MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

2099

2005 SENATE TRANSPORTATION

SB 2099

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2099

Senate Transportation Committee

☐ Conference Committee

Hearing Date 1-14-05

Tape Number	Side A	Side B	Meter #
1	x		0-2870

Committee Clerk Signature Mary K Monson

Minutes:

Chairman Trenbeath opened the hearing on SB 2099 relating to the expiration of a non driver photo ID card and the expiration of an operators license for a nonresident alien; the meaning of the term conviction, time required for a decision after a hearing, driving while license is suspended, when entries on a driving record are confidential, the implied consent advisory for refusal to submit to alcohol test, procedure to negate effect of a refusal, suspension of person under 21 for driving with a prohibited alcohol concentration, and admissibility of regularly kept records; driving while license is suspended.

All members were present except Senator Warner.

Keith Magnusson (Deputy Director, Driver and Vehicle Services, ND DOT) Supports SB 2099. He explained this as a cleanup bill. He submitted additional proposed amendments and written testimony. (See attached.)

Senator Mutch asked if a foreign student had a drivers license in his own country if he would have to get a permit to drive in our country.

Keith Magnusson replied that under the Geneva Convention they can drive for a year under their home country license. They get an international driving permit that is translated so law enforcement can understand what is on the license. There is no authority to drive in this country after that one year even if they have a four year student visa. What is being looked at here is when the visa expires. A lot of them would like to stay in this country after four years or six or seven years, depending on if they go to graduate school. Then they need to do something to stay legal in this country. It's part of the whole effort in the country to really keep track of people.

Senator Espegard asked what the conditions would be in Section 7 for increasing the revocation penalty up to four years.

Keith Magnusson said the ones that were put in last time, multiple offenses. The first offense starts out with one year and went up from there as they get them (meter 1430).

Senator Espegard Pertaining to Section 8, he questionned if it says that you cannot cure a refusal with an agreement to a DUI.

Keith Magnusson He explained that was something added last time. Before that you could refuse and cure more than once. They are just asking if they can use the DUI whether its the District Court or Municipal Court.

Senator Bercier stated that in Section 3, line 7, language has been added to include the tribal court or the court in another state. Asked if that was anticipating the working group in place now in the tribal court when there is a DUI case turning over the court sentence and pulling licenses.

Keith Magnusson said that was correct. This language was added in another section of law probably two sessions ago.

Senator Bercier asked if it would be necessary to include language that would state specifically tribal courts in other states.

Keith Magnusson said there probably would be no objection but thinks the way it is drafted any tribal court would suffice.

Senator Trenbeath questioned the repealer on 39-16-30 and 39-16.1-21 which could conflict with the 39-06-42 (meter 1860).

Keith Magnusson said there are three statutes and they want to repeal two of them. The one they want to keep really covers all driving under suspension.. The other two are both in financial responsibility chapters.

Senator Nething asked about section 5 and bringing them all into a class B misdemeanor.

Keith Magnusson said they are bringing them all into the same statute which provides for the first three times identified in the class B misdemeanor. After that it escalates to a class A misdemeanor.

Christopher Dodson (Executive Director, ND Catholic Conference) (Meter 2090) The Catholic Conference opposes section 1 and section 2 of SB 2099 and urges the committee to amend the bill by deleting those sections. Those sections single out certain persons for differential treatment with regard to non driver photo identification cards and operators licenses. They single out people here legally that work in our fields and factories, contribute to the state economy, worship in our churches, and drive on our roads. Making their identification dependent upon their immigration status serves no legitimate purpose. From a protection and safety standpoint, it

is better to have individuals licensed and identified so that we can have knowledge of their general location. Forcing expiration simply encourages more illegal behavior and immigrants are commonly the victims. Law enforcement is hindered when immigrants don't have valid identification. Immigration laws are not criminal but extremely complicated. Non immigration visas do not have uniform documentation nor do they have a single expiration date. That is why they are enforced by the immigration officer fully trained for that purpose.

