

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.

