

2009 SENATE TRANSPORTATION

SB 2070

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2070

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7573

Committee Clerk Signature

Jody Hauge

Minutes:

Senator Lee opened the hearing on SB 2070 relating to statutory fees for non moving violations; and to provide a penalty.

Senator Lyson introduced SB 2070 and spoke in support of it. He said that there were young people at the hearing and they will give the committee the facts.

Representative Hattlestad testified in support of SB 2070 and the efforts put forth by the students in Mrs. Selby's class. Written testimony #1.

Representative Sukut testified in support of SB 2070 and full support of the young people here that have worked on this bill.

Nancy Selby, sixth grade teacher at Rickard Elementary in Williston gave the history of how the students progressed with this idea of not smoking in a vehicle with children age sixteen and under. Written testimony #2.

Austin Anderson, 7th grader at Williston Middle School testified in support of SB 2070. He gave the committee information on chemicals found in cigarettes and the danger of smoking around children. Written testimony #3.

Samantha Miller, 7th grader at Williston Middle School testified in support of SB 2070. She talked about diseases contributed toward secondhand smoke. She said that research showed

that when a child grows up he or she is more likely to be addicted to tobacco if they were smoked around when they were children. Written testimony #4.

Senator Lee asked if there were any benefits from smoking.

Samantha said no.

Keely Kleven a 7th grade student testified in support of SB 2070. She testified about third hand smoke and told about research study at Harvard Medical School. More information and research are being done on third hand smoke. Written testimony #5.

Hailey Bendixson a seventh grader at Williston Middle School testified in support of SB 2070. She told us about her own health problems as a child and infant and also told the committee about other legislation similar to SB 2070 that have been passed by other states. Written testimony #6.

Senator Lee asked why they agreed on the age of sixteen.

Hailey said that their class discussed this and went from fourteen to sixteen. The bill reads under sixteen years of age and they decided on that so they could protect that many more kids.

Senator Lee asked how highway patrolmen would know or make a determination about the age.

Hailey said if he had some suspicion he could pull the car over and ask for the driver's license.

Sandra Miller a concerned parent and registered nurse testified in support of SB 2070.

Written testimony #7.

Senator Potter commented on third hand smoke and asked if smoking should be banned in all cars.

Miller said that would be okay with her but this bill is a start.

Senator Potter then asked where we end. He asked if we should be going into the homes as well.

Miller said that California was researching and discussing this.

Dennis Cooley an associate professor of Ethics and Philosophy at NDSU testified in support of SB 2070. Written testimony #8.

Kathleen Mangskau, chair of the Tobacco Prevention and Control Advisory Committee testified in support of SB 2070. The Advisory Council supports this bill to the extent that this legislation will help establish one part of a comprehensive program by helping to eliminate exposure to secondhand smoke in the vehicle when children are present. Written Testimony #8.

Senator Potter said in their primary goals that they did not list third hand smoke as a priority.

Mangskau said that the ones listed were the broad goals of their group but third hand smoke would certainly be a priority under one of the goals.

Senator Fiebiger asked what her thought were on the age (under sixteen).

Mangskau said they had no clear conclusion but our goal is to protect everyone from secondhand smoke.

Warren Larson, former Superintendent of School of Williston and representing the ND Council of Educational Leaders testified in support of SB 2070. It protects our youngest citizens from a significant health risk.

No opposing testimony.

Senator Nething asked Senator Lyson about the bill itself. He was concerned about line 8- page 1. He is concerned about the language whether it is ignited or smoked is enough.

Discussion followed about how clear we want to be in the bill.

Senator Nodland asked for a clarification on that the operator license points may not be assessed against an individual for a violation. He asked if this was correct.

Senator Lyson answered yes.

Discussion followed on how the bill was written and Legislative Council intent.

It was the conclusion of some of the committee that just having the bill on the books will help with smoking in a vehicle with children under sixteen.

Deborah Knuth, a member of the Tobacco Free ND Coalition provided written neutral testimony. Written testimony #9.

Senator Lee closed the hearing on SB 2070.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2070

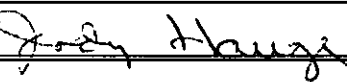
Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8111

Committee Clerk Signature



Minutes:

Committee Work for SB 2070 relating to smoking in vehicles.

Senator Nething said he liked the bill.

Discussion followed on the usage of the words ignite or smoke and the age of sixteen and under.

Senator Potter said he favored the bill but he was pro-freedom, he didn't like to see restriction on people, but this is children in a car. He said we had to protect the kids from their abusive parents.

Senator Nodland said the concept is good but he does have concern about the enforcement. He thinks the bill before us is more theory than law. He would rather educate than legislate.

Senator Nething said he didn't disagree with Senator Nodland but he said we don't have the opportunity to educate those that need to be educated. That is the adult smoker. Having a law on the books will bring out awareness. He did say from enforcement it may not be the best bill. He just cares about the kids. He said even it passed one chamber it should make an impact.

Senator Nething moved a Do Pass.

Senator Potter seconded. Roll call vote: 5-1-0



Senator Nething is the carrier.



Date: 1-29-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2570

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 Potter

| 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 | ✓ | |
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Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Nething

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

REPORT OF STANDING COMMITTEE

SB 2070: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS
(5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2070 was placed on the
Eleventh order on the calendar.

2009 HOUSE TRANSPORTATION

SB 2070

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2070

House Transportation Committee

Check here for Conference Committee

Hearing Date: 03/12/09

Recorder Job Number: 10817

Committee Clerk Signature

Jeanette Cook

Minutes:

Senator Stan Lyson, District 1, introduced the seventh grade class from Williston who prepared testimony in support of SB 2070.

Nancy Selby, a sixth grade teacher at Rickard Elementary School in Williston, explained the role of the seventh grade class in presenting testimony on SB 2070. She also spoke in support of SB 2070. See attachment #1.

Representative Patrick Hatlestad, District 1, Williston, spoke in support of SB 2070. See attachment #2.

Representative Weiler: If smoking in a car is harmful to kids, why doesn't this bill outlaw smoking in a car period? It would obviously harm the person who is smoking as well.

Representative Patrick Hatlestad: I agree, it does harm the person smoking. I don't smoke, I don't like smoking, I don't allow smoking. But, as an adult you should have a choice. As a young person in the car; you don't have an option. They should have someone, in a sense, speak for them. In this case it would be the legislature.

Austin Anderson, a seventh grade student at Williston Middle School, gave testimony in support of SB 2070.

Chairman Ruby: I agree with the harmful ingredients that are in cigarettes and the health risks that you mentioned. Why do you think that kids your age or slightly older decide to start smoking?

Austin Anderson: I think that kids my age start smoking because they see their parents doing it, and they think it is OK. It is even proven if you smell the smoke and inhale it, you could get addicted to that; and therefore you would start smoking yourself.

Representative Frantsvog: I have a question from the students from Minot. Why did you choose age sixteen as the age for this bill?

Austin Anderson: We had a fair amount of discussion on this, and we felt that sixteen year olds are starting to become more independent and most of them are driving on their own and don't have to go with their parents or anyone else. We thought that the higher the age limit; the more kids we are protecting.

Representative Delmore: In all the research that you did, has the law been proposed in other states and has it been successful?

Austin Anderson: Yes, but one of my classmates will get into that in more detail in her speech.

