

**HOUSE BILL NO. 1288**

Introduced by

Representative DeKrey

1 A BILL for an Act to amend and reenact sections 12.1-08-11, 20.1-02-14.1, and 29-05-31 and  
2 subsection 5 of section 39-06.1-03 of the North Dakota Century Code, relating to complaint and  
3 summons procedures and administrative hearing appeals; and to provide an effective date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12.1-08-11 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **12.1-08-11. ~~Fleeing a peace officer~~ Refusing to halt.** Any person, other than the  
8 driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who  
9 otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a  
10 visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense  
11 and a class A misdemeanor for a subsequent offense. A signal to stop complies with this  
12 section if the signal is perceptible to the person and:

- 13 1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren,  
14 and the vehicle is appropriately marked showing it to be an official law enforcement  
15 vehicle; or  
16 2. If not given from a vehicle, the signal is given by hand, voice, emergency light, or  
17 siren, and the officer is in uniform and prominently displays the officer's badge of  
18 office.

19 **SECTION 2. AMENDMENT.** Section 20.1-02-14.1 of the North Dakota Century Code  
20 is amended and reenacted as follows:

21 **20.1-02-14.1. Uniform complaint and summons - Promise to appear - Penalty.**

- 22 1. There is ~~hereby~~ established a uniform complaint and summons that may be used  
23 in cases involving violations of this title or other violations of a state law which  
24 occur on property that the department owns, leases, or manages or on sovereign

1           ~~lands as defined by section 61-33-01.~~ Whenever the complaint and summons  
2           established by this section is used, the provisions of the North Dakota Rules of  
3           Criminal Procedure ~~relating to arrests without warrants do not apply, and the~~  
4           ~~magistrates or state's attorneys are not required to make another complaint of the~~  
5           ~~offense charged in the uniform complaint and summons~~ apply. The uniform  
6           complaint and summons must be of a form prescribed by the director and  
7           approved by the attorney general.

8           2. The time of court appearance to be specified in the summons must be at least five  
9           days after the issuance of the summons unless the defendant demands an earlier  
10          hearing.

11          3. Upon receipt from the defendant of written promise to appear at the time and place  
12          specified in the summons, the defendant must be released from custody. After  
13          signing a promise to appear, the defendant must be given a copy of the uniform  
14          complaint and summons. Any person refusing to give a written promise to appear  
15          may be arrested if proper cause exists, or proceeded against by complaint and  
16          warrant of arrest as provided in the North Dakota Rules of Criminal Procedure.  
17          ~~Defendant's failure to appear at the time and place designated after signing a~~  
18          ~~promise to appear is a class B misdemeanor.~~

19          ~~The uniform summons and complaint may not be used if the officer, acting within the~~  
20          ~~officer's discretion, has reason to believe the defendant will not be subject to arrest upon a~~  
21          ~~warrant issued by a magistrate. The halting officer shall forthwith take any person not released~~  
22          ~~upon that person's promise to appear before the nearest or most accessible magistrate. If an~~  
23          ~~individual fails to appear in court after promising to do so, the court may issue an arrest warrant~~  
24          ~~and in addition to other conditions shall order the department to suspend the individual's~~  
25          ~~hunting, fishing, and trapping privileges until after the final disposition of the case.~~

26          **SECTION 3. AMENDMENT.** Section 29-05-31 of the North Dakota Century Code is  
27          amended and reenacted as follows:

28          **29-05-31. Uniform traffic complaint and summons.** There is hereby established a  
29          uniform complaint and summons that may be used in cases involving violations of statutes or  
30          ordinances ~~relating to the operation or use of motor vehicles. Whenever the complaint and~~  
31          ~~summons established by this section is used, the provisions of rule 5 of the North Dakota Rules~~

Sixty-first  
Legislative Assembly

1 ~~of Criminal Procedure relating to arrests without warrants do not apply, and magistrates or~~  
2 ~~state's attorneys are not required to make another complaint of the offense charged in the~~  
3 ~~uniform complaint and summons.~~ The use of a uniform complaint and summons must comply  
4 with the North Dakota Rules of Criminal Procedure and be in substantially the following form:

5 State of North Dakota ) In \_\_\_\_\_ Court,  
6 ) ss.

7 County of \_\_\_\_\_ ) Before Hon. \_\_\_\_\_;

8 The undersigned, being sworn, says that, on \_\_\_\_\_, \_\_\_\_\_,  
9 \_\_\_\_\_

10 First Name Middle Name Last Name Street City State

11 did unlawfully operate a motor vehicle upon a public highway, namely  
12 \_\_\_\_\_, \_\_\_\_\_ N E S W of \_\_\_\_\_ and did then and there commit  
13 Location City

14 the following offense: \_\_\_\_\_

15 MPH in \_\_\_\_\_

16 MPH Zone \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 All in violation of N. D. Century Code Sec. \_\_\_\_\_ and against the peace and dignity  
22 of the state of N. D.

