

2009 HOUSE TRANSPORTATION

HB 1431

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1431

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: #8787

Committee Clerk Signature

Marlyp Kingle

Minutes:

Chairman Ruby: Opened the hearing for HB 1431.

Rep Gruchalla: Representative from District 45 in Fargo introduced the bill. This bill increases fees paid by traffic offenders. These fees have not been adjusted since 1956. The increases in this bill will bring them up to about 1975 inflation level.

These increases are not for any financial gains of any entity as all the funds go into the fund for schools.

Testimony Attachments #1

Rep Delmore: Had questions on Page 4, refusal to take chemical test, 36 points and section 3, the penalty also goes to a misdemeanor. Is that based on stopping someone for cause to submit or for someone you don't have reason?

Rep Gruchalla: I would like to defer that to the next ones who testify.

Rep Griffin: Do other surrounding states have higher fines?

Rep Gruchalla: Please have the Attachment # 2.

Rep Weiler: You are saying make the fees at least cover the cost of processing the ticket.

Why is that an issue?

Rep Gruchalla: There is a correlation and it doesn't seem right that we should lose money when we process a ticket no matter where the money goes.

Rep Thorpe: Section 2 page 4 could you tell me where we are right now on points?

Rep Gruchalla: I would rather have the DOT address this. I would like to add 3 things that are being address in this bill. They are Gas Drive Offs, Speeding in construction zones. And School Zones, which are serious violations.

Cherri Clark: Assistant DA for Cass County. She reiterated the pros that Rep Gruchalla said about the bill, the extra fine fees, language changes and enhanced penalties for refusal.

Attachment #3

Rep Delmore: Asked if they would be picked up due to probable cause?

Cherri Clark: That is a directive of 3916 which states that NO screening or chemical test can be administered with our reasonable cause.

Rep Thorpe: Who put these 36 points in the bill and what reason? I would not really be able to afford the insurance.

Cherri Clark: I am only speculating. I would suspect the reason that it would be a mandatory reason to lose your license.

Rep Schmidt: I would imagine the more you would charge them the angrier they would get?

Cherri Clark: I don't think so. It is important to resolve the case in a fair and just manner.

Rep Kelsch: Going back to page 4 section 2, if we are taking care of the loophole, why do we need this language?

Cherri Clark: The refusal to take the test becomes very problematic for sure for the patrolmen who do not have cameras. What is irks me the most, it is the 3rd and 4th time offenders that know what to do. What they do don't test. It is unfair for the ones who don't know how to beat the system get punished but the ones who do they get by.

Rep Delmore: There is no reference that this applies to anyone with a second offense. It says 36 points and a misdemeanor. You are saying one thing and the bill says another.

Cherri Clark: When someone is picked up the 2nd time, there is an automatic 3 year suspension. Right now it is not criminal to not take a chemical test.

Rep Delmore: So Mr. Chairman if we took out section 3 and 4 we would be okay.

Rep Griffin: I have 2 questions. Under section 2 if someone ----- refusal would they still lose the 36 points? Does the chemical test apply to just the breathalyzer or blood test.

Cherri Clark: As written the officer would have the option to dismiss the refusal. Yes I believe that it would apply, but does have to be with another violation as an example as a moving violation.

Mike Reitan: Assistant Chief of Police of West Fargo Police Dept.

Testimony Attachment #3

Rep Delmore: do you assume that anyone who refuses to take a test is under the influence? Do other factors come into play first.

Mike Reitan: Many factors are in play as actions and smell along with many other suspicious action.

Rep Weiler: Are there any facts that show higher fines produce safer drivers?

Mike Reitan: ND is ranked #1 in fatalities in the Nation related to alcohol and #1 in the nation for speeding and for unbuckled drivers per capita.

Rep Griffin: When home rule cities fines dropped did the violations increased.

Mike Reitan: I don't see that we have seen an increase in violations but a decrease in income.

Rep Ruby: Reportable crash increased to \$1500 from \$1000, is that just inflation?

Mike Reitan: Almost all reportable crashes quickly find that any accident involving the new cars is over \$1000. My personal opinion is it could go higher.

Charlie Sheile: I am an Assist District Attorney for Cass County.

