

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1227

2007 HOUSE TRANSPORTATION

HB 1227

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1227

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01-19-2007

Recorder Job Number: 1449

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz opened the hearing on HB 1227. All representatives were present.**

**HB 1227 relates to verification of the information for an identification card.**

**Rep. Ruby** introduced the bill.

**Rep. Ruby:** The bill relates to non-driver identification. This gives the financial institutions or DOT more time to verify identification that is provided to them before they would give somebody a non-drivers identification. I believe it expands a few of the types of identification that may be accepted. It puts a little bit more onerous on DOT to make sure that the person is a North Dakota citizen and that they are who they say they are, and that they reside where they say they reside. I guess it resulted from some problems of these identifications being used and accepted because they are a product of the state and an official identification are being misused by people and with that, I will let the other parties give more information and back round.

**Marilyn Foss**, General Counsel for the North Dakota Bankers Assoc., spoke in support of the bill. See attached testimony.

**Rep. Schmidt:** Say that he is going to get his driver's license for the first time, he must have that identification card before he can get a driver's license?

**Foss:** I don't think there is anything in this bill that says that. All this bill say about operator's license is that the DOT may verify whatever information it is that you provide before he issues the operator's license.

**Rep. Weisz:** The non-photo I.D. card will not be required to obtain a driver's license.

Their language is just adding some requirements or gives them some more authority I guess, for the documentation.

**Foss:** I am not particularly wedded to the language either.

**Rep. Owens:** For fact, is it not true that the banking industry, under federal law, you can't open an account until you identify someone. And you are using or were using those I.D. cards as identification and that has the problem that you described now.

**Foss:** That is correct and actually if the committee members may recall that a couple of sessions ago, we were here to change our laws to allow banks to retain images of operator's licenses and I.D. cards for that reason.

**Chairman Weisz:** Have you had any cases in the last few years involving driver's license's that committed fraud on banks in North Dakota?

**Foss:** I can't say that I have had them reported to me. This case involves a non-driver's license and I acknowledge that a critical feature of it was the issuance.

**Rep. Gruchalla:** Having dealt with these photo I.D.'s, it is usually on a case of identity where they are using it to get into liquor stores. These photo I.D.'s are easier to get than a driver's license. I was thinking of one time when a roommate was twenty one and the other wasn't. So the roommate takes the birth certificate and social security card (of the one who was twenty one) goes down to the driver's license site and gets her picture put on the roommates I.D.

I don't see where this is going to help that situation.

**Foss:** Actually, I think that it could help that because the department can.....I'm not presenting this bill as the solution to everything. But if the driver's license examiner or these people who issue this from the DOT employees, have any reason to question the documentation, then this bill gives them more ability to do so.

**Rep. Gruchalla:** I DO like the part about having the thirty day waiting period. I do think it will help, but I don't think it's the final answer.

**Foss:** I think that we will be trying to develop more and more fraud-proofing pretty much forever. Part of the problem is that these I.D.s are so revered as the gold standard for I.D.'s and really it seems to me that it doesn't stand up to the reputation. It's not a mandatory thirty day waiting period.

**Rep. Dosch:** You indicated one additional simple thing could be to send them out to the residence, which makes a lot of sense, yet that provision isn't in here. Have you given that any thought?

**Foss:** I am not trying to intrude on the variety of methods which the department may use. Actually, I think that a little brainstorming, that probably department employees could come with any number of really good, cost effective simple ways to improve things.

**Dale Pahlke,** Dakota Community Bank, spoke in support of the bill.

**Pahlke:** Our bank is in full support of any measure that can be taken to make sure that identification documents are legal and legitimate. Two individuals came into our bank and presented picture identification that showed them with false names. They obtained these picture I.D.'s from the DOT by presenting a fraudulent birth certificate from another state. To think that people were able to obtain false I.D.'s twice, once in Grand Forks and once in Bismarck, they use these fraudulent I.D.'s to obtain fraudulent paychecks and cash them. Thereby, causing our bank a loss. We are not blaming the DOT because they follow the rules

and regulations for issuing an I.D, however, we feel strongly that the rules need to be changed to make it difficult for individuals to obtain identification cards. Banks are required to have picture I.D.'s to open accounts and we need to have confidence that the I.D.'s are legitimate and correct. In these times that we are living in today with homeland security being more important than ever before, the picture I.D. is needed to board an airplane, rent cars and trucks, and I think it is important that we are confident that the identification truly identifies the person carrying it. I would recommend that people obtain picture I.D.'s by presenting non-picture means for I.D. be required to be fingerprinted.

**There were no questions from the committee.**

**Greg Tschider**, Mid-America Credit Union Association, spoke in support of the bill. See attached testimony.

**Julie Dahle**, Dakota Community Bank, stated support for the bill.

**There were no questions from the committee.**

**There was no further support of the bill.**

**Chairman Weisz allowed for opposition at this time.**

**Darin Meschke**, ND Dept. of Health, spoke in opposition to the bill. See attached written testimony.

**Rep. Owens:** So what you are basically looking at is procedures and applications for the verification for the verification for identity protection for people who apply for any I.D. card. You are setting up electronic names and testing with the hopes of setting up electronic means of verifying this, which includes birth certificates, is that correct?

**Meschke:** That is correct.

**Rep. Owens:** Then I am confused by your opposition to taking out the requirement of the applicant presenting the birth certificate. That's really all this does. It is saying that the

applicant doesn't have to go get a birth certificate to present, but leaves him the requirement, the director, by satisfactory evidence to include the system you are developing. Then turn around and use it for verification that the person is who they say they are. So all the bill is doing is eliminating the individual coming to your office and purchasing the birth certificate and then carrying it down there, which you are going to verify on the back end anyway.

**Meschke:** The verification process still verifies that piece of paper. If they don't present a piece of paper to the DOT, then they could just make up the information. In this case, the process of having to come to our office and having to electronically verify it, is a two a fold more secure step. If you just come into the DOT and say that I'm Rep. Owens and this is my date of birth, they don't have anything in front of them that you are giving them to present that information.

Yes, it could be verified electronically, but you could say you are Rep. Kelsch, we are verifying names, not identity or sex.

**Rep. Weisz:** The example that was given with the fraud had to do with an out of state birth certificate, if it goes nation wide, are you going to be able to verify or the DOT electronically that Minnesota birth certificate?

