

2013 SENATE JUDICIARY

SB 2196

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2196
1/28/2013
Job #17806

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to implied consent

Senator David Hogue - Chairman

Ryan Sandberg - Criminal Defense Attorney, Minot - See written testimony (1)

Senator Hogue - Asks about the .07 and under driver losing their license for 1 year

Sandberg - Replies they could lose their license

Senator Berry - Asks if the individual can request a blood alcohol instead

Sandberg - Replies no there is no option to which you can take; it is up to the discretion of the officer.

Senator Hogue - States this bill is just for what the officer needs to inform the suspect of.

Senator Grabinger - Asks about the 1 - 4 year sentence.

Sandberg - Responds that it is not up to the Judge, it is the law. If they refuse to test and it is their first refusal it would be at least one year and could go up to four based on the statute not on what a Judge decides or what the DOT decides. This bill does not change the law; this requires the law enforcement to advise them what the full ramifications are if they refuse the test.

Senator Armstrong - Testifies in support of this bill and explains how DUI's work.

Opposition
Neutral

Glen Jackson - Director of the Driver's License Division for DOT - Said he is concerned with the language of the sentence. He needs clarification that it is limited to the specific query that is happening at the time of the arrest.

Close the hearing on 2196

Discussion

Senator Lyson says he doesn't have a problem with this but is concerned with when you have a combative suspect. Senator Armstrong says there is a litany of Supreme Court cases defending law enforcement in these situations. Senator Hogue says the logic behind this bill is good.

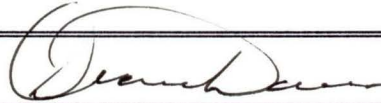
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2196
1/30/2013
Job #18016

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Armstrong proposes an amendment and explains where this language can be found in the Century Code and that this would make the language consistent throughout the chapter. He said it is the same implied consent advisory both times. Senator Hogue states that in this bill the police officer would be required to tell them that not only could they lose their license for up to four years but they will lose their license for a minimum of one year. Senator Armstrong says this is the same implied consent it just adds that extra requirement. Most officers know it by heart but it can be read from a card.

Senator Armstrong moves the amendment
Senator Lyson seconded

Verbal vote - all yes

Discussion

The law intern explains why the amendment looks the way it does.

Senator Armstrong moves a do pass as amended
Senator Lyson seconded

Vote - 7 yes, 0 no

Senator Armstrong will carry

January 30, 2013

VR
1/30/13
1082

PROPOSED AMENDMENTS TO SENATE BILL NO. 2196

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "39-20-01" insert "and 39-20-14"

Page 1, line 2, after "consent" insert "and screening tests"

Page 2, line 3, after "restricted" insert "operator's"

Page 2, after line 16, insert:

"SECTION 2. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests.

Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol. An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the individual that refusal of the individual to submit to a screening test will result in a revocation for at least one year and up to four years of that individual's driving privileges. The officer shall inform the individual that refusal of the screening test will result in the individual being ineligible for a North Dakota temporary restricted operator's license. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine."

Renumber accordingly

Date: 1-30-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2196

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0629.01000-Armstrong attachment #2

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal yes

Floor Assignment _____

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

Date: 1/30/13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2196**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0629.01001-.02000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment S Armstrong

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

REPORT OF STANDING COMMITTEE

SB 2196: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2196 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections"

Page 1, line 1, after "39-20-01" insert "and 39-20-14"

Page 1, line 2, after "consent" insert "and screening tests"

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Re-number accordingly

2013 HOUSE TRANSPORTATION

SB 2196

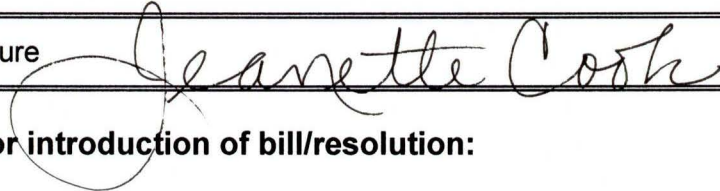
2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee Fort Totten Room, State Capitol

SB 2196
03-14-13
Job # 19930

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to implied consent and screening tests.

Minutes:

Chairman Ruby opened the hearing on SB 2196.

