

2021 HOUSE TRANSPORTATION

HB 1336

2021 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Room JW327E, State Capitol

HB 1336
1/22/2021

A bill relating to sealing a criminal record of a driving under the influence offense.
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9:00 AM **Chairman Ruby** opened the hearing.

Attendance

Representatives	
Representative Dan Ruby	P
Representative Tom Kading	P
Representative Rick Becker	P
Representative Cole Christensen	P
Representative LaurieBeth Hager	P
Representative Jared C. Hagert	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Emily O'Brien	P
Representative Mark S. Owens	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Robin Weisz	P
Representative Greg Westlind	P

Discussion Topics:

- A person with one DUI
- A look back clause of 15 years.
- The retroactive period.

Representative Johnson introduced the bill.

Robin Rehborg, Deputy Director for Driver Safety, ND Department of Transportation.
Neutral testimony # 2195.

Karen Mongeon, ND Department of Transportation Safety Director. Responded to questions.

Jesse Walstad, Lawyer, ND Association of Criminal Defense Lawyers, oppositional Testimony #2196.

Discussion of proposed amendment.

Representative Weisz moved the amendment. 21.0406.02001
Representative O'Brien seconded.
Voice vote. Carried.

Representative Jones moved a Do Pass as amended.
Representative O'Brien seconded.

Representatives	Vote
Representative Dan Ruby	Y
Representative Tom Kading	Y
Representative Rick Becker	Y
Representative Cole Christensen	A
Representative LaurieBeth Hager	A
Representative Jared C. Hagert	Y
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Emily O'Brien	Y
Representative Mark S. Owens	N
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Robin Weisz	Y
Representative Greg Westlind	Y

Motion passed. 11-1-2.

Representative Westlind carrier.

10:53 AM **Chairman Ruby** adjourned.

Additional written testimony:

Eric Berg, Fargo, ND #1799

Jeanette Cook, Committee Clerk

January 22, 2021

DR 1/22/21
1st

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1336

Page 1, line 2, after "offense" insert "; and to provide for retroactive application"

Page 1, line 9, remove "occurring after December 31, 2004"

Page 1, after line 17, insert:

"SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1336: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1336 was placed on the Sixth order on the calendar.

Page 1, line 2, after "offense" insert "; and to provide for retroactive application"

Page 1, line 9, remove "occurring after December 31, 2004"

Page 1, after line 17, insert:

"SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively."

Renumber accordingly

HOUSE TRANSPORTATION COMMITTEE
January 22, 2021, 9 AM – Room 327E

North Dakota Department of Transportation
Robin Rehborg, Deputy Director for Driver Safety
HB 1336

Good morning Chairman Ruby and members of the House Transportation Committee. My name is Robin Rehborg and I am the Deputy Director for Driver Safety for the North Dakota Department of Transportation (NDDOT). I am here this morning to provide information for HB 1336. Thank you for your time today.

HB 1336 will amend and reenact section 39-08-01.6 of the North Dakota Century Code, relating to sealing a criminal record of a driving under the influence offense.

This bill may result in further non-compliance under Section 164 for DOT. Section 164 is a federal law that requires states to impose certain minimum penalties for all repeat intoxicated drivers. The Federal implementing regulations define a repeat intoxicated driver as "a person who has been convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period." The three required minimum penalties are a mandatory license sanction, assessment and treatment, and a mandatory minimum sentence.

In the 2019 legislative session, two law changes introduced new mechanisms by which DUI convictions may be sealed or dismissed within the mandatory five-year lookback period required by Section 164, with the result that some intoxicated drivers may not be sentenced as repeat offenders for a second or subsequent offense, and would therefore not be subject to the enhanced penalties for repeat offenses in North Dakota laws.

These law changes resulted in North Dakota being deemed non-compliant under Section 164 and subject to an annual penalty transfer of funds. The penalty transfer equates to 2.5 percent of NDDOT's roadway apportionments for the National Highway Performance Program (NHPP) and Surface Transportation Block Grant (STBG) and equals about \$5.9 million annually. These funds are not lost for the DOT, but they are now under the control of NHTSA not North Dakota. The funds must be used for alcohol-impaired driving prevention programs and/or highway safety improvement program activities only not for constructing needed roads or bridges.

