

Transportation Committee
Interim Committee Meeting 21 September 2011
Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

Good Afternoon

Chairman Lee and members of the Committee, for the record my name is Mike Reitan, Assistant Chief of the West Fargo Police Department. I wish to present information today on the interim study of the regulations of drivers and of motor vehicles.

I have had the opportunity to testify during previous Legislative Sessions on issues that I felt were important to my community. I must admit the past practice has been a focused effort to change specific portions of the 39 code. The request for change was typically a reactionary response to a ruling of the court or a quirk in the law that was accidentally discovered. A complete review and analysis of the 39 code is long overdue.

To prepare for today I completed a review of the 39 Code. Some portions of the code I have little knowledge of and would need to defer to the Highway Patrol or the Department of Transportation for their expertise. I did note some issues that I feel should be addressed. The definition of a Class A vehicle appears to exclude volunteer Fire Departments and rescue squads or quick response units as an example.

I believe statutory fees should be raised from their current values. Many were set in the 1970s or earlier and no longer carry the prohibitive weight due to the change in the value of the dollar. For comparison, in 2010, the relative worth of \$1.00 from 1973 is:

\$4.91	using the Consumer Price Index
\$3.95	using the GDP deflator
\$7.18	using the nominal GDP per capita
\$10.50	using the relative share of GDP

The deterrent effect of a \$13.00 speeding ticket from the 1970s certainly does not carry the same weight today.

I would concur with the position of the North Dakota Highway Patrol and the Department of Transportation relating to the evaluation and restructuring of the 39 Code under the direction of a consultant. I believe this approach to be the best solution to bringing the chapter up-to-date and avoid the practice of numerous individual changes to the 39 Code.

Thank you for your time this afternoon.

39-01-01 [2] a. (1)	Class A vehicle	governmentally owned fire department	volunteer departments are incorporated/ all fire departments have certificate of existance
39-01-01 [2] a. (4)	Class A vehicle	Ambulance	does not include Quick Response Units/ first responder rescue squads
39-01-01 [2] c. (1)	Class C vehicle	vehicles authorized by DHS	did this change during 2011
39-06-37 [2]	return of license	peace officer to secure and return to DOT	directive from DOT discontinued practice
39-06-42 [3]	impound of vehicle plates	court order releases plate to new owner	conflict with 39-04-36 vehicle plate stays with owner
39-06.1-06 [1]	statutory fees non moving	39.06.1-08 [1]	
		39-04-11 display of license plate	increase fee \$20 to \$60
		39-06-17 [6] child's restricted license	increase fee \$20 to \$60
		39-06-44 permit unauthorized minor to drive	increase fee \$20 to \$60
		39-06-45 permit unaothorized person to drive	increase fee \$20 to \$60
		39-10-47 stopping, standing, parking on road	increase fee \$20 to \$40 - parking
		39-10-49 stopping, standing, parking prohibit	increase fee \$20 to \$40 - parking
		39-10-50 additional parking restrictions	increase fee \$20 to \$40 - parking
		39-10-51 unattended motor vehicle	increase fee \$20 to \$40 - parking
		39-10-54.1 opening and closing door	increase fee \$20 to \$40 - parking
		39-21-08 additional lighting for trucks	increase fee \$20 to \$60 - safety
		39-21-10 mounting lights on trucks	increase fee \$20 to \$60 - safety
		39-21-11 visibility of lights on trucks	increase fee \$20 to \$60 - safety
		39-21-14 lights on parked motor vehicle	increase fee \$20 to \$60 - safety
		39-06.1-08 [2] violations discovered not moving	increase fee \$20 to \$60 - safety - required equipment
3906.1-06 [2]	statutory fees moving	39-06.1-09	
		39-04-22 exceed registered gross vehicle weight	increase fee \$20 to \$100
		39-04-37 [1] fail to register MV	increase fee \$20 to \$60
		39-04-55 no registration card in possesion	increase fee \$20 to \$40
		39-06-01 drivers license required	increase fee \$20 to \$60
		39-06-14 violation of drivers license class	increase fee \$20 to \$60
		39-06-16 no drivers license in possession	increase fee \$20 to \$40
		39-08-24 use of wireless device by minor	increase fee \$20 to \$60
		39-09-04.1 special speed limitations	increase fee \$20 to \$60
		39-09-09 minimum speed limits	increas fee \$20 to \$60
		39-12-04 violation f size limitations	increase fee \$20 to \$100
		39-12-05 violation of weight limits on interstate	increase fee \$20 to \$100

