

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2254

2005 SENATE TRANSPORTATION

SB 2254

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2254

Senate Transportation Committee

☐ Conference Committee

Hearing Date 1-28-05

| Tape Number | Side A | Side B | Meter # |
|-------------------------------------------------|--------|--------|---------|
| 1 | x | | 70-3990 |
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| Committee Clerk Signature <i>Mary K. Monson</i> | | | |

Minutes:

Chairman Trenbeath opened the hearing on SB 2254 relating to drivers' records for driving while under the influence.

All members were present except Senator Nething.

Senator Trenbeath (District 10) As sponsor of SB 2254, he introduced the bill. For many years he practiced in this area of criminal law having to do with driving under the influence of alcohol. What a lot of people don't understand is that it's not just the criminal law. It's also the administrative law. When you are arrested for an alcohol related driving offense, you have the opportunity for an administrative hearing and whether or not your license should be suspended. And, of course, you have the right to the trial procedures to determine whether or not you were criminally liable for driving under the influence of alcohol. The problem is that you can have your drivers license suspended, either administratively through an administrative hearing process or as a result of conviction of driving under the influence. This bill corrects the problem of "you

may or may not have been guilty of driving under the influence of alcohol” which isn’t really the question. The real question is that the state may or may not be able to prove that, on that occasion, you were driving under the influence of alcohol. If they are not able to prove beyond a reasonable doubt that you were driving under the influence of alcohol, you, of course, do not suffer the penalty. On the administrative side of the equation, the question is not “beyond a reasonable doubt”. The question is whether it is more likely that you were in excess of the legal limit of alcohol content or not”. If that takes place, the administrative hearing process is exhausted prior to the criminal matter being resolved. In that case the license would probably have been suspended and yet you may not be convicted on the DUI charge. If you are not convicted on the DUI charge and spend time in trial and are found not guilty, your license is still gone administratively. You suffer as many penalties with respect to your driving privileges as you would have if you had been convicted beyond a reasonable doubt of the offense. On the administrative side, a person must request the administrative hearing within a certain number of days or the license is automatically suspended. That is why this bill makes sense. If they fail to convict you of a criminal offense beyond a reasonable doubt, and part of the penalty for conviction is loss of your drivers license, then why should you lose it administratively by a lesser standard.

Senator Lyson (District 1) Testified in support of SB 2254. When a person is found not guilty, he is not guilty of that crime. It is not fair to have it on his record if he is found not guilty. The law says you are not guilty if you are not convicted.

Keith Magnusson (Deputy Director for Driver and Vehicle Services, ND DOT) Testified in opposition of SB 2254. Safety is why he is in opposition. This bill has a potential for a huge

step backward. The legislature passed legislation last session that was a proactive look at problem drivers, ones that have a higher blood alcohol content, some of them that have been in trouble before. This bill may very well get those people off. The bill would wipe out evidence in their records at the DOT from the administrative suspension of no criminal DUI conviction. It erases history. There are many reasons why there may be no conviction. That's one of the reasons why we have the administrative system in the first place. There were lots of problems the criminal system wasn't handling. He said he would hand out an explanation of the process. (See attached.) (Meter 740) There are a lot of reasons why there are no convictions: plea bargains, emotions, refusal to take test, not enough evidence to try them for DUI.

Contrary to what the bill looks like, it's not that they have been found not guilty by a court. It's that they have not been convicted. (Meter 900) The result is that we can end up with a problem driver with no alcohol violations on the record. It's possible for somebody to never be a repeat offender if they can work the system well enough. The administrative process works.

Senator Mutch said it seems this bill just says that if they are not guilty the record will be expunged.

Keith Magnusson (Meter 1088) said that under this bill it just says "has not been convicted" of a DUI. That means they may never get to a court. It's different than somebody going in and having a trial in court and they say "not guilty".

Senator Espgaard asked if surrounding states have both systems.

Keith Magnusson said at least 40 states plus the District of Columbia have a system like we do.

Carlos Nestler (Works for the Fargo Police Dept.) As a law enforcement officer, a husband, and a father he testified in opposition to SB 2254. See attached testimony.

Senator Espegard asked why he wouldn't arrest someone he stopped for DUI who refused to take the test but he believed they had too much to drink.

Carlos Nestler responded that he would arrest them if he had probable cause to arrest them for DUI because of the smell of alcohol and the way they look. (Meter 1660) But sometimes they won't talk and they walk half way normal.

Senator Espegard asked if refusal to take the test was an offense.

Carlos Nestler said not for the preliminary breath test.

Deb Jevne (Spokesperson for Mothers Against Drunk Driving) See attached testimony opposing SB 2254.

Jack McDonald (Lobbyist #200; RL Polk Company) Testified in opposition to SB 2254. In their opinion this bill would make the driving record less accurate for the purposes they use the records for. That is to evaluate the risk for granting somebody auto insurance. (Meter 1980)

Senator Espegard (Meter 2038) asked why he would want to impair a person's driving record if he hadn't been convicted.

Jack McDonald said, the fact is, that the person was stopped for a drinking/driving violation. That would be an indication that this person perhaps has a drinking problem, particularly if there were three or four of these. Thinks the problem here is that those three or four instances send a message and they will be gotten rid of.

Senator Mutch asked how long these citations stay on the record.

Keith Magnusson replied that the conviction stays on the public record for three years. After that it is in private records for an additional four years for a total of seven years.

Senator Trenbeath addressed Mr. McDonald. He asked if a person is arrested for a crime like theft and that charge is dismissed, isn't the fact of the arrest still on record.

Jack McDonald replied that he didn't know where to look for that record. (Meter 2580) If he was acquitted, there is a court record for the proceeding.

Judy Erickstad (Bismarck) Testified against SB 2254 as a concerned citizen, mother, and a potential victim. See attached testimony.

Senator Espgaard said the fact remains that there was not enough evidence to convict the person of drunk driving, yet it is on his record. He doesn't agree with her that the laws are not tough in the state because they are.

Terry Riley (Resident of Burleigh County) (Meter 3300) Testified in opposition to SB 2254. He is concerned that this bill won't protect and enhance public safety. The court system is not perfect. Judges are trying to do their best but the system is deficient, and in some instances, it really is broken as far as victims are concerned. Generally speaking, he feels the current system is fair because it serves the public interest and serves the public safety. A person can refuse a test and not even be convicted of DUI even if the blood alcohol is .15 or higher. Alcoholics need to be held accountable for their actions.

Fred Wooten (Bismarck Police Department) Testified in opposition to SB 2254. (Meter 3605) He agrees there are two steps to the process -- the court and the administrative. The administrative is not an automatic. There is an opportunity for a hearing. The hearing officers has certain facts he needs to hear. First, he has to hear there is a reasonable ground for the officer to have made the stop. Second, he has to hear that this person was placed under arrest. Third, he has to hear the test results are over the legal limit. He said this bill, as written, is somewhat

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vague and feels there would be a lot of misinterpretation. Does this just deal with the record or does it deal with the after suspension once a person is found not guilty? How is it going to be applied? He believes if fairness is a concern, it should be addressed differently.

The hearing on SB 2254 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2254

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-04-05

| Tape Number | Side A | Side B | Meter # |
|------------------------------------------------|--------|--------|-----------|
| 1 | | x | 1746-2755 |
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| Committee Clerk Signature <i>Mary K Monson</i> | | | |

Minutes:

Chairman Trenbeath opened SB 2254 for discussion. He referred to an e-mail he received from a lady in Jamestown which seems to point out the problem. (See attached.)

Senator Espegard said this has to do with the administrative rule.

Senator Trenbeath said it has nothing to do with the fact that a person can be administratively suspended. If a person is not convicted of DUI it comes off his record but he can still be suspended.

Senator Espegard asked if the law was put in years ago by the Department when maybe more of the DUI's were being reduced to wreckless driving.

Senator Trenbeath felt maybe it was probably an unintended consequence in the beginning.

(Meter 2015) Discussion on the e-mail. It is a good example where there is no crime, but because he was charged with a crime, it stays on his record. Discussion followed with respect to other cases.

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Senate Transportation Committee

Bill/Resolution Number SB 2254

Hearing Date 2-04-05

Senator Mutch motioned a **Do Pass** on SB 2254. Seconded by **Senator Bercier**.

Senator Warner said he had talked with the Dept. and had concerns that reflect their concerns.

He didn't believe they were being derelict in their duty by having the concerns.

Roll call vote 4-1-1. **Passed**. Floor carrier is **Senator Trenbeath**.

Date: 2-4-05
Roll Call Vote #: _____

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2254

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Mutch Seconded By Sen. Bercier

| Senators | Yes | No | Senators | Yes | No |
|-----------------------------|-----|----|-----------------|-----|----|
| Senator Espegard | ✓ | | Senator Bercier | ✓ | |
| Senator Mutch | ✓ | | Senator Warner | | ✓ |
| Senator Nething | | | | | |
| Senator Trenbeath, Chairman | ✓ | | | | |
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Total (Yes) 4 No 1

Absent 1

Floor Assignment Senator Trenbeath

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

REPORT OF STANDING COMMITTEE (410)
February 7, 2005 7:24 a.m.

Module No: SR-24-1914
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2254: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO PASS
(4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2254 was placed on the
Eleventh order on the calendar.

2005 HOUSE TRANSPORTATION

SB 2254

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2254

House Transportation Committee

☐ Conference Committee

Hearing Date February 24, 2005

| Tape Number | Side A | Side B | Meter # |
|--------------------------------------------------|--------|--------|-----------|
| 2 | X | | 13.7-52.9 |
| 3 | X | | 0-29.5 |
| | | | |
| Committee Clerk Signature <i>Debra D. Shimeh</i> | | | |

Minutes:

Acting Chairman Price opened the hearing on SB 2254 A Bill for an Act to create and enact a new section to chapter 39-20 of the North Dakota Century Code, relating to drivers' records for driving while under the influence.

Senator Trenbeath:(13.9) Attracting allot more attention than it did in the senate. It is a simple bill. If a person is stopped for a suspected alcohol driving offense and is arrested, that person immediately embarks on two tours. She is going to take a tour of the criminal justice system and the administrative system simultaneously. At the time the rest is made that person is given is a report of notice form, which advises that person of a number of things. One of which is he or she has ten days to ask for an administrative hearing on whether or not that persons driving privileges should be suspended in the state of ND? If that person does not read the fine print and does not take action within the 10 days the license is automatically suspended. Simultaneously with that is the embarking on the journey through the justice system by which odds are he has been

charged with a class B misdemeanor or driving under the influence while being in actual physical control of the motor vehicle. One of the penalties associated with the conviction on the criminal road to justice is that the persons driving privileges are suspended in the state of ND. They can't suspend you twice for any more than the initial period of time. There are two opportunities for the suspension. One administrative, which is by a standard of proof. One if through the criminal system where the standard is beyond a reasonable doubt. In the number of instances, once the person who is charged with prosecuting this offense, reads the officers report, maybe interviews the officer, maybe speaks with the attorney that is representing the defendant at this point. The prosecutor says, I am not prosecuting this thing. This is no more an indication of guilt than a man in the moon where I am not able to prove this beyond a reasonable doubt. I think I would have a hard time proving his guilt so as a resolution of the matter, the person pleads to another offense in any event the matter is taken care of in criminal court so without there being a conviction of driving under the influence or actual physical control, therefore, no suspension is warranted because there is no penalty warranted under that statute. The persons driver license still has been suspended. You could have a person who is not only is not convictable, but was not under the influence at that time suffer a penalty administratively on the least evidence and suffer the suspension of the drivers license. Which we all know is still listed as a privilege in this state, but if there is any state in these US where a driving privilege ought to be a driving right it is here since there is no public transportation. (quoted this story about a friend of his parking by the bar in Wahala and was not driving, just setting in his car with the keys on the dash and got a DUI. The prosecutor actually agreed that he couldn't have done anything wrong, but he was found guilty). You will hear from many of the people here that passage of the bill promote flee

bargaining or impede prosecution or increase jury trials. For twenty years plus the government has had the benefit of an unintended consequence of the legislation that was passed in the early 80's. It has really given the government an unfair advantage for its citizens. This is not about prosecution, it is not about criminal defense and because this has to do with administrative suspensions, it is not about crime. It is about fundamental fairness to its citizens. All this bill would do it say if you do not convict this person of the crime for which he was charged, alcohol related and that person has been suspended administratively, that suspension can't show on his driving record. I am asking for a do pass on the bill.