**Meschke:** That is the goal of the e-nationwide system.

**Rep. Weisz:** You can't do it now, obviously.

**Meschke:** Any state participating in the filing system can check it.

**Rep. Ruby:** Is this system going to be able to see a name and see any form of I.D. and go on this system and verify that that I.D. is accurate?

**Meschke:** That is not the goal of the e-system. They are going to verify the birth certificate. It wouldn't allow them to verify a death certificate or other documentation used to establish someone's identity. It ties again that birth certificate is a primary identity documents and as

presented to obtain these photo I.D.'s it's going to add an extra step of verification to ensure that the document being presented is accurate information.

**Rep. Ruby:** And would you agree that the bill does not exclude them from using the birth certificate as identification, it just gives them a little more leeway. They could require a birth certificate and maybe a utility bill or something like that. Even if they do just allow the birth certificate, this gives them the time to do the verification, rather than having to present that I.D. immediately and that is really what the law says right now.

**Meschke:** We have no objections to the waiting period that is not part of the health department's specialization. Our main objection is the part where it removes the birth certificate specifically. It does reference other documentation, but we would rather see the language say birth certificate and/or something else. You should have to provide a birth certificate.

**Rep. Delmore:** I think there are people that are getting identification like this today in the state without a birth certificate, some of them have been brought over from Africa with Lutheran Social Services and many of them don't have that type of documentation, so those people are being allowed to do that with other types of documentation now, are they not?

**Meschke:** In that case it would probably be up to the director and their discretion.

**Rep. Delmore:** Is it impossible for me to get a copy of a birth certificate that's not mine?

**Meschke:** Currently, people can get a birth certificate of anyone whose parents were married at the time they were born. Those are considered open records and they can be obtained by anyone who knows the information. HB 1129 is changing that. If that passes in its current form, you must have legitimate rights to someone's birth certificate so again, we are closing the door to that.

**Rep. Delmore:** And sometimes complicating the lives of our constituents a lot.



**Meschke:** In some cases, yes.

**Rep. Dosch:** What prevents a twenty-two year old kid from giving his friend who is nineteen a copy of his birth certificate, who then takes it into the DOT and they then verify that birth certificate as being valid and get an I.D. card with his picture on it with his buddy's info. ?

**Meschke:** There is nothing that would prevent that. There are statutes that make that a felony. But there is nothing to prevent that.

**Rep. Kelsch:** How does the EVE project fit in with real I.D.'s?

**Meschke:** The real I.D. act and the intelligence reform and terrorism prevention act were crafted at the same time to fight identity theft and terrorism prevention. They are working together to do that.

**Rep. Gruchalla:** We had a lot of problems with immigrants and they had fake I.D.'s from other states such as Texas, and they would come up of course, when Minnesota toughened up their regulations, it didn't make a difference if it was driver's license or I.D. card. So Minnesota toughened up their standards and then they came into Fargo and they were walking out the door with false documents. The point is, I don't see where, I think that an I.D. card is just as valid to get as a driver's license so I don't see why we don't use the same exact language for an I.D. card as a driver's license. From what I see here, I don't think this is going to change it?

**Meschke:** I can't speak to the DOT policy about exchanging driver's licenses from other states. I agree with your question.

**Keith Magnusson,** ND DOT, spoke for clarification.

**Magnusson:** Nothing, nothing is going to be fool proof one hundred percent guaranteed. It just will not happen. The other thing is, this bill doesn't give us anything that we don't already have the authority to do. When we are looking at thirty days to do things, we can do that now. If we don't get the documents that we need, they are not going to get something right now. We

really don't need this and if they expect us to wait thirty days before we give out any I.D., I'm sure we are going to have some pretty unhappy customers that come in there, so I'm not sure what this language does. The thing about the birth certificate, we want that because it is a source document. Under the real I.D. Act, which we've been talking about, it talks about birth certificates and verifying them so we need to keep that in our law. We can show people and they can say they don't have a copy of their birth certificate.

There is no way we can verify those. You heard that we are part of a pilot where we can verify birth certificates. We are just ahead of the game.

**Rep. Weisz:** How do you verify someone from out of the country?

**Magnusson:** US Immigration papers are verifiable.

**Rep. Ruby:** If the birth certificate isn't in law, folks will argue. And what if we are not compliant with Homeland Security?

**Magnusson:** We think we have that now.

**Rep. Dosch:** If we leave it the way it is, will anything change?

**Magnusson:** No.

**Rep. Kelsch:** States will no longer issue I.D. cards that don't have pictures, we can verify pictures from other states.

**Rep. Price:** What do I bring to get a license?

**Magnusson:** A birth certificate.

**Rep. Kelsch:** If Rep. Price is eighty-nine years old and her kids say no, how will she get her license?

**Magnusson:** Some are digitally stored.

**Rep. Weisz:** Doesn't this make it easy for theft?

**Magnusson:** We hand them out. We mail very few licenses.

**Rep. Dosch:** If I come into your department and I'm from out of state, a state that you do not verify, and I come in with a birth certificate, you are going to issue me a I.D.?

**Magnusson:** If nothing else seems suspicious, we will verify that information, otherwise, we can't verify that birth certification. They are trained to recognize document fraud. There is no fool proof method.

**Rep. Delmore:** You can require a social security number from anybody that comes in for a license or I.D. card now?

**Magnusson:** Under both federal and state law, we are required to get that. State law doesn't let us, except for brand new applicants, doesn't let us ask for a social security card. They write a number down and we will verify that. It doesn't go on their license. It is in our database.

**There were no further questions from the committee. There was no further opposition.  
The hearing was closed on HB 1227. No action was taken at this time.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1227

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01-25-2007

Recorder Job Number: 1890

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz allowed committee discussion on HB 1227. All Representatives were present. HB 1227 relates to verification of the information for an identification card.**

**Rep. Ruby** presented the committee with amendments. See attached.

**Rep. Ruby:** I understood there were some possible changes that the NDBA allowed.

This deals with having the birth certificate as requirement for receiving your identification through the DOT. I think we all agreed that should still be left in there and I don't know if all of these are acceptable to DOT.

**Rep. Weisz:** How do you verify residence?

**Rep. Gruchalla:** Didn't he say that you may bring in a rent receipt or something to that effect?

**Rep. Kelsch:** It's like an MDU bill or a phone bill or something that goes to your residence.

With a P.O. box, it wouldn't work.

