

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1210

2005 HOUSE TRANSPORTATION

HB 1210

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. 1210

House Transportation Committee

☐ Conference Committee

Hearing Date January 13, 2005

Tape Number	Side A	Side B	Meter #
1	X		5.5-26.9

Committee Clerk Signature



Minutes:

Chairman Weisz opened the hearing on HB 1210 A Bill for an Act to amend and reenact section 39-16-03.1 of the North Dakota Century Code, relating to the confidentiality of a driving record.

Rep. Delmore (5.5) This bill was given to me by a constituent. I talked to a district court judge and a number of other people and I think this is one we can rectify. It reeferes to something called deferred imposition sentence. As a member of the judicial committee I had to look it up too. In a deferred imposition the judge gives you options for someone in the court system to plead guilty to the charge. He accepts the guilty plea to make amends that are set up by the judge; probation, taking medication, paying the fine and staying clean for a specific length of time. If the rules are followed the charges can be dismissed and the record can be sealed. However, the record is not cleared by DOT until the three years are up because of current statue. You can see that by looking at HB 1210. This bill can give the courts the latitude it should have to make judgments regarding the sentencing. Read a letter from District Court Judge Ralph Erickstad in Fargo. He

wrote to my constituents. I can appreciate your concern with the nature of the deferred imposition and how it is treated by the DOT. The reality of driving records is that they are maintained by the DOT consistent with state statutes and their own internal regulations. These laws require that the first three years be free imposition, which are treated like any other conviction and are in public record. Thereafter, they move into a confidential portion of the record, which is available only to law enforcement, courts and the DOT. That would not be changed, that portion. No member of the public for example; insurance companies would receive the confidential portions of the driving abstract. This is only after three years and the court has already decided that those records would be sealed. Back to 93 imposition, as I indicated is consistent with state law. The maintenance of a driving record is an executive branch function, not a judiciary function and must be done consistent with state law. The judicial record on the other hand is sealed from the date of the date the period the referral successfully completed. The courts have no direction to go over the action of the executive branch as long as the actions of the executive branch are consistent with state law. It seems to me your concern is primarily a legislative question, at this point. (Hanse I have it before you today). DOT and law enforcement still have excess to this information. It is not closed to them. It would only be closed to part of the public record. One of my constituents, who did meet all the court requirements, said I would never had plead guilty if I would have known that was going to be an open record to every body. The information would not be available to the public with this law. It would be available to DOT, law enforcement and the court. The DA's office in Fargo has also written to the DOT to report this case to the law and at least one attorney from the DOT has given positive impute back to my constituent. I have a number of papers, but they are so very

legal and should be confidential. I have a copy of the judgment that was lifted by Ralph Erickstad.

Rep. Owens (8.8) I want to make sure I understand. It is on the driving record and what this law is doing is it would be hidden completely or it would stay on the record until they meet the criteria and then it is taken off.

Rep. Delmore It would stay on there, obviously until the judge decided it could be taken off. After that time, if he dismisses the case, it would still be on the record. It would just not be available for public use only. Law enforcement and DOT would still have use of it.

Rep. Ruby (9.5) In a case where someone went to trial and that information was public. In this case you are talking about some body pleading guilty. Is there going to be a difference than on is open or what isn't based on whether they went to trial or plead guilty?

Rep. Delmore There probably would be. But the determination is made between the defendant and judge, if he thinks circumstances allow it. If he meets all the judges requirements. If he complies with the term of the offense and fine, it would be up to the judge. He would then dismiss the case. I can't tell you what they would do if someone went who to court.

Rep. Ruby (10.8) Without getting into specifics on a certain case. What kind of information is there, is it on the drivers license portion of their record that they want removed or no longer open to the public?

Rep. Delmore I don't have a copy of the report from DOT. I just have a copy of the judgment and the rest of the information. But it is my understanding of the laws use that all that would be available through DOT. Because you plead guilty to the charge that is all it would be. If he would have gone to court he probably could have had it removed. He said if he would have

known it was open record if he plead guilty he would have gone to court. He very possibly could of had it removed.

Rep. Iverson (11.7) Would this information be available to the defendants insurance companies for insurance purposes or would that also be sealed?

Rep. Delmore Yes, I believe that would be closed down.

Rep. Dosch (11.9) Now when you talk about criminal offenses just as they relate to a persons driving record are you talking DUI's or what is all included in the criminal offense?

Rep. Delmore (12.2) It could be a DUI. I don't know the answer to that. But it does include allot of other criminal charges as well. I am not sure about the DUI?

Rep. Iverson If someone is charged with a DUI; not convicted, then right away they plead guilty and say I will take the deferred sentence, I will plead guilty. Does that mean it would not be public record on an individuals drivers license?

Rep. Delmore (12.8) I think that might fall in a different part of the code with DUI's. I don't think that is one of the things here. It would still be available to law enforcement and courts. That would still be on your record. Senator Trenbeath would also like to testify and he will not be back until tomorrow.

Chairman Weisz we will hold the bill until tomorrow to allow Senator Trenbeath to testify on this bill. Anyone else here in support of HB 1210? Is there any opposition to HB 1210?

Lynn Heinert- DOT: In opposition to HB 1210. DOT is opposed to this bill. It is an unusual situation to be in. The reason are 1. Under the act of 1986 federal law prohibits us from masking any violations on the commercial drivers license record. This is a form of masking and we would be in violation of federal law. 2. Currently our system is automated and does not allow us

to program for the confidentiality of individual offenses. Take a look at the statute as it is written now. Confidentiality is for all violations that are 2 points or less on a driving record. It doesn't make who you are or what court you went to. They are all confidential. We also have the medical records that are all confidential. To group of violations, either confidential versus individual violations that would fall in there with these type of situations. Where a judge could do a deferred imposition sentence and the defendant does serve their probation period, fulfills the requirements of that for the disposition of sentence. I have been told it is almost impossible to program by individual offense. With that I will try my best to answer questions.

Rep. Hawken (15.8) After three years it is sealed. Isn't that on an individual basis?