Samantha Miller, a seventh grade student at Williston Middle School, spoke in support of SB 2070. See attachment #4.

Keely Kleven, a seventh grader at Williston Middle School, gave prepared testimony in support of SB 2070. See attachment # 5.

Representative Delmore: As you looked at this issue, did you have any thoughts about banning smoking in people's homes when children are probably in a home a lot longer than they would be in a vehicle?

Keely Kleven: We did think about this. We decided that this would be the best place to start because you can't take every right away. So, this is the best place to start.

Hailey Bendixson, a seventh grade student at Williston Middle School, spoke in support of SB 2070. See attachment #6.

Dennis Cooley, associate professor of philosophy and ethics at North Dakota State University and the associate director of the Northern Plains Ethics Institute, spoke in support of SB 2070 and provided documentation for his testimony. See attachment #7.

Representative Weiler: Do you have any studies that show the difference You threw out a statistic that said it was about twenty minutes before it had an effect in a car?

Dennis Cooley: The statistic is that it exceeds the EPA standard for the entire day in twenty minutes. So, as soon as you start smoking it starts running that. There have been two other studies in Canada at the University of Waterloo that said the same thing. Even if you have the car vented there are difficulties.

Representative Weiler: We are trying to stop people from smoking in cars, but they are going to take these kids home, and they are still going to smoke in their home. You are not attempting to stop people from smoking at home with their kids in the house. At least not this session, I'm sure in a couple of sessions you'll back. What is the difference statistic wise between a home and a car? Twenty minutes in a car, what is the time in a home?

Dennis Cooley: It is different in a home because a home is a much larger place than a car. The studies that were done in regards to a car were about a much smaller contained space. For studies that were done in homes, there was one that was especially influential from England in which they tried various methods to see what the exposure would be. One of the things that they did was have people smoke outside, versus smoke inside with the windows open, versus smoking near a vent or bent over a stove, and with no openings at all. The risk

factor for smoking outside and never coming into the house , the risk factor was classified as a one. If you smoked inside the house, the risk factor turned into a fifteen. There was a huge amount of increase there. In regards to a car, I think it is a special circumstance.

Representative Delmore: The young people today have testified that there are four states that states that have passed it. Are you aware of any information on enforcement? I think it would a lot to ask of our officers. And secondly whether it is really making people stop?

Dennis Cooley: In regards to enforcement they are relatively new, so we don't have any statistics as of yet to be able to evaluate it. In regards to it being onerous for people to actually fulfill this, you have police officers looking for open containers and people who are in cars drinking from that. This would be relatively obvious if they are smoking because there is smoke in the vehicle. It wouldn't be that difficult to see. Also, I think that our police agencies are really good at evaluating whether or not it is appropriate to give a ticket versus a warning. At the same time, if you have never been around a child that has been in a car and smoking. You haven't seen the damage it can cause.

Representative Delmore: I would like to focus on the enforcement. I don't see anything here that says that a policeman can give a warning. If you have a small child, they are put in the back seat not the front. As a policeman, how do they know that there is a child in the back seat. This is what I am talking about with enforcement. It is hard when there are no statistics that say, we are really enforcing it in these four states, therefore more people have decided not to smoke. I like to think that often time if people have small children that makes a great difference in the personal lifestyle that they choose. That is a choice that parents make because they have this young child.

Dennis Cooley: Whether or not it will be difficult as to seeing if there is a child in the back seat and the person is smoking in the front. It will be more difficult to tell if a parent is drinking

in the front seat and there are laws that consider driving and drinking a form of child abuse and child endangerment. Those laws have been in effect and work equally well here. You might not be able to see it clearly, but they will be able to see it while they are driving along in the car, especially in city driving. The police officers should be able to see in the cars. If they are moving at high speeds then it would be more difficult.

Chairman Ruby: I think that one of the issues with enforcement is the fact that the kids can be up to age sixteen. It will be difficult for the law enforcement officer to tell a fourteen year old from a sixteen year old sometimes. They would have to ID a student who may not even have a form of ID with them. Have you considered the problems for enforcement?

Dennis Cooley: I have spoken to several law enforcement officers in Fargo about this. What they were concerned about is that they can actually see when a car is full of smoke, and there is nothing they can do. It is not like people are taking a single puff and then trying to hide it, and the police are trying to catch them. If they are on I-94 and people are traveling at high speeds, they are not going to focus on that. It is more along the lines of the obvious.

Chairman Ruby: Could there be problems if there is a minor turning a parent in for this?

Dennis Cooley: That is a good question. What I would be concerned about is I believe that in this law the officer has to see it while it is occurring. I'm not sure how that would work in regards to other factors.

Representative Joyce Kingsbury, District 16, presented a letter written by her grandson. See attachment #8.

Sandra Miller, a concerned parent and registered nurse, spoke in support of SB 2070. See attachment #9.

Warren Larson, former Superintendent of Schools for the Williston Public Schools, spoke in support of SB 2070. See attachment # 10.

Jeannie Krom, a member of the Tobacco Prevention Control Advisory Committee, presented written testimony from the chair of the Tobacco Prevention Control Advisory Committee, **Kathleen Mangskau,** in support of SB 2070. See attachment # 11.

Representative Sukut, District 1, spoke to support SB 2070. He stated that he is so proud of the young people that presented this bill. He continued to explain that he grew up in a smoking family. He remembers when his family went on trips and there was smoke in the car remembers being sick most of the time at the end of those trips. Even today, when he is in a room with smoke, he plugs up and gets headaches. So, he is not a big fan of smoking.

Representative Sukut: I want to offer my support. I think they have done a wonderful job of presenting their case. I fully support their efforts and encourage this committee to give this serious consideration, and I hope that we can pass this on to the floor with a Do Pass to let it have its full hearing.

There was no opposition to SB 2070.

The hearing was closed on SB 2070.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2070

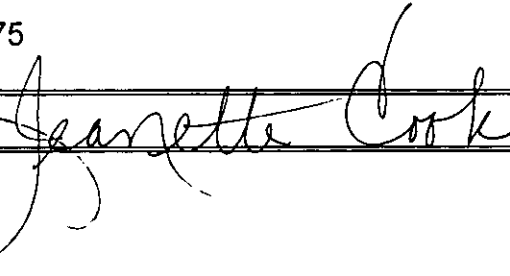
House Transportation Committee

Check here for Conference Committee

Hearing Date: 03/19/09

Recorder Job Number: 11275

Committee Clerk Signature

A handwritten signature in black ink, appearing to read "Jeannette Cook", is written over a horizontal line. The signature is cursive and extends above and below the line.

Minutes:

Chairman Ruby brought SB 2070 before the committee.

Representative Sukut moved a **Do Pass** on SB 2070.

Representative Gruchalla seconded the motion.

