

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1396

2005 HOUSE TRANSPORTATION

HB 1396

## 2005 HOUSE STANDING COMMITTEE MINUTES

### BILL NO. 1396

#### House Transportation Committee

☐ Conference Committee

Hearing Date January 27, 2005

Tape Number	Side A	Side B	Meter #
5	X		0.3-3.7
Committee Clerk Signature <i>Dr. Louis Albrecht</i>			

Minutes:

**Chairman Weisz** opened the hearing on HB 1396 A bill for an Act to amend and reenact subsection 4 of section 39-08-01 of the North Dakota Century Code, relating to fines for driving under the influence.

**Rep. Ruby** We have seen bills like this in the past. This bill deals with penalties for drunk driving. You know the issues and you know the concerns and you know what an emotional issue this is for many people that are dealing with people who have caused problems for them. Drunk drivers who have done harm to them or their families and some of the plans we have worked out earlier and are still working on are in the developing stage and don't have them kicked out of committee yet. This plan you see before you came from some discussion. Lots of people had ideas and I did talk to judges one of those judges suggested possibly fee structure. That could be a tool to use for offenses. For the first offense we have a Class B felony; we moved that up to a Class B felony, but we did not move the amount to the half way mark of what that penalty is.

Class B felony is up to \$1,000 . We have at this time \$250 and as I discussed this with the judge he said that the language change that the penalty would be at least half the amount of the penalty that we have for that offense. If we have the legislative counsel change that, I realize that it really only changes the first time offense. As you see in Subsection a. for the first offense, this change would move it to \$500. The second offense within five years, is \$500, a Class B misdemeanor, so this change is cheaper than \$500. In the Class A misdemeanor, this is setting this at \$2,000 where it was. The same with d. There isn't as much change as I had thought maybe that the judge was alluding to however, I was thinking this is something for the committee to consider as policy. Or if we just want to keep it in the actual dollar amount; and just raise that. That is not a problem either. With the other discussions that came up and other ideas with new technology that is available I have had a study prepared and have an amendment to the bill prepared.

**Chairman Weisz** In the interest of time I would ask we defer any questions to Rep. Ruby later. If there is anyone here from out of town to testify on HB 1396? Either for or against. We will again open HB 1396 after the hearing.

**Keith Magnusson:** Just there in support.

Closed bill (3.7)

## 2005 HOUSE STANDING COMMITTEE MINUTES

### BILL NO. HB 1396

#### House Transportation Committee

☐ Conference Committee

Hearing Date January 28, 2005

Tape Number	Side A	Side B	Meter #
2		X	4.5-8.5
Committee Clerk Signature <i>de Lou St. Pierre</i>			

Minutes:

**Chairman Weisz** reopened HB 1396.

**Rep. Ruby** (4.3) Other legislatures are more interested in seeing legislation that affected repeat offenders, rather than someone that just makes a mistake the first time. Maybe we should make the first time offender \$500 to make them think a little more about it and then possible look at some of the other fines as going up a little bit more.

**Rep. Weiler** Discussed the fines in the bill of one half. Seems to vary on the bill.

**Rep. Delmore**(6.0) I see some conflict with what the bill are saying. Many people get one DUI and never get another one.

**Rep. Ruby** I would like to know when it was the last time it was raised. Penalties should keep up with inflation. Maybe 100% jump is too high.

**Chairman Weisz** DOT prepared this handout on DUI processes. You can review that at your leisure. Rep. Ruby did you introduce your resolution last night?

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House Transportation Committee

Bill Number HB 1396

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**Rep. Ruby** Yes, I did hand out the amendment for study. It was brought to me by one of the two judges I talked to about this issue. He did recommend alittle more on first time offenders.

