

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1225

2005 HOUSE TRANSPORTATION

HB 1225

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. 1225

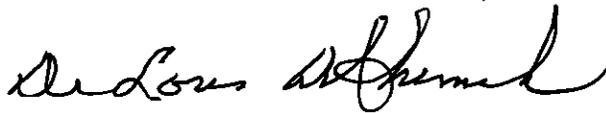
House Transportation Committee

Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
1	X		25.5-52.4
2	X		0-13.8

Committee Clerk Signature



Minutes:

**Vice Chairman Hawkens: (25.5)** opened the hearing on HB 1225 A Bill for an Act to amend subsection 3 of section 39-06-03 of the North Dakota Century Code, relating to individuals to whom motor vehicle operator's licenses may not be issued.

**Rep. Ruby** The intent of HB 1225 is to define the term found in the Century Code, but does not have a definition. The term that you will be considering today is habitual drunkard. I have the next bill that deals with DUI and I will be presenting more information and some statistics about that and there are people who would like to testify on both of these bills. In particular this bill has some potential for giving DOT more authority on withholding licenses from people and their suspension of a license. One of the things I found. I had legislative counsel research other states for the language that defined the term "habitual drunkard." After this was written Keith Magnusson from DOT brought to my attention the language they have in administrative rules,

which was last updated in 1983, and provisions they have in removing the title from their records, was updated in 1994. I will give you a copy of their rules (see handout attached)

I made the decision to file my bill anyway to see if the committee or DOT had a problem with defining this term. I also think some of the provisions that DOT uses at this time are just fine. I think possibly some can be merged with the two. The purpose of my bill is to provide DOT with expanded criteria to suspend the drivers license of someone who has shown they are a safety hazard to themselves and others. I am sure all of you are aware of the discussion on DUI's this session and has somewhat been done by me in the press, but this isn't being pushed by me. This is something that is being brought to us by the public. There is a real need to do something to address the problem of drunk drivers. Specifically repeat offenders. Seems to be allot of protection for offenders by the law. My purpose is to get something done and I don't believe they go far enough. I am offering these up as examples to begin. I hope with the help of this body and the legislature we can come to a solution.

**Vice Chairman Hawkens:** The handout you provided us is in administrative rule, is pretty inclusive. Why do you feel that we have this? Why do we also need to put it in Century Code because it is already what the policy force is using? Why do we want to double up?

**Rep. Ruby(32.2)** I understand that. That is why I brought it up to see if it is a good idea to define it. To see if DOT says it isn't, but maybe they want to expand some of their interpretation of the definition of habitual drunkard. Otherwise, maybe we can define it as other definitions are in Century Code. We have whole sections related to definitions and I don't see why this one is out, but it does happen in law. A few points of the bill are: in their administrative rules they said a number of times the director shall have good cause that the person is a habitual

drunkard if the person has three or more convictions for violating ND Century Code 39-08-01, with respect to intoxicating liquor. You notice the bill before you doesn't have a number.

Because it is much more encompassing in that it is an individual that has been convicted of an offense that in either case includes elements related to blood alcohol content or the consumption of alcohol beverage; they have violated section 39-08-18 which is the open container area and may be some discussion that they have all that information and they will be here to address that. Or an individual taken by a peace officer for detoxification under section 5-01-05.1; which deals with some body being drunk and disorderly and committed. There maybe some problems with what information they have available to them. It is possible through some of those provisions that they can determine through their administratively as it sets here that this person should not have their license back. This is a policy decision for us. Do we want it in code and do we want to expand the rules that we have in this area?

**Rep. Delmore(35.4)** As I read this bill it says an offense. So that is a number and habitual drunkard with an offense it is my understanding that there are many people that will make a mistake, get picked up, especially now that it is .08 and never have that happen again. By this bill we are saying any individual who does that one time is going to be regarded as a habitual drunkard. Was that your intend with this bill?

**Rep. Ruby(36.3)** Your right, but when you have a first offense at this time you loose your license for a period of time and that is already in law and as this says after the third violation we have steps provisions for higher penalties after the third violation. I don't see this necessarily being used on a first offense unless there is other proof that there is going to be a problem here and they choose to do that. That is my interruption of this. Maybe they have a different

interruption of that and I would be glad to hear what they have to say about it. Maybe some of these provisions aren't as well defined for them as theirs are and I would be willing to work with them. However, if you look on the back page of your handout; started on the second page and goes to the third page. They have some provisions to being able to remove the distinction from your license. I think they have some very good ones. I think theirs are better than the legislative council came up with.

**Rep. Delmore (38.2)** Your last language I am glad to see because I hope that one of the things we want to do with those people is have them get treatment and realize there is a problem in their life and so something with it. When you talk also about detoxification, wouldn't that be part of a recovery. Now I think we are mandated, after an offense, take this type of counseling already.

**Rep. Ruby (38.8)** You are absolutely correct. However, sometimes on being committed, sometimes people being committed, who have committed themselves, can walk out before treatment is completed. I think it is important to make sure people complete their treatment and that is administratively found to have completed it and proven that they have been through treatment. You are right, this is a very important aspect of it. If they don't complete it this can all come back.

**Senator Mathern:(40.2)** I am not an expert on the details of the changes between the administrative rules are different. However I am supportive of this legislation because of the general concept of moving people toward treatment sooner. I am on the appropriations committee in the Senate and we are hearing the correction budget and finding there is a dermantic number of people we have in prison that also have alcohol problems and I saw Rep. Ruby's attempt hearing these two bills of getting to that and I support that. I support changes

wherein we promote treatment; promote activities in terms of changes in their behavior before we sentence people to prison. I think this bill is one of those options we have. I think the last two sentences are the most important part of the whole bill.