Rep. Ruby(20.6) Under the situation where there is a higher degree of proof under the court proceeding than the administrative, it is very possible that maybe didn't show a proof that they didn't commit the crime, but they may have gotten off on a technicality in the court. However, the administrative code still shows there wasn't enough proof to show that they didn't actually drive drunk. In those situations that person would have the benefit of this law also.

Senator Trenbeath:(21.4) Let me walk you through the administrative process. In the administrative process you appear before an administrative hearing officer who is an employee of the DOT and who gets the testimony and makes the decision. You want to talk about whether a person has the ability to over come a technicality and balance look at this.

Rep. Ruby Is this CDL or not?

Senator Trenbeath: This is non CDL. CDL follows an entirely different course. I am not even functionally familiar with it since it is so different. You are talking about federal laws then. I think any indication of alcohol with a CDL; even a .2 can get your license suspended for a long time.

John Risch, United Transportation Union across ND: We certainly want to have people driving drunk not be truly penalized. But as railroad engineers we are certified the Federal Railroad Administration. Each time we are certified or rectified the FRA reviews our driving record. Someone that was found innocent of a drunk driving charge and that stays on your driving record and that is a concern for our union. Even though you were found innocent in a court of law it could jeopardize your employment. (Handed out a Federal Code-Attachment #1)

Rep. Owens(24.8) Since this is current law already and what we are talking about is correcting the problem with the law. Have you had any problems with this?

John Risch:(25.0) I relay any problems that we have had with this. It just seems an issue of fairness. If you are found not guilty and did not do the act, why should it remain on your driving record?

Acting Chairman Price: Anyone else in favor? Anyone in opposition of this bill?

Keith Magnusson: (see attached testimony #2) I ask for do not pass on this bill.

Rep. Meyer(33.3) When there is a refusal to take an alcohol test, you can't refuse to take an alcohol test?

Keith Magnusson: In law when you get your license you are deemed to have consented to taking blood alcohol tests. But people don't, and there are provisions in the law, if you don't take the test, there are pretty severe sanctions. Also probably unlike most states, allows you to tear. You can sober up the next morning and realize that I should not have done that and you can cure your refusal. The legislature last session said if you have a prior DUI you can't cure anymore. Before this you could refuse all the time and curing. What happens then is you don't have a test so often

times you don't have enough conduct or a test to try for a DUI. In Minnesota the act of refusal is a criminal offense itself.

Rep. Meyer(34.9) In another part on here that 2254 is the potential fund as much as it is hard work and get these drivers off. I don't see how it has the potential to get the drivers off.

Keith Magnusson:(35.4) If you look closely at my testimony and look at this bill all it says they have never been convicted, and they can get a paper to that affect. Their administrative record is wiped out. They getting off is undoing the system we have had for over twenty years. It is not aimed at helping first time offenders, it is aimed at helping the ones that really do have a problem. We had attitudes about drinking and we condone allot of this. Especially in the western part of the state.

Rep. Delmore(36.2) Is the criminal record wiped out if you are found not guilty? Is that taken off the record?

Keith Magnusson: If they happened to be found not guilty that would be the verdict of the court and that will stay on the court record. This would go back and take off the administrative record, even though you have someone with a .20 blood alcohol content.

Rep. Delmore If I am found not guilty there would be nothing on that charge on my driving record, but the administrative process would still remain there? Am I not correct.

Keith Magnusson: You are correct. We will not get anything if there is not a conviction. If there has been an administrative suspension and maybe an administrative hearing if you are going to have a trail in criminal court.

Rep. Delmore(38.2) As we look at the way we handle this in ND. Do other states also have a double tier system? Do they work the same way? Since we are hearing there are some inequities and they may fall through the cracks.

Keith Magnusson:(38.5) First, we don't think they are inequities. Forty other states plus the District of Columbia have a very similar system to ours. We think there are more safety guards in our system than their are in some of those other states. This is very common across the country and treated the same way.

Rep. Thorpe(39.0) I am having a little trouble understanding where do you see the problem in this bill, whether it is administrative hearings or court, if a person goes to administrative or court and wasn't guilty and didn't have an alcohol violation why should they not be found innocent?

Keith Magnusson: This is where it gets very difficult to understand, even if they are found not guilty, doesn't mean they are innocent. But the fact remains that they were still on the roads drinking and had a blood alcohol after a test over the limit. They already have that and the law right now assumes they were under the influence at that point. They have a right to a hearing to dispute plus to stop and correct all these other things.

Rep. Thorpe(40.5) I think you are making the assumption that they have already had the test. In the case of Senator Trenbeath pointed out that fellow had been drinking all right, but he had not driven. I find that hard to figure out how he was perceived to be guilty?

Keith Magnusson: That person was charged with actual physical control which is part of the DUI statue. ND Supreme Court has upheld that. With the keys there and everything they had control of the vehicle because they could wake up and take off. That keeps the drunk driver off

the road. They were looking at safety on this case. You could take off at any time since the keys were laying there and you may not have sobered up. You may think you have.

Rep. Thorpe(42.7) I don't understand in this bill how you could get convicted and loose your license if you hadn't done anything?

Keith Magnusson: Just because you are not convicted doesn't mean you haven't done something wrong.

Rep. Thorpe Lets say I had not done anything against the law or unsafe?

Keith Magnusson: If you have not done anything you will not be in this situation.

Rep. Meyer Had a friend who got picked up and he was a diabetic and was having an attack and refused the test. He was weaving and they picked him up and he also spent the night in jail. They did not find out until morning that this was the problem, but again that was on his record and will remain there and he was found not guilty. He did go to court and was charged with a DUI.

Keith Magnusson:(44.9) There are all kinds of stories out there. In a normal situation they have a right to have an administrative hearing to go over all of this. The notice to appear is not in fine print and they do have 10 days to respond. There is a right to the hearing and if they don't like the hearing there is a right to appeal all the way up to the courts.

Acting Chairman Price: Please supply us with some of those forms so we have them.

Rep. Ruby(45.8) I was just wondering. I suppose some states that lettering is kind of bleary?

Keith Magnusson: It shouldn't be by the next morning. Sometimes there are blood tests and they hand it to them personally up to a week later. I encourage people to read everything.

Rep. Vigesaa(46.7) When we hire new employees we should check their driving record for insurance purposes for a job. How would this influence a report we get back on an individual?

Keith Magnusson: If this bill would pass and they act quickly they may have their record wiped out so they would have a clean record yet they may have a .20 blood alcohol content test, and an administrative suspension and that would not show up on their record. CDL I am sure are not under this code.

Rep. Ruby How long would that information be on the record anyway?

Keith Magnusson: It stays available for three years. If they happen to be a CDL holder it would stay on the public record for three years and employers and prospective employers can get the entire record. Law enforcement and courts can get the entire record. But, if it is wiped out and expounds there won't be anything there for the court to know or anyone else.

Cynthia Feland: (49.4) Burleigh County States Attorney's office. I am here to urge a Do Not Pass. Basically my problems are limited to the fact that over the years we have been very careful to insure that there are two completely separate tracks; the administrative track and criminal track. They may not overlap and they have no bearing on one another; they are separate and you ask why is that so important. There is a little thing called double jeopardy. You can't be tried for the same crime twice. We have an onset of litigation a number of years ago where by the defense we saying you are penalizing this person though this administrative process. They have already been tried for this particular crime and you can't now come back and try them in the criminal arena for something that has already been handled administratively. The argument that was made in the prevailing factor of those cases was the fact they are distinct. They have no overlap, they have no bearing on one another. The state has a compelling interest, through the administrative

process, as part of the DOT, to regulate a persons driving privileges. That is completely separate from the fact that the state has a separate compelling interest to look at driving under the influence and other related penalties as being a criminal offense where they are looking at the potential for penalties associated with any other criminal offense like jail time or fines, but has nothing to do with their license. What happens in that criminal arena is not in fact tied to what happens to that license. There is a completely separate proceeding that handles that. This bill is going to put the two together again and what we are going to see is a resurrection of an issue that has been laid to rest a number of years ago. We are going to have to start to look at the same type of litigation all over again in the appeals arena for that very same issue. That States Attorney's office in Burleigh County is recommending a do not pass.

Tape 3, Side A

Rep. Thorpe (.1) I am surprised that this bill is so bad how did it get so far?

Cynthia Feland:(.3) I am ashamed to say it did slip through the cracks. One of the states attorneys saw it actually made it out of committee. Finally we started looking at it and realized that this was a slippery slope that was going to have a very devastating consequences as far as criminal convictions. Burleigh County tries more cases than any other jurisdiction in the state. Take a look at the records and we have by far more jury trials than any other jurisdiction. Potentially we are going to be eroding DUI laws and creating a situation where we actually give some merit to the double jeopardy argument.

Ladd Erickson: (see attached testimony #3)Went over DUI cases from last week. The first case was a young man from Washburn, rolled the stop sign and was pulled over. Failed the breath test and got out of the car and had a .10. He came to see me before court; has no record and is a

manager of a business in Bismarck and I gave him reckless on the spot. Yes, I will reduce your charge to reckless driving and I have a system set up so the .8-.09-1.0 type of DUI's you did not give the cop a hard time; you don't have a prior record I try to be uniform in that. By forcing a jury trial, even though the people are guilty is not necessarily a cost effective thing to do. I am not concerned that he did not do this and there was no discussion that he wasn't a .10. I felt to be fair from case to case I try to use the similar fact pattern. Under this bill a common type of case would be dramatically affected in this way. This guy plead out to reckless driving. That would mean that his judgment for reckless driving would be sent to the DOT and his license would be exonerated. He would have not gone through any administrative suspension. I as a prosecutor decides that I am not going to reduce your case to reckless until the pretrial conference, which will be in about 6 weeks. Then this guy would be suspended for six weeks. If he got the same thing in Sheridan County they get a judge about every other month and he has had about a two month suspension before the judge got there and could reduce the charge. Burleigh County it would probably be about 6 weeks because they don't go to their initial appearance for the State Attorney's office. So the problem here is that this bill affects is as some of these DUI's, I am not considering the guilt or innocence. This guy is as guilty of a DUI, but in fairness from case to case he is not convicted of it. That is my system. I work it out with the officers and I think it is a fair system. But these kind of cases, that are pretty routine now, are going to be suspended completely differently in every other county in the state. Some people will have a 91 day suspension because the prosecutor is going to say I will give you reckless, but I will have to let that case go through the suspension to be uniform so everyone gets their 91 days suspension. Other counties may not do it at all; he may never get suspended. This bill creates first of all in

the routine case, that is now is objectively handled. I know that the evidence is there. That he was above the .08 limitation and a valid test is done. We do two tests; a preliminary test in the car and an intoxicator at the police department. So I know that he committed the offense. Now he not going to have on his record a DUI. That is going to be treated differently. So we are going to go, under this bill, from an objective, fair uniform system on the length of suspension part on the license suspension part, to a subjective chaotic deal where it is going to depend on now when you have a judge; when the states attorney decides if this case might go to reckless or whatever. That is a significant problem because people are going to be treated much different. Most states attorneys have learned that going to trail on .08's and .09's in the rural parts of ND is not a promising thing. You have wasted resources bringing a judge and court recorder for 10 minutes a day and bringing in a jury and going through the whole thing.(Went over more cases, but generally the same illustration).

