

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1135

2005 HOUSE TRANSPORTATION

HB 1135

**2005 HOUSE STANDING COMMITTEE MINUTES**

**BILL NO. 1135**

House Transportation Committee

Conference Committee

Hearing Date January 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.9-3.8
1		X	14.9-29.9

Committee Clerk Signature

Minutes:

**Chairman Weisz** opened the hearing on HB 1135 A Bill for an Act to amend and reenact subdivision b of subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to the definition of class B authorizing emergency vehicles.

**Gary Berreth, Director of Operations for DOT:**In support of bill. (see attached testimony)

**Rep. Thorpe** This is just a comment, where is the common sense?

**Chairman Weisz** Why did we add wreckers?

**Gary Berreth:** Wreckers are presently under the definition of Class B vehicles now. What we did what basically just moved wreckers into a separate line and added #2. Wreckers are already under that.

**Chairman Weisz** asked if any further support of HB 1135? Any opposition to HB 1135?

Closed the hearing on HB 1135 (3.8).

Discussion:

**Chairman Weisz (15.1)** Guess there were some possible amendments, but we don't have them before us so let's just deal with this.

**Rep. Bernstein** As many times as I have observed vehicles coming close to a car with a flat tire or something they just go right on by. This bill doesn't go far enough, it should probably include all emergency vehicles, wrecker, vehicles under DOT and any other vehicle parked by the side of the road.

**Rep. Owens (16.0)** It is now law that any vehicle parked on the side of the road you are supposed to pull on the in the other lane, or slow down until it is safe. Why are DOT's now prior to making them a class B to see what authority they have now versus where we were taking them?

**Rep. Thorpe** if this is already in the law isn't this bill not necessary?

**Chairman Weisz (16.7)** There is a some issue like snow plows etc. they do not qualify now as an emergency vehicle. There is some discuss on that. Checking ND Code 39-10-26. Right now the only Class B vehicles are wreckers and such other emergency vehicles that are authorized. They wanted to make sure that they are under Class B.

**Rep. Owens (18.0)** The reason they are interested in being recognized as Class B is for 39-10-26. Paragraph 2. That is their whole focus. Looking for other part.

(Much discussion while checking the Code book)

**Chairman Weisz** looks like wrong section, this is when authorized emergency vehicles are approaching you, you are suppose to pull over to the right so they can go by. This isn't what they are after.

**Rep. Owens** No, it is item 2, whenever an emergency vehicles is parked or stopped.

**Chairman Weisz** Yes, but again it says to the right hand of the curb. They are trying to get you to pull into the left lane on the interstate. That is the point of this and now this is saying that if you have a snow plow stopped on the road now you have to pull to the right hand of the curb and stop. Wait until he moves? I don't think that is what the intent it? Section might be wrong.

**Rep. Meyer** asked what this was about since was not here earlier. What were they after?

**Chairman Weisz** (20.7) What they are after is when you have highway vehicles, emergency or otherwise, they want you to get into the left lane, if they are mowing on the right hand lane; in other words be as far away as possible; so they wanted to put all highway DOT vehicles in the same emergency section. It could even be someone mowing the interstate ditch, but this is logical request, but I haven't found another section. Looks like would have to stop if someone is mowing a road ditch. You can't pass them.

**Chairman Weisz** (22.6) To clarify what the DOT is trying to do insure that all DOT vehicles, snow plows and grass mowers on the interstate system, you pull over to the opposite lane you are working on?

**Gary Berreth:** No it is not. Our intention was for stopped operations. We had looked at it the other way for snow plows, but we only were looking at stopped operations on the interstate.

**Chairman Weisz** said he does not think the bill does that and that is our concern. The way we are reading the bill making it authorized emergency vehicles so all the provisions of that subsection 39-10-26 come into play. So it is not just stopped, it would be everyone would have to pull over for your highway trucks and pass in the opposite lane. All your provisions in 1.2.3

and 4 of 39-10-26 would apply because it is considered an emergency vehicle. That is the way we are seeing it.

