

2021 SENATE TRANSPORTATION

SB 2097

2021 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

SB 2097
1/7/2021

A BILL for an Act to create and enact a new subsection to section 39-06.2-07 of the North Dakota Century Code, relating to statutory fees and moving violations; to amend and reenact subsection 78 of section 39-01-01, subsection 6 of section 39-06.1-06, and sections 39-06.1-09, 39-12-22, and 39-32-02 of the North Dakota Century Code, relating to statutory fees and moving violations; to repeal sections 8-02-08, 39-06.2-17, 39-12-24, and 39-12-25 of the North Dakota Century Code, relating to transportation standards, exemptions, citations, excess size and weight restrictions, and funding for an electronic permit system; and to provide a penalty.

Chair Clemens calls the meeting to order. Chair Clemens, Vice Chair Fors, Senators Bakke, Conley, Dwyer, and D. Larsen are present. [9:30]

Discussion Topics:

- Commercial motor vehicle regulations
- Definitions of school buses
- Legal weights
- Electronic permit system

John Sova [9:31], Motor Carrier Safety Assistance Program Coordinator, presents the bill and submits testimony #29 in favor of SB 2097.

Additional written testimony: N/A

Chair Clemens adjourns the meeting on SB 2097. [10:17]

Sheldon Wolf, Committee Clerk

Senate Bill 2097
Senate Transportation Committee
Senator Clemens, Chairman
January 07, 2021

Chairman Clemens and members of the Senate Transportation Committee, my name is Trooper John Sova and I am the MCSAP, or Motor Carrier Safety Assistance Program, Coordinator with the North Dakota Highway Patrol. I serve in the southeast region of the state, and am stationed in Jamestown. I am here today to support and provide background information on Senate Bill 2097 which addresses laws relating to school buses, Commercial Motor Vehicle regulations and legal weights. I will provide information on the changes to each section of Century Code as affected by this bill.

Section 1: The update to the definition of a school bus is being proposed to create uniformity with the federal definition of a school bus. This change will also bring the definition in line with current school bus practices across the state. There are many school districts that utilize buses designed to carry between 10 to 15 passengers, including the driver. These buses are used to transport students from home to school and school to home. They are also used as activity buses to transport students to and from school related activities. This definition change does not require any additional modifications and it will not require drivers of these smaller buses to obtain a commercial drivers license.

Background for Sections 2, 3, 4 and 6

The State of North Dakota gives the Superintendent of the Highway Patrol the authority to adopt Commercial Vehicle Regulations under NDCC 39-21-46(3). The Superintendent has adopted these safety regulations under ND Administrative Code 38-04. The adoption of these safety regulations is necessary to remain compliant with the Federal Motor Carrier Safety Assistance Program (MCSAP) grant program. This program provides funding to ND Drivers License Division for Commercial Driver License (CDL) programs and the ND Highway Patrol for enforcement of the Federal Code of Regulations (CFR) under Title 49. To receive funding, states are required to either adopt Title 49 CFR or write equivalent state statute. North Dakota has chosen to adopt all necessary Parts of Title 49 under NDAC 38-04, except for Part 383. Part 383 contains the Federal Regulations pertaining to Commercial Driver Licenses. North Dakota Century Code 39-06.2 is meant to be equivalent to Part 383. Several of the requested

changes to Century Code are to address gaps between Part 383 and NDCC 39-06.2 regarding enforcement and the actions needed for NDCC 39-06.2 to be made equivalent to Part 383. The remaining requested changes bring uniformity to specific state and federal laws to reduce confusion for carrier compliance and overhead for the North Dakota Highway Patrol.

Section 2: This section seeks to add a penalty for CMV drivers that operate a vehicle in violation of an Out of Service order. There are two distinct reasons for adding this penalty. The first regards drivers who violate Out of Service orders. Hours of Service violations or Vehicle Equipment violations have specific regulation sections that can be cited based on the adoption of Title 49 CFR under NDAC 38-04 and are covered under subparagraph (c) of NDCC 39-06.1-06(6). Violations for driver qualifications, driving (including alcohol and drug violations), and CDL violations are covered under 49 CFR Part 383.37. As stated in the background information, North Dakota did not adopt Part 383 but instead uses NDCC 39-06.2. NDCC 39-06.2-10.9 is to be the equivalent to 383.37. An issue arises because a traffic citation cannot be written for a violation of NDCC 39-06.2-10.9 because there is no penalty section under NDCC 39-06.1. This can be resolved by adding 39-06.2-10.9 to Subsection 6, subparagraph (c). With this addition, Century Code would cover these violations and drivers would be treated consistently regarding operating in violation of an out of service order.

The second reason for this penalty is to preserve our CDL program equivalent to Title 49 CFR Part 383. Part 383, and NDCC 39-06.2, provide for a disqualification of a driver's CDL if the driver is convicted of operating in violation of a driver or vehicle out of service order. Without a penalty available for violations covered under NDCC 39-06.2-10.9, a conviction can never be obtained which would result in NDDOT being unable to disqualify the driver's CDL.

Section 3: This section seeks to define section 4 of this bill as a moving violation. Section 4, which is described below, would be a new section to the ND Century Code, but would need to be included within 39-06.1 to allow for a penalty for enforcement.

Section 4: Section 4 would be a new section added to NDCC 39-06.2-07. ND Century Code 39-06.2 is written to adopt Federal Commercial Driver License standards for North Dakota residents. Section 4 will mirror title 49 Part 383.25, laying out limitations on the types of vehicles that can be operated by drivers possessing Commercial Learner's Permits with endorsements. For NDCC 39-06.2 to be equivalent to 49 CFR Part 383, the law needs to limit

the types of vehicles operated by these permit holders. Enaction of this law will further provide law enforcement with the necessary law to reference for enforcement and citation purposes.

Section 5: This section seeks to modify ND Century Code to remove the applicability of the exemption for shifting livestock from federal roads. The change will keep the exemption on state roads but the Federal Highway Administration (FWHA) does not allow the exemption on federal roads. Without this modification, North Dakota would not meet FWHA standards.

