

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1224

2005 HOUSE TRANSPORTATION

HB 1224

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. 1224

House Transportation Committee

☐ Conference Committee

Hearing Date January 20, 2005

Tape Number	Side A	Side B	Meter #
2	X		14.1-52.4
3	X		0-32.8

Committee Clerk Signature



Minutes:

Chairman Weisz opened the hearing on HB 1224 A Bill for an Act to amend and reenact subsection 3 of section 39-08-01 and section 39-08-01.3 of the North Dakota Century Code, relating to the impoundment of number plates and motor vehicles for driving while under the influence.

Rep. Ruby(14.5) This is my next bill dealing with DUI's. I would like to give you a little history to why I am sponsoring this bill. It is better to have a full hearing, but it is very difficult to get any one that wants to make any subsequent changes, without a full hearing to weigh all the consequences or options and make sure that things are done in the proper procedures. I have looked at different areas of what we can do here and through extensive research from my constituent who will testify today, is dealing with the results of not following the laws we have now. North Dakota has some very good laws. The judges have the ability to do some very profound things. They can be very tough, if they so choose. For some reason, I don't know why,

they don't do something and repeat offenders get off time and again. Tom Palmer mentioned in the last hearing, it is going to take something like that happening to you. Someone getting killed for something to be done? My answer to that is no it is not and I am very thankful that I do not have to live through the experiences that two gentlemen are living through today. Seeing what happens to their children. We have a responsibility to see what can be done. See where the people who consistently disregard the law, should be held accountable to the law; otherwise, why do we have the law, if we are afraid to enforce the laws. If we are afraid to hand out punishment, I understand there is some real serious problems in the prison system and I would hate to see where people are allowed to continue doing what they are doing because we don't want to deal with them in the prisons and county jails. However, there are other punishments that we can do. People say I am glad you are looking at other things other than just putting them in jail.

Punishment in fines in another bill later. One thing I will say about this that many of the things that Mr. Reile talked about dealing with some of the advantages with technology we have, that maybe we can use them to help monitor by the courts their penalties that they are handing down I do support this and I did have legislative counsel get some information for me. As one of the testifiers in HB 1225 related to you there are some real problems dealing with our young people and this is of course, go up and get old enough to go to bars, they don't have DUI's before they are 21 they certainly continue their behavior and get more violations in the future. ND

Commission on Drugs and Alcohol was form by executive order issued by the Governor in 2002. The commissions charge was to evaluate substance abuse in ND by exploring their inter relationship among substance abuse, prevention, education and enforcement programs designing procedures to coordinate resources in the substance abuse area which is a big issue. Also find

avenues to insure future coordination of resources designed to address substance abuse issues.

Through a source of meetings the commission received information regarding funding sources, existing programs, insurance coverage, aid in prevention treatment and enforcement. The information was overwhelming and highlighted the impact on already scarce resources. That is why my study that I am proposing later would narrow it a bit to just alcohol problems. Some of the last statistics that you heard in the last testimony eluded to what this commission found was that students between the ages of 7 - 8 th grade said they had rode with someone that had been drinking 1 or more times in the past 30 days. Grades 9-12 that number went up to 43.5%. Had at least on drink on one or more dates in the past 30 days: Grades 7-8; 16.9%; Grades 9-12; 59.2%. Had 5 or more drinks in a row within a couple of hours in the last 30 days: Grades 7-8; 8.8%; Grades 9-12; 41.5%. That is almost as high as those who just had one or more. This is a big problem. In relation to the bill; in the first section this part of the bill will remove that it is the second conviction in 5 years or the 3 or 4th conviction in 7 years. However, the court shall order the department to impound the motor vehicle plates of the motor vehicle operator by the offender in which the offender has any interest, as an owner on the certificate of title at the time of the offense for the duration or period of the suspension or revocation of the defenders driving privilege. If the court orders the plates, the court shall maintain possession of the plates. In some cases the court already has the ability to do this. It is very seldom ever used. When we were here for the organizational session, Keith Magnusson from DOT came to me and said we have actually had some plates sent to us. He wasn't sure what to do with them. Law says they keep them and return them when they get their license back. DOT has a bill where they are addressing this very issue. Putting into law some more teeth to their ability to do this. However,

one of the provisions it has is a clause the allowed for hardship. In case of someone who had only one vehicle and it impacted the family. It is hard for me to hear that when you consider the hardship that these gentlemen have suffered. You can not compare loosing a vehicle to loosing a child. Constitutionally they may have to do that, but I would like to make sure is that with every exception it is basically a loop hole. You can bet with a hardship clause every person who is going to have their plates removed, will file an appeal that it is a hardship. Hopefully there are some guidelines to determine what is a real hardship. The second part of this section deals with after the 5th conviction in 7 years, which by the way is a felony. The court shall order motor vehicle operated by the convicted person in which the convicted person has any conviction on this particular title for the motor vehicle to be ceased or sold. I had language put in on both of these where the person has any interest in. Apparently there are some real problems that could be associated with that and there is someone here from the attorney generals office here who will elude to that provision, especially in removing the vehicle. If their name is not on the title law does not allow us to take that vehicle. Civil forfeiture, was brought to me by the attorney generals office, just in the event of any felony you can take a car. If they are transporting drugs or robbing a bank you can take their vehicle.