**Gary Berreth:** (25.4) Not sure about bill. Section 2 in the Code 39-10-26; we have asked for is just to put us under the emergency section.

**Chairman Weisz** what I read is, if you are not an authorized emergency vehicle so if you are parked or stopped on a two lane highway doing work, I have to stop. Is that correct? Traffic shall move to the right hand edge or curb and shall stop, and once stopped, may then proceed so any time you are doing anything, we have to stop. We know what you are after, but you have now defined every vehicle in the DOT fleet as an emergency vehicle. Can you clear this up for us? If that mower tractor stops and takes a drink of water I have to stop for him.

**Gary Berreth:** If you desire, we can go back and check this out?

**Chairman Weisz** I think the committee is in support of what you are trying to do. This lumping them in as an emergency vehicle means it brings in all the provisions that may or may not be intended. Asked Gary to come back with an amendment.

**Gary Berreth:** We would come back with an amendment that will work. Have an amendment for me on my desk for Thursday.

Took no action. Will take a look at it next Thursday with the amendment. (29.9)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. 1135

House Transportation Committee

Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
5	X		30.9-51.0

Committee Clerk Signature



Minutes:

**Chairman Weisz** reopened HB 1135.

**Rep. Owens** Explained the proposed amendment. The original bill attempt was to take DOT vehicles and put them into what is commonly known as the move over law. They were trying to do this by declaring them an emergency vehicle. Instead, what this amendment does is pull it out. It does not identify all DOT vehicles as emergency vehicles, but it does create a move over law to include them as well as emergency vehicles that were previously included in the section that was reference to 39-01-01. In order to do that, it's done in 39-06.1.05 identifying them and then again in 09 and also amends the penalty. Then in 26 by identifying a separate subsection 3; identifying vehicles operating under the control of the DOT. So rather than sticking everything under 26.10 for emergency vehicles; it identifies it in the other sections and creates a new subsection under 10.26.

**Chairman Weisz** Rep. Owens, in section 3, page 1 of your amendment you put them under there merely for the penalties. Basically, it's subsection 3 that is your move over law for non-emergency vehicles, because we essentially have a move over law for emergency vehicles in 1 & 2. This does not include all non emergency vehicles, this only includes DOT non-emergency vehicles.

**Chairman Weisz** To make this clear, if I don't pull over to the left lane when a mower is going down the interstate or road it is a 2 point violation.

**Rep. Owens** Only if the reason you didn't pull over was due to the fact that it was unsafe and at least you slowed down. If you can't pull over (got traffic beside you) that would be a reason.

**Rep. Dosch** (34.5) I think two points is allot.

**Chairman Weisz** I may have miss spoke too. I am not sure if it is 2 points. That section is strictly if you cause an accident. I am not sure what the penalty is? Rep. Hawken said it is an infraction. Could be up to a \$500 fine. I was wrong when I said it was 2 points. That is only for causing the accident.

**Rep. Meyer** (35.5) Would you clarify that. This goes into affect just if you cause an accident, or if you don't pull over?

**Chairman Weisz** The section I was referring to on page 1 put DOT vehicles in for a penalty for causing an accident the same as with authorized emergency vehicles. If you cause an accident, then it is page 2 subsection 3; that is basically the law that says you have to pull over.

**Rep. Hawken** Said you were correct. It says fail to yield to emergency vehicles is 2 points and \$50; failure to change lanes for authorized emergency vehicles is 2 points If you cause an



accident it is an infraction and 2 points. There are a number of right a way violations that are 2 points. If you drive through a red light it is 2 points.

**Rep. Meyer** So under this the penalty is 2 points and a \$50 fine.

**Rep. Owens (37.6)** I hate when they compare five years to 11 months. Does not like the time frame comparisons they use. The largest problem that I found with all my research with the 29 plus dates in 2001, has been complaints from people who get tickets because there wasn't proper drivers education about the new law. That has been the biggest complaint I have seen. Which prompted all the states to do drivers education.