**Chairman Weisz** (8.2) No one here in opposition.

Hearing closed (8.5)

## 2005 HOUSE STANDING COMMITTEE MINUTES

### BILL NO. HB 1396

#### House Transportation Committee

☐ Conference Committee

Hearing Date February 1, 2005

Tape Number	Side A	Side B	Meter #
1	X		13.9-25.2
Committee Clerk Signature <i>De Louz DeFrenck</i>			

Minutes:

**Chairman Weisz** reopened HB 1396.

**Rep. Ruby** read the suggested amendment. Just deals with putting a study on this bill.

Motion Made by Rep. Ruby      Seconded Made by Rep. Price

**Chairman Weisz** Everyone have the amendment so they know what we are talking about. It was handed out at the hearing.

**Rep. Delmore** You discussed before that there were other problems with the bill, turning it into a study resolution. Does this amendment do that or does it leave the rest of it in place?

**Rep. Ruby** The amendment just asked if the committee thinks that maybe we don't want to do any changes to the other portion of it and just have it as a study, that is for us to decide. Rather than have the new language of one-half of the maximum, go back to the dollars amount. Are we looking at raising each one or are we comfortable where they are at? The thing that I would like to see most is the study. The idea of increasing the fine was brought to me by one of the judges.

**Rep. Delmore** I am certainly for your study resolution because I do think it is important that we look at it. There are numbers that need to be increased and I don't doubt that at all. I don't think the bill itself is very clearly worded and I don't think it will do what we want it to do.

**Rep. Ruby** (16.5) I made a motion to accept that and further to amend to make other changes is some thing we can discuss. Maybe it is really something we do need to put allot more time into.

**Rep. Kelsch** Did you ever think of replacing the whole bill?

**Chairman Weisz** We have merely added the study onto the HB 1396 as is. That is what this amendment does. Motion carried. No opposition

We have an amended bill in front of us. What does the committee want to do?

**Rep. Weiler** (17.8) We did not get enough time to discuss this bill. First of all I think it is a type O in section c & d. Section d needs to add at least. To clear it up in subsection C ; at fine of at least should be inserted before one half. I think we need to add both of those and my question. In Section d it says a fine of at least one-half of the maximum fine allowed by law. What is the maximum amount allowed by law?

**Rep. Ruby** It keeps it at \$500 for the fine. As I said before the only real change that I found that this did was under a., it also put that at \$500 because we have that below half. In Section C, if we can put a fine in there at least.

**Rep. Weiler** If we can put in a fine of at least.

**Chairman Weisz** Rep. Weiler there was testimony that because of the language it must include at least. We did not have to add at least in the next part.

**Rep. Weiler** I think for a point of clarification I think the at least means at least 60 days in jail. I think on page 2 line 1 it should say at least to make it clear.



**Rep. Ruby**(19.7) I would agree because of the punctuation of that it is almost another thought.

Possibly we need to clarify that and also it still gives the discretion to the judges.

**Rep. Meyer** (20.2) Did I misunderstand? We you going to amend it or were you just going to amend it to eliminate the first part and include the study resolution. We wouldn't have to do that if we wouldn't have to do that would we?

**Rep. Ruby** Initially I would like to see an increase of at least what we have in the first one of that \$500. This does that. If we want to remove the over strike and put that amount in it. Or, if the committee wants to get ride of the first part and just keep the study, that is up to the committee. I would like to see the study pass and if that kill it I would certainly be in favor of it.

**Rep. Delmore** (21.0) I am not sure I am comfortable with the way it is written.

**Rep. Weiler**(21.3) We passed the amendment to include the study?

**Chairman Weisz** At this point the whole bill is before us. It hasn't been amended out. We haven't taken anything out.

**Rep. Thorpe** Moved to amend out the bill, except for the amended study. Seconded by Rep. Meyer

#### **No Discussion**

**Rep. Kelsch** (22.3) I think the study is a really good idea. I think we have peace mewled things together last session so now I think it is time we take a really good look at what we have on the books and come in with a comprehensive bill during the next legislative session and make all the necessary changes we need to make. Some of the fines are probably outdated and some of the penalties are out dated and I think there are some inconstancies as I have been looking at this bill.

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House Transportation Committee  
Bill Number HB 1396  
Hearing Date February 1, 2005

(discussed major problems with the way we have the DUI laws written.). I certainly hope that legislative counsel will take it if it passes.