Senator Kelly Armstrong, District 36, introduced SB 2196. This bill came to the Senate independently of the two other DUI bills. If neither of those bills make it through to being law, this bill simply adds that the law enforcement officer must inform the driver of the minimum consequence as well as the maximum consequence relating to implied consent violation for refusal to submit to chemical testing. The law enforcement officers all know what the minimum offense is, but the out of state drivers might not know since the laws in each state are so different. We want to encourage everyone to take the test. It is better for the driver to take the test regarding his driver's license. At this point an officer might be worried about giving legal advice in the process of an arrest. This would take away the ambiguity for the officer. Then, if the driver refuses, he can't say that he doesn't know what will happen because he has been told.

Representative Delmore: Do all states criminalize the refusal to take the test, and do you have a gamut of what the refusal would cost in other states?

Senator Kelly Armstrong: I don't have that information. Every state treats these things very differently. Minnesota criminalizes it, and Montana does not. I don't know what South Dakota does. In Arizona and Nevada the rule of the road is don't ever take the test. So, it is a very different area of law depending on the state. That is why if we want drivers to take the test, we want them to have as much information as possible.

Vice Chairman Owens: This bill does not seek to criminalize, is that correct?

Senator Armstrong: Yes.

Vice Chairman Owens: Is all of this language in this bill contained in the previous DUI bill that we just heard?

Senator Armstrong: Both of these sections are addressed in the other bill, but the language is very different because we are criminalizing the refusal.

Chairman Ruby: I think that one of the DUI bills will pass. Everyone is in the mood to see tougher laws. Do you really think that this bill is needed if either of the other DUI bills passes?

Senator Armstong: If either 1302 or 2240 passes in any shape or form, this bill will become completely irrelevant.

Aaron Burst, Association of Counties, spoke to support this bill. We also think that 1302 or 2240 will probably take care of this issue.

There was no further support for SB 2096.
There was no opposition for SB 2096.

The hearing on SB 2196 was closed.

Short discussion on the passing or holding this bill.

Representative Schatz moved a DO PASS on SB 2096.
Representative Becker seconded the motion.

Vice Chairman Owens: I am going to resist. I would rather just hold the bill.

Chairman Ruby: We can hold this until about mid-April.

Representative Becker: I don't have a strong feeling one way or the other; I just like to take care of things. If we were to hold it for a few weeks, would that really give any control over the order that the governor signs it?

Chairman Ruby: No, not really. In a few weeks we just might be a little surer that either version of the DUI bill that is going to progress through will include this portion of the code. We could just kill this and make sure that it is put into the DUI bill as intended. It is a toss-up.

A roll call vote was taken on SB 2196. Aye 7 Nay 7 Absent 0
The motion failed.

Chairman Ruby: We will just hold the bill for now.

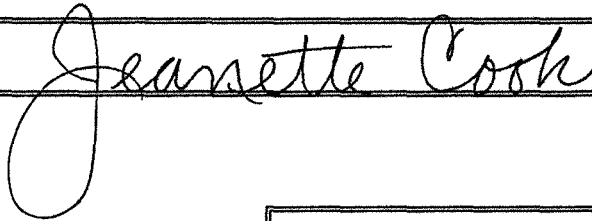
2013 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

SB 2196
03-21-13
Job # 20602

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Ruby brought SB 2196 back before the committee. (2:00) Pages were distributed that show the comparison of HB 1302, SB 2240, and the current law.

Chairman Ruby: This bill deals with implied consent. I have not heard on either of the DUI bills that there was an issue with that portion of the bills. I don't think that we need this.

Representative Weisz moved a **DO NOT PASS** on **SB 2196**.

Representative Weisz: I think that between the work on 1302 in Judiciary and 2240 the issue is being addressed.

Representative Vigesaa seconded the motion.

Representative Delmore: Is there some way that after a period of time there can be a way that the people can be eligible for the 24-7 program? I would like to see that here or in the other bill to give these people a chance.

Representative Weisz: In 2240 under the refusal you would be able to do the 24-7 and get a temporary work permit. Currently you can't.

Chairman Ruby: In 2240 a refusal is treated similar to a guilty plea. It then kicks in the same provisions of the first offense.

A roll call vote was taken on SB 2196. Aye 12 Nay 1 Absent 1 The motion carried. Representative Vigesaa will carry SB 2196.

