

2019 HOUSE JUDICIARY

HB 1334

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1334
2/5/2019
32192

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution: Relating to sealing a criminal record of a driving under the influence offense.

Minutes:

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Chairman Koppelman: Opened the meeting on HB 1334.

Rep. D. Johnson: Introduced the bill. If you go seven years and don't get another DUI defense it goes away. That is basically what I am trying to do. Federal law for CDL is not affected.

Chairman K. Koppelman: Under current law it stays there forever?

Rep. D. Johnson: Yes, to my understanding it does.

Rep. Magrum: If you have a DUI and it gets expunged and then later in life if you apply for a CDL would they know that?

Rep. D. Johnson: CDL is under federal law and it would not apply.

Rep. Magrum: So they wouldn't be able to reference that and it wouldn't affect your CDL later.

Opposition:

Neutral:

Aaron Burst: The lookback period is 15 years for a DUI. Rep. D. Johnson is making the non-public criminal conviction, so if you apply for a job, we assume that the criminal conviction for prosecutor still is allowable for that 15-year lookback. Is it expunged from just the general public roles or is it expunged from the criminal justice roles? If it is expunged from the criminal justice roles then 39801 has some conflicting language, which gives you a 15-year lookback.

Rep. Jones: What do you mean by other criminal offense?

Aaron Burst: I don't know? Our only interpretation is the DUI if that is sealed for 7 years then that causes a problem for the lookback period. That is fine if that is what this committee is doing but that is not clear on the bill.

Chairman K. Koppelman: If there is a 15-year lookback for prosecutors and judges is that public information for job applicants and so on?

Aaron Burst: Almost everything unless it sealed by the court is public. That would be sealed under this bill.

Chairman K. Koppelman: So only criminal justice would get the information? The bill would have to be clarified to accomplish that.

Aaron Burst: The public would have that 7 years' lookback.

Rep. Vetter: You need something that says except for relating to..

Aaron Burst: That would be preferable. I would be helpful if you said you are not meaning to change the 15 yr. lookback for criminal justice.

Rep. Paur: If you are applying for a job and you have a felony how can you apply?

Aaron Burst: That is a good question. The only way to do that is to employ employee protection.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1334
2/5/2019
32232

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to sealing of criminal record of a driving under the influence offense.

Minutes:

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Chairman Koppelman: Opened the meeting on HB1334.

Rep. Vetter: Made a motion to amend HB1334. Page 1, Line 15, add: Or to a prosecutors' access to a prior offence for purposes of enhancement under 39-08-01 (3)

Rep. Becker: Seconded

Voice Vote was taken: It was carried

Rep. Roers Jones: motioned for a Do Pass as amended on HB1334

Rep. Satrom: Seconded

A Roll Call Vote was Taken: Yes – 13 No – 1 Absent 0

Do pass as Amended Carries

Rep. Vetter: will carry the HB1334

19.0823.02001
Title.03000

DA 2/5/19
Adopted by the Judiciary Committee

February 5, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1334

Page 1, line 15, after "39-06.2-10" insert "or to a prosecutor's access to a prior offense for purposes of enhancement under subsection 3 of section 39-08-01"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1334**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Page 1 Line 15 add: Or to a prosecutors' access to a prior offence for purposes of enhancement under 39-08-01 (3)

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Vetter Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE CARRIED

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1334**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 19.0823.02001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Roers Jones Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo		X
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Vetter

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

REPORT OF STANDING COMMITTEE

HB 1334: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1334 was placed on the Sixth order on the calendar.

Page 1, line 15, after "39-06.2-10" insert "or to a prosecutor's access to a prior offense for purposes of enhancement under subsection 3 of section 39-08-01"

Renumber accordingly

2019 SENATE JUDICIARY

HB 1334

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1334
3/13/2019
#33606 (18:00)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 39-08-01.6 of the North Dakota Century Code, relating to sealing a criminal record of a driving under the influence offense.

Minutes:

1 Attachment

Chair Larson opens the hearing on HB 1334.

