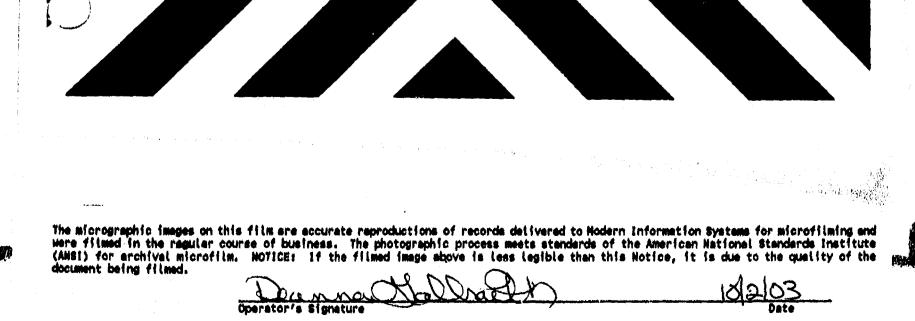
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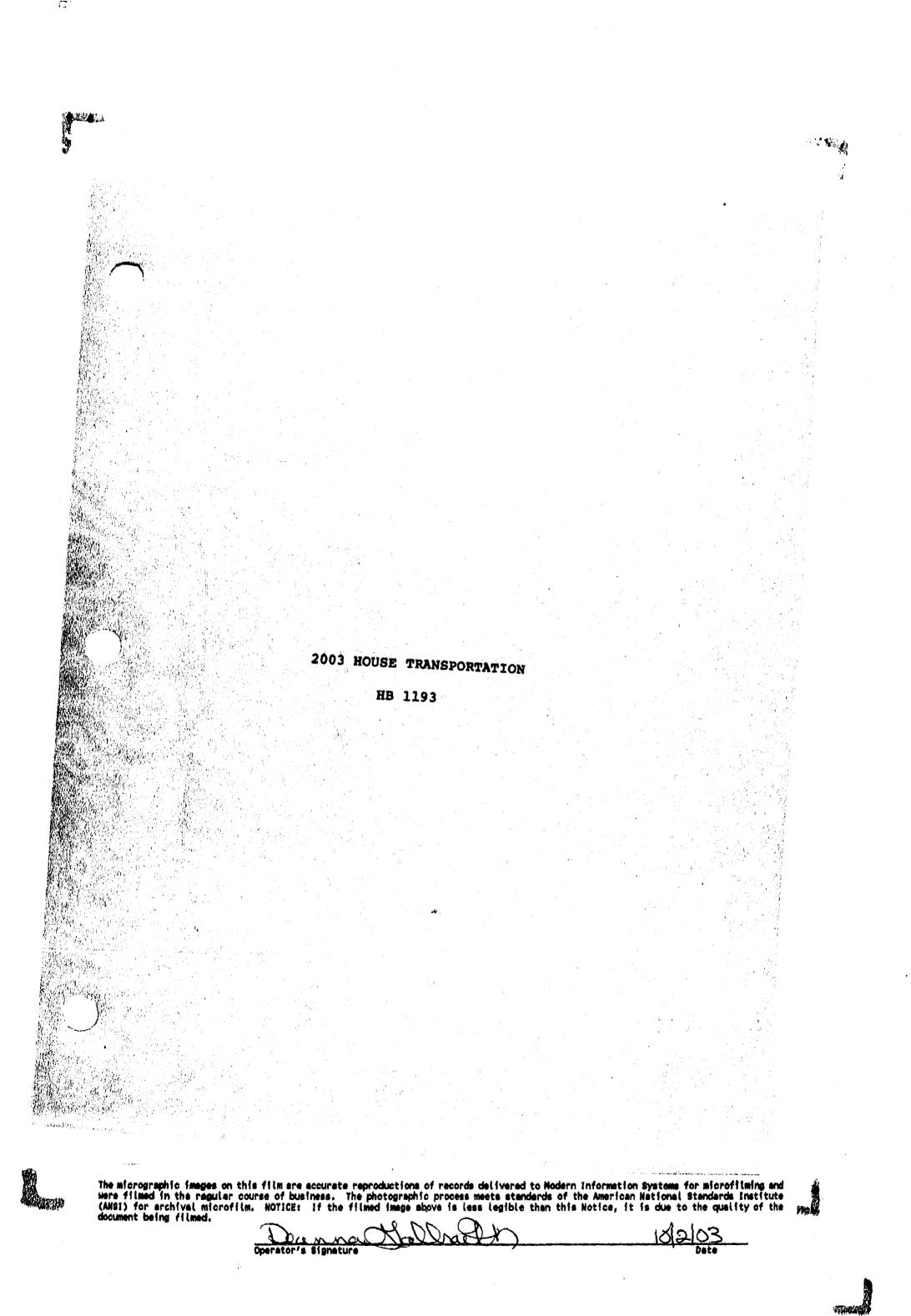


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2003 HOUSE STANDING COMMITTEE MINUTES

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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 Signa	ture Laur	militant	

Minutes:

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<u>Rep. Weisz Chairman</u> 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. <u>Rep. Klemin</u>, 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.