Testimony Attachment #5

Rep Kelsch: You are saying that if a law officer would pull someone over going 3 miles over the speed limit, they look at the individual and they are looking suspicious and the officer asks them to take a chemical/ breathalyzer test they refuse the test they will lose their license for 3 years as you are not putting this into the DUI code in law. So I see this as you are asking an individual to criminalize themselves. They don't have a right to protect themselves.

Charlie Sheile: Section 2 would impose 36 point under refusal of a test. The standard before the officer can give a test. This is poorly worded but in section 3 it has specific language that say per this title. That more clearly gives you the individual's rights. The officer must have reasonable suspicion. Section does not do that.

Rep Delmore: I am not sure that we are not going to solve all the problems hear.

Charlie Sheile: I do have a huge population of Drunk Drivers in Cass Counties.

Neutral to this bill;

Linda Butts Deputy Director from the Department of Transportation:

Attachment #6 and 7.

Rep Potter: On section 6, which is for the none payment for motor fuel. It is moving from a 2nd to a 1st.

Mike Reitan: Currently the violation is for the 2nd drive off. It was difficult to fine and to attempt to find the 2nd offense of a gas drive off.

Rep Potter: What are the criminal charges?

Mike Reitan: Most of it seems that it becomes difficult to find the second offenders. Once we locate the person there are no charges.

There was discussion of payment with the credit card and being charged a criminal charge.

Closed the hearing

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1431

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: February 5, 2009

Recorder Job Number: #8872

Committee Clerk Signature

Marlynn Kienzle

Minutes:

Chairman Ruby: Opened the hearing for HB1431.

Rep Delmore: Moved to make a motion to amend page 4 by removing Section 2 and 3 as there should be 36 points should not be in there.

Rep Kelsch: 2nd the motion.

Rep Griffin: I do agree with removing section 2 as there is no point because you already lose your license, but I do agree with Section 3. What happens most of these people lose their license and if they are picked up again, they feel "what is the big deal", as it will be for only a few more months. So it makes it very difficult to prosecute.

Rep Delmore: This isn't Minnesota Law and this doesn't do a thing to repeat offenders.

Rep Gruchalla: Actually it does do something for it. It makes it a misdemeanor and subject to 30 days in jail and up to a \$1000.00. So it does give it more teeth and adds a little more to the refusal part.

Voice vote # 1 to remove both sections 2 and 3 out of the bill.

Do Pass on the Amendment with 9 yes and 5 no.

Rep Weiler: There was also an issue with the section 5 that extended it to \$1500.00. I thought that someone stated to keep it to \$1000.00. Does anyone recall?

Rep Gruchalla: I am not sure that was something that was decided on.

Rep Weiler: It says that if we move to the \$1500.00 threshold it is inconsistent with the MMUUC and also with the DOT signs that may apply.

Rep Thorpe: I move to further amend to that be \$1000.00. Line 2 Section 5

Rep Vigessa; 2nd the motion

Voice Vote #2 **13 yes and 1 no.** Motioned carried

Rep Weiler: I am concerned about Page 6 Section 6 (1a). If a person drives off the first time they lose their license.

Rep Schmidt: Folks at home said quit raising fees.

Rep Thorpe: I don't feel good about section 6.

Rep Griffin: Moved to amend Section 6 by removing the section from the bill. We should go back to the old language and make it the second offense.

Rep Delmore: 2nd the motion.

Voice vote was **13 yes and 1 nay for new amendment.** Motion passed.

Rep Kelsch: I move do not pass as amended

Rep Weisz: 2nd the motion.

Vote was 6 yes and 8 no.

Rep Kelsch: I feel we will have all our constituents all over us if we vote this in.

Rep Thorpe: I believe there has been a lot of discussion between the larger cities. I believe this does limit them also.

Rep Gruchella: This does limit them. Traffic violations and behaviors are the number one complaint in all the polls. Since they have lost the home rule and charge different prices for violations it has become very difficult.

Rep. Potter: I don't know how people can complain about the fines when doing the behavior.

Chairman Ruby: We will now take a vote for a do not pass as amended.

The motion failed 6 yes – 8 no.

Rep Potter: Motion is do pass as amended.

Rep Gruchella: 2nd the motion.

Motion passed as amended with a 8 yes – 6 no.

Rep Thorpe is the carrier. To be re-referred.