Chairman Weisz(27.6) Was it your intend for the plates to go to DOT through the court? It could also be some electronic notification. Rep. Ruby said sure.

Rep. Meyer(28.3) I understand your intent, but one of the major problems I have with this bill is that you are telling a young, married woman she would have to get divorced. What is she suppose to do? They have one vehicle; she has no way to take her kids to school today or go to work. Now she was home watching the kids when this DUI took place. It is not her fault in any

way and they only have one vehicle. I understand your intent, but the realistic in Western North Dakota, we don't have public transport. You don't want to penalize a spouse because of what their other spouse does. Short of divorcing this person, that would be her limit of what she could do. If we are serious about this, let them install breathalyzer; breath locks on the vehicle, and put in a fiscal note for it.

Rep. Ruby I know there are some that have one vehicle, but the majority of the people have two or more. Second of all I think that there is nothing from excluding them from buying another one. This is another form of punishment, basically. This is part of a fine and they would have to buy another vehicle and it might have to be in her name. She could drive her vehicle. However, first of all I would like to say if they have 5 DUI's in 7 years they have a lot more problems with their married life than a loss of a vehicle. If they know that they have 4 in 7 years; they would put the whole vehicle in her name. The people who are going to disregard the law are going to find loopholes around it. I would like to see it stepped up so the judges will use that provision more often.

Rep. Meyer You can not penalize the person that did not commit the crime. She is trying to hang in there. These people are trying and you cannot take a married woman, especially a young one, and the determining factor is money and maybe that is punishment, but you are punishing her also. That is why I have a problem with the way that is written.

Rep. Ruby(32.5)If we use that criteria to it how would we say we could not impose a fine. Does not a fine take money out of their household that she would have benefit from? Or thrown in jail, does that not take money from the household? Where do you draw the line on this. Where do you say this is going to affect the family any more than any of the other penalties we have? I

understand where you are at and I appreciate the conservation and discussion because that is one of the primary reasons why the hardship clause is put into place on the DOT's bill. We can certainly look at those and see. My concern that it is a loop hole.

Keith Magnusson: NDDOT(33.7) We are here in support of HB 1224. (see attached testimony)The current procedure is working, not that judges are using it. Federal law means all vehicles owned by the offender. In our bill we do have a provision in there that the judge can have a hardship. That is something we had put in before we redid it.

Chairman Weisz(39.2) Do businesses automatically qualify for the hardship exemption.

Keith Magnusson: They don't automatically qualify in the draft we have. It is a federal hardship only extends to spouses or co-owners of the vehicle. Federal law will let us exempt out commercial vehicles. When we talk about this funding away from highways into the safety account it is hard to put as much as possible on the highways using that hazard elimination section and still comply with the transfer law. We find ourselves doing hazard elimination on many projects where there would really be nothing done to the roadway for several years. Then we are going to go and tear up the hazard elimination work that we have done. If congressman remove the exception, which have been in a couple versions of the federal highway preauthorization, then we won't be able to put these funds back into highway construction. It is really a good thing to look at repeat offenders. I hope Rep. Ruby goes through with this study; because there are other areas we need to look at. One is a problem with suspended drivers driving anyway.

Rep. Ruby(41.8) Your intent would be to remove the plates of all the vehicles. In that case if someone had filed for a hardship case like Rep. Meyer was concerned about that a judge would

then under that clause allow one vehicle to retain the plates so they would have some sort of transportation because of the rural areas.

Keith Magnusson:(42.9) We have several purposes there. We said safety, but we want to satisfy the federal mandate. The federal mandate talks about all of the vehicles owned. I am not concerned with the vehicles they do not own. The key is the offender should not be driving at all.

Rep. Meyer(44.1) If we are serious about people not driving, you can take a license off a vehicle but people can still drive it. With an interlock. Statistics from the state of Washington and many other states have glowing reports from those states using interlock device. If you breath into it and have any alcohol including mouth wash you don't go anywhere. Now if you take the license off it it still can go. I think it is more beneficial for federal funding to use the interlocking system.

Keith Magnusson: During the time you weren't on this committee there were interlock bills a couple times. We were looking at something we could get through the legislature and were not able to do that. The interlocks would not be put on until they get their license back. That is what the federal law talks about. The study needs to get at those people who drive without a drivers license.

Rep. Thorpe(45.6) It does get frustrating; back to back with these same issues. Could you just tell me how the law is right now. How do we handle DUI's? What happens? Can you explain it? I thought we had laws in place that would stop this abuse. We can keep passing laws, but it does not look like we are accomplishing anything.

Chairman Weisz We have requested the department furnish us a cheat sheet of DUI laws and how they work.

Rep. Meyer(47.6) Are interlock satisfactory, but we just can't get them passed through the legislature?

Keith Magnusson:(47.8) That is what I meant by them not being satisfactory.

Rep. Meyer But they are very satisfactory and comply and they work excellently. Right? Keith said he has not disagreement with that.