		39-12-06 violation on extened load	increase fee \$20 to \$100
		39-12-09 violation of size, weight or construction	increase fee \$20 to \$100
		39-24-02 fail to register snowmobile	increase fee \$20 to \$60
		39-24-09 rules for operation of snowmobile	increase fee \$20 to \$60 (except subdivisions b and c of subsection 5)
		39-10 general rules of the road	increase fee \$20 to \$60 (except subsection 5 of 39-10-26; subsection 1 39-06.1-08; 39-10 as exempt under 39-06.1-06 [2])
		39-10.2 rules specific to motorcycles	increase fee \$20 to \$60 (except subsection 5 of 39-10-26 or those listed in subsection 1 39-06.1-08)
		39-06.1-09 [2] c. (39-21-41.2 child restraint)	increase fee \$25 to \$50
		39-06.1-06 [3] (39-09-02 Speeding)	1-5 miles over the limit \$25 plus \$5/ each mph over 5mph over limit repeal 39-06.1-06 [7] and [11]
		39-06.1-06 [4] (39-09-01 Careless Driving)	increase fee \$30 to \$90
		39-06.1-06 [5] (39-09-01.1 Care Required in Driving)	increase \$10-\$30 to \$30-\$90
		39-06.1-06 [7] (39-09-02 Speed Highway greater than 55 mph)	repeal if change to 39-06.1-06 [3] is enacted
		39-06.1-06 [8] (39-21-41.4 Seat belt use required)	increase fee \$20 to \$60
		39-06.1-06 [11] (39-09-02 Speed Highway greater than 65 mph)	repeal if change to 39-06.1-06 [3] is enacted
		39-06.1-06 [12] (39-09-02 Speed school zone)	increase fee \$40 for 1-10 mph over limit to \$80; increase \$1/ each mph over 10 mph over limit to \$2/ each mph over 10
39-08-09	Immediate notice of crash		increase fee \$50 to \$100

			<p>39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence. Subject to the limitations of this section and section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.</p>
39-21-41.4	Use of seat belts required		
39-21-41.5	Secondary enforcement		repeal

39-08-20	Driving without liability insurance		<p>2. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days from the date of the request; however, during the investigation of an accident, the person may be charged with a violation of this section if that person fails to provide the satisfactory evidence within three business days from the date of the request. If that person produces satisfactory evidence of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the officer, the officer's agency, or a court, that person may not be convicted or assessed any administration fee for violation of subsection 1.</p> <p>4. Violation of subsection 1 is a class B misdemeanor <u>an infraction</u> and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within a three-year period must be fined at least three hundred dollars which may not be suspended. For a second or subsequent conviction for a violation of subsection 1 or equivalent ordinance, the court shall impound the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation until that person provides proof of insurance and a twenty dollar fee to the department. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the department. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.</p>
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TESTIMONY – HB 1431(2009)
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

SD speeding in residential area	13 mph over the limit	\$110 (fine \$56/ \$40 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
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Proposed ND disregard stop sign	\$ 30
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Current MN disregard stop sign	\$ 135 (fine \$50/ \$75 surcharge/ \$10 law library)
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Current SD disregard stop sign	\$ 104 (fine \$50/ \$40 liquidated costs/ \$14 surcharge)
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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.