Paul Laney: Fargo Police Department. The reason this bill is bad is two things. Convictions and unintended consequences. If this bill is passed it will put us back by decades and I will explain to you why. I will give you an example of why and how this will happen. Demonstrated an on the street driver that he had stopped. Imagine this anywhere on a highway in ND. I stopped her for speeding and approached this vehicle. I noted an alcohol smell and a watery, bloodshot look to her eyes. Which is enough to start to process to determine whether she is under the influence of alcohol. Would you be willing to step out and do some tests? She says, no. Would you be willing to do an HPN test, it is an eye test. She says no. At this point, the state of ND has the implied consent that says the driver must consent to the testing of the breath. The outside screening test. Would you be willing to do that for me. She says no. At this point,

if she is falling down drunk, I can make an arrest based on her condition. That is all I am going to have to take to the prosecution. What is she is not falling down drunk? What is she is a 1.1 or 1.2 and an experienced drinker? You could hardly tell other than the eyes and breath. The law the way it is now there is an administrative penalty for hindering that process. Now, I would have to decide if I am going to make an arrest and bring her before the courts based on the watery look, but you are going to see your arrest rates in ND for DUI go down. That is all we are going to have to go on and that will be the unintended consequence. Being able to have the administrative process gives us the tool to make that driver stop and think. OK, if I cooperate with this I might get a DUI. I might have to go through the court system. But, if I refuse I am going to loose my license from one to four years, depending on past history. If you take that away they have to make that decision. This is my first arrest and if I am convicted it is only 91 days. If I hinder this process and refuse to go through the process it is one to four years. You take away that ability and what person in their right mind is going to cooperate and go through the public like wildfire. This is not a simple bill and the system isn't broke so lets not fix it. I would ask for a do not pass recommendation.

Rep. Meyer(16.7) If someone would call me from the bar to drunk to drive and I go and get them. On the way home, and I am sober and have had nothing to drink at all. If I am in a wreck on the way home does that count as an alcohol related fatality

Paul Laney: No, if the driver has had nothing to drink that is who is in charge of the vehicle. It does not matter if you have had a person with you that has been drinking. We want you to go pick up that person and not have them driving when they are not capable.

Rep. Meyer Would it be an alcohol related accident in the statistics. Paul Laney said no it would not.

Clarence Tuhy:(18.2) (See attached testimony #4)

Deb Jevne: (See Attached testimony #5)

Patrick Ward:(21.8) See attached testimony #6) We also missed this bill on the senate side.

Rep. Iverson(24.1) Don't they have to get SR22 clearance if they get a DUI for insurance, if they get a conviction?

Patrick Ward: Yes, the SR22 do come into play if there is a conviction. What would happen in this statue would be a situation where there is an administrative defense once you open it. What happens is that the administrative process moves alot faster so there is a suspension right away and that will be on the driving record for a time. But then the trail 6 months or a year later on the criminal side; now they are found not guilty on the criminal side for whatever reason. The fact of the matter is that they were drinking and driving so from the suspension information that the insurance company gets we want to know that. If we are writing the policy for someone, we want to know if we are writing it for someone that has had a DUI or a suspension on their record. The more information we hide on the driving record the less valid that information is to the insurance companies.

Allen Koppy: I currently serve as states attorney in Morton County and use to work with Mr. Erickson. I would echo all the things that we said earlier and I would encourage a Do Not Pass.

Jack McDonald:(27.3) (See Attached Testimony #7) I think the administrative process has not been explained very well. I do not do much of this in my law practice, but I have done some. While an administrative hearing process is not a court trail, it never the less is somewhat like a

court trail because you present the evidence and a right to have an attorney present. The judge that is hearing the case they hear the evidence that we have discussed here today. It isn't like it goes right though. You do have the opportunity to present your side of the case and sometimes the judge just says there is no probable case and they dismiss the case. It does impair the accuracy of the records so we do oppose this bill.

Acting Chairman Price: Anyone else in opposition.

Hearing closed (29.5)

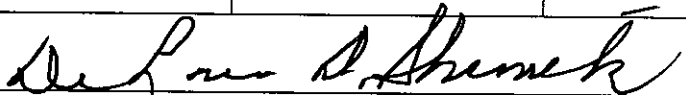
2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2254

House Transportation Committee

☐ Conference Committee

Hearing Date March 18, 2005

| Tape Number | Side A | Side B | Meter # |
|--------------------------------------------------------------------------------------------------------------|--------|--------|-----------|
| 1 | | X | 18.1-52.3 |
| 2 | X | | 0-2.9 |
| | | | |
| Committee Clerk Signature  | | | |

Minutes:

Chairman Weisz reopened the hearing on SB 2254. Rep. Kelsch do you have some amendments to hand out?

Rep. Kelsch(20.6) When this bill came over from the senate that was not the intent was to remove that portion so what this does is if you refuse to take the blood alcohol test you are guilty.

Chairman Weisz(21.1) Everyone understands what the bill does. It removes the refusal section from being expunged. If you are not guilty on a criminal conviction. If you refuse you get the suspension.

Motion Made By Rep. Kelsch Seconded By Rep. Iverson Voice Vote carried.

Chairman Weisz We have an amended bill in front of us.

Rep. Kelsch Rep. Hawken asked me to bring these amendments to the committee. What these amendments do is move the administrative hearings from the DOT to the office of administrative hearings. What is the reason for this is that some of the people don't think that they should be at the DOT and they should be at the office of administrative hearings. Some people think that the DOT may be bias and perhaps you might not be getting a fair break. So I am bring this forward and you can do what you want.

Motion Made By Rep. Owens Seconded by Rep. Iverson Do Pass As Amended #2

Chairman Weisz Does everyone understand what these amendments do?

Rep. Delmore(24.5) I understand the movement of these motions but we all understand what is going to happen. The fiscal note on these bills should disc it. Maybe enough said to the DOT.

They need to be aware of some of the inequities that are going on. We have heard from a number of individuals across the state and their point is very valid. Those are the people that we represent and they don't like everything that is going on. I will not vote for the amendments.

Rep. Owens (25.1) The original bill is trying to legislate spirit verus letter. It is the responsibility of the judicial branch. The problems is with administration. It is not with the DUI court. We have heard from a number of people and it is the administration process that is causing the problem.

Rep. Kelsch(25.9) It really is the aspect of double jeopardy has been the argument.

Unfortunately what happens is who writes the fiscal note. Every session is not a bad idea to remind the DOT that those feelings are out there.

Rep. Meyer(26.6) Why would it cost more? As long as your having an administrative hearing that should not be an argument.

Chairman Weisz(26.8) Yes there is a difference because under DOT they have a hearing officer and they have somewhat of a different system your costs are different.

For good or bad, from what I have been told that most people don't. It is just a pro forma goes to the hearing officer so the fear is there may be a whole lot more trying to fight it in the administrative law judge and then the DOT has indicated when it is a hearing officer they don't have to represent themselves because its DOT. If you go to a law judge they have to have their attorneys to present to the administrative law judge every case, so their costs go up. Whether you agree with the system or not, but that is why their costs go up. That is the perception, they representing the DOT and is not impartial.

Roll Call 6 Yes 7 No 2 Absent Failed

Chairman Weisz Any further amendments? Handed out another proposed amendment. One their issued in this amendment is the way they are reading the original bill we stand liable for loosing a fair amount of federal funds. These amendments supposed address this issue. Here it says according to this there would be about a \$10,000,000 lose due to noncompliance and \$20,000,000 the second year and subsequent years. This is a loss of highway funds; not a transfer. We have to have zero tolerance. There is no criminal penalty on zero tolerance if we expunge because they are saying again we are not criminal. These amendments the DOT does not like. They think it does address the loss of federal funds.

Rep. Delmore (32.3) I think one of the things we have to keep in mind is someone is not convicted of a crime and I don't care if it is murder or DUI or whatever; their found innocent and that is one of the premises of the courts in this country.

Chairman Weisz (32.5) No their not. Criminal courts are not determining innocence. Criminal courts just determine you are not guilty. There is not enough evidence to determine you guilty. The issue here is there is no criminal for the zero tolerance on the teenagers so if we expunge their records because there is no criminal convictions their argument is that you will never have anything on a driving record under the teenager zero tolerance under the federal mandate. Because we have no criminal section. You cannot be convicted criminally under zero tolerance. This amendment is suppose to address the issue. Whether it does it is up to you.

Rep. Delmore (33.8) Did they furnish you with the part in federal code that says we would loose all the money. I just want to see where that is coming from.

Chairman Weisz Under section 4-10. It would not enable ND to meet the ALR criteria under section 410. I do not have something from the feds and actually they indicated to me that they did not want to run this by the feds because of fear, if the bill passes, that at least the feds wouldn't notice it for awhile that if they brought it to their attention that we were going to be nailed. I don't have a letter from the feds if you do this specifically you are out of compliance.

Rep. Weiler I know that there are other states that have passed this law. Do we have any information from these states?

Chairman Weisz (35.4) Some states don't even have an administrator. The way the feds look at it get complicated. Some of it is federal funding and some of their requirements have to be that you can't go backwards. If you recall the debate we had with the .08 and there was allot of resistance and allot of time trying to pass language that had a lessor penalty under .08 and graduated up with penalties. The Feds would not allow that because even though we went to a .08 and we increased penalties further down we decreased from their understanding we had a

lessor penalty which made us in violation of all kinds of laws. That is why we had to bring the .08 back because we already had this in place. The zero tolerance only affects the teenagers because there is no way to convict them criminally because we have no criminal statutes.

Rep. Ruby(37.1) I think it would also set up another inequity as far as the CDL drivers. It is just one more thing that the CDL drivers have that the rest don't have.

Rep. Meyer(37.6) Your CDL drivers fall under an entirely different area of the code. So it doesn't affect them one way or another.

Rep. Ruby Discussed conflict and burden that already are on CDL drivers.

Rep. Delmore That is something you know getting a CDL and also a CDL driver may do many things that I cannot so there is a reason the feds hold you to a tougher standard.

Chairman Weisz When you get your drivers license you understand you are under the administrative law now so you can't make the excuse you are not aware that you are subject to administrative penalties.

Rep. Iverson(39.4) If you are found not guilty you are innocent because this system you are presumed innocent until you are proven guilty. If you are found not guilty or not you are innocent.

Chairman Weisz(40.0) The state does not determine your innocence. It only determines that you are not guilty. You are presumed innocent, but it doesn't determine you are innocent. The burden of proof is on you. We have different levels of burden of proof. Being not guilty of criminal has nothing to do with administrative. You can be declared not guilty in a criminal trial and be sued in a civil trial on the same issues and be declared guilty. That should be double jeopardy. How can that happen.

Rep. Delmore(42.7) Have you spoke to Senator Trenbeath on this bill.

Chairman Weisz The person that is promoting this said he spoke to Senator Trenbeath and he doesn't think the amendments are that bad, but of course he perfers his version. I am just passing these on; they are not my amendments.