Rep. Vigesaa(48.3) You talked a little bit about commercial vehicles and I am sure that there are some in business out there that license their vehicle in their company name for tax purposes or whatever. Your interpretation of this is that commercial vehicles would be except from this type of ruling?

Keith Magnusson: Commercial vehicles in ND are designed for 26,000 lbs. and that type of thing. Here we are looking at ownership. If it is owned by a cooperation, then it is now owned by the individual so it would not come under this law. That does not mean the offender can drive, it means that the vehicle would not come under this.

Rep. Ruby (49.4) So if an individual just titles a vehicle in his company name and goes out an offends it would not be considered a commercial vehicle, but it is not titled in his name, but his business name.

Keith Magnusson: The federal mandate talks about all vehicles owned by the individual. That doesn't mean you as a legislative body can't go further and change that.

Rep. Ruby(50.2) The judges actually had the authority to hand that down as a punishment. What those bills were intended to do was to mandate that after a certain number of violations; if that is correct, why do you see that the judges aren't using that punishment at this time even though they have that within their authority?

Keith Magnusson:(51.0) They haven't been using the tools that they have. It become cumbersome to take plates. The other is there is really no vender for interlocks in ND. There won't be until we have a mandatory law and there is enough business. They have a law down in South Dakota.

Rep. Price How would you handle leased vehicles?

Keith Magnusson: At least a federal mandate doesn't get vehicles they don't own. That doesn't mean the legislature can't address that. You could make it clear.

Tape 3 Side A 0-32.9

Rep. Dosch If they quite making their lease payments I am sure the leasing company would come back after them. Getting back to leased vehicles Rep. Vigesaa has a car dealership. I don't know what his ownership status is if it is a sole partnership and he has 20 cars on his lot? I am sure Rep. Vigesaa probably has a corporation, if he is smart. It could extend that far. If it is a corporation and he owns those vehicles how far does that go out? That is my question?

Keith Magnusson:(.9) We will look at the title of a vehicle and if it is a partnership or LLC, the entity owns this. The individual does not own those vehicles and there are tax consequences in moving vehicles in and out of titled ownership.

Rep. Dosch (1.2) What happens if there is a loan or lien against a vehicle?

Keith Magnusson: That comes in if you were going to confiscate and sell the vehicle and those statues already provide for that with that lien holder.

Rep. Dosch(1.5) Like we indicated it is in law on page 2 of the bill line 15 & 16 indicate that the court may require the installation of these interlock. It is simply that they have not.

Keith Magnusson: It is a current law and has been there for years and we encourage the court to experiment with it. It is a federal mandate and we are not complying with that. We would like to comply with them.

Chairman Weisz Anyone else in support of HB 1224?

Ronald and Jan Ryckman (SP?)(2.2) We lost a grandson in the spring of 2003. He was hit by a drunk driver. They had a trial and he was convicted of manslaughter and the judge didn't have a sentence for another three months. The sentence was 2 years in prison, rehabilitation. Eight years probation. What is our 12 man jury for? It is a waste of money. His blood alcohol was .21. He was a repeat offender many times, which was brought out in trial. I can only say I now you can make a difference. Our situation is over, our grandson is gone and the drunk driver is in rehab, but you can make a difference so nobody has to go through what we have gone through. It took a year and a half to get him in there, but he never served a day in jail. Another thing is victim rights? Offender said he had sympathy, but this was an accident. This is not an accident. When a drunk goes out and drinks and drives it is not an accident. What good are your laws, if you are not going to enforce them?

Tom Halbach(SP?) (4.7) Held up a picture of his daughter, Sarah. Sarah is dead that is a fact. There may be isolated cases where there is somewhere where someone may rely on a single vehicle. When you are talking to victims. A victim would appreciate it if you bring up the facts. If you check your e-mail and are wondering about undo hardship, I can give you a few better examples than any of you can. Interlock devices did not make it through the 1999 legislation because the senate transportation canned the bill. They said if a convicted offender has three or four vehicles that would put them into an undo hardship in order to install and interlock system.

I think interlock devices are a good thing. They are a step in the right direction. Something we hear allot about, but we are talking about a habitual drunkard. With ignition interlock devices those dependents that rely on that same vehicle where do you think that static 7-9 graders comes from? That single vehicle is allowing a habitual drunkard to endanger the lives of children. It is that simple. Come over here daddy, blow into that for me. It can and it will and it does happen. The alcohol consumption that goes on in our universities is 23% higher than the national average. We are not just talking about drinking and driving. We are talking about alcohol abuse. It has so many impacts through the public with domestic violence and rape included. (went on about the drug and alcohol abuse for awhile) There are loop holes all over this state for the enforcement of alcohol abuse. After 4 times, if they are not a menace, when will they be a menace? If driving in this state a privilege, when is that privilege abused. I think it is abused allot sooner than 4 times. Compared interlock devices with victim's lives. That is one of the reasons the Senate canned the bill. Where there is a will, there is a way. I don't see allot of will, except for a few. You need a plan; domestic violence and children. We are here to save the lives of our children; what are you doing there?

Chairman Weisz Anyone else here in support? Anyone in opposition of HB 1224?