**Rep. Weisz:** What if all you have is a P.O. box?

**Rep. Kelsch:** Well, the MDU bill would have your physical service address on it.

**Rep. Weisz:** That's fine, but if you are living in a motor home, you don't have to have a utility bill. How do we verify that from a legal prospective?

**Rep. Ruby:** That wasn't an issue that was important to me. I thought it was important to put back into language that there be the birth certificate and verifiable and certified, I don't how hard it is to have verified and certified. The main thing is to clarify in law and to DOT that they do have an amount of time that they can use to verify some identifying information if they so choose. They should have produced something that said the DOT denied it. That was a claim they made.

**Rep. Weisz:** Mr. Magnusson, have you had a chance to look at this?

**Magnusson:** I had glanced at it and I didn't know this was coming up, so....Frankly, there is no way to verify a residence. We get the residence now, there is no way to verify that. I would rather wait on this thing and let the "Real I.D. Act" and its regulations talk about this stuff because Homeland Security is...if we are going to have meaningful verification, we have to do it electronically. We can't do it over the phone and MDU is probably not going to do it for us. There are a lot of people who don't get utility bills and those types of things. We always ask for certified birth certificate because then we don't get photo copies. We are doing everything we can for safety.

**Rep. Ruby:** I think we should rework the amendments a bit before I move them.

**No action was taken at this time.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1227

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 02-02-2007

Recorder Job Number: 2695

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz allowed committee discussion on HB 1227. All Representatives were present. HB 1227 relates to verification of the information for an identification card.**

**Rep. Ruby:** This bill is something the banks wanted so they could have a little bit more time for the DOT to verify information before they give out a non-driver's identification. They initially wanted some language dealing with proof of residence and DOT didn't like that and also it initially removed the language for a birth certificate.

**Rep. Delmore moved to adopt the amendments. Rep. Owens seconded.**

**Voice Vote: 13 yes. 0 no. 0 absent.**

**Rep. Owens moved a DO PASS AS AMENDED. Rep. Ruby seconded.**

**Roll Call Vote: 13 yes. 0 no. 0 absent.**

**Carrier: Rep. Gruchalla**

Rep. Ruby 1-25-07  
introduced

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1227

Page 1, line 9, overstrike "upon request"

Page 1, line 22, after "name" insert ",<sub>1</sub>"

Page 1, line 22, after "birth" insert ", and residence"

Page 1, line 22, remove the overstrike over "~~a birth~~"

Page 1, line 22, after "a" insert "verifiable, certified"

Page, 1 line 23, remove the overstrike over "~~certificate or other~~"

Page 3, line 4, after the ".", insert " "To the extent it is practicable to do so,"

Page 3, line 4, replace "The" with "the"

Page 3, line 4, replace "may" with "is to"

Renumber accordingly

Page 1, line 9, overstrike "upon request"

Page 1, line 13, after "application" insert "including the applicant's social security number"

Page 1, line 22, after "name" insert "<sub>1</sub>", delete "and", after the first "birth" insert "and social security number", remove the overstrike over "a birth", and after "a" insert "certified"

Page 1, line 23, remove the overstrike over "certificate or other"

Page 2, line 5, remove "residence," and remove "<sub>1</sub>"

Page 3, line 4, after the "." insert "To the extent it is practicable to do so,", replace "The" with "the", and replace "may" with "is to"

Presented by Rep. Ruby on 2-2-07  
(Comm. WORK.)



**House Amendments to HB 1227 (70508.0101) - Transportation Committee 02/06/2007**

Page 1, line 9, overstrike "upon request"

Page 1, line 13, after "application" insert ", which includes the applicant's social security number"

Page 1, line 22, overstrike "and" and insert immediately thereafter an underscored comma, after "birth" insert ", and social security number", remove the overstrike over "a" and insert immediately thereafter "certified", and remove the overstrike over "~~birth~~"

Page 1, line 23, remove the overstrike over "~~certificate or other~~"

**House Amendments to HB 1227 (70508.0101) - Transportation Committee 02/06/2007**

Page 2, line 5, remove "residence," and remove the second underscored comma

**House Amendments to HB 1227 (70508.0101) - Transportation Committee 02/06/2007**

Page 3, line 4, replace "The" with "To the extent it is practicable to do so, the" and replace "may" with "shall"

Renumber accordingly

Date: 2-2-07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 122.7

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments - voice vote

Motion Made By Delmore Seconded by Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Welsz			Rep. Delmore		
Vice Chairman Ruby			Rep. Gruchalla		
Rep. Dosch			Rep. Myxter		
Rep. Kelsch			Rep. Schmidt		
Rep. Owens			Rep. Thorpe		
Rep. Price					
Rep. Sukut					
Rep. Vigesaa					

Total Yes 13 No 0

Absent 0

Floor Assignment

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

Roll Call Vote #:

122.7

## Committee

☐

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

### Action Taken

**Motion Made By**

Seconded by

[illegible]

Total	Yes
100	100

**Absent**

### Floor Assignment

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

**REPORT OF STANDING COMMITTEE**

HB 1227: Transportation Committee (Rep. Welsz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1227 was placed on the Sixth order on the calendar.

Page 1, line 9, overstrike "upon request"

Page 1, line 13, after "application" insert ", which includes the applicant's social security number"

Page 1, line 22, overstrike "and" and insert immediately thereafter an underscored comma, after "birth" insert ", and social security number", remove the overstrike over "a" and insert immediately thereafter "certified", and remove the overstrike over "~~birth~~"

Page 1, line 23, remove the overstrike over "~~certificate or other~~"

Page 2, line 5, remove "residence," and remove the second underscored comma

Page 3, line 4, replace "The" with "To the extent it is practicable to do so, the" and replace "may" with "shall"

Renumber accordingly

2007 SENATE TRANSPORTATION

HB 1227

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1227

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4787

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Senator Gary Lee** opened the hearing on Engrossed HB 1227 relating to verification of the information for an identification card. All committee members were present.

**Marilyn Foss**, general counsel for the North Dakota Bankers Association introduced this bill and testified in support of Engrossed HB 1227. Representative Ruby and Senator Lee introduced this bill at the request of NDBA. Her written testimony is enclosed.

**Senator Fiebiger** asked when the thirty days run from.

**Marilyn Foss** explained that both parties have to receive it and make the determination before the time starts running.

**Senator Fiebiger** asked if there was a need to include the SS number as part of the application.

**Marilyn Foss** said that the language adding the SS number was added by the House.

The House committee members were concerned and specified that one of the tools the department will use is the SS number.