**Keith Magnusson:** Deputy Director of Vehicle Services at DOT. We have no position on this bill. There are some policy issues I wanted to get up and address a number of things. I don't want us to back track on what we already have accomplished. There is a bill in the Senate that I don't think is a good bill on this and I hope you don't get to see it. Last year our alcohol related fatalities were down about 35%. That is very good and we like to see that. I visited with Rep. Ruby about this and you can see we do have a policy. I am looking more at the procedural types of things. One is where it defines a habitual drunkard as an individual who has been found to have been convicted of an offense. Right now, if you are convicted of a first offense DUI requires as part of the law an alcohol evaluation and any recommended treatment before you can get your license back. Unfortunately, that is not the same as an administrative suspension. When the law went into affect back in 1982 there was an element, that if you were administratively suspended you also have to have alcohol reevaluation. Whether it is an administrative suspension or a conviction there is proof there that you were drinking too much and had a blood alcohol test. We tried to remedy that about three sessions ago and it didn't survive the other transportation committee. I think if they loose their license, whether administrative or criminal, they should have an evaluation. This could do that. I think that is good. When you get into 39-08-18, right now that is an open container statue and we have had that for many years. This would presume that we could suspend for an open container violation. We don't have that authority any other place in the code. I am not sure this permanently gives us the authority to defend. We only have

open container if they are a driver. Actually legislative and state policy on open container is \$50 and two points. To do this we should say you can suspend for open container and that is a decision you will have to make. There are about 4,000 of these so it would add to our workload. The other part on the detox; we don't hear about that at all. We have no records on that. One of my concerns is that most things, when they come to us like convictions, they have a hearing, the proposed suspension comes to us, we have a hearing. So I think we would have to build a hearing into the program, if we were going to consider detox; and take away their license. We would need a permanent statute to do that. That would add to our workload and we are probably not equipped to do that right now.

**Rep. Thorpe(47.3)**The bill is involving 39-08, does the habitual drunkard language put us under section 37-03-02-04 in the Century Code on this handout from Rep. Ruby?

**Keith Magnusson:**The administrative code is what we have now. Depending on what you would put in statutes you may or may not even need that definition in the administrative code or maybe you need parts of it.

**Rep. Thorpe (48.6)** If this would move it to the point where it would come under this 37-03-02-04, then it goes over to page 3. Number 1 on that is that a person has not been committed of a traffic offense for the period of at least the length of suspension. Now any kind of traffic offense would go against them. Whether it was a parking ticket or whatever. So he could be trying to take care of his problems and still the law is going to work against him. If that not right?

**Keith Magnusson:** What you see there is set up for the current definition we have. If it weren't superseded by statutes we would still look at that and we have something like that in century

code, but it is for long term offenders. Parking ticket would not be in there because we don't get that, but speeding or those type of things we get. Allot of offense are criminal offenses. So if this passes we would have to take a look at the administrative rule and see if they still fit.

**Rep. Ruby(51.0)** Keith does your department have a stand one way or another on whether it should be defined in code or whether it should be defined in administrative rule?

**Keith Magnusson:(51.4)** That is a policy matter for this body. You can see the rules we have are old and have been there along time. We will make it work. We don't do many rules anymore. The rule making process is become so hard that we don't do that.(52.4)

**Tape 2 Side A .0-**

It is easier and quicker to get something done in statue. There are some things you have done with administrative rules that an agency can't do. Some places we have, but some places we don't have.

**Rep. Dosch(.6)** Keith, could you just clarify something for me. In the code bill here there is also detoxification under that section. I mean, if you get picked up for DUI don't you go into detox and the second part is it says because you are taken by a police officer to detox; does that mean that someone is picked up at the bar because he is intoxicated that he can also fall under this bill?

**Keith Magnusson:(.9)** That is correct. The detox law is very broad. Some people picked up for DUI may go for detox, but they may have someone else then come up and take them home, they may be in jail. This could be a person drunk on the street. This is to try and get people off the street and get them help before they injure someone else. It may not have anything to do with driving.

**Tom Palmer:**(1.6) Habitual drunkards do not only violate 39-08-01; they violate many more laws than those laws. That it the big difference.

**Terry Reile:(SP?)(2.1)**Bismarck resident. In 2003 my 19 year old daughter was in a car crash and I drove to the site. When I saw the car is was completely destroyed. The man that hit my daughter was a drunk. Had been picked up numerous times for DUI and had also driven many times with his license suspended and when he hit my daughter he did not even stop. He just drove right over top of her and crushed her. When onlookers came up to the accident they pulled him out of his pickup and he had no idea what he had done.(described daughter being in intensive care, which she did not survive.) I am wondering if there could have been some legislation or enforcement that could have prevented this from happening? This man had a history of drinking and driving and a history of driving intoxicated. I would not wish what happened to us and our family to happen to our worst enemy. A federal judge in Kansas says it is not an accident when someone drinks and drives. I know the technology is out there where we can monitor people how are habitual drunkards. But these technologies are not in place in North Dakota. The state of North Dakota needs to do better. You could do allot of things now to check on a person numerous times a day to see if there is alcohol in their system. Many judges order people to not drink any more after they have been convicted of a DUI. But there is no way under the current system to monitor whether they are complying with the law. Minnesota issues special license plates for habitual drunkard's that are identifiable only by the law enforcement. That would enable police to give them probable cause for pulling that vehicle over.(Explained culture of Britian. No one drinks and drives over there. They have severe consequences Went into allot of detail on Britian policy).

What I am saying is the state of North Dakota needs to do better. We have a judicial system that is broken. Next week I will be in court for a man who has had 7 DUI's in about a five year period and nothing has happened. He has had his license suspended and has paid a token fine. Offenders have very minimal consequences. Does this man have to kill someone in order to have something done? I don't want to punish people. I do want to see people rehabilitated. I also want to have our roads be safe. Driving is not a right, it is a privilege. I am tired of hearing all the reasons why we can't do something about this. If we don't have consequences for laws we won't even put bank robbers in prison. I heard we don't want to have some one loose their job and be on welfare system. I would rather have some one on welfare, but we don't want to have someone on the roadway that is a danger. There are 3,000 children every year who die in this country who is a passenger of someone who is a drunk.