FISCAL NOTE
Requested by Legislative Council
02/10/2009

Amendment to: HB 1431

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill increases fees for certain traffic related offenses.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill as amended has no fiscal impact to the NDDOT.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Glenn Jackson	Agency:	NDDOT
Phone Number:	328-4792	Date Prepared:	02/10/2009

FISCAL NOTE
Requested by Legislative Council
01/16/2009

Bill/Resolution No.: HB 1431

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$9,360		
Appropriations				\$9,360		

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill increases the fee for certain offenses, increases the amount of a reportable crash to \$1,500, and require a 36 point assessment for refusing a law enforcement officers request for a chemical test.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact from HB1431 to the NDDOT resides solely within Section 2 regarding switching Refusals to a 36 point violation. This is in total contradiction to the DUI/APC logic and will require software modifications to the coding and must be extensively tested to ensure record integrity.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill provides no additional revenue.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Software modification expenses are as follows:

Estimate 100 hrs programming @ \$72.00/Hr =	\$7,200.00
45 hrs testing @ \$48.00/Hr =	\$2,160.00
Total =	\$9,360.00

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

A one-time appropriation would be needed for software modification expenses.

Name:	Glenn Jackson	Agency:	NDDOT
Phone Number:	328-4792	Date Prepared:	01/21/2009

VR
2/6/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1431

Page 1, line 1, remove "create and enact a new section to chapter 39-08 and a new paragraph to"

Page 1, remove line 2

Page 1, line 3, remove "to a penalty for failure to submit to testing; to"

Page 1, line 4, remove "39-08-22,"

Page 4, remove lines 1 through 11

Page 5, line 21, remove "five hundred"

Page 6, remove lines 7 through 23

Renumber accordingly

Date: 2-5-09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1431

*Amendment
passed*

House TRANSPORTATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By _____

Seconded By _____

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 Vigasaa		✓			
Representative Weisz		✓			

Total Yes 9 No 5

Absent _____

Bill Carrier _____

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

Remove section 2 + 3

Date: 2-5-09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. _____

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By _____ Seconded By _____

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 Vigasaa					
Representative Weisz					

Total Yes 13 No 1

Absent _____

Bill Carrier _____

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

*Section 5 have it be \$1000.00
Instead of \$1500.00*

Date: 2-5-09

Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1431

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☐ Amended ON Amendment #3

Motion Made By Griffin Seconded By Delmore

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 Vigasaa					
Representative Weisz					

Total Yes 13 No 1

Absent _____

Bill Carrier _____

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

*to go back to original language
in section 6*

Date: 2-5-09

Roll Call Vote #: 4

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1431

Failed

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Kelsch Seconded By Weisz

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 Vigasaa	✓				
Representative Weisz	✓				

Total Yes 6 No 8

Absent _____

Bill Carrier _____

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

Date: 2-5-09

Roll Call Vote #: 5

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1431

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

Motion Made By Potter 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 Vigasaa		✓			
Representative Weisz		✓			

Total Yes 8 No 6

Absent 0

Bill Carrier Thorpe

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

to be reoffered

REPORT OF STANDING COMMITTEE

HB 1431: Transportation Committee (Rep. Ruby, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1431 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new section to chapter 39-08 and a new paragraph to"

Page 1, remove line 2

Page 1, line 3, remove "to a penalty for failure to submit to testing; to"

Page 1, line 4, remove "39-08-22,"

Page 4, remove lines 1 through 11

Page 5, line 21, remove "five hundred"

Page 6, remove lines 7 through 23

Renumber accordingly

2009 TESTIMONY

HB 1431

Attachment #1

HB14331

FEB. 5, 2009

TESTIMONY OF HB1431

HOUSE NATURAL RESOURCES COMMITTEE

REPRESENTATIVE ED GRUCHALLA

DISTRICT 45 FARGO, ND

GOOD MORNING MR. CHAIRMAN AND ESTEEMED MEMBERS OF THE TRANSPORTATION COMMITTEE.

I APPEAR BEFORE YOU TODAY TO INTRODUCE HB1431.

LAST SESSION WE HAD A BILL THAT WAS MUCH MORE AGGRESSIVE THAN THE ONE BEFORE YOU TODAY.

THIS BILL CONTAINS SOME MODERATE INCREASES IN THE FEES THAT ARE PAID BY TRAFFIC OFFENDERS. MANY OF THE FEES IN TITLE 39 HAVE NOT BEEN ADJUSTED SINCE 1956. THE INCREASES CONTAINED IN THIS BILL WILL BRING THEM UP TO ABOUT 1975 LEVELS, WHEN ADJUSTED FOR INFLATION.

