

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

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Dannan G. Ball
Operator's Signature

10/2/03
Date

2003 HOUSE TRANSPORTATION

HB 1114

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Deanna Holcomb
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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1114

House Transportation Committee

☐ Conference Committee

Hearing Date January 17, 2003

Tape Number	Side A	Side B	Meter #
1	x		1.0 to 48.8
Committee Clerk Signature <i>Laurenth Felt</i>			

Minutes:

Rep. Weisz, Chairman opened the hearing on HB 1114, a bill for an Act to amend and reenact section 39-20-3.1 of the North Dakota Century Code, relating to the action following a test to determine the alcohol content of the blood of a resident motor vehicle operator.

Keith Magnuson, Deputy Director for Driver and Vehicle Services for the North Dakota DOT appeared in support of this Department sponsored legislation. A copy of his written testimony is attached. He clarified that this legislation came at the request of the State's attorneys who were having the problem with the non-service aspects of the process. Also the drafting was incomplete as there some words left out in the bill draft. His request was for the committee to hold the bill for a week or so to allow time for them to get together with the state's attorneys for the wording of an amendment.

Rep. Weisz, Chairman (5.4) To clarify, the intent of the new language is to personally issue the temporary permit they would have to personally contact your office within twenty days?

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Dannan Hall
Operator's Signature

1/21/03
Date

Page 2
House Transportation Committee
Bill/Resolution Number HB 1114
Hearing Date January 17, 2003

Keith Magnuson: That is correct -- there is no real magic in the 20 days -- but we did want to have a balance in there -- where the driver would have time to contact the office -- the real intent is to get the notice and report forms in. May be the mail-in is the best way to go.

Rep. Delmore: Are you assuming guilt on that person without having the blood alcohol test information? If someone signs that they could be giving up their rights.

Keith Magnuson: You are right -- but at the time our intent was that they could choose between the two but I think with new language we can make it more clear so that doesn't happen.

Rep. Dosch: What is the significance of this report?

Keith Magnuson: This form -- this report really starts the administrative process -- it tells them what they have done -- what their blood alcohol content was -- if they failed the test -- what their rights are -- what they need to do to ask for a hearing -- so many days after a hearing -- all of those types of things. All of those things are on there, if they read it -- or they may want to go see an attorney -- If it is never given to them the process never starts.

Rep. Headland: What would happen in the case where a person decide not to sign it -- just refused to sign it?

Keith Magnuson: Right now if they take a breath test or refuse to take a blood test and refuse to sign it -- that is noted by the law enforcement officer -- that starts the administrative process. Its not like getting certified mail -- a lot of people never sign for certified mail -- because they are suspicious -- that's why in certain parts of the law they have gotten around that by having a process serve make service. But they cannot get out of the process by refusing to sign.

Rep. Price: (8.2) This never starts unless the have had a test that shows they had a blood alcohol content -- is that correct?

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Donna Hall
Operator's Signature

1/22/03
Date

Page 3
House Transportation Committee
Bill/Resolution Number HB 1114
Hearing Date January 17, 2003

Keith Magnuson: This process doesn't start and the report and notice form is no completed for the normal adult where our standard of .10 -- unless they have a .10 or higher BAC. Or if they refuse the test. These two things will start the process. If their test comes out a .05 -- they are never shown this form.

Ladd Erickson: McLean County State's Attorney -- I have three brief points to make -- this bill came about -- When the Mandan police were complaining about the stacks of notices not served and complaints -- I asked for a Law School students research project to find out what other states are doing in this area. We are one of a very few who still have the personal service. I believe there are 39 states that have the direct mail of notice. The state lab a couple of years ago said that about 1 % of the tests that came back were below the legal limit -- so the police officers are doing

the job in the field. There are 3 basic problems with current law; they are some unfairness because if a person is offered a breathalyzer test the officer gives, if the test is above the legal limit they are immediately given a report and notice; if they are given the breath test they are not -- what happens then is if there is problem with service, the people that are taking an intoxilyzer go through the administrative process but the people who a take blood test -- there is the margin of error where they don't get served. Thus there is the unfairness. The second problem, the amount of time the law enforcement officer spend in search of these people to try to get service. It is particularly troubling when people from Bismarck get a DUI in Mandan -- the paper work has to be sent over to the Bismarck PD and then they have to go over try and get service in Mandan. The third , is the cagey defendant -- the person that has repeat DUI's and know that they are process is not going to start unless they are served that notice --- therefore take great