Lynn Heinert: They go by the date of the violation so all violations heard on that specific date can be sealed after three years. That would be by grouping; not individual records. All violations that are three years old.

Rep. Hawken That seems strange to me. What happens then, if in fact, the court has it on record, and for whatever reason it does become a conviction? That would be an individual record. There are times when you do an individual record. If an insurance company wants a record, they don't get everybody's record, they only get one.

Lynn Heinert: An insurance company does get a driving record, but a portion of that driving record may or may not be confidential. Each individual entry onto the driving record is fed up. Convictions of January 13, 2002 as of 12:01 AM last night all those convictions would become confidential that day after 3 years. In this case we would have one conviction for less than 3 years old. Let's say it is a conviction for a DUI. A DUI conviction, when they plead guilty. They have to stay clean for one year. We have no way to be able to program it for John Doe for a DUI

conviction that is less than 3 years old is confidential, but Jane Doe, whose DUI conviction is only one year, if it is confidential. It is a programing thing.

Rep. Hawken (18.3) How to the courts do it? Because of the deferred imposition are sealed of them as of the clearing of it by the judge?

Lynn Heinert: I have no idea how the court system handles each individual case.

Rep. Hawken They do because it is sealed on an individual basis at the time the judge says so.

Lynn Heinert: I have a feeling they have a computer system that they are able to program their system. Ours, unfortunately, can not.

Chairman Weisz I have a couple questions. You brought up the Motor Carriage Safety Act that prohibits masking. but aren't you masking when it over 3 years old and it is under 2 points. So I assume there is some criteria of masking is? Would you have that available?

Lynn Heinert: On a commercial drivers their entire record is open to courts, law enforcement and prospective employers. If an insurance company would run a record check, the insurance company would only get the portion that is available to the public. Criminal violations currently are available to the general public for that three year period. This would be a way it would be masked by commercial.

Chairman Weisz But Lynn, if you fulfill a deferred imposition, there is no longer any record. You are no longer guilty so it is not a conviction any longer. In reality it goes away, so what are we masking?

Lynn Heinert:(19.9) Under ND Century Code, off the top of my head, I know it is 39-06 something, and also 39-07. A deferred imposition of sentence is considered a conviction.

Chairman Weisz You have no means in your programing to enter any thing in manually? How many deferred impositions are there that are going to come onto the driving record in a year?

Lynn Heinert: Currently when we receive a deferred imposition of record into our office, if we get two a month, I would say that is an average.

Chairman Weisz No way to manually seal that record?

Lynn Heinert: No not at this time. I will let you know we are asking for a million dollars from appropriations. Then we could do that.

Rep. Delmore (21.0) What do you do in a case then of a DUI charge that does go to court and the person is found not guilty. The charges are dismissed. Do you leave that on the record for public consumption as well, until three years go buy, even though I had gone to court showing that I was not driving under the influence?

Lynn Heinert: If it is dismissed by the court, other than those with a deferred imposition of sentence, do not appear on their driving record.

Rep. Delmore (21.4) If the judge dismisses it for cause; because that they have meet all the requirements and he will dismiss it and seal the record. Can't you do that, if you can when I go into court. That DUI is entered on my records automatically and when I go to court and the charges are dismissed you take that off. You must not have hundreds of those either. Why would you be able to take that off the record or have it remain confidential, but not this?

Lynn Heinert: (22.0) If the charges are dismissed. You go into court and the charges are dismissed; you go into court and the court finds you not guilty. That never appears on your drivers license. The criminal charge never appears on the driving record because we have never received it from the court. Under the definition of conviction for deferred imposition of sentence

under state statute if there is a conviction and there for it goes on the driving record. There is a conviction there. If later, the conviction is dismissed based upon meeting requirements of the sentence.

Rep. Delmore If that conviction is dismissed you automatically take it off the record? That is automatically done by DOT.

Lynn Heinert: (22.9) If that charge is dismissed other by the court; we never receive it, we never put it on our records so we don't have any reason to take it off if it is not there.

Rep. Delmore If I relinquish my license immediately with the charge. That is not listed in your record anywhere?

Lynn Heinert: (23.3) That is a civil procedure. That is completely separate from the court portion of a DUI, which is the criminal side. If they charge and you surrender your drivers license that is entered onto the driving record, even if you are found not guilty in court on the criminal side, that portion does stay on your driving record. One doesn't have anything to do with the other. The civil side doesn't have anything to do with the criminal side.

Rep. Delmore (23.9) I am just saying, those are things that are accessible by entering something; that administrative part is still on my record even if I am found not guilty and in this case the judge dismisses the charges; neither of them are going to be confidential. They are both going to be open for public record.

Lynn Heinert: (24.3) Yes, we have the administrative information on the driving record; an individual goes into court, pleads guilty with a deferred imposition of the sentence on the criminal side, a year later the court dismisses the criminal side. In the bill the say it is written,

the conviction would become confidential; not the administrative part. That would remain public record.

Rep. Price (24.8) What is the negative impact to this bill. I am asking this questions from the employer point of view. If a person goes in on a deferred imposition and proposed and we seal it up. They plead guilty. I hire this person, they have a DUI. They tell me they have a clean driving record. I put them through training and I go to insure them as an OTR driver will my insurance company ever know they plead guilty for a DUI? Or will I find out at that point after I have already trained them and then put them on the road, but I can't insure them?

Lynn Heinert: Depending when an insurance company does are record check. They may or may not find out about it. They may find out, if they do a prior to the deferred imposition of sentence requesting removal of that charge from the record. Or they may find out after ward. From an employer stand point you may not know you have a high risk driver.

Chairman Weisz (26.) What happens if you were convicted of a DUI so it is on your record and you appeal it to the supreme court and it is over turned? How do you take it off your record then.

Lynn Heinert: We can remove violations from your record; we just cannot hide them.

Chairman Weisz (26.5) Any further questions? Anyone else here in opposition of HB 1210?