THE IMPUTUS FOR THESE INCREASES IS NOT FOR THE FINANTIAL GAIN OF ANY ENTITY AS ALL THE FUNDS COLLECTED GO INTO THE SCHOOL FUND AND USED FOR EDUCATION.

SOME REASONS FOR INCREASING THESE FEES ARE:

1. TRAFFIC SAFETY
2. MOVE THE FEE SCHEDULE TO BE MORE COMPETITIVE WITH OUR NEIGHBORS.
3. INSIGNIFICANT FEES ARE HAVING LITTLE OR NO DETERENT EFFECT.
4. MAKE THE FEES COLLECTED AT LEAST PAY THE COST OF PROCESSING THE TICKET.
5. SIGNIFICANT FEES CHARGED FOR OFFENCES DO HAVE AN EFFECT AND WILL INCREASE TRAFFIC SAFETY AND THUS REDUCE TRAFFIC CRASHES.
6. STOP VIOLATORS FROM OTHER JURISDICTIONS FROM LAUGHING WHEN THE OFFICER INFORMS THEM WHAT THEY OWE. \$20 FOR RUNNING A RED LIGHT IS A JOKE.

THIS BILL IS SUPPORTED BY LAW ENFORCEMENT AND THE STATES ATTORNEYS, WHO DO NOT GAIN ANYTHING FROM THESE INCREASES; THEY ONLY SUPPORT THIS BILL IN THE INTEREST OF TRAFFIC SAFETY.

THANKYOU FOR YOUR CONSIDERATION

From: J & T Buzick [jbuzick@rrv.net]
 Sent: Wednesday, January 10, 2007 10:51 PM
 To: Gruchalla, Edmund A.
 Subject: FINE COMPARISON FINAL

Below are the current fee schedule and
 the proposed fees in HB 1113

Below shows a comparison of the current ND fines and prop
 average ND Municipal fines and average Tri-State fines. Th
 the current/proposed fine is below the municipal and tri-

CURRENT FINE SCHEDULE				Current fine compared to			
SPEED OVER LIMIT	55 zone	65 zone	70-75 ZONE	Municipal Average	Municipal Average	55 zone	65 Zone 70-
10 MPH	\$10	\$20	\$50				
15 MPH	\$15	\$45	\$75				
20 MPH	\$25	\$70	\$100				
25 MPH	\$40	\$95	\$125				
30 MPH	\$55	\$120	\$150				
35 MPH	\$70	\$145	\$175				
STOP SIGN							
CHILD RESTRAINT							
CARE REQUIRED							

1113 AS PROPOSED

10 MPH	\$50.00
15 MPH	\$75.00
20 MPH	\$100.00
25 MPH	\$125.00
30 MPH	\$150.00
35 MPH	\$175.00
STOP SIGN	\$50
CHILD RESTRAINT	\$50
CARE REQUIRED	\$60

SPEED (OVER LIMIT)	Municipal Average	Municipal Average	55 zone	65 Zone	70-
10 MPH	\$43				
15 MPH	\$61				
20 MPH	\$82				
25 MPH	\$107				
30 MPH	\$149				
35 MPH	\$168				
STOP SIGN	\$51				
CHILD RESTRAINT	\$36				
CARE REQUIRED	\$57				

SPEED (OVER LIMIT)	Tri-State Average	Current compared to Tri-St	55 zone	65 zone	70-
10 MPH	\$74				
15 MPH	\$94				
20 MPH	\$127				
25 MPH	\$137				
30 MPH	\$182				
35 MPH	\$225				
STOP SIGN	\$104				
CHILD RESTRAINT	\$99				
CARE REQUIRED	\$92				

All dollar amounts are rounded to the nearest dollar (.5 rounded up).

** South Dakota and Minnesota Traffic Law allows the County or Municipal Courts to add additional fees, each different by the governing agency. Clay County, MN and Kingsbury County, SD are in near the middle of the fee scale for their respective states.

Reference: Municipal ordinances: Grand Forks: section 8, Minot: section 20, Bismarck: section 12, Wahpeton: section 5, Mandan municipal traffic code, Williston municipal traffic code, Fargo section 8, Mayville: section 16, West Fargo: section 13
 Clay County, MN Traffic Code Kingsbury, SD Traffic Statute section 32 Montana: Title 61 Traffic Law

VEHICLE IN MOTION

PERSONAL CONTACT

INITIAL OBSERVATIONS

Observed car from earlier BOLO (see below comments and notes) going approximately 25 mph in 40 mph zone on 32nd Ave. S.