**Senator Fiebiger** asked how the 30 day time period was arrived at.

**Marilyn Foss** said that was copied from the Minnesota standard and it seem to them to be an adequate period of time to resolve any questions that might arise.

**Senator Lee** recapped what he thought the bill said: The bill says that if you are going to get a non-drivers photo ID, the director shall issue it within thirty days of when the application is received and that would include a certified birth certificate plus SS number.

**Marilyn Foss** said that is correct for section 1, section 2 addresses operators license. The language "practical to do so" was from Minnesota. The application asks for your residence and verification. This could come from a bill addressed to them from one of the power companies or the DOT could just send something to them and see if it comes back.

**Senator Potter** asked if there was any conflict between the two sub-sections 2 of this bill. The one says must and second say to the extent that it is practical.

**Marilyn Foss** said the language is amended language added by the House committee.

When the bill was introduced in the House the DOT did not like the mandate. The engrossed bill gives the DOT and Health Dept. more latitude.

There was discussion on the wording in the bill and Senator Fiebiger and Senator Potter both had concerns on what the bill was actually saying.

**Keith Magnusson**, NDDOT testified in support of Engrossed HB 1227. He said that the engrossed bill gave the DOT more flexibility. He said as bills are amended sometimes you get things that are a little confusing. It says the SS number must be verified and they think that is very important. He said that this will track with the Real ID Act and working with the Federal Regulation that we will have to comply with. He also said that Minnesota doesn't issue anything over the counter.

**Senator Fiebiger** asked what they meant by a certified birth certificate.

**Keith** said they meant a certified copy of the birth certificate.

**Senator Fiebiger** asked if that should be put in the language of the bill.

**Keith** answered that he thought most people understood this and that would be unnecessary.

**Senator Fiebiger** asked about the SS # and asked if on the original form they could not ask for SS#.

**Keith** replied that if the SS # is asked for on the form they can put it in but if someone does not put in their SS# we have no way of making them put it in. In the present bill we can't ask for the SS#. The Real ID Act will require SS# so this bill is going in the right direction.

**Dale Pahlke**, Dakota Community Bank testified in support of Engrossed HB 1227. His written testimony is enclosed. He testified that two individuals came into their bank and presented fraudulent picture identification cards that they obtained by presenting false birth certificates from another state. They feel that rules need to be changed to make it more difficult for individuals to obtain picture identification cards.

**Julie Dahle**, Dakota Community Bank testified in support of Engrossed HB 1227. Her written testimony is enclosed.

**Senator Lee** closed the hearing on Engrossed HB 1227.

**Senator Fiebiger** offered to rewrite some language in the bill that would make it easier to understand and less cumbersome.



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1227

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2007

Recorder Job Number: 5193

Committee Clerk Signature

*Judy Hauge*

Minutes:

**Senator Lee** called the committee to order. The clerk took the roll all committee members were present.

**Senator Lee** opened the discussion on Engrossed HB 1227 relating to verification of the information for an identification card.

**Senator Fiebiger** walked the committee through his proposed amendments to Engrossed HB 1227. He also handed out his notes that go with the amendment explaining the changes. He said he had ran the amendments by Keith Magnusson at NDDOT and they had no problems with the amendments.

**Senator Lee** asked if it was written somewhere or described somewhere in the statue that a water bill or an electric bill would apply in identifying who you are and where you live.

**Senator Fiebiger** said that they used these sources for voting or other things like that but he didn't think it is necessarily in the statue. Even if it is not listed he would expect it to be a viable source of ID.

**Senator Fiebiger** moved the Fiebiger amendment 70508.0201.

**Senator Potter** seconded the motion.

**Senator Potter** asked why we were removing SS number.

**Senator Fiebiger** said it is in line 12.

The clerk called the roll 6-0-0.

**Senator Fiebiger** moved a Do Pass as amended on Engrossed HB 1227.

**Senator Andrist** seconded the motion.

Clerk took the roll 6-0-0.

**Senator Fiebiger** will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1227

Page 1, line 12, remove "and determination by the director that"

Page 1, line 13, remove "there is" and replace ", which" with "that"

Page 1, line 14, after "issue" insert "and, if appropriate, issue"

Page 1, line 23, overstrike "The name", remove the first underscored comma, overstrike "date of birth", remove ", and social security number", and overstrike "on all original applications"

Page 1, line 24, overstrike "must be verified by", remove "certified", overstrike "birth certificate or other" and insert immediately thereafter "To confirm the identity of the applicant, the director or examining officer shall require", and replace "as" with "be provided by the applicant"

Page 2, line 1, remove "determined by the director or examining officer" and overstrike "Applicants must produce"

Page 2, line 4, overstrike "documentary evidence", remove "that", and overstrike "confirms to the satisfaction of the"

Page 2, line 5, remove "director or" and overstrike "examining officer the true identity and date of birth of the applicant" and insert immediately thereafter "satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth and identification of the applicant by the director or examining officer"

Page 2, after line 28, insert:


"10. The director may not withhold the issuance of a nondriver color photo identification card without reasonable cause."

Page 3, line 4, remove "To the extent it is practicable to"

Page 3, remove line 5

Page 3, line 6, remove "operator's license."

Renumber accordingly

  
3-16-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1227

Page 1, line 1, remove "and subsection 2 of section"

Page 1, line 2, remove "39-06-07"

Page 1, line 12, remove "and determination by the director that"

Page 1, line 13, remove "there is" and replace ", which" with "that"

Page 1, line 14, after "issue" insert "and, if appropriate, issue"

Page 1, line 23, overstrike "The name", remove the first underscored comma, overstrike "date of birth", remove ", and social security number", and overstrike "on all original applications"

Page 1, line 24, overstrike "must be verified by", remove "certified", overstrike "birth certificate or other" and insert immediately thereafter "To confirm the identity of the applicant, the director or examining officer shall require", and replace "as" with "be provided by the applicant. Satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth and identification of the applicant by the director or examining officer"

Page 2, line 1, remove "determined by the director or examining officer" and overstrike "Applicants must produce"

Page 2, line 4, overstrike "documentary evidence", remove "that", and overstrike "confirms to the satisfaction of the"

Page 2, line 5, remove "director or" and overstrike "examining officer the true identity and date of birth of the applicant."