We will recess the hearing on HB 1210. (26.9)

2005 HOUSE STANDING COMMITTEE MINUTES

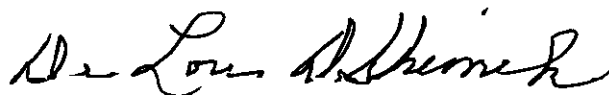
BILL/RESOLUTION NO. 1210

House Transportation Committee

☐ Conference Committee

Hearing Date January 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		36.1-51.9
		X	4.5 - 14.7

Committee Clerk Signature 

Minutes:

Chairman Weisz opened the hearing on HB 1210 A Bill for an Act to amend and reenact section 39-16-03.1 of the North Dakota Century Code, relating to the confidentiality of a driving record.

Tom Trenbeath: (36.1) Senator from District 10. There are certain offenses that are driving other related offenses for which judges in considering the facts along with cooperation of prosecutors decide to do what is called a deferred imposition of sentence. (Example) fleeing from an officer, once the person is caught he is cooperative and sorry. The prosecutor agrees, but wants to be sure that you do not do it again so he agrees to do a deferred imposition of sentence. You go before the judge and you plead guilty and the judge accepts it. The judge says he is not going to sentence you, but defer imposition of sentence for a period of 6 months. When that 6 months time period I want you to do the specific items. Keep you nose clean and take an anger management course, whatever. I certainly don't want you to fleeing from a police officer again.

When you then come back into court and you have complied, I will allow you to withdraw your guilty plea and dismiss the charges. So all that happens is, apparently the DOT doesn't get involved and it should not be listed on your driving record. That is what this bill does and I am really in support of this bill.

Chairman Weisz The department testified that if you were convicted of a DUI and it was appealed to court and overturned they did not have a problem removing your records. You just said that when you come back in with a deferred imposition, it is removed from your record. Yet they were telling us they could not in any easy way remove that from the record. They are saying it is still a violation. That a deferred imposition was the same as a conviction?

Tom Trenbeath: Yes, and there maybe one there so that is why this bill is necessary. It is not fair, it is no longer there, but it appears on your driving record.

Rep. Thorpe (42.) I think it is a great idea. I have one reservation, could this be viewed as a privilege.

Tom Trenbeath (42.6) I suppose that could be a danger. However, the fact of the matter is, where that privilege comes in is the offering of the deferred imposition of sentence. That is certainly something anyone is entitled to. Depends on the nature of the crime, the nature of the criminal, is usually the reason. This is the judges right to make those decisions rather than the legislature telling him how he or she should rule on a particular situation. There probably will still be some abuse.

Rep. Rubv (44.3) If they get the guilty plea and convicted of this crime. During that time they are considered convicted of that crime and it is on the record during that period of time. After they have satisfied the requirements of the deferred imposition of sentence then it should be

removed? Tom said that is correct. We talked initially about masking. Now if they just removed that then it is no longer a conviction. Can they do that?

Chairman Weisz (45.6) The point they brought out was that other whole section of law that is considered a deferred imposition, they are arguing they can not remove it. They were saying this bill is only going to mask it. They were saying they could do it, but it would cost millions to do it because of their programing. You are making it clear that after that period, it is no longer a conviction. They said a deferred imposition never goes away, even if you satisfy your conditions.

Tom Trenbeath: (46.8) If the law says it goes away, it goes away.

Rep. Hawken (46.9) I did allot of research yesterday and there are a good number of states that have this law. So we would not be unusual in this because of the fact it is going away. Question, we heard it would still stay there for three years in a court record and the court record that is only available to the police and the court. Is that true? Tom said the believed that was true. But it is sealed for three years in case something happens again within the 3 years.

Tom Trenbeath: (48.1) That is the thing, it certainly would be useful to the court if two years down the line. After two years down the line the guy flees from a police officer the court would certainly want to know that when they sentence him.

Rep. Hawken We are saying it goes away, but it doesn't. It just ceases to be a part of public record. Tom said that is correct.

Rep. Iverson (49.0) When I was a probation officer in Florida we did this stuff all the time. Usually when it was someone that did something that was really stupid and was really sorry for it they were put on probation for a period of time and properly taken care of it went away.

Rep. Owens My understanding is a little different than Rep. Hawken explained. If it is an offense that can take it completely off the record, it would not show up two years down the line, it would not show up only for the government or not. If we try to set it up so that it would only show up internally for the government, but on public records, that is the masking that we couldn't do. They can take it off, but they can't mask it. That is the difference.

Rep. Delmore (50.7) Sen. Trenbeath, you missed their testimony yesterday and it was the way their computers system wasn't set up enabling them to mask. Those charges will be available to law enforcement, to DOT and to the court system. They are not gone forever but they are not available for public review. How often are these really used and how often are they used and two, are they used most on DUI's?

Tom Trenbeath: (51.9) Never used in DUI's. I have not been a party to this in a long time, but when I was in that arena, we used them all the time.

Side B (4.5) I do not know of a deferred imposition on a DUI or alcoholic related charge.

Rep. Owens (4.8) Does the masking issue where DOT said it violated federal law, they were referring to commercial vehicles only, were we not? Not just everyday drivers? She made that point, it wasn't if we mask it violated federal law for everybody. She admitted they do that all the time where they mask certain things automatically based on date and point. But it was commercial vehicles that concerned her.

Chairman Weisz If we are not masking anything, how are we violating anything? She answered the questions, if you were convicted and it was overturned from higher court, it goes away. There is nothing to mask they just take it off. You are saying that is what happens is the judge takes it off. They are no longer convicted of the crime.

Tom Trenbeath: I can for see it becoming a standard part of the document at the time.

Rep. Price (5.9) If we do this, do you see judges, as a prospective employer, we are not going to know if this person has had a DUI. After we hire this person and train this person and they will end up with another DI and we find it out too late.

Tom Trenbeath: (6.5) Deferred imposition is never used with DUI's. I am not sure about drugs.

Chairman Weisz (7.6) The sentence never goes away. They don't have to fulfill all the requirements of the sentence, but they are still guilty of whatever offense.

