

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2148

2007 SENATE TRANSPORTATION

SB 2148

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2148

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 19, 2007

Recorder Job Number: 1432

Committee Clerk Signature

Jody H. Lange

Minutes:

Senator Gary Lee opened the hearing on SB 2148 relating to penalties for motor vehicle dealer licensees.

All members of the transportation committee were present

Bob Lamb appeared in support of SB 2148 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in the state. Mr. Lamb stated that the penalties in the current laws are too extreme and need some modification, particularly where they call for a mandatory suspension of a dealer's license for a third violation. He stated that the department will still have suspension authority. In section 39-22-04, there are specific references to the grounds for denial, suspension, cancellation or revocation of a dealer's license. He stated that they did not oppose these references as they meet the test of more serious offenses that are reasonable grounds for suspension. Testimony is enclosed along with a handout of the economic impact of ND's franchised automobile dealers.

Senator Fiebiger asked Mr. Lamb how many dealers have had 3 or more violations that would be affected.

Mr. Lamb said he couldn't give the exact number. He said they have several suspensions that he is aware of that have been one or two day suspensions. The number of violations seems to be small in compared to the overall dealer population.

Senator Nething stated that there were six sections where suspension can be mandatory. He asked for some history of the suspensions that have occurred and what was the reason they occurred.

Mr. Lamb said that again he felt the Department would be in a better position to answer those specified questions. He said he did not get notified every time a dealer is suspended. Mr. Lamb did give some examples: In order for a Native American to get a tax exemption when he purchases a vehicle, the vehicle must be delivered on the reservation. I believe we have had dealers sign off that they delivered that car and in reality they did not deliver that car. He stated that he believed there was a suspension for that violation. Also there has been misuse of dealer plates. We have had dealers that do not use their plates properly or not willfully. He believes that some dealers have come close or have had three violations in that area. He stated that they did not feel that this type of violation seemed serious enough for a suspension. He added that if there is any type of criminal offense in any of these dealerships there are other sections of the law that takes care of that.

Senator Lee stated that in the fiscal note it says that in 2006 there were 38 violations, total fees \$4500 and only one 3rd violation. He also said that section 3 has a class B misdemeanor and asked if this was the section that was the most serious offenses.

Mr. Lamb said he thought that was correct because that is the section that deals with having a license and doing business without a license and that is a serious violation.

Senator Lee clarified that now we want to reduce this category to a fine and not a suspension.

Mr. Lamb stated that he understood Senator Lee's concern but referred to section 39-22-04 that continues to give the department suspension authority.

Representative Vigesaa, a sponsor of SB 2148 and owner of a car dealership in Carrington spoke in favor of SB 2148. As a dealer he feels that certain violations that are in this section do not warrant a suspension. Rep. Vigesaa gave an example of how he was in violation of a plate violation through no fault of his own. He respectfully asked for a do pass on SB 2148.

Senator Potter clarified with Rep. Vigesaa that Rep. Vigesaa was suggesting that on a technical violation he was willing to pay the fine but shutting the business down is kind of a nuclear option that impacts everybody and suggests that SB 2148 is the right way to go.

Rep. Vigesaa said that is correct. The dealers are not trying to get way with anything and we are willing to accept a fine but believe the suspension is over kill.

Senator Nething asked Rep. Vigesaa if he recalled the circumstances around this law that was enacted in 2001.

Rep. Vigesaa replied that he was not involved with the dealer board at the time or the legislation.

Senator Lee asked Rep. Vigesaa if he agreed that the DOT will still have authority to suspend a license if there was an issue they felt was appropriate to this penalty.

Rep. Vigesaa answered yes.

Keith Magnusson, Deputy Director for Driver and Vehicle Services testified in opposition to SB 2148. Testimony is enclosed.

Senator Potter asked a question about Section 1, line 17 about willfully violating.

Mr. Magnusson would like to see the law remain the same because once we use the wording willfully, then we have to prove.

Senator Potter commented that if the DOT is going to take serious action like suspending a license maybe it is appropriate for them to have that burden of proof.

Senator Nething asked how many dealers there were in 2001.

Mr. Magnusson answered that he did not know, but there are fewer new car dealers. We have more used car dealers and used car dealers seem to be more of the problem.

Senator Nething stated that the whole scenario has changed and the industry has changed and maybe the 2001 law should be changed. He also questioned the word willful and its use in line 17 were it is being added and line 12 where it will remain. And then in line 8 were we still can suspend. Senator Nething stated he didn't think that the new wording took away the DOT's authority to suspend a license if deemed necessary.

Mr. Magnusson is not sure the industry has changed enough from 2001 to change the law.

He stated that the DOT was not putting dealers out of business. The ultimate question the legislature has to decide is what kind of legislature we are going to have.

Senator Andrist said he did not understand the oppositions because the DOT still has the authority. He does not understand the problem. DOT would continue to have the authority to suspend a license.

Mr. Magnusson answered saying what we have has worked well but if we have to change, maybe the fee should be more meaningful.

Senator Bakke asked how many dealers do they suspend and do you have repeat offenders.

Mr. Magnusson answered that on the fiscal note it tells how many have been suspended and he added that some are repeats. Some have some serious violations and the DOT may use their broader authority to deal with these.

Senator Potter asked since 2001 if there had been any incidents that his department had to order suspension for a technical violation that they would have rather not ordered.

Mr. Magnusson referred to Lorrie Pavlicek.

Lorrie Pavlicek, Motor Vehicle director for the Department of Transportation stated that there had only been one violation that went to a specific 3rd violation within one section of the law. This suspension has not taken place because it has been taken to an administrative hearing and the hearing supported the DOT but it is now being appealed. With that violation there was a plate violation involved but there were also other circumstances along with that.

Senator Potter asked that the way the current law is written the current law would require a suspension whether it's technical or deep seeded problems with that dealership.

Lorrie Pavlicek answered, that is correct, and added that they use some discretion with the length of suspension. She added that they have appropriately and equitably used that discretion.

Senator Fiebiger further asked for more figures on suspensions.

Lorrie Pavelcek gave the figures that are included in the e-mail attached.

Senator Bakke asked if the number one reason for violations was misuse of plates.

Lorrie Pavelcek said she didn't have that data but typically they have been from plate violations to actual charges filed. It is probably likely that of the 14 suspensions they likely had a plate violation.

Senator Andrist asked if she saw anything in the bill that would prohibit them from taking action that was deserved.

Lorrie Pavelcek replied that she believed that the law is clearer the way it is.