Representative Sukut: I know that I would have to do this because the kids brought it. But, that is not my total reason for asking for support on this bill. As I listen to the conversation and the talk about the bill. Because it has been presented by a bunch of young people, it is not taken seriously by some. I don't think it is one of those bills that you stand up on the floor and say this is a bad bill, let's kill it. It really does have a lot of merit. We all heard the testimony from all the young folks, and they did a good job of talking about the hazards of secondhand smoke. I think that we all agree, and we all know that secondhand smoke has some very disastrous side effects. As I look at that bill and try to find the down side, I can't find a real downside. When you look at it from the standpoint of the smoker, and you may be infringing on the smokers "rights" or choice. But, the bill is really not about the smoker, it is about the child that is put into a car seat and being subjected to secondhand smoke. They went through all the ramifications that can happen in those situations. It is twenty times more poisonous in the car than it is in a house. Twenty-three times more toxic than in a smoky bar. I think that

those are true facts and are things that we really need to consider. The other side of that are the smoker's rights. Sometimes people need a little push to stop doing something like lose weight or make new year's resolutions. This bill may provide a little push to the smoker that knows that they shouldn't be smoking in the car when there is a child in there. It may provide a little impetus for them to not do that. The other side of this that I have heard is the law enforcement part of it, trying to enforce this issue. As I visit with law enforcement people, they didn't see a problem with it at all. I don't know that they would go after that. It won't be a high priority, if the law is passed. It probably will be like the seatbelt law. If you get picked up for something else, and there is an infraction there. A lot of times if they get picked up, they may get a warning. I don't see law enforcement as a problem. The law enforcement won't go out head hunting. I want to make one other point. We did the bottle rocket thing. If you were there and heard the testimony, you probably would have voted with us. That bill was different to me in one respect. There are two sides to the bottle rocket thing: all the injuries that are caused by the bottle rockets and the infringement on the retailer. But, there wasn't one person that showed up from the retail side that showed up to object. In my mind I don't think that they are too concerned about it. In the case of the smoking bill if law enforcement was concerned about it, they would have been here to object. There was not one person who came in to object in the hearing. I think the bill has merit. What will it hurt? What is the down side? How is it going to hurt anything? I am just going to ask the committee to give it some good serious consideration, and I hope that we would send it out with a good solid Do Pass, then let it be hammered out on the floor.

Representative R. Kelsch: Before we heard the bill, I had already made up my mind that I was going to vote against it. I'm still not exactly sure what I'm going to do. After I found out that the bottle rocket bill had passed, it really made me think. The reason that the bottle rocket

bill passed was the compelling testimony. I can tell you that there wasn't any more compelling testimony than what we heard from those young people on this bill. They came in here more well prepared than many adults come into this hearing room. Even when Representative Weiler asked a tough question that young man stood there, looked him in the eye, and responded correctly to the question. He had the answer. It may not have been what we wanted to hear, but he did have a good response. My husband was surprised when I told him that I planned on voting against this bill. He said, "You were one of those kids that was stuck in the car with your dad. You pled with him to stop smoking, and he wouldn't do it. I'm surprised that you wouldn't be an advocate for the kids in this situation. Well, it looked to me that the IBL committee was being an advocate for the children and for young adults and adults when they passed the bottle rocket bill. I tried to weigh the two of them. The bottle rocket bill can cause injury, but the chances of dying from a bottle rocket are pretty slim. Now, your chances of dying from lung cancer from second hand smoke are a lot higher. I understand the death sentence of lung cancer. We found out my dad had lung cancer and two weeks later he was dead. As much as the treatments have evolved over the last few years, they still don't have a cure for lung cancer. I think about this that we want to protect kids from bottle rockets, in case they get an eye poked out. I would rather be living with one eye, than to find out that I had lung cancer and be served the death sentence. These are the things that I have been weighing in my mind. I am still not sure how I would like to vote on this. A part of me says that I would like to get this bill out with a good strong Do Pass recommendation from this committee and then let the floor argue it out. I think that in this committee, we had very compelling testimony.

Chairman Ruby: I don't like the idea of this being lumped in with the bottle rocket issue, even though I see some of the similarities that you are talking about.

Representative Gruchalla: I stopped a car one night. It had a husband and wife, and the inside of the windows had a film from smoking that looked like tinted windows. The adults were both smoking and in the back seat there were three kids, one on each side and a car seat in the middle. The little kid had an oxygen mask on. I was checking to see if the car seat was in properly. I asked the father what was wrong with the little kid, about one year old. He said, "Oh, that kid has had nothing but asthma and breathing problems all his life." I thought that this is child abuse. How could you do that to your kid. That is the kind of thing that I think that this bill might prevent.

Representative Schmidt: You know that teenage kids are rebellious. Is there a chance here that one of those kids will call the cops and report that he will be on the road with his parents at a certain time and the parents will be smoking. This could happen. In my area if they stopped the car, the sixteen year old will probably be smoking. I see some problems here. You could start a family feud.

Chairman Ruby: I asked that question, and there could be the same problem with drinking as well. I will just put some things out for discussion. I asked the one young gentleman why kids at his age are smoking. He gave the patent answer that is normally given. The parents probably smoke, so they think it is OK. I can give personal experience. Both of my parents smoked, and I was one of the kids in the car as well. My brother and I don't smoke. I have raised my kids without smoking or chewing, and out of my five kids that are out of the house, two smoke and two chew. They did not see me do it or follow my example. Even though he gave what he thought was the most common perception of how it happens, in my situation it hasn't followed though to that. Someone asked why we don't just ban smoking all together.

One of the girls answered, "Well, we can't take every right away all at one time." I remember back when smoking in a private business was banned. When that was passed, I jokingly said

then that the next thing will be if you have a kid in a car you won't be able to smoke in your own car. You smoke at home with the kids around. It may not be so confined to an area, but it there is more time exposure than there is in a car. A lot of people go outside to smoke. If you are the person who goes outside to smoke, because you don't want to smoke in your own home so it doesn't affect your kids, do you think that those are the parents that smoke in the car with the kids? I don't think so. I think that I didn't smoke because when I got up to eat breakfast and the ash tray was on the table, it just ruined my appetite. I am not a big fan of smoking, but I don't like this erosion. The kids did a great job, but just because they picked this issue doesn't mean we need to follow what the kids want. It doesn't hurt them to know that they don't always get their way in life, especially in the legislative process.

Representative Thorpe: The kids really grabbed my heart. This will be argued and decided on the floor. I would plead with the committee to respect our Representative Sukut who made a nice presentation to the committee. I would hope that we could give a unanimous Do Pass out of this committee and let the floor decide.

Representative Weiler: Given the number of bills that have been overturned on the floor, are you sure that you want that?

Chairman Ruby: I am not going to support the bill. The cynical side of me says, "Let's send it out and let the floor vote on it and be the bad guys." I don't like to do things out of spite like that. I want everyone to vote how you believe on this issue. I think the kids were impressive. In respect to Representative Sukut, I agree with you 100% with the pride to see kids come up and do something like that. I think that if some of us are around long enough we will see some of those kids be our colleagues some day. If not that they will certainly be city or county leaders some day. The teacher is developing leaders.

Representative Sukut: I would hope that you would look at this on the **merits of the bill**. I think that the bill has merit. Take a look at it from that aspect. If an adult had brought the bill in, I would like you to look at it from the same standpoint, from the merits of the bill also.

Chairman Ruby: I think that the people that support the idea would support it no matter who brought it in. I think that bringing the kids in adds a new element. Because they did so well, it adds sentimental value. I agree with Representative Thorpe with some of the enforcement issues. The precedence of what the bill says. Already in your own house you can't smoke if you have foster care or day care. Then this is another step, if you have your own kids in your house. I don't know where it is going to stop. Let's just ban the whole product and go to prohibition.

Representative Thorpe: I am not so sure that this bill won't pass on the floor.

Chairman Ruby: It might.

No further discussion.