Page 2, replace lines 29 and 30 with:

"10. The director may not withhold the issuance of a nondriver color photo identification card without reasonable cause."

Page 3, remove lines 1 through 9

Renumber accordingly

Date: 3-16-07  
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. Engrossed HB 227

Senate Transportation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 20508.0203

Action Taken Do Pass the Amendment

Motion Made By Senator Fiebiger Seconded By Senator Potter

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator JoNell Bakke	✓	
V Ch John Andrist	✓		Senator Tom Fiebiger	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3-16-07  
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. Engrossed H B 1227

Senate Transportation

Committee

☐ Check here for Conference Committee

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

Action Taken Do pass as amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator JoNell Bakke	✓	
V Ch John Andrist	✓		Senator Tom Fiebiger	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Fiebiger

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

**REPORT OF STANDING COMMITTEE**

**HB 1227, as engrossed: Transportation Committee (Sen. G. Lee, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1227 was placed on the Sixth order on the calendar.**

Page 1, line 1, remove "and subsection 2 of section"

Page 1, line 2, remove "39-06-07"

Page 1, line 12, remove "and determination by the director that"

Page 1, line 13, remove "there is" and replace "which" with "that"

Page 1, line 14, after "issue" insert "and, if appropriate, issue"

Page 1, line 23, overstrike "The name", remove the first underscored comma, overstrike "date of birth", remove ", and social security number", and overstrike "on all original applications"

Page 1, line 24, overstrike "must be verified by", remove "certified", overstrike "birth certificate or other" and insert immediately thereafter "To confirm the identity of the applicant, the director or examining officer shall require", and replace "as" with "be provided by the applicant. Satisfactory evidence includes a certified copy of the applicant's birth certificate or other evidence reasonably calculated to permit the determination of the date of birth and identification of the applicant by the director or examining officer"

Page 2, line 1, remove "determined by the director or examining officer" and overstrike "Applicants must produce"

Page 2, line 4, overstrike "documentary evidence", remove "that", and overstrike "confirms to the satisfaction of the"

Page 2, line 5, remove "director or" and overstrike "examining officer the true identity and date of birth of the applicant."

Page 2, replace lines 29 and 30 with:

"10. The director may not withhold the issuance of a nondriver color photo identification card without reasonable cause."

Page 3, remove lines 1 through 9

Renumber accordingly

2007 TESTIMONY

HB 1227



TESTIMONY OF MARILYN FOSS  
NORTH DAKOTA BANKERS ASSOCIATION  
IN FAVOR OF HB 1227

Chairman Weisz, members of the transportation committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association. Representative Ruby introduced HB 1227 at request of NDBA.

This bill addresses nondriver photo identification cards that are issued by the department of transportation. **As a matter of law these cards "are sufficient identification for all identification purposes.** N.D.C.C. 39-06-03.1(7). Accordingly, banks and others take these cards to verify the identity of the person presenting the cards. They are used to identify customers who wish to open bank accounts and to verify that persons who want to cash checks are who they say they are. Until recently, our banks thought they could rely on these identification cards. Unfortunately, last summer they learned that is not correct. What happened? Member banks lost thousands of dollars when they cashed counterfeit checks for Chicago fraudsters who established their identification as North Dakota residents/payees by presenting brand new, actual, valid North Dakota issued nondriver photo identification cards.

As our victimized banks looked into what went wrong, they couldn't overlook the fact that the speed and ease with which the out of state crooks were able to obtain a state issued North Dakota nondriver's photo ID were critical to the success of the scheme to defraud the banks. On inquiry, the department of transportation correctly advised the banks that DOT offices in Grand Forks and Bismarck issued the ID cards on the demand of the fraudsters and without determining the authenticity of the birth certificates that were presented to support the issuance of the ID cards because that is all current law requires or, even, allows. The banks also learned that the Chicagoans tried to work the same scheme in Minnesota. They were stopped and Minnesota's banks and citizens were protected because Minnesota authorities wouldn't issue the ID cards on demand; Minnesota allows time for verification of the information and authentication of the

documentation that is presented by an applicant for a state issued ID card. The crooks crossed the border into North Dakota where they presented fraudulent, out of state birth certificates and apparently false information about their residence and were immediately issued a North Dakota nondrivers photo ID.

With this, I looked at what Minnesota does. Essentially it appears that the state does not interpret its laws to require issuance of an ID card on demand. Additionally, there are rules which flesh out the requirements for verifying information that an applicant provides to support an ID card. Frankly, given the potential for harm, this didn't strike me as being impractical or onerous. (A copy of the Minnesota rules are attached to my testimony so you can undertake a leisurely review of them.)

With this background let me go through the bill. Please keep one central point in mind. **This bill allows the department of transportation to do a better job protecting North Dakota's citizens from fraud. But, if that's not practical or within the department's capacity for creativity, the bill does not impose one, single obligation on the department.**

Section 1 amends N.D.C.C. 39-06-03.1(1) to allow the DOT director to take up to 30 days to issue an ID card. The 30 days is measured from the receipt of a complete application for an ID. Current law requires the ID card to be issued virtually on demand. The purpose of the 30 day period is to give the department time to effectively follow up when there is reason to question the information or documentation that is presented to support the issuance of the ID card. **Please note that nothing requires the department to take its allotted 30 days. If there is no reason to question information or documentation, there is no requirement to delay issuance of an ID.**

Section 1 of the bill also amends N.D.C.C. 39-06-03.1(2) i) to eliminate the requirement for the department to accept a birth certificate as conclusive documentation

for the issuance of an ID and to provide, simply, that any satisfactory evidence as determined by the department may be used to support the application and ii) to confirm to the satisfaction of the department the true residence of an applicant. **Again, please note that nothing restricts the department's ability to accept a birth certificate as satisfactory evidence of identity. Furthermore, the department is given the ability to confirm that the applicant is a North Dakota resident.** A birth certificate doesn't have any function to establish residency.

Subsection 2 of the bill amends the driver's license laws to allow a director to verify information on a driver's license application before issuing the license. That's all. Again, it doesn't mandate the department to do anything.

The entire focus of this bill is to give the department of transportation tools it may choose to use to do a more credible job when it comes to issuing documents that qualify as "government issued photo identification" in the service and for the protection of North Dakota citizens. Of course, we see this bill as carrying a legislative message to the department that, if it can do better, it should try to do so within the limits of the department's ability to do so. We actually do believe there are cost effective ways to build a better, more credible system. We trust the department to find them. This bill reflects that trust, but recognizes that more tools need to be available.