Bob Bennett, Ass't Attorney General:(14.9) Name on the certificate of title just says an owner. If someone has an interest in that as a lien holder, how is that money disbursed. Specifically relating to subsection 2 of the bill; there is no procedure set up to how it is going to be done as far as funds. Rep. Ruby asked that I supply information to the committee. We have had several long discussions with him about this bill relating to some concerns about implementation. It related to the difference between forfeiture of a vehicle and taking the vehicle

after the conviction. The bill sets up a mandatory taking of the vehicle upon conviction. Until you have a conviction this bill gives nobody the ability to take a vehicle. Could be along time between the events and the final conviction. Only upon conviction does it trigger this bill.

Under civil forfeiture that is independent of a conviction and is key to the offending property. It is what we have in the drug law and in Chapter 29-31.1. is the general forfeiture statute. It states that we can have a court order ceasing and selling and confiscating and forfeiting property that is used in the commission of certain crimes. The action is against the property and not the owner of the property. We have to give notice to a lien holder or anyone that has interest in that property. There is a civil complaint filed, the judge then holds a hearing and determines whether or not the conditions of the statutes are met. The interest of that individual will be sold. Subject to lien holders or other people who may put a claim on the property. Then that money will be disbursed by court order. It maybe to a county general fund or state or local drug funds. The court will determine the disbursement. This forfeiture process is a problem. I can't fix it with a mandatory conviction, if you are really looking at some way to claim a persons vehicle. It can be very difficult to deal with a mandatory conviction for many reasons. Not only because of the implementation process dealing with the conviction, but also the fact that there are certain Supreme Court decisions that states if this is in fact punishment, you have to have a separate finding by a jury or court to support that as an additional punishment. This may be an additional punishment over and above what your maximum punishment is allowed by law. Which really puts another step in the whole process. It does become cumbersome under the US Supreme Court decision. If the instance that this is a mandatory punishment upon conviction, I don't know what we can do with it. You can pass it, but I can never guarantee that we are going to be

able to do this. There are some options. If there is some discretion put in it is possible in our current laws 39-31.1 we can currently seize and forfeit a vehicle that is used in the commission of a felony. We use this allot; when used in cattle thief or drug cases. If this is limited to a felony offense it is very likely the current law will cover it under the civil forfeiture laws. We have to go through that civil process with hearing with individuals etc. It could be covered under the law. It is also possible that 29-31.1. That chapter might be redefined to include vehicles owned and operated by a subsequent felony offender. This is a separate civil case that is brought against the vehicle. The law is right now is that it may permit it. The direction of the bill would go more toward the forfeiture area. It could be done through that chapter 29-31.1. It would be a vehicle used in the commission of a felony. It would not apply to all their vehicles, just the vehicle being used Chapter 29-31.1 is the general forfeiture statute that is motor vehicles used in the commission of a felony. It is an action against the vehicle; not the person.

Rep. Ruby(22.3) Not used in a DUI. Have you ever heard of this used in DUI's after five felonies and fines?

Bob Bennett: No, not as far as the DUI cases. Used it in Minot in the in a case where the individual used the vehicle in the commission of a crime so we confiscated it. It was not against the individual; it was against the vehicle.

Rep. Delmore(23.1) Have we used forfeiture of vehicles or any other personal property in any of the menthe cases?

Bob Bennett: Much of the property we have in the menthe cases are contraband itself. That is contraband forfeiture and that is illegal in itself to possess. As far as the vehicles go, if the lab is in the vehicle there is no question the vehicle has been seized. It is allowed under our drug laws;

the immediate seizure of those vehicles. They are impounded and they are sold. Quite often what happens is during the criminal case defendants in those types of cases will agree to the forfeiture of the vehicle. Everyone of interest would have to agree to it. But unfortunately, like every law, people buy old vehicles to use in drug deals and that is what we are allowed to seize. (when on to explain more examples)

Rep. Ruby(24.4) How many of those have more than one owner on the title?

Bob Bennett: I don't have any static's for it. I know from personal experience I had 35 forfeitures going at one time. We gave notice to everyone with interest. All we can sell is the interest of the defendant. The majority of the time the other joint interest owners will give us their rights if they are owing on it. Many times we sell them back and the funds go into the forfeiture fund.

Rep. Thorpe (25.9) I am trying to get a feel what this is going to do. Is it going to accomplish what we want. What percentage of the vehicles that are seized, that an individual has an equity.

Bob Bennett: The smarter criminals they drive the old cars when committing a crime. We do have individuals loaded to the hilt, and they may have no interest. There are times that the vehicles are not seized by the agency because they have done a check and found out that the loans are so much that their equity is so little that to file a civil case and go through the process it is not worth it. Number two it is not a car law enforcement wants, and by paying off the lien. Number three, there is not enough money for them to take the risk of the impound lot if it is going to be stripped or damaged and they would be liable, either to the lien holder or owner for the damages.

Rep. Thorpe(27.7) I am wondering if what we are doing here, will do what we expect.

Rep. Owens(28.0) I just want to clarify what you last said. So when they are upside down on the car. Are you telling me it's upside down and it is not worth it so don't take it?

