



NORTH DAKOTA HOUSE OF REPRESENTATIVES

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COMMITTEES:
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Chairwoman Larson and Members of the Senate Judiciary Committee:

I write in **support** of HB 1223, which would change the offense level for minor in consumption or possession of alcohol (MIC/P) from a class B misdemeanor to an infraction. In the House, HB 1223 earned a 12-1-1 “do pass” recommendation from the Judiciary and passed on the floor by a vote of 81-11. For the reasons set forth below, I urge this Committee to recommend a **DO PASS** on HB 1223.

I put forward this proposal at the joint request of the five judges of the Northeast Central Judicial District. The judges—who are on the frontlines of administering justice in North Dakota—requested this change to align in state law the treatment of unlawful alcohol consumption/possession with unlawful marijuana consumption/possession in low volumes. I agree with the judges that such a change is appropriate and fair given North Dakota’s recent change in marijuana criminalization laws, and I refer the Committee to the testimony of Judge Donald Hager, presiding judge of the Northeast Central Judicial District, discussing his support of the bill. The persuasiveness of the judges’ views has only increased following the House’s recent passage of bills to both permit recreational adult use of marijuana and decriminalize the possession of small amounts of marijuana.

But some have asked, “What message does this bill send about underage drinking in the state?” And that’s a fair question. We all know underage drinking, and binge drinking in particular, are problems among North Dakota’s youth and young adults. Does this bill say we don’t take those problems seriously? No. The message this bill sends is that underage drinking, binge drinking, and substance abuse are problems best addressed by parents, educators, and mental health professionals, not primarily by courts and certainly not by incarceration. Indeed, when heard in the House Judiciary Committee, HB 1223 had the support of the Department of Human Services’ Behavioral Health Division, which highlighted that reducing criminal justice involvement for those with behavioral health needs is a key focus for the Department.

Before I move to what HB 1223 does, let me spend some time on what it does *not* do. First, it has no impact on driving under the influence (DUI) laws. Anyone, no matter their age, who gets behind the wheel while drunk still faces the serious penalties already in place under North Dakota law. This bill makes no changes to those appropriately severe consequences. Second, this bill has no material impact on juveniles—those under age 18—who consume or possess alcohol. Such offenses are already dealt with in the juvenile justice system. There, MIC/P is present an “unruly child” offense, meaning the law already treats the conduct as a less severe offense than a “delinquent act” (*i.e.* the juvenile equivalent of an adult crime).

This bill instead impacts only young adults ages 18, 19, and 20 who choose to possess or consume alcohol in violation of the law. More specifically, HB 1223 does just one thing: it amends NDCC § 5-01-08(3) to punish underage use or possession (among various other less common violations of law) as a criminal infraction rather than as a class B misdemeanor. As a class B misdemeanor currently, MIC/P is punishable by a maximum penalty

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of 30 days in jail, a \$1,500 fine, or both. *See* NDCC 12.1-32-01(6). If changed to an infraction, the maximum penalty for MIC/P would be a fine of \$1,000; no jail time is permitted as a sentence for an infraction. *Id.* § 12.1-32-01(7). It is important to note here that an infraction is still a criminal offense under North Dakota law. If cited for an infraction, offenders still must appear in court and answer for their conduct before a judge. Moreover, even if HB 1223 were enacted, a serial MIC/P offender still could face more serious punishment in appropriate circumstances, as the law permits sentencing an offender who has committed the same infraction at least twice before in the same year as if he had committed a class B misdemeanor. *Id.* Thus, even if the offense were to become an infraction, serial offenders still could face jail time and heftier fines for repeated violations.

Why, though, is this change necessary? I believe there are several reasons.

First, even the mere threat of possible incarceration is an inappropriate way to deal with the problem of underage drinking. We have made strides in the state and nationally in recognizing that treatment and education, not jail time, are the best way to deal with substance abuse problems. So while using jail time under current law is rarely, if ever, done, we should remove that threat in recognition that there are better ways of addressing the problems associated with underage drinking.

Second, an infraction still carries penalties that I believe are enough to deter MIC/P. In truth, most MIC/P violators already are sentenced only to criminal fines. Many jurisdictions, including Grand Forks, routinely defer imposition of sentence on MIC/P, which requires offenders to pay fines/fees and then have the charge dismissed and sealed after a year if they do not reoffend. Thus, our courts generally already recognize the appropriate punishment befitting this offense is a monetary penalty and not incarceration.

Third, I do not believe a young adult should be saddled with a misdemeanor criminal record for underage drinking. As the Committee knows well, a host of collateral consequences can flow from having a misdemeanor criminal record, with such impact being particularly fraught for young adults who may be looking to start careers that require professional or occupational licenses. Changing the offense level to an infraction better balances the need to hold offenders accountable for their conduct while being cognizant of the long-term consequences caused by interaction with the criminal justice system.

Fourth, HB 1223 fairly aligns treatment in North Dakota law of two substances commonly used (unlawfully) by young adults: alcohol and marijuana. Under current law, MIC/P of alcohol is subject to harsher punishment than the possession of small amounts of marijuana. While MIC/P of alcohol is a class B misdemeanor, possession of marijuana in an amount less than one-half ounce is classified only as an infraction. *See* NDCC § 19-03.1-23(7)(d)(1). This arguably creates an unintended incentive structure pushing those young adults under 21 years of age to use marijuana rather than alcohol given the less severe consequences attached to marijuana. It likewise creates an unfair structure wherein a 20-year-old could face jail time for underage drinking, but another 20-year-old would only be subject to a criminal fine for marijuana use. This misalignment would only increase if the House bills legalizing adult use of marijuana for recreational purpose and/or decriminalizing possession of small amounts of marijuana were to be enacted. Thus, aligning the penalties for alcohol and marijuana use as set forth in HB 1223 makes sense as a matter of policy and as a matter of fairness.

Fifth, and finally, changing the maximum penalty for MIC/P may increase judicial efficiency and safeguard state and local financial resources. Persons charged with an MIC/P infraction might be less inclined to retain counsel or contest the charges in court if the maximum punishment is merely a fine, thereby expediting judicial proceedings. If an MIC/P defendant opts to contest the charge, he or she would not be entitled to court-appointed counsel at public expense. *See* NDCC § 12.1-32-03.1(1). Even if they chose to “fight the charge” or

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to retain private counsel, there is no right to a jury trial for an infraction-level offense, further providing another avenue of judicial efficiency. *See id.*

In summary, HB 1223 promotes fairness, efficiency, and a recognition that harsh criminal penalties are not the best way to deal with substance abuse. For these reasons, Madam Chairwoman and members of the Committee, I urge you to support HB 1223 with a **DO PASS** recommendation. I stand ready to answer any questions.