I want to mention one more thing. When I was discussing this with a potential bill sponsor, the subject of state liability came up. The concern was that if the department had more power to verify information, it or its employees could be held liable for doing a poor job of it. Frankly, this does not appear to be a material risk. The North Dakota legislative assembly has enacted strong and effective statutes to protect the state and its employees from lawsuits that arise out of just this type of claim. I am attaching a copy of the relevant statute to my testimony, together with citations to cases in which the state dismissed lawsuits against state employees, including employees of the Dot for

wrongfully revoking an operators' license. I have highlighted the sections of law that apply to protect agency exercises of discretion and decisions not to issue driver's licenses or ID cards at all. Assertions that this bill imperils the state and DOT employees are red herrings.

I'd like to say just one more thing before closing If we can't improve our system, then perhaps state law shouldn't provide that the cards are "sufficient identification for all identification purposes." . . . because they are not.

Thank you.

Marilyn Foss, Lobbyist No. 76  
North Dakota Bankers Association  
701-223-53-3  
marilyn@ndba.com

## CHAPTER 32-12.2

### CLAIMS AGAINST THE STATE

#### **32-12.2-02. Liability of the state - Limitations - Statute of limitations.**

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. **No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.**

2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.

**3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:**

- a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
- b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.**
- c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.

**d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.**

e. A claim relating to injury directly or indirectly caused by a person who is not employed by the state.

f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:

(1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.

(2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.

(3) Providing or failing to provide law enforcement services in the ordinary course of a state's law enforcement operations.

g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:

(1) Direct contact between the state and the injured party.

(2) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.

(3) Knowledge on the part of the state that inaction of the state could lead to harm.

(4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.

h. A claim resulting from the assessment and collection of taxes.

i. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.

j. A claim resulting from any injury caused by a wild animal in its natural state.

k. A claim resulting from the condition of unimproved real property owned or leased by the state.

l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.

m. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.

n. A claim resulting from damage to the property of a patient or inmate of a state institution.

o. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

p. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.

q. A claim resulting from a natural disaster, an act of God, a military action, or an

act or omission taken as part of a disaster relief effort.

r. A claim for damage to property owned by the state.

s. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.

4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.

5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 22, 1995.

(Emphasis supplied.)

#### **Case Citations.**

Acts of a state employee (the director of human services) that are discretionary are covered under section (3)(b) of this section and [are] therefore immune from suit. Perry Center, Inc. v. Heitkamp, 576 N.W.2<sup>nd</sup> 505 (N.D.1998).

Driver has no cause of action for erroneous license suspension; N.D.C.C. 32-12.2-02(3)(d) gives quasi-judicial immunity to and protects the director of the department of transportation from liability and no private cause of action exists under the state constitution against the state for acts not described in N.D.C.C. 32-12.2-02(1). Kouba v. State, 2004 ND 186, 687 N.W. 2<sup>nd</sup> 466 (2004).

# TESTIMONY IN SUPPORT OF HOUSE BILL NO. 1227

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GREG TSCHIDER, MID-AMERICA CREDIT UNION  
ASSOCIATION

Mr. Chairman and Members of the House Transportation Committee, I am Greg Tschider and I represent the Mid-America Credit Union Association.

In this age of security and identification issues, it is important that any identification issued by the State of North Dakota must be based on proper and reasonable background information. Presently the Department of Transportation is not performing any background checks prior to issuing the photo identification cards.

By issuing the photo identification, the public is given the impression that nondriver photo identifications are legitimate and that the issuer has properly verified the identity of the individual prior to issuing the identification.

The present method permits fraudulent requests to go undetected with the public being penalized for accepting the photo identification.

Identification cards should only be issued after proper background checks have been completed. If the State of North Dakota is not going to perform reasonable background checks, then all photo identification cards will be suspect and businesses will not be able to reasonably rely on them. Either that or the cards should not be issued.

This bill is needed to protect the public from fraudulent parties.

Thank you.



## **Testimony**

### **House Bill 1227**

#### **House Transportation Committee**

**January 19, 2007; 9:30 a.m.**

#### **North Dakota Department of Health**

Good morning, Chairman Weisz and members of the Transportation Committee. My name is Darin Meschke, and I am the state registrar and director of the North Dakota Department of Health's Division of Vital Records. I am here today to provide testimony in opposition to House Bill 1227.

The Division of Vital Records is required by state law to register and certify all births that occur in the state. Because of new federal requirements, the processes surrounding the registration and certification of births are changing. Current House Bill 1129 addresses the new requirements of the federal Intelligence Reform and Terrorism Prevention Act, which is putting much tighter restrictions on access to birth records and much closer scrutiny on identity verification than ever before.

The portion of House Bill 1227 that we oppose starts on page one, line 22, and removes the requirement to present a birth certificate as documentary evidence to verify a person's name and date of birth. A birth certificate is the primary document used to establish a person's identity, including legal name and date of birth. It is currently used by the U.S. Social Security Administration to establish identity prior to obtaining any of their benefits and is the primary identity document used to obtain a U.S. passport.

The Division of Vital Records has made many changes to ensure that certified copies of North Dakota birth certificates are more secure and far less subject to fraudulent activities. The improvements to the birth certificate also make the process of obtaining a driver's license or identification card more secure. Removing the requirement to present a birth certificate to receive an identification card creates an opportunity for criminals to obtain an ID card illegally if they are able to use other documentation that may not have the same security processes in place.

Currently, both the Division of Vital Records and the Department of Transportation's Driver's License Division are participating in an American Association of Motor Vehicle Administrator's pilot project to further ensure the identity of a person requesting a driver's license or identification card. As part of the Electronic Verification of Vital Events (EVVE) project, the Driver's License Division electronically verifies the birth certificate information presented on a certified copy with the Division of Vital Records birth database. If the data cannot be verified electronically, then the license or identification card is not issued until the information

is verified manually. The EVVE process is being marketed to the nation as another prevention method against fraud and terrorism.

It is the goal of the Division of Vital Records to work closely with the Department of Transportation to provide accurate and secure identity documents. We believe that removing the birth certificate requirement makes security more difficult.

This concludes my testimony. I am happy to answer any questions you may have.