OBSERVATION OF THE DRIVER

Bloodshot, watery eyes. Odor of alcoholic beverage on breath while I spoke to him outside of his car.

OBSERVATION OF STOP

Vehicle pulled into parking space at apt. complex. I asked to speak to driver and he agreed.

STATEMENTS MADE BY THE DRIVER

Said he'd been down on his luck lately and has been in a lot of trouble. Said he shouldn't have taken his dad's car out. Said numerous times that he was "fucked" and to lock him up for 20 years.

PHYSICAL EVIDENCE

OBSERVATION OF THE EXIT

When driver got out of car, appeared to have poor balance.

PASSENGERS

DISPOSITION OF VEHICLE

Left in parking lot.

COMMENTS AND NOTES

At 0141 hours, dispatch put out a BOLO (Be On the Look Out) for a purple 72 Monte Carlo. The caller stated her name was Anna, and that she was supposed to pick up the driver from a party to take him home. When she was on her way, he took off. He was last seen SB on 25th St. at 1st Ave. N. Some time later, the purple monte carlo pulled up next to me on the off-ramp from SB I-29 to turn EB onto 32nd Ave. S. I observed the male driver and drove next to him EB on 32nd Ave. Driver would only accelerate to 25 mph in 40 mph zone. This was occurring shortly after bar close. All of these circumstances led me to believe I had reasonable suspicion to stop veh.

I observed veh. turn NB onto 33rd St. S. from 32nd Ave. and I continued, doing a U-turn at 32nd St. to go back and follow vehicle. During this time, I called Anna, the original caller. Anna told me she'd been contacted by a mutual friend who told her she needed to come pick Justin up from a party. Anna said the friend told her Justin was quite intoxicated. I asked Anna to describe Justin and she described the driver of the monte carlo. Physical description matched.

I observed vehicle turn from SB 33rd St. to EB 30th Ave., then SB again on 32nd St. until pulling into parking lot at 3161 32nd St. S. I pulled up behind but did not activate overhead leads. I observed Justin exiting vehicle and walk away from me, when he'd waved at me prior to walking away. I got out and asked him to stop and talk to me, which he did voluntarily. I then ID'd Justin with a MN DL and name matched person we were looking for earlier in the BOLO.

Justin asked to speak w/attorney prior to being placed under arrest, but I told him that I was investigating a DUI and he'd have opportunity to speak w/an attorney if I place him under arrest. After I arrested Justin and read implied consent, he asked to speak with attorney prior to giving me answer on a blood test. Once at Innova, I removed his cuffs, turned off recorder, gave him phonebook and cell phone, and allowed him to make attempts at contacting an attorney. He said he had Mark Friese's phone number in his cell. I gave Justin 15 minutes and he said he was unable to contact Mark, but did reach his mother who "chewed him out". Decided to refuse blood test because unlike MN, it's not a felony to refuse.

Justin also was record only ND, canceled IPS MN. He was issued citation for OMV w/out valid DL.

TESTIMONY – HB 1431
HOUSE COMMITTEE – TRANSPORTATION
February 5, 2009
BY MIKE REITAN
ASSISTANT CHIEF, WEST FARGO POLICE DEPARTMENT

Mr. Chairman and members of the committee, my name is Mike Reitan. I am the Assistant Chief of Police, City of West Fargo. My intent is to provide information concerning the importance of HB 1431 as it relates to updating the current fees for traffic offenses and add a criminal penalty for refusal to submit to chemical testing.

I had hoped to provide a background as to when the current fee structure was first implemented. In my research I was unable to locate the actual date of the legislation establishing current fees. Not finding the information I then asked a retired Highway Patrol Officer. The Trooper responded that the fees were established in the 1950s or the 1960s. Without a solid date I am forced to rely on my own personal experience.

In 1975 I received my first speeding ticket in the City of Arthur from Cass County Deputy Oscar England. I was driving 13 mph over the 25 mph limit and received a citation. The fee was \$13.00. In 1984 when I began my career in law enforcement in Casselton the fee for driving 13 mph over the 25 mph limit was \$13.00. If I were on the street today and clocked a violator doing 13 mph over the limit within your residential neighborhood the fee would \$13.