Motion Made By Rep. Dosh Seconded By Rep. Weiler Do Pass the Amendment #3

Chairman Weisz (44.) This amendment changes what is being done, but it is only on a first offense. If you have a multiple offense and you go back you won't get your record expunged. If they were suspended for a year, they still have to serve the year. If it is a first offense they can get that expunged off their record. But they cannot make that go away. They have to serve it. It brings in the refusal part, which we already passed. If they are over .12 none of these apply. If those conditions are met the records are expunged.

Rep. Delmore This says it is not accessible to the public; where the original bill said it shall expunge permanently and totally. So that would be one of the key differences.

Chairman Weisz(45.9) This would be much like the deferred imposition. A deferred imposition is expunged, but it is still available to the court. The court can look back on your record. Insurance companies cannot look back. It does say that if you get stopped again you are not at zero, you have a first DUI now. When the court looked at it to decide if your going to fall under this. I don't know if it is good or bad. According to DOT it does address the dollar issue. They really don't like the bill. Senator Trenbreath, I understand prefers his version.

Discussion: None

Rep. Kelsch: This bill is a hog house.

Do Pass on Amendment #3 10 Yes 3 No 2 Absent

Page 7

House Transportation Committee

Bill Number SB 2254

Hearing Date March 18, 2005

Motion Made By Rep. Weiler Seconded By Rep. Kelsch (end 52.3)

Tape 2, Side A

Motion failed 5 Yes 8 No 2 Absent

Motion Made By Rep. Ruby Seconded By Rep. Vigesaa

**Do Not Pass as amended 8 Yes 5 No. 2 Absent Carrier: Rep. Iverson (later changed
to Rep. Ruby)**

(2.9) done

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2254

House Transportation Committee

☐ Conference Committee

Hearing Date April 1, 2005

| Tape Number | Side A | Side B | Meter # |
|------------------------------------------------|--------|--------|---------|
| 1 | X | | 0-15.8 |
| | | | |
| | | | |
| Committee Clerk Signature <i>De Lou Alheim</i> | | | |

Minutes:

Chairman Weisz reopened hearing on SB 2254. Everyone has a copy of the proposed amendments from the Senate from the sponsor. There was concern having to do with the idea of gleaning down the DUI. If you plead it down you never get a DUI so your record could be continuing expunged. C on the amendment says that section 39-08-03 has to do with pleading to reckless driving so if they plead to that they still would not get it expunged. The rest of it in front of you is what you approved.

Rep. Price(1.9) All of this information; however, will be available to the courts in the case of a subsequent DUI?

Chairman Weisz The only thing that is expunged is the public record for the employers for CDL will be able to get it, courts get it and it is available to the DOT. For example, if you had a DUI and you had the administrative suspension for a DUI and you got the 91 day suspension. Then it

got expunged through this process. Now a year later he got picked up for another DUI; does he have two DUI's or not. Yes, because the DOT still maintains that first suspension so you would immediately go to the one year suspension since it is your second offense. What it does for a first time offense where you are not convicted it will not affect your insurance. The insurance company is not going to see that your had a drivers license suspension for the first DUI.

Rep. Ruby(3.1) As I understand after we amended it last time, at that point it still didn't hide it or make it transparent to the court. It was just still dealing with DOT and administrative hearing process. This, as I understand, only masks it from the insurance company and an employer that may seek to check the record. Is that correct?

Chairman Weisz This would not affect when the employer on a CDL went to check, this would not be hidden. But for the press or anyone else who would want to see the drivers record it would not be expunged and that would include the insurance companies.

Rep. Price (3.8) As an employer who not all my drivers have to have a CDL, I would not know I am hiring a drunk driver.

Chairman Weisz(3.9) That is correct.

Rep. Meyer They are not a drunk driver. They are found not guilty; they are not a drunk driver. This is the only system where you are guilty until you are proven not guilty. That is what we have now. This is if they have been found to be, in a court of law, not guilty and under that they are not a drunk driver.

Chairman Weisz Rep. Meyer, just to be clear, they are not guilty of a criminal action. The courts have not addressed the administrative action, which they have an ability to go to district

court on that also. So there are two different actions. They were never declared not guilty of the administrative action So that needs to be clear.

Rep. Delmore I understand what you are saying, but we have heard enough about how the administrative hearings are working as they are administrated through DOT. People go through and many people don't even see the notice that they have the option.

Rep. Ruby(4.9) One of the things we didn't have before us was a long line of people coming in saying they were wronged. We had some lawyers tell us that there are people that could get off in the court level, then they would still have this on their record on the administrative level. So as far as that, if somebody committed a crime in front of all of us and we saw it and would know exactly who it is we know he did it, but the courts say they are presumed innocent. Now if they get off, do we all set here and say I guess he was innocent? That is where the differences are with the DUI. The DUI, if somebody gets pulled over and their blood alcohol is over the legal limit, and they are arrested for it that is what the administrative hearing looks at and says the evidence before us shows they are. Now, when they go to the court hearing there might be a whole difference circumstance and they say well it was just a small matter and we are not sure; maybe the test was a little off. The other ones say no, the evidence shows just as we would if it was somebody that committed a crime before us.

Rep. Hawken (6.0) We are talking here about first time offenders. We have changed this bill to such an extent that it might affect one or two people, but first of all, in your example there is no administrative hearing. I will use myself as an example. Two years ago when we did that little field trip to the highway patrol and did our field testing. According to that machine that night I didn't test over the limit. There is no way I would have driven a car. Some of the rest of my

colleagues did. Now what if they had then gotten a blood test and the blood test said different. That is the kind of thing we are looking at. We are not looking at the repeat offender. This is a person who gets caught in a system that we know we have broken and we don't know how to fix. That's it. It is for somebody who is found innocent and the way we have got it now; you can't plea down, you can't refuse the test so you are going to have your license suspended; your going to pay your \$150 to get your license back. I am not real sure it does a whole lot but for those two or three people that might get caught in it. We have certainly done bills for two or three people before.

Rep. Meyer:(7.5) This is such a different entity. You can get pulled over right now; say you crossed the center line, and I hate to give you a life example. But I had an elderly gentleman, I told you the story before. He is 65 years old. It came right up on his bumper. He pulled over because it scared him. He had had one beer and they pulled him over and charged him with a DUI. You can get charged with a DUI if you are below .08 right now. When that happened then he has to go through the whole process. That is still on his drivers license even though he was found innocent.

Chairman Weisz:(9.0) You are not legal just because you are below .08. We do have driving under the influence. It says if you are impaired. Now that is for the hearing and the court to decide that. Just because you are not .08 doesn't make you illegal.

Rep. Meyer: That is correct. That was my point. He went in with his evidence and he was found not guilty. It is still on his driving record. He appealed it on the administrative hearing in court and found not guilty.

Chairman Weisz If he appeals to the court and he wins the administrative goes away. So something is not correct in this story.

Rep. Owens (10.0) This conversation is interesting because I just asked the highway patrol yesterday that if you pull someone over and they agree to a breath test and they come up .7 what do you do? He told me they say thank you and drive safe. Unless you are .8 they have no legal ability to prevent them from driving. So somebody is confused somewhere.

Rep. Meyer If you get pulled over. You go across the center line and they pull you over so the police could pass him. When he was pulled over he was given a breath test and he was charged with a DUI.

Chairman Weisz(10.9) Obviously, law enforcement operates on an individual basis. By law they cannot stop someone unless they have a reason. Obviously, crossing the center line is a reason. Even if they are under .08 they have no reason they can hold them. If they have erratic driving they can charge them under being impaired regardless of their alcohol. That is the law, but this is not addressing that. We need to get back to the bill. What we are addressing is do we want to expunge the record if he has been convicted. That is not the proper term because you are not convicted per say in an administrative hearing. You are loosing your license because they give the license and they can take it away. It is an administrative. There is no fine; not criminal record and there is no civil penalty and this is different. We are saying we want to expunge the administrative suspension off the record. If you were never convicted of a DUI you have an administrative suspension and that needs to be clear. So we understand that is what we are doing and lets not get off on the side issues of debating whether they should have been stopped or this and that.

Rep. Meyer It will expunge the administrative suspension if they are found not guilty. Correct, in a court. Is that what we are doing?

Chairman Weisz That is what we are addressing here. So we are clear. We are saying regardless if you are found guilty on the first offense it will hide the public record of that administrative suspension.

Motion Made By Rep. Iverson Seconded By Rep. Meyer that we reconsider our actions on SB2254.

Voice vote carried.

Motion Made By Rep. Hawken Seconded By Rep. Delmore to we consider amendment 0201.

Rep. Ruby I will vote for the amendment just as I did for the other amendment to make it a better bill. I probably won't support the whole bill, but it does make it better just as the other one did and that is why I did it last time.

Voice vote carried. No opposition

Motion Made By Rep. Iverson Seconded By Rep. Meyer

Do Pass As Amended 8 Yes 7 No 0 Absent Carrier: Rep. Hawken

(15.8)

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2254

Page 1, line 9, after "chapter" insert "other than section 39-20-04"

Renumber accordingly

Kelsoch-1
Lundson-2
Voice Vote
Carried

Date: 3-18-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2257

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass As Amended ^{amendment} _{waiving}

Motion Made By

Rep Dosch

Seconded By

Rep Weller

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------------|-------------|----|-----------------|-----|----|
| Rep. Weisz - Chairman | ✓ | | Rep. Delmore | ✓ | |
| Rep. Hawken - Vice Chair. | <i>abst</i> | | Rep. Meyer | ✓ | |
| Rep. Bernstein | | ✓ | Rep. Schmidt | ✓ | |
| Rep. Dosch | ✓ | | Rep. Thorpe | ✓ | |
| Rep. Iverson | | ✓ | | | |
| Rep. Kelsch | ✓ | | | | |
| Rep. Owens | ✓ | | | | |
| Rep. Price | <i>abst</i> | | | | |
| Rep. Ruby | | ✓ | | | |
| Rep. Vigasaa | ✓ | | | | |
| Rep. Weiler | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes)

10

No

3

Absent

2

Floor Assignment _____

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

Passed

PROPOSED AMENDMENTS TO SENATE BILL NO. 2254

Page 1, line 2, after "influence" insert "; and to amend and reenact sections 39-06.2-10.6, 39-06.2-10.7, 39-06.2-10.8, 39-20-03.1, 39-20-03.2, 39-20-04, 39-20-05, and 39-20-06 and subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to the transfer of administrative hearings from the department of transportation to the office of administrative hearings"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.6. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.
2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was warned that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-06.2-10.2, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-06.2-10.2 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover only the issues of whether the law enforcement officer had reason to believe the

person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was warned that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the office of the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the office of the state toxicologist, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.
5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-06.2-10.2 or that the person had an alcohol concentration of at least four one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. On the date for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have

been held on the date for which it is scheduled for purposes of appeal under section 39-06.2-10.7.

SECTION 2. AMENDMENT. Section 39-06.2-10.7 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.7. Judicial review. Any person whose commercial driver's license or privilege has been suspended, revoked, or denied by the decision of the ~~hearing officer~~ administrative law judge under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision.~~ Neither the director nor the. The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence ~~may be heard.~~ The court shall affirm the decision of the ~~director or hearing officer~~ administrative law judge unless ~~it the court~~ finds the evidence insufficient to warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence.

SECTION 3. AMENDMENT. Section 39-06.2-10.8 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.8. Temporary driver's permit. A temporary driver's permit extends driving privileges for twenty-five days, unless earlier terminated by the decision of a ~~hearing officer~~ an administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign and note the date of issuance on the temporary driver's permit. The temporary driver's permit serves as the director's official notification to the driver of the director's intent to revoke, suspend, or deny driving privileges in this state. ~~No~~ A temporary driver's permit may not be issued for the period covered by an out-of-service order.