Senator Andrist continued to ask if there was anything that would prohibit her from suspending a license.

Lorrie Pavelcek replied that it would not necessarily prohibit but she felt it would make situations more difficult and more likely be moved into a court.

Senator Lee asked Ms. Pavelcek if she agreed that they would still have the authority to suspend a license in all of these cases if they found it necessary to do so.

Lorrie Pavelcek said the possibility does exist with the revisions. She referred back to Mr. Magnusson testimony and she still supports his reasons for opposing SB 2148. Also believes that the plate laws that were passed by this committee will make a significant difference in the violations that seemed to be of significant concern.

Senator Lee said that the committee will try to take up this bill next week. He closed the hearing on SB 2148.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2148

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number 1912

Committee Clerk Signature

Judy Hauga

Minutes:

Chairman Gary Lee opened the discussion on SB 2148 at 10:08AM. SB 2148 relates to penalties for motor vehicle dealer licensees.

Senator Lee said that he had talked with the DOT and the Auto Dealers Association to see if they had come to some common ground but they had not.

Senator Potter said he had no problem with the bill as presented.

Senator Fiebiger stated that the way the bill stands now, he still sees that the DOT maintains their authority to suspend a license if the violation is deserving of a suspension.

Senator Bakke added that she agreed with the bill and that suspension is very harsh punishment.

Senator Potter moved for a do pass.

Senator Nething seconded.

The clerk called the roll call vote.

The motion passed: 5-0-1

Senator Potter will carry SB 2148

FISCAL NOTE
Requested by Legislative Council
03/05/2007

Amendment to: SB 2148

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

The changes in this bill would modify penalties for dealers operating in the state who violate law.

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 changes in this bill would modify penalties for dealers operating in the state who violate law. The changes are essentially revenue and cost neutral. The amendments do not change our projected fiscal impact—fee collections are case specific and the number and types of violations are unpredictable. 2006 calendar year reported only 38 Violations, total fees \$4,500; only one 3rd violation.

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:	Lorrie Pavlicek	Agency:	NDDOT
Phone Number:	328-2725	Date Prepared:	03/06/2007

FISCAL NOTE

Requested by Legislative Council

02/27/2007

Amendment to: SB 2148

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

The House amendments have no substantial fiscal impact on the bill. This bill would modify penalties for dealers operating in the state who violate law. The bill is essentially revenue and cost neutral. 2006 calendar year reported only 38 Violations, total fees \$4,500; only one 3rd violation.

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 has no significant fiscal impact.

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:	Lorrie Pavlicek	Agency:	NDDOT
Phone Number:	328-2725	Date Prepared:	02/27/2007

FISCAL NOTE
Requested by Legislative Council
01/10/2007

Bill/Resolution No.: SB 2148

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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).*

The change in this bill would modify penalties for dealers operating in the state who violate law. The changes are essentially revenue and cost neutral. 2006 calendar year reported only 38 Violations, total fees \$4,500; only one 3rd violation.

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 has no significant fiscal impact.

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:	Lorrie Pavlicek	Agency:	NDDOT
Phone Number:	328-2725	Date Prepared:	01/13/2007

REPORT OF STANDING COMMITTEE

SB 2148: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2148 was placed on the
Eleventh order on the calendar.

2007 HOUSE TRANSPORTATION

SB 2148

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2148

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02-22-2007

Recorder Job Number: 3641

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz opened the hearing on SB 2148. SB 2148 relates to penalties for motor vehicle dealer licenses. Representative Kelsch was absent.

Senator Nething introduced the bill.

Sen. Nething: I introduced this bill at the request of the Auto Dealers Association rep and I encourage you to pass this bill because it brings into line the area of penalties in relationship to the need to have penalties. There are people here to speak on the bill from the industry.

*There were no questions from the committee.

Bob Lamp, Automobile Dealers Association of North Dakota spoke in support of the bill. See written testimony.

Chairman Weisz: When we did all this drastic changes in 2001, was the suspension added then or was that already in current law?

Lamp: My memory recalls the suspension language was added in 2001.

Chairman Weisz: Are you aware of anyone having bumped into that since the law were passed?

Lamp: There definitely have been suspensions, it hasn't been wholesale, but there have been suspensions.

Chairman Weisz: My next question, is in section four about all of the rules and how easy it can be to be in violation with out even intending to, so why did you leave a suspension language yet, in that section. I understand why you left it in the franchising area, but rather than go to the five hundred dollar fine in a place of business like you did in the other section you left it.

Lamp: The reason we left it in there is because on page one, line nineteen, says that the grounds for a suspension or cancellation is having ceased to have an established place of business.

Rep. Dosch: How many suspensions have occurred in the past year?

Lamp: I would defer that to the department. In addition to that, what we are concerned about is that it is three strikes over a five year period of time. Some of these violations, the misuse of the dealer plate for example, should that really be suspend able offense? You guys dealt with SB 2111, where they are changing the use of dealer plates, and we explained to you at that time how there is many people who have access to those plates and not everyone knows how to use them properly, so that is an example.

Rep. Schmidt: I see that the department can change the words "shall" to "may". How does that work? Does the department then have a hearing or how does that work?

Lamp: I think what we are talking about here is making it descretionary on the part of the department. In talking to the department over the last couple of years, the suspensions we have been told that they don't have any choice. If there is a third violation in any one of these sections, they don't have any descretion. They have to suspend the license. The main language simply says that they still have the power to do that, but they don't have to.

Rep. Schmidt: Does this dealer get a hearing then?

Lamp: I don't want to speak for the department here, but it is my understanding that if there is a suspend able offense committed, they notify the dealer that they are suspending the license for x period of time and the dealer has the right to ask for a hearing and then that obviously would evolve to an agreement and of course the dealer always has the option of going to court.

*There was no further support for the bill.

Chairman Weisz allowed opposition to be given at this time.

Keith Magnusson, ND DOT, spoke in opposition to the bill. See written testimony.

Chairman Weisz: You mentioned when you do the inspections, it is my experience with inspections that no matter what the agency's ability, if they show up, they are going to find a violation. Are they just saying, "Okay you are not doing things properly and you need to take care of that" or are they automatically written up for a violation so that is already counting now on their three in five years.

Magnusson: Most dealers don't have any problem because we've been doing this for several years now and we actually have one of our inspectors is in the room and they go out and look at things. New car dealers don't have any problems with signs, place of business and that type of thing because they are franchise agreements require a lot more than used car dealers. The 2001 one thing, we are not sure if they are dealers or not, but if they have been written up one time, they should never have a problem again because they are told what needs to be done and the standards are in the law. This inspection is done because the dealer community wanted it. They may get caught one time on an inspection, but they should never get caught again.