①

TESTIMONY OF MARILYN FOSS  
NORTH DAKOTA BANKERS ASSOCIATION  
IN FAVOR OF ENGROSSED HB 1227

Chairman Lee, members of the transportation committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association. Representative Ruby and Senator Lee introduced this bill at the request of NDBA.

This bill addresses the two types of documents that are issued by the state department of transportation and used by North Dakotans as their state government issued photo IDs: nondriver photo identification cards and motor vehicle operator's licenses. As a matter of practice or law the ID cards and operator's licenses are accepted as sufficient identification for all identification purposes. Banks and others take these documents to verify the identity of the person presenting them. As a matter of federal law they may be used by banks to identify customers who wish to open bank accounts and to verify that persons who want to cash checks are who they say they are.

North Dakota banks have thought they were safe to rely on the state issued identification cards as identification. Unfortunately, last summer they learned that is not correct. What happened? Two NDBA member banks lost thousands of dollars when they cashed counterfeit, payroll checks for a couple of Chicago fraudsters. Although they were neither, the Chicagoans established their identification as North Dakota residents and as check payees by presenting our banks with brand new, actual, valid North Dakota issued nondriver photo identification cards. The result was that the banks cashed the checks. They are now out that money.

As our victimized banks looked into what went wrong, they couldn't overlook the fact that the speed and ease with which the out of state crooks were able to obtain a state issued North Dakota nondriver's photo ID were critical to the success of the scheme to defraud the banks. On inquiry, the department of transportation correctly advised the banks that DOT offices in Grand Forks and Bismarck issued the ID cards on the demand of the fraudsters and without determining the authenticity of the birth certificates that were

presented to support the issuance of the ID cards because that is all current law requires or, even, allows. The banks also learned that the Chicagoans tried to work the same scheme in Minnesota. They were stopped and Minnesota's banks and citizens were protected because Minnesota authorities wouldn't issue the ID cards on demand; Minnesota allows time for verification of the information and authentication of the documentation that is presented by an applicant for a state issued ID card. The crooks crossed the border into North Dakota where they presented fraudulent, out of state birth certificates and apparently false information about their residence and were immediately issued a North Dakota nondrivers photo ID.

With this, I looked at the Minnesota law and regulations. Essentially it appears that the state does not interpret its laws to require issuance of an ID card on demand. Additionally, there are rules which flesh out the requirements for verifying information that an applicant provides to support an ID card. Frankly, given the potential for harm, this didn't strike me as being impractical or onerous.

With this background let me go through the engrossed bill. Please keep one central point in mind. **This bill allows the department of transportation to do a better job to protect North Dakota's citizens from fraud.**

Current law requires the ID card to be issued virtually on demand. Section 1 of this bill amends N.D.C.C. 39-06-03.1(1) to allow the DOT director to take up to 30 days to issue an ID card and provides that a complete application must include a social security number as well as a name and date of birth and be supported by a certified birth certificate of other satisfactory evidence as determined by the department of transportation in order to confirm the true identity and date of birth of an applicant. The 30 days is measured from the receipt of a complete application for an ID The purpose of the 30 day period is to give the department time to effectively follow up when there is reason to question the information or documentation that is presented to support the issuance of the ID card. **Please note that nothing requires the department to take its allotted 30 days. If there is no reason to**

**question information or documentation, there is no requirement to delay issuance of the ID card.**

Subsection 2 of the bill amends the operator's license laws to encourage better verification of the information on a operator's license application before issuing the license. It does so by adding the imperative that "to the extent it is practicable to do so, the director shall verify the application information before issuing an operator's license. We believe the director of the department of transportation will take this to heart and be creative about finding ways to better verify information without unduly inconveniencing citizens.

The entire focus of this bill is to give the department of transportation tools its may choose to use to do a more credible job when it comes to issuing documents that qualify as "government issued photo identification" in the service and for the protection of North Dakota citizens. Of course, we see this bill as carrying a legislative message to the department that, if it can do better, it should try to do so within the limits of the department's ability to do so. We actually do believe there are cost effective ways to build a better, more credible system. We trust the department to find them. This bill reflects that trust, but recognizes that more tools need to be available.

I want to mention one more thing. In the discussion of this, the subject of state liability came up. The concern has been expressed that more department power to verify information carries more liability for doing a poor job. Frankly, this does not appear to be a material risk. The North Dakota legislative assembly has enacted strong and effective statutes to protect the state and its employees from lawsuits that arise out of just that type of claim. I am attaching a copy of the relevant statute to my testimony, together with citations to cases in which the state dismissed lawsuits against state employees, including employees of the DOT for wrongfully revoking an operators' license. I have highlighted the sections of law that apply to protect agency exercises of discretion and decisions not to issue driver's licenses or ID cards at all. Assertions that this bill imperils the state and DOT employees are red herrings.

I'd like to say just one more thing before closing. State law now provides that the ID cards are to be accepted as "sufficient identification for all identification purposes." This bill will help the reality meet that standard.

Thank you.

Marilyn Foss, Lobbyist No. 76  
North Dakota Bankers Association  
701-223-5303  
marilyn@ndba.com

## CHAPTER 32-12.2

### CLAIMS AGAINST THE STATE

#### 32-12.2-02. Liability of the state - Limitations - Statute of limitations.

1. The state may only be held liable for money damages for an injury proximately caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state, or an injury caused from some condition or use of tangible property under circumstances in which the state, if a private person, would be liable to the claimant. **No claim may be brought against the state or a state employee acting within the employee's scope of employment except a claim authorized under this chapter or otherwise authorized by the legislative assembly. The enactment of a law, rule, or regulation to protect any person's health, safety, property, or welfare does not create a duty of care on the part of the state, its employees, or its agents, if that duty would not otherwise exist.**

2. The liability of the state under this chapter is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The state may not be held liable, or be ordered to indemnify a state employee held liable, for punitive or exemplary damages. Any amount of a judgment against the state in excess of the one million dollar limit imposed under this subsection may be paid only if the legislative assembly adopts an appropriation authorizing payment of all or a portion of that amount. A claimant may present proof of the judgment to the director of the office of management and budget who shall include within the proposed budget for the office of management and budget a request for payment for the portion of the judgment in excess of the limit under this section at the next regular session of the legislative assembly after the judgment is rendered.

**3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:**

a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.

**b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.**

c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.

