

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

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10/2/03  
Date

2003 HOUSE EDUCATION

HB 1153

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10/2/03  
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2003 HOUSE STANDING COMMITTEE MINUTES  
BILL/RESOLUTION NO. HB 1153

House Education Committee

☐ Conference Committee

Hearing Date January 20, 2003

Tape Number	Side A	Side B	Meter #
1	x		3415- end
Committee Clerk Signature <i>Linda Grechauer</i>			

Minutes:

**Chairman Kelsch** opened hearing on HB 1153

**Rep. Bellew, District 38, NW Minot and Ward County.** See Attached Testimony

**Rep. Solberg** While the concept is good. However, I have some serious questions on 1153, on line 11 of this document, Who can submit a signed document?

**Bellew:** I would hope that it would be the local law enforcement.

**Rep. Solberg** This says anyone could submit this signed document.

**Rep. Williams** You say that if this bill is passed, it would elevate local school boards from having to deal with this emotional issue. At the present time, if there is an offense, we follow the NDHSAA policy and procedures. Under this the principal would decide and the parents could appeal, appeal to the school boards. And with the board of the school district. This appears to me that it will be much more emotion on the part of the board. Clarify this if you would.

**Bellew:** School boards enact the NDHSAA guidelines and then go beyond those guidelines. This would make it uniform for all boards.

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**Rep. Jon Nelson** Statement about we should not allow one free crime. Explain this?

**Bellew:** To me the free crime it is the 6 weeks suspension.

**Rep. Jon Nelson** If someone is kicked off an activity for 6 weeks, that could be an entire season.

Often times there is a situation on the fringe area. The unattended associated of someone that is in trouble. This will bring more cases not free up the emotion. You can't disassociated the principal and board in these cases, if this doesn't go through the court system, it is a call of the school system to discipline. The binge drinking aspect of students in ND doesn't really apply to the ones that are involved in the extra curricular activities. They are the ones that are not involved.

**Rep. Herbel** Duration of the school calendar. So if the student is in violation on May 24 and school is out on the 25th. If the student is caught on Sept., they would serve the whole year not 2 days like the other.

**Bellew:** I to have those same concerns. It was to be for a year.

**Rep. Herbel** I realize that their needs to be consequences for things, but I see many non athletes that are doing the same thing and the schools have no consequences for those situations. That is a little unfair, the extra activities are sometimes the only thing kids have to hang on to and that is what is keeping them in school and grades up. And so to punish them doesn't seem right.

**Rep. Hawken:** I believe that if a student is picked up, they do pay a penalty through the court system. They are punished.

**Bellew:** They do go through the courts

**Hawken:** So then they get an additional punishment to get the 6 weeks probation.

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**Rep. Mueller** This is a tough question. A educational philosophy. How you learn is the process of mistakes. I have learned a lot of things. I'm interested in your philosophy on this. We are taking about a person who has made a mistake, and certainly having to pay some consequences. How excessive should that consequence be? And if we aren't reasonable about that, then we have not served that individual well. The question is what is your philosophy about people who make a mistake.

**Bellew:** If it were my child, I would remove him from the activities for that school year.

**Rep. Hunsaker** You will not be in for 6 weeks, and they come back with a better attitude and are ready to do better. we are in the business of constructing lives, we make mistakes, and we get our hands spanked and we come back as better people. I think that if this bill becomes law were going to be saying that we will not give them a second chance.

**Rep. Sitte** If your intent is to tighten up laws on youth. This committee feels that you should do it through the legal system not the school system.

**OPPOSITION:**

**Dr. Kent Hjelmstad, Superintendent of Mandan Public Schools, President of the NDASA and member of the NDHSAA Board of Directors. See Attached Testimony**

(5800) read testimony, Flip tape

**Rep. Norland:** This issue would come up each year, we would deal with each the best we could. Basically, we would find that the 6 weeks, 18 weeks was maybe not the true answer but it was the best answer. And I would guess since you arrived on the board, the same issue has been brought before the board. Schools can go beyond what the ND High School Activities rules, or they can stay with the minimum.