Rep. Owens I just want to have a simple answer yes or no. See if I understand. We are not talking about masking, we are talking about taking them off once the judge says they have done their duty and it is clean. During the time they are doing their duty it is on their drivers license. It is visible to everyone and then once it is over and done, we are taking it off the record. Still concerned about commercial vehicles not showing up. We are not masking so it would show up.

Chairman Weisz What should be do.

Rep. Iverson (9.1) Expense to training people. Not done for DUI's. Might be for minor in possession.

Rep. Delmore (10.2) DUI's are a separate part of the code and would never be used for that. I would like to check to see if it is in there. I think it is a very valid concern. I never meant this to be used for someone to get around a DUI. The person that presented this to me was not in this situation and it was not my intent.

Chairman Weisz (6.9) Do you want to hold this bill until you can clarify this information?

Rep. Delmore (10.7) Yes, if people are willing to do that.

Rep. Ruby (10.8) How often will this deferred disposition of sentence being used?

Chairman Weisz I think everyone seeks this since once it is done, my record is clean if you do what they ask. If it is a one time thing etc. no one has to accept a deferred imposition, but it is the judges option.

Rep. Iverson (12.4) I looked into it and it is a one time thing. You have to fulfill what requirements the judge sets. I think we should pass this bill.

Rep. Bernstein (12.7) What is the record if 6 months and after 3 years it happens again? How do you know if it is going to be for the first time or the second time? Chairman Weisz said the court is still available.

Rep. Iverson (13.2) We would have 9 people that would make a mistake. They weren't in there right minds and we did not want to wreck their lives so judges can mediate and I think that is good.

Rep. Delmore (14.5) I would like to make sure it is in a different part of the statues and isn't going to be used for this. It was never my intent.

Chairman Weisz (14.6) Decided to hold bill.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. HB 1210

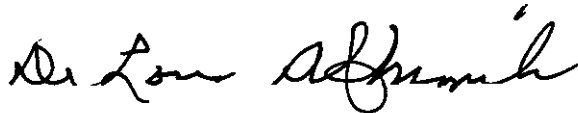
House Transportation Committee

☐ Conference Committee

Hearing Date February 1, 2005

Tape Number	Side A	Side B	Meter #
1	X		27-47.6

Committee Clerk Signature



Minutes:

Chairman Weisz reopened the hearing on HB 1210.

Rep. Delmore Not happy with DOT responding back with information on this bill and others.

My constituent has both a letter from the states attorney and from a district judge that lead him to bring this to me and this committee to see if there was something we could do. That being said I appreciate the patience and tolerance from every one on the committee. I just want Tim Dawson to explain one more time the intend of the bill as it was written. I am frustrated and rather sad that DOT was not willing to work on anything with this bill.

Tim Dawson: I have spoke with to her constitution as well and there is a statue in 39-07-11 that requires judges to report all impositions of deferred sentences to the DOT. That is why they are doing it. I think it is also important to note that rules for judges require them to say; that the judge should advise the defendant fulfills the condition of the probation the guilty plea will be withdrawn or the guilty verdict set aside, the case dismissed and the file sealed. So that is what

the person is told in court. But it goes to DOT never the less because of that other statue. I think the constituent would like that requirement removed. But to make things a little more workable we addressed a different statue, which deals with the records of the DOT. It says that the following entries on a driver record or abstract are not available to the public. That includes an entry made for a criminal offense upon submittal to the DOT that the court ordered let the criminal record. The department would still be able to use that to yank their license, but it would just not be public record.

Chairman Weisz Concerning the opposition the department had concerning masking and their costs. As we read the bill it says the record must be removed. They are arguing they have to mask it. That is where the issue is because they already remove a record. If for example, the conviction was overturned by the courts they remove that. This bill would require them to remove it? Right. Or does it just require them to hid it?

Tim Dawson:(31.3) This bill would require them to hid it and not remove it.

Rep. Price When you say it is not available to the public. Would it be available to an insurance company when they check your driving record?

Tim Dawson: No it would not be available. That is the way it is written.

Rep. Price If this would pass, and lets say someone had this happen in a felony. Maybe two years later they were picked up in another county for the same offense. Will the prosecution know there was an offense? I was asked this by a judge.

Tim Dawson:(32.7) No. It is a sealed record. Discussion and decided that the court would still have a record of it.

Rep. Mever You said in two years and it states an entry more than three years old. After three years is it still available to the court?

Rep. Delmore I am not sure what they do with court records to be honest with you.

Chairman Weisz This section applies for under two year old records. There is an exception for those under three years old. All driving records over three years old are confidential. This section would now say any deferred imposition under three years is still confidential.

Rep. Owens (34.6) This is what I understood about this. Basically they stood up there and said they couldn't mask it because they couldn't do it by date and birth date. Then we later heard the intend was that if it was a deferred imposition; as long as they are going through the process it is on their drivers record and then it comes off only after the court says OK they have meet all the requirements. We heard earlier also that they routinely go in and take off specific offenses. So the issue to them, based on all the testimony, to me was masking, not adding and deleting specific events. They said when the court told them they would delete the one entry completely, but they couldn't mask it.

Chairman Weisz They can remove, if any criminal traffic ticket is overturned. So they can remove this one, but where it is setting it is not removed, it is masked, and that is the issue they have. They can't mask an individual record under the current scenario. That is what the DOT is telling us. We can remove a record. They are arguing they can't remove it because they are going to be in trouble with the Feds. Tim do you have any idea how this relates? If we actually remove the record, would that put us in any conflict with the Feds?

Tim Dawson: It would to the extent that a person that had a commercial drivers license had the offense.

Chairman Weisz Assuming that scenario, say the commercial driver was convicted of a criminal offense and then it was over turned, they could remove it and it would not be a violation of the Feds., but a deferred imposition doesn't afford it. You said in your statement the judge removes the guilty plea so there is no longer guilty.