Section 6: Section 6 makes two additions to NDCC 39-32-02, Intrastate exemptions to the hours of service regulations. The first addition is under Section 1, subparagraph (b) and would include 9 to 15 passenger contract carrier vehicles in the intrastate hours of service regulations. These vehicles are currently exempted in the Intrastate Hours of Service and in NDAC 38-04 from following Title 49 CFR. ND Century Code requires the North Dakota Highway Patrol to adopt separate safety regulations and issue a permit for these carriers under NDAC 38-09. NDAC 38-09 requires these carriers to follow the same requirements as other Intrastate carriers of property or passengers that are subject to the federal rules already adopted under NDAC 38-04. The only difference is NDAC 38-09 requires the drivers of these 9-15 passenger vehicles to have a drug and alcohol testing program. This requirement on these vehicles poses issues as the same carrier operating in Interstate Commerce would not be required to have a Drug and Alcohol Testing program since the driver would not be required to have a CDL. A second issue that arises occurs due to a positive DOT-regulated test, as determined by 49 CFR Part 40, needs to be tracked in the Federal Drug and Alcohol Clearinghouse which prohibits a driver from operating a CMV until an evaluation and return to duty process was completed. This would disqualify a driver from operating in interstate commerce for a violation of Federal DOT Drug and Alcohol Testing regulations even though the driver was not subject to those regulations at the time of the test. An edit to NDAC 38-09 was considered to address this problem, but it makes more sense to make the 9-15 passenger contract carriers subject to intrastate hours of service and federal regulation adoption. This addition harmonizes the rules for these carriers when operating in intrastate and interstate commerce. The federal definition of a CMV already includes these carriers and vehicles. This change to NDCC would create uniformity in the rules for these carriers to follow and eliminate duplication of effort by rewriting regulation into administrative code. This change would subject the carriers to the same regulations while reducing burden on industry and would not affect MCSAP grant compliance.

The second part of this section relocates the Hours of Service exemption for Agricultural Operations from the CDL section to the Hours of Service section of the North Dakota Century Code. This Hours of Service exemption is currently located in 39-06.2-17. In addition to relocating the exemption in Century Code, it is recommended the radius of the exemption be changed from 100 air-miles to 150 air-miles, this increase in the radius size has been in effect for several years in federal regulation. The change harmonizes the radius with federal regulation and does not affect MCSAP grant compliance.

Section 7: This section repeals unneeded North Dakota Century Code.

- The implementation of Section 6 of this Bill results in there no longer being a need for NDCC 8-02-08. This section directed the North Dakota Highway Patrol to develop safety rules for smaller passenger carriers. These carriers will now be subject to the current rules without the need to rewrite rules in administrative code.
- NDCC 39-06.2-17 is relocated to NDCC 39-32-02 so it can be removed.
- NDCC 39-12-24 allowed for cooperative regional permit agreements. This program has been dissolved and is no longer active.
- NDCC 39-12-25 provided for a line of credit for the North Dakota Highway Patrol to establish an online permit system; the line of credit was no longer available as of June 30, 2015.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions.

2021 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

SB 2097
1/8/2021

A BILL for an Act to create and enact a new subsection to section 39-06.2-07 of the North Dakota Century Code, relating to statutory fees and moving violations; to amend and reenact subsection 78 of section 39-01-01, subsection 6 of section 39-06.1-06, and sections 39-06.1-09, 39-12-22, and 39-32-02 of the North Dakota Century Code, relating to statutory fees and moving violations; to repeal sections 8-02-08, 39-06.2-17, 39-12-24, and 39-12-25 of the North Dakota Century Code, relating to transportation standards, exemptions, citations, excess size and weight restrictions, and funding for an electronic permit system; and to provide a penalty.

Chair Clemens calls the meeting to order. Present are Chair Clemens, Vice Chair Fors, Senators Bakke, Conley, Dwyer, D. Larsen. [10:48]

Discussion Topics:

- School bus definitions and passenger vans

Wade Kadrmas [10:51], Sergeant with ND Highway Patrol and with the Safety in Education Program, provides oral testimony in the form of answering questions from the committee.

Additional Written Testimony: N/A

Chair Clemens adjourns the meeting. [11:14]

Sheldon Wolf, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

SB 2097
1/14/2021

A BILL for an Act to create and enact a new subsection to section 39-06.2-07 of the North Dakota Century Code, relating to statutory fees and moving violations; to amend and reenact subsection 78 of section 39-01-01, subsection 6 of section 39-06.1-06, and sections 39-06.1-09, 39-12-22, and 39-32-02 of the North Dakota Century Code, relating to statutory fees and moving violations; to repeal sections 8-02-08, 39-06.2-17, 39-12-24, and 39-12-25 of the North Dakota Century Code, relating to transportation standards, exemptions, citations, excess size and weight restrictions, and funding for an electronic permit system; and to provide a penalty.

Chair Clemens calls the meeting to order. Chair Clemens, Vice Chair Fors, Senators Bakke, Conley, Dwyer, and D. Larsen are present. [10:46]

Discussion Topics:

- Definition of school buses

Wade Kadrmas [10:47], Safety and Education officer for the ND Highway Patrol, provides clarity on the bill.

Steve Snow [10:52], offers neutral oral testimony and submits testimony #868.

Senator D. Larsen moves DO PASS on SB 2097. [11:01]
Senator Conley seconds. [11:02]

Senators	Vote
Senator David Clemens	Y
Senator Robert Fors	Y
Senator Cole Conley	Y
Senator Michael Dwyer	Y
Senator Doug Larsen	Y
Senator JoNell Bakke	Y

The motion passes 6-0-0. [11:02]

Senator D. Larsen will carry. [11:02]

Chair Clemens adjourns the meeting. [11:06]

Sheldon Wolf, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2097: Transportation Committee (Sen. Clemens, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2097 was placed on the Eleventh order on the calendar.