23 Officer \_\_\_\_\_ LET A WARRANT ISSUE HEREIN Sworn to and subscribed  
24 before me on \_\_\_\_\_, \_\_\_\_\_.

25 \_\_\_\_\_

26 Judge State's Attorney

27 DESCRIPTION OF DEFENDANT AND VEHICLE

28 Mo. \_\_\_\_ Day \_\_\_\_ Yr. \_\_\_\_ Race \_\_\_\_ Sex \_\_\_\_ Wt. \_\_\_\_ Ht. \_\_\_\_

29 Birth date

30 Hair \_\_\_\_ Dr. Lic: State \_\_\_\_ No. \_\_\_\_ Motor Vehicle:

31 PSC

1 Make \_\_\_\_\_ Reg. No. \_\_\_\_\_ State \_\_\_\_\_ Year \_\_\_\_\_ ICC No. \_\_\_\_\_

2 CLAIMED CONDITIONS OF THE VIOLATION

3 SLIPPERY SURFACE

4 \_\_\_\_\_ Rain \_\_\_\_\_ Snow \_\_\_\_\_ Ice

5 DARKNESS

6 \_\_\_\_\_ Night \_\_\_\_\_ Fog \_\_\_\_\_ Snow

7 OTHER TRAFFIC PRESENT

8 \_\_\_\_\_ Cross \_\_\_\_\_ Oncoming \_\_\_\_\_ Pedestrian \_\_\_\_\_ Same direction

9 IN ACCIDENT

10 \_\_\_\_\_ Ped. \_\_\_\_\_ Vehicle \_\_\_\_\_ Intersection

11 \_\_\_\_\_ Right angle \_\_\_\_\_ Head on \_\_\_\_\_ Rear end

12 \_\_\_\_\_ Ran off road \_\_\_\_\_ Other

13 \_\_\_\_\_

14 Area: \_\_\_\_\_ School \_\_\_\_\_ Rural \_\_\_\_\_ Business

15 \_\_\_\_\_ Industrial \_\_\_\_\_ Residential

16 Highway: \_\_\_\_\_ 2 Lane \_\_\_\_\_ 4 Lane \_\_\_\_\_ 4 Lane Divided

17 Type

18 \_\_\_\_\_ Gravel \_\_\_\_\_ Dirt

19 OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

20 \_\_\_\_\_ Yes \_\_\_\_\_ No

21 THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT

22 (CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

23 You are summoned to appear at the time and place designated below to answer to the  
24 charge made against you.

25 \_\_\_\_\_

26 \_\_\_\_\_

27 Appearance

28 Before: Municipal Judge District Ct. \_\_\_\_\_

29 \_\_\_\_\_ A.M./P.M.

30 Location Month Day Year Time

31 Dated \_\_\_\_\_, \_\_\_\_\_

1 Officer \_\_\_\_\_

2 PROMISE TO APPEAR

3 I consent and promise to appear at the time and place specified in the above summons,  
4 the receipt of a copy of which is acknowledged, and I expressly waive earlier hearing.

5 Dated \_\_\_\_\_, \_\_\_\_\_

6 Defendant \_\_\_\_\_

7 (STATE NONCRIMINAL TRAFFIC VIOLATION)

8 You are notified of your right to request, within fourteen days of the date of this citation,  
9 a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is  
10 deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the  
11 following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the  
12 alleged violation. Failure to do so may result in the suspension of your operator's license. You  
13 will be notified of the hearing date by the court for the county in which this citation was issued.

14 REQUEST FOR HEARING

15 I submit the designated bond and request a hearing on the alleged traffic violation and  
16 promise to appear at the time and date specified in the summons issued by the court for the  
17 county in which the citation was issued.

18 Dated \_\_\_\_\_, \_\_\_\_\_

19 Defendant \_\_\_\_\_

20 **SECTION 4. AMENDMENT.** Subsection 5 of section 39-06.1-03 of the North Dakota  
21 Century Code is amended and reenacted as follows:

22 5. a. A person may not appeal a finding from a district judge or magistrate that the  
23 person committed the violation. If a person is aggrieved by a finding in the city  
24 court that the person committed the violation, the person may, without  
25 payment of a filing fee, appeal that finding to the district court for trial anew.  
26 If, after trial in the appellate court, the person is again found to have  
27 committed the violation, there may be no further appeal. Notice of appeal  
28 under this subsection must be given within thirty days after a finding of  
29 commission of a violation is entered by the official. Oral notice of appeal may  
30 be given to the official at the time that the official adjudges that a violation has  
31 been committed. Otherwise, notice of appeal must be in writing and filed with

1 the official, and a copy of the notice must be served upon the prosecuting  
2 attorney. An appeal taken under this subsection may not operate to stay the  
3 reporting requirement of subsection 4, nor to stay appropriate action by the  
4 licensing authority upon receipt of that report.

5 b. The appellate court upon application by the appellant may:

6 (1) Order a stay of any action by the licensing authority during pendency of  
7 the appeal, but not to exceed a period of one hundred twenty days;

8 (2) Order a stay and that the appellant be issued a temporary restricted  
9 driving certificate by the licensing authority to be effective for no more  
10 than one hundred twenty days; or

11 (3) Deny the application.

12 An application for a stay or temporary certificate under this subdivision must  
13 be accompanied by a certified copy of the appellant's driving record, for the  
14 furnishing of which the licensing authority may charge a fee of three dollars.

15 Any order granting a stay or a temporary certificate must be forwarded  
16 forthwith by the clerk of court to the licensing authority, which immediately  
17 shall issue a temporary certificate in accordance with the order in the manner  
18 provided by law. A court may not make a determination on an application  
19 under this subdivision without notice to the appropriate prosecuting attorney.

20 A person who violates or exceeds the restrictions contained in any temporary  
21 restricted driving certificate issued pursuant to this subdivision is guilty of a  
22 traffic violation and must be assessed a fee of twenty dollars.

23 c. If the person charged is found not to have committed the violation by the  
24 appellate court, the clerk of court shall report that fact to the licensing  
25 authority immediately. ¶ Unless the appropriate state's attorney consents to  
26 prosecute the appeal, if an appeal under this subsection is from a violation of  
27 a city ordinance, the city attorney for the city wherein the alleged violation  
28 occurred shall prosecute the appeal. In all other cases, the appropriate  
29 state's attorney shall prosecute the appeal.

30 **SECTION 5. EFFECTIVE DATE.** This Act becomes effective on January 1, 2010.