault for the accident, even

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though you did nothing wrong. (Attached as Ex. 2 is a copy of the standard jury instruction as given by a Ward County judge).

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In conclusion, I urge the committee to give a "do pass" recommendation to House Bill 1193. I would be happy to answer any questions that you may have.

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Dorinda Halverson
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10/2/03
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