A roll call vote was taken on a Do Pass recommendation. Aye 6 Nay 7 Absent 1

The motion failed.

Representative Weiler moved a Do Not Pass on SB 2070.

Representative Vigesaa seconded the motion.

A roll call vote was taken. **Aye 7 Nay 6 Absent 1**

The motion passed.

Representative Weiler will carry SB 2070.

Date: 3/19/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2070

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Don't Pass Amended

Motion Made By Sukut Seconded By Gruchalla

| 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 | ✗ | | | | |
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Total Yes 6 No 7

Absent 1

Bill Carrier _____

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

Date: 3/19/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2070

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Don't Pass Amended

Motion Made By Weiler 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 | | | | | |
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Total Yes 7 No 6

Absent 1

Bill Carrier Weiler

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

REPORT OF STANDING COMMITTEE (410)
March 19, 2009 1:02 p.m.

Module No: HR-50-5353
Carrier: Weller
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2070: Transportation Committee (Rep. Ruby, Chairman) recommends DO NOT PASS
(7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). SB 2070 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2070

Chairman Gary Lee
Members of the Committee
Senate Transportation Committee
January 22, 2009

Thank you, Mr. Chairman and members of the Senate Transportation Committee.

For the record my name is Representative Patrick Hatlestad, District One, Williston.

I stand in support of SB 2070 and the efforts put forth by the students in Mrs. Selby's class. It is also my pleasure to recognize Mrs. Selby, affectionately known as "Boss", and her former 6th grade class

We, as legislators, take pride in the belief that we are part of a citizen legislature. A belief that anyone can get involved in their government. Anyone can make a difference.

These students offer a civics lesson in motion, an example of individuals who became deeply involved in North Dakota government. Individuals who picked up on an idea, did the required ground work, have run with it all the way to the state legislature, are now seeing their efforts flourish and will today, with your help, leave their mark.

These individuals are here to discuss, with you, the reasons they believe smoking in a car with young people under the age of 16 present, should be prohibited.

I would attempt to answer any questions you may have but would prefer to defer to the young experts.

Mr. Chairman

Mr. Chairman for the record, my name is Nancy Selby. I am a sixth grade teacher at Rickard Elementary in Williston.

Same given to House.

Today I am here with a group of students who were in my classroom last year. They are currently 7th graders at Williston Middle School. The first day of school, August 22, 2007, I met them outside the door of the school as they were lining up and one of them said to me, "Hey, Mrs. Selby, I think we need a state vegetable, corn. What I said and what I thought were two totally different things. After I composed myself I said, nope we're not going that direction. Look for something you're passionate about, and then we'll talk. And so the school year progressed. Sometime during the year we read in our Scholastic News Magazine about smoking in vehicles and one of the students suggested that that would be a good thing to write about.

Right about this time last year we were working on business letters and persuasive writing which is in Standard 3 of the sixth grade language arts document. The students wrote about many different things that

they're concerned about from more ice time for the hockey players to different foods at lunch time. These are more than just opinions of the students; I require that they research and have good reasons for trying to persuade people to their point of view. They also need to find out who the correct person is to contact. Some students chose the issue that we're here to testify for today. They wrote to Senator Lyson; who is not only a good listener but he must have broad shoulders (I'm sure two years ago he got a lot of kidding about the chokecherry bill and I'm sure he's received many comments about this bill). He always responds to the students by letter and comes to my classroom to visit with students.

He informed them this bill would receive opposition and explained to the students why. He encouraged them to go home and talk to their parents and get their opinions. After the students had done some research, Senator Lyson returned and the students asked him to go ahead and draw up the bill.

I grew up in a household where my dad smoked in the house, in the car and where ever he pleased. As a child we blamed my coughing and sneezing on allergies; today we know better. The times my dad did try to quit smoking usually resulted in him smoking a cigar or a pipe. He eventually did quit, it was the day my young daughter said to him at the breakfast table, as she pushed her cereal bowl away, I can't eat this, it tastes like smoke. My dad never smoked again; however it was too late for him, my dad was 67 when he died of cancer.

Yes, I have a personal story to tell, but I also have a deep concern for all youngsters who live in a tobacco smoke environment and have no say about it. I have concerns for the students in my classroom who miss school because they live in a smoking environment. And I'm here because I'm passionate about my students and the hard work they've put in researching. I urge you to support Senate Bill 2070. Austin Anderson will be the first student to speak.

Thank you.

BILL NO. 2070 SPEECH

#3

Mr. Chairman, for the record my name is Austin Anderson and I am a seventh grade student at Williston Middle School. Cigarettes have 4000 known chemicals and at least 69 of them are known to cause cancer. The rest of the chemicals are just plain gross and I wouldn't put them in my mouth if I found them. Some of the major toxic chemicals are arsenic and benzene. Arsenic is a silvery-white very very poisonous chemical. This deadly poison is used to make insecticides and it is also used to kill gophers and rats. Benzene is a flammable liquid obtained from coal tar and used as a solvent. This cancer-causing chemical is used to make everything from pesticides to detergent to gasoline. I found this from many quit smoking resources.

From the age of zero to five, children can inhale 102 packs of cigarettes just from secondhand smoke. What choice does this child have? We buckle them in a car seat for safety, put a blanket over their heads so they don't breathe cold air and yet we expose them to second hand smoke that is more deadly than the smoke the smoker inhales.

EPA estimates that 200,000 to 1,000,000 asthmatic children have their condition worsened by the exposure to secondhand smoke. Secondhand smoke

exposure among children with respiratory-related diseases is directly associated with days missed at school. The average days missed of school for one child is about 3 per six month period. Because of secondhand smoke, many kids are getting asthma. Asthma's effect on kids brings the average rate of days missed to six per six months. I got this information in the "HealthDay News".

Children of parents that smoke, have more bronchitis, respiratory infections, pneumonia, and reduced pulmonary function than those children whose parents don't smoke. Children that inhale secondhand smoke also have lower levels of vitamin C so their immune system is weaker and also they are proven to be sleepier and not focused on schoolwork.

Secondhand smoke is responsible for 150,000-300,000 respiratory tract infections in infants and children under eighteen months old resulting in 7,500-15,000 hospitalizations per year estimates Environmental Protection Agency (EPA).

60% of all children from the age of three to eleven, or 22 million, are exposed to secondhand smoke. And 25 percent of those live with at least one smoker. Because children are still growing, the 4,000 known chemicals found in cigarettes are exceptionally bad for their growing lungs. Children, like me, also have higher metabolisms than adults, so they inhale more harmful smoke than adults. Painful ear infections and allergies towards children are more likely to occur just from inhaling

secondhand smoke. Children who breathe secondhand smoke often get pneumonia also.

In the bill that we are proposing we will not only protect kids from getting harmful diseases, we will protect the future generation and save lives. According to the centers for disease control (CDC), over 54,000 people die per year in the U.S. alone from secondhand smoke exposure. I had almost all of my grandpas die of smoking and one of my grandmas also died from smoking. It isn't worth dying because of an addiction. If this bill is passed maybe my family would have fewer grandparents and other family members that are lost to secondhand smoke. Thank you for your time and please consider the passing of this bill.

*Same given
to House*

*# 4
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Mr. Chairmen,

For the record my name is Samantha Miller, and I am a 7th grader at Williston Middle School.

I am here to urge your support in Senate Bill 2070. Research shows that...as my classmate Austin said, there are many harmful ingredients in a cigarette.