Tim Dawson: I was reading from the court regulations. There is some inconsistencies between what the court is saying and what is happening in the real world. A deferred imposition of sentence is; you sentence is imposed until your clean and it is cleared backward and so for a time there you are guilty for awhile.

Rep. Owens (38.5) That was my point, while it is on there you are guilty and they can remove the individual item. The only problem then is in two places; the commercial vehicles or it may not be the case if we ignore the confidential part. It is the confidential that is causing them to look at this and say, oh we have to mask it.

Rep. Meyer Do you feel this would help to start cleaning up some of the inconsistencies between what the court is doing and what the DOT is?

Tim Dawson: There are tons of inconsistencies in it because of that time that you are guilty for a little bit of time. If your bad, you are guilty for ever. That delay in there is a problem. As far as cleaning this up, I think you exempt from the exception people with commercial drivers license.

Rep. Meyer(40.7) I move to exempt the CDL license from it.

Chairman Weisz CDL's would not be exempt from the deferred imposition.

Rep. Delmore (41.0) How do we live by different rules. I don't know that even putting that in there would make any difference.

Rep. Price If they are not operating a commercial vehicle at the time of the offense does it matter?

Chairman Weisz If they have a CDL license it doesn't matter. I don't know if they would already run under different rules already.

Rep. Weiler She made a motion; don't we need a second.

Rep. Hawken seconded it.

Rep. Ruby: In the situation you talked about, did that person have a CDL?

Rep. Delmore No he does not. I would think because of the unique statute for CDL; they are in a whole different part of code.

Rep. Kelsch Maybe what Rep. Delmore should do is talk to counsel and find out if they are already exempt from this or DOT before we put the amendment on?

Rep. Delmore I have been working with this bill long enough and I would like some votes in support, if I can have them. No I am done running.

Rep. Meyer withdrew the motion and Rep. Hawken removed her second

Chairman Weisz

Motion made by Rep. Iverson Seconded made by Rep. Meyer

Do Pass 11 Yes 4 No 0 Absent Carrier: Rep. Hawken

(47.5)

FISCAL NOTE
Requested by Legislative Council
03/15/2005

Amendment to: HB 1210

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures		\$5,000				
Appropriations		\$5,000				

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

There would be a one-time computer programming expense of approximately \$5,000.

This is the same information as reported in the previous fiscal note for this bill.

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.*

There would be a one-time computer programming expense of approximately \$5,000.

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: Marsha Lembke
Phone Number: 328-4865

Agency: NDDOT
Date Prepared: 03/16/2005

FISCAL NOTE
Requested by Legislative Council
03/02/2005

Bill/Resolution No.: HB 1210

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$5,000			
Appropriations			\$5,000			

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

There would be a one-time computer programming expense of approximately \$5,000.

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.*

There would be a one-time computer programming expense of approximately \$5,000.

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: Marsha Lembke
Phone Number: 328-4865

Agency: NDDOT
Date Prepared: 03/03/2005

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

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1210

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Dis Pass - 150 Amend.

Motion Made By Ammon Seconded By Meyer

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) 11 No 4

Absent 0

Floor Assignment Rep. Hawken

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2005 11:48 a.m.

Module No: HR-22-1668
Carrier: Hawken
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1210: Transportation Committee (Rep. Welsz, Chairman) recommends DO PASS
(11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1210 was placed on the
Eleventh order on the calendar.

2005 SENATE TRANSPORTATION

HB 1210

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1210

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-25-05

Tape Number

1

Side A

x

Side B

Meter #

465-3345

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Trenbeath opened the hearing on HB 1210 relating to the confidentiality of a driving record.

Representative Lois Delmore (District 43) Testified in support. HB 1210 came about because of a constituent that was given the deferred imposition of sentence. The judge gives the option to someone who has a clean record. This gives the person a chance to plead guilty to the charge, make amends set by the court and the judge that could include probation, taking medication, paying fines, and staying right for a specific length of time. If the rules are followed, the charge is dismissed and the records can be sealed as far as the court is concerned. However, the record is not cleared in DOT until three years are up. The person involved was under the impression that if the courts sealed the records, that would mean it was not part of the public information, either through the court or through the DOT. He is not sure he would have taken the deferred sentencing otherwise. This bill gives the courts the latitude it should have to make judgments

regarding the individual defendant. She provided a letter from Judge Erickson, District Court, who made it very clear that what happened to her constituent was something he didn't think was right. (See attached.) She also provided the committee with proposed amendments from the Attorney General's office. (See attached.) Most of the people she sees being affected by deferred sentencing are people who are on their first offense. They've made an honest mistake and the court is willing to give them the benefit of the doubt if they follow through with the criteria set by the court.

Robert Bennett (Assistant Attorney General, Attorney General's Office) Was present at the request of Rep. Delmore to explain the proposed amendments. One of the issues that came up with the original bill 1210 as written was there was really no authority for the courts to grant the relief that was provisioned by the bill. (Meter 900) These amendments are a new section 1 that authorizes the court to make an order relating to the entry in the driver record and also some procedures that will require some type of motion to the court, notice to the prosecuting attorney, and some finding of good cause. Since HB 1210 envisions two types of relief, that either the record be held confidential and still kept or removed from the system, there are different times of release. They tried to draft the bill to be broad enough to cover the courts discretion upon a good cause showing what relief may be requested. On page 1 of the amendment, lines 19-20 are basically style changes.