He pointed out that this provision has already failed two sessions of Congress. He feels it is premature to say it will show up again and will be passed since it has the opposition, not just from the religious leaders and those concerned about immigrants, but also from the law enforcement around the nation. It also is opposed by farm organization.

Congress hasn't decided that this is necessary and neither has the Department for Homeland Security.

These provisions would work contrary to the goal of keeping track of people. When the license would expire the person wouldn't use it anymore, but they are still here. That makes it difficult for law enforcement, makes it difficult for immigrants to contribute to the economy, and we lose the ability to verify identification and residence.

Mr. Dodson said he would provide the committee with written testimony. (See attached.)

The hearing on SB 2099 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2099

Senate Transportation Committee

❑ Conference Committee

Hearing Date 1-27-05

Tape Number	Side A	Side B	Meter #
1	x		2150-3185

Committee Clerk Signature Mary K Monson

Minutes:

Chairman Trenbeath opened SB 2099 for discussion. He had a proposed amendment that was prepared by Chris Dodson with respect to Section 1 and 2 of the bill.

Senator Espegard asked if we should have people here without proper visas.

Senator Trenbeath said that we shouldn't have but he didn't think this is the way to ensure that doesn't happen.

Senator Warner said his opinion is that immigration law is a federal concern. If we adopt this, then, as much as we fight unfunded federal mandates, here we are asking for one. We are asking to assume a federal responsibility without asking for the money to do it.

Senator Nething asked if this was an even bigger picture -- security for the country and other things wrapped into it.

Senator Trenbeath replied that he thought it was intended to be that. Whether it is or not, he was inclined to believe this is the mark.

(Meter 2435) Discussion about licenses and visas being hand in hand. If one or the other wasn't valid then the other wouldn't be valid either.

Senator Trenbeath referred to a set of proposed amendments from DOT.

Senator Espegard motioned a Do No Pass on SB 2099. Seconded by **Senator Bercier.**

Roll call vote 5-1-0. Floor carrier is **Senator Bercier.**

2005 SENATE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. SB 2099

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-03-05

Tape Number	Side A	Side B	Meter #
1	x		3830-4560
Committee Clerk Signature	Mary K Monson		

Minutes:

Chairman Trenbeath reopened discussion on SB 2099 which had previously been passed out of committee on a 5-1-0 Do Not Pass.

Senator Warner motioned to reconsider the committees action of Do Not Pass on SB 2099.

Senator Bercier seconded the motion. The motion passed on a voice vote.

Senator Trenbeath said he thought the sections that the committee was trying to kill were sections 1 and 2. He also said there was a proposed amendment from the DOT that they didn't handle.

Senator Warner made a motion to delete Sections 1 and 2.

Senator Bercier seconded the motion.

Senator Mutch asked what the problem was.

Senator Trenbeath explained that the basic problem seemed to be more of a federal matter.

(Meter 4180)

Roll call vote 5-0-1. Passed.

Senator Trenbeath addressed the amendment proposed by the DOT. He explained that it would take out section 10 on page 7 and would clean up some language on page 1.

Senator Nething made a motion to accept the proposed amendment by the DOT.

Senator Mutch seconded the motion. Roll call vote 5-0-1. Passed.

Senator Bercier motioned a **Do Pass as Amended** on SB 2099.

Senator Warner seconded the motion. As per Chairman Trenbeath the vote was held open for Senator Espegard. Final roll call vote 6-0-0. **Passed.** Floor carrier is **Senator Bercier.**

Date: 1-27-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2099

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do not pass

Motion Made By Sen. Espegard Seconded By Sen. Bercier

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

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Bercier

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

REPORT OF STANDING COMMITTEE

SB 2099: Transportation Committee (Sen. Trenbeath, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2099 was placed on the Eleventh order on the calendar.