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Page 4
House Transportation Committee
Bill/Resolution Number HB 1114
Hearing Date January 17, 2003

efforts to avoid service -- then they go to an attorney -- there is what is known as the Rule 43 process -- that makes it possible for them to not have to appear in court until the jury trial date --

so that the officer's can't catch them in court (at a preliminary hearing) and make service there

-- so there is a problem there in how these things are handled with the cagey defendant. I am

concerned the language in this bill -- one is too have the person agree in writing --? when he is

drunk? I would refer that they be given a notice so that when they sober up the can read it. They

then can within the next 20 days -- they will get the results of the blood test -- do what ever they

are going to do but in any event in 20 days they are going to be mailed notice to their address --

they can claim they didn't get notice best if was handed to them at the time.

Rep. Weisz, Chairman: (12.8) Please go through the procedure currently when one is stopped

-- go through the steps --- so that we know how this would fit in.

Ladd Erickson: He deferred the response to one of the Law Enforcement officers present so that the response would be right on point.

Bob Benson: Bismarck police office since 1991. (13.6) He explained the procedures and the

options of the person arrested and the options of the police officer under the law presently --

he covered the roadside tests - the saliva, urine, blood and breath tests the time required for

various reports, the time required in the personal service of notice, and what happens for a

person from out of town some distance away --- how service is made, etc.

Rep. Weiler: (18.2) 2 questions -- you stop someone for reason -- they need to go to the

hospital -- you can do a breath test right there can't you ? on site? Answer: Yes we can. --

if this process continues on and you go to the hospital and the BAC test comes out to be less than

a .10 say a 0.06 - 0.07 then what happens? Are they set free or are they charge with anything?

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Page 5

House Transportation Committee

Bill/Resolution Number HB 1114

Hearing Date January 17, 2003

Robert Benson: A lot is determined by the facts in the case -- if he was swerving and he hit a couple of vehicles -- he does terrible on the field test -- say he was under the effects of something

else -- the urine test or the saliva test is about the only other thing you are going to get from this individual. The administrative process does not kick in as the BAC was below legal limits but there is still the criminal aspects to be followed through. Here the other aspect support that he was driving impaired. He can still be convicted under the DUI law.

Rep. Weiler : If there is nothing else in their system and the BAC was 0.06 -- then what?

Robert Benson: If I have arrested him -- it is then up to the States Attorney to look at the facts --it is out of my hands.

Rep. Weiler: (21.1) When these papers are mailed -- the report and notice -- when they are mailed to these people and they claim they don't get them, then what happens?

Robert Benson: Currently we don't mail them -- they are personally served. Personally I would like to see these mailed out the defendant -- the duty is on him and not the Law Enforcement Officer.

Rep. Delmore: Under the scenario where the blood test came in under the .10 -- say .06 would he still have to come and talk to you?

Robert Benson: No -- the service is over.

Rep. Delmore: (24.8) So we do have a BAC minimum -- if the .06 or .08 at which you can prosecute them ?

Robert Benson: yes -- but remember there is still the criminal process if warranted. The .10 is the per se law where anything above that you are presumed intoxicated. The criminal side goes to impairment.

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Page 6
House Transportation Committee
Bill/Resolution Number HB 1114
Hearing Date January 17, 2003

Rep. Headland: So that I understand -- today if they don't respond (not served) are they getting out of it then? Are they getting out of the criminal offense?

Robert Benson: It is more work -- there are the two processes --the administrative and the criminal -- there are still being prosecuted. Some of the shady persons do plead to a lesser offense --- and there are a few of those who do get by but not many.

Rep. Thorpe: (28.9) In my mind, if we pass this or as amended -- I believe that the conscientious will comply and the abuser won't. and to follow up -- if a driver is obviously under the influence and if he refused to cooperate can't the officer take the offender off the road?

