

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRANSPORTATION COMMITTEE

Wednesday, June 2, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David P. O'Connell, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David P. O'Connell, Duane Mutch, Dave Nething, Tom Seymour; Representatives Craig Headland, Joyce Kingsbury, William E. Kretschmar, Dan J. Ruby, Dorvan Solberg, Elwood Thorpe, Robin Weisz, Ray H. Wikenheiser

Others present: See attached appendix

It was moved by Senator Nething, seconded by Senator Mutch, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

DEALER LICENSING STUDY

At the request of Chairman O'Connell, committee counsel presented the second draft of a bill draft [50041.0200] to create a licensing procedure for low-speed vehicle dealers. He said the bill draft contains changes that were recommended by the Department of Transportation. He said in the bill draft the license was changed from a yearly license expiring on December 31 to a license that expires on March 31 of each odd-numbered year. He said a provision to provide for additional dealer plates was included and the plates would be available for \$20 each per license period. He said the language allowing a low-speed vehicle dealer to be bonded through a rider on the bond of an automobile dealer was removed because these types of riders are not offered in the marketplace and if a rider were offered in the marketplace, it would be allowed as long as it complied with the statutory requirements for the bond. He said all fees collected under the licensing structure would be deposited in the state's highway fund.

In response to a question from Representative Kretschmar, committee counsel said a low-speed vehicle is defined under North Dakota Century Code (NDCC) Section 39-29.1-01 as a four-wheeled vehicle that is able to obtain a speed upon a paved surface of 20 miles per hour in one mile and not more than 25 miles per hour in one mile and may not exceed 1,500 pounds in unloaded weight.

In response to a question from Representative Weisz, committee counsel said there are 10 licensed dealers of low-speed vehicles.

In response to a question from Senator O'Connell, committee counsel said the bill draft would prevent an

out-of-state company from selling low-speed vehicles in this state unless it had a permanent office and place of business in this state.

In response to a question from Representative Thorpe, committee counsel said a motorcycle dealer, trailer dealer, automobile dealer, and low-speed vehicle dealer under the bill draft would have to have a separate bond for each type of license.

Representative Thorpe said multiple bonds are not friendly to businesses.

Chairman O'Connell called on Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, who provided testimony on the bill draft. He said a \$10,000 bond costs \$100 to \$125 for motor vehicle dealers. He said all low-speed vehicle dealers have some other dealership except for Global Electric Motorcars, a company that manufactures low-speed vehicles in this state and sells directly from the factory. He said the bonding requirement is for consumer protection.

In response to a question from Senator Seymour, Mr. Magnusson said the bonding requirement does not provide any revenue to the state. He said it is like private insurance.

Representative Weisz said there presently is not any problem with low-speed vehicle dealers and he questioned the need for the licensing of low-speed vehicle dealers. He said there is not a need to license low-speed vehicle dealers because most are already dealers of some other vehicle and low-speed vehicles will never be sold in great quantities in North Dakota because of the weather.

Representative Thorpe agreed with Representative Weisz and said the bill draft would be cumbersome for a person trying to start a business. He said he did not support the bill draft.

At the request of Chairman O'Connell, committee counsel presented the second draft of a bill draft [50042.0200] to provide for the more stringent licensing of motorcycle dealers. He said the bill draft contains changes that were recommended by the Department of Transportation. He said the bill draft removes previous provisions on in-transit and demonstration plates. He said the bill draft provides for the fees from the chapter to be deposited in the state highway fund for reasons of administrative convenience.

In response to a question from Senator Seymour, Mr. Magnusson said the provision of the bill draft that allows the department to make rules that limit the number of dealer plates was included to prevent the abuse by dealers of using dealer plates on private vehicles.

In response to a question from Representative Weisz, Mr. Magnusson said the bill draft came at the request of the Motorcycle Dealers Association. He said the signage provisions parallel the automobile dealer licensing law and were included in that law as a means of encouraging legitimate dealerships. He said some dealers abuse the license by using it to avoid fees and excise taxes on private vehicles.

In response to a question from Representative Ruby, Mr. Magnusson said the provisions for a heated and lighted place of business that is comfortable for customers and standard office equipment are taken from the automobile dealers law. He said these requirements make it easier to differentiate between legitimate and illegitimate dealers. He said these requirements are meant to exclude illegitimate dealers.