**Rep. Hawken(10.2)** Others in favor of HB 1225.

**Charlotte Olson (10.3) An employee of the Division of Mental Health and Subsistence**

**Abuse:** I just want to bring up a point of information for you to consider why you are looking at DUI legislation. According to the 2003 users behavior surveys students from grades 9-12; North Dakota leads the nation in the number of students who have ridden with a drinking driver in the past month at 43%. The national average is 30%. The leading cause of death in young people ages 10-24 is motor vehicle crashes. In North Dakota it is 48%; across the nation it is 32%. So while considering legislation regarding DUI bills I would like to ask you to consider that.

**Rep. Weiler(11.2)** Charlotte, the one statistic you gave about the leading cause of young people ages 10-24 is what?

**Charlotte Olson:**(11.4) The leading cause of death is motor vehicle crashes among youth ages 10-24. According to the 2003 information.

**Rep. Weiler** That doesn't mean it was alcohol related.

**Charlotte Olson:**(11.7) No. We are number one in the national for 9-12 for people riding with people who have been drinking, drinking and driving themselves. 54% of young people in North Dakota have had a drink in the 30 days. We are also #1 in the National for young people binge drinking. It is a problem and the riding with a drunk driver.

**Rep. Hawken** Other in favor of HB 1225. No opposition to HB 1225.

**Rep. Weisz** (12.8) I apologize that I had to be gone. If I read this bill properly if you have made the right determination and that person when to court and was not convicted of any violation under this statute, it still stays in place on this bill?

**Keith Magnusson:** (13.3) The bill on the other side, that is the one if you weren't found guilty of a DUI later, your whole record would be wiped out. That is the one I said I hope doesn't get to this side because it is a bad bill.

Closed hearing 13.8

*1/21/05  
Chr. apppt. sub  
committee: Rep. Kelsch,  
Luby & Delmore*

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO HB 1225

House Transportation Committee

Conference Committee

Hearing Date February 3, 2005

Tape Number	Side A	Side B	Meter #
1	X		30.1-52.2
2	X		0-8.6

Committee Clerk Signature



Minutes:

**Chairman Weisz** reopened the hearing on HB 1225.

**Rep. Ruby.** The first amendment added new language as you can see added the director shall have due cause to believe that an individual is a habitual drunkard if the individual has three or more administrative suspensions under chapter 39-20 within a five year period.

**Chairman Weisz** How does this change current law.

**Rep. Ruby** The current one is in rule only; we have nothing in statue. The second amendment is for the administrative section of the code. Under the administrative side they cannot always require them to get treatment. Just cleaned up the language.

**Rep. Meyer(35.2)** Adequate proof of removal of the habit, is that just a certificate that you went to an alcohol treatment program?

**Rep. Ruby** Yes, they would have to show they completed the program. They now will be able to make them go through the treatment as well.

**Rep. Delmore (36.4)** The first amendment 3920 is all driving under the influence, how encompassing is that?

**Rep. Owens (36.7)** I have a note where on we discussed changing that to who is a habitual drunkard, user because 6-9 discusses drug use as well as drunkards and 39-08-01 identifies(the second amendment you handed out) persons under the influence of intoxication liquor or any other drug or substance, not to operate the vehicle penalty. So this section does cover users and drunkards. So my question was should we add user in that second amendment you handed us as well?

**Rep. Ruby (37.6)** Above that on line 7 - 10 we talk about that. Anyone who is a habitual drunkard or user.

**Rep. Owens** If I was a defense attorney I would swear up and down that the law as changed why this amendment only applies to DUI and alcohol abuse not drug abuse.

**Rep. Delmore (38.1)** One of the bills that we have in this year is based on South Dakota law for ingestion of drugs and I am not so sure what the policy is right now as far as jerking your license etc. if that is one of the reasons that bill was introduced. It has already passed and I think the house will pass it.

**Rep. Ruby(38.4)** They don't know if somebody gets possession, but if they are drunk driving while under the influence of a narcotic it falls under that. Decided the definition is not quite clear. Agreed with Rep. Owens.

**Rep. Thorpe (39.4)** What administrative suspension is under chapter 39-20?

**Rep. Ruby** Keith told me that several provisions are there and that is why we just included it all in there in 39-20.

**Rep. Thorpe** My question is, if an individual is 25 years old and they picked up a DUI charge; then he is 28 or 29 years old and got some other charges that weren't alcohol related, does that still come under the five year period? He was not driving so does offense not alcohol related count on the five years..

**Rep. Ruby** Driving impaired is what they usually go after. Impaired driver is someone under alcohol or drugs. Usually not people too tired to be on the road.

**Chairman Weisz** You have to get an administrative suspension under 39-20; and get three of them.

**Rep. Ruby** This proposal is just cleaning up the language.

**Rep. Hawken** Which one did they think was better?

**Rep. Ruby** Either one does the same although the second one I handed out mention the DUI convictions and the administrative ones so it covers both. It is just spelled out in writing.

**Chairman Weisz** This change says under rule you have to have three convictions to be considered a habitual drunkard.

**Rep. Thorpe** Under 39-20 they got 39-20-12 all it says is liability. If you have two accidents that you were determined liable; it does not say anything about being intoxicated.

**Rep. Ruby** I think they can suspend your license if you are driving without liability insurance; however, that is not any reason to make you go through drug treatment.

**Rep. Meyer** Three administrative suspensions under the entire chapter; it would not matter?

**Chairman Weisz** You need to remember the director makes the call. You could tighten it up and go into each particular section. Discussed how this would work.

**Rep. Meyer(49.6)** This worries me because incidents do happen that are unusual and could affect this language.( Described one incident that had happened to her with a couple by Manning, ND).

**Chairman Weisz** Under administrative you have a hearing process and with zero blood alcohol and you do get unusual law enforcement on occasion.

**Tape 2 Side A**

**Rep. Thorpe** This is a habitual drunkard and yet the director on the 16 line was adding proof of the removal of the habit, which may? Don't they have to take alcohol treatment? It should be should; either he gets the treatment or he doesn't.