Kent Olson (ND PIA) Testified in opposition to HB 1210 because of the potential for not indicating a conviction or a major violation on one's driving record. In the auto insurance industry, the insurance agent will always order an MVR, the motor vehicle driving report, to see what's of record. In ND, the records for the public for which the insurance company can gather

the data go back three years. This section of the statute, 39-16-3.01, gives the times a record can be confidential. Any time there is something that is confidential or withheld from the underwriting process, they feel they have an adverse selection process beginning because they can't get the information to adequately put the premium onto the exposure. In the past they accepted the three years. Item 4, the new part of the bill, worries them because it deals with criminal conviction. (Meter 1320) Criminal convictions include reckless driving, aggravated reckless driving, leaving the scene, violation of restrictions, no liability insurance, etc. These are considered major violations and would directly affect the underwriting, the auto insurance rates, and the shifting of possibly the premium from the bad driver to the good driver. If the record is not available, there is no way for the insurance company to assess premium. (Meter 1395) They don't want citations on the record to be used but they certainly want convictions for violations on the record. When access is shrunk to underwriting information, generally, the underwriter assumes guilty until innocent. Another area of contention in underwriting insurance is the driving points. Speeding under three points goes on the record but not a public record so the insurance companies don't get all the speeding violations and can't rate accordingly. They feel there are potentials for abuses. They don't like the idea of removing the record or hiding it with confidentiality. They would be open to amendments. If the courts decide on imposition of sentences in these specific cases with some checks and balances, it would probably be okay.

Senator Trenbeath asked why the agent's organization cares.

Kent Olson said they are the front line underwriter. Their association has a license with the DOT to extract driving records, MVR's, for their members. This is done daily so they can move forward with the underwriting.

Senator Trenbeath referred to Mr. Olson's comments about an adverse selection process and that it worries them that some of this information is subject to judicial discretion. He asked if they don't trust the judges to determine if this should be an offense that is open to the public.

Kent Olson said they would respect the decisions of the judicial system. However, it seems unfair if there is an opportunity to reduce the sentence and not have it a record.

Senator Trenbeath said the three year limitation is just an empty situation. He asked if they discovered something within the three years they know that through year ten or however long they insure the person and it enters into their underwriting.

Kent Olson said, yes, they are aware of it but the agent or the insured many times will switch companies.

Senator Trenbeath asked him about the DUI being a problem. The specific statute says that it is not subject to deferred imposition. That has to go on record.

Kent Olson said he wasn't aware of that if it wasn't subject to deferred imposition. If it goes on the driving record could it then be expunged or removed by a court or by a judge.

Senator Trenbeath said, yes, that could be problematic.

Patrick Ward (Association of ND Insurers) See attached testimony in opposition to HB 1210.

He said this bill draft is much broader than just deferred imposition. The way he reads it, subsection 4 would make any criminal offense a possible area for a court to keep off the driving record.

Senator Nething said the amendment by the Attorney General's office has tempered the original bill quite a bit. Asked if he had a chance to look at it.

Patrick Ward said they hadn't looked at it but, based on Mr. Bennett's testimony, would agree that it was tempered somewhat.

Senator Espegard referred to the DUI and said he didn't think that this affected the DUI.

Patrick Ward said he understood from Rep. Delmore's testimony the DUI laws don't permit deferred imposition but this is much broader. He reads it as any criminal offense.

Senator Trenbeath said he thought Mr. Ward made a good point and suggested the committee look at some language that would exclude driving related alcohol offenses from this authorization.

Jack McDonald (The Polk Company) See attached testimony in opposition to HB 1210.

Senator Nething asked if all of these people had a chance to testify in the House hearing.

Jack McDonald replied that he had testified in the House. The information concerning the additional court records and information from the Attorney General was not available at that time.

Senator Trenbeath asked Mr. McDonald why his company cares.

Jack McDonald said if the value of the record diminishes, the demand for that record might also.

Keith Magnusson (Director for Driver and Vehicle Services, ND DOT) See attached testimony in opposition to HB 1210. He was also concerned with the commercial driving part. He offered an amendment to make it clear that HB 1210 would not apply to the holder of a commercial driver's license. (See the attached proposed amendment.)

(Meter 3288) There was a short discussion on the need for a fiscal note. DOT had not been asked for a fiscal note. Because of their computer program, the DOT will have to make some

Page 6

Senate Transportation Committee

Bill/Resolution Number HB 1210

Hearing Date 2-25-05

substantial changes which would involve a fiscal note of about \$5,000. Senator Trenbeath requested that Mr. Magnusson provide one.

The hearing on HB 1210 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1210

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-11-05

Tape Number

1

Side A

x

Side B

Meter #

1535-2035

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Trenbeath opened HB 1210 for discussion and action.

There was a discussion on the amendments. Mr. Magnusson offered the amendment dealing with line 18 on page 1. The other amendment was from Bob Bennett which also dealt with the same section and added a Section 1 regarding confidentiality.

Senator Nething said it seemed, if the bill were to pass, you would want the amendments on it.

Senator Trenbeath said he would agree.

Senator Bercier moved to accept both the Magnusson amendment and Bennett amendment.

Seconded by **Senator Espegard**. Roll call vote 5-0-1. **Amendments adopted.**

Senator Warner motioned a **Do Not Pass**. Seconded by **Senator Nething**.

As per Chairman Trenbeath, the roll call vote was held open for Senator Mutch.

Final roll call vote 6-0-0. **Passed**. Floor carrier is **Senator Nething**.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1210

Page 1, line 1, after "to" insert "create a new section to chapter 39-16 of the North Dakota Century Code relating to authority of a court to order confidentiality or removal of an entry in a driver record or abstract; and to"

Page 1, after line 3, insert:

"**SECTION 1.** A new section to chapter 39-16 of the North Dakota Century Code is created and enacted as follows:

Confidentiality or removal of entry of criminal offense by court order.

A court may order that an entry made in a driver record or abstract for a criminal offense reported to the director be confidential or removed from the driver record or abstract. The order shall be made only upon motion of the driver, with notice to the prosecuting attorney, and a finding by the court of good cause to support the relief requested."

Page 1, line 4, replace "1" with "2"

Page 1, line 19, replace "criminal record" with "entry"

Page 1, line 19, replace "offense" with "entry"

Page 1, line 20, replace "criminal record" with "driver record or abstract"

Renumber accordingly

Magnusson

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1210

Page 1, line 18, after "offense" insert ". other than by a holder of a commercial driver's license."