Date: 2-3-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2099

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Delete sections 1-2

Motion Made By Sen. Warner Seconded By Sen. Bercier

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

Total (Yes) 5 No 0

Absent 1

Floor Assignment

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

Magnusson (DOT)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2099

Page 1, line 6, after "39-20-04," insert "and" and remove ", and subsection 4 of section 39-20-05"

Page 1, line 10, after "refusal," insert "and"

Page 1, line 11, remove ", and admissibility of regularly kept records"

Page 6, line 31, after "ordinance" insert "<u>, with the last violation or suspension</u>"

Page 7, line 1, after "concentration" insert "<u>of</u>"

Page 7, remove lines 17 through 30

Renumber accordingly

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2099

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Accept proposed amendment by DOT

Motion Made By Sen. Nething Seconded By Sen. Mutch

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

Total (Yes) 5 No 0

Absent 1

Floor Assignment

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

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2099

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Sen. Bercier Seconded By Sen. Warner

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 Bercier

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

REPORT OF STANDING COMMITTEE

SB 2099: Transportation Committee (Sen. Trenbeath, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2099 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new subsection to section 39-06-03.1 and a new"

Page 1, remove lines 2 and 3

Page 1, line 4, remove "license for a nonresident alien; to"

Page 1, line 6, after the first comma insert "and" and remove ", and subsection 4 of section 39-20-05"

Page 1, line 10, after the comma insert "and"

Page 1, line 11, remove ", and admissibility of regularly kept records"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 and 2

Page 6, line 31, after "ordinance" insert "<u>, with the last violation or suspension</u>"

Page 7, line 1, after "concentration" insert "<u>of</u>"

Page 7, remove lines 17 through 30

Renumber accordingly

2005 HOUSE TRANSPORTATION

SB 2099

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2099

House Transportation Committee

☐ Conference Committee

Hearing Date February 24, 2005

Tape Number	Side A	Side B	Meter #
2	X		0-10.8
Committee Clerk Signature			

Minutes:

Acting Chairman Price opened the hearing on SB 2099 A Bill for an Act to amend and reenact sections 39-06030 and 39-06-34 and 39-06-34, subsection 1 of section 39-06-42, and subsection 1 of section 39--20-04.1 of the North Dakota Century Code, relating to the meaning of the term conviction, time required for a decision after a hearing, driving while license is suspended, when entries on a driving record are confidential, the implied consent advisory for refusal to submit to alcohol test, procedure to negate effect of a refusal, and suspension of person under twenty-one years of age for driving with a prohibited alcohol concentration; and to repeal sections 39-16-30 and 39-16-16.1-21 of the North Dakota Century Code, relating to driving while a license is suspended.

Keith Magnusson:(1.0) DOT. We are here today in support of SB 2099. This is an agency bill that we profiled that cleans up and clarifies the number of drivers license issues. Those who

have been on session for a while know we usually have a clean up bill and that is what this is.(See attached testimony #1.

Acting Chairman Price: Is there any need for the emergency clause in section 7?

Keith Magnusson: In my version of section 7 there is no emergency clause and we don't need it. In the original bill there were a couple sections that dealt with drivers license with nonresident aliens. Those were taken off by the senate. They were not asked to be put on at this time. I think we will be back in two years with a federal mandate on it.

Rep. Ruby(9.1)In your testimony under section 3 explain what the financial responsibility chapter are?

Keith Magnusson: Chapter 39-16 and 36-16.1 are very similar. They talk about proof of financial responsibility in the future. There are number of situations where this comes up. One is if somebody has had crack and they didn't have insurance they would have to provide proof of financial responsibility, normally through an insurance filing. There are a couple other ways they can do that. If they have had a DUI there are going to have to provide a financial responsibility. That is normally done with high risk insurance. Those chapters cover those particular situations and go through how they do it. But they have different driving under suspension provisions and we think we should have one.

Rep. Delmore(10.0) In Section 1, you talk about taking action on something that happened out of state? Are those criminal and non criminal charges that would be put on your record?

Keith Magnusson: In this context these are criminal. These are convictions.

Acting Chairman Price: Anyone else to testify in favor? Anyone in opposition to SB 2099. There was none.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2099

House Transportation Committee

☐ Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
2	X		0.1-4.9
Committee Clerk Signature			

Minutes:

Chairman Weisz reopened hearing on SB 2099. There was an issue for zero tolerance for under 21 year olds.

