

2009 HOUSE TRANSPORTATION

HB 1244

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1244

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01/29/09

Recorder Job Number: 8129 @ 26 minutes 40 seconds

Committee Clerk Signature

Minutes:

Chairman Ruby introduced HB 1244. He read and explained the language in the amendment.

Terry Narum spoke in support of HB 1244. He explains that on the internet there are thousands of sites that will help you defraud a drug test. He has seen **many** different ways that people have tried to defraud a test. He stated that there are other states that are looking at legislation like this.

Representative Delmore: What other states have a policy like this that makes this a Class A misdemeanor?

Terry Narum: I don't have that information. I could get it for you.

Representative R. Kelsch related an example of a person who drank Drano in a detention center. The Drano was technically provided to the detainee by the Law Enforcement Center, by being available. How would this work under this bill?

Terry Narum: It would not be covered under this bill. This bill is for devices, or chemicals that are used only specifically as a drug adulterant. The Drano mainly has an entirely different purpose. Some products have no other uses, except to defraud a drug test.

Tom Balzer, North Dakota Motor Carrier Association, spoke in support of HB 1244.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1244

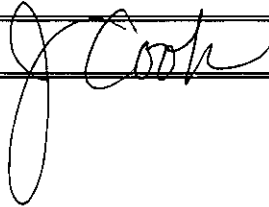
House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 01/29/09

Recorder Job Number: 8193

Committee Clerk Signature



Minutes:

Chairman Ruby: Asked the committee their wishes on HB 1244.

There was some discussion on some language changes.

Representative Griffin suggested the addition of the word "knowingly" possesses to line 9.

Representative Griffin moved the amendment.

Representative Frantsvog seconded the motion.

A voice vote was taken. All were in favor.

Representative Gruchalla moved a **Do Pass** as amended on HB 1244.

Representative Vigesaa seconded the motion.

A roll call vote was taken. **Aye 12 Nay 2 Absent 0**

Representative Schmidt will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1244

Page 1, line 9, after "person" insert "knowingly"

Renumber accordingly

Date: 1-29-09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1244

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☒ Amended

Motion Made By Gruchalla Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe		✓
Representative Vigesaa	✓				
Representative Weisz	✓	✓			

Total Yes 12 No 2

Absent 0

Bill Carrier Schmidt

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

REPORT OF STANDING COMMITTEE

HB 1244: Transportation Committee (Rep. Ruby, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1244 was placed on the Sixth order on the calendar.

Page 1, line 9, after "person" insert "knowingly"

Renumber accordingly

2009 SENATE TRANSPORTATION

HB 1244

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1244

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 13, 2009

Recorder Job Number: 10888

Committee Clerk Signature

Minutes:

Chairman Gary Lee opened the hearing on Engrossed HB 1244 relating to defrauding a urine test.

Representative Dan Ruby introduced the bill and stated that in the previous session we passed a law of defrauding urine drug tests for CDL. We failed to include people that were assisting the person that is trying to defraud. He said that there are a lot of devices and chemicals used to defraud tests. They sell all sorts of these devices and chemicals on the internet or in other states and they advertize these at truck stops. This bill deals with people assisting the person that is defrauding a urine test.

Senator Fiebiger asked if he could tell the committee how wide spread this problem is.

Rep. Ruby said he didn't know. He knows that there are a lot that do come in and try to defraud their test. He personally had an employee that tried to flush his system with water but he still failed the test.

Senator Fiebiger asked if he had any conversations with states attorneys who have prosecuted anyone on the law the way it reads now or if they have any additional things that should be added.

Rep. Ruby said he didn't know.

Senator Potter said this is not like a government ordered test, any company can decide to test his employees. He stated, "We have criminal sanctions against those?"

Rep. Ruby answered that it is in the code and he believed it was in line with the CDL section.

Tom Balzer representing the ND Motor Carriers Association testified in support of Engrossed HB 1244. He said they are seeing a growing number of failed drug tests in their industry. This is their livelihood and these people are doing anything to pass these tests. There are some very realistic prosthetics out there and they can buy many of these types of defrauding instruments over the internet. The issue is that people are selling these and distributing these and helping drug users pass these tests. The ND Motor Carriers Association believe that by passing this bill it is a step that takes them forward and prevents people from trying to assist others in defrauding urine tests.

Senator Nodland asked if he could tell the committee the number of alcohol and drug test failures.

Tom Balzer said he didn't have exact statistics but the last statistics he had were about 8 to 10% of the test done have some type of failure.

Senator Fiebiger asked if under the current statute if there has been any prosecutions and how big of problem it has been.