<u>Rep. Weisz. Chairman</u> (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 agrue that if you

had been belted, your injuries would have been less -- therefor you were contributarily negligent.

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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 contributarily 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. Hawkens, that is correct.

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

End (6.4)

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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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FISCAL NOTE Requested by Legislative Council 01/16/2003

Bill/Resolution No.: HB 1193

Γ.

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		2003-200	5 Biennlum	2005-2007 Biennium		
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds	
Revenues	<u></u>			1			
Expenditures	· · · · · · · · · · · · · · · · · · ·			\$0	· · · · · · · · · · · · · · · · · · ·	\$0	
Appropriations							

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

200	1-2003 Bienr	nium	2003-2005 Blennium			2005-2007 Biennium		nium
		School			School			School
Counties	Cities	Districts	Counties	Cities	Districts	Counties	Citles	Districts

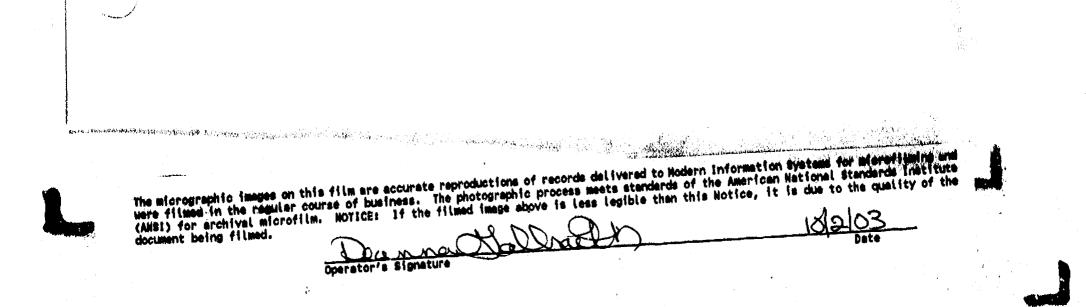
2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

No fiscal impact.

- 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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Representatives	Yes	No	Representatives	Yes	No
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REPORT OF STANDING COMMITTEE (410) February 5, 2003 11:52 a.m.