Chairman Weisz: Next question I have, I know you guys never like to have the discretionary authority. What is your position on the discretionary authority?

Magnusson: From my prospective, when we are dealing with things, the less discretion we have, we are not the courts. We need to have some certainty in the legislature. Everything that is in the current law was agreed to by the whole community at the time that the bill was brought in and we have always looked things we need to tweak. I don't know if this is one of them or not. There needs to be some certainty in the law and that is why in 2001 law is much more specific as to what dealers need than we have had before. It was primarily for the used car dealers.

Rep. Delmore: Looking at this, I am curious about the number of violations. If SB 2111 would pass, how many of those would really go away because they do deal with more minor things like the dealer plates and those types of things because it seems to me that you have the authority still for major violations even with this legislation.

Magnusson: We've always had the authority with major violations, the law that we have now is to provide some certainty so that if you keep violating this, this is what is going to happen. Now the dealer plate situation that is one where everybody looked at it and said "we need to do something". With SB 2111, that is really going to take out the dealer plate violations that happen because you use a DD instead of a DX, those types of things. There will only be one type of plate and the only violation really is going to be if you don't have a plate on that vehicle at all. So it is not picking up the wrong plate anymore.

Rep. Delmore: How many of these third violations will probably go away because of that SB 2111, is that the major violation we have in that industry?

Magnusson: I will leave my experts here, but we think that a number of those will go away because we can see the dealer and they put the wrong plates on when I test drove a vehicle in another town. The next time I went to that dealer, I wanted to make sure they had the right

plate on, which they did, so those inadvertent ones I think will go away. Maybe our current law, before 2111, is a little bit harsh as to that.

Rep. Dosch: I had a question on the number.

Rep. Thorpe: Are any of the violations that you are speaking of having anything to do with section eight, consignment of vehicles, and the section to do with lots and location?

Magnusson: Those are both going from mandatory to permissive. For the one hundred and two hundred dollars for the second offense and a five hundred dollar fee instead of the mandatory suspension. They take care of that in this bill.

Rep. Vigesaa: Do you recall a third violation where it was minor, but because of the law, you had to suspend the dealer?

Magnusson: Not to my knowledge. We don't get to the third violation that often and really if someone is disregarding the law, they probably deserve a suspension after that third violation. My Motor Vehicle Division folks can tell that better but I am not aware of any that we wouldn't have wanted to suspend anyway.

Rep. Vigesaa: If this law passed as it was and you got to a third violation and the department felt that the suspension should be handed out, even though the law says it "may", you still could if you had the documentation and some history on that dealer that would warrant a suspension.

Magnusson: The first page of the bill has language that stays that gives us the authority to suspend and we do that in grievous situations. We just think that this, we will call the scheme of the process, that was set out in 2001; it gives a real certainty to the process. If there is a real grievous violation we won't go through the progressive discipline, and we have that.

Lorrie Pavlicek, ND DOT, spoke to answer the committee's questions.

Pavlicek: I could start with numbers if you would like me to do that.

Pavlicek: I will use calendar year 2006. I have been in Motor Vehicle Division Director for about a year and a half so this is representative of the decisions that I have made in that position. In calendar year 2006 we had thirty-eight violations. We have a total of about six to seven hundred dealers. Four thousand five hundred dollars for fees were accessed relating to those violations. One of those thirty-eight had a third violation. This may go to your question, Rep. Vigesaa, there was actually one last year that did have a third violation. The particular violation did relate to a plate but there were a number of other factors and a number of other issues related to this particular dealer that came into play as to whether, first of all, not so much whether the suspension would occur, but the length of the suspension. That is where we do have some discretion. So there were mitigating factors involved in that decision.

Rep. Weisz: Can I ask you how long the suspension was in this case?

Pavlicek: Six days. Fourteen suspensions of those thirty-eight, two of them were new car dealers and one of those is pending appeal, and twelve of those were used car dealers.

Rep. Weisz: I thought you said there were thirty-eight violations?

Pavlicek: mmm hmmm.

Rep. Weisz: Now you just said that there were twelve suspensions?

Pavlicek: There were fourteen suspensions of the thirty-eight, there were fourteen suspensions overall issued, of varying degrees in length. One of those had that third violation.

Rep. Delmore: What's the discretion you have on number of days that the suspension is set?

Pavlicek: The discretion comes in as I said with the days. We have suspensions ranging from one day to six months. Six month violations typically have some type of criminal activity that has been in place during the course of the time in addition to various other violations. I believe in the year and a half that I have been the director, I have suspended two dealers for six months and they have been severe cases. That is rare. Hopefully by that action, we won't have

any more of them. Our goal is not to suspend, it is to assist and help the dealers in operating the businesses in an appropriate fashion. The one days are maybe could be multiple violations, maybe they didn't have a sign, maybe they had a plate violation, and some other type of violation and when you combine them all together, necessitated some action because they were perceived to have been done without much concern for the customer and the consumer in mind. Six days is typically something where there have been a number of offenses over a five year period. We do look at that five year period, I'll use an example of the six day that we just talked about. There were plate violations for certain, but there were also agreements that had been made on prior violations where suspension time was decreased and in the process of that five years, they broke two of those agreements through that third violation and there were some other factors involved in that process which then determined that we should go with that six day violation. I hope that answers your question, without telling you who and specifics. I am trying to give you enough information to answer that.

Rep. Delmore: With these violations, how many of them were considered minor?

Pavlicek: I don't have those numbers broken down. My guess is probably each of them maybe had a plate violation somewhere in that process or some other minor violation but typically it a combination of a variety of other factors, more severe violations, and lateness in getting fees sent into the department, forgery. We actually have that happen a fare number of times. We've only had that one that actually hit the third violation that prompted the suspension we were just talking about, but again there were a lot of other factors involved in determining the length of that violation.

Rep. Thorpe: Give me an idea of how many of the more grievous violations, which in my mind being an insurance that lapsed or suspended or out of trust, with their financing agency.

Things like DUI and what not. Can you tell me how many of the thirty-eight violations contain some of those previous ones?

Pavlicek: I don't have it broken down that way. If that is something that you would like me to get to you...

Rep. Thorpe: That isn't necessary.