There are many diseases contributed toward secondhand smoking. One disease that can harm a baby or child's health is Sudden Infant Death Syndrome or SIDS. Every year there is up to 5,000 deaths due to SIDS and 3,000 of them are related to secondhand smoke. Also, only 26 % of adults smoke and 50-67% of children have to be around secondhand smoke every day of their lives. Research shows that there is no exact cause of SIDS, but it is known that smoking around your baby is greatly contributed toward it.

Another commonly known effect from secondhand smoke is asthma. Children are more easily susceptible than adults for asthma. The EPA estimates that 200,000 to 1,000,000 children have asthma due to secondhand smoke. When a child has asthma their airways become inflamed making it very difficult to breathe. It also makes it very hard for the children's brain to work properly.

Bronchitis and pneumonia are also associated with secondhand smoke. Among the children 18 months or younger in the United States, 300,000 cases of bronchitis and pneumonia are treated each year.

When a child grows up he or she is more likely to be addicted to tobacco if they were smoked around when they were children. Every year, more than a million teenagers start to smoke.

When asked why, more than half of them said that they saw their parent smoke when they were children, so they wanted to try it. They also said that they would be able to quit. But now they are addicted to it because of their parents.

Smoking around your children or infant causes their brain to become smaller as they grow. This is only in affect if they are heavily smoked around. But even with little smoke it is known that the infant or child is most likely to get a learning disability. He or she may struggle in elementary school, or for the rest of their life.

Even as a young child it is very likely to get lung cancer. When the child gets into their teen years, they may spend most of his or her life in a hospital bed, because their parent smoked around them when they were younger. Every year secondhand smoking contributes to 3,000 cancer deaths each year. Most of them are in children between the ages of 10-16. But it is well known that a child starts having the symptoms of lung cancer at the age of only 3. Your support is Senate Bill 2070 could change many young lives.

Now my classmate Keely is going to be talking to you about third hand smoke.

Thank you for your time.

Mr. Chairman and members of the committee,

*Same given
to House.*

5

For The record: My name is Keely Kleven. I'm a seventh grader at Williston Middle School.

Good morning. You have heard about the dangers of smoking and also of second hand smoke. Recently more information is being published about third hand smoke. A study conducted at Harvard Medical School published an article in the Medicine and Health magazines Dec. issue that studied the effects of third hand smoke. When a person smokes, toxic particulate matter from tobacco smoke gets into their hair and clothing. When they come into contact with children, those kids come into contact with these toxins.

Eleven of the two hundred and fifty compounds found in tobacco particulate are classified as group one carcinogens, the most dangerous kind. This rating is set by the National Toxicology Program. This information is cited in the December 29th, 2008 edition of Medicine and Heath.

Third hand smoke can remain long after the smoking has stopped. It clings to car seats, and car upholstery. According to the Harvard study exposure to tobacco particulates, similar to low-level lead exposure has been associated with cognitive deficits among children. Higher exposure to lead correlates with lower reading scores. These findings underscore

the possibility that even extremely low levels of these compounds may be neurotoxic. We are happy to speak for children who can not speak for themselves. I now would like to let Hailey speak about how many states have passed this bill.

Please consider a do pass for SB 2070.

Thank you.

Madam or Mr. Chairman,

For the record my name is Hailey Bendixson. I am a seventh grade student at Williston Middle School.

When I was younger I went to a baby-sitter. My baby-sitter smoked. By the time I was five I had gone to the doctor eleven times. The reason I went to the doctor was for bronchial related reasons. Also my mom and dad both smoked when I was younger. Even though they did not smoke in the house my mom on occasion did however smoke in the car. My mom now knows that was wrong and is a supporter of this bill.

Out of the fourteen states that have tried to pass the bill to outlaw smoking in vehicles with children present, four states have succeeded in passing the law, they include:

- Arkansas
- Louisiana
- California
- Maine

These states all have different fines and age limits. They are as follows:

- Arkansas-up to age 13-\$125 fine
- Louisiana-up to age 13-\$25 first offense \$100 any other offense
- California-up to age 17-\$100 fine

- Maine-up to age 16-\$50 fine

Out of these four states Arkansas was first to pass the bill and Louisiana, California, and Maine followed in this order. We hope we can follow and be the fifth state to pass the bill.


Many other states have tried, or they are still in the process of discussing the bill. There are some states that are trying very hard to pass the bill, for example, Virginia has tried to pass the bill but is so far been unsuccessful. Another state trying to pass the law is Washington Last year, like in Virginia, this state tried, and is working hard to pass.

Some other states trying to pass are:

- Washington
- Illinois
- Wyoming
- Texas
- Oklahoma
- Vermont
- Arizona
- Nebraska
- Puerto Rico
- New York

Some of the states have certain age limits and fines established.

Just remember it is the parents' idea to smoke in the car with children present not the children's idea. I



encourage you to lend your support and vote yes on
bill 2070.



*Same given
to House.*

7

Mr. Chairman,

For the record my name is Sandra Miller and I am here as a concerned parent and registered nurse. I urge your support on Senate Bill 2070.

In 1992 the EPA classified second hand smoke as a "Group A" carcinogen. That is the most dangerous category of cancer causing agents. When we know this information why would we allow infants and children to be exposed to second hand smoke?

Some may argue that we are taking away their right to smoke. Smoking is a choice not a right, and what about the rights of infants and children. They do not get to choose to inhale this second hand smoke. Research has shown that second hand smoke in a car can be more than 20 times poisonous than in a house. The concentration of toxins in a smoke filled car is 23 times greater than in a smoky bar. These toxins can remain on car seats, blankets, clothing and other things for months. I don't think any parent would want their child in these surroundings.

There have been laws to ban smoking in work places, restaurants, bars, and public transportation, however, private motor vehicles remain a place of intense and consistent exposure for children and adults. We can't control everything parents and others do for the safety of children, but your support of this bill could help them by not letting them be exposed to second hand smoke.

Data has shown second hand smoke is highly associated with increased medical problems, and increased utilization in health care services. Your support of this bill would go a long way in supporting the goals of healthy youth and decreasing health care costs.

Mr. Chairman and Committee members,

My name is Dennis Cooley. I am an associate Professor of Ethics and Philosophy at WDSU and associate Director of the Northern Plains Ethics Institute.

I am here to address the conflict between the duties of the state to protect children and public health and the rights to private property and privacy, especially in regards to raising one's children.

In the case of smoking in cars with children present, the states duties override the rights to privacy and private property.

There are several reasons why.

First, the health dangers are clear and proven. Children have asthma, bronchitis, and other actual reactions they would not have had if smoking had not happened. ~~The~~ Even when children do not appear to be harmed,

they are. The U.S. Surgeon General states there is no safe exposure to second hand smoke. California has shown that exposure to smoke in a car exceeds the amount allowed by the EPA. If the windows are closed, it is within 20 minutes. If open, it is within 2 hours. The EPA's time for exposure is 24 hours.

Even the increased risk is a harm to the person. If the person is worse off, which we know he is, then he is harmed. Second hand smoke increases risks without a scientific doubt. Hence, even if there are no outward ~~signs~~ signs, harm has happened.

Finally, the state of ND has already recognized a right to ~~the~~ intervene in smoking.