**Chairman Weisz(1.3)** It is at the discretion of the director, which means from the recommendation of the court, if he gets evidence that the person is rehabilitated he can take it off or on. He is suppose to weigh the issues. If you get three suspension, you are not automatically a habitual drunkard. If it is alcohol related you could be but it is still at the discretion of the director.

**Chairman Weisz** read the definition under chapter 37. It says such person will not have ones operator license restored until that person has reported for an evaluation to determine that the person qualifications on the use of alcohol. A persons cooperation, refusal or neglect on the evaluation may be used to determine the persons disposition of a persons driving privileges. The director has the final responsibility in the disposition of a persons driving privileges. So again it is up to the director. He has to determine if the person is fit to drive again. We are just defining what is a habitual drunkard.

**Rep. Price** Moved to accept the #2 amendment Seconded by Rep. Owens.

**Chairman Weisz**(5.0) Does everyone understand the amendment.

**Rep. Delmore** Why are we putting it in two sections of code. Why 39-20 doesn't cover it?

**Chairman Weisz** Because 39-08 is criminal court; 39-20 is administrative. They aren't necessarily related. What DOT does and what the court does is two different things.

**Rep. Thorpe** (6.6) I have no trouble with the habitual drunkard and DUI but I do have trouble with administrative code 39-20. Personally somebody could get into a bind here where they really didn't have three DUI's.

**Chairman Weisz** Voice vote motion carried. Rep. Thorpe voted no.

We have an amended bill in front of us. What is the committees wishes?

**Motion Made by Rep. Ruby    Seconded By Rep. Price**

**DO PASS AS AMENDED    8 Yes   3 No   4 Absent Carrier: Rep. Owens**

Hearing closed (8.6)

2-3-05

#1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1225

Page 1, line 9, remove "A"

Page 1, remove lines 10 through 14.

Page 1, line 9, after "vehicle." insert "The director shall have good cause to believe that an individual is a habitual drunkard if the individual has three or more administrative suspensions under chapter 39-20 within a five-year period."

Renumber accordingly

#2

2-305

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1225

Page 1, line 9, remove "A"

Page 1, remove lines 10 through 14.

Page 1, line 9, after "vehicle." insert "The director shall have good cause to believe that an individual is a habitual drunkard if the individual has three or more convictions for violating section 39-08-01. or equivalent ordinance, or three or more administrative suspensions under chapter 39-20 within a five-year period."

Renumber accordingly

**House Amendments to HB 1225 - Transportation Committee 02/04/2005**

Page 1, line 9, replace "A" with "The director has good cause to believe that an individual is a habitual drunkard or user if the individual has three or more convictions for violating section 39-08-01, or equivalent ordinance, or three or more administrative suspensions under chapter 39-20 within a five-year period."

Page 1, remove lines 10 through 14

Page 1, line 15, after "drunkard" insert "or user"

Page 1, line 17, after "alcohol" insert "or drug"

Renumber accordingly

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

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1225

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *As Pass. As Amend.*

Motion Made By *Rep. Ruby* Seconded By *Rep. 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	<i>abs</i>				
Rep. Kelsch	<i>abs</i>				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	✓				
Rep. Vigesaa	<i>abs</i>				
Rep. Weiler	<i>abs</i>				

Total (Yes) 8 No 3

Absent 4

Floor Assignment *Rep. Owens*

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

**REPORT OF STANDING COMMITTEE**

**HB 1225: Transportation Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 3 NAYS, 4 ABSENT AND NOT VOTING). HB 1225 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "A" with "The director has good cause to believe that an individual is a habitual drunkard or user if the individual has three or more convictions for violating section 39-08-01, or equivalent ordinance, or three or more administrative suspensions under chapter 39-20 within a five-year period."

Page 1, remove lines 10 through 14

Page 1, line 15, after "drunkard" insert "or user"

Page 1, line 17, after "alcohol" insert "or drug"

Renumber accordingly

2005 SENATE TRANSPORTATION

HB 1225

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1225

Senate Transportation Committee

Conference Committee

Hearing Date 3-10-05

Tape Number	Side A	Side B	Meter #
1		x	2710-4875

Committee Clerk Signature

*Mary K. Maxson*

Minutes:

**Chairman Trenbeath** opened the hearing on HB 1225 relating to individuals to whom motor vehicle operator's licenses may not be issued.

**Representative Dan Ruby** (District 38) He introduced HB 1225 on behalf of a constituent who noticed that within the state code there was a term "habitual drunkard" but it is not defined in the code. After the bill was introduced Rep. Ruby was informed that there was a definition in Administrative Rules, a copy of which he provided for the committee. (See attached.) This is what DOT currently uses to define that term. Their definition had been in the rules for many years without many changes and they believed it was time to review it to see if they could clean it up and make it more acceptable to terms used now and how the process is working. Another purpose is to put this language in code rather than just in rules.

**Harriet Gantzer** (Norwich, ND) Testified in favor of HB 1225. As a citizen, she has a hard time understanding why our judicial system believes a person can have five DUI offenses before

it is considered a felony. She said there has to be a beginning to get more than a hand slap for these offenders. In South Dakota only two offenses in ten years is considered a felony. She urged the committee to keep the families, the victims, in mind when passing this bill.

**Tom Hallamy** (Minot) See the attached testimony in favor of HB 1225.

**Senator Tim Mathern** (District 11) Testified in support of HB 1225. He said this bill moves us a little bit closer to trying to get more people into treatment as indicated by lines 13-15. The bottom line is, alcoholism is a serious problem in our state. One of the things that can be done about it is promoting treatment.

With no further testimony, the hearing on HB 1225 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1225

Senate Transportation Committee

Conference Committee

Hearing Date 3-11-05

Tape Number	Side A	Side B	Meter #
1	x		3280-3920

Committee Clerk Signature

*Mary K Monson*

Minutes:

**Chairman Trenbeath** opened HB 1225 for discussion and action.

**Senator Trenbeath** didn't see the need for this bill. This is already in the law in two places, the regulations and the DUI law.