**Rep. Owens** It specifically says parked or stopped on a multi lane highway.

**Rep. Dosch (40.3)** Has DOT looked at this? Rep. Owens said DOT wrote this.

Discussion: Discussed when this would go into affect.

Motion Made by Rep. Iverson Seconded by Rep. Owens on the Amendment.

**Rep. Owens (41.6)** The point about education, I called over and talked to DOT about that because I wanted to make sure. I thought there should be a statement in there directing them to do it, but I don't see it here. It was directing DOT to do driver education on the move over law. Safety is paying \$100,000 to run the 911 thing in this state. So they have a little flexibility.

**Rep. Meyer** An objection to the bill. I don't think there has been proper education done now on existing pass laws. In Bismarck there seems to be a problem, it just seems to be a mess. I have not seen education on what we have now as an emergency vehicle; not alone this.

**Rep. Dosch** This says a the motor vehicle is parked or stopped. So what if they are mowing along the roads. It is strictly parked or stopped. If the lights are flashing!

**Chairman Weisz** Motion for a DO PASS As Amended :

Page 4  
House Transportation Committee  
Bill Number 1135  
Hearing Date January 20, 2005

**Motion Made by Rep. Iverson Rep. Iverson; Seconded by Rep. Hawkens**

**Do Pass As Amended 5 Yes 10 No Motion Failed**

**Do Not Pass Motion Made By Rep. Iverson Seconded By Rep. Kelsch**

**10 Yes 5 No 0 Absent Carrier: Rep. Weisz**

Closed (51.0)

VK  
1/21/05  
1082

HOUSE AMENDMENTS TO HOUSE BILL NO. 1135 TRANS 1-24-05

Page 1, line 1, after "A BILL" replace the remainder of the the bill with "for an Act to amend and reenact subsection 10 of section 39-06.1-05, section 39-06.1-09, paragraph 13 of subdivision b of subsection 3 of section 39-06.1-10, and section 39-10-26 of the North Dakota Century Code, relating to operation of a vehicle on approach of department of transportation vehicles.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 10 of section 39-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

10. Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 4 of section 39-10-26.

**SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-09. Moving violation defined.** For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; subsection 2 of section 39-12-02; sections 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 4 5 of section 39-10-26, sections 39-21-44 and 39-21-45.1, and subdivision b of subsection 1 and subsection 2 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

**SECTION 3. AMENDMENT.** Paragraph 13 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- |      |                                                                                                                                                                                                                                                         |          |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| (13) | Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 4 <u>5</u> of section 39-10-26, or equivalent ordinance | 2 points |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|

**SECTION 4. AMENDMENT.** Section 39-10-26 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-26. Operation of vehicle on approach of authorized emergency vehicle or vehicle used for maintaining the state highway system - Penalty.**

2062

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on a multilane highway outside the limits of a city unless the highway is part of the interstate system; and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
3. If a vehicle operated by or under the control of the director used for maintaining the state highway system is parked or stopped on a multilane highway outside the limits of a city unless the highway is part of the interstate system and the vehicle is displaying a flashing, revolving, or rotating amber or white light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
4. This section does not operate to relieve the driver of an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system from the duty to drive with due regard for the safety of all persons using the highway.
- 4-5.
  - a. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.
  - b. Any individual who violates subsection 3 and causes an accident with a vehicle operated by or under the control of the director used for maintaining the state highway system while the vehicle is displaying a visible flashing, revolving, or rotating amber or white light is guilty of an infraction."

Renumber accordingly

Date: 1-20-05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1135

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

*Do Pass*

*As Amended*

Motion Made By

*Duvon*

Seconded By

*Hawken*  
*Price*

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman		✓	Rep. Delmore		✓
Rep. Hawken - Vice Chair.	✓		Rep. Meyer		✓
Rep. Bernstein	✓		Rep. Schmidt		✓
Rep. Dosch		✓	Rep. Thorpe		✓
Rep. Iverson	✓				
Rep. Kelsch		✓			
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby		✓			
Rep. Vigasaa		✓			
Rep. Weiler		✓			