The language that is deleted in subsection 2 creates an additional burden on the law enforcement officer or law enforcement agency to maintain record of drivers who were stopped and failed to provide proof of insurance. According to our prosecutor, the twenty days must be tracked and only after the twenty days may the officer charge the violator. To be able to charge the violator, the officer must prepare a long form complaint and have the violator located for service. The exception to this is when the individuals say they do not have insurance.

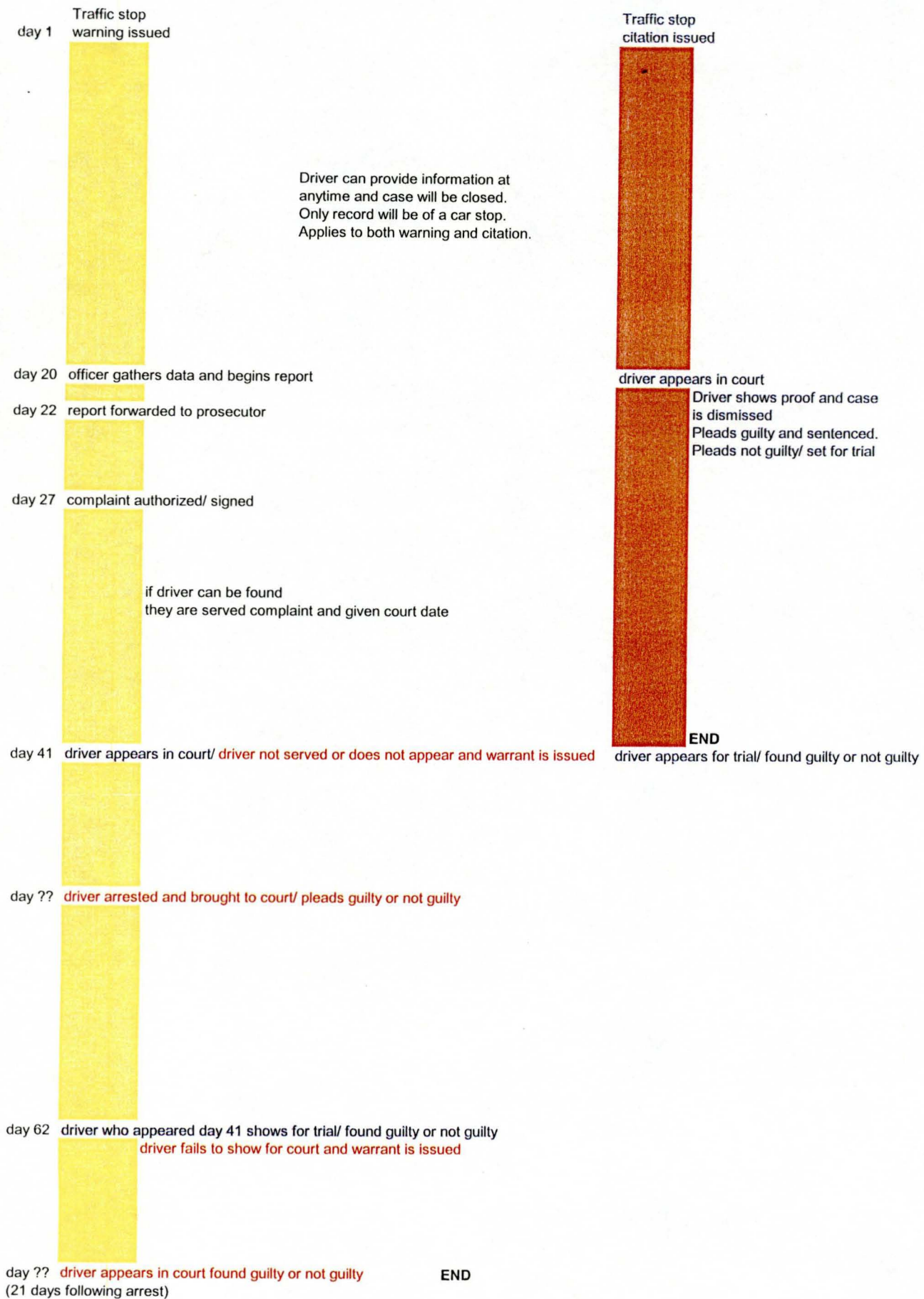
The remaining language in subsection 2 allows the driver two opportunities to produce satisfactory evidence of the policy. At the time of the stop the individual can produce the card; provide a policy number and company; or provide the insurance agent. The second opportunity is any time between the time of the stop and their appearance in court. They can provide a copy of the policy to the officer, the officer's agency, or a court. This notification can occur in person; by mail; by e-copy or any other means which provides satisfactory evidence a policy existing at the time of the stop.