During conversations with other drivers you may have heard them comment how they adjust their driving habits when they enter Minnesota or South Dakota because of the perceived harsher penalties. For comparison I would like to provide the following examples:

Speeding

Current ND

ND speeding in residential area	13 mph over the limit	\$ 13
	22 mph over the limit	\$ 31

Proposed ND

ND speeding in residential area	13 mph over the limit	\$ 35
	22 mph over the limit	\$ 80

Current MN

MN speeding in residential area	13 mph over the limit	\$125 (fine \$40/ \$75 surcharge/ \$10 law library)
	22 mph over the limit	\$227 (fine \$70/ \$75 surcharge/ \$10 law library/ \$72 State general fund)

Current SD	13 mph over the limit	\$110 (fine \$56/ \$40
SD speeding in residential area	liquidated costs/ \$14 surcharge)	
	22 mph over the limit	\$150 (fine \$96/ \$40
	liquidated costs/ \$ 14 surcharge)	

Disregard Stop sign

Current ND disregard stop sign	\$ 20
Proposed ND disregard stop sign	\$ 30
Current MN disregard stop sign	\$ 135 (fine \$50/ \$75 surcharge/ \$10 law library)
Current SD disregard stop sign	\$ 104 (fine \$50/ \$40 liquidated costs/ \$14 surcharge)

As you can see with the proposed changes to the fee structure North Dakota would still remain lower than the neighboring states.

In 2000 the City of West Fargo, following an Attorney General's opinion on the powers of Home Rule communities, did raise traffic fees slightly above those set by the State of North Dakota. While the increase in fees was not significant the public's awareness of the increase did affect driving habits within the city.

Drivers are constantly weighing risks of an accident or the penalty for a violation of law as they operate a motor vehicle in North Dakota. If the risk or penalty is low or inconsequential a driver will be willing to accept the risk or penalty and overdrive the conditions or violate the law. Your friends and neighbors will tell you the harsher penalties imposed in Minnesota and South Dakota do affect how they drive. A change to the North Dakota traffic fees is long overdue.

Alcohol related driving offenses take two tracks within the North Dakota enforcement process. One track, under NDCC 39-08, is criminal and the second, under NDCC 39-20, is administrative. In each when an officer has probable cause to believe an individual is driving under the influence the officer may request a chemical test of the driver. The refusal of a test under NDCC 39-20 may result in a driver's license revocation. A refusal of the test under NDCC 39-08, however, has no consequence. Prosecuting Attorneys in North Dakota are reluctant to continue with an alcohol related charge against the driver without the alcohol test. The criminal cases are frequently reduced to a non-alcohol related driving offense. Experienced offenders are aware of this.

The State of Minnesota has enacted legislation where the refusal itself is a misdemeanor. Grading of the refusal offense in Minnesota is one grade higher than what the alcohol driving offense would have been had a test been given.

The current proposal before you would set the refusal of a chemical test in North Dakota as a B-misdemeanor. The conviction would appear on the driver's driving record as an alcohol related offense and provide for enhancement penalties for future violations. The criminal prosecution of an intoxicated driver should not end with a refusal of a chemical test.

Thank you for your consideration. I would be willing to answer any questions you may have.

**Consent of Chemical Test for Individuals
Charged with Third or More DUI Offense in
Cass County in 2008**

	3rd DUI Offenders	4th DUI Offenders	5th DUI Offenders	Total
Refused Chemical Test	15	14	4	33
Consented to Chemical Test	36	4	3	43
Total	51	18	7	76

**Percent Chemical Test Refusal Rate of
Third or More DUI Offenders in Cass
County from 2008**

3rd DUI Offenders	4th DUI Offenders	5th or More DUI Offenders
29%	78%	57%

**Percentage of Individuals Charged
with Third or More DUI Offense in
Cass County in 2008 Who Did Not
Have a Valid Operating License at
Time of Offense**

3rd DUI Offenders	4th DUI Offenders	5th or More DUI Offenders
43%	67%	86%

HOUSE TRANSPORTATION COMMITTEE

February 5, 2009 9:30 am Ft. Totten Room

**North Dakota Department of Transportation
Linda Butts, Deputy Director for Driver and Vehicle Services, NDDOT**

HB 1431

Good morning Mr. Chairman and members of the committee. I'm Linda Butts, Deputy Director for Driver and Vehicle Services at the North Dakota Department of Transportation. Thank you for giving me the opportunity to present information to you today.