Pavlicek: I would say a majority of those thirty-eight have relative and grievous violations. Many, okay, my husband and I were out a couple of weekends ago test driving cars. And it was for personal and we went to one dealership, got in the vehicle and started driving out of the driveway and I said to the salesman, I don't see a DD plate in this car. And you would think that any customer that would know what a DD plate is, it would be a pretty good clue to the salesperson. He said, "Yeah, I should probably have one in here." We drove another block to a block and a half and I said, "If you would like to go back and get one, we could." He still didn't do it, okay. What I did in that case, I'm not law enforcement, but I am to uphold the law. I called the dealer one of the next business days and visited with him about that. We actually do that fairly often. When there are legal violations through law enforcement where stops have been made and that sort of thing, I think it ups the anti a little bit in what we do, but we do fairly often try to work with the dealer, educate them and give them an opportunity to correct before we enforce violations and suspensions.

Rep. Thorpe: I realize that ND is fortunate that we've had some very good, prominent well established dealers that are doing an excellent job. I was just trying to get a feel for where these violations are and the thing mentioned about the bill changing the license, do you think that will facilitate a better understanding?

Pavlicek: I think it will make a significant difference in the plates, relating to violations or concerns or issues, because what we will be doing with SB 2111, if passed, is right now there

are three different plates that dealers have to use. There is one that they can use in normal operations, there is one that they have to put on the car that has the DD in front of it when they are demonstrating and when they are transporting vehicles, there is a DX plate that they have to put on there. We are taking away, through that bill, the DD and the DX, so all that they need to do is use either their N plates or the U plates. Any operation in the process of buying, selling a vehicle and operating that dealership that is the plate that they put on so they don't have to worry if it's the right plate. There is one plate, all I got to do is remember to never go out of that parking lot without a plate on. We have had some of that happen too.

Rep. Thorpe: I guess I'm kind of looking for your opinion on the changes asked for in SB 2148 vs. what is in place in the law right now. Is the language in SB 2148 going to make the system work easier?

Pavlicek: As you heard earlier, as a department, we are opposed to the bill. We have a very good representative who is a dealer in the room and some of the ones that we have had by far are no problem, but you are looking at some of the best, as far as whether the amendments to this bill make our job better or worse or easier, or harder, it does provide for a lot more discretion and I am not opposed to making those decisions, but what I do like about the prior bill is it really does lay out there for the dealer, here is, you know up front what the consequences are if in fact you continue to violate. So if it is clear to them as a dealer and they know where they stand and what the consequences are and that part of it I do think is better written.

Rep. Gruchalla: The Auto Dealers Association is the same group that helped develop the first law in 2001 and Keith said that he was surprised by this one. I am wondering why they didn't approach you with this change.

Pavlicek: We do work closely with the NDADA. We have attended some of their board meetings, we've offered to attend any time that they would invite us to participate in anything. We also meet about quarterly with them, regarding this particular issue, we did discuss it at a meeting that we had on December thirds and at that time, we did not know that they were going to be approaching this bill from this way. What happened between December and towards the beginning of the session when Bob contacted me and there was not communication I guess, that question might have to be answered by them.

Rep. Price: Of the fourteen suspensions in 2006, did I understand you right in saying this wasn't just one thing that they violated at that point, there were more than one mitigating factors in the suspension?

Pavlicek: That's correct.

Rep. Weisz: You said suspensions vary from one day to six months, is that correct?

Pavlicek: That's correct.

Rep. Weisz: From you prospective then, if you stop and look at those that have a one or two or three day suspension, from practical standpoint, obviously you didn't think the offense was that great because you only gave them the one day, doesn't it make sense to allow five hundred dollar fine for the operation doesn't cease? You obviously didn't think the offense was that severe that they should have a six month or one month or even one week. You have obviously taken that discretion with suspensions and looked at the factors and made what we assume was a rational call. Do you feel that is out the window now if we did go to the five hundred dollar fine?

Pavlicek: No, I would still use discretion in the length, okay. I just think that it's much clearer, it's easier to educate, and it's easier for people to understand. They are clear with the consequences are when things are laid out and I believe they are a little bit better in the first

writing of the bill. Relating to the discretion that is used in the length of the suspension. There are so many factors and those one situations at least that I have seen with these thirty-eight is exactly the same as you did. I think you have to look at each situation individually. We have some dealers who fight you all the way and they tell you literally in person and on the phone that they will violate again. So my use of discretion in some of those cases, and again, depending upon the severity of what they have been doing over the last five years and the frequency of it, may well necessitate a lengthier suspension and someone says, you know what we made a mistake, we have corrected it and they are truly making a sincere effort and we are not likely going to see violations in the future, and I think that is part of my job then is to use that discretion to help determine length. Those are some of the ones that you see maybe a day violation. They may have been notified of a six day violation or a four day violation, three I should say, we don't really use four too much but a three day violation by the time we are done looking at everything and assessing everything, and maybe it's down from a six to a three or a three to a one.

Rep. Vigesaa: I just wanted to put forth a scenario so that the committee can understand how this could be harsh on the dealer. It's a five year span for three violations to take place. So you could have in the first six months of a five year period, you could have a couple of minor violations, plate or something. Then four and a half years could go by and another very very minor violation could happen that was outside of the dealer's control let's say. Under the current laws, you would have to suspend that dealer?

Pavlicek: Under the law, the way it reads now, yes. However, if truly what you are putting out there, we might put together an agreement that suspends that suspension, based on any further violations over a period of time.

Rep. Vigesaa: I thought you said earlier in your testimony that you did not want to use discretion in the implementation of the third violation suspension. Are you telling me that you are using discretion on whether or not a third violation that's results in a suspension?

Pavlicek: There have been situation where that has been the case and sometimes that's not necessarily something that..... a decision that's made in isolation, usually it's made at the department.

Rep. Vigesaa: Then you are not necessarily following the law as it is currently stated?

Pavlicek: I would say in rare cases that are probably true.

Rep. Thorpe: I think it was Keith who made the mention of the five hundred dollar fee that's I believe felt like would be kind of a slap on the hand type of thing. Would you feel more comfortable with the language in the new bill here if that third violation was higher?

Pavlicek: I think we would be open to that. I would like to go back to the previous question that you asked. What I would like to do is to double check the one day because I may misstated there. I think that might have been on some of the longer violations where those decisions have been made. I would like to check that and get back to you.

There were no further questions. There was no action taken at this time. The hearing was closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2148

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02-23-2007

Recorder Job Number: 3735

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz allowed committee discussion on SB 2148. SB 2148 relates to penalties for motor vehicle dealer licenses.