Rep. Hawken This was a clean up bill.

Chairman Weisz asked if there were any further questions.

Motion made by Rep. Vigasaa Seconded by Rep. Price

DO Pass 11 Yes 0 No 4 Absent Carrier: Rep. Schmidt

Discussed bill more.

done (4.9)

Date: 3-10-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2099

House **Transportation Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Vigesaa Seconded By Rep. Price

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	abst	
Rep. Iverson	abst				
Rep. Kelsch	abst				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	abst				
Rep. Vigesaa	✓				
Rep. Weiler	✓				

Total (Yes) 11 No 0

Absent 4

Floor Assignment Rep. Schmidt

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

REPORT OF STANDING COMMITTEE

SB 2099, as engrossed: Transportation Committee (Rep. Weisz, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2099 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2099

SENATE TRANSPORTATION COMMITTEE
January 14, 2005

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

SB 2099

The North Dakota Department of Transportation prefiled SB 2099 as an agency bill. This bill cleans up and clarifies a number of driver's license issues.

Section 1 and **Section 2** make the expiration date of a nonresident alien's driver's license or nondriver ID card the same as the expiration date of that person's visa or end-of-stay document. The expiration date for any driver's license is now four years. (A nondriver ID card does not currently have a statutory expiration date, but we recently implemented a 10-year expiration because people and situations can change so much during that period of time.) This change for nonresident aliens is strongly recommended by the American Association of Motor Vehicle Administrators DL/ID Security Framework and has been passed in a number of states. It would prevent someone from having a valid state document when they are no longer in the country legally. New standards that are part of the recently passed Intelligence Reform and Terrorism Prevention Act will most likely require us make this change in the future.

Section 3 clarifies that the term "conviction" includes those coming in from another jurisdiction (which is already defined), a tribal court, or a court in another state, and not just those from a North Dakota court. This has already been done in several other sections of the Motor Vehicle Code. It is our intent to make all parts of the Motor Vehicle Code dealing with convictions, suspensions, etc., where appropriate, have the same meaning and much of this has already been done, especially in the implied consent area. This allows us to take action upon something that happens out-of-state just as if it had happened in North Dakota. It is consistent with the Drivers License Compact we belong to with almost all other states.

Section 4 clarifies language pertaining to a hearing when the director has required a reexamination. The current language talks about a decision being rendered within two days of the conclusion of the hearing. This is confusing, as the hearing officers issue a recommended decision and the Drivers License and Traffic Safety Division, on behalf of the director, makes the final decision. It can be cleared up by specifying that the hearing officer's recommended decision must be rendered within two days. There is language in other parts of the code that requires the department to act on the recommended decision within a certain number of days.

Section 5 harmonizes the penalty for driving while under suspension or revocation, which is now found in three separate statutes. The normal driving under suspension statute has a class B misdemeanor penalty for the first, second, or third offense within a five year period. Any subsequent offense within the same five year period is a class A misdemeanor. The statutes found in the financial responsibility chapters have a straight class B misdemeanor penalty for driving under suspension. We recommend that these be made the same and that we follow the statute that provides for an enhanced penalty for four or more convictions of driving while under suspension or revocation within a five year period. In other words, driving under suspension is

the same no matter what the underlying reason for the suspension. **Section 11** of SB 2099 repeals these financial responsibility driving under suspension penalties.

Section 6 clears up a reference that was missed in enacting 0.08 BAC, as the standard for driving under the influence, last session. This is in Section 39-16-03.1, which hides the suspension of someone under 21 years of age under the zero tolerance law. There is reference to ten one-hundredths (0.10) and that should be changed to eight one-hundredths (0.08).

Section 7 clarifies the implied consent advisory. During the last session, HB 1439 (which provided for enhanced sanctions for 0.18 and greater BAC) increased the revocation penalty, in certain situations, for refusing to submit to an alcohol test, to as much as four years. The provision in NDCC 39-20-01 concerning the implied consent advisory given to drivers only talks about a revocation for up to three years. This reference should be changed to make it clear that we can revoke up to four years, if the situation meets the criteria of NDCC 39-20-04.

