

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1413

2005 HOUSE JUDICIARY

HB 1413

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1413

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/26/05

Tape Number	Side A	Side B	Meter #
2	xx		18-37.5
Committee Clerk Signature <i>Alain Penrose</i>			

Minutes: 12 members present, 2 members absent (Rep. Charging & Zaiser).

**Chairman DeKrey:** We will open the hearing on HB 1413.

**Rep. Dwight Wrangham:** I am the sponsor of this bill (explained the bill). This is a short and simple bill. This bill would allow a service person that's under the age of 21, to be able to come onto the premises and repair a problem. The AG's office took a look at this, after the LC drafted it, and is offering some amendments that Mr. Bennett proposed, and that is to add in both instances where this is referred to in the bill, insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages." This is just a precaution so that they wouldn't construe this to mean that they could hire then as a bartender. With that amendment, the AG's office was happy with it.

**Representative Boehning:** A lot of bars in small towns have a grill in the back. Would that be considered a restaurant, where someone under 21 can go into the place and eat with their parents, or on their own.

**Rep. Dwight Wrangham:** I don't know.

**Representative Meyer:** One of the problems, coming from a small town perspective, I see with this, we've had cases where we've had young people and the only place open is the bar, it's 30 degrees below and their pickup has gelled up, it won't run, why make it a crime for them to go and get warm, they're not drinking, they're not being served alcohol. I don't feel that we should make it a crime for them to go in and get warm.

**Rep. Dwight Wrangham:** Presently, it is against the law for anyone to go in to a liquor establishment. These instances to which you and Representative Boehning are referring to, under current law it is illegal for a minor to go into the establishment now to warm up.

**Chairman DeKrey:** This bill doesn't change any of that. All it does is let the contractor go into the premises.

**Rep. Dwight Wrangham:** This allows someone to go in and do repair work.

**Chairman DeKrey:** Those of us in rural ND ignore it quite often.

**Representative Meyer:** Why is that on line 14, page 1.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1413.

**Bill Shalhoob, ND Hospitality Association:** We support this bill. Before this bill, this was happening, we weren't aware that this couldn't happen. Nobody was checking for it, we assumed that someone underage could come in and work, carpentry work or general fix-it work.

**Representative Meyer:** Would you be adverse to putting a cold weather amendment on the bill.

**Bill Shalhoob:** No we would not. But some of this probably goes to the definition within the political subdivision of the place of business. If it's classified as a restaurant/bar and the kind of

license they get, it would be legal. If it is classified as a bar, many political subdivision work in terms of a class of license they give you. If they are giving you a Class D license, that is needed to operate a bar/bar, of course, not everybody is the same, but I believe the usual standard is a 60-40 mix. Any time that your food mix reaches over 60%, at least 60% of your sales, you are classified as a restaurant. If you're under that mix, you're classified as a bar, and the restrictions would start to apply in that place. Whether they have those mixes in smaller subdivisions, I don't know.

**Chairman DeKrey:** Thank you. It was the 1991 session, I remember where we tried to do what you're saying, and the bill was defeated.

**Representative Galvin:** I don't think you have to pay much attention to these kinds of laws anyhow in small towns.

**Chairman DeKrey:** Thank you. Further testimony in support. We're wondering why on page 1, line 14, is says a person under 21 years of age, may not... Is that present law, and we're just adding it in as a contractor.

**Bob Bennett, AG's Office:** The current statute is one paragraph, and LC, in the last couple of sessions, when they look at these statutes, they wanted for style change to have it put into paragraphs and subparagraphs, this is one reason why we've had to have some amendments, to make sure that everything fits. This is done as a style change.

**Representative Maragos:** Are you aware of anywhere in law where health and safety of the human being overrides any of these types of laws as a common sense approach to things.

**Bob Bennett:** If we're looking at a situation, let's say we have a 19 year old EMT who is responding to a heart attack inside of a bar, you're not going to stop him at the front door, and no

one is going to be taking away the bar owner's license by letting him in, and nobody is going to arrest the 19 year old EMT for providing that service. You have an emergency situation, which may be covered under a criminal law anyway. There are always exceptions to the rule.

**Representative Maragos:** We have the prudent man theory, where the only business in a small town is an establishment that serves alcohol, and technically if you are in a situation where you need to be in that building because of a life threatening situation, doesn't that supersede the law, or should it, is there any place in code that allows these kinds of common sense situations to exist, so that there technically isn't a violation of the law.

**Bob Bennett:** There is in our criminal code, there are defenses, and there is also a public necessity defense, that's been recognized under our law. For example, several years ago, an individual was near Medina, car froze up, he broke into a house to stay warm. There was a defense in that area, that a defense was raised by the individual, that to save my life I could not be found guilty of criminal trespass, which is a felony or burglary, and that was a defense. That is available. But you can't use the weather to say, it's raining outside, therefore I want to enter Chairman DeKrey's property to see what he's got inside of his house. You have to have a compelling reason. In response to Representative Meyer's question, Chairman DeKrey is right. I think it was down in the House or Senate political subdivisions, and the bill came in, it was limited, but that any community under 500, would allow their bars to allow children (anyone under 21) to be in there if there is some good reason for it, and that had a quick death to it on the floor.