Bob Bennett: There are times that that happens. When we are looking at forfeiture we are looking at forfeiting the interest of the owner. We may take the vehicle, but all we can sell is their interest and if your lien holder or someone else comes in and bids, even the owner can come in and bid on the thing, we are looking at what exactly is it going to cost for us to get that vehicle and sell that vehicle? Sometimes we are only selling it for the finance company since the amount owing is so much.

Rep. Owens So seizing the vehicle would be insuring they can't drive the vehicle. I would hope that if we decided on that, we wouldn't decide whether or not they were upside down on the loan. We would just pull it if we have to.

Bob Bennett: Forfeiture is the vehicle or properties used in the commission of a crime. Rep. Ruby, this turns the who concept of his bill on it's head. This is why it is hard to think how I can fix this bill. By fixing it we change the bill. We change it into a situation where the concept now is we have the conduct or the interest for the individual really is irrelevant, except where it relates to how the vehicle was used. A person does not have to be convicted of a crime to have the vehicle taken. This is an action against the vehicle; but we still have to prove in the forfeiture that they were using the vehicle during the commission of a crime. The remedy is that we are going to remove this offending property. It is not on the individual for what they did. The current bill says we are going to punish them for what they did. The forfeiture bill says we want a determination this property was used in the commission of a felony.

Chairman Weisz (32.6) We will close the hearing on HB 1224.(32.8)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. HB 1224

House Transportation Committee

☐ Conference Committee

Hearing Date February 10, 2005

Tape Number	Side A	Side B	Meter #
2	X		23.-33.0

Committee Clerk Signature



Minutes:

Chairman Weisz reopened HB 1224.

Rep. Kelsch explained the amendment.

Chairman Weisz on the second page change the may to shall and getting rid of all the other language.

Rep. Dosch(25.8) suppose SB2102 passes in which the license plates are taken off vehicles and we have this bill pass as well for the interlocks but they won't be able to use them on the vehicles since they won't have license plates?

Chairman Weisz I would assume if either passes one or the other would be killed so there would be only one valid bill. I don't know if the impounding of plates will pass, that is why I think we need to do this. Then we have two vehicles downstairs. One we hope will pass both chambers.

Rep. Delmore How much money are we really going to lose if we don't do this?

Page 2
House Transportation Committee
Bill Number HB 1224
Hearing Date February 10, 2005

Chairman Weisz (28.3) The new federal highway bill, that amount will be about 6 million, will end up in this fund. If this does not pass we could loose this money completely from the FEDS. They have a narrow definition of what hazard litigation. Painting the white strip does not count. In some cases guard rails do not count either. There are allot of games that are played on funding.

Motion Made By Rep. Kelsch Seconded by Rep. Hawken on amendment

Voice Voted carried. No opposition

Motion Made By Rep. Hawken Seconded by Rep. Ruby

Do Pass As Amended 13 yes 1 No 1 Absent Carrier: Rep. Kelsch

(33.0)

House Amendments to HB 1224 - Transportation Committee 02/11/2005

Page 1, line 1, remove "subsection 3 of section 39-08-01 and"

Page 1, line 2, replace "the impoundment of number plates" with "ignition interlock devices"

Page 1, line 3, remove "and motor vehicles for driving while under the influence"

Page 1, remove lines 5 through 21

House Amendments to HB 1224 - Transportation Committee 02/11/2005

Page 2, line 3, remove "1."

Page 2, remove lines 10 through 14

Page 2, line 15, remove "3." and overstrike "may also" and insert immediately thereafter "shall"

Page 2, line 16, after "appropriate" insert "for a second or subsequent violation of section 39-08-01 or an equivalent ordinance within five years"

Renumber accordingly

Date: 2-10-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1224

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass As Amend

Motion Made By Rep. Hawken Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair.	✓		Rep. Meyer	✓	
Rep. Bernstein	✓		Rep. Schmidt	✓	
Rep. Dosch	✓		Rep. Thorpe		✓
Rep. Iverson	✓				
Rep. Kelsch	✓				
Rep. Owens	✓				
Rep. Price	absent				
Rep. Ruby	✓				
Rep. Vigesaa	✓				
Rep. Weiler	✓				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Rep. Kuloch

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

REPORT OF STANDING COMMITTEE

HB 1224: Transportation Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1224 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "subsection 3 of section 39-08-01 and"

Page 1, line 2, replace "the impoundment of number plates" with "ignition interlock devices"

Page 1, line 3, remove "and motor vehicles for driving while under the influence"

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2005 SENATE TRANSPORTATION

HB 1224

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1224

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-04-05

Tape Number	Side A	Side B	Meter #
1		x	1110-4950

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Trenbeath opened the hearing on HB 1224 relating to the impoundment of number plates and motor vehicles for driving while under the influence.

Representative Dan Ruby (District 38) Introduced HB 1224 and explained that it had been changed from the original version. The first version dealt with confiscating plates after a certain number of offenses and eventually confiscation of the vehicle after the five offenses in seven years. As the Senate passed out the plan from DOT that confiscated plates, he agreed to change this bill. HB 1224 was amended to address the issue of people who have been convicted of subsequent violations, Section 39-08-01, or equivalent ordinance within five years. The provisions to use the breath interlock device is in our statute at this time under "may". The problem with this, even though it says "may", is it is never used because there are no companies that will set up shop here in this state. If the change is made to "shall", he feels there would be companies that will be willing to have places that would install them. These devices would be

on the vehicles and would need to be blown into for the vehicle to start and blown into periodically to continue operation of the vehicle.