In response to a question from Representative Thorpe, Mr. Magnusson said the department becomes aware of a violation of dealership rules by complaints from the public.

Mr. Jack Toring, University Motors, Fargo, provided testimony in support of the bill draft. He said the building and signage requirements are important. He provided pictures of licensed motorcycle dealers that operate out of homes, unrelated businesses, and nondescript warehouses.

In response to a question from Representative Thorpe, Mr. Toring said manufacturers require new motorcycle dealers to have certain signs.

In response to a question from Representative Thorpe, Mr. Toring said the bill draft is aimed at individuals who obtain a motorcycle dealer's license to avoid paying taxes. He said these individuals do not purchase motorcycles to sell, but to ride. He said the supporters of the bill draft are not after anyone in a legitimate business.

In response to a question from Representative Thorpe, Mr. Toring said a legitimate dealer has normal business hours and a telephone.

Representative Ruby said he does not approve of the state dictating vague requirements like standard business equipment and a place of business that is comfortable for customers.

In response to a question from Representative Weisz, Mr. Toring said his business is affected by individuals who purchase Canadian merchandise and sell it in this state. He said his business is affected by individuals who are in the trucking business and haul damaged new motorcycles from Chicago and fix them to ride and to later sell. He said he objects to the free use of the motorcycle.

In response to a question from Representative Solberg, Mr. Toring said major motorcycle manufacturers require \$1 million in net worth for franchisees. He said representatives from the manufacturers threaten to remove the franchise if sales do not meet the manufacturers' expectations.

Representative Thorpe said it is not the legislature's place to regulate where people buy motorcycles for sale in this state. He said all dealers have the same opportunity to purchase Canadian or damaged motorcycles.

In response to a question from Senator Seymour, Mr. Toring said the major source of income for his business is the sale of motorcycles.

Ms. Annette Behm-Caldwell, Open Road Honda, Mandan, provided testimony in support of the bill draft. She said the goal of the bill draft is to close down those dealers that abuse the system, not small businesses. She said the cost of \$150 for a bond is much less than the excise tax on a new motorcycle. She said the requirement of four sales is very important. She said illegitimate dealers usually do not keep records and could not prove four sales even if they had made four sales. She said the liability insurance requirement would be an extra step that would prevent abusers from receiving a dealer's license. She said insurance is a large fixed expense. She said the requirement of having all paperwork and fees to the department within 15 days of the sale does not work in all circumstances. She said there are over 45 dealers and inspections of dealerships would prevent abuse.

Representative Thorpe said some motorcycle dealers buy motorcycles to sell for parts. He said the four-motorcycle sale minimum would be a burden on these dealers.

Mr. Magnusson provided testimony on the bill draft. He said the 15-day requirement is the same as it is for automobile dealers. He said the 15 days start from the date of sale and the days are calendar days. He said there is an incentive to dealers to hold the fees as long as possible for the float and for the security of having the money while payment is finalized.

Mr. Dwayne Wahl, D & S Auto & Trailer Sales, Mandan, provided written testimony in opposition to the bill draft. He said the administrative fee for a first-time offense is too high. He said if a motorcycle dealer has another business that meets the signage requirements for square feet, then the business should not have to purchase a different sign for the sale of motorcycles. He said the 10-inch size of the lettering is not relevant. He said signage is a marketing decision. He said if you do not have a good sign you will not have customers. He said \$50, instead of \$100, is high enough for the initial inspection. He said there should not be separate licenses for new and used motorcycle dealers. He said all dealers should be able to sell a new motorcycle if a new motorcycle is traded in or sold to the dealer. He

said all dealers pay the same taxes on a new motorcycle. He said 15 days is not enough time to send the money and application to the department. He said he preferred 25 days. He said it may take more than 15 days for a check to clear. He said manufacturers regulate the industry and will take care of unauthorized sales. He said Harley-Davidson takes a motorcycle away from any Canadian dealership that sells a motorcycle to a person in the United States. He said if dealers have problems with Canadian motorcycles, they should contact the factory representative. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Weisz, Mr. Wahl said it is not unreasonable to require that a dealer show four sales in the previous year, to have a commercial business site, and to obtain a bond and insurance.

Mr. Justin Bohn, Cycle Hutt, Bismarck, provided testimony in support of the bill draft. He said he understood Mr. Wahl's concern with a separate license for new and used motorcycles. He said franchised dealers and other dealers should work together to produce a bill draft that is agreeable to both parties.