1. ND Administrative Code, Chapter 75-03-14-04, states Foster parents cannot smoke around children with relevant health conditions, even in their own home.
2. Heck v. Reed 529 N.W.2d (N.D. 1995) ~~to~~ states smoking can be used

3

in child custody cases

3. There is a ban on smoking in public places passed by the State legislature. This means it thinks second hand smoke is dangerous and exposure to it should be limited.

Hence ~~there~~ given all these facts, state action on this bill is warranted and just.

I hope that it passes.

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**Testimony
SB No. 2070
Senate Transportation Committee
January 22, 2009, 10:30 a.m.**


#8
Same given
to House.

Good morning Chairman Lee and members of the Senate Transportation Committee.



My name is Kathleen Mangskau and I am the chair of the Tobacco Prevention and Control Advisory Committee. I am here to provide testimony in support of SB 2070 preventing smoking in vehicles when children under age 16 are present.

The Tobacco Prevention and Control Advisory Committee has primary goals of preventing youth from starting to use tobacco, helping youth and adults to quit tobacco use, eliminating exposure to secondhand smoke and identifying and eliminating tobacco use disparities. Implementing evidence-based, statewide tobacco control programs that are comprehensive, integrated, sustained and accountable have been shown to reduce smoking rates, tobacco-related deaths, and diseases caused by smoking. These programs will prevent or accelerate declines in heart disease, lung diseases and disorders, and once again make lung cancer a rare disease.

Dr. Richard Carmona in the 2006 Surgeon General's Report stated, "The scientific evidence is now indisputable: secondhand smoke is not a mere annoyance. It is a serious health hazard that can lead to disease and premature death in children and nonsmoking adults." Secondhand smoke is known to cause cancer in humans. It contains more than 4,000 chemicals including more than 50 cancer-causing chemicals.



We commend the students on their effort to engage in the policy process and work to protect children and youth from exposure to dangerous secondhand smoke. We applaud their efforts to prevent tobacco-related disease and lives by introducing this legislation. The Advisory Committee supports this bill to the extent that this legislation will help establish one part of a comprehensive program by helping to eliminate exposure to secondhand smoke in the vehicle when children/youth are present. Each part of a comprehensive program must be based on science and must have been proven effective to prevent, treat, and otherwise reduce tobacco use in our state. Thank you.



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Testimony

Senate Bill 2070

Senate Transportation Committee

Thursday, January 22, 2009

Tobacco Free North Dakota

Good morning Chairman Gary Lee and members of the Transportation Committee.

My name is Deborah Knuth and I am a member of the Tobacco Free North Dakota Coalition. I am here to provide neutral testimony related to Senate Bill 2070 to regulate smoking in vehicles when children under 16 are present.

We commend Nancy Selby's former students from Rickard Elementary School in Williston for their efforts in clearing the air in cars for children and their energy to get involved in the democratic process.

Along with these efforts we are working hard to eliminate exposure to secondhand smoke for all workers and in public places. The 2006 Surgeon General's Report clearly states that there is no safe level of exposure to secondhand smoke. Even short exposures can cause harm. Only smoke-free environments afford full protection. Secondhand smoke is not just an annoyance; it is a public health hazard.

There is no question that secondhand smoke is a serious health issue. Thank you for this opportunity.

Attachment # 2

Chairman Dan Ruby
Members of the Committee
House Transportation Committee
March 12, 2009

Thank you, Mr. Chairman and members of the House Transportation Committee.
For the record my name is Representative Patrick Hatlestad, District One, Williston.

I stand in support of SB 2070 and the efforts put forth by the students from Rickard Elementary School in Williston. It is also my pleasure to recognize Mrs. Selby, "Teacher Extraordinaire," and her former 6th grade class.

As our distinguished majority leader, Mr. Al Carlson, says we, as legislators, take great pride in the belief that we are part of a citizen legislature. A belief that anyone can participate in their government and anyone can make a difference.

These students prove that point and offer a civics lesson in motion, an example of individuals who became deeply involved in North Dakota government. Individuals who picked up on an idea, did the required ground work, have run with it all the way to the North Dakota legislature, and are now seeing their efforts flourish. They will, today, with your help, leave their mark in the annals of North Dakota politics.

These students are here to discuss, with you, the reasons they believe smoking in a car with young people under the age of 16 present should be prohibited.

I would attempt to answer any questions you may have but would prefer to defer to the young experts.

Thank you Mr. Chairman and members of the Transportation Committee.

Mr. Chairman

Attachment #3

BILL NO. 2070 SPEECH

Mr. Chairman, for the record my name is Austin Anderson and I am a seventh grade student at Williston Middle School. Cigarettes have 4000 known chemicals and at least 69 of them are known to cause cancer. The rest of the chemicals are just plain gross and I wouldn't put them in my mouth if I found them. Some of the major toxic chemicals are arsenic and benzene. Arsenic is a silvery-white very very poisonous chemical. This deadly poison is used to make insecticides and it is also used to kill gophers and rats. Benzene is a flammable liquid obtained from coal tar and used as a solvent. This cancer-causing chemical is used to make everything from pesticides to detergent to gasoline. I found this from many quit smoking resources.

From the age of zero to five, children can inhale 102 packs of cigarettes just from secondhand smoke. What choice does this child have? We buckle them in a car seat for safety, put a blanket over their heads so they don't breathe cold air and yet we expose them to second hand smoke that is more deadly than the smoke the smoker inhales.

EPA estimates that 200,000 to 1,000,000 asthmatic children have their condition worsened by the exposure to secondhand smoke. Secondhand smoke

exposure among children with respiratory-related diseases is directly associated with days missed at school. The average days missed of school for one child is about 3 per six month period. Because of secondhand smoke, many kids are getting asthma. Asthma's effect on kids brings the average rate of days missed to six per six months. I got this information in the "HealthDay News".

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60% of all children from the age of three to eleven, or 22 million, are exposed to secondhand smoke. And 25 percent of those live with at least one smoker. Because children are still growing, the 4,000 known chemicals found in cigarettes are exceptionally bad for their growing lungs. Children, like me, also have higher metabolisms than adults, so they inhale more harmful smoke than adults. Painful ear infections and allergies towards children are more likely to occur just from inhaling

secondhand smoke. Children who breathe secondhand smoke often get pneumonia also.

In the bill that we are proposing we will not only protect kids from getting harmful diseases, we will protect the future generation and save lives. According to the centers for disease control (CDC), over 54,000 people die per year in the U.S. alone from secondhand smoke exposure. I had three grandpas die of smoking and one of my grandmas also died from smoking and my great grandma just died of a heart attack on February 7. She had never smoked a moment in her life but yet she was around secondhand smoke every day. It isn't worth dying or hurting anyone else because of an addiction. If this bill is passed maybe my family would have fewer grandparents and other family members that are lost to secondhand smoke. Thank you for your time and please consider the passing of this bill.

Attachment #6

Madam or Mr. Chairman,

For the record my name is Hailey Bendixson. I am a seventh grade student at Williston Middle School.

When I was younger I went to a baby-sitter. My baby-sitter smoked. By the time I was five I had gone to the doctor eleven times. The reason I went to the doctor was for bronchial related reasons. Also my mom and dad both smoked when I was younger. Even though they did not smoke in the house my mom on occasion did however smoke in the car. My mom now knows that was wrong and is a supporter of this bill.

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Out of these four states Arkansas was first to pass the bill and Louisiana, California, and Maine followed in this order. We hope we can follow and be the fifth state to pass the bill.