**ARTICLE 67-12
STANDARDS FOR SCHOOLBUSES**

Chapter
67-12-01 Standards for Schoolbuses

**CHAPTER 67-12-01
STANDARDS FOR SCHOOLBUSES**

Section	
67-12-01-01	Minimum Standards Required
67-12-01-02	National Standards Adopted
67-12-01-03	Additional Standards
67-12-01-04	Effective Date
67-12-01-05	Investigation and Enforcement

67-12-01-01. Minimum standards required.

Except as specifically provided in this chapter, all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in this chapter. Through June 30, 2008, a school may use a noncomplying van to transport school children to and from school and school-related activities if:

1. The van was purchased by the school district and placed into service for the purpose of transporting school children to and from school and school-related activities prior to March 1, 2003;
2. The van is equipped with a seatbelt for the driver and each passenger in the van; and
3. The van is driven in compliance with rules of the road applicable to schoolbuses.

History: Effective May 1, 1999; amended effective July 1, 2003; December 1, 2003.

General Authority: NDCC 28-32-02, 39-21-27, 39-21-27.1

Law Implemented: NDCC 39-21-27, 39-21-27.1

67-12-01-02. National standards adopted.

Except as provided in section 67-12-01-03, the body and chassis standards identified in the federal motor vehicle safety standards for schoolbuses, 49 CFR part 571 [as revised through July 1, 2005], are hereby adopted for schoolbuses in this state.

History: Effective May 1, 1999; amended effective July 1, 2003; July 1, 2006.

General Authority: NDCC 28-32-02, 39-21-27, 39-21-27.1

Law Implemented: NDCC 39-21-27, 39-21-27.1

67-12-01-03. Additional standards.

1. Whenever body and chassis standards identified in the 2005 revised edition of the national minimum standards for schoolbus construction, as developed by the fourteenth national conference on school transportation, May 15-19, 2005, exceed or are in addition to the federal motor vehicle safety standards for schoolbuses, those national minimum standards for schoolbus construction apply and are hereby adopted by reference.
2. All schoolbuses purchased after September 1, 2006, may not include interior overhead racks unless the rack:
 - a. Meets head requirements of FMVSS no. 222 effective on July 1, 2002, when applicable;

- b. Has a maximum rated capacity displayed for each compartment;
- c. Is completely enclosed and equipped with latching doors which must be sufficient to withstand a force of five times the maximum rated capacity of the compartment;
- d. Has all corners and edges rounded with a minimum radius of one inch [25.4 millimeters] or padded equivalent to door header padding;
- e. Is attached to the bus sufficiently to withstand a force equal to twenty times the maximum rated capacity of the compartment; and
- f. Has no protrusions greater than one-fourth of one inch [6.35 millimeters].

History: Effective May 1, 1999; amended effective July 1, 2003; July 1, 2006.

General Authority: NDCC 28-32-02, 39-21-27, 39-21-27.1

Law Implemented: NDCC 39-21-27, 39-21-27.1

67-12-01-04. Effective date.

These specifications apply to bus chassis and bodies manufactured after January 1, 2000.

History: Effective May 1, 1999.

General Authority: NDCC 28-32-02, 39-21-27, 39-21-27.1

Law Implemented: NDCC 39-21-27, 39-21-27.1

67-12-01-05. Investigation and enforcement.

If the department of public instruction has reason to believe that a school district is operating a bus which does not conform to the standards established by this chapter, the department shall request that the North Dakota highway patrol investigate and report its findings to the department. If the findings indicate noncompliance, the department of public instruction shall notify the school district accordingly and order that the vehicle not be operated until it is in compliance. The department shall also notify the school district of its opportunity to request a review and reconsideration of the decision if such request is made in writing within two weeks of the date of mailing by the department of public instruction. The reconsideration request must state the following:

1. The facts, law, or rule which the school district believes was erroneously interpreted or applied; and
2. The school district's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction will issue a final written response on the reconsideration request within two weeks after receiving a complete reconsideration request.

History: Effective May 1, 1999; amended effective July 1, 2003.

General Authority: NDCC 28-32-02, 39-21-27, 39-21-27.1

Law Implemented: NDCC 39-21-27, 39-21-27.1

**LETTER OPINION
2003-L-15**

March 4, 2003

Honorable Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking whether a van that does not conform to school bus standards contained in your department's administrative rules may be used by a public or private school to transport children to and from school or school-related activities.

State law defines "schoolbus" as follows:

"Schoolbus" means any motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to or from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities.

N.D.C.C. § 39-01-01(67).

A "vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway." N.D.C.C. § 39-01-01(89). A "motor vehicle" includes every vehicle that is self-propelled." N.D.C.C. § 39-01-01(38). Therefore, a vehicle commonly referred to as a "van" is a motor vehicle and, if operated for the transportation of children to or from school or to or from school-related activities, must comply with your department's rules on schoolbuses.

Your authority with respect to schoolbus standards provides:

Schoolbus standards - Equipment and color regulations. Only motor vehicles which have been designed by the manufacturer for the purpose of carrying passengers may be used as schoolbuses. The

LETTER OPINION 2003-L-15

March 4, 2003

Page 2

superintendent of public instruction may adopt reasonable regulations, consistent with the provisions of this chapter, relating to the construction, design, operation, equipment, and color of schoolbuses and shall prepare and publish standards for North Dakota schoolbuses which must set forth the regulations. The superintendent of public instruction may issue an order prohibiting the operation on public streets, highways, and elsewhere of any schoolbus which does not comply with the regulations, and school districts operating buses which do not meet the regulations will not be eligible to receive state reimbursement for vehicular transportation. If a schoolbus is purchased for a purpose or purposes other than the public transport of schoolchildren, the purchaser shall change the color of the vehicle and deactivate or remove the warning signal lights and the stop sign on the control arm.

Highway patrolmen and all peace officers are authorized to make necessary investigations relating to compliance with the regulations adopted by the superintendent of public instruction and to make reports of their findings to the office of the superintendent of public instruction.