Date: 3-14-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2196**

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt
 Amendment

Rerefer to Appropriations Reconsider

Motion Made By Schatz Seconded By Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby		✓	Rep. Lois Delmore		✓
Vice Chairman Mark Owens		✓	Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Kylie Oversen	✓	
Rep. David Drovdal	✓				
Rep. Robert Frantsvog	✓				
Rep. Brenda Heller	✓				
Rep. Curtiss Kreun	✓				
Rep. Mike Schatz	✓				
Rep. Gary Sukut		✓			
Rep. Don Vigesaa		✓			
Rep. Robin Weisz		✓			

Total (Yes) 7 No 7

Absent _____

Floor Assignment _____

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

Date: 3/28/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2196

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt
Amendment

Rerefer to Appropriations Reconsider

Motion Made By Weisz Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Lois Delmore	✓	
Vice Chairman Mark Owens	✓		Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Kylie Oversen	✓	
Rep. David Drovdal	✓				
Rep. Robert Frantsvog	A				
Rep. Brenda Heller	✓				
Rep. Curtiss Kreun	✓				
Rep. Mike Schatz	✓				
Rep. Gary Sukut	✓				
Rep. Don Vigesaa	✓				
Rep. Robin Weisz	✓				

Total (Yes) 12 No 1

Absent _____

Floor Assignment Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2196, as engrossed: Transportation Committee (Rep. Ruby, Chairman) recommends DO NOT PASS (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2196 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2196

Senate Bill 2196 (Implied Consent Law)

1. **Why do we want People to take the chemical test?**
 - a. Provide the right type of disposition of the DUI/APC charge
 - i. Example
 1. Driver with a high BAC (e.g. .18 or higher)
 - a. Increases the chances he will plead or be convicted of the DUI charge if he takes the test
 - b. If refuses, increases the chances of a plea agreement to something other than DUI.
 2. Driver with BAC .07 or lower
 - a. By taking the test, it would increase the chances the driver will not be wrongly convicted
 - b. If refuses the test, it would increase the chances a person will plead to a crime he didn't commit.
2. **Implied Consent Law (N.D.C.C. 39-20-01)**
 - a. Current Implied Consent Read to the Driver
 - i. "Refusal to submit to the chemical test will result in revocation for up to four years of the individual's driving privileges."
 - b. Proposed Additions to the law
 - i. "Refusal to submit to the chemical test will result in revocation **for at least 1 year and** up to 4 years of the individual's privileges."
 - ii. **In addition, you will not be able to obtain a temporary restricted license from this State if you refuse the chemical test.**
3. **Reasons for these additions**
 - a. "For at Least 1 year and"
 - i. This is the law (**N.D.C.C. 39-20-04(1)(a)**)
 - ii. Guidance to Law Enforcement
 1. When asked questions by the driver.
 - iii. Informs the Driver
 1. Increase drivers taking the test.
 - b. "In addition, the law enforcement officer shall inform the individual charged that the individual will not be able to receive a temporary restricted license from this State if the individual refuses to test."
 - i. This is the law (**N.D.C.C. 39-06-03(2) and 39-06.1-11(2)**)
 - ii. Guidance to Law Enforcement
 1. When asked questions by the driver;
 - iii. Informs the Driver
 1. Increase driver's taking the test
 - c. Goals of Implied Consent Laws
 - i. Increases the Driver taking the chemical test;
 - ii. Punishment if refuse the test

13.0629.01000

Sixty-third

Legislative Assembly

North Dakota

*Senator Armstrong's
amendment (2)*

PROPOSED AMENDMENT TO SENATE BILL NO. 2196

Introduced by

Senators Hogue, Armstrong, Schneider, Triplett

Representative Klemin

A BILL for an Act to amend and reenact section 39-20-01 and 39-20-14 of the North Dakota Century Code, relating to implied consent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 2. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests.

Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol. An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director or the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provision of section 39-20-01. The officer shall inform the individual that refusal of the individual to submit to a screening test will result in a revocation for at least one year and up to four years of

that individual's driving privileges. In addition, the law enforcement officer shall inform the individual that he/she will not be able to get a temporary restricted license through North Dakota if the individual refuses the test. If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke an individual's driving privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood or urine sample for a chemical test requested under section 39-20-06 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in an individual's blood, breath, or urine.