We are in the process of consulting with the National Highway Traffic Safety Administration (NHTSA) to determine how this bill conflicts with Section 164, but we may not have a determination for several weeks.

Since North Dakota is already non-compliant under Section 164, there would be no compounding federal penalty, but returning control to North Dakota is made more difficult.

January 21, 2021

Testimony to the **House Transportation Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Opposition to H.B. 1336**

Chairmen and Members of the House Transportation Committee:


My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process” and to “promote the proper and fair administration of criminal justice within the State of North Dakota.” With that mission in mind, the NDACDL **opposes H.B. 1336** and recommends a **DO NOT PASS** from the House Transportation Committee.

Criminal records severely impair a person’s access to employment, education, housing, public assistance, and civic engagement. The overwhelming majority of employers, colleges, landlords and lenders employ background screening checks specifically to determine whether a person has prior convictions. Section 39-08-01.6, N.D.C.C., in its current form, offers a ray of hope and a rehabilitative incentive to my clients. Since it took effect in August 2019, I have routinely advised DUI clients of the statute’s record sealing provision and that they must remain law abiding for a period of seven years to benefit from this opportunity. I genuinely believe it provides them an achievable goal to strive for and the vast majority take it very seriously.

Across our nation state, and local governments are recognizing the profound and long lasting negative impacts stale criminal records have on individuals, families, and society. Thankfully, North Dakota has been among the majority of state governments to expand record sealing remedies for certain offenses. The record sealing provision of Section 39-08-01.6, N.D.C.C., as passed by the Legislative Assembly only two years ago, recognizes and rewards rehabilitation by helping to alleviate the taint of stale DUI convictions when the individual has demonstrated seven years of law abiding behavior. It implicitly recognizes society’s interest in maintaining an easily accessible record of conviction while simultaneously acknowledging that after an individual has paid their debt to society and demonstrated a lengthy period of rehabilitation the value of maintaining a public record is outweighed by the stigma and collateral consequences of a stale conviction.

H.B. 1336 would arbitrarily deny the safe harbor of Section 39-08-01.6, N.D.C.C., to individuals convicted of DUI prior to December 31, 2004. This would result in an incongruent application of law. There is no responsible reason why an individual who was convicted of DUI on December 31, 2004, should be denied the benefit of the law, when a person convicted of the same offense a day later could reap its full reward. The criminal justice system must be fairly administered, it must ensure equal standing and protection under the law. H.B. 1336, if passed into law, would establish an inherently unfair and inexplicable incongruence. To safeguard against this implicit unfairness and to reinforce the sound reasoning and societal benefit of Section 39-08-01.6, N.D.C.C., in its present form, the NDACDL urges a **DO NOT PASS** on H.B. 1336.

Respectfully,



Jesse Walstad

Regarding House bill 1136, I see no rationale reason to seal the record of someone who commits a motor vehicle offense related to driving under the influence.

This is a senseless attempt to create an unnecessary exclusion. A DUI is a serious offense and the penalties should actually be greater and no grace or second chances allowed.

2021 SENATE JUDICIARY

HB 1336

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1336
3/9/2021

Relating to sealing a criminal record of a driving under the influence offense; and to provide for retroactive application.

Chair Dwyer called Hearing to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Sealing of a DUI offense retroactively

Representative D. Johnson introduced HB 1336 and testified in favor [8:36]

Senator Myrdal [8:43] moved to DO PASS HB 1336

Senator Luick [8:43] seconded the motion

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

The motion passes 7-0-0

Senator Myrdal [8:44] will carry

Additional Testimony:

Mitchell Sanderson, Bismarck, ND testimony in opposition #8099

Hearing adjourned [8:43]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1336, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1336 was placed on the Fourteenth order on the calendar.

Senator,

I do not mind this bill but if you are going to keep those with commercial licenses on the books than I suggest that all government employees stay on as well.

It is a disgusting shame that the DPI superintendent got away with driving distracted, DRIVING DRUNK AND REFUSING A BREATHALIZER!

All of use citizens would not have gotten that treatment. Legal action needs to be taken as a class action to get everyone off that had a DUI after Kerstin's plea deal. If it is good for her it should be good for us!

The government should be held at a higher standard! They are the ones that make the laws and should follow the laws.

Thank you,

Mr. Mitchell S. Sanderson