Section 8 provides another clarification needed because of legislation last session. HB 1439 (from the 2003 session) also provided that a person could not "cure" a refusal under Section 39-20-04 if they had ever been convicted of a DUI under Section 39-08-01. We are proposing to add "or an equivalent ordinance" to that clause to make it clear that a conviction from another jurisdiction or under a city ordinance will be sufficient. This is consistent with other provisions in the Motor Vehicle code.

Section 9 clarifies that part of the zero tolerance law found at NDCC 39-20-04.1 (1) to leave no doubt that driving privileges will be suspended for minor drivers with 0.02 BAC or greater alcohol concentration. At the very end of the last legislative session, a conference committee took a proactive move and provided for longer suspensions for a higher BAC, starting at 0.18 BAC (HB 1439). In the rush of drafting all of these changes, there appears to be a gap in the law. We have had two recent court decisions on this issue. The first was adverse to our position, but the second (and much better reasoned) was favorable to us. Both of these cases have been appealed to the North Dakota Supreme Court. Even though we believe that the gap doesn't make any difference and that the law still covers zero tolerance situations, we wanted to get this perceived discrepancy cleared up. If we don't either clarify the statute or prevail in the Supreme Court, this can mean a significant highway funding penalty.

After this bill was drafted, the Attorney General's office contacted NDDOT with a request to add language to this same section, as long as the section was already in front of us, to clear up another area of confusion from HB 1439. The Attorney General's office is in the midst of an appeal at the North Dakota Supreme Court and had argued that certain language should be imputed to subdivision d in order to clarify legislative intent. This would involve adding at line 31 on page 6, after ordinance, a comma and the words "with the last violation or suspension." This would clarify to the public that the legislature intended the enhanced suspension time when the last violation, which is the current one, is over the threshold.

Section 10--We are asking that section 10 be removed from the bill. Again, after the bill was drafted, we took another look at this issue and decided that no change in the law is really needed at this time. Court decisions have made it clear that there is no real ambiguity to the statute. I have prepared an amendment that covers both the additional language discussed under Section 9 and to delete Section 10.

Section 11 repeals references that are discussed in the explanation for Section 5.

NORTH DAKOTA CATHOLIC CONFERENCE
NDCC

Representing the Diocese of Fargo and the Diocese of Bismarck

Christopher T. Dodson
Executive Director and
General Counsel

227 W. Broadway, Suite 2
Bismarck, ND 58501

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-88[redacted]1237
FAX # (701) 223-6075

To: Senate Transportation Committee
From: Christopher T. Dodson, Executive Director
Subject: Senate Bill 2099 (Expiration of Driver's License for Nonresident Alien)
Date: January 17, 2005

The North Dakota Catholic Conference opposes Section 1 and Section 2 of Senate Bill 2099 and urges the committee to delete those sections. Those sections, by singling out certain persons for disparate treatment with regards to nondriver photo identification cards and operator's licenses, fail to further the interests of justice and public safety.

Issues regarding immigration, domestic security, and public safety are complex and interrelated. They require comprehensive examination and reform, primarily at the federal level. We should avoid piece-meal and localized responses that shift current policies and practices away from legitimate needs. Most importantly, our society must root any response to these issues in basic principles of justice and respect for the dignity for all human persons. These principles are, perhaps, best summarized in a passage from the Old Testament: "You shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself." (Leviticus 19:34)

These sections fail that test. They single out people – people who are here legally, work in our fields and factories, contribute to the state's economy, worship in our churches, and drive on our roads -- by requiring what amounts to a "Scarlet Letter" on their state identification and by making that identification dependent upon their immigration status.

What is more troubling is that provisions serve no legitimate purpose. The people affected are still the same persons and they drive just as safe as they did before the arbitrary expiration. In short, the proposed provisions do not further the legitimate state interests providing proof of identity and safe drivers.