**Senator Bercier** motioned a **Do Not Pass**. There was no second.

**Senator Warner** motioned a **Do Pass**. Seconded by **Senator Espgaard**.

There was discussion to review the testimony. The main testimony in support of the bill was that every person with an alcohol problem is not able to drive until the alcohol problem has been resolved. Other testimony in support was emotional. There was no opposition.

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

Final roll call vote 4-2-0. **Passed**. Floor carrier is **Senator Warner**.

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO 1225

Senate

TRANSPORTATION

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By *Sen. Warner* Seconded By *Sen. Espegard*

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

Total (Yes) 4 No 2

Absent 0

Floor Assignment *Senator Warner*

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

**REPORT OF STANDING COMMITTEE (410)**  
March 17, 2005 10:53 a.m.

**Module No: SR-49-5247**  
**Carrier: Warner**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1225, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)**  
recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1225 was placed on the Fourteenth order on the calendar.

**2005 TESTIMONY**

HB 1225

#1225 1-20-05

CHAPTER 37-03-02  
HABITUAL DRUNKARD AND HABITUAL DRUG USER

Section	
37-03-02-01	Habitual Drunkard - Determination
37-03-02-02	Habitual User of Narcotic Drugs - Determination
37-03-02-03	Habitual User of Drugs Other Than Narcotic Drugs - Determination
37-03-02-04	Inimical Operator - Determination and Return of Privileges

**37-03-02-01. Habitual drunkard - Determination.** The director shall have good cause to believe that a person is a habitual drunkard if a person has three or more convictions for violating North Dakota Century Code section 39-08-01, or equivalent ordinance, with respect to intoxicating liquor or three or more administrative suspensions for testing at a blood-alcohol concentration of at least ten one-hundredths of one percent by weight within a five-year period. Such person shall not have one's operator's license privileges restored until that person has reported for an evaluation at an approved facility to determine that person's tolerance to the use of alcohol. A person's cooperation, refusal, or neglect to submit to such examination and the evaluation made by the approved facility will be used to determine the disposition of a person's driving privileges. The director has the final responsibility in the disposition of a person's driving privileges. Such disposition may result in the refusal to issue or reissue a license or the revocation or restoration, either partial or total, of a person's driving privileges.

**History:** Effective January 1, 1979; amended effective July 1, 1983.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 39-06-03, 39-06-34

**37-03-02-02. Habitual user of narcotic drugs - Determination.** The director shall have good cause to believe that a person is a habitual user of narcotic drugs if a person has three convictions for driving while under the influence of narcotic drugs within a five-year period. Such person shall not have one's operator's license privilege restored until that person has reported for an evaluation at an approved facility to determine that person's possible impairment, either mental or physical, through the use of narcotic drugs. A person's cooperation, refusal, or neglect to submit to such examination and the evaluation made by the approved facility will be used to determine the disposition of a person's driving privileges. The director has the final responsibility in the disposition of a person's driving privileges. Such disposition may result in the refusal to issue, suspension,

revocation or the restoration, either partial or total, of a person's driving privileges.

**History:** Effective January 1, 1979.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 39-06-03, 39-06-32

**37-03-02-03. Habitual user of drugs other than narcotic drugs - Determination.** If the director has good cause to believe that a person is a habitual user of drugs other than narcotic drugs to a degree which renders such person incapable of safely operating a motor vehicle, the director may require such person to submit to such physical, mental, or driver's examination which the director may deem necessary to determine such person's fitness to safely operate a motor vehicle upon the highways of this state. The director may require such person to report for an evaluation at an approved facility to determine that person's possible impairment, either mental or physical, through the use of such drugs. A person's cooperation, refusal, or neglect to submit to any required examination and the evaluation made by the approved facility will be used to determine the disposition of a person's driving privileges. The director has the final responsibility in the disposition of a person's driving privileges. Such disposition may result in the refusal to issue, suspension, revocation or the restoration, either partial or total, of a person's driving privileges.

**History:** Effective January 1, 1979.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 39-06-03, 39-06-32

**37-03-02-04. Inimical operator - Determination and return of privileges.** The director shall have good cause to believe that a person is inimical to public safety or welfare if that person has demonstrated a course of conduct in the operation of a motor vehicle through a conviction or convictions of traffic offenses or admissions and adjudications, evincing such hazard; or has a physical or mental disability which may inhibit or prohibit the safe operation of a motor vehicle. In determining whether a person is inimical to the public safety or welfare in the operation of a motor vehicle, the director will consider at a minimum the type of conviction, convictions, admissions, or adjudications; the number of convictions, admissions, or adjudications; the total number of points assessed against the driving record of the operator during the preceding three years; whether the events giving rise to the charge that lead to the conviction, admission, or adjudication resulted in death or serious personal injury, requiring professional medical care, or serious property damage. The period of suspension shall be until the person can show, to the director's satisfaction, that the person's driving behavior has improved. The director may allow temporary driving privileges for school or work purposes or reinstatement of driving privileges upon a showing of all of the following:

1. That the person has not been convicted of a traffic offense for a period of at least the length of suspension.
2. Letters of recommendation submitted from the person's employer, citizens in the community, and law enforcement advising of the person's conduct and driving behavior for the past two years.
3. Successful completion of a defensive driving course approved by the director.
4. That the person has liability insurance required by North Dakota Century Code section 39-08-20.
5. Payment of the reinstatement fee required by North Dakota Century Code section 39-06-35.

**History:** Effective January 1, 1979; amended effective May 1, 1994.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 39-06-03, 39-06-32

## EXPLANATION OF THE DUI PROCESS

In North Dakota, when someone is arrested for driving under the influence (DUI), normally this starts a two track process. The first process is civil or administrative in nature and starts with a Report and Notice form that is sent to the Department of Transportation. A criminal track is started with a Summons and Complaint, usually as a short form citation, which goes to the appropriate court. Both processes are independent of each other. While, in normal situations, both processes start at about the same time, sometimes, for a reason probably only known to the arresting officer, only one track is commenced.