SECTION 4. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator. If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a ~~hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to

the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

SECTION 5. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the

test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 6. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving

privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under subdivision a of subsection 1 if all of the following criteria are met:
- a. An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;

- (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued;
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
 - f. The person has never been convicted under section 39-08-01.
- 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

SECTION 7. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

39-20-05. Administrative hearing on request.

- 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails or communicates by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing is not requested within the time limits in this section, and ~~no~~ an affidavit is not submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.
- 2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded and its scope may cover only the

issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the state toxicologist or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the state toxicologist, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the ~~hearing officer~~ administrative law judge does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the ~~hearing officer~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary operator's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The ~~hearing officer~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The ~~hearing officer shall~~ administrative law judge, on the date for which the hearing is scheduled, shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-20-06.

SECTION 8. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

39-20-06. Judicial review. Any person whose operator's license or privilege has been suspended, revoked, or denied by the decision of the ~~hearing officer~~ administrative law judge under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision. Neither the director nor the~~ The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not hear additional evidence ~~may be heard~~. The court shall affirm the decision of the ~~director or hearing officer~~

administrative law judge unless it the court finds the evidence insufficient to warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the presentation of additional evidence."

Page 1, underscore lines 6 through 11

Page 1, after line 11, insert:

"SECTION 10. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, workforce safety and insurance, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. ~~But, appeals~~ Appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; ~~and chapter 37-19.1 veterans' preferences hearings for any agency; and hearings of the department of transportation under sections 39-06.2-10.6 and 39-20-05~~ must be conducted by the office of administrative hearings in accordance with applicable laws."

Renumber accordingly

Date: 3-18-05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2257

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass the Amend #2

Motion Made By

Rep. Owens

Seconded By

Rep. Iverson

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------------|---------------|----|-----------------|-----|----|
| Rep. Weisz - Chairman | | ✓ | Rep. Delmore | | ✓ |
| Rep. Hawken - Vice Chair. | <u>absent</u> | | Rep. Meyer | ✓ | |
| Rep. Bernstein | | ✓ | Rep. Schmidt | | ✓ |
| Rep. Dosch | ✓ | | Rep. Thorpe | ✓ | |
| Rep. Iverson | ✓ | | | | |
| Rep. Kelsch | | ✓ | | | |
| Rep. Owens | ✓ | | | | |
| Rep. Price | <u>absent</u> | | | | |
| Rep. Ruby | | ✓ | | | |
| Rep. Vigesaa | | ✓ | | | |
| Rep. Weiler | ✓ | | | | |
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Total (Yes)

6

No

7

Absent

2

Floor Assignment _____

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

Failed

Date: 3-18-05
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2254

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Weiler Seconded By Rep. Kelsch

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------------|-------------|----|-----------------|-----|----|
| Rep. Weisz - Chairman | | ✓ | Rep. Delmore | ✓ | |
| Rep. Hawken - Vice Chair. | <u>abst</u> | | Rep. Meyer | ✓ | |
| Rep. Bernstein | | ✓ | Rep. Schmidt | | ✓ |
| Rep. Dosch | | ✓ | Rep. Thorpe | ✓ | |
| Rep. Iverson | | ✓ | | | |
| Rep. Kelsch | ✓ | | | | |
| Rep. Owens | | ✓ | | | |
| Rep. Price | <u>abst</u> | | | | |
| Rep. Ruby | | ✓ | | | |
| Rep. Vigasaa | | ✓ | | | |
| Rep. Weiler | ✓ | | | | |
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Total (Yes) 5 No 8

Absent 2

Floor Assignment _____

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

Failed

House Amendments to SB 2254 - Transportation Committee 03/22/2005

Page 1, line 6, replace "The department shall expunge," with:

1. An individual whose driving privileges have not been previously suspended for an alcohol-related driving offense may petition the court for an order removing the suspension from the driving record that is accessible to the public under the following circumstances:
 - a. The individual does not have a previous alcohol-related conviction or license suspension in this or another state;
 - b. The individual served the duration of the individual's suspension time;
 - c. The individual was not convicted of an alcohol-related driving offense; and
 - d. The individual did not refuse to submit to a chemical test or the individual did not have an alcohol concentration that exceeded twelve one-hundredths of one percent.
2. If the conditions of subsection 1 are met, the court shall issue an order directing the department to expunge the individual's driving record that is accessible to the public. This section does not apply to a suspension for an individual under twenty-one years of age with an alcohol concentration of at least two one-hundredths of one percent by weight."

Page 1, remove lines 7 through 11

Renumber accordingly

Date: 3-18-05
Roll Call Vote #: 4

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 5B2257

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50702-0103.0200

Action Taken do Not Pass As Amended.

Motion Made By Rep. Ruby Seconded By Rep. Vigasaa

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------------|------------|----|-----------------|-----|----|
| Rep. Weisz - Chairman | ✓ | | Rep. Delmore | | ✓ |
| Rep. Hawken - Vice Chair. | <u>abs</u> | | Rep. Meyer | | ✓ |
| Rep. Bernstein | ✓ | | Rep. Schmidt | ✓ | |
| Rep. Dosch | ✓ | | Rep. Thorpe | | ✓ |
| Rep. Iverson | ✓ | | | | |
| Rep. Kelsch | | ✓ | | | |
| Rep. Owens | ✓ | | | | |
| Rep. Price | <u>abs</u> | | | | |
| Rep. Ruby | ✓ | | | | |
| Rep. Vigasaa | ✓ | | | | |
| Rep. Weiler | | ✓ | | | |
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Total (Yes) 8 No 5

Absent 2

Floor Assignment Rep Iverson (later) changed to Rep. Ruby

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

Last Vote

REPORT OF STANDING COMMITTEE

SB 2254: Transportation Committee (Rep. Welsz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). SB 2254 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "The department shall expunge," with:

1. An individual whose driving privileges have not been previously suspended for an alcohol-related driving offense may petition the court for an order removing the suspension from the driving record that is accessible to the public under the following circumstances:
 - a. The individual does not have a previous alcohol-related conviction or license suspension in this or another state;
 - b. The individual served the duration of the individual's suspension time;
 - c. The individual was not convicted of an alcohol-related driving offense; and
 - d. The individual did not refuse to submit to a chemical test or the individual did not have an alcohol concentration that exceeded twelve one-hundredths of one percent.
2. If the conditions of subsection 1 are met, the court shall issue an order directing the department to expunge the individual's driving record that is accessible to the public. This section does not apply to a suspension for an individual under twenty-one years of age with an alcohol concentration of at least two one-hundredths of one percent by weight."

Page 1, remove lines 7 through 11

Renumber accordingly

March 31, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2254

In lieu of the amendments adopted by the House as printed on page 1241 of the House Journal, Senate Bill No. 2254 is amended as follows:

Page 1, line 6, replace "The department shall expunge," with:

- "1. An individual whose driving privileges have not been previously suspended for an alcohol-related driving offense may petition the court for an order removing the suspension from the driving record that is accessible to the public under the following circumstances:
 - a. The individual does not have a previous alcohol-related conviction or license suspension in this or another state;
 - b. The individual served the duration of the individual's suspension time;
 - c. The individual was not convicted of an alcohol-related driving offense or of a violation of section 39-08-03 subsequent to a charge of an alcohol-related driving offense for the same act or occurrence; and
 - d. The individual did not refuse to submit to a chemical test or the individual did not have an alcohol concentration that exceeded twelve one-hundredths of one percent.
2. If the conditions of subsection 1 are met, the court shall issue an order directing the department to expunge the individual's driving record that is accessible to the public. This section does not apply to a suspension for an individual under twenty-one years of age with an alcohol concentration of at least two one-hundredths of one percent by weight."

Page 1, remove lines 7 through 11

Renumber accordingly

Date: 4-1-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2254

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .0201

Action Taken No Pass as Amended

Motion Made By Rep Hawken Seconded By Rep. Delmore

| 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 | | | | | |
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| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Unanimous
Carried*

Date: 4-1-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2254

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass As Amended 50702, 0103.0200

Motion Made By Rep. Iverson Seconded By Rep. Meyer

| 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 | ✓ | | | | |
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| | | | | | |
| | | | | | |

Total (Yes) 8 No 7

Absent 0

Floor Assignment Rep. Hawken

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

REPORT OF STANDING COMMITTEE

SB 2254: Transportation Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 7 NAYS, 0 ABSENT AND NOT VOTING). SB 2254 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 1241 of the House Journal, Senate Bill No. 2254 is amended as follows:

Page 1, line 6, replace "The department shall expunge," with:

- "1. An individual whose driving privileges have not been previously suspended for an alcohol-related driving offense may petition the court for an order removing the suspension from the driving record that is accessible to the public under the following circumstances:
 - a. The individual does not have a previous alcohol-related conviction or license suspension in this or another state;
 - b. The individual served the duration of the individual's suspension time;
 - c. The individual was not convicted of an alcohol-related driving offense or of a violation of section 39-08-03 subsequent to a charge of an alcohol-related driving offense for the same act or occurrence; and
 - d. The individual did not refuse to submit to a chemical test or the individual did not have an alcohol concentration that exceeded twelve one-hundredths of one percent.
2. If the conditions of subsection 1 are met, the court shall issue an order directing the department to expunge the individual's driving record that is accessible to the public. This section does not apply to a suspension for an individual under twenty-one years of age with an alcohol concentration of at least two one-hundredths of one percent by weight."

Page 1, remove lines 7 through 11

Renumber accordingly

2005 TESTIMONY

SB 2254

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

COURT PROCESS, SEE REVERSE

DUI ARREST

BAC OR GREATER
OR REFUSAL

1. Officer takes driver's license.
2. Officer issues 25-day temp. operator's permit and order suspension.
3. .04 for CMV
4. .02 for under age 21

ADMINISTRATIVE PROCESS

ADMINISTRATIVE PROCESS (Refusal)

NO HEARING
REQUESTED

SUSPENSION PERIOD
91 Days 1st Offense, BAC
.08 - .17
180 days 1st Offense, BAC
.18 or Greater
365 days, 2nd Offense,
BAC .08 - .17
2 years, 3rd or subsequent
Offense, BAC .08 - .17
3 years, 3rd or subsequent
Offense,
BAC .18 or Greater

REINSTATEMENT

.08 or higher
.04 CMV or
higher

\$100
Reinstatement
Fee

HEARING REQUESTED
(Request must be made
within 10 days of
issuance of permit)

LICENSEE NOTIFIED OF
TIME AND PLACE OF
HEARING

HEARING CONDUCTED
(Results immediately to
licensee and to Drivers
Lic. & Traffic Safety Div.)

DISMISSED

REINSTATEMENT
Hearing Officer Issues
20-day temporary
Drivers Lic. & Traffic
Safety Div. returns
original license
No \$100
reinstatement
fee required

UPHELD

SUSPEND
Hearing Officer
takes
25-day permit

**SUSPENSION
PERIOD**
91 Days 1st Offense,
BAC .08 - .17
180 days 1st Offense,
BAC .18 or Greater
365 days, 2nd Offense,
BAC .08 - .17
2 years, 2nd Offense,
BAC .18 or Greater
2 years, 3rd or
subsequent Offense,
BAC .08 - .17
3 years, 3rd or
subsequent Offense,
BAC .18 or Greater

Reinstatement
\$100 fee

NO HEARING
REQUESTED

Revocation Period
1 year 1st Offense in 5 years
3 years 2nd Offense in 5 years
4 years 3rd or Subsequent
Offense in 5 years
Refusal cannot be set aside
for the 2nd or subsequent
Offense. Refusal allowed for
1st Offense in 5 years if never
convicted of a prior Offense
of 39-08-01.

