

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1082

2007 HOUSE JUDICIARY

HB 1082

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1082

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1-8-07

Recorder Job Number: 750

Committee Clerk Signature *Nancy Penrose*

Minutes:

**Vice Chair Klemin:** We will open the hearing on HB 1082.

**Rep. DeKrey:** I am the prime sponsor of this bill. This bill came about after I read an article in the Fargo Forum that Minnesota was using these devices and I had never heard of such a thing before. In conversation with myself and the AG, I decided that it would be a good idea to nip this in the bud before it became a problem in ND. He brought a device along today and he will demonstrate it.

**Wayne Stenehjem, Attorney General:** I want to thank Rep. DeKrey for taking the leadership on introducing this legislation which would ban in ND the use or possession of the device known as the "alcohol without liquid device". It is a process that was invented in Asia and used in Europe that allows people to take in liquor, specifically distilled liquor, without actually consuming the liquid. The machine vaporizes alcohol and mixes it with oxygen, allowing the consumer to breathe in the mixture. The AWOL machine produces a fine, alcoholic mist. The continual intake of this mist over a 20 minute period, is the equivalent of taking a shot of distilled spirits. The machine was introduced in the United States in 2004. Possible health and safety risks of inhaling alcohol vapors are largely unknown and many legislators across the country, including those I think in my latest tally in 20 states, have

introduced legislation to ban these machines. Support for such legislation comes from a variety of groups, including those that are working to fight underage drinking and drunk driving, including many alcohol companies including the industry group known as Distilled Spirits Council of the United States. The key marketers have a website, that they say that it produces a euphoric high and the effect of alcohol consumption without the high calories, carbohydrates and hangovers associated with common consumption. In reality, however, distilled spirits do not contain any carbohydrates, nor any fat, nor any cholesterol that the machine could possibly remove. Hangovers are allegedly prevented due to the fact that the alcohol is delivered with oxygen to the brain. Vaporized alcohol also enters the bloodstream faster and its effects are more immediate than its liquid counterparts. Marketers encourage purchasers to use the machine no more than twice in a 24 hour period to avoid over consumption, which might be dangerous, because, of course, there is no mechanism on the machine. I will also demonstrate that the mask is overused. This comes under the category of "what will they think of next"; alcohol without liquid device (demonstrated the device). This device costs \$299 to pay for the machine. The company has a website that makes several claims about this device, for example, according to the website it says that one of these ways of how to get rid of the alcohol we drink, is through the lungs. The alcohol without liquid simply turns the procedure around and lets the alcohol enter through the lungs and thus eliminating the dreaded hangover. However, scientist studies have shown that hangovers simply result in several causes including the direct, physiological effect of alcohol on the brain, as well as dehydration and electrolyte imbalance; all of which can occur even with the use of this device. The company also claims that once the alcohol enters the bloodstream it affects the body the same way as drinking alcohol. When an individual uses the AWOL machine, the alcohol vapor bypasses the consumer's stomach and liver when inhaled. The liver function is to breakdown

harmful substances, like alcohol, so that AWOL liquor does not go through the liver, but is absorbed through the blood vessels in the lung and goes directly to the brain. It also should be noted that there is a direct and notable lack of scientific evidence about the effects that this particular machine has on the human body. It ought not to be a device that is permitted in the state of ND, as it is not permitted in 20 other states that have enacted on this, until further scientific research has been conducted. The concern that I have about this particular device that it has been proven in other states, and in Europe where it is not uncommon, to be very popular with young people, with underage drinkers who do not like the taste of alcohol, now can bypass the taste of alcohol that they don't care for, and proceed immediately to become intoxicated. That's a concern. It's also very difficult to know exactly when you are intoxicated. When the typical person that is actually consuming alcohol, has had a lot of beer to drink, you will get full. Once you are full, you might not consume more; which is not a precaution that is available through the use of this device. In addition to that, I think that it promotes reckless consumption of alcohol, and it is likely if it becomes popular, to promote driving under the influence offenses here in ND. I think it makes a lot of sense for us to follow the lead that several other states have taken and that is to simply ban the use, possession of these devices in ND. The Crime Lab, as you know, is a part of my office as well. Margy Pearson, is the ND State Toxicologist, to come here to answer any technical questions you might have.

**Rep. Klemin:** When my children were young, we had a vaporizer that we put in their room when they had a cold or flu, which put vapor into the air that was just water vapor. You have an exception here as to the term does not include certain kinds of vaporizers, only those intended specifically for medical purposes. Could it be interpreted that this bill might encompass the kind of vaporizer you could buy at the local drugstore, to put into a kid's room.

**Wayne Stenehjem:** I think the provision in subsection 2 is designed to make it clear that it is not intended to prohibit the use of medical devices that have a legitimate purpose. I believe it might have been drafted based on another section.

**Rep. Klemin:** I see on here that it says, it talks about to dispense prescribed or over-the-counter medications, but all we're vaporizing in this case is water, which doesn't seem to fall in this area. Do we need to change it?

