

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1288
(Representative DeKrey)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

1. There is hereby established a uniform complaint and summons that may be used in cases involving violations of this title or other violations of a state law which occur on property that the department owns, leases, or manages or on sovereign lands as defined by section 61-33-01. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedure ~~relating to arrests without warrants do not apply, and the magistrates or state's attorneys are not required to make another complaint of the offense charged in the uniform complaint and summons apply.~~ The uniform complaint and summons must be of a form prescribed by the director and approved by the attorney general.
2. The time of court appearance to be specified in the summons must be at least five days after the issuance of the summons unless the defendant demands an earlier hearing.
3. Upon receipt from the defendant of written promise to appear at the time and place specified in the summons, the defendant must be released from custody. After signing a promise to appear, the defendant must be given a copy of the uniform complaint and summons. Any person refusing to give a written promise to appear may be arrested if proper cause exists, or proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure. ~~Defendant's failure to appear at the time and place designated after signing a promise to appear is a class B misdemeanor.~~

~~The uniform summons and complaint may not be used if the officer, acting within the officer's discretion, has reason to believe the defendant will not be subject to arrest upon a warrant issued by a~~

CLAIMED CONDITIONS OF THE VIOLATION

SLIPPERY SURFACE

Rain Snow Ice

DARKNESS

_____ Night _____ Fog _____ Snow

OTHER TRAFFIC PRESENT

_____ Cross _____ Oncoming _____ Pedestrian _____ Same direction

IN ACCIDENT

_____ Ped. _____ Vehicle _____ Intersection
_____ Right angle _____ Head on _____ Rear end
_____ Ran off road _____ Other

Area: _____ School _____ Rural _____ Business

_____ Industrial _____ Residential

Highway: _____ 2 Lane _____ 4 Lane _____ 4 Lane Divided

Type

_____ Gravel _____ Dirt

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

_____ Yes _____ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT
(CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

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

Appearance

Before: Municipal Judge District Ct. _____ A.M./P.M.

Location Month Day Year Time

Dated _____, _____
Officer _____

PROMISE TO APPEAR

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

Dated _____, _____
Defendant _____

(STATE NONCRIMINAL TRAFFIC VIOLATION)

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

REQUEST FOR HEARING

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

Dated _____, _____
Defendant _____

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

5. a. A person may not appeal a finding from a district judge or magistrate that the person committed the violation. If a person is aggrieved by a finding in the municipal court that the person committed the violation, the person may, without payment of a filing fee, appeal that finding to the district court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.

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

- (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days;
- (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty days; or
- (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of three dollars. Any order granting a stay or a temporary certificate must be forwarded forthwith by the clerk of court to the licensing authority, which immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1288.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State