Robert Benson: Under the current law we can remove them and do. Under this there has to be some language to allow that and maybe it is in there.

Rep. Delmore: Is it possible in this state to request the blood test -- I will not take the breatholyzer and I want the blood test? Is it not legal for them to say which test they want?

Robert Benson: Currently under the North Dakota State Law the decision which test is going to be administered is up to the officer -- and there is good reason for that -- in the Bismarck PD we do the breatholyzer -- however there are times when we do not have an operator for that machine and does take two officers to administer that test-- so we do have to run to get a blood test done. If we suspect drugs we can ask for a n urine sample -- The courts would like the scientific evidence in most cases -- to prove the criminal case but the refusal in the administrative case is enough.

Rep. Galvin: (34.4) In most cases where there is an accident with alcohol involved-- isn't the BAC much higher than .10 ?

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Page 7
House Transportation Committee
Bill/Resolution Number HB 1114
Hearing Date January 17, 2003

Robert Benson: Generally we find it is -- somewhere around .16 for an average.

Collin Rixen: (38.4) I am with the Burleigh county Sheriff's Department. Bob (Benson)

pretty well covered it for the Law Enforcement side of it but I am looking at it from the warrant side of it -- the civil side -- a lot go not served because they have no intention of being found and the word gets out -- they know how to beat the system -- if they can avoid being served by giving us a bad address -- it end up sitting on people desks until to goes away into the file -- right now I have in excess of 2000 warrants and notices -- and may be 15 -20 report and notices attached to the warrants -- nothing happens and they continue to drive until they are stopped or end up in an accident.

Rep. Delmore: (40.7) Would you have any objection to having them mailed to them?

Collin Rixen: In 95% of the cases that's going to work out but in those 5% of the cases it isn't going to make any difference -- they won't give you a decent address anyway.

Rep. Price: If you have one of these addresses on the reservations -- what are your options?

Collin Rixen: I don't really have any options -- I do in Belcourt and they will attempt to serve them and sometime in Fort Totten -- in Berthold and Standing Rock -no. We are serving Tribal Warrants now and that is a step in the right direction to get cooperation.

Rep. Weiler: (42.8) Did you send the report of the reservations (BAC ?) ?

Collin Rixen: No -- we send them a letter telling them that the report and notice is here. I can't go onto the reservation to serve a warrant. Sometimes they don't know that and they will respond to the letter.

Rep. Dosch: In these cases you are waiting for the blood test to come in -- could you file out the notice before and with the proper verbiage pending the blood test ?

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Page 8
House Transportation Committee
Bill/Resolution Number HB 1114
Hearing Date January 17, 2003

Collin Rixen: No we really can't issue them a temporary drivers license until we know the results of the BAC.

Capt. Scott Brand: I am with the North Dakota Highway Patrol and we do support this bill. To further answer Rep. Galvins question -- most of the people involved in accidents who are drunk their BAC ranges from .15 to .25.

There being no one wishing to testify further on HB 1114 either for or against, the Chairman closed the hearing. (48.9)

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1/21/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1114b

House Transportation Committee

☐ Conference Committee

Hearing Date January 30, 2003

Tape Number	Side A	Side B	Meter #
1		x	8.3 to 17.2
Committee Clerk Signature <i>Laurie B. J...</i>			

Minutes:

Rep. Hawken, Vice Chairman opened the discussion on HB 1154. Keith Magnuson, ND DOT was available to furnish information on the amendments they had testified were needed. He furnished a handout, a copy of which is attached. These were drafted after consulting with law enforcement officers, prosecutors, and the Attorney Generals Office.

Rep. Delmore: What is the reason for not asking for drugs testing?

Keith Magnuson: (13.1) You could include that in there too -- but I am not sure about the test and the numbers of days required. That would be up to law enforcement but we don't get into that so much.

In an exchange of dialogue, Keith Magnuson assured Representative Delmore the there would still be the same number of days required for making an appearance and to ask for a hearing. But some of these other questions about drugs get more into the criminal aspects of enforcement.

There was discussion also about the three day requirements for mailing in their licenses.