Rep. Owens: On 2148 I would like to move an amendment and I'll give you the pages and lines here but it would replace the underscored portion where it says "it's, or a five hundred dollar fee for" and it would do that on pages two, line thirteen and fourteen, page three line two and three, page six line seven page seven line one, and line eighteen on page eight, line sixteen and seventeen with the statement "The Department shall assess a fee up to two thousand dollars but not less than two hundred and fifty dollars for" and then it will continue "A third or subsequent violation within five years" in each of those cases.

Rep. Weisz: So you are saying for the third or subsequent, the department would have the discretion initiating a two hundred and fifty to two thousand dollar fine, instead of the mandatory five hundred.

Rep. Owens: Based on the testimony we heard, they don't want discretion but they are using it anyway.

Rep. Weisz: Does everyone understand the amendments that were proposed. What we are giving them now is discretion. Not lower than two fifty but no more than two thousand.

Rep. Thorpe seconded.

Rep. Price: Why did you drop the bottom to two fifty?

Rep. Owens: I didn't actually drop it, what I was doing is I was focused more on giving them, if you recall, when she was up there she said sometimes it is a five days and sometimes it's a three day and what really caught my attention was when she said and there is a four day suspension, but, oh, we don't use that that much. That told me right there that they have already gone through and created the list based on certain situations of why and how many days they will suspend and what not. So they are already using the discretion, so I wanted to give them discretion, but the five hundred was arbitrary in my opinion just bringing it down from suspension. I put in there 'could not be less than two hundred and fifty' because I didn't believe that it should be less than the second offense. So it wasn't that I lowered it, cuz the five hundred didn't exist to begin with.

Rep. Price: We are lowering it because the suspension is definitely going to be more costly than the five hundred, or I would hope so.

Rep. Owens: Yes, except in the case where they suspended him for the day but then they suspended the suspension.

Rep. Weisz: I did visit with the DOT on this and they hate discretion and yet they are using it. I understand their point for hating discretion. There is no question from their own testimony they have already been doing this. It is hard for them to make a case that they hate it when at the same time, they are doing this.

Rep. Vigesaa: I did visit with the dealers yesterday and they did agree that the five hundred dollars for the third violation probably was a little on the low side. They would be willing to accept a higher fee per violation.

Rep. Owens: One piece of information that came to me this morning, with out using names, was from a large dealer taking in all of the tax money from selling these cars and deliberately keeping it for a couple of months to make money off of the interest and then send it in. That is a violation. That is a violation that benefits them. That is why I think five hundred or one thousand might be a little low. There is still in the other sections, they can still suspend them if it's pretty bad.

Rep. Weisz: Is there any discussion on changing the amendment to say five hundred instead of two hundred and fifty?

Rep. Thorpe: The first second and third suspension language is still intact, right?

Rep. Weisz: The first and second violation haven't changed and the third and subsequent would now say 'five hundred to two thousand'. There are two sections that still have a suspension, the franchise.

Rep. Price: What sections are you putting them into?

Rep. Owens: Every place the five hundred is now. Only I'm leaving in the current language where they've stricken 'suspended license' that is staying and they swap that out for the original authors changed that out for five hundred dollar fee which only changes that portion and that is on pages two, three, six, seven, and eight.

Rep. Weisz: So your section four and section five still have a suspension. Then of course in section one where it has those fixed items. There they will suspend forgery etc.

Rep. Owens: Auto auction operator's license as well, the suspension is still in section ten.

Voice vote to adopt the amendment: Unanimous. Motion carried. Amendments were adopted.

Rep. Delmore moved a DO PASS AS AMENDED. Rep. Owens seconded.

Rep. Dosch: I'm going to oppose the bill. I believe the amendment made it a better bill but still overall, in my former life; I was in banking and although I was in the commercial end of it and didn't have to deal with used car dealers. The new ones are not the problem, but there are a lot of issues out there with people selling used cars in which a lot of consumers were injured and banks were injured. The guidelines that were put in place in 2001 or whenever, strengthened and cleaned up an industry that really needed some heavy regulation. We are taking a step backwards here and the DOT doesn't like this either. They look at it as a step backwards as well. We have had one shut down in Bismarck here for numerous things and they tell you this industry needs regulation. That's why I think we are taking a step backwards. I am not going to support it.

Rep. Vigesaa: In section one on line twelve, the department still has the ability to suspend even if it is the areas where right now we are putting language in that is a mandatory suspension is relieved. Because on line twelve it says they can suspend up in line eight for any dealer that willfully fails to comply with the business of this chapter or with any rule adopted by the director. So I believe that even when we make these changes and remove the mandatory suspension in those sections that if the dealer is that far out of line on what they are doing that in section one, they still have the ability to suspend if they so feel.

Rep. Price: Do I understand that if we do this as amended and let's say maybe they have two plate violations and something else, so they really violated two or three sections with in here. They can hit them with a fee for each violation, can't they?

Rep. Weisz: I guess I would interpret the language that way. Now if you fine two thousand dollars every subsequent one they find.

Rep. Price: That would make me feel more comfortable about doing the changes because a six thousand dollar penalty might be more of a deterrent than a one day suspension.

Rep. Vigesaa: I was just going to mention to Rep. Dosch has some valid points about that industry needing to be cleaned up because the new car dealers are really the ones that pushed this legislation to clean up some of that used industry and Rep. Gruchalla can speak to that and maybe he will, but it has come a long ways. There are so many fewer used car licenses than there were.

Rep. Gruchalla: Rep. Vigesaa is correct. This program has been in effect since 2003. I think that last year there were two hundred less used car dealers than there was when it started. I did some investigations before I retired. The ones with all the violations were not ticky tacky people. One place we went in there was like fifty-three violations that we identified. It is a lot better now.

*The question was called.

Roll Call Vote: 11 yes. 1 no. 1 absent.

Carrier: Rep. Owens.

Rep. Ruby was absent for the vote.