**Wayne Stenehjem:** If the committee would like, I could certainly get in touch with some of the other states and see if they have had similar issues like that. I know subsection 2 was designed specifically to provide for proper medical use.

**Chairman DeKrey:** If you could do that, we'd appreciate it.

**Rep. Meyer:** After you do this, what happens on a breathalyzer or a blood test for a DUI arrest.

**Wayne Stenehjem:** My understanding is that the alcohol will still register on the Intoxilizer 5000, just as it does if you ingest it.

**Chairman DeKrey:** When I looked it up on the website, when I was thinking about this bill that was the one claim that the company did make, was that it didn't inhibit breathalyzers and blood alcohol content. That would still be the same. Now, whether they were telling the truth or not, I don't know. Maybe you know better.

**Margy Pearson, State Toxicologist:** The body doesn't differentiate where the alcohol comes from. No matter where the alcohol comes from, it is still recorded. It does impairment to the brain. The difference is that with this instrument, although vaporized alcohol goes from the lungs directly to the brain and bypassing the circuit that we use to detoxify chemicals through the liver. It will come out on your breath, it will be registered, but it will be after the

damage that is done to the brain, because it hasn't been eliminated with 5 liters of blood in the human body.

**Rep. Kretschmar:** Is there any problem with restricting the possession or use to an adult.

**Wayne Stenehjem:** The bill will make it illegal to have or use them here in ND. I know in some states they are popular in bars; where you will have not the \$300 device that you see here, but you may have a \$3,000 device with several tubes connected and people will meet at these clubs and that's what they will do. This bill will make all devices illegal in ND. I did visit, by the way, with the ND Hospitality Association prior to looking at this legislation. There isn't any place in ND that uses these devices that they are aware of, or that have any interest in doing so.

**Chairman DeKrey:** Thank you for appearing on this bill. Further testimony in support of HB 1082.

**Nikki Wiseman, ND Hospitality Association:** We do support this bill. We're not interested in irresponsible drinking.

**Rep. Meyer:** Nikki, does this in any way affect the new oxygen bars that you see a lot of them in Las Vegas, etc.

**Wayne Stenehjem:** You're talking about those places where you just go and inhale and nothing else.

**Chairman DeKrey:** Pure oxygen.

**Wayne Stenehjem:** This would not affect them.

**Chairman DeKrey:** If there are no further questions for Ms. Wiseman, thank you for appearing. Further testimony in opposition. We are going to close the hearing.

**Rep. Klemin:** Before we get on to the bill, I have a concern that we've got some exceptions here that it doesn't apply to, and I see where you could potentially put alcohol into the kind of

vaporizer I was talking about. But it's not the use so much, as it is the possession of having this machine that could be used for that purpose. I'm wondering if on lines 11-13, where it says the term does not include all of these kinds of things, if it would be appropriate to put in there a vaporizer to dispense prescribed or over-the-counter medications or water.

**Chairman DeKrey:** I don't see a problem with that.

**Rep. Meyer:** Or oxygen.

**Chairman DeKrey:** You want to add oxygen too.

**Rep. Klemin:** Water or oxygen.

**Rep. Charging:** Didn't the AG say that he was going to do a little looking into what other states are doing.

**Wayne Stenehjem:** I just wonder if the definition of device doesn't already exclude what Rep. Klemin is talking about. An alcohol liquid device means an apparatus that is advertised, designed, or uses, vaporizes an alcoholic beverage; to produce a vapor that may be inhaled by an individual. So the water vaporizers aren't advertised and designed or used to vaporize alcohol.

**Rep. Klemin:** Aren't those three terms all separate and distinct. One, you can have a violation of this section if you use it, irregardless of whether you advertise it or not.

**Chairman DeKrey:** We will hold off on the bill until we get further clarification.

**Wayne Stenehjem:** We will have it for you tomorrow.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1082

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/9/07

Recorder Job Number: 819 (1-4)

Committee Clerk Signature *Delmore*

Minutes:

**Chairman DeKrey:** We will take a look at HB 1082.

**Rep. Klemin:** After further consultation with the AG, I would like to propose a short amendment to this bill. The amendment would be on page 1, line 13, after the word medications insert a comma, and the words "or water". I move the amendment.

**Rep. Koppelman:** Seconded the motion.

**Rep. Klemin:** Just a couple of comments. First of all, it had been suggested that possibly that we should put oxygen in here too; however, oxygen is already a gas and doesn't require a type of device like this in order to vaporize it, so it wouldn't be appropriate to put it in there.

**Chairman DeKrey:** We will take a voice vote on the amendment. Motion carried. We now have the bill before us as amended.