Senator Warner asked what happens if we mandate this and there is still no one to install them.

Rep. Ruby didn't necessarily have the answer but said he would definitely work with DOT. He would personally contact companies and ask where they would be able to locate or if they could be ordered and installed by someone here who deals with electronics. It is possible that dealerships could put these on as optional parts.

Senator Warner asked about the cost and who would bear the cost.

Rep. Ruby thought the cost was between \$100 - \$150 per unit and the cost would be the responsibility of the person who is required to have it. It would be part of their fine or penalty.

Senator Espegard asked if there is a fiscal note with this.

Rep. Ruby said that none was given by the DOT or as it passed the House. The cost of the unit is the responsibility of the offender.

Senator Trenbeath asked if this would be installed during the time of suspension or commence after the suspension.

Rep. Ruby said his thought would be during the time of the suspension -- during that time they are not allowed to drive. (Meter 2065)

Senator Bercier asked about multiple owners of the car and one is in good standing.

Rep. Ruby said there would be some burden on the other drivers. (Meter 2190)

Senator Espegard said another problem is multiple cars in the family.

Rep. Ruby there are so many ways people can find loopholes to get around it and the worst ones will probably find a way around it.

Senator Trenbeath asked, if there are so many ways around it, why would we want to do something that is predictably ineffectual. Why do we not trust the judge to decide whether or not it ought to be installed, but we do trust him/her to determine the amount of time it needs to be installed?

Rep. Ruby said his thought is, if the judge knew that in certain cases this was going to be the right way to go, they should have been giving that as a punishment. As of yet, they're not at all. He didn't know if that was because they don't think they are effective. Apparently the federal government thought they were effective because they required certain language to be in the laws of the states.

Senator Tim Mathern (District 11) Testified in support of HB 1224. The bottom line is they want to get drunk drivers off the road and this may be one vehicle to do that. A recent study from the National Survey on Drug Use and Health found more than 31% of North Dakotans, age 12 and over, said they have had five or more drinks in one sitting during the month before this survey was done. North Dakotans have 11% rate of alcohol dependence and abuse which is the highest in the nation. North Dakotans have the lowest perception of a problem when it comes to drinking, in this survey. He was interested in getting on bills that address the problem without throwing a lot more people in prison. This is one potential way. It doesn't solve all the issues but it offers one alternative for society. Using these machines would actually keep some people who are drinking off the road.

Senator Trenbeath asked why he was not content to let the judge make the decision to use that device but content to let the judge make the decision whether or not to seize the vehicle.

Sen. Mathern replied that he believes it is important to give the judges discretion but he doesn't think it is full discretion. This is an area where we have provided some discretion and they have not used it. He doesn't know if this works but feels that it should be given to the judges to do and look at it after a few years in place. If it works, maybe they will have become educated and make it part of the system. If it doesn't work, then it can be taken off.

Senator Warner asked if Minnesota uses this device.

Sen. Mathern replied that he did not know.

Keith Magnusson (ND DOT) See attached testimony in support of HB 1224.

Senator Trenbeath asked how many interlock devices would have been used in 2004 if this had been law.

Keith Magnusson said there were about 1500 repeat offenders.

He continued and offered information that South Dakota has an interlock law. Companies have said that if the business is there, they will come.

Senator Trenbeath said the long and short of this bill is that we don't need this bill for federal compliance because of the actions taken earlier in the session. And if we did need this bill, it doesn't comply with the federal mandate.

Keith Magnusson said that was correct.

Senator Espegard asked about a fiscal note.

Keith Magnusson said there is no fiscal note on this because there is no cost to any government entity. The testimony they have had from the companies is there is a monthly charge of \$60 - \$120 per month/per vehicle paid by the driver.

Julie Hallamy (on behalf of her family and herself) See attached testimony in support of HB 1224. (Meter 3840) A friend of the family, Fred Gantzer, read her testimony.

Fred Gantzer testified in support of HB 1224. (Meter 4200) He defined an undue hardship as it applied to the care of his god daughter who has been in a coma due to an accident involving a drunk driver. He said if a person can afford three or four vehicles, put gas in them, and pay for the insurance, then he/she can afford to pay for an interlock. If he can't afford interlocks for three or four vehicles, then let him get rid of some of them.

Senator Espegard asked if the traffic interlock system would have saved his god daughter.

Mr. Gantzer said he wasn't sure. He said he was sure this would save some and if only one, it would be enough.

Ronald and Joann Ryckman appeared in support of HB 1224. (Meter 4850) They said the interlock system would have saved their son.

The hearing on HB 1224 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1224

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-11-05

Tape Number

1

Side A

x

Side B

Meter #

2050-2500

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Trenbeath opened HB 1224 for discussion.

Senator Warner motioned a **Do Pass** on HB 1224. Seconded by **Senator Nething**.