Many other states have tried, or they are still in the process of discussing the bill. There are some states that are trying very hard to pass the bill, for example, Virginia has tried to pass the bill but is so far been unsuccessful. Another state trying to pass the law is Washington. Last year, like in Virginia, this state tried, and is working hard to pass.

Some other states trying to pass are:

- Washington
- Illinois
- Wyoming
- Texas
- Oklahoma
- Vermont
- Arizona
- Nebraska
- New York
- Puerto Rico

Some of the states have certain age limits and fines established.

Recently Minnesota and New Mexico have joined in trying to create a smoke free environment in the car with children present. Both states are in the first stage of trying to make this bill into a law.

Just remember it is the parents' idea to smoke in the car with children present not the children's idea. I encourage you to lend your support and vote yes on bill 2070. Thank you.

Attachment #7

Mr. Chairman and Committee Members thank you for allowing me to address you today on Bill 2070.

My name is Dennis Cooley. I am an associate professor of philosophy and ethics at North Dakota State University (NDSU) and the associate director of the Northern Plains Ethics Institute (NPEI). [Any of my remarks made here today may not represent the views of either NDSU or the NPEI.]

That being said, I would first like to take a moment to congratulate these students on the excellent job they have done in gathering data, synthesizing it, and then presenting it. Their work is a tribute to not only themselves but their teacher as well.

as a professor without a graduate

I am here to address the conflict between the duties of the state to protect children and public health, and the rights of private property and privacy, especially in regards to raising one's children from outside influence. In the case of smoking in cars with children present, the state's duties override the rights of privacy and private property.

Exposure to tobacco smoke

There are several reasons why this is the case. First, the health dangers are clear and proven. Children have asthma, bronchitis, and other actual reactions they would not have had if smoking had not happened. *in the presence* Hill and Liang have found that home ETS increases the probability of an emergency room visit for a respiratory condition by 5%, and the probability of in-patient use by 3%, both of which contributed to the additional \$117 in ~~additional~~ health care expenditures for each exposed child aged from 0-4. (Hill and Liang)ⁱⁱⁱ Mannion et al. states that ETS exposure affects children of all ages by among other things, significantly decreasing lung functions for 8-16 year olds, and increasing asthma and wheezing and the number of school days missed because of illness for 4-6 year olds. (Mannion et al.) All of these are actual harms that can be easily perceived by any layperson; so they are often used as evidence for bans and child abuse claims. Even when children do not appear to be harmed they are. The U.S. Surgeon General states that there is no safe exposure to second hand smoke. In a study commissioned by California when it was considering a smoking ban of the type proposed here, it was shown that exposure to smoke in a car quickly exceeds the amount allowed by the EPA per day. If the windows are closed, then all it takes is 20 minutes. If the car's windows are open, then the EPA standard is exceeded within 2 hours.

Even the increased risk is an injury to the person. Although it is not perceived in the same way, increased significant risk is also an injury because it places minors in a less safe position than they otherwise would have been in, but this harm is not always included in the moral evaluation of smoking around children. Judith Jarvis Thomson argues that those exposed to ETS have a legitimate complaint from having their risks increased. (Thomson, p. 126) Although no actual physical or emotional harm is suffered, the increased danger caused by ETS is analogous to the injury of someone whose risk of harm from a surgical procedure increases to 20% rather than 10% due to some fault of the surgeon, even if the person suffers no physical harm. (Thomson, *ibid.*) The patient is worse off than she would have been with only a 10% chance of injury because her life is more dangerous than it needed to be. In the case of ETS, a child who has less risk of future problems has a better chance of fulfilling her potential than one who has greater risk, *ceteris paribus*. (Railton, p. 94) That is, she is safer, and thus better off, both of which are goods we pursue for ourselves and those for whom we have special duties of care .

Granted that it is important to clearly define what is entailed by significant risk, doing so would take a great deal of time to develop and defend. After all, one person might believe that a significant risk would have to exceed a 50% probability in certain situation, while another would place it much lower for the same set of circumstances. There are, however, general rules of risk acceptability assessment. As Rescher states about risk to others:

For any given level of benefit, people are prepared to tolerate a greater level of risk for activities that rate more highly in point of being: voluntary; avoidable; controllable; familiar (i.e., not particularly striking, memorable, shocking); well understood; not dreaded; not potentially disastrous; remote (not immediate or near-term). (Rescher, p. 123)

For example, assuming the probability is the same in all cases, if an activity's harm is likely to be relatively insignificant, then people are more willing to allow it than in instances in which the injury is more severe. Moreover, behaviours that have the same potential outcomes can be evaluated according to the probability that harm will ensue.

The rules of risk assessment are more restrictive for activities that will affect children than they are those impacting adults only. Given our natural desire to

protect minors to a much greater degree than autonomous adults, these risk factors will tend to make decision makers allow fewer risks for children in general than they would for adults. For example, an adult smoking a cigarette may be morally permissible, but the same conclusion would not hold in the case of a juvenile. In addition, if the risks are the same, then the benefits will generally have to be greater or more likely for children than they have to be for adults. For example, for an adult, a 6% chance of success might be acceptable, while for a minor, the risk is deemed too great to justify the small probability that benefits will accrue. To provide a plausible rule to evaluate risk acceptability in these and other cases, significant risk to a child occurs when a reasonable person would reasonably believe the chance of the child being injured is too great a negative moral factor to justify any potential goods that might be procured from the injury. Hence, given no benefit and the possible harms from being exposed to ETS, it follows that reasonable people would evaluate the risk to children to be significant, and therefore, ETS exposure is a form of endangerment.

Finally, the state of North Dakota has already recognized a right to intervene on the grounds of second hand smoke on private property in children's upbringing. First, N.D Administrative Code, Chapter 75-03-14-04, states that foster parents cannot smoke around children with relevant health conditions, even if the children are in the foster parents' home. The state, hence, must think that the child's welfare overrides the right to do as one wishes in one's private property.

Second, in *Heck v. Reed*, 529N.W.2d (N.D. 1995) the majority opinion stated that smoking can be used in child custody cases. Although the fact that the children's father was physically abusive was considered to be a more grave danger than second hand smoke, the justices did acknowledge it could be a factor. In fact, it appears that the original court's decision to grant custody to the non-smoking father would have been upheld had it not been for the physical abuse coming to light.

Third, there is a ban on smoking in public places passed by the state legislature. The only reason that this could happen is if the state thought that second hand smoke was so not in the public's health that it overcame the right for people to do as they want when they want.