REINSTATEMENT

Refusal

Application fee \$100
Written test fee \$5
Road test fee \$5
Reinstatement fee
\$100
SR-22 Filing

.08 or higher
.04 CMV or
higher

\$100
Reinstatement
fee

HEARING REQUEST
(Request must be made
within 10 days of
issuance of permit)

LICENSEE NOTIFIED OF
TIME AND PLACE OF
HEARING

HEARING CONDUCTED
(Results immediately to
licensee and to Drivers
Lic. & Traffic Safety Div.)

DISMISSED

REINSTATEMENT
Hearing Officer
issues
20-day temporary.
Drivers Lic. & Traffic
Safety Div. returns
original license.
No \$100
reinstatement
fee required.

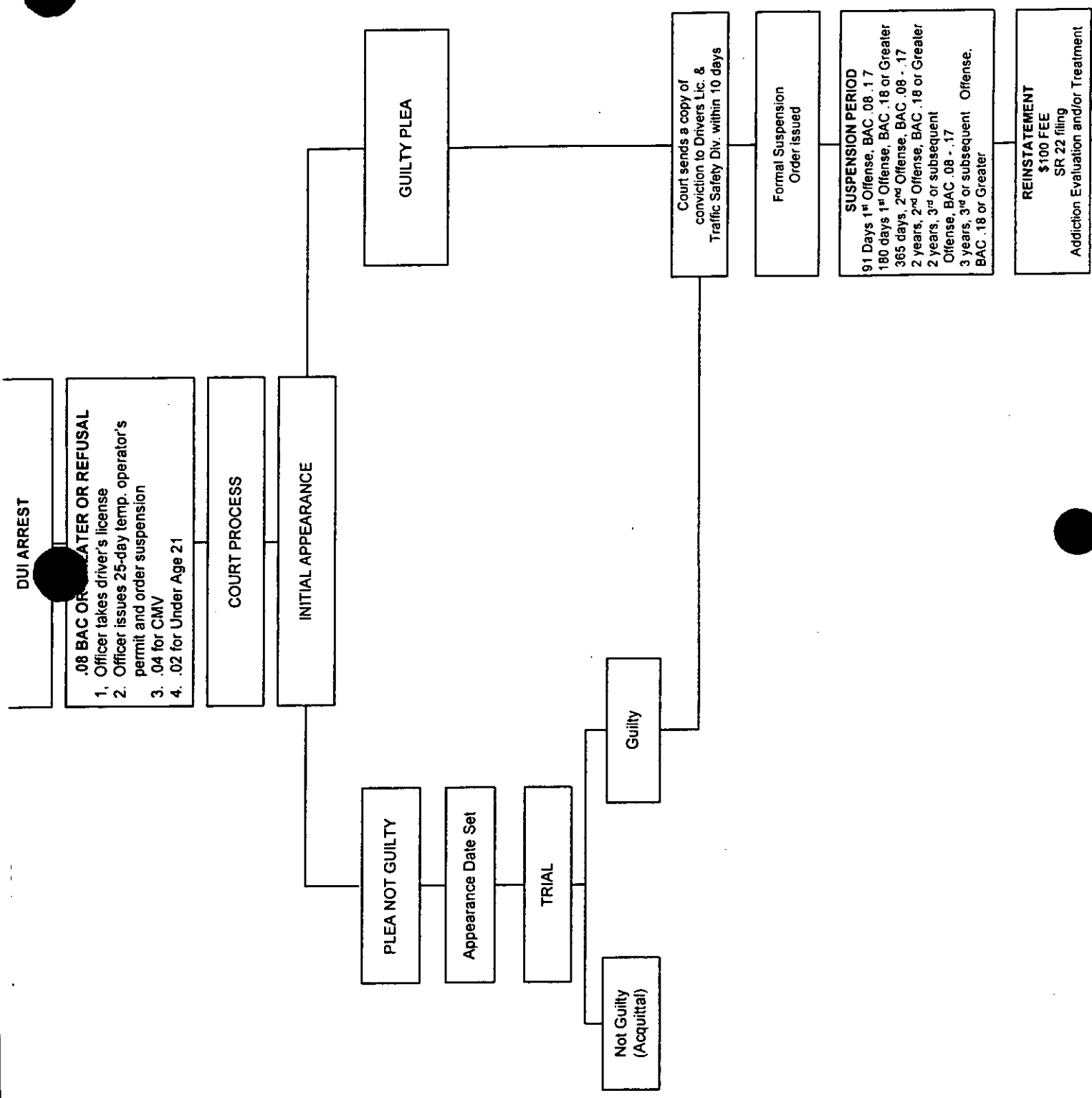
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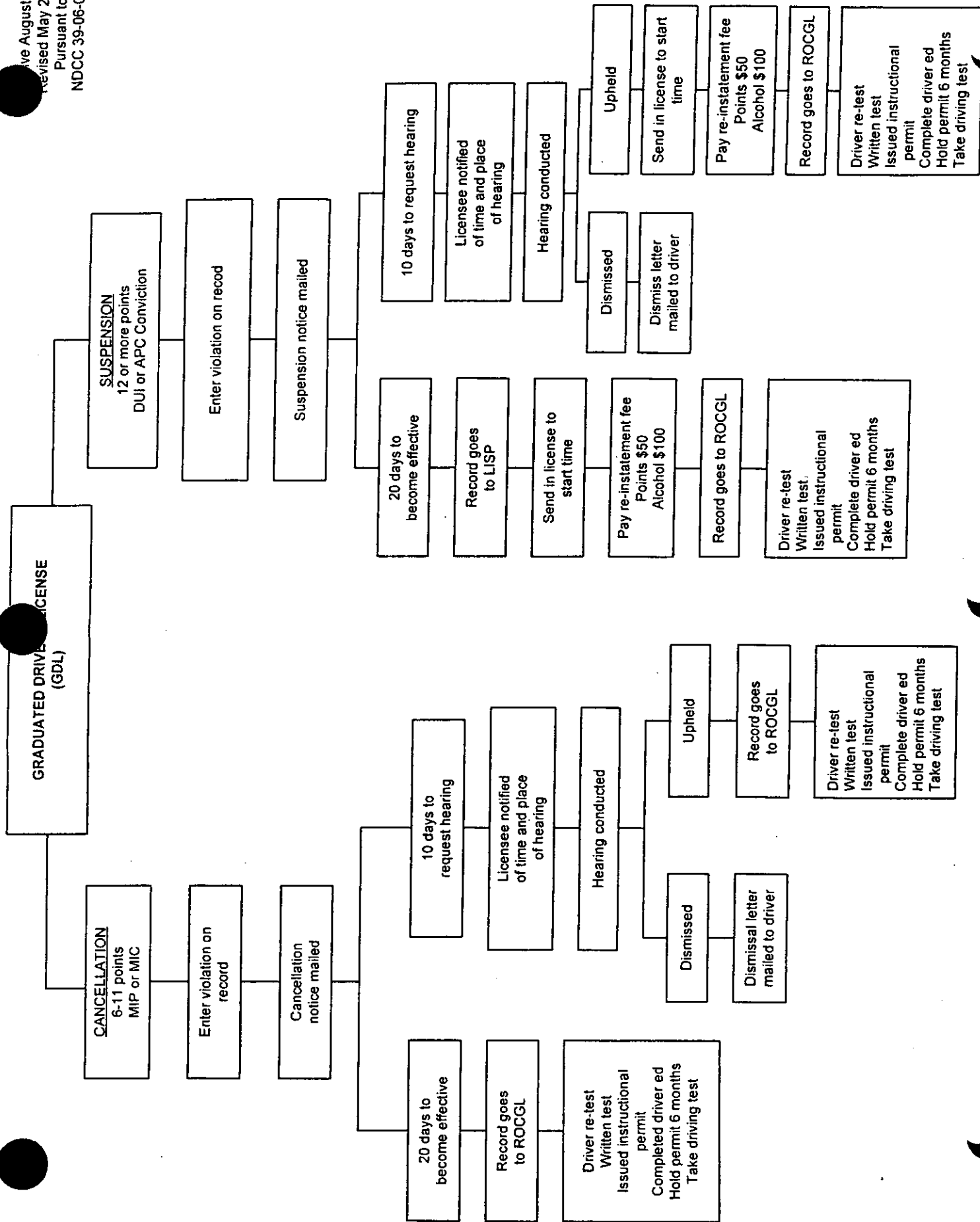
SUSPEND
Hearing Officer
takes
25-day permit.

REINSTATEMENT
\$100

NOTE:

- After an arrest for DUI or APC there are two actions that can happen:
1. Administrative process (civil action).
 2. Court process (criminal action).
- The dismissal of either process does not remove the remaining administrative or court action.
- *Temporary Restricted License (work permit) may be given after 30 days of suspension is served.
- **No Restricted License may be given during entire suspension/revocation period.
- ***Commercial Motor Vehicle (CMV) suspension is 1 year for first offense and lifetime for second offense.





Sgt. Carlos Nestler
Fargo Police Department

SB 2254 is a step **backwards** for traffic safety in our state and puts the public at risk.

All too often, drunk drivers—even those with shockingly high blood alcohol levels—are able to obtain plea bargains that allow them to plead guilty to a reduced charge, such as Reckless or Careless Driving, and thus avoid a DUI conviction. Such plea bargains are a fact of life in today's criminal justice system. Limited resources, crowded court dockets, and a high number of other serious crimes that need to go to trial make such plea bargains in drunk driving cases an unavoidable reality.

Fortunately, in North Dakota, as well as in 41 other states, drivers arrested for DUI as a result of a chemical test—and drivers who refuse to take a chemical test when stopped for drunk driving—face administrative sanctions against their licenses. These sanctions may include suspension or revocation, even if the driver pleads guilty to a reduced charge stemming from a DUI arrest. Such sanctions are based on objective chemical test (usually a breath or blood test) and are similar to "illegal *per se*" criminal laws (such as .08% or .10%).

Arrested drivers have due-process rights associated with these administrative sanctions, including the right to a hearing before an Administrative Hearing Officer to dispute the basis for the traffic stop and the arrest. In fact, the U.S. Supreme Court specifically found in *Mackey v. Montrym* that administrative license sanctions do not violate due process rights as long as drivers have the right to a swift post-suspension hearing. In addition, administrative license sanctions are not considered double jeopardy and are constitutional based on rulings in all of the highest State appellate courts that have considered the issue.¹

Research has shown that states with administrative license sanctions have a 9% average decrease in late night fatal crashes. Savings in costs associated with nighttime crashes are in the millions of dollars. This makes sense because there are fewer drivers on the roads who are the most likely to be impaired as a result of administrative license sanctions.

If passed into law, SB 2254 would require the DOT to permanently expunge an administrative sanction related to an individual's operators license (such as a suspension or revocation) if there was no criminal conviction for DUI.

Talk about an incentive for drunk drivers and defense attorneys to get DUI violations plead down to a lesser charge! The impact of such a change on both smaller and larger communities would be significant. In smaller towns and more rural counties, where it likely is cost prohibitive to try every DUI case in court, plea bargains in DUI cases could allow drunk drivers to go right back on the road. In larger cities, where municipal and district court dockets are already crowded due to increasing numbers of drug cases and

¹ In North Dakota, *State v. Zimmerman*, 539 N.W.2d 49 (ND1995) and *State v. Jacobson*, 545 N.W.2d 152

other serious crimes, DUI plea bargains to charges like Reckless Driving would put significant numbers of DUI offenders back on the streets—putting the rest of us at risk.