**Rep. Ruby** I appreciate every ones thoughts on this.

**Rep. Schmidt** I am certainly for a study. Can you get Rep. Ruby on that study?

**Chairman Vigesaa:** The other section of the bill other than the amendments; are we just raising one penalty \$250, isn't that the only thing we are doing with the rest of it?

**Chairman Weisz** (24.4) That is what it would have done. We have an amendment to take out the bill. We need to deal with this amendment first. Just leave the study. Voice vote. Some opposition. Decided it carried

**Motion Made By Rep. Delmore      Seconded By Rep. Kelsch**

**Do Pass As Amended   14 Yes   1 No 0 Absent   Carrier: Rep. Iverson**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1396

Page 1, line 2, after "influence" insert "; and to provide for a legislative council study"

Page 3, after line 7, insert:

**"SECTION 2. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying driving under the influence repeat offenses, prevention, enforcement, and penalties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

PASSED

*[Handwritten signature]*  
2/16/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1396

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - DRIVING UNDER THE INFLUENCE OFFENSES.** The legislative council shall consider studying, during the 2005-06 interim, driving under the influence, repeat offenses, prevention, enforcement, and penalties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

Date: 2-1-05  
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1396

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Rep Delmore Seconded By Rep Kelsch

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	✓				
Rep. Ruby	✓				
Rep. Vigasaa	✓				
Rep. Weiler		✓			

Total (Yes) 14 No 1

Absent 0

Floor Assignment Rep. Iverson

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

**REPORT OF STANDING COMMITTEE**

**HB 1396: Transportation Committee (Rep. Welsz, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1396 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY - DRIVING UNDER THE INFLUENCE OFFENSES.** The legislative council shall consider studying, during the 2005-06 interim, driving under the influence, repeat offenses, prevention, enforcement, and penalties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

2005 SENATE TRANSPORTATION

HB 1396

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1396

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-24-05

Tape Number	Side A	Side B	Meter #
1	x		5995-end
1		x	0-450
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

**Chairman Trenbeath** opened the hearing on Engrossed HB 1396, a Bill for an Act to provide for a legislative council study.

**Representative Dan Ruby** (District 38) Introduced HB 1396 which initially had language that dealt with fines for DUI. At the time he introduced the bill, he also introduced an amendment for a study of DUI issues. That study became the bill. The study would not only look at repeat offenders but DUI's in general, fine structures, prevention, treatment, education etc. A few years ago the Attorney General had a study that dealt with DUI's and drug related problems and other issues. A comment in that summary was that they were deluged with so much information. He felt this time they should focus just on the DUI and not have all the drug related issues before them also. Some of his constituents and others across the state who have contacted him feel not enough is being done to address especially the repeat offenders.

**Marsha Lembke** (Director of Drivers License and Traffic Safety) They support the study.



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Senate Transportation Committee

Bill/Resolution Number HB 1396

Hearing Date 2-24-05

They are always looking for ways to confirm and implement better counter measures to keep alcohol off the roads. They would be happy to stand ready with their crash facts and information.

**Senator Trenbeath** asked if the Department monitors what goes on in other states as far as enforcement, fine levels, and that sort of thing.

**Marsha Lembke** said they actively do that through two ways. (1) AMVA (2) Governor's Highway Safety Association. They also attend other traffic record forums.

**Senator Trenbeath** asked if her department recommends legislation from time to time based on the data they gather.

**Marsha Lembke** said, yes, they do.

The hearing on HB 1396 was closed.

**Senator Nething** asked if the intern could check to see if this was studied in the past and when.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1396

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-25-05

Tape Number	Side A	Side B	Meter #
1	x		5510-5740
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

**Chairman Trenbeath** opened HB 1396 for action.

**Senator Warner** motioned a **Do Pass** on HB 1396. Seconded by **Senator Nething**.

Roll call vote 6-0-0. **Passed**. Floor carrier is **Senator Warner**.