**Representative Boehning:** Where it says there is an exemption of a independent contractor under 21 years of age, can a bar that serves food, can they employ anyone under 21 years of age, and legally serve food to someone who is 21 years of age and under.

**Bob Bennett:** 5-02-06 recognizes the difference between a bar that serves food and a restaurant that serves alcohol. 5-02-06 says you're a restaurant if you are physically separated from the area where the drinks are mixed, and your food sales are at least equal to the alcoholic beverage sales in the dining area, this involves a physical separation and also to show that, in fact, they are in the food business, and not in the liquor business that happens to sell food. The key here is, do they have a restaurant license from the health department. In the restaurant there has to be a physical separation of the two areas. In the smaller communities, they do, in fact, have an eating area, and that anybody can go in there of any age. But there are restrictions then in the eating area who can serve the drinks. If you have a waiter, bus person, generally they cannot be involved, they work in the restaurant, but they can't be involved in alcoholic beverages. There is another provision of 5-02-06, which is one of the exceptions that says that if you are between 19-21, and under the supervision of someone that is 21, you can serve beverages and collect money, but you can't be the bartender. You can't go into the bar and mix the drinks. Are you a restaurant serving alcohol or are you a bar serving food. Bars serving food are a bar. No one under 21, with the exceptions under the law, can walk in the front door. But a restaurant, you can inside and have a 3 year old walk in and be served food and be inside there, and not be in violation of the law.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the same session).

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1413.

**Representative Maragos:** I move the Wrangham amendments.

**Representative Koppelman:** Seconded.

**Chairman DeKrey:** Motion carried.

**Representative Kretschmar:** I move that line 18, page 1, and line 24, page 2, add "or its employee".

**Representative Meyer:** Seconded.

**Chairman DeKrey:** Motion carried.

**Representative Bernstein:** I move a Do Pass as amended.

**Representative Boehning:** Seconded.

12 YES 0 NO 2 ABSENT      DO PASS AS AMENDED      CARRIER: Rep. Bernstein



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1413

Page 1, line 18, after "work" insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages"

Page 2, line 24, after "work" insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages"

Renumber accordingly

VK  
1/26/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1413 JUD 1/27/05

Page 1, line 18, after "contractor" insert "or the independent contractor's employee" and after "work" insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1413 JUD 1/27/05

Page 2, line 24, after "contractor" insert "or the independent contractor's employee" and after "work" insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages"

Renumber accordingly

Date: 4/26/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1413

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

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

Action Taken Do Pass as Amended

Motion Made By Rep. Bernstein Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	A				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Bernstein

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

**REPORT OF STANDING COMMITTEE**

**HB 1413: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1413 was placed on the Sixth order on the calendar.

Page 1, line 18, after "contractor" insert "or the independent contractor's employee" and after "work" insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages"

Page 2, line 24, after "contractor" insert "or the independent contractor's employee" and after "work" insert "and is not engaged in selling, dispensing, delivering, or consuming alcoholic beverages"

Renumber accordingly

2005 SENATE JUDICIARY

HB 1413

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1413

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 15, 2005

Tape Number	Side A	Side B	Meter #
1		X	1920 - 2800
2			4500 - 6000
Committee Clerk Signature <i>Mario L. Salvey</i>			

Minutes: Relating to underage person in a licensed alcohol establishment.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Rep. Dwight Wrangham**, Dist. #8 (meter 1413) Introduced the bill and Gave Testimony - Att. #1

The wording of the bill was assisted by the Attorney General's office.

**Senator Hacker** questioned that in a restaurant it would not prevent people underage who could already eat at the establishment to still do so, for example; Applebee's? No nothing would change in the current law.

**Bill Shelton**, ND Hospitality Association is in support of the bill. (meter 2190) There are times where we have had a video repair person in and did not even consider that they were not old

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1413

Hearing Date March 15, 2005

enough to be in the establishment because they were after all a certified repair personnel. This is a good law that people may have been mistakenly in violation of.

The committee discussed under age musicians playing with the band and other incidents.

**Testimony in Opposition of the Bill**

None

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

**Senator John (Jack) T. Traynor**, Chairman reopened the Hearing

**Sen. Trenbeath** made the motion to Do Pass seconded by **Senator Syverson**. All members were in favor and the motion passes.

Carrier: **Sen. Traynor**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

Date:  
Roll Call Vote #:

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1413

Senate Judiciary Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Senator Trenbeath Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment Sen Traynor

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



**REPORT OF STANDING COMMITTEE (410)**  
March 15, 2005 12:56 p.m.

**Module No: SR-47-5002**  
**Carrier: Traynor**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1413, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1413 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

HB 1413

**HB 1413**

**Representative Dwight Wrangham**

**March 15, 2005**

**Good Morning Chairman Traynor and Senators of the Judiciary Committee**

**HB 1413 is intended to clear up a potential problem with minors in a liquor establishment. Presently, if the furnace goes out and the repairman on call is 19 or 20 years old, they could not legally enter the bar to do the necessary repairs.**

**This bill would allow such services to take place, while insuring, on page one lines 19 and 20, that the individual is "not engaged in selling, dispensing, delivering, or consuming alcoholic beverages."**

**The bill language is repeated on page 2 in order to include it in the penalty section.**

**The added language on page 3 is a clarification of existing law.**

**Thank You for your consideration.**