Hence, given all these factors, positive state action in passing North Dakota Bill 2070 is warranted and appropriate. — *stop?*

Given the intrusiveness of the legal prescription I am endorsing, many will object to it - and quite strenuously. One of the more obvious counter-arguments to the mandatory smoking ban position incorporates a view of private property being an inalienable, or as close to it as possible, right that should not be subverted to the government's authority. It is argued that each person's private property should be immune from governmental intrusion unless such actions on a government's part can be shown to be for the society's significantly greater good or performed in accordance with laws established in the proper fashion, such as by a legitimately elected legislature or popular acclaim. The criticism can be augmented with Walter William's slippery-slope argument that allowing government intrusion in these cases makes it more likely that states will become involved in all matters based on what is good for people. Personal rights on which people depend and many countries are based will be overridden indiscriminately, merely in order for elitist do-gooders to protect everyone from every danger imaginable. Hence, on the grounds of rights, respect, and circumventing overreaching governmental control, what a parent, guardian, or anyone ~~he~~ freely allows to be present does in the privacy of the house, car, or other private property is the free person's own business.

duh The main problem with the privacy-private property-autonomy argument is that the harm children suffer from exposure is undue and unethical. As Peter Railton states "One is objectively obliged not to maintain an unsafe condition that threatens innocents (other things equal), even if this is being done without evil intent." (Railton, p. 102) First, unlike the need to breathe oxygen or care for their offspring, smokers are not required to smoke around children. Second, by now, smokers should have been made aware of this fact, and children need protection from unnecessary dangers and risks. If adults continue to smoke around children, then they illicitly violate children's entitlement to the potential to flourish. Those who expose children to ETS fail fully to appreciate their action's impact on all others affected by it and they are not prepared to give adequate reasons for their action, which makes their actions wrong according to Rawls. (Rawls, p. 337)

Of greater importance is the argument based upon children's lack of autonomy. Children are incapable of "following rules, drawing inferences, generalizing, making free choices, and altering conduct when the truth of a proposition and

interconnections between conduct and the proposition is recognized" to the degree required to be autonomous. Moreover, children cannot formulate reasonable plans for reasonable goals the way autonomous adults can. These facts make adults responsible for minors' well-being to act in their best interests, even when they do not want them to do so. (Abrams, p. 161; Hacking, p. 253) For example, a child might not want to eat healthy food or go to school, but a reasonable guardian would require him to do so for the juvenile's future benefit. Furthermore, children's non-autonomous status allows each state much greater ability to intervene in family situations than it would have for fully autonomous individuals. For instance, the state can decide custody matters in divorce cases and terminate parental rights for abuse and other grounds. Given the lack of autonomy and the unwarranted harm, even though it overrides certain adults' fundamental entitlements, it is clear to see why the state has a duty to protect children from this type of ~~endangerment~~ endangerment.

(Hacking, p. 253) This duty is characterized by obligations to act in each child's best interest, including protecting his or her rights, when his or her guardian fails to do so. (Hacking, p. 262; *In re Julie Anne*) Hence, the state and its citizens have a duty to ban smoking around children, even if it is on private property or violates property entitlements. (Ferrence and Ashley, pp. 310-1)

There are many who fear that the government ^{is} becoming too intrusive in our everyday lives. At times, this concern is well justified as in the case of smoking bans for adult only activity in which all parties are aware of the dangers of smoking and ETS but autonomously choose to be exposed to it anyway. However, in the case of smoking around children, the state has a duty to protect those who cannot defend themselves from suffering needless injury. Since many guardians or others continue to smoke around children when they know or ~~should~~ ^{ought} be aware that they should not, the state should make this relatively minor step to adopt this ban. Although we ~~should~~ ^{ought} not be our brother's keeper, we certainly should be our children's.

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Two studies on exposure in cars:

W. Ott, N. Klepeis, and P. Switzer, "Air Change Rates of Motor Vehicles and In-Vehicle Pollutant Concentrations from Secondhand Smoke". *Journal of Exposure Analysis and Environmental Epidemiology*, 2007.

"The Hazard of Tobacco Smoke Pollution in Cars: Evidence From an Air Quality Monitoring Study" 2006

Taryn Sendzik, BA1, Geoffrey T. Fong, PhD1, Mark J. Travers, MS2, and Andrew Hyland, PhD2. (1) Department of Psychology, University of Waterloo, 200 University Avenue West, Waterloo, ON N2L 3G1, Canada, (2) Health Behavior, Roswell Park Cancer Institute, Elm & Carlton Streets, Buffalo, NY 14263

Objective: Tobacco Smoke Pollution (TSP) has been identified as a serious public health threat. Accordingly, laws have been developed to reduce TSP exposure. However, there have been few, if any, successful attempts to pass laws in cars where the small cabin space may contribute to concentrated exposure. The present investigation attempted to quantify the levels of TSP exposure in cars measuring fine particles less than 2.5 microns in diameter (PM2.5), one marker of TSP, which is easily inhaled deep into the lungs. A second objective was to provide the evidence base for possible laws to reduce TSP exposure in cars.

Methods: Four smokers and their cars completed 5 controlled *in vivo* air-sampling conditions. Each condition varied on whether the car was moving, presence of air conditioning, open windows, and combinations of these air flow influences. Air quality readings were measured using a TSI Dustrak. PM2.5 was measured in the car while one cigarette was smoked during the condition, and for at least 3.5 hours after participant first entered the car.

Results: High PM2.5 peak levels, >5900 µg/m³, were observed under the condition with the least airflow. In the greatest airflow condition PM2.5 peaks exceeded 200 µg/m³. This study demonstrates that TSP in cars can reach unhealthy levels, even under the best realistic ventilation conditions. There is a need to begin to communicate these high exposure levels and harm from TSP. These findings support the need to take the necessary steps to protect the public from further harm through smoke-free car policies.

ⁱ Leung et al have different figures for admissions but are in agreement that the increase in admissions from infants under 18 months raised in a smoking environment is significant over that of infants from smoke free households. (Leung et al.)

ⁱⁱ Aligne and Stoddard have estimated that Parental smoking around children causes direct medical expenditures of \$4.6 billion and loss of life costs of \$8.2 billion. (Aligne and Stoddard)

Attachment # 8.

Andrew

Things I have opinions on...

no smoking

should be no smoking in MNND

no selling cigarettes in stores MNND

no smoking playground areas

no smoking in cars when kids are
in there

Rep. Joyce Kasperling

Andrew is in 4th grade.
The assignment
was to express their
opinion on one
subject. No suggestions
given.

Attachment #10

Chairman Ruby and Committee Members:

For the record I am Warren Larson, former Superintendent of Schools for the Williston Public Schools.

As with each of you, this past session I have seen a myriad of proposed bills. All have merit, some more, some less. Some are well thought out, some not as well thought out.

This bill devised by students when in elementary school, is well thought out, and clearly has significant merit.

Every day from 12:30 to 2:00 or beyond, we see bills passed by each legislative body. Almost always developed by legislators, or one special interest group or another (or shudder I use the term, a lobbyist). Always with an intent of one sort or another.

This bill too has intent, although not developed by seasoned legislators, but by kids. The intent is indeed admirable, saving lives of their peers, much as you so often try to do with your legislation in this very room. Too often we are guilty of criticizing kids; the media is filled with tales of mishaps and misfortunes due to the actions of kids.

When many of us were in 6th or 7th grade, our greatest priority likely was to get home from school that night and meet our friends, to play a game of ball . . . or shudder to admit that we too did this . . . to hang out.

These young people chose another route. They chose to take on the challenge of working to protect those who too often go unprotected . . . kids. This risk is second hand smoke, a proven carcinogen, one which children riding in a car with an adult smoker have no escape from.

Maybe today, we should listen to the kids, for too often we think that we know what they need. Perhaps today, they know what they need. For as Senator Flakoll said a few days ago in an interview, "When I talk to kids about what they need, I feel like an eight track in an IPOD world."

Today, it is with pride that I ask you listen to our kids, and give a do pass of SB 2070, a bill developed, researched, written, and presented by kids, much like those of your own, or your grandchildren.

Thank you for your time and I will stand for any questions.