House Amendments to SB 2148 (70588.0101) - Transportation Committee 02/23/2007

Page 2, line 12, remove the overstrike over "~~The department~~"

Page 2, line 13, remove the overstrike over "~~shall~~" and replace ", or a" with "assess a fee of at least"

Page 2, line 14, replace "dollar fee" with "dollars but not more than two thousand dollars"

House Amendments to SB 2148 (70588.0101) - Transportation Committee 02/23/2007

Page 7, line 1, replace "five hundred dollar fee" with "fee of at least five hundred dollars but not more than two thousand dollars"

Page 7, line 18, replace "five hundred dollar fee" with "fee of at least five hundred dollars but not more than two thousand dollars"

House Amendments to SB 2148 (70588.0101) - Transportation Committee 02/23/2007

Page 8, line 16, replace "five hundred dollar fee" with "fee of at least five hundred dollars but not more than two thousand dollars"

Renumber accordingly

Date: 2-23-07
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2148

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Delmore Seconded by Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Delmore	✓	
Vice Chairman Ruby	Absent		Rep. Gruchalla	✓	
Rep. Dosch		✓	Rep. Myxter	✓	
Rep. Kelsch	✓		Rep. Schmidt	✓	
Rep. Owens	✓		Rep. Thorpe	✓	
Rep. Price	✓				
Rep. Sukut	✓				
Rep. Vigasaa	✓				

Total Yes 11 No 1

Absent 1

Floor Assignment Owens

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

REPORT OF STANDING COMMITTEE

SB 2148: Transportation Committee (Rep. Welsz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2148 was placed on the Sixth order on the calendar.

Page 2, line 12, remove the overstrike over "~~The department~~"

Page 2, line 13, remove the overstrike over "~~shall~~" and replace ", or a" with "assess a fee of at least"

Page 2, line 14, replace "dollar fee" with "dollars but not more than two thousand dollars"

Page 7, line 1, replace "five hundred dollar fee" with "fee of at least five hundred dollars but not more than two thousand dollars"

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Page 8, line 16, replace "five hundred dollar fee" with "fee of at least five hundred dollars but not more than two thousand dollars"

Renumber accordingly

House Amendments to SB 2148 (70588.0201) - Transportation Committee 03/01/2007

In addition to the amendments adopted by the House as printed on page 792 of the House Journal, Senate Bill No. 2148 is further amended as follows:

Page 3, line 2, after "a" insert "fee of at least"

Page 3, line 3, replace "dollar fee" with "dollars but not more than two thousand dollars"

House Amendments to SB 2148 (70588.0201) - Transportation Committee 03/01/2007

Page 6, line 9, after "a" insert "fee of at least" and replace "dollar fee" with "dollars but not more than two thousand dollars"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2148: Transportation Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2148 was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the House as printed on page 792 of the House Journal, Senate Bill No. 2148 is further amended as follows:

Page 3, line 2, after "a" insert "fee of at least"

Page 3, line 3, replace "dollar fee" with "dollars but not more than two thousand dollars"

Page 6, line 9, after "a" insert "fee of at least" and replace "dollar fee" with "dollars but not more than two thousand dollars"

Renumber accordingly

2007 TESTIMONY

SB 2148

①

**TESTIMONY
SENATE BILL 2148
SENATE TRANSPORTATION COMMITTEE**

- Mr. Chairman and members of the committee. My name is Bob Lamp and I am appearing in support of Senate Bill 2148 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.
- I would like to give you some historical background on the current law and then explain why we ask for your support of this bill.
- In 1999, the franchised new car dealers, the Independent used car dealers and the Motor Vehicle Division of the NDDOT joined together in an effort to rewrite our North Dakota dealer licensing. This law had not been revised since the early 1960s and we all agreed it was time to bring this portion of law up to date.
- In 2001, Senate Bill 2273 was introduced which significantly changed the dealer licensing law. The issues addressed in this legislation were designed to assure the legitimacy of licensed dealers, established measurable criteria for dealer licensure and provided better oversight and enforcement of our licensing law. In order to financially support this initiative, dealers accepted increased fees for licensing, increased inspection fees and increased costs to purchase dealer plates.
- Senate Bill 2148 comes to you because dealers feel that some of the penalties in current law are too extreme and need to be modified. Specifically, our reference is to the language in sections 2, 3, 6, 7, 8 and 9 which call for a mandatory suspension of a dealer's license for a third violation.
- Suspension of a dealer license is a very serious matter. It harms the public perception of the dealership, impacts the financial standing of the dealership, affects employees who find themselves laid off during the suspension and, in the case of franchised dealers, is cause for termination of a dealer's franchise. It is also important to mention the potential financial impact to our state's economy. (See attachment)
- The amendments in Senate Bill 2148 remove the mandatory suspension language in the six sections mentioned previously and replace that language with imposition of additional fees for third and subsequent violations. They also give the Motor Vehicle Division of the NDDOT more latitude in determining the whether or not penalties need to be imposed.
- It is important to remember the department will still have suspension authority. In section 39-22-04, there are specific references to the grounds for denial, suspension, cancellation or revocation of a dealer's license. We do not oppose these references as they meet the test of more serious offenses that are reasonable grounds for suspension.
- Mr. Chairman, this concludes my testimony. Thank you for the opportunity to appear before your committee.

Robert L. Lamp, CAE
ADAND Executive Vice President

2

ECONOMIC IMPACT OF NORTH DAKOTA'S FRANCHISED AUTOMOBILE DEALERS

January 2007

- There are **100** franchised automobile dealerships in North Dakota.
- Dealers average **\$15.9 million** in annual retail sales per dealership.
- Dealers generate over **\$1.6 billion** in annual retail sales statewide.
- North Dakota's automobile dealerships generate over **\$67 million** in motor vehicle excise tax annually.
- Franchised automobile dealerships comprise **2.9%** of the total retail establishments in North Dakota.
- Dealerships generate **22.4%** of the total retail sales in the state.
- Nearly **3,300** people statewide are employed by franchised automobile dealerships.
- The average dealership employee earns over **\$35,000** per year.
- The average annual payroll per dealership is nearly **\$1.2 million**.
- Dealership payroll statewide is over **\$120 million** annually.
- Dealer payroll comprises **15.1%** of ND's total retail payroll.
- Dealers statewide pay over **\$18 million** in payroll taxes and employee benefits annually.
- ND dealers collectively spend over **\$18 million** per year in advertising.
- In addition to time and talent, ND's franchised automobile dealers contribute over **\$1 million** annually to charitable and civic concerns.

②

SENATE TRANSPORTATION COMMITTEE
January 19, 2007

North Dakota Department of Transportation
Keith C. Magnusson , Deputy Director For Driver and Vehicle Services

SB 2148

I am here today because the North Dakota Department of Transportation is concerned about the effect of SB 2148.

To understand our concern, an explanation of the law's history is necessary. Prior to the 2001 session, the department's Motor Vehicle Division, which regulates dealers, worked closely with a group that included both new and used vehicle dealers, among others, to look at the antiquated dealer law. The purpose was to modernize the law and, where regulation is necessary, to have enforceable standards. This process was successful and culminated in a bill for which the automobile dealers sought introduction in the 2001 session. That was the basis for the current law that is before us today for amendment.