N.D.C.C. § 39-21-27.1. This section authorizes you to adopt administrative rules, issue orders prohibiting operation of non-complying vehicles, and impose sanctions upon school districts operating non-complying buses. Id.

You implemented that authority by adopting N.D.A.C. ch. 67-12-01, Standards for Schoolbuses. Those rules provide that all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in the chapter. N.D.A.C. § 67-12-01-01 (emphasis added). The rules apply to buses manufactured after January 1, 2000. N.D.A.C. § 67-12-01-04. The rules adopt the body and chassis standards of the federal motor vehicle safety standards and supplement those standards with the 1995 national minimum standards for schoolbus construction if the ~~latter exceed or are in addition to the federal motor vehicle safety standards for~~ schoolbuses. N.D.A.C. §§ 67-12-01-02 and 67-12-01-03.

Section 39-21-27.1, N.D.C.C., authorizes you to issue orders prohibiting any party, including private schools, from using a schoolbus that does not comply with your department's rules. However, the rules that have been adopted are limited to schoolbuses operated by public schools. It is therefore my opinion that a van used to transport children to and from school or school-related activities which you find does not comply with the minimum standards adopted in your administrative rules may not be used by a public school district, whether it is owned by the district or operated under contract pursuant to

LETTER OPINION 2003-L-15
March 4, 2003
Page 3

N.D.C.C. §§ 15.1-30-06 through 15.1-30-12.¹ Vehicles used by private schools are not required to comply with your department's standards.

Sincerely,

Wayne Stenehjem
Attorney General

rel/pg

¹ Transit buses utilized by students under N.D.C.C. § 15.1-30-01(3) are not schoolbuses subject to regulation because they are operated for general public transit which only incidentally includes students.



Department of Public Instruction
600 E Boulevard Ave., Dept. 201, Bismarck, ND 58505-0440
(701) 328-2260 Fax - (701) 328-2461
<http://www.dpi.state.nd.us>

Dr. Wayne G. Santee
State Superintendent

MEMO

To: School Transportation Advisory Committee

From: Tom Decker, Director
School Finance & Organization

Date: October 22, 2003

Re: Advisory Committee Meeting

As you will recall, in 2002 the Department formed a school transportation advisory committee. The members of the committee include:

NAME	TITLE	UNIT	PHONE	FAX	E-MAIL ADDRESS
Jerry Gusaas	Transportation Director	Bismarck Public School	221-3778	221-3784	jerry.gusaas@edu8.org
Loren D. Scheer	Superintendent	Dakota Prairie Public School	322-4771	322-5128	loren.scheer@sendit.nodak.edu
Barry Brooks	Transportation Director	Minot Public School	857-4451	857-4405	barry.brooks@sendit.nodak.edu
Myron Schweitzer	Superintendent	Mott Public Schools	824-2249	824-2249	myron.schweitzer@sendit.nodak.edu
Steven Johnson	Superintendent	Lisbon Public Schools	683-4106	683-4414	steven.johnson@sendit.nodak.edu
Wayne Winkler	Sales Rep.	Trucks of Bismarck, Inc.	845-0544	586-283-1542	wwinkler@daktel.com
Jason Hageness	Sales Rep.	Harlow's Bus Sales, Bismarck	224-1767	224-1127	jhageness@go.com
Jeanette Grabinger	Manager	Dietrich School Bus, Jamestown	252-4804	252-1751	jgrabinger@dietrichbus.com

The advisory committee was formed to provide a vehicle for input from school districts and transportation suppliers regarding school transportation issues. Those issues include, but are not limited to, school transportation funding, approved school transportation equipment standards, and advice regarding administrative rules for school transportation.

The advisory committee will meet annually during the North Dakota School Boards Association convention. The next meeting of the advisory committee is scheduled for **Friday, October 31, 2003, at 3:30 p.m. in Room 2160 at the Ramkota Inn in Bismarck.**

Thank you for serving on the school transportation advisory committee. I look forward to seeing you at our meeting on October 31, 2003. Please bring your suggestions for improving the working relationship between the department, school district transportation officials, and school bus contractors and suppliers.

Chapter 67-12-01
STANDARDS FOR SCHOOLBUSES

Section

16-12-01-01

Minimum Standards Required

67-12-01-01. Minimum standards required. Except as specifically provided in this chapter, all public schoolbuses operated in North Dakota must meet the minimum body and chassis standards established or referenced in this chapter. Up to and including June 30, 2008, a school may use a non-complying van to transport school children to and from school and school-related activities if:

1. The van was purchased by the school district and placed into service for the purpose of transporting school children to and from school and school related activities prior March 1, 2003;
2. The van is equipped with a seat belt for the driver and each passenger in the van; and
3. The van is driven in compliance with rules of the road applicable to schoolbuses.

History: Effective May 1, 1999

General Authority: NDCC 39-21-27, 39-21-27.1, 28-32-02

Law Implemented: NDCC 39-21-27, 39-21-27.1

General Authority: NDCC 39-21-27, 39-21-27.1, 28-32-02

MEMO

To: Administrators
Business Managers

From: Tom Decker, Director
School Finance & Organization

Date: April 8, 2008

RE: 10 to 15 Passenger Vans

The purpose of this memo is to remind school districts that as of July 1, 2008, 10 to 15 passenger vans, commonly called "non-conforming vans", will no longer be legal for transporting students to or from school or school related activities. This change includes all vans in the 10 to 15 passenger capacity rating, including those that had been fitted for special education or handicapped transport. After July 1, any school transportation vehicle with a rated passenger capacity of 10 persons or more, must meet all the criteria of the school bus, or all the criteria of an activity bus. As a reminder, the only difference between an activity bus and a school bus is that the activity bus does not have a stop arm or four-way flashers on the rear and may be a color other than orange.