The civil process is known nationally as an administrative license revocation (ALR), but in North Dakota we normally use the term suspension. At the present time, at least 40 states and the District of Columbia have adopted some form of ALR. North Dakota's system was enacted in 1983 and effective in 1985. The administrative system is designed to quickly get a problem driver off the road, is based on an objective chemical test (usually breath and sometimes blood) and is similar to "illegal per se" criminal laws against impaired driving. Administrative license revocation allows driver licensing authorities to suspend or revoke a driver's license swiftly, without long delays, while awaiting a criminal trial. The driver retains the right of due process through an administrative appeal system. This is similar to the "implied consent" laws that automatically suspend (revoke in North Dakota) a driver's license for drivers who refuse to submit to a blood-alcohol content (BAC) test, whereas ALR automatically suspends or revokes the license for failing a BAC test.

Traditionally, states used to only base licensing actions against impaired drivers upon a conviction for the offense. Unfortunately, convictions are not always swift and sure in impaired driving cases. Many courts have case backlogs, and a defendant can employ a wide range of tactics to delay a verdict. The conviction often can be avoided altogether by plea bargaining to a lesser offense. Also, in many states, pretrial or preconviction diversion programs operate in some courts that allow an offender to participate in an alcohol treatment or a rehabilitation program in lieu of a court imposed sanction.

The imposition of an administrative as well as a criminal sanction does not create a "double jeopardy" sanction. All cases in which the highest state appellate courts have considered this issue have held that a separate criminal trial for an impaired driving offense following an ALR action does not constitute double jeopardy under either federal or state constitutional law. The U.S. Supreme court has gone further and found that the right of due process is not violated if a driver's license is suspended prior to an administrative hearing, as long as provisions are made for a swift post suspension hearing. In North Dakota, the driver has a right to an administrative hearing and an appeal to district court and, ultimately, the North Dakota Supreme Court.

Under the administrative process, the sanction is only against the driver's license and the driver retains temporary driving privileges until the conclusion of any administrative hearing, if one is held. This whole process takes, at the maximum, 30 days from the time of arrest. This is swift and sure disposition, especially as all of the sanctions are set out precisely in North Dakota law and there is no discretion upon the part of the Department of Transportation.

The criminal process normally takes much longer than the administrative process. Often, the administrative process and any resulting suspension have been completed before any criminal trial. Unlike the administrative process, which can only sanction the driving privileges of an offender, the criminal court can levy a fine and jail sentence, the amount and extent depending on a number of factors. The criminal process provides for a trial and subsequent appeal if desired. The Department of Transportation is not involved in the criminal process, but does suspend driving privileges, based on the law, for any conviction. But, this suspension would be served concurrently with any administrative suspension, so there is no additional suspension to what has already been served.

Under our law, there can be an administrative suspension without any criminal action. There can also be a criminal action and conviction without any administrative process. Attached is a copy of charts for both the administrative and the criminal processes. There are many variables, which makes it probably easier to understand in chart form, rather than in a narrative. Also attached is a chart detailing the minor driver's license (often commonly called a graduated driver's license) process for cancellation of a license. This applies to those drivers who are under 18 years of age.

Keith C. Magnusson  
ND Department of Transportation  
January 2005

**FOR COURT PROCESS, SEE REVERSE**

**DUI ARREST**

**.08 BAC OR GREATER OR REFUSAL**

1. Officer takes driver's license.
2. Officer issues 25-day temp. operator's permit and order suspension.
3. .04 for CMV
4. .02 for under age 21

Effective July 1, 1985  
 Revised August 1, 1983  
 Revised August 1, 19999  
 Revised September 2003  
 Pursuant to 39-20 NDCC

**ADMINISTRATIVE PROCESS**

**ADMINISTRATIVE PROCESS (Refusal)**

**NO HEARING REQUESTED**

**HEARING REQUESTED**  
 (Request must be made with 10 days of issuance of permit)

**NO HEARING REQUESTED**

**HEARING REQUEST**  
 (Request must be made within 10 days of issuance of permit)

**SUSPENSION PERIOD**  
 91 Days 1<sup>st</sup> Offense, BAC .08 - .17  
 180 days 1<sup>st</sup> Offense, BAC .18 or Greater  
 365 days, 2<sup>nd</sup> Offense, BAC .08 - .17  
 2 years, 2<sup>nd</sup> Offense, BAC .18 or Greater  
 2 years, 3<sup>rd</sup> or subsequent Offense, BAC .08 - .17  
 3 years, 3<sup>rd</sup> or subsequent Offense, BAC .18 or Greater

**LICENSEE NOTIFIED OF TIME AND PLACE OF HEARING**

**Revocation Period**  
 1 year 1<sup>st</sup> Offense in 5 years  
 3 years 2<sup>nd</sup> Offense in 5 years  
 4 years 3<sup>rd</sup> or Subsequent Offense in 5 years  
 Refusal cannot be set aside for the 2<sup>nd</sup> or subsequent Offense. Refusal allowed for 1<sup>st</sup> Offense in 5 years if never convicted of a prior Offense of 39-08-01.

**LICENSEE NOTIFIED OF TIME AND PLACE OF HEARING**

**HEARING CONDUCTED**  
 (Results immediately to licensee and to Drivers Lic. & Traffic Safety Div.)

**HEARING CONDUCTED**  
 (Results immediately to licensee and to Drivers Lic. & Traffic Safety Div.)

**DISMISSED**

**UPHELD**

**REINSTATEMENT**

**DISMISSED**

**UPHELD**

**REINSTATEMENT**

**REINSTATEMENT**  
 Hearing Officer Issues 20-day temporary Drivers Lic. & Traffic Safety Div. returns original license  
 No \$100 reinstatement fee required

**SUSPEND**  
 Hearing Officer takes 25-day permit

**Refusal**

.08 or higher  
 .04 CMV or higher

**REINSTATEMENT**  
 Hearing Officer issues 20-day temporary. Drivers Lic. & Traffic Safety Div. returns original license.  
 No \$100 reinstatement fee required.