39-08-20. Driving without liability insurance prohibited - Penalty.

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1.
2. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. ~~If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days from the date of the request; however, during the investigation of an accident, the person may be charged with a violation of this section if that person fails to provide the satisfactory evidence within three business days from the date of the request.~~ If that person produces satisfactory evidence of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the officer, the officer's agency, or a court, that person may not be convicted or assessed any administration fee for violation of subsection 1.
3. Notwithstanding section 26.1-30-18, a person may be convicted for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle.
4. Violation of subsection 1 is ~~a class B misdemeanor~~ an infraction and the sentence imposed must include a fine of at least one hundred fifty dollars which

may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within a three-year period must be fined at least three hundred dollars which may not be suspended. For a second or subsequent conviction for a violation of subsection 1 or equivalent ordinance, the court shall impound the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation until that person provides proof of insurance and a twenty dollar fee to the department. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the department. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.

5. Upon conviction for a violation of subsection 1 or equivalent ordinance, the person who has been convicted shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of three years and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
6. A person who has been convicted for violation of subsection 1 or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.
7. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.



Good Morning

Chairman Lee, Vice Chair Oehlke and members of the Committee, for the record my name is Mike Reitan, Assistant Chief of the West Fargo Police Department. I am testifying today in support of House Bill 1171.

The bill before you today is meant to increase compliance with the requirement of motor vehicle operators and owners to maintain motor vehicle liability insurance. Under subsection 2 of section 39-08-20 of the North Dakota Century Code as currently written the West Fargo Prosecutor has determined a driver has up to 20 days to provide proof of insurance before they may be charged with driving without liability insurance. The time between the driving offense and the lapse of 20 days creates a situation where the individual has had an extended period to continue driving without insurance.

I have provided two documents to help illustrate through a flow chart and time line the process that is used to address an individual who can not produce proof of insurance during a traffic stop. The flow chart was actually prepared by North Dakota Legislative Council staff for the Transportation Committee in 2005. The time line is an attempt to depict the length of time necessary to complete this transaction.

During a vehicle stop an officer will typically ask for the driver's license, the registration card and proof of insurance. If the person does not have their driver's license or registration card they may be issued a citation. The citation is dismissed if the driver later provides proof of the driver's license or registration card to the officer or to the court. Not so with the proof of insurance.

If the driver does not have proof of insurance they are asked a series of questions to determine if in fact they have insurance. It could be as simple as do you have insurance? A no response can result in an arrest for driving without liability insurance. A yes response and information about the agent and insurance company typically ends with a warning to make sure the insurance information is in the vehicle. A yes response and vague information about insurance company and agent has the potential to begin the 20 day clock.

The officer may issue a warning ticket or other paperwork instructing the driver to produce the insurance information within 20 days. The paperwork will have an address to which the information should be sent. The officer or agency must then track the warning ticket and wait for the receipt of the insurance information.

If no insurance information is received within 20 days the officer is required to submit a report to the prosecutor for a drafting of the complaint. The officer will spend 30 minutes to an hour gathering the data and completing the report. The prosecutor spends 15 to 30 minutes reviewing the report and drafting the complaint. Once drafted, the complaint must be served upon the driver and a warrant issued for their arrest. When the offender lives in the community an officer will go to the home to deliver the complaint. If the offender lives elsewhere the complaint may be sent to the local jurisdiction for service.