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**Rep. Hunsaker :** 1st offense is 6 weeks, 2nd 18 weeks, 3rd is also 18. I heard there was some community service that can be added, is this true?

**Hjelmstad:** There is a component related to some counseling for possible treatment that doesn't reduce the penalty but it is a option to assist the child.

**Rep. Hanson** Does that penalty carryover to the second year?

**(230) Hjelmstad:** Children receive a fresh start each year.

**Rep. Hanson** Is there any jurisdiction during the summer?

**Hjelmstad:** The HS activities doesn't deal with this.

**Rep. Herbel** HS Activities rules go into effect?

**Hjelmstad:** When practice begins the rules begin.

**Rep. Mueller** Are there schools keeping track and have it carry into the next year.

**Hjelmstad:** If there are schools doing this, it is probably very few. Teams follow image, reputation, and team concept. we don't want to downgrade the child.

**Rep. Mueller** Are there many school districts that have tougher rules of the NDHSA.

**Hjelmstad;** A high percentage use these rules.

**Larry Klundt, Executive Director of NDCEL, See Attached Testimony (600)**

**Rep. Herbel** Do process, if a student has possession of alcohol a week before state tournament, may not take due process before a tournament just days away. He's not guilty until proven guilty.

**Klundt:** If information is brought to the principal. The principal has the obligation to investigate, he/she doesn't need to wait, they can conduct a due process at the school as soon as possible. It doesn't have to go to a court.

**Rep. Herbel to Hjelmstad:** General knowledge on 3rd party allegation and investigation.

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Hjelmstad: If there is a 3rd party that make a substantive allegation, and investigation takes place immediately. If it is gossip, most principal will look into it, but will not be as aggressive. It has to be creditable acquisition, when the allegation has substance. The criminal process moves slower than that of the school. As soon as the school believes there is a violation, they decide local school- judge and jury with parents.

Rep. Jon Nelson Why is this bill before us? Has the roll of parent changed?

Hjelmstad: We have great kids right now with good cooperation with the parents. That was not the case in the 70 and 80's.

Rep. Hunskor Who has the final authority?

Hjelmstad: The answer on my experience is that once the school make the decision and turns in a violation, if they are following the guide. The NDHSAA doesn't get involved. But if they we thought it over and we don't think there is a violation, then the NDHSAA can get involved.

(1731) Alex Kelsch, student of Mandan High School, See Attached Testimony

(1968) Linda Johnson, Director of School health Programs of Department of Public

#### Instruction

Close hearing on HB 1153. Rep. Solberg motioned a DO NOT PASS, seconded by Rep. Sitte

DO NOT PASS, 14-0-0 carried by Rep. Solberg.

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*Doreen Baller*  
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10/2/03  
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Date: 1/20/03  
Roll Call Vote #: 1

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

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB 1153

Action Taken do Not

Motion Made By Solberg Seconded By Sitte

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Solberg

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

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**REPORT OF STANDING COMMITTEE (410)**  
January 21, 2003 7:25 a.m.

Module No: HR-11-0804  
Carrier: Solberg  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**HB 1153: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS**  
**(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1153 was placed on the**  
**Eleventh order on the calendar.**

(2) DESK, (3) COMM

Page No. 1

HR-11-0804

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*10/2/03*  
Date

2003 TESTIMONY

HB 1153

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10/2/03  
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**TESTIMONY FOR HB 1153  
BY  
LARRY BELLEW, REPRESENTATIVE  
MINOT, ND**

**Madam Chairman and members of the Education Committee, it is an honor and pleasure to appear before my former committee.**

**I am introducing this bill not to punish students, but to let them know that they are responsible for their actions. Currently it's up to school districts to deal with such cases, although I believe that most of them abide by the North Dakota High School Activities Association guidelines.**

**My bill, if passed, would alleviate local school boards from having to deal with this very emotional issue.**

**I firmly believe we should not allow one free crime, not only for high school students, but for all citizens.**

**Also, with passage of this bill, maybe we can deter the drinking rates for North Dakota teens. According to the ND Department of Health, binge drinking for adolescents is significantly higher in North Dakota than in the general population in the United States. 41.4 percent**

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***Dan Bell***  
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**10/2/03**  
Date

of North Dakota adolescents have done what is called binge drinking compared to 29.9 percent nationwide. The Health Department said that alcohol use is associated with accidents, liver disease, and incidents of violence. Anything we as a society can do to stop the use of illegal substances can be nothing but good for all society.