Many organizations have publicly expressed support for administrative license sanctions, including:

- AAA
- American Insurance Association
- International Association of Chiefs of Police
- National Sheriffs' Association
- Governors Highway Safety Association
- National Safety Council
- The Century Council
- Most major insurance companies
- Mothers Against Drunk Driving

The bottom line is **administrative license sanctions save lives and money**. SB 2254 would gut these sanctions and compromise highway safety in North Dakota at the state and local level.

**TESTIMONY OF DEB JEVNE
SPOKESPERSON FOR MADD CASS COUNTY**

**SENATE TRANSPORTATION COMMITTEE
FRIDAY, JANUARY 28, 2005**

*So me seven
to H. man*

FOR THE RECORD, MY NAME IS DEB JEVNE, AND I AM THE SPOKESPERSON FOR MOTHERS AGAINST DRUNK DRIVING CASS COUNTY AND ALSO A VOLUNTEER MEMBER OF THE SAFE COMMUNITIES COALITION OF THE RED RIVER VALLEY. BUT MORE IMPORTANTLY I AM HERE BECAUSE I AM A VICTIM/SURVIVOR OF DRUNK DRIVING.

I HAVE BEEN AN ACTIVIST IN THE CAMPAIGN AGAINST DRINKING AND DRIVING SINCE MY OLDEST SON WAS INJURED BY A DRIVER WHO CHOSE TO DRINK AND DRIVE.

I AM HERE TO OPPOSE THE PASSAGE OF SENATE BILL #2254. FIRST, THIS BILL SENDS THE MESSAGE THAT DUI IS A SPECIAL, LESS-SERIOUS CRIME FROM EVERY OTHER LAW ON THE BOOKS. SECOND, IF A PERSON IS PICKED UP FOR A DUI AND PLEA BARGAINS FOR A LESSER OFFENCE THE PROSECUTOR WOULD THEN REVIEW THE FILE. IF THIS LAW WAS PASSED, THE PROSECUTOR WOULD NOT KNOW THAT THIS IS TRULY THE FOURTH OR FIFTH OFFENCE AND CAN NOT MAKE AN INFORMED DECISION BASED ON THE INFORMATION IN FRONT OF THEM. THE PROSECUTOR NEEDS THE WHOLE RECORD TO MAKE AN EDUCATED DECISION. THIS LAW TAKES THAT KNOWLEDGE AWAY.

PLEASE VOTE 'NO' ON SENATE BILL #2254.

THANK YOU!

SB 2254

SENATE BILL HEARING JANUARY 28, 2005

I am here today as a concerned citizen, mother and potential victim.

I have had it with the way our society protects the use of the drug, alcohol, *and the people who abuse it.*

I compare the use of a car by an intoxicated person to be the same as a driver holding his/her hand out the window with a loaded gun and randomly firing. He/she may hit something or somebody or he/she may not. Isn't that the same threat potential as an intoxicated driver? He/she may hit something or somebody, or he/she may not.

I do not understand why our society is so inclined to protect alcohol. *with their car the abuse of* Have we forgotten that it is an addictive drug that literally consumes the person? It has reaped havoc, misery, disease, abuse, disability, grief and death on countless people and families. We need to take control and protect the innocent people.

If someone has consumed excess alcohol permitted by law, they must face the consequences. We cannot in any way say that it is okay and let these people be on their way. We must set higher standards to protect everyone.

What does the behavior of our citizens reflect about our society's standards and quality of living? We need to aspire to the best we can be and the best we can offer our citizens.

What message do we send to our young people? They see, hear and know far more than we realize. What behavior do we adults model for our future leaders and future parents?

Why do we rescue the people that abuse alcohol? The people that choose to anesthetize themselves, get in a vehicle and drive need to be *understand* told that it is absolutely wrong, will not be tolerated and there will be consequences *that are enforced.*

When I get in my car to go somewhere, must I be concerned about defending myself against a drunk driver? And just how do I do that?

The injustice is horrific and tragic for those victims and families that were not able to defend themselves against an intoxicated driver.

we must

Set a higher standard, *with our laws.* choose life, sobriety, protection for yourself and those you love.

Please do not think of this issue as just business. It is about life and death, *sanity vs insanity,* justice vs injustice and ultimately what we value and hold in high esteem.

I'm appalled by the past injustice dealt out to victims and families of drunk driving offenders. *especially repeat offenders*

How many times does a drunk driver have to be arrested before they face consequences that are enforced.

These offenders are not just playing Russian roulette with their own lives. In 2001, drunk drivers killed over 5,000 innocent people -almost double the toll of the 9/11 terror attacks that year. At the same time, according to an estimate by the National Highway Traffic Safety Administration, drunk drivers cost our economy tens of billions of dollars, including higher expenses for medical care and such public services as police, fire and ambulance. The family's budget even takes a direct hit, since drunk drivers boost almost everyone's auto insurance premium.

It's become a national disgrace and also[^]disgrace for the state of N.D. with the lax laws ~~and~~ shielding drunk drivers especially repeat offenders.

Trenbeath, Thomas L.

From: Larry Ridley [ridley2004@msn.com]
Sent: Thursday, February 03, 2005 3:39 PM
To: Trenbeath, Thomas L.
Subject: sb2254

Senator Trenbeath,

I am extremely happy to hear that you are co-sponsoring sb2254. I have been dealing with the exact injustices that your bill addresses. Please let me know if I can help in anyway in getting this bill passed.

The jest of my story is: My 16 year old son was stopped by a Jamestown city police officer for taking a turn too wide while driving one of his classmates home. My son, Cody was driving Tyler's car and was being followed by one of their friend's in my son's car. The idea being that once Cody dropped off Tyler in his car my son would have transportation back to our house. As soon as the officer ascertained that the passenger and owner of the car was a minor and had been drinking, he placed Tyler under arrest, handcuffed him with his hands behind his back and while attempting to place him in the back seat of the squad car, Tyler lost his balance and fell on the curb abrading his forehead. During this time, the first officer had called for help and two other squad cars arrived. The arresting officer decided to take Tyler to the ER via ambulance and while this was being arranged, one of the older officers told my son to continue to take Tyler's car to his mother's house. As my son was getting in to do this, the first officer came back, stated that he had placed the owner of the car under arrest and that because he was afraid "for his safety" he was going to search the car. Unbeknownst to my son, Tyler had a pot pipe in the console. There was no marijuana found and Tyler admitted that the pot pipe was his but because of the paraphernalia the officer asked if my son would submit to some field sobriety tests. My son willingly did these tests and when the officer came out with the breathalyzer my son registered a 0.0. But the officer said that he had failed the other tests, handcuffed my son and took him to our Emergency Room for a state administered blood/urine sample. At the ER, the policeman intimidated my son into drinking over a gallon of tap water in a 40 minute period of time. I am a nurse and I know that that much water in such a short amount of time can have fatal consequences. During this 40 minute period of time, my son requested a blood test to be taken to which the officer refused the request twice. At the end of this time, my son voided less than 60cc of dark yellow urine. My son was stressed out, scared and being intimidated into continuing to drink water past a safe level, his kidneys were not working as proven by the yellow urine he had voided. As the officer was handing the specimen cup back to my son, the cup was dropped; the policeman got mad, said that my son had deliberately dropped the cup and immediately wrote my son up as a refusal. I did hire a lawyer to help with the admin hearing, but as I now know, not all lawyers are as competent as others. The admin hearings findings were "No specimen was sent in, the refusal stands". It was not until I researched why we lost the hearing that I find all of the insanity of this refusal law. I have found that the administrative hearing is almost always lost by the defendant. (Most lawyers will tell you 99% of the admin hearings are lost). We can appeal the hearing's findings and another 95% of the time the findings are upheld. And for the 5% that are won by the defendant's, those cases are immediately appealed by the DOT. So, the administrative hearings are rigged from the start. Now I have also found out from a lawyer who specializes in juvenile cases that our administrative hearing should have been won on the fact that neither I nor Cody's father had been notified of the incident while it was happening. My 18 year old daughter had been called but she was not and never has been my son's guardian. Either I or Cody's father should have been notified. The admin guy who heard my son's case, either did not know the rules, or did not care about because my lawyer had not brought this up. Due to the gross errors of the policeman, my son has now not been charged with the DUI but has not been able to drive since August because of the refusal for which he truly did not refuse. So the absurdity of this case is: My son was being a designated driver, blew a 0.0, was cooperating with the officer, drank enough water to put him in serious medical trouble, gets written up as a refusal and loses his license for a year. Because, the police department has decided that they can not prove with any evidence whatsoever that my son was driving under the influence they've dropped the case. IF my son had been able to go to court, he could have pled guilty and gotten his license back in 91 days!!!!!! He would have been better off being guilty, because the way things are, we can't go to court, he cannot get his license back, he was not guilty yet he still ends up paying higher insurance rates for the next 3 years. I do want to get impaired drivers off the street, but it is not fair that this type of situation can happen to unimpaired drivers. As I have said, please let me know if there is anything I can do to help get your bill passed. I know this is a long story and if you are interested I will tell you even more of the absurdities of the refusal clause. You can contact me by email or by phone which is 701-251-1942 or by mail which is Diane Ridley 8374 33rd ST. SE, Jamestown, ND 58401.

2/3/2005

1

§240.115

§240.201 or for persons covered by §240.109(h), each person seeking certification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraph (b) of this section to make information concerning his or her prior railroad service record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

(b) Each person seeking certification or recertification under this part shall request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or recertification.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60990, Nov. 8, 1999]

§240.115 Criteria for consideration of prior safety conduct as a motor vehicle operator.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance;

(2) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine

whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(c) If such an incident is identified,

(1) The railroad shall provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in §240.119(d)(3) of this part.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of §240.119(b) will apply.

§240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)(1) A certified engineer who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall have his or her certification revoked.

(2) A Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and

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FOR YOUR INFORMATION
JOHN RISCH, NORTH DAKOTA
STATE LEGISLATIVE DIRECTOR
UNITED TRANSPORTATION UNION

#2

HOUSE TRANSPORTATION COMMITTEE

February 24, 2005

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

SB 2254

The mission of the North Dakota Department of Transportation is "providing a transportation system that safely moves people and goods." Safety is why I am here to oppose SB 2254. It is a bad bill and I am asking you to give it a "do not pass" recommendation. This bill, in effect, undercuts and degrades the administrative or civil driving while under the influence (DUI) process. The administrative process is there because the criminal process was not working back in the early 1980s when states started passing what is often called administrative license revocation (ALR) laws. This bill has the potential for a huge step backward to the time 20 to 30 years ago when we killed many more people on our roads. Even last year, 38 out of 100 fatalities involved alcohol; this is still way too many.

I know that SB 2254 "sounds good," and the argument of the proponents that this is a matter of "fairness" "sounds good" on the surface. But, if you really take a look at what the consequences could be, "fairness" really has nothing to do with it.

Many, including this Legislature, have worked long and hard to make our roads safer from drunk drivers. As an example, we only need to go back to HB 1439, from the 2003 session. This was a proactive look at problem drivers, particularly those with a high blood-alcohol content, and repeat offenders. SB 2254 has the potential to undo much of this hard work and get those drivers off. The same goes for the repeat offender legislation, versions of which have already passed both houses this year. We have many laws dealing with drunk drivers. No law is a "magic bullet," but every piece of the puzzle (or law) has its purpose and helps to make our roads safer for all of us to travel.