**SUSPEND**  
 Hearing Officer takes 25-day permit.

.08 or higher  
 .04 CMV or higher

\$100 Reinstatement Fee

**SUSPENSION PERIOD**  
 91 Days 1<sup>st</sup> Offense, BAC .08 - .17  
 180 days 1<sup>st</sup> Offense, BAC .18 or Greater  
 365 days, 2<sup>nd</sup> Offense, BAC .08 - .17  
 2 years, 2<sup>nd</sup> Offense, BAC .18 or Greater  
 2 years, 3<sup>rd</sup> or subsequent Offense, BAC .08 - .17  
 3 years, 3<sup>rd</sup> or subsequent Offense, BAC .18 or Greater

Application fee \$100  
 Written test fee \$5  
 Road test fee \$5  
 Reinstatement fee \$100  
 SR-22 Filing

\$100 Reinstatement fee

**REINSTATEMENT**  
 \$100

Reinstatement \$100 fee

**NOTE:**  
 After an arrest for DUI or APC there are two actions that can happen:  
 1. Administrative process (civil action).  
 2. Court process (criminal action).  
 The dismissal of either process does not remove the remaining administrative or court action.

\*Temporary Restricted License (work permit) may be given after 30 days of suspension is served.  
 \*\*No Restricted License may be given during entire suspension/revocation period.  
 \*\*\*Commercial Motor Vehicle (CMV) suspension is 1 year for first offense and lifetime for second offense.

DUI ARREST

.08 BAC OR GREATER OR REFUSAL

1. Officer takes driver's license
2. Officer issues 25-day temp. operator's permit and order suspension
3. .04 for CMV
4. .02 for Under Age 21

COURT PROCESS

INITIAL APPEARANCE

PLEA NOT GUILTY

Appearance Date Set

TRIAL

Not Guilty  
(Acquittal)

Guilty

GUILTY PLEA

Court sends a copy of conviction to Drivers Lic. & Traffic Safety Div. within 10 days

Formal Suspension Order issued

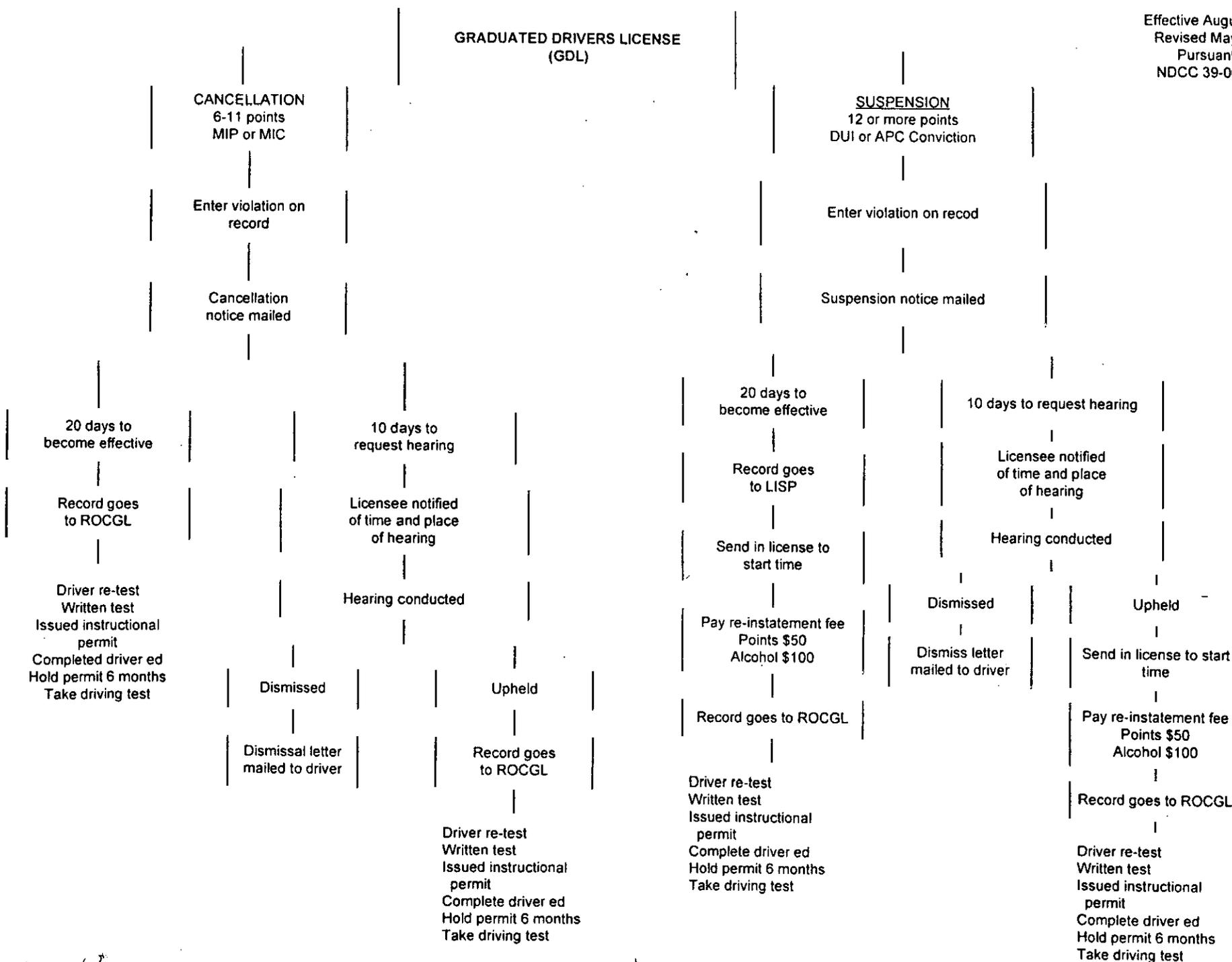
SUSPENSION PERIOD

91 Days 1<sup>st</sup> Offense, BAC .08 - .17  
180 days 1<sup>st</sup> Offense, BAC .18 or Greater  
365 days, 2<sup>nd</sup> Offense, BAC .08 - .17  
2 years, 2<sup>nd</sup> Offense, BAC .18 or Greater  
2 years, 3<sup>rd</sup> or subsequent Offense, BAC .08 - .17  
3 years, 3<sup>rd</sup> or subsequent Offense, BAC .18 or Greater