Senator Trenbeath clarified that the law, as it stands, would allow the courts to order the interlock device installed. The amendment would require them to be installed for a second or subsequent violation of 39-08-01.

Discussion followed on the funding argument. **David Sprynczynatyk** clarified that either this bill or the Department bill that came out of the Senate has to be passed into law in order to meet federal requirements for funding in the DUI laws. He also informed the committee that bill had been heard in the House and an amendment was added, at the request of DOT, defining the second offense.

Senator Warner withdrew his motion of **Do Pass** with permission of the second.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1224

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-17-05

Tape Number	Side A	Side B	Meter #
1	x		80-475
1	x		540-800

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Trenbeath opened HB 1224 for discussion and action.

HB 1224 is the interlock bill. He reminded the committee that earlier they passed out of committee the mandatory license plate confiscation bill. For federal dollar purposes only one of the two needs to be passed.

Senator Warner motioned a **Do Pass**. Seconded by **Senator Nething**.

There was further discussion that the other bill mandated pulling the plates although a court could make an exception for family members. This bill does not address that. Any lawful driver could blow into the machine and, as long they didn't have alcohol, could drive the vehicle.

Senator Trenbeath said this one leaves some court discretion to a period of time the court deems appropriate. He asked David Sprynczynatyk if that language, "for a period of time that the court deems appropriate", was acceptable to the feds.

David Sprynczynatyk replied that, as far as they know, it is.

Page 2

Senate Transportation Committee

Bill/Resolution Number HB 1224

Hearing Date 3-17-05

As per Chairman Trenbeath, the vote was held open for Senator Espegard.

Roll call vote 3-3-0. The motion fails.

Senator Trenbeath asked for another motion.

Senator Bercier motioned a **Do Not Pass**. Seconded by **Senator Mutch**.

Roll call vote 4-2-0. **Passed**. Floor carrier is **Senator Trenbeath**.

Date: 3-17-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 1224

Senate

TRANSPORTATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By *Sen. Warner* Seconded By *Sen. Nething*

Senators	Yes	No	Senators	Yes	No
Senator Espegard		✓	Senator Bercier	✓	
Senator Mutch		✓	Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman		✓			

Total (Yes) 3 No 3

Absent 0

Floor Assignment

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

Date: 3-17-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 1224

Senate

TRANSPORTATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By *Sen. Bercier* Seconded By *Sen. Mutch*

Senators	Yes	No	Senators	Yes	No
Senator Esguard	✓		Senator Bercier	✓	
Senator Mutch	✓		Senator Warner		✓
Senator Nething		✓			
Senator Trenbeath, Chairman	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment *Senator Trenbeath*

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

REPORT OF STANDING COMMITTEE (410)
March 17, 2005 10:50 a.m.

Module No: SR-49-5246
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1224, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)
recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1224 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1224

HOUSE TRANSPORTATION COMMITTEE
January 20, 2005

North Dakota Department of Transportation
Keith C. Magnusson, Deputy Director

HB 1224

The North Dakota Department of Transportation supports HB 1224. This bill concerns repeat DUI offenders who operated a vehicle while under the influence of drugs or alcohol. It is intended to conform North Dakota law to the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act. That law and subsequent federal regulations mandate certain sanctions for repeat offenders. The mandate applies only to convictions and not to administrative proceedings.

This is a safety issue, aimed at drivers who drink and drive and have not been, or will not be affected by other laws, most of which are intended to prevent serious problems from developing in the first place (such as 0.08 BAC threshold).

In previous sessions you've considered repeat offender bills. All federally mandated provisions have been added to North Dakota law except for mandatory impoundment, immobilization, or interlocks. We have had a running disagreement with the National Highway Traffic Safety Administration on interpretation of those mandatory provisions, but we have not prevailed.

As long as North Dakota law does not conform to the federal laws and regulations on repeat offenders, certain highway funds will be transferred to safety (drinking and driving) and it may not be used for road construction or maintenance (except for "hazard elimination"). On October 1, 2000, there was a transfer of 1.5 percent of several categories of federal funds, amounting to about \$2 million, and an identical transfer on October 1, 2001. On October 1, 2002, the transfer penalty increased to three percent and amounted to about \$4 million. That percentage has been transferred on each October 1 since then and it amounts to about \$5.3 million this year (it will go up with increased federal highway funds). The three percent transfer penalty will be applied every year until we conform our state law to the federal mandate.

The amendment found in HB 1224 would require that the judge order the motor vehicle number plates (license plates) of all the motor vehicles owned and operated by the offender to be impounded for the period of suspension or revocation. The court has always had the discretion to do this; this amendment would make it mandatory. Current law does set up a procedure for the court to send these to the department for retention during the time of suspension or revocation. This would comply with federal law as a

form of immobilization. In the past, we have considered impoundment or interlocks, but neither has been deemed satisfactory.

We do need to make it clear that the impoundment applies to all of the vehicles owned by the offender; this is required by the federal mandate. HB 1224 is not clear in this regard and could be interpreted to mean only the vehicle operated at the time of the offense.