NDDOT is neutral on this bill, but did want to offer information on certain parts of the bill. I have provided a graph illustrating current law on refusals and how this bill will change the time of a revocation for refusing to submit to a chemical test. This bill, by adding 36 points to a driver's record for refusing a test, would potentially establish an additional 252-day suspension to the driver for accumulating too many points. Drivers can receive up to eleven points on their record. Upon receiving twelve points, the driver is suspended for seven days for every point in excess of eleven. We would interpret the bill such that the times would run consecutively, and not concurrently. The driver would serve a one-year revocation for the refusal and at the end of the one-year, begin serving the suspension for being above the allowed point total.

We would also like to comment on increasing the reporting threshold to \$1,500. The Model Minimum Uniform Crash Criteria (MMUCC) (Third Edition, 2008) recommends that all crashes statewide involving death, personal injury, or property damage of **\$1,000** or more should be reported and entered into a statewide database.

Our current crash report threshold is \$1,000. If we moved to the \$1,500 threshold, this would be inconsistent with MMUCC and also inconsistent with the certification the NDDOT signs when we apply for and receive funding through the National Highway Traffic Safety Administration (NHTSA). The certification requires the NDDOT to use NHTSA Section 408 funds to "adopt and use the maximum number of Model Minimum Uniform Crash Criteria (MMUCC) elements as soon as practicable."

If this is a law enforcement issue and they are trying to reduce their paper work by increasing the threshold, it is important to know that this is being addressed as MMUCC is in the planning stages to identify a reduced set of MMUCC elements that would be recommended specifically for Property Damage Only (PDO) crashes. MMUCC also states,

"Considering that approximately two-thirds of all crashes reported are property damage only crashes, for law enforcement this could mean:

- a) less time spent reporting motor vehicle crashes,
- b) an increase in reporting of PDO crashes, which often go unreported, and
- c) improvement in the accuracy and completeness of information collected in the field.

Results from this effort are expected to be completed in 2009."

We reviewed the current practices of other jurisdictions and found:

- Three jurisdictions have a reporting threshold above \$1000
- Nineteen jurisdictions have a reporting threshold at \$1000
- Twenty-nine jurisdictions are below the \$1000 threshold.

Mr. Chairman that concludes my comments. I would take any questions of the committee.

House Bill 1431 - Relating to Fee Increases for Traffic Offenses and Refusals

Current Process	1st Offense for Refusal in 5 years	2nd Offense for Refusal in 5 years	3rd or Subsequent Offense in 5 years
NDCC 39-20-04	Results in a 1 year Revocation	Results in a 3 year Revocation	Results in a 4 year Revocation
New	1st Offense for Refusal in 5 years	2nd Offense for Refusal in 5 years	3rd or Subsequent Offense in 5 years
Proposed Legislation	Results in a 1 year Revocation and 36 points (252 days) assessed to the driver's record.*	Results in a 3 year Revocation and 36 points assessed to the driver's record.*	Results in a 4 year Revocation and 36 points assessed to the driver's record.
NDCC 39-06.1-10			

*NDDOT would interpret the law to mean these sentences run consecutively, not concurrently.

The Model Minimum Uniform Crash Criteria (MMUCC) (Third Edition, 2008) recommends that all crashes statewide involving death, personal injury, or property damage of **\$1,000** or more should be reported and entered into a statewide database. Our current threshold is \$1,000, and we are trying to increase our data elements to comply with MMUCC so we can continue to receive 408 funding. However, MMUCC is also in the planning stages to identify a reduced set of MMUCC elements that would be recommended specifically for Property Damage Only (PDO) crashes. MMUCC also states,

“Considering that approximately two-thirds of all crashes reported are property damage only crashes, for law enforcement this could mean:

- a) less time spent reporting motor vehicle crashes,
- b) an increase in reporting of PDO crashes, which often go unreported, and
- c) improvement in the accuracy and completeness of information collected in the field. Results from this effort are expected to be completed in 2009.”

Currently there are:

- 3 jurisdictions that have a reporting threshold above \$1000
- 19 jurisdictions that have a reporting threshold at \$1000
- 29 jurisdictions that are below the \$1000 threshold