Dennis Johnson, District 15 Representative, testifies in favor

Representative Johnson: This is for individuals with their first DUI. I wanted to go 5 years, but I had to go 7 years because of the DUI laws with the lookbacks. I want that person to have the opportunity to get that one offense expunged from their record. The person that brought this to me, it's long past helping them out because it's over 10 years when they got their DUI when they were 19 and never had an offense since. She went through a very difficult time trying to find jobs in her field that would accept her because of that one DUI. Now it's 10 years later in Pennsylvania, and she finally got the job as a dietician in a nursing home. It took her 10 years for one mistake in her young life of growing up and has paid the price. Her family said that if they had realized this was going to happen, they would have probably got a lawyer and went to court. This has happened to many people, and some really learn from it. One man emailed me that he got a DUI on his 21st birthday. Since that has happened, he stays in touch with the officers that stopped him thanking them. He lives in Minneapolis now and volunteers with MAD to try to prevent young folks from drinking and making mistakes. It has turned his life around, and he's pleased to see a piece of legislation like this come forward. There were questions if the lookback was just for employers or for the judicial system. My intent was for employers. The attorney general has an amendment that would address that for all to be expunged for lookback. Someone is here to speak on that. Since I've introduced it, I've had several come forward that have happened to them or someone they know.

(6:45) Steve Harstad, Chief Agent with BCI on behalf of the attorney general's office, testifies in favor

Chief Harstad: We have some amendments. As you know, we deal a lot with criminal records, and we want to make sure we get this right so it doesn't negatively affect something that we foresee there. I don't have a written amendment, but we would like more time to work on that with Representative Johnson.

Chair Larson: Does it have to do with rewording it to say "will not release records" rather than "sealing"?

Chief Harstad: Exactly. We don't want to expunge the record completely; we just want to seal it. Then who do we seal or release it to?

Senator Myrdal: If there is a repeat offense within those 7 years or after, is that available to the judge to see?

Chief Harstad: We would like the law enforcement and the judge to be able to see that. It's the public and employers that we would like to seal out.

Senator Luick: In a record that is sealed, would that show up as a sealed record? There may be suspicion from the employer if so.

Chief Harstad: That's what we're trying to work out is whether or not there would be anything showing up. They could investigate that further or ask the person if they want to divulge that information.

Senator Luick: The suspicion of wrongdoing and the fact that the individual has a sealed record may be enough to tip off an employer.

Vice Chairman Dwyer: We're considering an amendment relating to marijuana possession. It says the criminal history record information excludes. That would be another approach, but I'm not sure what that means either. I would be interested in having you guys look at that to make sure that we're being consistent on these records.

Chief Harstad: I am looking at that amendment and how that fits in this bill. It would also exclude several employers that get records within the state such as daycares that are allowed by statute to get the same record that law enforcement gets. Then that proposes another level of a problem in there. Now you're specifically giving it to employers.

Representative Johnson: The last part of the bill talks about exclusion, and that is for CDLs. If you get a CDL DUI, you lose your license for one year. If you get a second DUI on a CDL, that's for life and federal law. The state doesn't have control over that.

(12) Bonnie Storbakken, Executive Secretary for the ND Board of Medicine, testifies in opposition (see attachment #1)

Storbakken: We do background checks. Routinely we also ask if there are any prior arrests on our applications. What happens frequently is someone's been advised, were previously arrested and settled the case for reckless driving rather than the DUI which was the basis of the arrest. They're advised by their attorney that they don't have to disclose that to us; however, we have a specific question that asks if they've ever been arrested and/or convicted of a crime, so they have to answer yes to the arrest as well as the convictions. We then ask for the report. If they haven't disclosed that to us on their application, we can find out during the background check. Then we go to them and ask for the documentation and the police report because not many people plead guilty to reckless driving. It's a red flag for us. If you're pleading guilty to reckless driving, what was the original charge?

The concern for us when we're dealing with medical professionals is we have to come up with a plan to deal people who have substance use disorders by law. National research has found that if you get over a certain blood alcohol point on your DUI, that's an indicator that there might be a problem, that it wasn't just a one-time situation. If the DUI is recent within the last 5-6 years, we ask them provide proof of an evaluation or complete one if they haven't. That information is shared with a panel of our board. If there's no substance use disorder, it's not a problem. If there is a substance use disorder, that gives us the opportunity to intervene and help them. Rather than stopping people practicing medicine, this allows us to help them get help and let them continue to keep their job.

This is a national issue. One impaired physician can do a significant amount of damage. It's important for us that we have the ability to do the background checks, get the information, and if someone is struggling, provide them that link. When they answer no to the arrest or conviction and we see it show up on the background check, now we've got two issues with their credibility called into question. We need to iron that out so that we're not setting people up for even more trouble with some of these licensing boards that have the ability to go back and do those background checks.

Senator Luick: There are a number of fields where we can get in trouble for this of sealing records rather than facing a potentially big issue.