When federal funds are transferred away from highways and into the safety account, it is cumbersome finding ways to put as much as possibly on the highways (using the "hazard elimination" exception) and still comply with the transfer law. We find ourselves doing "hazard elimination" on many projects where there would really be nothing done to the roadway for several years and then we would come in and often rebuild, tearing up the "hazard elimination" work that was done several years before. If Congress removes the exception, which has been in some versions of the federal highway reauthorization, putting these funds back in highway construction will become all but impossible. At first, it was fairly easy to use these transfer funds for "hazard elimination," but it is becoming increasingly difficult to use them wisely.

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*enclosed
all offenders
V. S. Richter*

**SENATE TRANSPORTATION COMMITTEE
MARCH 4, 2005**

**North Dakota Department of Transportation
Keith C. Magnusson, Deputy Director**

HB 1224

The North Dakota Department of Transportation supports HB 1224. This bill concerns repeat DUI offenders who operated a vehicle while under the influence of drugs or alcohol. It is intended to conform North Dakota law to the Transportation Equity Act for the 21st Century (TEA-21) Restoration Act. That law and subsequent federal regulations mandate certain sanctions for repeat offenders. The mandate applies only to convictions and not to administrative proceedings.

This is a safety issue, aimed at drivers who drink and drive and have not been, or will not be affected by other laws, most of which are intended to prevent serious problems from developing in the first place (such as 0.08 BAC threshold).

In previous sessions you've considered repeat offender bills. All federally mandated provisions have been added to North Dakota law except for mandatory impoundment, immobilization, or interlocks. We have had a running disagreement with the National Highway Traffic Safety Administration on interpretation of those mandatory provisions, but we have not prevailed.

As long as North Dakota law does not conform to the federal laws and regulations on repeat offenders, certain highway funds will be transferred to safety (drinking and driving) and it may not be used for road construction or maintenance (except for "hazard elimination"). On October 1, 2000, there was a transfer of 1.5 percent of several categories of federal funds, amounting to about \$2 million, and an identical transfer on October 1, 2001. On October 1, 2002, the transfer penalty increased to three percent and amounted to about \$4 million. That percentage has been transferred on each October 1 since then and it amounts to about \$5.3 million this year (it will go up with increased federal highway funds). The three percent transfer penalty will be applied every year until we conform our state law to the federal mandate.

The amendment found in HB 1224 would require that the judge order an ignition interlock device be installed on the person's vehicle. The court has always had the discretion to do this; this amendment would make it mandatory. In the past, we have considered impoundment or interlocks, but neither has been deemed satisfactory to the entire Legislature.

We do need to make it clear that the interlock requirement applies to all of the vehicles owned by the offender; this is required by the federal mandate. HB 1224 is not clear in this regard and could be interpreted to mean only the vehicle operated at the time of the offense. It is also not clear that the interlock goes on after the suspension or revocation ends, this is also part of the federal rules.

When federal funds are transferred away from highways and into the safety account, it is cumbersome finding ways to put as much as possibly on the highways (using the "hazard elimination" exception) and still comply with the transfer law. We find ourselves doing "hazard elimination" on many projects where there would really be nothing done to the roadway for several years and then we would come in and often rebuild, tearing up the "hazard elimination" work that was done several years before. If Congress removes the exception, which has been in some versions of the federal highway reauthorization, putting these funds back in highway construction will become all but impossible. At first, it was fairly easy to use these transfer funds for "hazard elimination," but it is becoming increasingly difficult to use them wisely.

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Mr. Chairman, Committee Members my name is Julie Hallamy, on behalf of my family I am here in support of HB-1224. Mr. Chairman since you have become a Senator there has been over 150 murders committed by drunk drivers. There have been over 7,000 injuries. With the exception of Senator Warner, it's a statistic Senators failed to consider when they voted for 2254 the Drunk Drivers Bill of Rights.

This is not the first time ignition interlock devices have been considered for repeat offenders. Some years ago Senators had a chance to prevent the pain and suffering and even the murder of victims of drunk drivers. Instead they chose to defend the actions of drunk drivers. Senators claimed that if a repeat offender had two or three vehicles requiring the installation an ignition interlock would place an "undue hardship" on that criminal or their spouse. The same spouse who stood by and did nothing but watch her children being abused or endangered. The same spouse that accompanied a drunk to the bar. Undue hardship.....you can't define it and you can't explain it. A man or a woman can't explain what it's like to bury their spouse? A spouse can't explain what it's like to raise a family without the mother or father of their children? A parent can't explain what it's like to bury their child? They can try but they can't, just as I can't explain a coma. Words cannot describe what the victim of a drunk driver deals with,

physically or emotionally. Senators claim that a few hundred dollars is undue hardship. The cost of ignition interlocks has followed the same course as cell phones, computers and HD-TVs. Yet not one has ever been installed in any repeat offenders vehicle in North Dakota. The reason is court discretion; every Judge in the state shares your idea of undue hardship. No one deserves to be crippled, injured, or killed by a drunk driver because of your definition or a Judges definition of undue hardship. Victims of drunk drivers know what hardship is, you do not. Why shouldn't the guilty pay for the sake of the people that you claim to represent? Your definition of undue hardship would be a lot different if it was your child. The people you claim to represent aren't that lucky.