Renumber accordingly

9NN
3/11/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1210

Page 1, line 1, after "to" insert "create and enact a new section to chapter 39-16 of the North Dakota Century Code, relating to authority of a court to order confidentiality or removal of an entry in a driver record or abstract; and to"

Page 1, after line 3, insert:

"SECTION 1. A new section to chapter 39-16 of the North Dakota Century Code is created and enacted as follows:

Confidentiality or removal of entry of criminal offense by court order. A court may order that an entry be made in a driver record or abstract for a criminal offense reported to the director to be confidential or removed from the driver record or abstract. The order may be made only upon motion of the driver, with notice to the prosecuting attorney, and a finding by the court of good cause to support the relief requested."

Page 1, line 18, after "offense" insert ", other than by a holder of a commercial driver's license."

Page 1, line 19, replace "criminal record" with "entry" and replace "offense" with "entry"

Page 1, line 20, replace "criminal record" with "driver record or abstract"

Renumber accordingly

Date: 3-11-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 1210

Senate

TRANSPORTATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Amendments by Magnusson and Bennett

Motion Made By Sen. Bercier Seconded By Sen. Espgaard

Senators	Yes	No	Senators	Yes	No
Senator Espgaard	✓		Senator Bercier	✓	
Senator Mutch			Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment

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

Date: 3-11-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 1210

Senate

TRANSPORTATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50037.0101 Title .0200

Action Taken Do Not Pass

Motion Made By Sen. Warner Seconded By Sen. Nething

Senators	Yes	No	Senators	Yes	No
Senator Espegard	✓		Senator Bercier	✓	
Senator Mutch	✓		Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

HB 1210: Transportation Committee (Sen. Trenbeath, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1210 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 39-16 of the North Dakota Century Code, relating to authority of a court to order confidentiality or removal of an entry in a driver record or abstract; and to"

Page 1, after line 3, insert:

"SECTION 1. A new section to chapter 39-16 of the North Dakota Century Code is created and enacted as follows:

Confidentiality or removal of entry of criminal offense by court order. A court may order that an entry be made in a driver record or abstract for a criminal offense reported to the director to be confidential or removed from the driver record or abstract. The order may be made only upon motion of the driver, with notice to the prosecuting attorney, and a finding by the court of good cause to support the relief requested."

Page 1, line 18, after "offense" insert ", other than by a holder of a commercial driver's license."

Page 1, line 19, replace "criminal record" with "entry" and replace "offense" with "entry"

Page 1, line 20, replace "criminal record" with "driver record or abstract"

Renumber accordingly

2005 TESTIMONY

HB 1210

Price, Clara Sue

1-14-05. 1210

From: Lynn F. Heinert [lheinert@state.nd.us]
To: Thursday, January 13, 2005 1:47 PM
Cc: Clara Sue Price
Subject: Keith C. Magnusson; Marsha M. Lembke
HB 1210

Representative Price:

If HB 1210 were to pass, requiring either the removal of a criminal traffic violation or the violation to be considered confidential because of a deferred imposition of sentence, the following could occur:

An employer when requesting the driver record, of a driver who is not required to have a Commercial Driver License, would not receive the information that the driver had a criminal traffic violation. Conceivably an employer could hire a driver who was convicted of a criminal traffic violation and not know about it. This would hold true for delivery persons, farmers, on the road sales persons, or any type of driver not required to have a CDL.

This would allow the masking or hiding of convictions. If a criminal violation were to be dismissed as a result of a deferred imposition of sentence and the court ordered the conviction removed from the driving record, the violation would be required to be removed from the record. Meaning that there would be no record of the violation.

Neither the courts, law enforcement or Driver License and Traffic Safety Division (DLTS) division would know that a prior offense was committed. This could result in a court in Ward County not knowing that the driver had a prior offense in Cass County. The driver could then conceivably have a second DUI offense, but because the first offense was dismissed as a result of the deferred imposition of sentence, the court would not know about the first offense and subsequently sentence the driver as if it were a first offense. The same would hold true for DLTS division. The conviction for DUI would be removed from the driving record, and if a second conviction were to come in, the length of suspension or revocation would be as if the second offense were a first offense.

Federal Law 49 CFR 384.226 does not allow the masking of convictions for CDL drivers.

The federal law states, "The State must not mask, defer imposition of judgment, Or allow an individual to enter into a diversion program that would prevent a CDL

driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver

1-14-05

1210

Pg 2

is licensed or another State." Therefore we would not be able to remove or make confidential any conviction that a CDL holder has accumulated.

courts and prosecutors rely on the accuracy of the driving records kept by DLTS. If convictions were to be removed from the driving records, the courts and prosecutors would not have an accurate driving history of the driver. Therefore the courts could not sentence the drivers accordingly.

In Attorney General's Opinion 83-22 the attorney general stated. . . "Where the imposition of the sentence was suspended there is no question but that a conviction has been obtained. . . " This opinion requires that all traffic convictions appear in the driving record.

Currently under NDCC 39-16-03.1 entries on a driving record that are confidential and not available to the general public or insurance companies are;

- entries that are more than three years old,
- medical suspensions once the suspension has been released,
- suspensions for failure to appear or post bond once the suspension has been released
- failure to pay a fine or serve a sentence after the suspension has been served.

Under NDCC 39-06.1-10 violations that are two points or less are also considered confidential and not releasable to the general public or insurance companies.

During the hearing on HB 1210 I was asked how many requests we receive to remove convictions from driving records based upon a deferred imposition of sentence. I stated that our office received approximately two per month. I believe that the reason we do not receive more is that the courts know that under current law our office cannot remove these types of convictions from the driving record. If this bill were to pass I can guarantee that these requests would become the norm rather than the exception.