Date: 2-25-05  
Roll Call Vote #: \_\_\_\_\_

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO 1396

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken No 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) 6 No 0

Absent 0

Floor Assignment Senator Warner

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

**REPORT OF STANDING COMMITTEE (410)**  
**February 25, 2005 11:33 a.m.**

**Module No: SR-35-3666**  
**Carrier: Warner**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1396, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)**  
**recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).**  
**Engrossed HB 1396 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

HB 1396

## EXPLANATION OF THE DUI PROCESS

In North Dakota, when someone is arrested for driving under the influence (DUI), normally this starts a two track process. The first process is civil or administrative in nature and starts with a Report and Notice form that is sent to the Department of Transportation. A criminal track is started with a Summons and Complaint, usually as a short form citation, which goes to the appropriate court. Both processes are independent of each other. While, in normal situations, both processes start at about the same time, sometimes, for a reason probably only known to the arresting officer, only one track is commenced.

The civil process is known nationally as an administrative license revocation (ALR), but in North Dakota we normally use the term suspension. At the present time, at least 40 states and the District of Columbia have adopted some form of ALR. North Dakota's system was enacted in 1983 and effective in 1985. The administrative system is designed to quickly get a problem driver off the road, is based on an objective chemical test (usually breath and sometimes blood) and is similar to "illegal per se" criminal laws against impaired driving. Administrative license revocation allows driver licensing authorities to suspend or revoke a driver's license swiftly, without long delays, while awaiting a criminal trial. The driver retains the right of due process through an administrative appeal system. This is similar to the "implied consent" laws that automatically suspend (revoke in North Dakota) a driver's license for drivers who refuse to submit to a blood-alcohol content (BAC) test, whereas ALR automatically suspends or revokes the license for failing a BAC test.

Traditionally, states used to only base licensing actions against impaired drivers upon a conviction for the offense. Unfortunately, convictions are not always swift and sure in impaired driving cases. Many courts have case backlogs, and a defendant can employ a wide range of tactics to delay a verdict. The conviction often can be avoided altogether by plea bargaining to a lesser offense. Also, in many states, pretrial or preconviction diversion programs operate in some courts that allow an offender to participate in an alcohol treatment or a rehabilitation program in lieu of a court imposed sanction.

The imposition of an administrative as well as a criminal sanction does not create a "double jeopardy" sanction. All cases in which the highest state appellate courts have considered this issue have held that a separate criminal trial for an impaired driving offense following an ALR action does not constitute double jeopardy under either federal or state constitutional law. The U.S. Supreme court has gone further and found that the right of due process is not violated if a driver's license is suspended prior to an administrative hearing, as long as provisions are made for a swift post suspension hearing. In North Dakota, the driver has a right to an administrative hearing and an appeal to district court and, ultimately, the North Dakota Supreme Court.

Under the administrative process, the sanction is only against the driver's license and the driver retains temporary driving privileges until the conclusion of any administrative hearing, if one is held. This whole process takes, at the maximum, 30 days from the time of arrest. This is swift and sure disposition, especially as all of the sanctions are set out precisely in North Dakota law and there is no discretion upon the part of the Department of Transportation.

The criminal process normally takes much longer than the administrative process. Often, the administrative process and any resulting suspension have been completed before any criminal trial. Unlike the administrative process, which can only sanction the driving privileges of an offender, the criminal court can levy a fine and jail sentence, the amount and extent depending on a number of factors. The criminal process provides for a trial and subsequent appeal if desired. The Department of Transportation is not involved in the criminal process, but does suspend driving privileges, based on the law, for any conviction. But, this suspension would be served concurrently with any administrative suspension, so there is no additional suspension to what has already been served.

Under our law, there can be an administrative suspension without any criminal action. There can also be a criminal action and conviction without any administrative process. Attached is a copy of charts for both the administrative and the criminal processes. There are many variables, which makes it probably easier to understand in chart form, rather than in a narrative. Also attached is a chart detailing the minor driver's license (often commonly called a graduated driver's license) process for cancellation of a license. This applies to those drivers who are under 18 years of age.

Keith C. Magnusson  
ND Department of Transportation  
January 2005

# NORTH DAKOTA DUI LAW FOR COURT PROCESS, SEE REVERSE

Effective July 1, 1985  
Revised August 1, 1983  
Revised August 1, 1999  
Revised September 2003  
Pursuant to 39-20 NDCC