The provisions also make little practical sense. For example:

- The provisions will have a negative effect upon those who are currently in the legalization process. As they wait for the federal government to process their case, they will be stripped of their ability to drive and possibly hold employment, which might then affect their cause for legalization. It is important to remember that these proposed sections will probably only impact individuals who are were here legally, were working and contributing to the economy, and plan to stay in North Dakota.

- From a protection and safety standpoint, it is better to have individuals licensed and identified, so we have knowledge of their general location. Law enforcement is hindered when people do not have valid

identification. Witnesses fear to come forward. Suspects cannot be traced through standard databases that rely on driver's licenses. Drivers involved in accidents are more likely to flee the scene.

- Forcing expiration encourages more illegal behavior, such as driving without insurance, manufacturing and purchasing fraudulent identification, and theft that takes advantage of those who were compelled to carry cash due to lack of identification.

- Immigration laws are noncriminal, but extremely complicated. Nonimmigrant visas do not have uniform documentation nor do they have a simple expiration date. This is why immigration officers fully trained for that purpose enforce these laws.

- Training the personnel at the state's 44 driver's license sites to interpret the over 26 different immigration statuses and reprogramming the state's computer system to handle atypical expiration dates will require a significant appropriation of state funds and staff time.

Several statements made in support of the proposed provisions warrant closer examination.

It was stated that the federal government will likely pass legislation to require states to have such provisions. Congress *may* pass such a law, but at this point such a claim is highly speculative. Similar legislation was introduced in the last two sessions of Congress and never passed. In the most recent case, the proposal was stripped from the "Intelligence Reform" bill. The removal of the provision came not just in response to concerns from religious organizations, but also in response to concerns by law enforcement, agricultural interests, and experts on national security and terrorism.

It was stated that individuals could use identification to board an airplane. It is important to note that other forms of identification are acceptable to board an airplane and that all but one of the hijackers responsible for the September 11 tragedy had a valid driver's license. These provisions will not stop an individual determined to commit a terrorist act.

It was stated that a person could use the identification to open a bank account. It is not a crime for an undocumented person to open a bank account. Indeed, considering that the people affected by these provisions are working in the state and intend to stay here, why would the state government want to place barriers to keeping money in our state's banks?

It was also stated that the proposed provisions are part of the whole effort to keep track of people. Providing a method of identification and ensuring safe roads, not keeping track of people, are the primary purposes for providing driver's licenses and nondriver photo identification cards. These provisions, far from being part of "housekeeping" bill, make policy changes that expand the purpose and scope of the Department's licensing activities.

Besides, the provisions would actually undermine that purported goal. The provisions decrease, rather than increase, the number of persons who have some form of reasonable proof of their identity, making it more difficult to track people and verify their identity. At the same time, law enforcement, banks, employers, schools, and others would be denied the ability to verify identification and residence, eventually undermining the common good.

In summary, the provisions fail to meet principles of justice and fairness, do not accomplish legitimate goals, jeopardize public safety, and require the expenditure of new funds.

We urge the committee to delete Sections 1 and 2 from Senate Bill 2099 or give the bill a "Do Not Pass" recommendation.

Dodson

PROPOSED AMENDMENTS TO SENATE BILL NO. 2099

Page 1, line 1, remove " to create and enact a new subsection to section 39-06-03.1 and a new"

Page 1, remove lines 2 through 3

Page 1, line 4, remove "license for a nonresident alien;"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 and 2

Renumber accordingly

#1

HOUSE TRANSPORTATION COMMITTEE
February 24, 2005

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

SB 2099

The North Dakota Department of Transportation prefiled SB 2099 as an agency bill. This bill cleans up and clarifies a number of driver's license issues.

Section 1 clarifies that the term "conviction" includes those coming in from another jurisdiction (which is already defined), a tribal court, or a court in another state, and not just those from a North Dakota court. This has already been done in several other sections of the Motor Vehicle Code. It is our intent to make all parts of the Motor Vehicle Code dealing with convictions, suspensions, etc., where appropriate, have the same meaning and much of this has already been done, especially in the implied consent area. This allows us to take action upon something that happens out-of-state just as if it had happened in North Dakota. It is consistent with the Drivers License Compact we belong to with almost all other states.