**Rep. Klemin:** I move a Do Pass as amended.

**Rep. Koppelman:** Seconded.

**14 Yes 0 no 0 Absent DO PASS AS AMENDED CARRIER: Rep. Delmore**

70090.0201  
Title.0300

Adopted by the Judiciary Committee  
January 9, 2007

**House Amendments to HB 1082 (70090.0201) - Judiciary Committee 01/09/2007**

Page 1, line 13, after "medications" insert "or water"

Renumber accordingly

Date: 1-9-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1082

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Klemin Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Delmore

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

REPORT OF STANDING COMMITTEE (410)  
January 10, 2007 12:57 p.m.

Module No: HR-06-0400  
Carrier: Delmore  
Insert LC: 70090.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1082: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1082 was placed on the Sixth order on the calendar.

Page 1, line 13, after "medications" insert "or water"

Renumber accordingly

2007 SENATE JUDICIARY

HB 1082

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1082

## Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4507

Committee Clerk Signature

*Mona L. Solberg*

**Minutes:** Relating to alcohol without liquid devices; penalty.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present except for Sen. Olafson. The hearing opened with the following hearing:

### Testimony in Favor of the Bill:

**Tom Trenbeath**, Attorney General's Office introduced the bill AWOL is no longer a term for the military, it now is a term to describe Alcohol with out liquid. He referred to the machine in the committee room eliminating vaporized raspberry vodka. The machine is designed for a person to inhale atomized alcohol and described the process. The technology came from Europe last August and he named the states it has been or in the process of being banded. The concerns are two fold; health and social. The supporters claim is that it will not give you a hangover or effect the liver, none of this has been proven in fact there is proof for the opposite.

**Sen. Nething** asked if this is the only inhaling device so not to affect other inhaling machines.

**Mr. Trenbeath** replied that it has a special diffuser capsule that breaks down the 80 proof alcohol. Spoke in detail the type of machine and how the band would prevent purchase or use

of the machine. **Sen. Nething** asked if it was a "gift" it would still be illegal by use. This is distributed out of a single location in North Carolina.

**Sen. Nelson** spoke of a scenario of a person going into an establishment with the device uninvited who would be liable (meter 6:40) was discussed. **Sen. Fiebiger** asked how the penalty was derived. We used what is common with most initial alcohol type of violations and he is not aware of any of the machines being in ND.

**Nicki Weiseman**, Ex. Dir. for ND Hospitality Assoc. (meter 8:08) spoke in favor of the bill. We as an industry have enough restrictions and enough problems we do not need this one. The activity of the devices goes in opposition to a social environment. This is still very new to ND.

**Testimony Against the bill:**

**Brad Manz**, Bismarck Resident (meter 10:16) spoke against the bill – Att. #1

**Testimony Neutral to the bill:**

**Margy Pearson**, O.A.G. (meter 11:40) from the State Toxicology Lab hear to answer technical questions.

**Senator David Nething**, Chairman closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1082**

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4884

Committee Clerk Signature

**Minutes:** Relating to alcohol without liquid devices; penalty.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

**Sen. Fiebiger** stated that the person against the bill gave him the impression that what you did at home was your business and no one else's.

**Sen. Lyson** made the motion to Do Pass HB 1082 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

**Senator David Nething**, Chairman closed the hearing.



**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2007 2:14 p.m.

**Module No: SR-46-5019**  
**Carrier: Lyson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1082, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1082 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1082

AH #1  
3-7-07

## HB 1082

Mr. or Madam Chairman and members of the committee and public, my name is Brad Manz from Bismarck and I oppose this bill for the following reasons:

- This bill is a solution seeking a problem and is therefore unnecessary. My understanding of the previous testimony concerning this device is that none of them are known to exist in North Dakota - with the exception of a demonstration model. It seems to me that there are sufficient real problems in North Dakota -such as illegal drug use - to address first.
- It is hardly credible that a group of underage drinkers will gather around one of these machines to "get high". According the AWOL website, approximately half a shot of alcohol is vaporized by the device in twenty minutes. This would not be expected to have much effect - even on inexperienced drinkers - despite the supposedly more intense feeling produced. Let us also not forget that they would already be breaking the law by using and possessing alcohol.
- Claims that this machine will "substantially increase the economic costs of alcohol abuse"<sup>1</sup> are questionable at best. If indeed the feeling produced is more intense then it is likely that less alcohol will be consumed which has definite health benefits. Other considerations are fewer calories being taken in by the body to assist with weight loss. In addition, many people suffer from a variety of health problems such as stomach ulcers, acid reflux, etc. and would otherwise be unable to assimilate alcohol.
- One might make the argument that these devices should be banned in bars and other public drinking establishments as close control would be difficult. To prevent individuals from using these machines in their homes, however, presents not only an enforcement nightmare but is patently unfair to those who would sit quietly at home using these machines and bothering no one.

<sup>1</sup> "State Citations, Titles and Statutory Language Addressing Alcohol Without Liquid (AWOL) Machines, January 2007, The National Alliance for Model State Drug Laws, <http://www.natlalliance.org/pdfs/Statutory%20Language%20of%20AWOL%201.08.pdf>.

Are there any questions?

Thank you.