Thank you.

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10/2/03  
Date

### TESTIMONY ON HB 1153

By Dr. Kent Hjelmstad, Superintendent of Mandan Public Schools,  
President NDASA, Board of Directors, NDHSAA

Madame Chair and members of the Committee, my name is Kent Hjelmstad, Superintendent of Mandan Public Schools, President of NDASA and member of the NDHSAA Board of Directors. I am here to testify in opposition of HB 1153.

Let me illustrate as I hypothetically roll the clock back about three years in Williston. A phone rings at the home of Mr. Mike Norland . . . "Hi, Mr. Norland, this is the principal of Williston High School. I regret to inform you that I must suspend your son from tonight's play-off football game against Mandan and all other activities for this school year. I have received a signed document from a member of the Mandan Booster Club. It relates that your son was drinking last Saturday night. If you do not agree, you may request a meeting and in about two days we will discuss this issue. I do not have the authority to adjust the suspension, but within a week you could meet with our board to appeal."

I can assure you the emotions of the Norland family would supercede the perceived malice of the state legislature.

There are several reasons why this bill must be opposed. Though we of the HSAA (the schools and its students) are flattered that you would find our arena worthy of your review, I must caution you - it is an arena of the heart, fraught with emotions. A young person quests the privilege of representing his school while his loved ones look on with pride. This is not a topic for the lawmakers of North Dakota. Parents should be the first lawmakers for children. The school, in-loco parentis should assist, and the HSAA through its member schools should set minimum guides. Discipline should be proffered as close to the child as possible.

HB 1153 defies law and logic by seemingly erasing the due process of a child. It also assumes the desires of parents as they raise their children. We all learned and grew by our mistakes of youth. To sound an adolescent death knell based on a youngster's poor choice is not productive parenting. To many youngsters, activities are the platform upon which social skills and citizenry are learned. Excessive punishment is not a pedagogical tool.

Please leave the activities of North Dakota kids in the hands of schools with the blessing and guidance of mom and dad.

Thank you for your attention. I encourage you to give the HB 1153 a Do Not Pass recommendation. I will be happy to answer questions.

*Dorena Ball*  
Operator's Signature

10/2/03  
Date

## Testimony on HB 1153

By

Dr. Larry Klundt, Executive Director—NDCEL

Madam Chairman and members of the Committee, my name is Larry Klundt and I represent the school administrators of North Dakota. I am here to testify in opposition to HB 1153.

There are several reasons why the NDCEL opposes this bill. One is that it appears to violate the minimal due process rights that are required as a result of *Goss v. Lopez* (1975), a United States Supreme Court decision that is considered the "landmark case" when dealing with student suspensions. As a result of this case, the Court established the minimal due process procedures for suspensions in cases that involve participation as a privilege rather than a property right. The requirements are:

- (a) Oral or written notice must be give to the student of the charges and accusations.
- (b) If denied, the student must be given the opportunity to explain the evidence and to give her/his account of the incident in question. This informal hearing must be allowed before the suspension unless the student is a threat to the safety of others or creates an extremely disruptive situation.
- (c) The evidence must support the action of the school officials.

In some situations, a more "substantive due process" is required. The basic difference is that in substantive due process, the student is allowed to be represented by counsel and can produce witnesses. This type of hearing is most often used in an expulsion or when a student is denied a property right associated with a school.