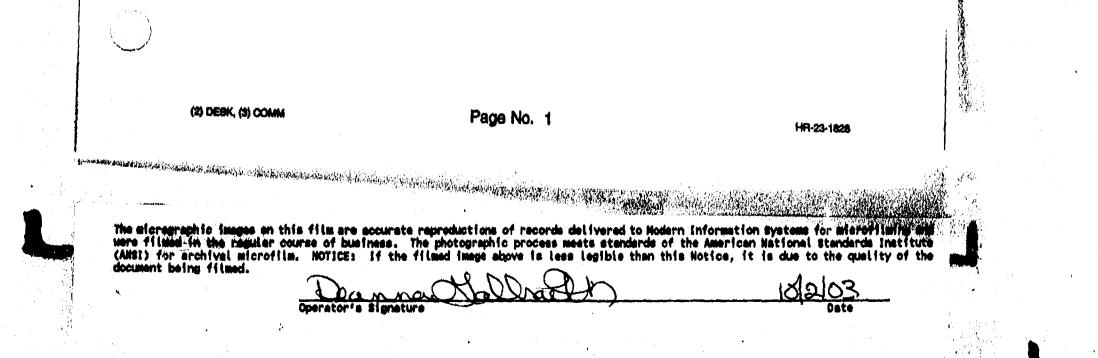
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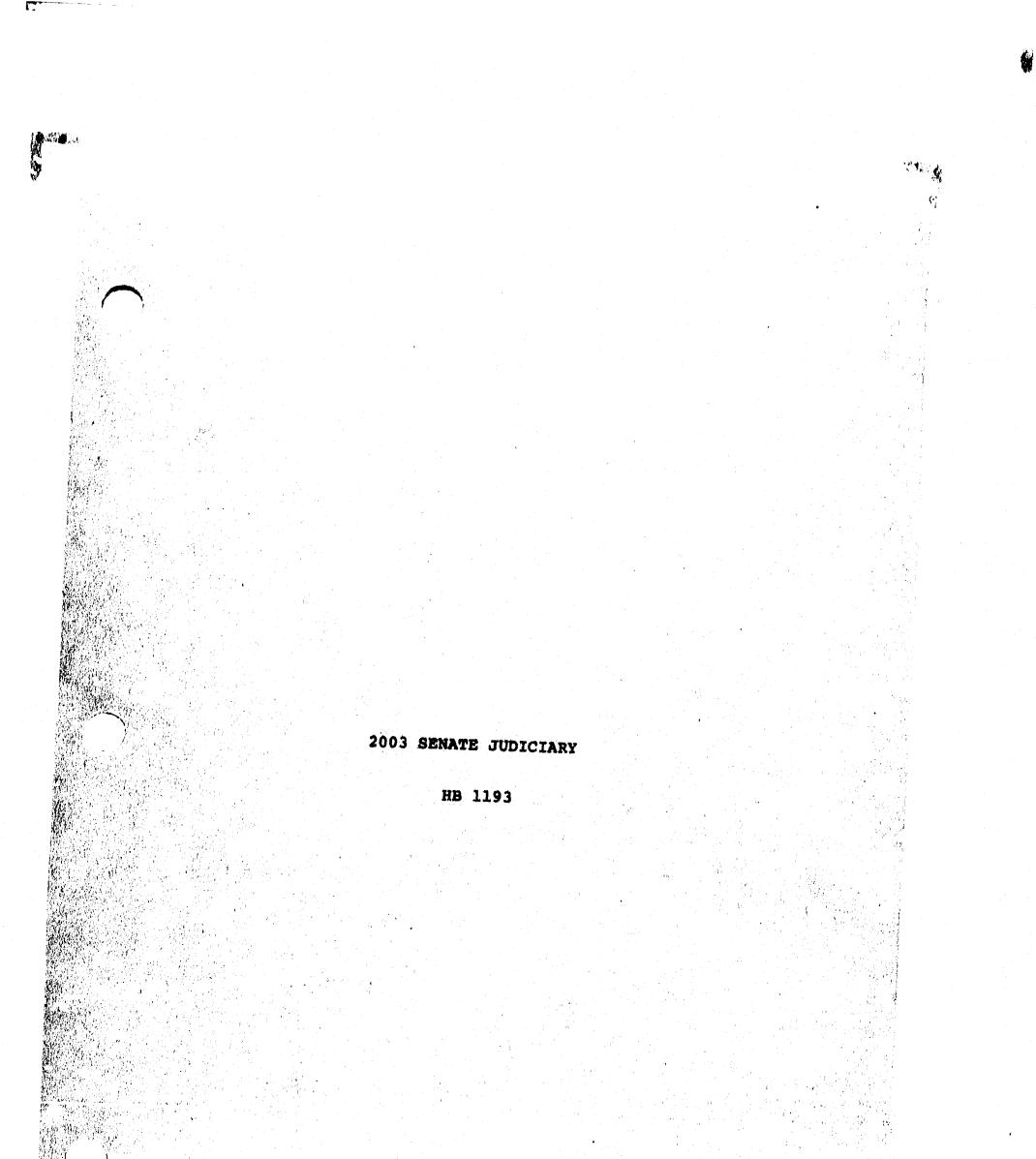
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Module No: HP-23-1828 Carrier: Doech Incert LC: . Title: .

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.





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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 Morra L Solberg

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

<u>Representative Larry Klemin</u> - Dist #47, Introduce the bill (meter 34.9) I along with Senator <u>Thomas L. Trenbeath</u> 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.

<u>Dave Schweigert</u> - 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



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violated the statute is not in itself negligent.