Tom Balzer he does not believe there have been a significant amount of prosecutions because the testing facility hasn't been able to make a good case. But as they look at this bill, if you are selling these items there is a paper trail. Presently it is difficult to prosecute.

Senator Fiebiger asked if anyone has been prosecuted for assisting.

Tom Balzer said there is no law yet.

Senator Nodland asked the seriousness of drug and alcohol use in your industry.

Tom Balzer said if you get a DUI you are banned from driving commercially for a year. The second time if it is within a ten year period, you are banned for life. As far as drugs, most companies will dismiss you immediately and if you are driving under the influence of drugs it is his understanding that your CDL is gone for life.

Senator Potter asked if there were any sanctions against these advertisers or manufactures.

Tom Balzer said unfortunately not.

Senator Potter asked if there were postal regulation against these items.

Tom Balzer said it was his understanding that prosthetics would be legal but he is not sure about the urine but it is legal to send hospital urine samples in the mail so he thinks that other urine samples must be legal.

Senator Lee asked if the language was clear enough to satisfy all his concerns.

Tom Balzer said they had struggled over this because there are various chemicals used to defraud urine tests are used for other things. They used the word chemicals and hope it works.

Senator Fiebiger asked if other states are doing this.

Tom Balzer said he didn't know.

No Opposing Testimony

Senator Lee closed the hearing on Engrossed HB 1244.

Discussion followed and the intern handed out the print out of Chapter 12.1-11. Attachment #1

Discussion continued and it was decided to hold this bill for further discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1244

Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11260

Committee Clerk Signature



Minutes:

Committee Work on Engrossed HB 1244 relating to defrauding a urine test.

Senator Potter moved a do pass on amendment 90561.0201.

Senator Fiebiger seconded.

Senator Nething has a problem with changing a law that they don't have before them. This amendment changes the whole issue. He said that they have not had a hearing on these changes. The amendment is completely different than the bill we have before us which relates to defrauding a urine test.

Senator Nodland asked if the amendment would affect a private business in his area (oil).

Senator Potter said yes, unless there is a governmental action.

Senator Lee wanted to clarify a question, a private business wouldn't have to disclose and the individuals wouldn't be charged under this section if they were in violation. It would just be up to the employee to terminate employment?

Senator Potter said that was his wish and understanding.

Senator Nething said there was a reason why oil companies offer these tests it is safety and then comes the risk with the equipment. If you take the felony away they can just disregard it. He doesn't want to do this.

Senator Fiebiger said the risk to them is they will lose their job or don't get hired and that is their livelihood.

Senator Nething answered that we are discussing the person that assists the defrauding.

Discussion followed.

Senator Fiebiger said in the hearing we didn't have testimony from law enforcement.

Roll call vote on the amendment: 2-4-0

Amendment failed.

Committee will discuss later.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. Engrossed HB 1244

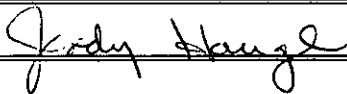
Senate Transportation Committee

☐ Check here for Conference Committee

Hearing Date: March 20, 2009

Recorder Job Number: 11331

Committee Clerk Signature



Minutes:

Committee work on Engrossed HB 1244 relating to defrauding a urine test

Senator Potter said that the bill was ok but he wondered why we let the advertisers get away without reprimanding them.

Senator Nething moved a Do Pass.

Senator Nodland seconded.

Senator Nething said the reason that he does this is Senator Seymour would tie it back to what is happening in the oil field. It is a risk and safety issue.

Senator Fiebiger said he agreed with Senator Potter about the advertisers comments but he will support this bill because he feels that someone who assists defrauding a urine test should be equally guilty.

Senator Lee expressed his concern of enforcing this.

Senator Nething it is in Chapter 12 of how it can be prosecuted. They will have the tools.

Senator Nodland brought up Mr. Balzer's testimony on the dangers of oil field work. He said back in the eighties they didn't do drug tests and it was even more dangerous.

Senator Lee said that testing goes on all over in different fields. He doesn't like the bill.

Roll call vote: 4-1-1 Senator Marcellais was absent.

Senator Nething will carry the bill.

March 18, 2009 # 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1244

Page 1, line 11, after the underscored period insert "This section does not apply to a urine test unless the test is required by law or is requested by a governmental entity."