COMPARISON OF PRESENT DRIVING UNDER THE INFLUENCE LAW TO SENATE AND HOUSE BILLS

The following compares present driving while under the influence of alcohol laws with Reengrossed House Bill No. 1302 and Reengrossed Senate Bill No. 2240. There are two tables because there are two separate actions for driving under the influence of alcohol. There is an administrative action on the operator's license with remedial action in the form of a suspension or revocation of the license (a license is revoked if the driver refuses to submit to blood alcohol content (BAC) testing) and a criminal action with punishment in the form of fines and imprisonment. The following tables detail these actions and the consequences for the driver:

Present Law	Administrative			
	Suspension	Revocation	Temporary Restricted License	Other
1 st offense within 5 years	<ul style="list-style-type: none"> • 91 days if under .18 BAC • 180 days if .18 BAC or over 	1 year	Director may issue for good cause after 30 days of suspension	Revocation to suspension upon admission allowed for <i>first</i> offense
2 nd offense within 5 years	<ul style="list-style-type: none"> • 365 days if under .18 BAC • 2 years if .18 BAC or over 	3 years	Director may issue for good cause if no offense within previous 2 years and report of treatment program or, if a drug court, no offense within previous year	
3 rd offense within 5 years	<ul style="list-style-type: none"> • 2 years if under .18 BAC • 3 years if .18 BAC or over 	4 years		
24/7 sobriety program	No suspension if participating in 24/7 sobriety program		2 nd or subsequent offense	
House Bill No. 1302				
1 st offense within 10 years	Same as present law but within 10 years	Same as present law		Revocation to suspension upon admission allowed for <i>any</i> refusal
2 nd offense within 10 years				
3 rd offense within 10 years				
24/7 sobriety program	In lieu of suspension		Director may issue after 15 days	
Senate Bill No. 2240				
1 st offense within 7 years	Same as present law but within 7 years	180 days		Revocation to suspension upon admission allowed for <i>any</i> refusal
2 nd offense within 7 years		2 years		
3 rd offense within 7 years		3 years		
24/7 sobriety program	In lieu of suspension		Director may issue after 15 days	

Criminal						
Present Law	Imprisonment		Minimum Fine	Level	Minimum Mandatory Probation	Other
	Maximum	Minimum Mandatory				
1 st offense within 5 years	30 days		\$250	Class B misdemeanor		Serious bodily injury, Class A misdemeanor with 90 days' mandatory imprisonment
2 nd offense within 5 years	30 days	5 days	\$500	Class B misdemeanor		
3 rd offense within 5 years	1 year	60 days, serve at least 10 days	\$1,000	Class A misdemeanor		
4 th offense within 7 years	1 year	180 days, serve at least 10 days	\$1,000	Class A misdemeanor		
5 th offense within 7 years	5 years	180 days, serve at least 10 days	\$1,000	Class C felony		
House Bill No. 1302						
1 st offense within 10 years	30 days	<ul style="list-style-type: none"> None if under .21 BAC 10 days serve at least 1 nonworking day if .21 BAC or more 	\$500 \$750 if 21 years of age or older	Class B Misdemeanor	6 months if .21 BAC and over	
2 nd offense within 10 years	1 year	60 days, serve at least 10 days	\$1,500	Class A Misdemeanor	1 year	Serious bodily injury Class C felony with 1 year and 1 day sentence
3 rd offense within 10 years	5 years	180 days, serve at least 60 days	\$2,000	Class C Felony	1 year	Serious bodily injury Class C felony with 1 year and 1 day sentence
4 th offense within 10 years	5 years	1 year and 1 day, serve at least 1 year	\$3,000	Class C Felony	2 years	Serious bodily injury Class C felony with 1 year and 1 day sentence
<i>Refusal to test is an offense</i>						
Senate Bill No. 2240						
1 st offense within 7 years	30 days	2 days or 24 hours community service if .18 BAC or over	\$500	Class B Misdemeanor		
2 nd offense within 7 years	1 year	10 days	\$1,000	Class A Misdemeanor		Serious bodily injury, Class C felony with 1 year and 1 day sentence
3 rd offense within 7 years	1 year	120 days, serve at least 120 days, limits house arrest to 90 percent	\$2,000	Class A Misdemeanor	2 years	Serious bodily injury, Class C felony with 1 year and 1 day sentence
4 th offense	5 years	1 year and 1 day, serve at least 1 year	\$1,000	Class C Felony	2 years	Serious bodily injury, Class C felony with 1 year and 1 day sentence
<i>Refusal to test is an offense</i>						