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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

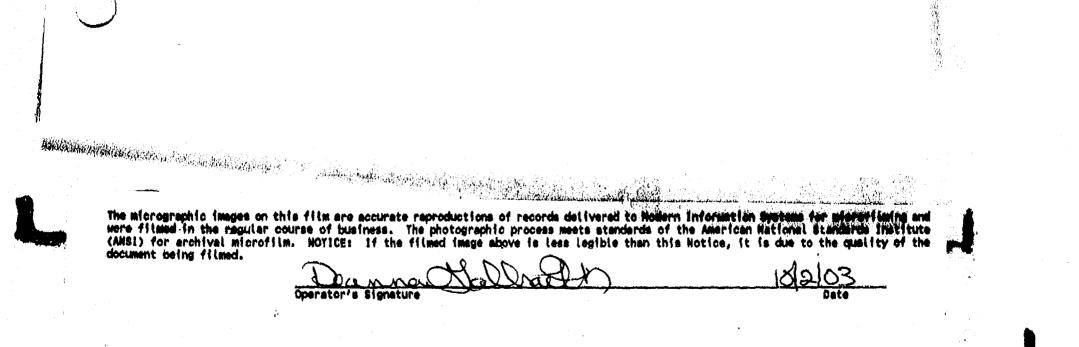
seconded by Senator Thomas L. Trenbeath

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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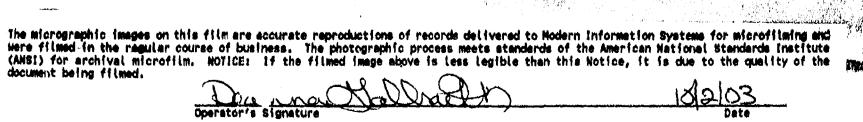
Date: March 12, 2003 Roll Call Vote #: 1

11.25

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES BILL/RESOLUTION NO. HB 1193

Senate JUDICIARY					
Check here for Conference Con	nmittee				
Legislative Council Amendment Nu	mber				
Action Taken DO PASS					
Motion Made By Sen. Lyson		Se	conded By Senator Thom	as Trenbea	th
Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X	-			
					
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Cotal (Yes) <u>SIX (6)</u>		No	ZERO (3)		
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Absent ZERO (0)					
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loor Assignment Senator Thoma	as L. Trei	ibeath			

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



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

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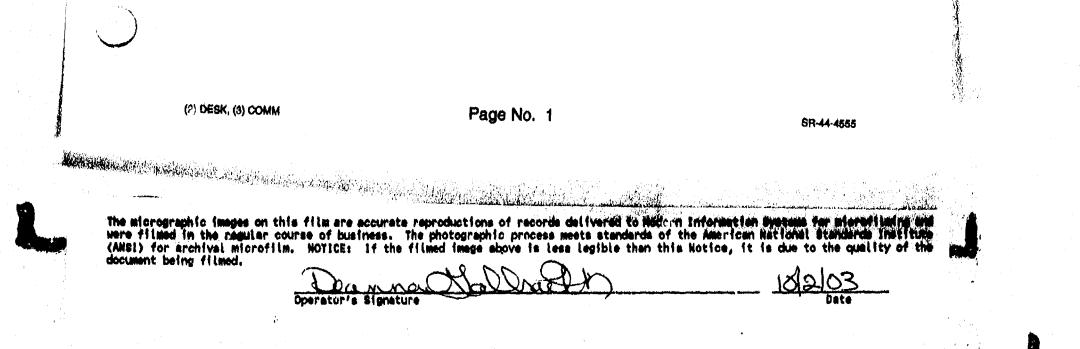
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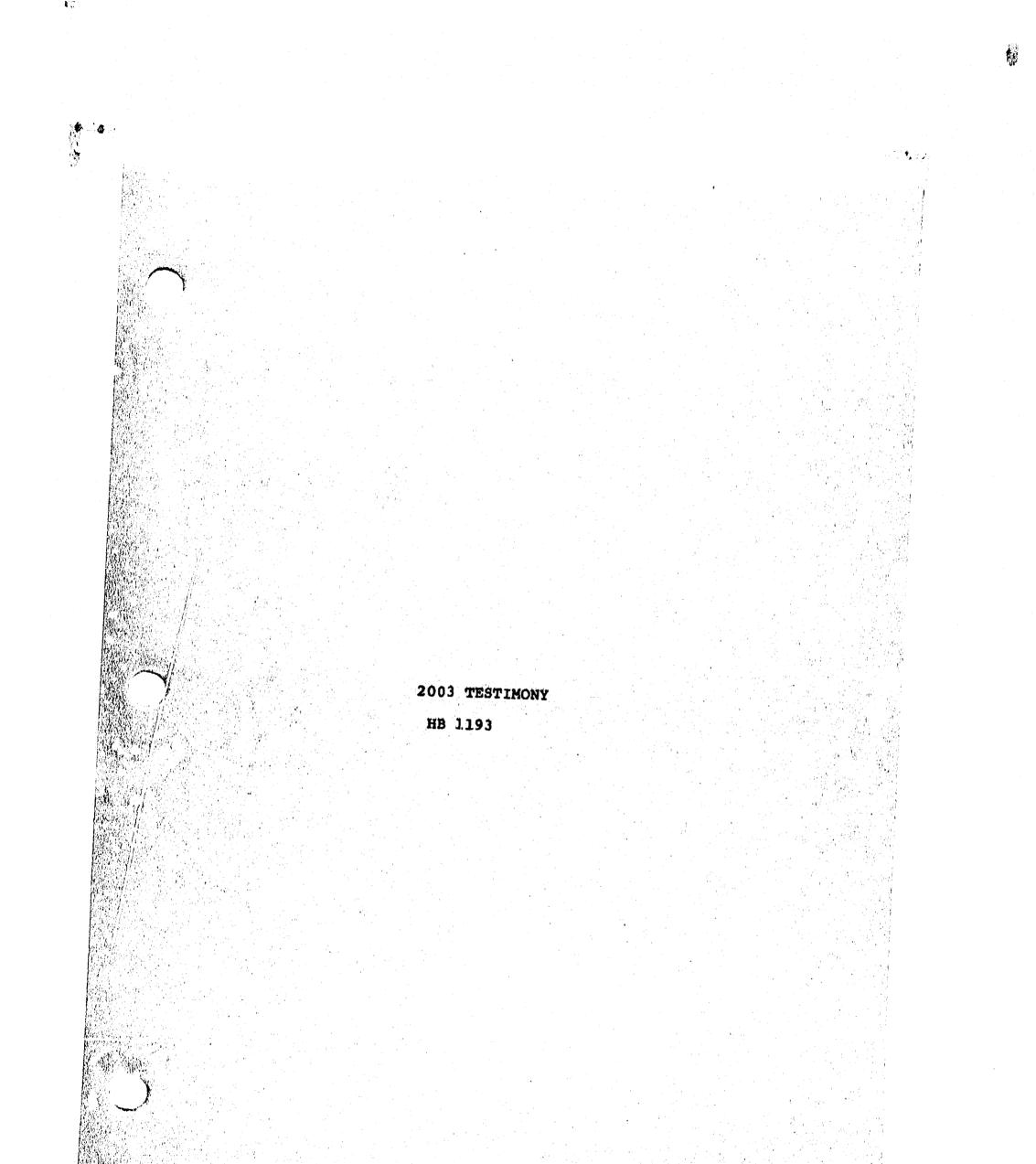
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REPORT OF STANDING COMMITTEE