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Dan...
Operator's Signature

10/2/03
Date

Page 2
House Transportation Committee
Bill/Resolution Number HB 1114b
Hearing Date January 30, 2003

Rep. Price: (14.9) what happens if they don't mail it back within 3 days -- I realize they are already under the temporary permit but what happens -- ?

Keith Magnuson: We ask them to send the license back and the three days is allowed for the mailing time for them to return their license and they get their temporary permit --- but they still have the same ten days they normally have to ask for a hearing. We can suspend their license.

Rep. Ruby moved to approve the amendments. Rep. Price seconded the motion. Motion carried on a voice vote.

Rep. Price moved a 'Do Pass as Amended' motion for HB 1114. Rep. Ruby seconded the motion. On a roll call vote the motion carried 10 Ayes 0 Nays 3 Absent and not voting.

Rep. Price was designated to carry HB 1114 on the floor.

End of record (17.2)

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Danna Ballin
Operator's Signature

1/31/03
Date

38166.0101
Title.0200

Adopted by the Transportation Committee
January 30, 2003

YK
1/30/03

HOUSE AMENDMENTS to HB 1114 htrn 2-03-03

Page 2, line 16, after the period insert "Alternatively, if the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the person who submitted to the blood, urine, or saliva test. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Within three days after the person receives the temporary operator's permit, the person shall mail the person's North Dakota operator's license to the law enforcement agency that made the arrest."

Page 2, line 18, remove "At the time of the test, the law enforcement officer may"

Page 2, remove lines 19 through 22

Renumber accordingly

Page No. 1

38166.0101

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Date: 1/30/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1114

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38166.0100

Action Taken Defers as amended

Motion Made By Rep. Price Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	A		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlie E. Schmidt	✓	
LeRoy G. Bernstein	A		Elwood Thorpe	✓	
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby	✓				
Dave Weller	A				

Total Yes 10 No 0

Absent 3

Floor Assignment Rep. Price

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

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Donna Hall
Operator's Signature

1/30/03
Date

REPORT OF STANDING COMMITTEE (410)
February 3, 2003 10:04 a.m.

Module No: HR-20-1503
Carrier: Price
Insert LC: 38166.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1114: Transportation Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1114 was placed on the Sixth order on the calendar.

Page 2, line 16, after the period insert "Alternatively, if the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the person who submitted to the blood, urine, or saliva test. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Within three days after the person receives the temporary operator's permit, the person shall mail the person's North Dakota operator's license to the law enforcement agency that made the arrest."

Page 2, line 18, remove "At the time of the test, the law enforcement officer may"

Page 2, remove lines 19 through 22

Renumber accordingly

Donna Baller
Operator's Signature

10/2/03
Date

2003 SENATE TRANSPORTATION

HB 1114

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10/2/03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1114

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-13-03

Tape Number	Side A	Side B	Meter #
1		X	1460-2665
2	X		2190-3300
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Senator Thomas Trenbeath opened the hearing on HB 1114 relating to the action following a test to determine the alcohol content of the blood of a resident motor vehicle operator.

Keith Magnusson (ND DOT) See attached testimony supporting HB 1114.

Senator Trenbeath asked if this is an erosion of the rules of evidence where you abrogate personal service of a document that is going to affect the person's driving privileges.

Keith Magnusson answered that he didn't think this would be an erosion. They would still have the same information and it is being done for those out of state right now.

Colin Rickson (Burleigh County Sheriff's Department) (Meter 2070) Testified in support of HB 1114. Spoke to the fact that the notice is currently served at the time of court. There is a percentage of drivers who find a way to delay this event so that administrative sanctions don't come into effect.

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10/2/03
Date

Page 2

Senate Transportation Committee

Bill/Resolution Number HB 1114

Hearing Date 3-13-03

Senator Mutch asked how many days a person who has been apprehended has to respond when he has been found to be under the influence.

Keith Magnusson answered the question by saying that they have 10 days to ask for a hearing.

The whole administrative process has a 30 day window.

(Meter 2360) Discussion on when a person refuses to take a test to determine the blood alcohol level. The law says that, if a person refuses to take the breath or blood test, there are some very serious sanctions.