One of the things that was done at that time was to replace minor criminal offenses, which prosecutors did not necessarily want to handle, with a schedule of civil fees and suspension of a dealer's license. For most things, the department would assess a \$100 fee for a first violation, a \$200 fee for a second violation within two years of the first, and a mandatory suspension for the third or subsequent violation within five years of the first violation. The department does have the authority to suspend the dealer's license, without this progressive discipline, for more serious violations.

Since 2001, this regulatory process has seemed to work well. Most dealers know what they have done, made corrections and have accepted their sanctions. There is always a right to an administrative hearing and appeal to the district court, if the dealers are not satisfied with what the department proposes. However, a few dealers have not been satisfied with the current law and its civil fee and suspension process, and that is why we have SB 2148 before us today.

The dealers all know the rules. When the law was passed, and even prior to that, there were educational sessions and the department has been very available for working one-on-one with dealers or groups of dealers, as well as our current communication through newsletters and other means. Dealers know the standards, and unless they are blatantly disregarding the law, should have no trouble complying and we probably should never get to a third offense. For the overwhelming majority of dealers, that is the situation.

Under the current law, we have even handled some serious criminal actions, such as forgery and false affidavits, administratively, rather than turn them over to the state's attorney for prosecution. These have been dealt with through suspensions; our purpose is to correct any

wrong behavior, rather than close someone down or put someone in jail. The law is really designed to be a deterrent.

If the committee is interested, we can provide many specific examples of conduct that is in violation of the law. This really only involves a few dealers and many of them have multiple violations. I wish to emphasize that we do not go looking for these; most of them literally "fall into our lap." We often find out about these violations through a customer complaint, a vigilant licensing clerk, or a customer getting stopped by a law enforcement officer for not having a plate on a vehicle. We then have an obligation to follow up.

Now, I have some specific comments on SB 2148. In Section 1, line 17, a requirement for a "willful" violation is inserted, which really takes us back to the proof required in a criminal action and is not appropriate for a civil process. If we are to have meaningful regulation, I am not sure any of us wants to go back to a criminal process for any of these violations.

The remainder of the bill retains the fees for first or second violations, but takes out the mandatory suspension for a third violation within five years and substitutes a \$500 fee. I submit to you that the \$500 fee provides no real deterrent. It looks more like someone is trying to buy their way out of trouble and that making the sale is more important than following the rules. If the proponents are really serious about this, the fee should be much higher, say \$5,000. Then we might have some deterrent. But, we still will have those cases where suspension should be available. It is also interesting to note that the suspension has been retained for an auto auction operator, although it has been changed from mandatory to permissive.

In summary, we ask that our current regulatory process and statutory schedule of civil fees and suspensions be retained. If the state desires regulation of dealers at all, we need to retain real deterrents or we might as well have self regulation by the industry.

NDLA, S TRN

From: Pavlicek, Lorrie R.
Sent: Saturday, January 20, 2007 12:52 PM
To: NDLA, S TRN; Lee, Gary A.
Cc: Magnusson, Keith C.
Subject: SB2148--Requested Information

Below is the information requested from Senator Lee at Friday's Senate Transportation Committee hearing regarding SB2148, which deals with amendments to the dealer licensing laws:

In calendar year 2006:

- in total, 38 dealer violations were handled by the Motor Vehicle Division
- \$4,500 in fees were assessed and collected as a result of those violations
- 1 (of the the 38) dealer had a 3rd violation
- 14 suspensions were issued:
 - 2 were New car dealers (1 of these is pending appeal)
 - 12 were Used car dealers

If I can be of further assistance, please feel free to contact me.

Lorrie R. Pavlicek, SPHR
Motor Vehicle Division Director
Dept. of Transportation
781-328-2725
lpavlice@nd.gov

**TESTIMONY
SENATE BILL 2148
HOUSE TRANSPORTATION COMMITTEE
FEBRUARY 22, 2007**

- Mr. Chairman and members of the committee. My name is Bob Lamp and I am appearing in support of Senate Bill 2148 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.
- I would like to give you some historical background on the current law and then explain why we ask for your support of this bill.
- In 1999, the franchised new car dealers, the independent used car dealers and the Motor Vehicle Division of the NDDOT joined together in an effort to rewrite our North Dakota dealer licensing. This law had not been revised since the early 1960s and we all agreed it was time to bring this portion of law up to date.
- In 2001, Senate Bill 2273 was introduced which significantly changed the dealer licensing law. The issues addressed in this legislation were designed to assure the legitimacy of licensed dealers, established measurable criteria for dealer licensure and provided better oversight and enforcement of our licensing law. In order to financially support this initiative, dealers accepted increased fees for licensing, increased inspection fees and increased costs to purchase dealer plates.
- Senate Bill 2148 comes to you because dealers feel that some of the penalties in current law are too extreme and need to be modified. Specifically, our reference is to the language in sections 2, 3, 6, 7, 8 and 9 which call for a **mandatory** suspension of a dealer's license for a third violation.
- Suspension of a dealer license is a very serious matter. It harms the public perception of the dealership, impacts the financial standing of the dealership, affects employees who find themselves laid off during the suspension and, in the case of franchised dealers, is cause for termination of a dealer's franchise. It is also important to mention the potential financial impact to our state's economy. (See attachment)
- The amendments in Senate Bill 2148 remove the mandatory suspension language in the six sections mentioned previously and replace that language with imposition of additional fees for third and subsequent violations. They also give the Motor Vehicle Division of the NDDOT more latitude in determining the whether or not penalties need to be imposed.
- It is important to remember the department will still have suspension authority. In section 39-22-04, there are specific references to the grounds for denial, suspension, cancellation or revocation of a dealer's license. We do not oppose these references as they meet the test of more serious offenses that are reasonable grounds for suspension.
- Mr. Chairman, this concludes my testimony. Thank you for the opportunity to appear before your committee.