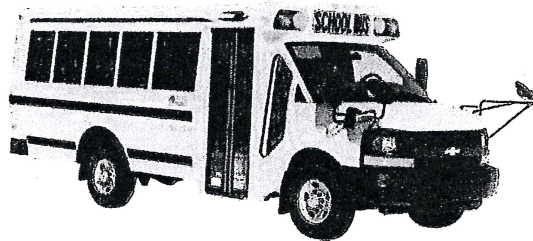
This ban on further use of non-conforming vans, is based on an Attorney General's opinion issued in March, 2003. At that time, the department adopted minimum standards for school transportation equipment that requires the use of school buses after June 30, 2008. The related Administrative Rule, 67-12-01-01, is attached to this memo. School districts may continue to use passenger vehicles with a rated passenger capacity of 9 passengers or less for transporting students to or from school or related school activities. These vehicles may be used as long as the number of passengers transported does not exceed the number of seat belts in the vehicle. Drivers of the school buses, which must replace 10 – 15 passenger vans, do not need a commercial drivers license as long as the school bus replacement has a rated passenger capacity of 15 passengers or less. However, the legislature passed legislation last session that requires additional training for drivers of school buses in the 10 to 15 passenger range. While the department has not issued specific regulations, this training should include considerations such as the law that requires these small buses to stop at railroad tracks and should focus on teaching drivers the appropriate use of four-way flashers, the stop arm, and so on. It is also worth noting that all bus drivers are required to take defensive driver training every five years. That training is available through the North Dakota Safety Council in cooperation with North Dakota Insurance Reserve Fund. Should you have questions about any of these school transportation vehicle issues, please feel free to call Tom Decker at 701-328-2267 or Kenneth Steiner at 701-328-1678, at the Department of Public Instruction.

SCHOOL BUS TYPES

School bus: A bus owned, leased, contracted to or operated by a school or school district and regularly used to transport students to and from school or school-related activities, but not including a charter bus or transit bus. A school bus must meet all applicable FMVSSs and is readily identified by alternately flashing lamps, National School Bus Yellow paint, and the legend "School Bus," except as may be provided for the multifunction school activity bus. The following describes each of these types and styles of vehicle.

Type A: A Type "A" school bus is a conversion or bus constructed utilizing a cutaway front section vehicle with a left side driver's door. This definition includes two classifications:

Type A-1, with a Gross Vehicle Weight Rating (GVWR) of 14,500 pounds or less; and **Type A-2**, with a GVWR greater than 14,500 and less than or equal to 21,500 pounds.



Type B: A Type "B" school bus is constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: **Type B-1**, with a GVWR of 10,000 pounds or less; and **Type B-2**, with a GVWR greater than 10,000 pounds.



Type C: A Type "C" school bus is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels; also known as a *conventional school bus*. This type also includes cutaway truck chassis or truck chassis with cab with or without a left side door and a GVWR greater than 21,500 pounds.

Uniform Guidelines *for* State Highway Safety Programs



March 2009

Highway Safety Program Guideline No. 17

Pupil Transportation Safety

Each State, in cooperation with its political subdivisions and tribal governments, should establish a State highway safety program for pupil transportation safety including administration; the identification, operation, and maintenance of buses used for carrying students; and the training of passengers, pedestrians, and bicycle riders. The purpose of this guideline is to provide strategies for minimizing, to the greatest extent possible, the danger of death or injury to school children while they are traveling to and from school and school-related events.

I. PROGRAM MANAGEMENT

There should be a single State agency with primary administrative responsibility for pupil transportation that employs at least one full-time professional to carry out these responsibilities. The responsible State agency should develop an operating system for collecting and reporting information needed to improve the safety of operating school buses and school-chartered buses. Each State should establish procedures to meet the following recommendations for identification and equipment of school buses. All school buses should:

- Be identified with the words "School Bus" printed in letters not less than eight inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle, except as required by Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR Part 571;
- Be painted National School Bus Glossy Yellow, in accordance with the colorimetric specification of National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 13432; except that the hood should be either that color or lusterless black, matching NIST Federal Standard No. 595a, Color 37038.
- Have bumpers of glossy black, matching NIST Federal Standard No. 595a, Color 17038, unless, for increased visibility, they are covered with a reflective material;
- Comply with all FMVSS applicable to school buses at the time of their manufacture;
- Be equipped with safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted near the driver's seat, with signs indicating the location of such equipment;
- Be equipped with device(s) demonstrated to enhance the safe operation of school vehicles, such as a stop signal arm;

- Be equipped with a system of signal lamps that conforms to the school bus requirements of FMVSS No. 108, 49 CFR 571.108; and
- Have a system of mirrors that conforms to the school bus requirements of FMVSS No. 111, 49 CFR 571.111.
- School-chartered buses should comply with all applicable Federal Motor Carrier Safety Regulations (FMCSR) and FMVSS.

Any school bus meeting the recommendations above that is permanently converted for uses other than transporting children to and from school should be painted a color other than National School Bus Glossy Yellow, and should have the stop arms and school bus signal lamps removed.

School buses, while being operated on a public highway and transporting primarily passengers other than school children, should have the words "School Bus" covered, removed, or otherwise concealed, and the stop arm and signal lamps should not be operated.

II. OPERATIONS

Each State should establish procedures to meet the following recommendations for operating school buses and school-chartered buses:

- Personnel
 - Each State should develop a plan for selecting, training, and supervising people whose primary duties involve transporting school children in order to ensure that such persons will attain a high degree of competence in, and knowledge of, their duties;
 - Every person who drives a school bus or school-chartered bus occupied by school children should, at a minimum:
 - Have a valid State driver's license to operate such a vehicle. All drivers who operate a vehicle designed to transport 16 or more persons (including the driver) are required by the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License Standards (49 CFR Part 383) to have a valid commercial driver's license;
 - Meet all physical, mental, moral, and other requirements established by the State agency having primary responsibility for pupil transportation, including requirements related to drug and/or alcohol misuse or abuse; and
 - Meet the physical qualification standards for drivers under the FMCSR of the FMCSA, 49 CFR Part 391.
- Vehicles
 - Each State should enact legislation that provides for uniform procedures regarding school buses stopping on public highways for loading and discharge of children. Public information campaigns should be conducted on a regular basis to ensure that the driving public fully understands the implications of school bus warning signals and requirements to stop for school buses that are loading or discharging school children. Schools should work with local law enforcement agencies to enforce laws against passing a stopped school bus that is loading or unloading students.