The hearing on HB 1114 was closed.

There was discussion by the committee concerning personal service.

Senator Trenbeath moved a Do Not Pass. Seconded by Senator Espgaard.

Roll call vote 5-0-1.

Floor carrier is Senator Trenbeath.

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10/2/03
Date

Date:
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1114

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not pass

Motion Made By Senator Trenbeath Seconded By Senator Espgaard

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espgaard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Trenbeath

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

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Dennis Bercier
Operator's Signature

10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 13, 2003 1:22 p.m.

Module No: SR-45-4689
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1114, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)
recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1114 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-45-4689

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10/2/03
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2003 TESTIMONY

HB 1114

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10/2/03
Date

HOUSE TRANSPORTATION COMMITTEE

January 17, 2003

**North Dakota Department of Transportation
Keith C. Magnusson, Deputy Director for Driver and Vehicle Services**

HB 1114

The North Dakota Department of Transportation prefilled ^HHB 1114 as an agency bill. This bill concerns delivery of the Report and Notice form to a driver after an alcohol test is taken by the drawing of blood.

When a driver "fails" the implied consent alcohol test and has more than the legal limit of alcohol in his or her system while driving, the administrative process for license suspension begins with a Report and Notice form to the driver (under NDCC 39-20). When a breath test is used, the Report and Notice is handed to the driver. When a blood test is used, the results are not immediately available.

When law enforcement receives the blood test results, they must try to find a law enforcement officer in the driver's vicinity to personally deliver the Report and Notice form. Many drivers are difficult to find, for various reasons, and quite a few of the Report and Notice forms end up in a file at the law enforcement agency and are never delivered. Because of this, some drivers, often with alcohol problems, don't get the sanctions and attention they need.

HB 1114 sets up a process or procedure where the law enforcement officer may, in certain situations, be able to mail the Report and Notice form with the test results to the driver. This mail delivery is now allowed for out-of-state drivers, but not for North Dakota residents. The proposed amendment would allow the law enforcement officer, at the time of the blood test, to have the person tested agree to either come in personally to pick up the Report and Notice form or have it mailed to their current address.

The department has worked with prosecutors and law enforcement on this serious issue and we introduced the bill at their urging. The proposal is a fair solution to the problem. Both law enforcement and prosecutors can give you their perspective based on practical experience. It is possible, after they have had time to look at this proposal, that they may have some suggestions to make it work even better.

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Donna Ballman
Operator's Signature

10/2/03
Date

SENATE TRANSPORTATION COMMITTEE
March 13, 2003

North Dakota Department of Transportation
Kelth C. Magnusson, Deputy Director for Driver and Vehicle Services

HB 1114

The North Dakota Department of Transportation prefiled HB 1114 as an agency bill. This bill concerns delivery of the Report and Notice form (containing a temporary operator's permit) to a driver after an alcohol test is taken by the drawing of blood.

When a driver "fails" the implied consent alcohol test and has more than the legal limit of alcohol in his or her system while driving, the administrative process for license suspension begins with a Report and Notice form to the driver (under NDCC 39-20). When a breath test is used, the Report and Notice is handed to the driver. When a blood test is used, the results are not immediately available.

When law enforcement receives the blood test results, they must try to find a law enforcement officer in the driver's vicinity to personally deliver the Report and Notice form. Many drivers are difficult to find, for various reasons, and quite a few of the Report and Notice forms end up in a file at the law enforcement agency and are never delivered. Because of this, some drivers, often with alcohol problems, don't get the sanctions and attention they need.

HB 1114 sets up an alternative process or procedure where the law enforcement officer may mail the Report and Notice form with the test results to the driver. This mail delivery is now allowed for out-of-state drivers, but not for North Dakota residents. We will develop an explanatory form to be given to the driver at the time of the blood test.

The department has worked with prosecutors and law enforcement on this serious issue and we introduced the bill at their urging. The proposal is a fair solution to the problem. Both law enforcement and prosecutors can give you their perspective based on practical experience.

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Dan Magnusson
Operator's Signature

10/2/03
Date