Representative Ruby said there are some good things in the bill draft for making sure that dealers are legitimate, but other provisions should be removed.

At the request of Chairman O'Connell, committee counsel distributed a bill draft [50085.0100] to regulate snowmobile dealers and a bill draft [50086.0100] to regulate all-terrain vehicle dealers in the manner provided in the bill drafts for the regulation of low-speed vehicle dealers.

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

At the request of Chairman O'Connell, committee counsel presented a memorandum entitled *Uninsured and Underinsured Motorist Coverage in Other States*. He said 13 states and the District of Columbia have mandatory uninsured motorist laws. He said of the states with mandatory uninsured motorist laws, underinsured motorist coverage is optional in five states. He said most states' laws that relate to motor vehicle insurance include motorcycles. He said uninsured motorist coverage is not mandatory for motorcycles in the states of Minnesota and Wisconsin but is mandatory for automobiles. He said in this state uninsured and underinsured motorist coverage is mandatory for motorcycles.

At the request of Chairman O'Connell, committee counsel presented a bill draft [50083.0100] on excluding motorcycles from uninsured and underinsured motorist coverage of an automobile policy. He said the bill draft provided that uninsured and underinsured motorist coverages would not apply to an insured while operating or occupying a motorcycle and a motorcycle would not be included in the policy

for which the claim is made. He said the motorcycle in the policy would not have to be the motorcycle in the accident.

Mr. Rob Hovland provided testimony in support of the bill draft. He said the bill draft is much like a bill draft from last session which was introduced to address increases in motor vehicle insurance premiums. He suggested that the committee remove the language limiting a motorcycle to a vehicle having a seat or saddle.

In response to a question from Representative Kretschmar, committee counsel said a motorcycle is defined in NDCC Section 39-01-01 as a motor vehicle having a seat or saddle for the use of a rider and designed to travel on not more than three wheels in contact with the ground but excluding implements of husbandry.

Mr. Dan Ulmer, Blue Cross Blue Shield of North Dakota, Bismarck, provided testimony in opposition to the bill draft. He said the committee should receive testimony on the effect the bill draft would have on premiums. He said the bill draft may financially affect Blue Cross Blue Shield because Blue Cross Blue Shield has subrogation rights against uninsured and underinsured motorist coverage.

Representative Thorpe said he supported the bill draft.

NO-FAULT INSURANCE

In response to a question from Representative Ruby, committee counsel said one of the main concerns of the insurance industry with no-fault insurance regards payment for medical expenses and no statutory limitation on those expenses by duration or type.

Representative Ruby said he thought one of the main issues the insurance industry had with no-fault insurance was claims made by people loading and unloading vehicles.

Representative Weisz said insurance companies are the insurance experts and should be allowed some latitude in tailoring an insurance product that is appealing to the consumer. He said one solution would be to have a limited no-fault coverage that was mandated and allow additional benefits to be offered by insurance companies. He said no-fault was meant to reduce litigation and it does not seem to have reduced litigation.

Senator Nething said simplifying the no-fault law would open the law up to legal arguments. He said the way the law is written is fairly well-settled.

Representative Ruby said making minor adjustments to the no-fault law does not directly address the issue of whether no-fault insurance should or should not be mandated by the Legislative Assembly. He requested a bill draft to repeal mandatory no-fault coverage.

RAILWAY RIGHT OF WAY STUDY

At the request of Chairman O'Connell, committee counsel presented a memorandum entitled *State Jurisdiction over Railroads*. He said federal law specifically allows for state regulation of safety in areas in which there is no federal regulation or there is a particular local hazard. He said economic regulation is preempted under the Interstate Commerce Commission Termination Act of 1995. He said there is some case law that has found no preemption in regulating a business that loaded and unloaded railcars and over state tort and property law relating to negligence and nuisance claims. He said discriminatory taxation against railroads is prohibited and the law is fairly clear because of much litigation on the subject matter.

Senator O'Connell said the Canadian Pacific Railroad has told an elevator that if the elevator does not

pay for the switch going to the elevator, the railroad will bypass the elevator.

In response to a question from Representative Weisz, committee counsel said the regulation of switches and the cost of maintenance appears to be preempted by the Interstate Commerce Commission Termination Act.

No further business appearing, Chairman O'Connell adjourned the meeting at 12:20 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1