- o Each State should establish policies to ensure that school districts are aware of the Federal statutory provision 49 U.S.C. Section 30112(a), as amended by Section 10309(b) of SAFETEA-LU (P.L. 109-59), prohibiting the purchase by schools and school systems of new non-conforming vehicles for school transportation purposes, and prohibit operation of any school bus or other vehicle used for school transportation purposes unless it meets the FMVSSs for school buses.
- o Each State should minimize highway use hazards to school bus and school-chartered bus occupants, other highway users, pedestrians, bicycle riders and property. Efforts to minimize such hazards should include, but not be limited to:
 - Planning safe routes and annually reviewing routes for safety hazards;
 - Planning routes to ensure the most effective use of school buses and school-chartered buses to ensure that passengers are not standing while these vehicles are in operation;
 - Providing loading and unloading zones off the main traveled part of highways, whenever it is practical to do so;
 - Establishing restricted loading and unloading areas for school buses and school-chartered buses at or near schools;
 - Ensuring that school bus operators, when stopping on a highway to take on or discharge children, adhere to State regulations for loading and discharging including the use of signal lamps;
 - Replacing school buses manufactured before April 1, 1977, with buses that meet the current FMVSSs for school buses, and not chartering any pre-1977 school buses; and
 - Prohibiting public or private schools from purchasing school buses built prior to April 1, 1977 for school transportation or school-related events.
- o Use of amber signal lamps to indicate that a school bus is preparing to stop to load or unload children is at the option of the State. Use of red warning signal lamps as specified in this guideline for any purpose or at any time other than when the school bus is stopped to load or discharge passengers should be prohibited.
- o When school buses are equipped with stop arms, such devices should be operated only in conjunction with red warning signal lamps, when vehicles are stopped.
- Seating
 - o Children are protected in large school buses by compartmentalization, a passive occupant protection system. This provides a protective envelope consisting of strong, closely-spaced seats that have energy-absorbing padded seat backs that help to distribute and reduce crash forces. Compartmentalization is most effective when occupants are fully seated within the bus seat. Seating should be provided that will allow each occupant to sit on a school bus seat without any part of his or her body extending into the aisle.
 - o There should be no auxiliary seating accommodations such as temporary or folding jump seats in school buses.
 - o Standing while school buses and school-chartered buses are in motion should not be permitted. Routing and seating plans should be coordinated to eliminate passengers standing when a school bus or school-chartered bus is in motion.

- Drivers of school buses and school-chartered buses should be required to wear occupant restraints whenever the vehicle is in motion.
- Passengers in school buses and school-chartered buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less should be required to wear occupant restraints (where provided) whenever the vehicle is in motion. Occupant restraints should comply with the requirements of FMVSS Nos. 208, 209 and 210, as they apply to multipurpose vehicles.
- When transporting preschool age children in a school bus;
 - Each child should be properly secured in a Child Safety Restraint System, suitable for the child's weight and age, that meets applicable FMVSSs; and
 - The Child Safety Restraint System should be properly secured to the school bus seat, using anchorages that meet FMVSSs.
 - Emergency exit access
- Baggage and other items transported in the passenger compartment should be stored and secured so that the aisles are kept clear and the door(s) and emergency exit(s) remain unobstructed at all times.
- When school buses are equipped with interior luggage racks, the racks should be capable of retaining their contents in a crash or sudden driving maneuver.
- Vehicle maintenance. Each State should establish procedures to meet the following recommendations for maintaining buses used to carry school children:
 - School buses should be maintained in safe operating condition through a systematic preventive maintenance program;
 - Regularly scheduled vehicle inspections should be conducted as specified in accordance with FMCSA regulations contained in 49 CFR Part 396.3; and
 - School bus drivers should perform daily inspections of their vehicles, including all safety equipment and submit a report of their findings daily as specified in 49 CFR 396.11.

III. OTHER ELEMENTS OF PUPIL TRANSPORTATION SAFETY

- At least once during each school semester, each pupil transported from home to school in a school bus should be instructed in safe riding practices, proper loading and unloading techniques, proper street crossing to and from school bus stops and should participate in supervised and timed emergency evacuation drills. Prior to each departure, each pupil transported on an activity or field trip in a school bus or school-chartered bus should be instructed in safe riding practices and the location and operation of emergency exits.
- Parents and school officials should work together to identify and select safe pedestrian and bicycle routes for the use of school children. (See Guideline No. 14.)
- All school children should be instructed in safe transportation practices for walking to and from school. For those children who routinely walk to school, training should include preselected routes and the importance of adhering to those routes.
- Children riding bicycles to and from school should receive bicycle safety education, be required to wear bicycle safety helmets, and not deviate from preselected routes.

2021 HOUSE TRANSPORTATION

SB 2097

2021 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee Room JW327E, State Capitol

SB 2097
3/4/2021
AM

A bill relating to statutory fees and moving violations; relating to statutory fees and moving violations; relating to transportation standards, exemptions, citations, excess size and weight restrictions, and funding for an electronic permit system; and to provide a penalty.

10:23 AM **Chairman Ruby** opened the hearing.

Attendance

Representatives	
Representative Dan Ruby	P
Representative Tom Kading	P
Representative Rick Becker	P
Representative Cole Christensen	A
Representative LaurieBeth Hager	P
Representative Jared C. Hagert	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Emily O'Brien	P
Representative Mark S. Owens	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Robin Weisz	A
Representative Greg Westlind	P

Discussion Topics:

- Definition of current school bus practices in ND
- Federal Definition of school bus
- Current adoption of Commercial Vehicle Regulations
- Additions to Century Code
- Violations and penalties

Trooper John Sova, Coordinator for Motor Carrier Safety Assistance Program with the ND Highway Patrol, introduction and testimony # 7126 and informational # 7127.

Joe Kolosky, ND Department of Public Instruction, shared the testimony for Steve Snow supportive testimony # 7402.