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.





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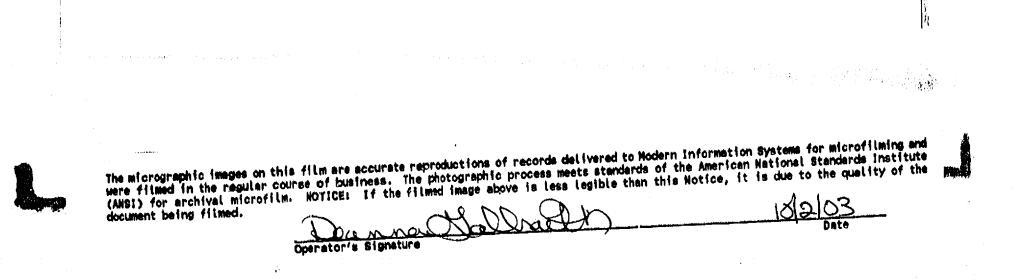
House Bill No. 1193 Testimony of David D. Schweigert House Transportation Committee February 6, 2003

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 Lill 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.

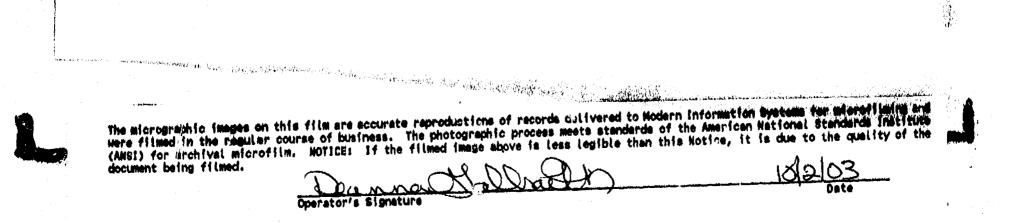
Assume you are involved in a head on collision with a drunk driver who crossed over the centerline as you were pulling away from the local hardware store on your way to the grocery store. You are injured because of this accident and you sue the drunk driver. Ultimately, your claim ends up before a jury 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).