HB 1153 seems to violate *Goss v. Lopez* in that there is no due process afforded the student when a "signed document" that alleges that the student has violated a law regarding the use or possession of alcohol or a controlled substance is received by the principal. HB 1153 would require an immediate suspension for the rest of the school calendar without any due process. Only after the parents have been notified, had a meeting with the principal, and appealed the situation to the school

board, would the student be afforded a hearing on the charges or accusations. Another problem with this bill is that it will provide more severe penalties for student's accused of violating rules early in the school year than those later in the school year. Yet another problem is the "signed document" can come from anyone who wants to make an accusation as there is no restriction on who can provide the signed document. We believe that the process outlined in HB 1153 will not stand the scrutiny of the courts.

The local school officials should make decisions regarding the disciplining of students. They are much closer to the issues and can more easily weigh the evidence. Currently there are mechanisms in place to deal with alcohol and controlled substance violations by student athletes and extra-curricular participants. The NDHSAA has rules with penalties and each school district has its rules and penalties as well. This system has worked and should be left alone.

Thank you for your attention and I encourage you to give HB 1153 a Do Not Pass recommendation. I will be happy to answer any questions that you might have regarding this testimony.

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**Chairman Kelsch and members of the House Education Committee**

**My name is Alex Kelsch. I am a junior at Mandan High School. I am involved in a number of extracurricular activities, football, basketball, and track; Trust in Teens and Concert Band 1.**

**House Bill 1153 requires schools to prohibit students, who were caught using or in possession of alcohol or a controlled substance, from participating in any extracurricular activity for the full school year.**

**I do not use alcohol or controlled substances. I know that it is both wrong as well as against team and school rules for students to be using or possessing alcohol or a controlled substance.**

**The current penalty for violating these rules is a minimum 6-week suspension from all extracurricular activities. This is sufficient. A 6-week suspension is a long time in a high school sports season. It is a punishment that fits the crime. But it still gives the student a second chance. The student can serve their 6 week suspension, learn their lesson and then come back to be involved in extracurricular activities, later in the year.**

**Sports and other extracurricular activities are good positive learning experiences for students. Participating in extracurricular activities deters students from using alcohol and controlled substances.**

**House Bill 1153 would take that second chance away from the student who made a mistake. It would also take away a deterrent for the student not to use alcohol or a controlled substance.**

**A suspension from extracurricular activities for a full school year would do the student more harm than good. And isn't that what it is all about, what is best for the students?**

**I urge a DO NOT PASS on House Bill 1153.**

**Thank you**



**TESTIMONY ON HB 1153  
HOUSE EDUCATION COMMITTEE**

**January 20, 2003**

**by Linda I. Johnson, Director of School Health Programs  
(701) 328-4138  
Department of Public Instruction**

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Madam Chair Kelsch and members of the committee:

My name is Linda Johnson. I am the Director of Safe and Drug Free Schools for the Department of Public Instruction. I am here to oppose to HB 1153.

The intent of the Safe and Drug Free programs, Title IV under No Child Left Behind, is to promote academic success by creating safe and drug free, and positive learning environments in schools. There are two issues with this bill that I will address, one philosophical and the second, implementation.

This bill attempts through punitive measures to attain a drug free environment in the extra curricular domain. The very purpose of a school is to promote learning. Prohibiting a student from extra curricular activities for a year denies that student the chance to learn from the mistake and be given a second chance. We need to create a positive learning environment. Extra curricular activities may be the incentive keeping some students in school.

The second issue deals with implementation and inequities. It is clear that students with an offense in September would be out all year while one in May would be out for less than a month. Also, more clarity is needed in line 11 with the term "signed document". Could the document be hear-say from a parent in another school, another student? Is this student guilty until proven innocent?

Currently under NDCC 15.1-19, "the local school board shall develop policies setting the standards for student behavior and procedures to be followed if the standards are not met." For extra curricular activities, these policies are set by the High School Activities eleven-member board and adopted by local districts. There is nothing deterring the local board from making their standards stronger than what is recommended.

I will be happy to answer any questions.

*Dorena Hall*  
Operator's Signature

1/21/03  
Date