REINSTATEMENT

\$100 FEE  
SR 22 filing  
Addiction Evaluation and/or Treatment

GRADUATED DRIVERS LICENSE  
(GDL)



Tom Hallamyer

Awful things. If the shoe fits. *Right Victim*

Senator Warner thanks for the no vote on 2254. Senators who voted for it claimed it was a fairness issue and the courts should decide what is fair.....Like a Judge would know. Tommy was murdered by a repeat offending drunk who was sentenced to treatment for the crime of murder. No apology, no regret, no remorse, no responsibility. Somebody get up and preach to Joann and Ronald about fairness in a courtroom and I will personally teach you some manners. Try and tell me what's fair. I dare you.

An optimist always looks for the silver lining in a dark cloud. I am an optimist, an optimist who spends a lot of time day dreaming. There's not a lot of difference between day dreaming and praying.

I always thought that there was justice for all. That every vote counted. Senator Trenbeth if your ~~wife~~ was kidnapped, raped and murdered by a sex offender. Like Gina North, like Drew, if it happened to your ~~wife~~ you wouldn't be preaching to other legislators about how you can't change laws based on the experiences of one person. And why you ever said that about me I don't know. Your gonna have explain that statement to me sometime. But if that is your point of view I doubt you told of your political philosophy to the people you represent during your campaign?

This committee is barely interested in addressing the alcohol abuse problem. The .08 BAC is a perfect example. This Committee fought the 2003 HB-1439 tooth and nail. The Federal Government is going to shove a no plea bargain law down your throats the exact same way. Although I don't approve of the tactic, in the case of this state government, in the case of this committee I'll make an exception. Three lawyers and a banker on a Six-member committee is just about the dumbest bloody idea I have ever heard. Decent people don't stand a chance against a cheaper is better policy. It's a matter of morals vs economics. Plea-bargaining saves money not lives. There's tons of data out there to prove it.

Senators promote small business owners in the alcohol industry by letting the bars stay open till 2:AM. Yet they stifle emerging technology by canning affordable ignition interlock devices. I don't understand it. Senators are not interested in protecting the people they claim to represent from a public menace.

I know a lot more about undue hardship than any of you. I know about harsh reality. My daughter is a vegetable and I may never see her smile again. I waste a lot of time daydreaming, praying. Just like I think I'm wasting my time right now. The minds of Committee members are made up long before the token courtesy of public testimony. There will be more of the people you claim to represent, injured, crippled and killed by drunk drivers. More kids will die from alcohol overdose. More women and children will be beaten, battered, abused, neglected, and endangered. The harsh reality is that controlling the alcohol abuse problem in this state is far beyond the abilities of our current state representation. For one reason and one reason only. MONEY. What many legislators value most. You can deny it all you want. People are not that stupid.

It's a harsh reality is that there is little or nothing victims can do about it. The only way I would let a drunk inflict the pain and suffering that their victims are forced to endure would be over my dead body. Yet you people consistently let it happen. Because if DA's don't plea bargain the courts would be overloaded. Because North Dakota won't hire anybody else. Because North Dakota can't assume the liability of vehicle impoundment or confiscation. Because of speculated undue hardship. Because offenders outnumber their victims. Because a drunk driver has rights and victims don't.

This part is pretty ugly but it's true. Drunk driving will never stop. I hope that the people of North Dakota are lucky enough for right Legislators to get a phone call. To become a victim. To get a phone call directing them to go to the scene of what Senators would call an accident. That they see a tourniquet around a severed limb. That they hear the screams of a familiar voice wailing in agony. That they are looking into terrified eyes when they hear the gurgle of a dying breath. That they smell burning flesh and see burned beyond recognition. I was an over the road truck driver. I've been there, done that. There are sights sounds and smells that I wish I could forget. I am haunted by them. Sometimes I think God is trying to tell me something. Maybe today was it. I hope on your way home this weekend that you go head on with a drunk. I pray that you live but that you suffer. That you suffer and recover.

The lucky ones suffer and recover, physically. Then maybe you'll understand undue hardship. Maybe it'll just take 5 of you, or 10 or 50 maybe more. You and your family wouldn't deserve it any more than any body else. But until it hits legislators in the face the alcohol abuse problem in this state will hardly change. It will never get anything more than a token effort. You can deny it all you want. Your record speaks for itself.

Drunk driving will never stop. How much of it that happens depends on Legislators. Victims pay for the mistakes of drunk drivers for the rest of their life or with their life. I thought North Dakota was the best state in the country to raise a family. I made a mistake. It cost me my daughter. I already know what you think about it. Your vote on this bill may let some know what you think. What our young people just starting their own family should consider. I built the house we live in with my own two hands. You can have it. It ain't worth it. I'd like to stay. I'd like to be buried in Minot. One way or another I am going to reduce the risk and increase the chances that the rest of my kids, my grand kids, can live long and be happy, die happy, unlike me. I cannot, I will not let you or the drunk drivers that you so arrogantly defend take anything else from my family, from me. You can't have anymore.

North Dakota is way behind the curve dealing with alcohol abuse. I came here for every man woman and child in North Dakota including drunk drivers and their families. I pity them, too many of them are going down, they just don't know it, but you do. I didn't come here just to testify but because of the attitude of most legislators, of this Committee, this is goodbye.

Dan, God speed

Farewell Senator Warner

Goodbye Senator Mutch I've never been more disappointed in any politician as I am with you.

Goodbye Senator Nething, Senator Bercier, Senator Espegaurd, Add 6 to the out-migration list.

Goodbye Senator Trenbeath congratulations you win!