**d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other**

**administrative approval or denial.**

e. A claim relating to injury directly or indirectly caused by a person who is not employed by the state.

f. A claim relating to injury directly or indirectly caused by the performance or nonperformance of a public duty, including:

(1) Inspecting, licensing, approving, mitigating, warning, abating, or failing to so act regarding compliance with or the violation of any law, rule, regulation, or any condition affecting health or safety.

(2) Enforcing, monitoring, or failing to enforce or monitor conditions of sentencing, parole, probation, or juvenile supervision.

(3) Providing or failing to provide law enforcement services in the ordinary course of a state's law enforcement operations.

g. "Public duty" does not include action of the state or a state employee under circumstances in which a special relationship can be established between the state and the injured party. A special relationship is demonstrated if all of the following elements exist:

(1) Direct contact between the state and the injured party.

(2) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who allegedly was injured.

(3) Knowledge on the part of the state that inaction of the state could lead to harm.

(4) The injured party's justifiable reliance on the state's affirmative undertaking, occurrence of the injury while the injured party was under the direct control of the state, or the state action increases the risk of harm.

h. A claim resulting from the assessment and collection of taxes.

i. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.

j. A claim resulting from any injury caused by a wild animal in its natural state.

k. A claim resulting from the condition of unimproved real property owned or leased by the state.

l. A claim resulting from the loss of benefits or compensation due under a program of public assistance.

m. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.

n. A claim resulting from damage to the property of a patient or inmate of a state institution.

o. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.

p. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.

q. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.

r. A claim for damage to property owned by the state.

s. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental



company.

4. An action brought under this chapter must be commenced within the period provided in section 28-01-22.1.

5. This chapter does not create or allow any claim that does not exist at common law or has not otherwise been created by law as of April 22, 1995.

(Emphasis supplied.)

#### **Case Citations.**

Acts of a state employee (the director of human services) that are discretionary are covered under section (3)(b) of this section and [are] therefore immune from suit. Perry Center, Inc. v. Heitkamp, 576 N.W.2<sup>nd</sup> 505 (N.D.1998).

Driver has no cause of action for erroneous license suspension; N.D.C.C. 32-12.2-02(3)(d) gives quasi-judicial immunity to and protects the director of the department of transportation from liability and no private cause of action exists under the state constitution against the state for acts not described in N.D.C.C. 32-12.2-02(1). Kouba v. State, 2004 ND 186, 687 N.W. 2<sup>nd</sup> 466 (2004).

Sam Dale Pahlke

With Dakota Community Bank

Good Morning Mr. Chairman and committee members:

Thanks for giving us the opportunity to address this committee on House Bill 1227. Our bank supports any measures that can be taken to avoid fraudulent identification documents from being issued.

Two individuals came into our bank and presented fraudulent picture identification cards that they obtained from the Department of

Transportation by presenting false birth certificates from another state.

These individuals were able to obtain false ids, twice, once in Grand Forks and once in Bismarck. They used these false ids to cash fraudulent payroll checks, thereby causing our bank a loss. We are NOT blaming the Department of Transportation because they followed the rules and regulations for issuing identification cards. However, we feel strongly that the rules need to be changed to make it much more difficult for individuals to obtain picture identification cards.

Banks are required to have picture identification to open accounts and need to have confidence that the identification is not false.

Furthermore, in these times we are living today with homeland security being more important than ever before, a picture id is needed to board airplanes, rent cars and trucks, enter buildings, etc, etc, and I think it is of paramount importance that we are confident that the identification card truly identifies the person carrying it. I recommend finger printing all individuals attempting to obtain picture identification. A picture id is the passport to many things across America and I think it is very important that our government uses extreme diligence in determining how picture identification is validated.

Thank-you for your time and I urge you to do everything possible to stop identification fraud for the benefit and safety of all of us.

Good Morning Mr. Chairman and committee members. As introduced, I am Julie Dahle and I am also with Dakota Community Bank. I'd like to share my thoughts on House Bill number 1227 with you today.

As you likely are aware the banking industry is governed by an abundance of laws and regulations that have been implemented to help ensure safe and sound practices, to protect consumers, and sometimes even to assist other organizations in carrying out their objectives.

One of these regulations became effective after Sept. 11, 2001 as part of the USA PATRIOT Act, with the underlying purposes of putting a stop to terrorist financing within the banking system. The section of regulation applicable to banks requires that bank's implement a Customer Identification Program (CIP). This program first and foremost must include procedures to ensure certain required pieces of information are obtained from every customer and secondly that verification procedures be implemented to validate the information obtained. The procedures used by the bank must be sufficient for the bank to perform a reasonable belief that it knows the true identity of the customer. Speaking from personal experience, not only based on what we do at our bank, but also what I saw in my experience as a banking examiner – the most common *primary* form of validation procedure used for consumers is through review of an unexpired government issued form of identification. I fully understand that banks must all do their part in ensuring these procedures are carried out effectively.

However, if banks and other businesses can't attain a sense of comfort in the procedures backing the government issued identification, the reliance on these documents may need to be reassessed and in my opinion the practice of issuing them should also be reconsidered.

I also would like to briefly touch on Identity Theft. We all hear about it on the National level; however, it is happening to citizens of our state and likely will only increase in frequency and magnitude. I personally have seen varied levels of identity theft attempted against friends, family, and customers on a surprisingly frequent basis.

I feel that change is necessary by everyone in order to protect the citizens of our state and nation from frauds such as identity theft and additionally to protect our country from terrorist activities. **Change is not always easy, but it also is not impossible.** When weaknesses in existing procedures are identified it is only prudent to reassess those procedures and many times change IS Necessary. Therefore, I encourage your support for requiring that strengthened due diligence procedures be adhered to prior to issuing identification cards in the State of North Dakota.

Thank you for your time and attention and have a great day.

Proposed Amendments to House Bill 1227

Page 1, line 12 – “Within 30 days from receipt of a complete application, that includes the applicant’s social security number, the director shall determine and issue where appropriate a nondriver photo identification card to the applicant.”

Page 1, line 23 – “ To confirm the identity of the applicant, the director or examining officer shall require satisfactory evidence be provided by the applicant. Such evidence may include a certified copy of the applicant’s birth certificate or other evidence reasonably calculated to permit the determination of the date of birth and identification of the applicant by the director or examining officer.”

Page 2, line 29 – Insert “10. Issuance of the photo identification card shall not be unreasonably withheld.”

Page 3, lines 4-6 – Remove “To the extent it is practicable to do so, the director shall verify the application information before issuing an operator’s license.”

Renumber accordingly.