Storbakken: Aviation comes to mind. There are so many things that we need to be very thoughtful in how that amendment is put down, who's able to access that information, how they're able to access it and how long they are able to access it. It's a concern for us as we do our licensing.

Chair Larson: We'll wait for amendments to consider.

Chair Larson closes the hearing on HB 1334.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1334
4/1/2019
#34408 (05:45)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact section 39-08-01.6 of the North Dakota Century Code, relating to sealing a criminal record of a driving under the influence offense.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1334.

Troy Seibel, Chief Deputy Attorney General

Seibel: We've been asked to look at this bill several times, both on the House side and now on the Senate, about ways that it could be amended potentially to address some questions that have arose. We understand the impetus behind the bill and the drive. When we look at ways that would seal a record and not show up in a background check, we're running into a lot of practical problems. We had Steve Haarstad look at the bill to come up with amendments, and we quickly ran into several practical problems. The first thing is we possess many federal records that are FBI records. Federal law prohibits us from altering those federal records in any way. In the event that someone comes to us and asks for both the federal and state background check, we would have no choice but to provide those federal records as part of that background check. We want to make sure that everyone is aware so that if you do pass the bill, we're all on the same page. If we want to cover our state records in our system, that's doable; it would just require that we make changes to our computer, and that would take money and time. A third option that Chief Haarstad mentioned was that if you exclude from the definition of criminal record the records at BCI, I don't know if that will help much, but it would only cover the court records. If someone went and looked at the court records and they had been sealed under this bill, they would not find them. However, if someone came to us and asked for a background check on that person, they would get them from us. It's a catch-22, and we've looked at every way to try to figure out a way to address what the bill is attempting to do. We're finding it difficult from a practical perspective just to try and make something get erased forever.

Senator Myrdal: The second issue that it's costly with IT, I get that, but it's also extremely costly for a young person who is stuck from a DUI from one time. Many of my constituents come to me about this bill as well. It's a long-term curse, so the IT cost to me isn't so important. They're excluded for a whole section of society of the workforce.

Seibel: We agree. We think the bill makes sense, what it's trying to do. In the event that the committee wanted it to have us make changes to our computer program to do it, we are happy to do so. We want everyone to be aware that if there's a request for federal records, they're still going to get those federal records.

Chair Larson: But you can still seal your state records.

Seibel: We could, yes.

Senator Myrdal: Motions for a Do Pass.

Senator Lemm: Seconds.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.

Senator Lemm will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1334**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Myrdal Seconded By Senator Lemm

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Lemm	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Lemm

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

REPORT OF STANDING COMMITTEE

HB 1334, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1334 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1334

Testimony of Bonnie Storbakken in opposition to HB 1334
By Bonnie Storbakken, Executive Secretary for the North Dakota Board of Medicine
Senate Judiciary Committee
March 13, 2019

Hello Madam Chair Larson and members of the Senate Judiciary Committee. My name is Bonnie Storbakken. I am the Executive Secretary for the North Dakota Board of Medicine. I am here today to discuss our Board's concern regarding HB 1334.

Our Board is responsible for licensing MDs, DOs, PAs, Genetic Counselors and Fluoroscopy Technicians. Within our licensure process we seek information regarding the applicant's training, work history as well as information pertaining to other jurisdictions where the applicant holds a license. In addition to basic credentials we are authorized to conduct background checks on all applicants before our Board. We also ask specific questions on our application regarding arrests and criminal convictions.

Our Board has been able to intervene and provide support through referrals to the North Dakota Physicians Health Program (PHP) to applicants and licensees who have disclosed arrest activity relating to alcohol or drug use. NDCC 43-17-07.2(6) specifically gives the Board the power to establish a mechanism for dealing with a licensee who has an alcohol or chemical substance dependency.

Sealing these records for our licensees and future applicants would remove one mechanism we have to ensure that we are properly dealing with alcohol and chemical dependency issues with our licensees. This could prevent our Board from identifying an impaired licensee. One impaired licensee has potential to do an extreme amount of damage to the public.

It should be noted that the sealing of the criminal records under these sections of law will not in itself seal any criminal arrest records where a person was finger printed. It has been my experience with the Board of Medicine where an applicant does not disclose a previous arrest and then the information shows up on the criminal background check. When this happens, we ask the applicant about the information. Many times, applicants state I was told that would not be relevant as it was dismissed or pled down to a lesser crime. As such this legislation may not be helpful to all who have been convicted of driving under the influence.

In the least we would seek an exemption from the language of this bill as was done for commercial drivers.