This bill would wipe out evidence in NDDOT records of an administrative suspension if there is no criminal DUI conviction. First, this erases history, which is bad public policy. There actually could be many reasons why there may be no conviction for DUI. Many charges are plea bargained, often to reckless driving, which only carries eight points on the record and no suspension. Emotion can often play a part with a jury, which in the hands of a skillful defense attorney can be made to feel sorry for the driver ("that could be me"). When there is a refusal to take an alcohol test, there may not be enough other evidence (without the test results) to try a driver for a DUI.

Prosecutors often plea bargain cases and lack of evidence is only one minor reason in DUI cases. I have been a prosecutor and have been in this situation. Normally, there are too many cases to try, both for the prosecutor and the courts. In most cases, NDDOT has often already suspended the driving privileges, which is what drivers seem

to understand most, and there is not as much incentive to try the case. In many situations, particularly in rural areas, prosecutors do not want to try cases, especially if it would involve a jury trial (for many reasons). This takes time away from a private practice for a part-time prosecutor; jury trials can be costly and county commissioners do not want to pay; and the prosecutor has to run for election, etc.

If SB 2254 passes, there is much less reason to plead guilty to DUI. Someone might as well see what they can get by threatening a jury trial. If all of these cases go to a jury trial, the courts probably cannot handle the work load. This all leads to plea bargaining.

It is reasonable to foresee that we could end up with a problem driver with no alcohol violation on the record, not even for enhancement purposes. It is not too far fetched to realize that it is possible for someone to never be a repeat offender. Studies show that someone drives drunk 20 to 22 times before getting caught; there probably is, in most situations, no such thing as a first-time offender to feel sorry for. Circumstances, not the BAC or impairment will dictate what happens. We will still have a problem driver who does not get help. I can see where an enterprising defense attorney could act quickly, get a plea agreement, and even beat the administrative suspension.

The proponents talk about a jury of your peers saying you're not guilty or the law saying you're not guilty, then you're not guilty. That is not what SB 2254 says at all. This bill only says that if someone has not been convicted of a DUI, they can have their administrative record wiped out. But, that is a far cry from being found "not guilty."

There are those who do not like the administrative process or system. They have been trying to chip away at it for years, generally unsuccessfully, and this is the most audacious attack on the system (and it will not end here). They do not like the administrative or civil process, because it works—let's keep it working for all of us. Take a look at the explanation of the DUI process that I provided to this committee earlier, to see how the system really works.

What is the constituency? Who is asking for this bill? The only ones who would benefit are problem drivers and DUI defense attorneys! Are normal law-abiding citizens asking for this bill?

3

Office of
McLean County State's
Attorney

McLean County

STATE OF NORTH DAKOTA

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Mr. Chairman and members of the committee, my name is Ladd R. Erickson and I am the McLean County State's Attorney. I appear here OPPOSED to SB2254 for the following reasons:

1. It is inferred in the Bill that people "innocent" of the crime of DUI are being prosecuted in the criminal system and having their licenses suspended administratively. In fact, I am not aware of any evidence that indicates we have a problem with our police officers falsely charging people with DUI in this State. What does happen is people who are guilty of DUI are at times not convicted because a jury decided to give the person a break, or sometimes charges are reduced to reckless driving for a variety of reasons such as the arresting officer is no longer employed in the state and by the trial date and it would be undue expense to pay the officer to return for trial, or the chemical test in a first offense case is in the .08 to .12 range are common reasons why a person guilty of DUI is not convicted of the offense. Therefore, even if a conviction for DUI does not occur in a particular case, that in no way translates to meaning the person didn't commit the offense.

2. The most benefitted people under this Bill are problem drunk drivers. The repeat offenders, and/or the chronic alcoholic who has conditioned his or herself to refuse impairment and chemical tests. These people are often already under suspension for prior DUIs and can be difficult jury cases without the evidence juries want to see the prosecutor present. These people

will have every incentive to try and get a jury to let them off if doing so will help their suspension time period. Juries are not allowed to hear about a person's prior record, so a jury will not be informed of the danger this person is on the road, and this person's attorney can use the same defense tactics of humanization of the person, claiming they had just a "few beers," and putting the police officer on trial. This is an effect defense with juries because we are all human and when not given the whole story tend to want to give people the benefit of the doubt. This Bill is perfect for these people even though they have history of being a danger behind the wheel.

3. Under this Bill, the length of a person's drivers license suspension period which is now uniform throughout the state will be dramatically changed and hinged instead on the court procedures in each judicial district and county. For example, if a person was arrested for DUI with a .10 blood alcohol result in McLean County where I have a judge twice a month, and I reduced that persons charge to reckless driving at the initial appearance there would be only a few days, if any, where the person was under suspension. If I waited until the pre-trial conference and then reduced the charge the person would be under suspension for four to six weeks depending on the timing when a judge is present. If the case is set for trial and then reduced to reckless driving near the trial date the person would serve the full 91 day suspension. In counties like Sheridan County it may be two months between court days making the problem even worse. Therefore, under the this Bill the length of suspension is going to switch from objective uniformity (i.e. fairness), to subjective chaotic treatment related to court day scheduling and procedures in each county. This problem standing by itself is reason enough to defeat this Bill.

4. Our State's judges, state's attorneys, chemists, and indigent defense attorneys all have a full plate of issues we deal with at present. This Bill will reduce the time these entities can address meth labs, sex cases, crimes of violence, and the other matters that the public wants addressed in the court system. There will be a dramatic increase in the amount of resources that are spent on trying DUI cases to a jury if this Bill passes. This creates a legislative value judgment on what the courts and enforcement personally spend time on. By passing this Bill the legislature would be re-arranging and reducing the time we spent on other serious community problems for the sake of drunk drivers who can afford to try and buy their way out of a DUI conviction.

5. Finally, there is a significant public safety problem with this Bill. We want people concerned about having their license suspended who drink to excess and drive so they make the safe choices of getting ride, walking home, calling a cab, etc. The difference between a B misdemeanor DUI charge and homicide is often a matter of luck. "Luckily no one was in the intersection when a drunk driver flew through the red light"; "luckily no one was there as the drunk driver drove the wrong way in a one way," etc. We need to keep the clean, objective, and fair system we have in place so there isn't doubt in a person's mind about cost to their driving privileges by putting the rest of us in danger. This deterrence saves lives, and this Bill weakens that deterrence.

I respectfully request that the committee defeat this Bill. Thank you.

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Fifty-ninth

Legislative Assembly
of North Dakota

SENATE BILL NO. 2254

Introduced by
Senators Trenbeath, Krauter, Lyson
Representatives DeKrey, Drovdal, Herbel

A BILL for an Act to create and enact a new section to chapter 39-20 of the North Dakota Century Code, relating to drivers' records for driving while under the influence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-20 of the North Dakota Century Code is created and enacted as follows:

Expunged violation for lack of conviction. ~~The department shall expunge, permanently and totally, a violation contained in the driving record and abstract which relates to a provision of this chapter if an individual has had that individual's operator's license or privilege suspended, revoked, or denied under this chapter, has not been convicted of a violation of section 39-08-01 or equivalent ordinance for the same occurrence, and provides written proof to the department of the lack of conviction.~~

A person who has not previously had their driving privileges suspended for an alcohol related driving offense may petition the court for an order removing the suspension from the driving record that is accessible to the public under the following circumstances:

- 1) The person had no previous alcohol related convictions or license suspensions in this or another state;
- 2) The person served the duration of their suspension time;
- 3) The person was not convicted of an alcohol related driving offense
- 4) The person did not refuse to submit to a chemical test or the person did not have an

alcohol concentration that exceeded .12.

If these conditions are met, the court shall issue an order directing the department to expunge the person's driving record that is accessible to the public. This section does not apply to the state's zero-tolerance law.

Members of the House of Transportation Committee, and Chairman Weisz.

My name is Clarence Tuhy, I am the Sheriff of Stark County. I have come before you today in opposition to SB 2254.

With 32 + years of experience in Law Enforcement, I have personally witnessed the devastation that can be created by alcohol impaired drivers on our roadways. There is no simple and easy solution to this problem. It takes the coordinated efforts of continuing education, enforcement and adjudication to make an impact on reducing the incidence of impaired driving. The passing of SB 2254 would critically damage the essential process of removing driving privileges from an offender who made a potentially dangerous choice of driving while intoxicated.

The administrative drivers' license procedure is not without due process. An offender has the right to request a hearing and present their evidence accordingly. This hearing is not as rigorous as a criminal court proceeding, and suspension of privileges is not taken lightly. The offender still has the right to appeal this decision to the District Court and even the Supreme Court.

The criminal process is a separate and independent process designed for a distinct purpose. The defendant is brought before the Court to answer before a Jury, his or her potential losses of privileges. The lack of criminal conviction has no bearing on the administrative process, and it should not be. The impact on my agency will be the Officers having to spend more time in Court and at Trials and less time on the road serving the public.

Drinking and driving comes with consequences, either punitive, or more seriously, injury or death. Why would we want to eliminate the penalties when a driver commits such a dangerous act? If an impaired driver does not learn to modify his behavior from their actions, then who are we truly protecting and what message are we sending?

The passage of SB 2254 would really influence the individual to pursue a Jury Trial in hopes of an acquittal and put a burden on the Court System and on Law Enforcement.

I ask for your "NO VOTE" on SB 2254.

If you have any questions on the administrative process, there are others present here today who are capable of responding to your inquiries.

I will also be more than happy to answer any questions on how this bill will impact my agency.

Thank you for allowing me the time to testify before the Committee today.

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February 24, 2005

Testimony in Opposition to SB 2254

Chairman Weisz and Members of the House Transportation Committee:

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith here in Bismarck. I represent the Association of North Dakota Insurers in opposition to SB 2254.

SB 2254 would add a new statute to North Dakota's DUI law that would require the Department of Transportation to remove any record of a suspension of a driver's license for a DUI violation if there is not ultimately a conviction for that violation under the statute.

As you know, North Dakota has an administrative suspension provision for refusal to take a test and for certain other reasons. Oftentimes the suspension of a license does not lead to a conviction.

It is our social policy in North Dakota and elsewhere around the United States that drinking and driving presents a danger to society and, in particular, to innocent bystanders. Sometimes there are legitimate administrative suspensions for alcohol use which do not result in a conviction. However, if potentially harmful conduct to the public has occurred as a result of conduct of a person, for purposes of insurance underwriting, insurance companies want to know about

that conduct to evaluate the risk they may be taking. If a driver has had a suspension of a license due to a DUI, or for any other reason, we need to know.

We believe that rates should be structured so that the safest drivers get the best rates, and drivers that are willing to drink and drive are appropriately underwritten.

As a practical matter, how would this work? Would an insurer notice that a person's license has been suspended, but not the reason? Or would we get notice at all? If not, it is possible we would even be providing insurance to people who do not have a valid driver's license. At a minimum, the bill should be amended to provide that the information is available for insurance purposes, if there is some other valid concern to suppress the information.

We urge a Do Not Pass on SB 2254.

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February 24, 2005

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| HOUSE TRANSPORTATION COMMITTEE SB 2254 |
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CHAIRMAN WEISZ AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of The Polk Company, a business that collects driver's license information for select clients. We oppose SB 2254 and ask that you give it a do not pass.

We understand the reasoning behind the bill; i.e. there should be no record if there is no conviction. However, in North Dakota, as long as we have the administrative hearing process in place for DUI violations, then we believe the record should reflect this procedure as well as convictions. That procedure involved a hearing, a finding of probable cause and the opportunity for the defendant to have an attorney present and present his or her case.

Putting this information on the record makes for an accurate and true record that can be relied upon by the courts and by business in making decisions regarding insurance.

Therefore, we respectfully request that you give the bill a do not pass. If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.