House Bill 1193 would prohibit this argument by the drunk driver. However, ic 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. 请 😤 🏙

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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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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. i9, § 3; 1965, ch. 281, § 1; 1969, ch. 357, 1; 1969, ch. 358, § 1; 1975, ch. 359, § 1; 183, ch. 415, § 29; 1983, ch. 444, § 5; 1985, 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, 358, § 8; 2001, ch. 120, § 1.

fective Date.

3-20-12

The 1999 amendment of this section by tion 63 of chapter 278, S.L. 1999 became ective January 1. 2001, pursuant to section of chapter 278, S.L. 1999.

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

Section 39-20-07 was amended twice by the 99 Legislative Assembly. Pursuant to secn 1-02-09.1, the section is printed above to rmonize ...nd give effect to the changes

ing 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). Collateral References. Authentication of blood sample taken from

human body for purposes of determining blood alcohol content, 76 A.L.R.5th 1.

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

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 test-

and section 8 of chapter 358, S.L. 1999.

"Fairly Administered".

-Not Shown.

Authentication of organic nonblood apecimen taken from human body for purposes of analysis, 78 A.L.R.5th 1.

39-20-12. Liability. Any individual medically qualified to draw blood any licensed physician, nurse, technician, or an employee of a hospital 10 draws blood from any person pursuant to a request of any arresting icer is not liable in any civil action for damages arising out of said act cept for gross negligence.

iource: 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.

ective Date.

The 1999 amendment of this section by

39-20-14. Screening tests.

missibility.

Where the defendant conceded the arrestofficer 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

tion

alty - Evidence.

Section 21-41.2. Child restraint devices - Pen- 39-21-46. Scope and effect of equipment requirements - Penalty.

EQUIPMENT OF VEHICLES

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

39-21-41.1. Safety belts.

Collateral References.

Nonuse of seatbelt as reducing amount of damages recoverable, 62 A.L.R.6th 537.

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

- 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. section 3 of chapter 344, S.L. 1999 became 444, § 1; 1987, ch. 482, § 1; 1991, ch. 431, effective August 1, 1999. § 1; 1991, ch. 432, § 1; 1999, ch. 344, § 3.

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 stathelt violation

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

1. a. It is unlawful for any person to drive or move, or for owner to cause or knowingly permit to be driven or mound on

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

1. If a child, under four years of age, is present in any motor vehicle,

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).

ORDINARY NEGLIGENCE

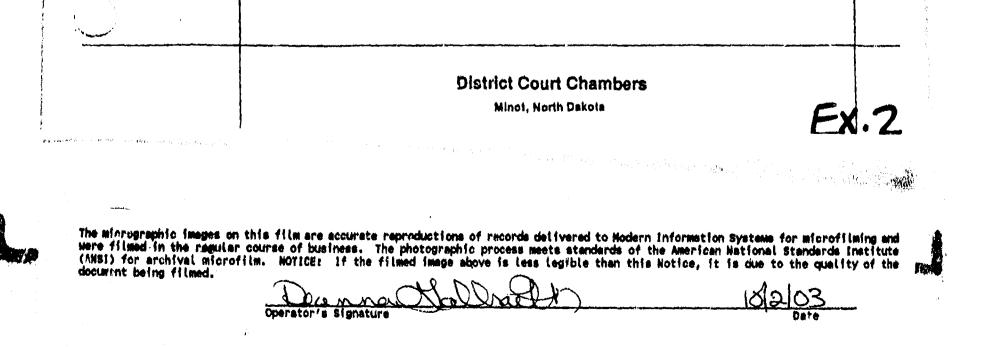
2 "Ordinary negligence" is the lack of ordinary care and diligence required by 3 the circumstances. Ordinary care or diligence means such care as a person of 4 ordinary prudence usually exercises about his own affairs of ordinary importance. 5 Negligence involves a lack of such concern for the probable consequences 6 of an act or failure to act as a person or ordinary prudence would have had in 7 conducting his affairs. It is the lack of such care as persons of common sense and 8 ordinary prudence usually exercise under the same or similar circumstances. 9 Negligence is a relative term. Whether a certain act or failure to act is negligence 10 depends upon the facts and circumstances of each particular case. 11

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.

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

AH #1

Mr. Chairman and Members of the Senate Judiciary Committee:

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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 restruints in motor vehicles. (Attached as Ex. 1 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

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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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