11:26 **Chairman Ruby** closed the hearing.

Representative Jones moved a Do Pass.

Representative Paulson seconded.

Roll Call Vote

Representatives	Vote
Representative Dan Ruby	Y
Representative Tom Kading	Y
Representative Rick Becker	Y
Representative Cole Christensen	A
Representative LaurieBeth Hager	Y
Representative Jared C. Hagert	Y
Representative Karla Rose Hanson	Y
Representative Terry B. Jones	Y
Representative Emily O'Brien	Y
Representative Mark S. Owens	Y
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Robin Weisz	Y
Representative Greg Westlind	Y

Motion carried. 13-0-1 Representative Hager carrier.

Adjourned.

Jeanette Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2097: Transportation Committee (Rep. D. Ruby, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2097 was placed on the
Fourteenth order on the calendar.

Senate Bill 2097
House Transportation Committee
Representative Ruby, Chairman
March 4, 2021

Chairman Ruby and members of the House Transportation Committee, my name is Trooper John Sova and I am the MCSAP, or Motor Carrier Safety Assistance Program, Coordinator with the North Dakota Highway Patrol. I serve in the southeast region of the state and am stationed in Jamestown. I am here today to support and provide background information on Senate Bill 2097 which addresses laws relating to school buses, Commercial Motor Vehicle regulations and legal weights. I will provide information on the changes to each section of Century Code as affected by this bill.

Section 1: North Dakota's definition of a school bus needs to be updated to bring the definition in line with current school bus practices across the state. This will also make the definition consistent with the federal definition of a school bus. There are many school districts that utilize buses designed to carry between 10 to 15 passengers, including the driver. An example of these buses is shown on the handout provided. Type A and A-1 buses are used to transport students from home to school and school to home. They are also used as activity buses to transport students to and from school related activities. According to North Dakota Department of Public Instruction, there are currently 136 districts and 1 special education unit that have them in their inventory, for a total of 357 of these buses (10-15 passenger) across the state. The definition change does not require any additional modifications and it will not require drivers of these smaller buses to obtain a commercial driver's license.

Background for Sections 2, 3, 4 and 6

The State of North Dakota gives the Superintendent of the Highway Patrol the authority to adopt Commercial Vehicle Regulations under NDCC 39-21-46(3). The Superintendent has adopted these safety regulations under ND Administrative Code 38-04. The adoption of these safety regulations is necessary to remain compliant with the Federal Motor Carrier Safety Assistance Program (MCSAP) grant program. This program provides funding to ND Driver's License Division for Commercial Driver License (CDL) programs and the ND Highway Patrol for enforcement of the Federal Code of Regulations (CFR) under Title 49. To receive funding, states are required to either adopt Title 49 CFR or write equivalent state statute. North Dakota

has chosen to adopt all necessary Parts of Title 49 under NDAC 38-04, except for Part 383. Part 383 contains the Federal Regulations pertaining to Commercial Driver Licenses. North Dakota Century Code 39-06.2 is meant to be equivalent to Part 383. Several of the requested changes to Century Code are to address gaps between Part 383 and NDCC 39-06.2 regarding enforcement and the actions needed for NDCC 39-06.2 to be made equivalent to Part 383. The remaining requested changes bring uniformity to specific state and federal laws to reduce confusion for carrier compliance and overhead for the North Dakota Highway Patrol.

Section 2: This section seeks to add a penalty for CMV drivers that operate a vehicle in violation of an Out of Service order. There are two distinct reasons for adding this penalty. The first regards drivers who violate Out of Service orders. Hours of Service violations or Vehicle Equipment violations have specific regulation sections that can be cited based on the adoption of Title 49 CFR under NDAC 38-04 and are covered under subparagraph (c) of NDCC 39-06.1-06(6). Violations for driver qualifications, driving (including alcohol and drug violations), and CDL violations are covered under 49 CFR Part 383.37. As stated in the background information, North Dakota did not adopt Part 383 but instead uses NDCC 39-06.2. NDCC 39-06.2-10.9 is to be the equivalent to 383.37. An issue arises because a traffic citation cannot be written for a violation of NDCC 39-06.2-10.9 because there is no penalty section under NDCC 39-06.1. This can be resolved by adding 39-06.2-10.9 to Subsection 6, subparagraph (c). With this addition, Century Code would cover these violations and drivers would be treated consistently regarding operating in violation of an out of service order.

The second reason for this penalty is to preserve our CDL program equivalent to Title 49 CFR Part 383. Part 383, and NDCC 39-06.2, provide for a disqualification of a driver's CDL if the driver is convicted of operating in violation of a driver or vehicle out of service order. Without a penalty available for violations covered under NDCC 39-06.2-10.9, a conviction can never be obtained which would result in NDDOT being unable to disqualify the driver's CDL.

Section 3: This section seeks to define section 4 of this bill as a moving violation. Section 4, which is described below, would be a new section to the ND Century Code, but would need to be included within 39-06.1 to allow for a penalty for enforcement.

Section 4: Section 4 would be a new section added to NDCC 39-06.2-07. ND Century Code 39-06.2 is written to adopt Federal Commercial Driver License standards for North Dakota

residents. Section 4 will mirror title 49 Part 383.25, laying out limitations on the types of vehicles that can be operated by drivers possessing Commercial Learner's Permits with endorsements. For NDCC 39-06.2 to be equivalent to 49 CFR Part 383, the law needs to limit the types of vehicles operated by these permit holders. Enaction of this law will further provide law enforcement with the necessary law to reference for enforcement and citation purposes.

Section 5: This section seeks to modify ND Century Code to remove the applicability of the exemption for shifting livestock from federal roads. The change will keep the exemption on state roads but the Federal Highway Administration (FHWA) does not allow the exemption on federal roads. Without this modification, North Dakota would not meet FHWA standards.