When the person is arrested and held in a jail outside our jurisdiction we are required to have the person transported to appear before our Municipal Judge. At times this has involved sending a squad car and officer to as far away as Minot. From the time of the traffic stop until the driver actually appears in court a substantial amount of time can pass.

Reviewing our records less than half of my patrol officers have issued a warning ticket to show proof of insurance. When asked why they indicate the extra steps required to issue and track the warning ticket; write a report and submit it to the prosecutor; locate the driver and serve the complaint; and ultimately arrest the person on a warrant is not a good use of their time. I have enclosed comments from three other Chiefs.

From Fargo Chief of Police

From: Keith Ternes **Sent:** Thursday, January 06, 2011 1:15 PM
To: Michael D. Reitan
Subject: RE: Financial Note for current driving without liability insurance

Mike,

I wholeheartedly support the change you are suggesting to the "liability insurance" statute. It seems to me the law should require people to carry proof of insurance in their vehicle in the same manner as having your vehicle's registration card. This "20-day" issue makes enforcement of the statute much harder than it needs to be – to the point of discouraging officers from pursuing this violation – which isn't ideal especially in the aftermath of a traffic crash.

I'll be happy to provide you with the necessary numbers if you (or the other chief's you included in your e-mail) want to pursue what you're proposing.

Keith

From Keith Witt, Bismarck Chief of Police

From: Witt, Keith A.
Sent: Thursday, January 06, 2011 9:49 AM
To: Michael D. Reitan
Subject: RE: Financial Note for current driving without liability insurance

Mike,

I did run this by some of our resident experts. They expressed a concern that if someone simply doesn't have their insurance card with them, does that establish probable cause that they don't have liability insurance and are in violation of a criminal traffic offense? The person may have insurance, just not have the proof present at the time. Maybe an amendment to the effect of "that a twenty day period is to be given unless probable cause exists that the person does not

Senate Transportation Committee

House Bill 1171

Testimony of Mike Reitan, Assistant Chief, West Fargo Police Department

have liability insurance at the time of driving". Then, if the person admits to the officer they don't have insurance, there would be probable cause of a violation.

Maybe another alternative would be to have a separate non-criminal statute simply requiring the carrying a current card. I don't know if it is procedurally possible, but if someone has a card to present the officer, the person could be cited with this statute and at the end of 20 days if they don't provide proof, it upgrades to a criminal violation.

Just some thoughts on this.

In terms of the cost analysis, we don't seem to have that much problem here the way our system on this is working that we could show that much cost.

Thanks for working on this.

Keith

From Scott Thorsteinson, Chief of Police Wahpeton

From: Scott Thorsteinson **Sent:** Thursday, January 06, 2011 3:28 PM

To: Michael D. Reitan

Subject: Re: Financial Note for current driving without liability insurance

Mike,

In my opinion, the current part of the statute that allows 20 days to provide proof of liability insurance makes the verification process very unwieldy and time-consuming. It puts the burden on law enforcement to track down those people that (inevitably) fail to show up with the required proof because they simply have none to provide and hope to avoid negative legal consequences through the time-honored technique of avoidance. If a motorist unable to provide proof of insurance is immediately cited at the scene of a traffic stop or crash, they are then sufficiently motivated to take the steps necessary to get the charge dismissed.

As far as actual costs go, each long form complaint issued by the city attorney costs the citizens approximately \$30-\$50 for city attorney staff time, with the expense for PD staff time likely in this same \$30-\$50 range, depending on how easy it is to locate and serve the miscreant.

Scott T.

Searching for some national statistics I found a news release from 2006 that was put out by the Insurance Research Council. According to a recent Insurance Research Council (IRC) Study, the estimated percentage of uninsured motorists increased nationally from 12.7 percent in 1999 to 14.6 percent in 2004. However, the magnitude of the uninsured motorists problem varied widely from state to state.

I respectfully request your passage of House Bill 1171. Thank you for your time today and I will answer any questions you may have.