Section 2 clarifies language pertaining to a hearing when the director has required a reexamination. The current language talks about a decision being rendered within two days of the conclusion of the hearing. This is confusing, as the hearing officers issue a recommended decision and the Drivers License and Traffic Safety Division, on behalf of the director, makes the final decision. It can be cleared up by specifying that the hearing officer's recommended decision must be rendered within two days. There is language in other parts of the code that requires the department to act on the recommended decision within a certain number of days.

Section 3 harmonizes the penalty for driving while under suspension or revocation, which is now found in three separate statutes. The normal driving under suspension statute has a class B misdemeanor penalty for the first, second, or third offense within a five year period. Any subsequent offense within the same five year period is a class A misdemeanor. The statutes found in the financial responsibility chapters have a straight class B misdemeanor penalty for driving under suspension. We recommend that these be made the same and that we follow the statute that provides for an enhanced penalty for four or more convictions of driving while under suspension or revocation within a five year period. In other words, driving under suspension is the same no matter what the underlying reason for the suspension. **Section 8** of SB 2099 repeals these financial responsibility driving under suspension penalties.

Section 4 clears up a reference that was missed in enacting 0.08 BAC, as the standard for driving under the influence, last session. This is in Section 39-16-03.1, which hides the suspension of someone under 21 years of age under the zero tolerance law. There is reference to ten one-hundredths (0.10) and that should be changed to eight one-hundredths (0.08).

Section 5 clarifies the implied consent advisory. During the last session, HB 1439 (which provided for enhanced sanctions for 0.18 and greater BAC) increased the revocation penalty, in certain situations, for refusing to submit to an alcohol test, to as much as four years. The provision in NDCC 39-20-01 concerning the implied consent advisory given to drivers only talks about a revocation for up to three years. This reference should be changed to make it clear that we can revoke up to four years, if the situation meets the criteria of NDCC 39-20-04.

Section 6 provides another clarification needed because of legislation last session. HB 1439 (from the 2003 session) also provided that a person could not "cure" a refusal under Section 39-20-04 if they had ever been convicted of a DUI under Section 39-08-01. We are proposing to add "or an equivalent ordinance" to that clause to make it clear that a conviction from another jurisdiction or under a city ordinance will be sufficient. This is consistent with other provisions in the Motor Vehicle code.

Section 7 clarifies that part of the zero tolerance law found at NDCC 39-20-04.1 (1) to leave no doubt that driving privileges will be suspended for minor drivers with 0.02 BAC or greater alcohol concentration. At the very end of the last legislative session, a conference committee took a proactive move and provided for longer suspensions for a higher BAC, starting at 0.18 BAC (HB 1439). In the rush of drafting all of these changes, there appears to be a gap in the law. We have had two recent court decisions on this issue. The first was adverse to our position, but the second (and much better reasoned) was favorable to us. One of these cases has been appealed to the North Dakota Supreme Court. Even though we believe that the gap doesn't make any difference and that the law still covers zero tolerance situations, we wanted to get this perceived discrepancy cleared up. If we don't either clarify the statute or prevail in the Supreme Court, this can mean a significant highway funding penalty.

After this bill was originally drafted, the Attorney General's office contacted NDDOT with a request to add language to this same section, as long as the section was already in front of us, to clear up another area of confusion from HB 1439. The Attorney General's office is in the midst of an appeal at the North Dakota Supreme Court and had argued that certain language should be imputed to subdivision d in order to clarify legislative intent. This involves adding at line 16 on page 6, after "ordinance," a comma and the words "with the last violation or suspension." This clarifies to the public that the legislature intended the enhanced suspension time when the last violation, which is the current one, is over the threshold. This was added in the Senate.

Section 8 repeals references that are discussed in the explanation for Section 3.

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