Section 6: Section 6 makes two additions to NDCC 39-32-02, Intrastate exemptions to the hours of service regulations. The first addition is under Section 1, subparagraph (b) and would include 9 to 15 passenger contract carrier vehicles in the intrastate hours of service regulations. These vehicles are currently exempted in the Intrastate Hours of Service and in NDAC 38-04 from following Title 49 CFR. ND Century Code requires the North Dakota Highway Patrol to adopt separate safety regulations and issue a permit for these carriers under NDAC 38-09. NDAC 38-09 requires these carriers to follow the same requirements as other Intrastate carriers of property or passengers that are subject to the federal rules already adopted under NDAC 38-04. The only difference is NDAC 38-09 requires the drivers of these 9-15 passenger vehicles to have a drug and alcohol testing program. This requirement on these vehicles poses issues as the same carrier operating in Interstate Commerce would not be required to have a Drug and Alcohol Testing program since the driver would not be required to have a CDL. A second issue that arises occurs due to a positive DOT-regulated test, as determined by 49 CFR Part 40, needs to be tracked in the Federal Drug and Alcohol Clearinghouse which prohibits a driver from operating a CMV until an evaluation and return to duty process was completed. This would disqualify a driver from operating in interstate commerce for a violation of Federal DOT Drug and Alcohol Testing regulations even though the driver was not subject to those regulations at the time of the test. An edit to NDAC 38-09 was considered to address this problem, but it makes more sense to make the 9-15 passenger contract carriers subject to intrastate hours of service and federal regulation adoption. This addition harmonizes the rules for these carriers when operating in intrastate and interstate commerce. The federal definition of a CMV already includes these carriers and vehicles. This change to NDCC would create uniformity in the rules for these carriers to follow and eliminate duplication of effort by rewriting

regulation into administrative code. This change would subject the carriers to the same regulations while reducing burden on industry and would not affect MCSAP grant compliance. The second part of this section relocates the Hours of Service exemption for Agricultural Operations from the CDL section to the Hours of Service section of the North Dakota Century Code. This Hours of Service exemption is currently located in 39-06.2-17. In addition to relocating the exemption in Century Code, it is recommended the radius of the exemption be changed from 100 air-miles to 150 air-miles, this increase in the radius size has been in effect for several years in federal regulation. The change harmonizes the radius with federal regulation and does not affect MCSAP grant compliance.

Section 7: This section repeals unneeded North Dakota Century Code.

- The implementation of Section 6 of this Bill results in there no longer being a need for NDCC 8-02-08. This section directed the North Dakota Highway Patrol to develop safety rules for smaller passenger carriers. These carriers will now be subject to the current rules without the need to rewrite rules in administrative code.
- NDCC 39-06.2-17 is relocated to NDCC 39-32-02 so it can be removed.
- NDCC 39-12-24 allowed for cooperative regional permit agreements. This program has been dissolved and is no longer active.
- NDCC 39-12-25 provided for a line of credit for the North Dakota Highway Patrol to establish an online permit system; the line of credit was no longer available as of June 30, 2015.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions.

SCHOOL BUS TYPES

School bus: A bus owned, leased, contracted to or operated by a school or school district and regularly used to transport students to and from school or school-related activities, but not including a charter bus or transit bus. A school bus must meet all applicable FMVSSs and is readily identified by alternately flashing lamps, National School Bus Yellow paint, and the legend “School Bus,” except as may be provided for the multifunction school activity bus. The following describes each of these types and styles of vehicle.

Type A: A Type “A” school bus is a conversion or bus constructed utilizing a cutaway front section vehicle with a left side driver’s door. This definition includes two classifications:

Type A-1, with a Gross Vehicle Weight Rating (GVWR) of 14,500 pounds or less; and **Type A-2**, with a GVWR greater than 14,500 and less than or equal to 21,500 pounds.



Type B: A Type “B” school bus is constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: **Type B-1**, with a GVWR of 10,000 pounds or less; and **Type B-2**, with a GVWR greater than 10,000 pounds.



Type C: A Type “C” school bus is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels; also known as a *conventional school bus*. This type also includes cutaway truck chassis or truck chassis with cab with or without a left side door and a GVWR greater than 21,500 pounds.



Type D: A Type “D” school bus is constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels; also known as *rear or front engine transit style school buses*.



Multifunction school activity bus (MFSAB) or multipurpose passenger vehicle (MPV): “A school bus whose purposes do not include transporting students to and from home or school bus stops,” as defined in 49 CFR 571.3. This subcategory of school bus meets all FMVSS for school buses except the traffic control requirements (alternately flashing signal and stop arm).

TESTIMONY ON SB 2097
HOUSE TRANSPORTATION COMMITTEE
04 MAR 2021

By: Steve Snow, Assistant Director, School Approval and Opportunity
701-328-2236
North Dakota Department of Public Instruction

Chairman Ruby and Members of the Committee:

My name is Steve Snow and I am the Assistant Director, School Approval and Opportunity with the North Dakota Department of Public Instruction (NDDPI). I am here to provide information regarding Section 1 of SB 2097

The updated language clarifies the definition of a school bus. The term ‘commercial’ motor vehicle limits the definition of school bus to only those that require the Commercial Driver’s License (CDL) (sixteen passenger and above). Removing the term ‘commercial’ allows the definition to expand to include ten passenger and above. The inclusion of ten passenger and above aligns with the National Highway Traffic Safety Administration’s (NHTSA) definition of bus found in 49 Code of Federal Regulations (CFR) Part 571. NDDPI adopted the body and chassis standards found in 49 CFR, Part 571 in North Dakota Administrative Code (NDAC) 67-12-01 (enacted July 2003) under authority of NDCC 39-21.27.1. The updated definition of school bus proposed in this legislation removes contradictions between federal and state definitions.

NDAC 67-12-01 (enacted July 2003) also provided a timeframe for schools to transition away from the use of noncomplying vans (10-15 passenger) by Jun 2008 for transporting school children to and from school and school related activities.

In 2003 the NHTSA also ruled that a school may use a Multifunction School Activity Bus for purposes other than transportation between home and school.

Chairman Ruby and Members of the Committee that concludes my prepared testimony and I will stand for any questions that you may have.