Total (Yes)

*5*

No

*10*

Absent

*0*

Floor Assignment

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

*Failed*

*Second Kelsch*

Date: 1-20-05  
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1135

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By *Rep. Iverson* Seconded By *Rep. Kelsch*

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair.		✓	Rep. Meyer	✓	
Rep. Bernstein		✓	Rep. Schmidt	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Iverson		✓			
Rep. Kelsch	✓				
Rep. Owens		✓			
Rep. Price		✓			
Rep. Ruby	✓				
Rep. Vigasaa	✓				
Rep. Weiler	✓				

Total (Yes) 10 No 5

Absent 0

Floor Assignment *Rep. Weisz*

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

**REPORT OF STANDING COMMITTEE**

**HB 1135: Transportation Committee (Rep. Welsz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1135 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the the bill with "for an Act to amend and reenact subsection 10 of section 39-06.1-05, section 39-06.1-09, paragraph 13 of subdivision b of subsection 3 of section 39-06.1-10, and section 39-10-26 of the North Dakota Century Code, relating to operation of a vehicle on approach of department of transportation vehicles.

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**SECTION 3. AMENDMENT.** Paragraph 13 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- |      |                                                                                                                                                                                                                                                         |          |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| (13) | Causing an accident with an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system in violation of subsection 4 <u>5</u> of section 39-10-26, or equivalent ordinance | 2 points |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|

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**39-10-26. Operation of vehicle on approach of authorized emergency vehicle or vehicle used for maintaining the state highway system - Penalty.**

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on a multilane highway outside the limits of a city unless the highway is part of the interstate system, and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
3. If a vehicle operated by or under the control of the director used for maintaining the state highway system is parked or stopped on a multilane highway outside the limits of a city unless the highway is part of the interstate system and the vehicle is displaying a flashing, revolving, or rotating amber or white light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
4. This section does not operate to relieve the driver of an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the state highway system from the duty to drive with due regard for the safety of all persons using the highway.
- ~~4.~~ 5.
  - a. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.
  - b. Any individual who violates subsection 3 and causes an accident with a vehicle operated by or under the control of the director used for maintaining the state highway system while the vehicle is displaying a visible flashing, revolving, or rotating amber or white light is guilty of an infraction."

Renumber accordingly



2005 TESTIMONY

HB 1135

**HOUSE TRANSPORTATION COMMITTEE**

**January 14, 2005**

**North Dakota Department of Transportation  
Gary Berreth, Director of Operations**

**HB 1135**

Support

Mr. Chairman and members of the committee, my name is Gary Berreth and I am the director of Operations for the North Dakota Department of Transportation. I'm here today in support of HB 1135. The North Dakota Department of Transportation pre-filed HB 1135 as an agency bill. This bill changes the definition of a Class B authorized emergency vehicle under subdivision b of subsection 2 of section 39-01-01 of the North Dakota Century Code to include vehicles used for maintaining the state highway system which are operated under the control of the NDDOT Director.

Current law, NDCC Section 39-10-26, requires vehicles – when approaching a Class B emergency vehicle on a multi-lane highway outside city limits – to move to a lane not adjacent to the authorized emergency vehicle. This maneuver must be made with due regard to safety and other traffic. If it cannot be done, the driver must proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for existing road conditions. Under the current law, NDDOT vehicles are not included in the definition of emergency vehicles.

Many states have a “move-over” law that includes maintenance vehicles. In our area, both South Dakota and Minnesota have such “move-over” laws. South Dakota actually requires vehicles to move over into the open lane for any stopped vehicle.

NDDOT has many operations that require maintenance vehicles to be stopped or driven on the shoulder. Operators have reported numerous close calls where vehicles have come close to hitting our equipment or workers, and in fact an employee *was* hit this year – by a motorist in the work area – while working on the Interstate. Legislation such as being recommended in HB 1135 would provide another tool to help improve safety in work zones. The safety of highway workers and the traveling public would be improved by including NDDOT vehicles under the definition of emergency vehicles.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions the committee may have.

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