Criminal traffic violations are:

- Reckless driving
- Aggravated reckless driving
- Leaving the scene of an accident
- Violation of restrictions
- No Liability Insurance
- Fleeing a peace officer
- Causing an accident with an emergency vehicle
- Driving Under Suspension or Revocation
- Driving Under the Influence
- Actual Physical Control
- Manslaughter
- Negligent Homicide

If I can be of any further help, please let me know

Lynn Heinert, Manager



UNITED STATES DISTRICT COURT

DISTRICT OF NORTH DAKOTA
655 1ST AVE. NORTH, SUITE 410
FARGO, ND 58102-4952

August 5, 2003
RALPH R. ERICKSON
DISTRICT JUDGE
Mr. Jerry Hjelden
1508 14th St. S.
Grand Forks, ND 58201

Tel: (701) 297-7080
Fax: (701) 297-7085

re: Your letter of 7/21/03

Dear Mr. Hjelden:

I am sorry that I didn't get back to you sooner, I have been busy the last few weeks in court and with family matters. I hope that this delay has not caused you any undue hardship.

I can appreciate your concern with the nature of a deferred imposition and how it is treated by the Department of Transportation. The reality of driving records is that they are maintained by the DOT consistent with state statute and their own internal regulations. These laws require that for the first three years deferred impositions, which are treated the same as any other conviction, are on the public portion of the driving abstract. Thereafter, they move onto a confidential portion of the record which is available only to law enforcement, the courts, and the DOT. No member of the public, for example, insurance companies, receive the confidential portions of the driver's abstract.


This action on deferred impositions is, as I indicated consistent with state law. The maintenance of a driving record is an executive branch function, not a judicial branch function and must be done consistent with state law.

The judicial record, on the other hand is sealed from the date that the period of deferral is successfully completed. The courts have no direct control over the actions of the executive branch, so long as the actions of the executive branch are consistent with state law.

It seems to me that your concern is primarily a legislative question at this point. The courts are under severe limitations in the legislative arena, so I would suggest that you take this matter up with your local legislators, as they are the only persons with the ability to address your concerns.

I am sorry that I couldn't be of more assistance to you. Thank you for your inquiry.

Sincerely yours,


Ralph R. Erickson

February 25, 2005

Testimony in Opposition to HB 1210

Chairman Trenbeath and Members of the Senate Transportation Committee:

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith here in Bismarck. I represent the Association of North Dakota Insurers in opposition to HB 1210.

Chapter 39-16-03.1 of the North Dakota Century Code relates to entries on a driver record abstract. As you know, insurance companies in underwriting policies frequently request driver records from the Motor Vehicle Department to determine whether an individual is driving in a safe or risky manner. Currently these abstracts are limited to the past three years and to certain specific discoverable information.

HB 1210 would hide additional information from the insurance carrier and the public generally by providing that a court may enter an order that a criminal offense be confidential or removed from the criminal record. Such a request could become a commonplace component of a plea bargain in a criminal setting. The result would be to deprive the insurance company of information relevant and germane to underwriting. For example, the offense may be for DUI, or reckless driving, or some violation of that nature. If the insurance company is not

aware of that, they would not be able to appropriately underwrite the risk presented by such a driver.

We urge a Do Not Pass on HB 1210.

February 25, 2005

SENATE TRANSPORTATION COMMITTEE
HB 1210

CHAIRMAN TRENBEATH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of The Polk Company, a business that collects driver's license information for select clients. We oppose SB ¹²¹⁰~~2254~~ and ask that you give it a do not pass.

We understand the reasoning behind the bill; i.e. a court order can keep certain criminal conviction information off the driver's record or abstract. We believe it is questionable whether this bill is needed or not. A court order may well keep this information off the record even if this law were not enacted. However, we believe this law will encourage persons to seek such orders.

Any deletions of valid information on these records diminish the value of the records.

Therefore, we respectfully request that you give the bill a do not pass. If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

SENATE TRANSPORTATION COMMITTEE

February 25, 2005

**North Dakota Department of Transportation
Keith C. Magnusson, Deputy Director for Driver and Vehicle Services**

HB 1210

The North Dakota Department of Transportation is appearing in opposition to HB 1210 and urges a "do not pass" recommendation.

For an "open records" state, we sure are considering a lot of bills to "hide" things from the public. HB 1210 is one of those. Although, from previous testimony, the proponent may not have intended to have a bill that is so broad. But, the bill is extremely broad and would allow a court to order that evidence of a criminal offense in department records be made confidential or be removed entirely from our records.

Testimony has seemed to indicate that the proponent only intended this to apply to a deferred imposition of sentence. But, that is not what HB 1210 does! In the bill, there is no procedure or criteria for the judge to follow. This could be done at the whim of the judge, and, based on our experience, that may very well happen. We have had several occasions, where a judge tried to "hide" a conviction, without making DOT a party, just because they felt sorry for the driver. Many judges believe they have the power to do almost anything.

HB 1210 adds another category to a section on making entries on a driver record abstract confidential. This new one is much different than what has normally been done under this section. Existing law makes an entry more than three years old confidential. This is based on length of time and gives someone who has no other subsequent violations a chance to clear their public record. Also, several entries are made confidential after a period of suspension ends. These are generally those that do not have any direct relationship to their driving conduct. There is one on hiding the suspension of someone under the zero tolerance law; this is probably something that should not be done, but it has crept into our law. The point is that HB 1210 breaks new ground and seems to go beyond what the original intent was of this section.

Even if HB 1210 were changed to only affect deferrals, it still is not a good bill. It would still have numerous criminal violations, for serious conduct, ranging from reckless driving to negligent homicide that still could be hidden. Hiding these does not mean there is not a driving problem or a problem driver. There are those who should be entitled to this information who will no longer be aware of the driver's problems.

Federal law prohibits the masking or hiding of convictions for someone who holds a commercial driver's license, even if the conduct is in their personal automobile. Although this is prohibited by federal law, we need to reflect it in North Dakota law, or risk having our CDL program decertified or the loss of highway funds. I am offering an amendment that would make it clear that HB 1210 would not apply to the holder of a commercial driver's license. We recently had a CDL audit that looked at our present law and agreed that we do not allow the masking or hiding of convictions for a CDL holder. But, HB 1210 changes that. Federal agencies will not read anything into our law, even though the House Transportation Committee knew that we could not affect CDL holders and they thought that the federal law was good enough. But, we need to reflect this in state law.