Robert L. Lamp, CAE
ADAND Executive Vice President

SUMMARY SENATE BILL 2148

- Section 1 deals with grounds for denial, suspension, cancellation, or revocation of the dealer's license. This section gives the director broad discretion for suspending a dealer license for more serious violations. The only meaningful change is on line 17 with the addition of "willfully violating". This language corresponds to existing language on line 12.
- Section 2 addresses secondary motor vehicle dealer lots and signage requirements for these lots. There are two changes to this section of the code:
 1. On page 2, line 10, the mandatory assessments for violations of this section become discretionary for the director and
 2. On page 2, lines 12-14, the mandatory suspension language on a third violation is changed to an imposition of a \$500 fee for third and subsequent violations.
- Section 3 outlines who must have a dealer license, the fee and inspection requirements for becoming a licensed motor vehicle dealer and the contents of the license application. The two changes made in this section are:
 1. On page 2, line 30, the mandatory assessments for violations of this section become discretionary for the director and
 2. On page 3, lines 1-3, the mandatory suspension language on a third violation is changed to an imposition of a \$500 fee for third and subsequent violations.
- Section 4 outlines the requirements for the dealer's established place of business. The changes to this section are found on page 4, line 8, where the mandatory assessments become discretionary and on page 4, line 11, where the suspension of the dealer license is discretionary rather than mandatory. The bill does not remove the suspension language from this section since this is already a suspension offense under Section 1.
- Section 5 deals with the requirement of holding a bona fide contract or franchise with a manufacturer before the dealer can sell new motor vehicles. The changes to this section are found on page 5, line 8, where the mandatory assessments become discretionary and on page 5, line 10, where the suspension of the dealer license is discretionary rather than mandatory. Again, this bill does not remove the suspension language from this section since this is a suspension offense under Section 1.
- Section 6 is the section on dealer plates. Previous amendments to this section were brought before this committee in Senate Bill 2111. Senate Bill 2148 further amends this section:

1. On page 6, line 5, removes the mandatory imposition of fees for violations of this section and makes them discretionary for the director and
 2. On page 6, lines 8-9, the mandatory suspension language on third violation is changed to an imposition of a \$500 fee for third and subsequent violations.
- Section 7 relates to the display and sale of vehicles by out of state dealers and offsite display and sale by instate dealers. The proposed changes to this section include:
 1. On page 6, line 28, removes the mandatory imposition of fees for violations of this section and makes them discretionary for the director and
 2. On page 6, line 31, and page 7, line 1, the mandatory suspension language on third violation is changed to an imposition of a \$500 fee for third and subsequent violations.
 - Section 8 relates to consignment vehicles. It places restrictions on dealer to dealer consignments and specifies the terms of the consignment contract. Again, this section calls for the following changes:
 1. On page 7, line 14, removes the mandatory imposition of fees for violations of this section and makes them discretionary for the director and
 2. On page 7, lines 17-18, the mandatory suspension language on the third violation is changed to an imposition of a \$500 fee for third and subsequent violations.
 - Section 9 addresses motor vehicle display lots. Often individuals will allow vehicle owners to display their own vehicles on private property for a fee. Under these circumstances, the display lot operator must have a permit and meet certain criteria. The two changes to this section;
 1. On page 8, line 13, removes the mandatory imposition of fees for violations of this section and makes them discretionary for the director and
 2. On page 8, lines 16-17, the mandatory suspension of the permit language on the third violation is changed to an imposition of a \$500 fee for third and subsequent violations.
 - Section 10 deals with the licensing of auto auctions. This section requires auctions to keep records of vehicles sold and make those records available to the director. The following changes are requested:
 1. On page 8, line 27, removes the mandatory imposition of fees for violations of this section and makes them discretionary for the director and
 2. On page 8, line 30, makes the mandatory suspension discretionary for the director.

HOUSE TRANSPORTATION COMMITTEE

February 22, 2007

North Dakota Department of Transportation
Keith C. Magnusson , Deputy Director For Driver and Vehicle Services

SB 2148

OPPOSED

I am here today because the North Dakota Department of Transportation is concerned about the effect of SB 2148.

To understand our concern, an explanation of the law's history is necessary. Prior to the 2001 session, the department's Motor Vehicle Division, which regulates dealers, worked closely with a group that included both new and used vehicle dealers, among others, to look at the antiquated dealer law. The purpose was to modernize the law and, where regulation is necessary, to have enforceable standards. This process was successful and culminated in a bill for which the automobile dealers sought introduction in the 2001 session. That was the basis for the current law that is before us today for amendment.

One of the things that was done at that time was to replace several minor criminal offenses, which prosecutors did not necessarily want to handle, with a schedule of civil fees and suspension of a dealer's license. For most things, the department would assess a \$100 fee for a first violation, a \$200 fee for a second violation within two years of the first, and a mandatory suspension for the third or subsequent violation within five years of the first violation. The department does have the authority to suspend the dealer's license, without this progressive discipline, for more serious violations.

Since 2001, this regulatory process has seemed to work well. Most dealers know what they have done, made corrections and have accepted their sanctions. There is always a right to an administrative hearing and appeal to the district court, if the dealers are not satisfied with what the department proposes. However, a few dealers have not been satisfied with the current law and its civil fee and suspension process, and that is why we have SB 2148 before us today.

The dealers all know the rules. When the law was passed, and even prior to that, there were educational sessions and the department has been very available for working one-on-one with dealers or groups of dealers, as well as our current communication through newsletters and other means. Dealers know the standards, and unless they are disregarding the law, should have no trouble complying, especially with passage of SB 2111 regarding dealer plates, and we probably should never get to a third offense. For the overwhelming majority of dealers, that is the situation.

Under the current law, we have even handled some serious criminal actions, such as forgery and false affidavits, administratively, rather than turn them over to the state's attorney for

prosecution. These have been dealt with through suspensions; our purpose is to correct any wrong behavior, rather than close someone down or put someone in jail. The law is really designed to be a deterrent.

If the committee is interested, we can provide many specific examples of conduct that is in violation of the law. This really only involves a few dealers and many of them have multiple violations. I wish to emphasize that we do not go looking for these; most of them literally "fall into our lap." We often find out about these violations through a customer complaint, a vigilant licensing clerk, or a customer getting stopped by a law enforcement officer for not having a plate on a vehicle. We then have an obligation to follow up.

The prime focus of the bill retains the fees for first or second violations, but takes out the mandatory suspension for a third violation within five years and substitutes a \$500 fee. I submit to you that the \$500 fee provides no real deterrent. It looks more like someone is trying to buy their way out of trouble and that making the sale is more important than following the rules. If the proponents are really serious about this, the fee should be much higher. Then we might have some deterrent. But, we still will have those cases where suspension should be available.

In summary, we ask that our current regulatory process and statutory schedule of civil fees and suspensions be retained. If the state desires regulation of dealers at all, we need to retain real deterrents or we might as well have self regulation by the industry.