Renumber accordingly

Date: 3-19-09
Roll Call Vote #: ~~1244~~ #1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1244

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90561.0201

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

amendment

Motion Made By Senator Potter Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee		✓	Senator Tom Fiebiger		✓
Senator George Nodland		✓	Senator Richard Marcellais	✓	
Senator Dave Nething		✓	Senator Tracy Potter	✓	

Total (Yes) 2 No 4

Absent _____

Floor Assignment _____

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

Motion failed

Date: 3-20-09
Roll Call Vote #2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. Engrossed ~~HB 1244~~ HB 1244

Senate Transportation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Other

Motion Made By Senator Nething Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee		✓	Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais		
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 4 No 0

Absent 1

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE (410)
March 23, 2009 10:36 a.m.

Module No: SR-52-5536
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1244, as engrossed: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS (4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1244 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1244

#1

CHAPTER 12.1-11
PERJURY - FALSIFICATION - BREACH OF DUTY

12.1-11-01. Perjury.

1. A person is guilty of perjury, a class C felony, if, in an official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a false statement previously made, when the statement is material and he does not believe it to be true.
2. Commission of perjury need not be proved by any particular number of witnesses or by documentary or other types of evidence.
3. Where in the course of one or more official proceedings, the defendant made a statement under oath or equivalent affirmation inconsistent with another statement made by him under oath or equivalent affirmation to the degree that one of them is necessarily false, both having been made within the period of the statute of limitations, the prosecution may set forth the statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant to be true. Proof that the defendant made such statements shall constitute a prima facie case that one or the other of the statements was false, but in the absence of sufficient proof of which statement was false, the defendant may be convicted under this section only if each of such statements was material to the official proceeding in which it was made.

12.1-11-02. False statements.

1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.
2. A person is guilty of a class A misdemeanor if, in a governmental matter, he:
 - a. Makes a false written statement, when the statement is material and he does not believe it to be true;
 - b. Intentionally creates a false impression in a written application for a pecuniary or other benefit, by omitting information necessary to prevent a material statement therein from being misleading;
 - c. Submits or invites reliance on any material writing which he knows to be forged, altered, or otherwise lacking in authenticity;
 - d. Submits or invites reliance on any sample, specimen, map, boundarymark, or other object which he knows to be false in a material respect; or
 - e. Uses a trick, scheme, or device which he knows to be misleading in a material respect.
3. This section does not apply to information given during the course of an investigation into possible commission of an offense unless the information is given in an official proceeding or the declarant is otherwise under a legal duty to give the information. Inapplicability under this subsection is a defense.
4. A matter is a "governmental matter" if it is within the jurisdiction of a government office or agency, or of an office, agency, or other establishment in the legislative or the judicial branch of government.

12.1-11-03. False information or report to law enforcement officers or security officials. A person is guilty of a class A misdemeanor if that person:

1. Gives false information or a false report to a law enforcement officer which that person knows to be false, and the information or report may interfere with an investigation or may materially mislead a law enforcement officer; or
2. Falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when that person knows that the incident did not occur. "Security official" means a public servant responsible for averting or dealing with emergencies involving public safety.

12.1-11-04. General provisions.

1. Falsification is material under sections 12.1-11-01, 12.1-11-02, and 12.1-11-03 regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the official proceeding or the disposition of the matter in which the statement is made. Whether a falsification is material in a given factual situation is a question of law. It is no defense that the declarant mistakenly believed the falsification to be immaterial.
2. It is no defense to a prosecution under sections 12.1-11-01 or 12.1-11-02 that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at a time when the actor represents it as being so verified shall be deemed to have been duly sworn or affirmed.
3. It is a defense to a prosecution under sections 12.1-11-01, 12.1-11-02, or 12.1-11-03 that the actor retracted the falsification in the course of the official proceeding or matter in which it was made, if in fact he did so before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding or the matter.
4. In sections 12.1-11-01 and 12.1-11-02, "statement" means any representation but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

12.1-11-05. Tampering with public records.

1. A person is guilty of an offense if he:
 - a. Knowingly makes a false entry in or false alteration of a government record; or
 - b. Knowingly, without lawful authority, destroys, conceals, removes, or otherwise impairs the verity or availability of a government record.
2. The offense is:
 - a. A class C felony if committed by a public servant who has custody of the government record.
 - b. A class A misdemeanor if committed by any other person.
3. In this section "government record" means:
 - a. Any record, document, or thing belonging to, or received or kept by the government for information or record.

- b. Any other record, document, or thing required to be kept by law, pursuant, in fact, to a statute which expressly invokes the sanctions of this section.

12.1-11-06. Public servant refusing to perform duty. Any public servant who knowingly refuses to perform any duty imposed upon him by law is guilty of a class A misdemeanor.

12.1-11-07. Fraudulent practice in urine testing. A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance.