

2009 SENATE TRANSPORTATION

SB 2092

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2092

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 15, 2009

Recorder Job Number: 7038

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Senator Gary Lee** called the Transportation Committee to order. The clerk took the roll call.

**Senator Nodland**, opened the hearing on SB 2092 a bill relating to an exemption from rear-end protection requirements for certain vehicles; and to declare an emergency.

**Senator G. Lee** introduced the bill and testified in support of SB 2092. Written testimony #1.

Also, copies of 39-21-55 (#2 & #3); Intro. Letter (#4); Denial Letter (#5); Sugar Beet Growers Letter (#6). The bill would repeal NDCC 39-21-55 that was passed during the 2007 session. It was always the intention, that if the exemption was denied, the 2007 law would be repealed.

He stated that, "Given the exemption was not granted, it is important that we move quickly to revert to the 2005 law so that we do not lose Federal dollars for the Motor Carriers Safety Program and also lose interoperability with our partners in the U.S., Canada, and others."

**Representative Kaldor** testified as a supporter of SB 2092.

**Senator O'Connell** testified in support for SB 2092. He stated that we have to do this because we are losing Federal funds every day.

**Colonel Mark Nelson**, Superintendent of the ND Highway Patrol, testified in support of SB 2092. His written testimony is enclosed (#7).

**Chairman Lee** asked if there were any question.

**Senator Potter** asked that if this is passed, can we recover any of those funds lost. What was the amount lost?

**Nelson** replied that they tried to get retroactive funding back to October 1<sup>st</sup> but that did not happen. The amount is roughly \$10,000/month.

**Representative Weisz** testified in support of SB 2092. He stated that we had to pass this to restore funding.

**Tom Balzer**, Motor Carriers Association testified in support of SB 2092.

**Dan Wogsland**, ND Grain Growers Association testified in support of SB 2092.

No opposing or neutral testimony.

**Senator Lee** closed the hearing on SB 2092.

**Senator Nething** moved a Do Pass. **Senator Potter** seconded. Passed: 6-0-0.

Senator Gary Lee will carry the bill.

Date: 1-15-09  
Roll Call Vote #: 2092

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.**

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senator Nething Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	✓	
Senator George Nodland	✓		Senator Richard Marcellais	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Lee

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

**REPORT OF STANDING COMMITTEE**

**SB 2092: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2092 was placed on the  
Eleventh order on the calendar.

2009 HOUSE TRANSPORTATION

SB 2092

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2092

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02/12/09

Recorder Job Number: 9309

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Senator Gary Lee, District 22, introduced SB 2092** which would repeal a section of code that was added during the 2007 session. It deals with the rear bumpers on farm trucks and was put into place while an exemption was sought. It was always the intention that if the exemption was denied, the 2007 law would be repealed. See attachment #1 for

**Representative Lee's** complete testimony.

**Representative Weiler:** What kind of money are we losing or potentially could be losing?

**Representative Lee:** It is significant. Colonel Mark Nelson will have those numbers for you.

**Representative Wesley Belter, District 22,** spoke in support of SB 2092. He feels this is a federal issue that congressional people need to take care of and from his prospective this bill needs to be passed.

**Representative Weisz,** District 14, spoke in support of HB 2092. When the 2007 law was passed, it was felt that an attempt had to be made to apply for the exemption, because it had the potential to be costly to ag producers to try to comply with the law. The exemption was not given, so the agreement was to rescind the law.

**Chairman Ruby:** Do you think that we need to ask the DOT to continue to attempt to seek an exemption if possible?

**Representative Weisz:** I would like to say that, but unless something would change on the federal level, it would not be worth the time and resources. There is a move to get Congress to open the grandfather clause again to allow state's some flexibility. That would apply to a lot more than just "the bumper law".

**Representative Vigesaa:** What does this mean for the agricultural people? Do they have to immediately comply with the bumper requirements?

**Representative Weisz:** In reality there won't be a change. The Colonel will expound on their program.

**Colonel Mark Nelson, Superintendent of the North Dakota Highway Patrol,** spoke in support of SB 2092. See attached testimony #2.

**Colonel Nelson** answered **Representative Weiler's** question by saying that it is \$110,000 per month that the Highway Patrol has not been eligible for.

**Representative Delmore:** How much have you lost so far?

**Colonel Nelson:** No, it is \$110,000 per month. So, from October to February it will be about \$550,000 that we have not been able to get.

**Representative Weiler:** Are we assured that we will begin receiving the money again, if we pass this law?

**Colonel Nelson:** It is my understanding that once the Governor signs the letter, and we come back into compliance with federal motor carrier standards, we are eligible for the funding once again.

**Representative Weiler:** Is there any chance we can recover the lost money?

**Colonel Nelson:** When you are out of compliance they do not do the federal grant, so that money is gone.

**Chairman Ruby:** Can you give us a better description of what these funds are used for?



**Colonel Nelson:**

- The MCSAP program pays for troopers to do driver vehicle inspections on interstate carriers to make sure that they comply with safety standards.
- We have three safety auditors that are in the new entrant program. They provide a program to new people that are getting into the business of interstate commerce or commercial carrying to let them know the standards, so they are in compliance.
- There are two teams on the border inspection program in Williston and Grand Forks.
- It will also help with data improvements. Being part of the FMCSA, we have access to databases on the federal level that really assist in doing the driver vehicle inspections. For instance if they stop a high risk carrier, we can get into the databases and look and see their history as a hauler. If we don't get back into the FMCSA program, we isolate North Dakota from the rest of the nation, Canada, and Mexico by not being a member of the program. They are all members.

**Dan Wogsland spoke on behalf of the North Dakota Grain Growers' Association** in support of SB 2092.

**Tom Balzer, North Dakota Motor Carriers' Association,** spoke in support of SB 2092.

This is the only program that we have funded federally that takes care of our industry. It is vital to our industry. If we don't repeal this law, we have the concern that North Dakota carriers will be singled out as they make their way across the United States because North Dakota will not be part of the program.

**Colonel Nelson** spoke in regard to Representative Vigesaa's question about enforcement.

**Colonel Nelson:** This did come when someone from North Dakota was stopped going into Minnesota. On the North Dakota side we don't issue citations for not having rear end protection. We issue warnings. Working with the representatives and the industry, we

insured them that our intent is not to go out and start writing citations. We want to have an educational effort for the motor carriers that are not in compliance. If we happen to stop them for another violation without rear end protection, we plan on doing an educational program. I brought one brochure with me. It clearly explains what is required by the law. It doesn't have to be expensive, it is a bumper that a farmer could make in his machine shed.

**There was no further testimony on SB 2092.**

**The hearing was closed on SB 2092.**

**Chairman Ruby** asked the wishes of the committee.

**Representative Vigesaa** moved a **Do Pass** on SB 2092.

**Representative Gruchalla** seconded the motion.

A roll call vote was taken. **Aye 13 Nay 0 Absent 1**

**The motion passed.**

**Representative Delmore will carry SB 2092.**

Date: 2-12-09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. SB 2092

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do pass  Don't Pass  Amended

Motion Made By Vigesaa Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	A		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigesaa	✓				
Representative Weisz	✓				

Total Yes 13 No 0

Absent 1

Bill Carrier Delmore

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

**REPORT OF STANDING COMMITTEE**

**SB 2092: Transportation Committee (Rep. Ruby, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2092 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

SB 2092

# Attachment #1

*Same testimony + handouts given to House.*

SB 2092 - Repeal NDCC section 39-21-55 - relating to rear bumpers on certain vehicles.

Good Morning! For the record I am Gary A. Lee Senator from District 22. I am here to introduce SB 2092. The bill would repeal NDCC 39-21-55 that was passed during the 2007 session. It deals with rear bumpers on farm trucks & was put in place while an exemption from federal law was sought. It was always the intention, that if the exemption was denied, the 2007 law would be repealed.

This section of ND law states: "the superintendent of the highway patrol may not adopt or enforce any law or rule requiring rear-end protection on a rear-end dump truck or other rear unloading truck or trailer while being used for hauling agricultural & other farm products from a place of production or on a farm storage site to a place of processing or storage."

Federal law requires that that each motor vehicle, manufactured after December 31, 1952, that doesn't meet certain backend dimensional requirements be equipped with a rear bumper. Many farm trucks do not meet this requirement. Agricultural producer groups in the state asked that an exemption be sought for intrastate travel. Federal exemptions have been granted. Minnesota would be an example.

The ND Highway Patrol, along with these producer groups <sup>*by the Governor's office*</sup> worked hard during the past interim to obtain the exemption. But in March of 2008 word was received from the Federal Motor Carrier Safety Administration that the request was denied. They stated that granting the exemption could be inconsistent with the safety goals enacted by Congress.

Given the exemption was not granted, it is important that we move quickly to revert to the 2005 law so that we do not lose Federal dollars for the Motor Carrier Safety Program and also lose interoperability with our partners in the U.S., Canada & others.

I am hoping this Committee will give the bill a favorable recommendation. I will attempt to answer ~~to answer~~ any questions.

Copies: Intro letter, denial letter, code copy of 39-21-55, Sugar Beet Growers Letter.

**39-21-52. Exemption for certain street rod motor vehicles.** The provisions of this chapter or chapter 52-04-01 of the North Dakota Administrative Code relating to bumpers, tires, and fenders do not apply to street rod motor vehicles. However, a street rod must have all equipment, in operating condition, which was specifically required by law as a condition for its sale when it was first manufactured. A street rod is a modernized motor vehicle which was manufactured before 1949 by a recognized manufacturer and which retains the general appearance and original body configuration as manufactured or a motor vehicle designed and manufactured to resemble such a motor vehicle. A street rod may have improved modifications to the body, chassis, engine, brakes, power train, steering, and suspension systems either by modifying the original equipment or replacing original parts with fabricated parts or those taken from other existing vehicles. The director may adopt rules to implement this section.

**39-21-53. Retractable axle control requirements.**

1. For a motor vehicle manufactured after July 31, 2005, variable load suspension or retractable axles, or both, raised or lowered by air, hydraulic, or other pressure must have the lock or pressure regulator valve, or both, positioned outside the cab and inaccessible from the driver's compartment if there is more than one variable load suspension axle or retractable axle, or a combination of each.
2. The control to lift and lower a retractable or variable load suspension axle may be accessible in the driver's compartment, but also may not function as the pressure control device unless allowed by subsection 1.

**39-21-54. Requirement for steerable, castoring, or pivoting axles.** A single unit vehicle or any vehicle in combination may not be equipped with more than four axles unless the additional axles are steerable, castoring, or pivoting axles.

**39-21-55. (Contingent effective date - See note) Exemption from rear-end protection requirements.** The superintendent of the highway patrol may not adopt or enforce any law or rule requiring rear-end protection on a rear-end dump truck or other rear unloading truck or trailer while being used for hauling agricultural and other farm products from a place of production or on a farm storage site to a place of processing or storage.

# 2

Source: S.L. 2007, ch. ch. 340, § 1.

**Effective Date.**

Section 3 of chapter 340, S.L. 2007 provides: "CONTINGENT EFFECTIVE DATE. Section 1 of this Act [which enacts this section] becomes effective on the earlier of October 1, 2008, or on approval of this state's application for exemption from rear-end pro-

tection requirements for vehicles in section 1 of this Act by the federal motor carrier safety administration, unless the superintendent of the highway patrol does not complete and submit an application for exemption for vehicles in section 1 of this Act by July 1, 2007, then section 1 of this Act becomes effective on August 1, 2007."

**CHAPTER 39-21.1**

**RANDOM MOTOR VEHICLE MAINTENANCE**

[Repealed by S.L. 1981, ch. 401, § 1]

**CHAPTER 39-22**

**MOTOR VEHICLE DEALER LICENSING**

- Section
- 39-22-01. Dealer defined — Repealed.
- 39-22-02. Motor vehicle dealer's license — Fees — Additional number plates — Repealed.
- 39-22-03. Motorcycle dealer's license — Fees — Repealed.
- 39-22-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license.
- 39-22-05. Bond required.
- 39-22-05.1. Disposition of fees.
- 39-22-05.2. When bid bonds not required in bids to state or political subdivisions.
- 39-22-06. Motor vehicle lots — Location.
- 39-22-07. Dealer permitting license to be used by another dealer — License revoked — Penalty — Repealed.
- 39-22-07.1. Motor vehicle sales prohibited on Sunday — Penalty.
- 39-22-08. Dealers to furnish information to director — Repealed.
- 39-22-09. Dealer to file list of used motor vehicles with registrar — Fees paid on used cars by dealer — Delinquency — Penalty — Repealed.
- 39-22-10. Powers of the director.
- 39-22-11. Examination of books and records.
- 39-22-12. Officers to administer chapter — House car dealer, manufacturer, and distributor exemption.

- Section
- 39-22-14. Motor vehicle dealer license — Fees — Penalty.
- 39-22-15. Established place of business — Penalty.
- 39-22-16. Application for new motor vehicle dealer license — Franchise required — Selling vehicles without a franchise — Penalty.
- 39-22-17. Additional dealer plates — In-transit plates — Demonstration plates — Fees — Use of dealer plates — Penalty.
- 39-22-18. Renewal of dealer license — Fees — Minimum sales requirement — Penalty.
- 39-22-19. Garage liability insurance requirement.
- 39-22-20. Display and sale of vehicles by out-of-state dealers — Offsite display and sale by instate dealers — Penalty.
- 39-22-21. Consignment vehicles — Penalty.
- 39-22-22. Operators of motor vehicle display lots — Permit required — Fee — Records required — Penalty.
- 39-22-23. Auto auction operators — License required — Records required — Penalty.
- 39-22-24. Factory store prohibited — Penalty.
- 39-22-25. Direct manufacturer sales prohibited — Penalty.
- 39-22-26. Brokering of motor vehicles prohibited — Penalty.
- 39-22-27. Motor vehicle dealer's license.

**39-22-02. Motor number plates. Re**

**39-22-03. Motor 1983, ch. 451, § 2.**

**39-22-04. Grounds of dealer's license or su**  
dealer's license or su  
been granted for mal  
application for the li  
this chapter or with  
any person to sell or  
motor vehicle except  
person is employed;  
tion, or financing of  
place of business; or  
alteration of odomete

Source: S.L. 1963, ch. 415, § 2; 1985, ch. 446, § 15; 2007, ch. 341, § 1.

**Effective Date.**  
The 2007 amendment

**39-22-05. Bond**  
dealer's license, as  
furnish a continuous  
executed by a surety  
the state of North  
Dakota, be in the am  
upon the faithful co  
issued to the dealer,  
the state of North Da  
the dealer as a deal  
dealing or transactin  
motor vehicle from an  
to comply with any of  
a proper and valid ce  
such transaction, and  
the issuance of license  
of all persons, howeve  
third party sustains  
against the principal  
covered by. The ter

# 3



# 4



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Administrator

MAR 20 2008

1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Refer to: MC-ESS

Colonel Mark A. Nelson  
Superintendent  
North Dakota Highway Patrol  
State Capitol, 600 E. Boulevard Ave., Dept. 504  
Bismarck, ND 58505-0240

Dear Colonel Nelson:

I am writing in response to a letter dated June 6, 2007, sent by Colonel Bryan Klipfel to Mr. Jeffrey Jensen, North Dakota Division Administrator, requesting that the Federal Motor Carrier Safety Administration (FMCSA) grant an exemption from the rear end protection requirements for farm trucks in North Dakota.

Currently, the Federal Motor Carrier Safety Regulations (FMCSRs) require rear impact guards on all motor vehicles manufactured after December 31, 1952, if the clearance from the rear bottom edge of the body or chassis is more than 30 inches from the ground when the vehicle is empty. Further, trailers and semitrailers with a gross vehicle weight rating of 10,000 pounds or more that were manufactured on or after January 26, 1998, must be equipped with a rear impact guard meeting Federal Motor Vehicle Safety Standards Nos. 223 and 224.

While I recognize your goal of reducing to the greatest extent possible the regulatory burden on farmers operating commercial motor vehicles (CMVs) in North Dakota, granting the exemption could be inconsistent with the safety goals enacted by Congress when the Motor Carrier Safety Assistance Program (MCSAP) was established. Additionally, an October 2007 study by the Upper Great Plains Transportation Institute, North Dakota State University found, "The analysis here shows that the rear-guard safety equipment has injury severity benefits that far outweigh equipment cost." Therefore, I cannot grant your request.

The North Dakota legislation that was mentioned in the letter makes the State's exemption effective October 1, 2008, unless FMCSA grants a variance prior to that date. The legislation as passed and signed by the Governor is not compatible with the FMCSRs because it does not achieve substantially the same purpose as the Federal regulations, is not limited to intrastate commerce, and would be likely to have an adverse impact on safety. As such, when this new law goes into effect it will make North Dakota ineligible to receive any MCSAP Basic and Incentive grant funding on October 1, 2008.

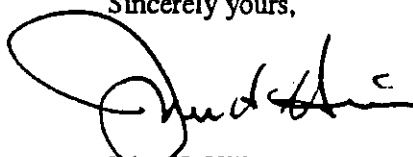
The MCSAP provides financial assistance to States to reduce the number and severity of crashes and hazardous materials incidents involving CMVs. The goal of MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The MCSAP includes conditions for participation by States and local jurisdictions, and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the FMCSRs and the Federal Hazardous Materials Regulations for both interstate and intrastate motor carriers and drivers.

Participation in MCSAP allows some specific variances from FMCSA's safety regulations for State laws governing motor carriers, drivers, and CMVs engaged solely in intrastate commerce. The MCSAP tolerance guidelines specifically allow States to retain those exemptions from their motor carrier safety laws that were in effect prior to April 1988, are still in effect, and apply to specific industries operating in intrastate commerce. These FMCSRs variances are intended to provide the States with flexibility in managing their safety oversight of intrastate motor carrier operations, while working in partnership with FMCSA to achieve national safety goals.

North Dakota has been an excellent safety partner in the MCSAP. The FMCSA will continue to work with North Dakota State officials to achieve our safety goals while providing as much flexibility as is permissible for the State. We hope North Dakota takes the necessary steps to bring its legislation into compliance thus avoiding ineligibility.

If you need additional information or assistance, you may contact Jack Kostelnik, Acting Chief, State Programs Division, at (202) 366-5721 or e-mail him at [jack.kostelnik@dot.gov](mailto:jack.kostelnik@dot.gov).

Sincerely yours,



John H. Hill

cc:

William Paden, FMCSA Field Administrator, Western Service Center  
Jeffrey P. Jensen, FMCSA Division Administrator, North Dakota



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Administrator

NOV 6 2008

1200 New Jersey Avenue, SE  
Washington, DC 20590

Refer to: MC-ESS

The Honorable John Hoeven  
Governor of North Dakota  
Bismarck, ND 58505

RECEIVED  
NOV 17 2008

Dear Governor Hoeven:

Thank you for your letter of July 28 describing an emerging consensus in the North Dakota legislature in favor of repealing a 2007 law that exempted agricultural industry vehicles from the Federal Motor Carrier Safety Administration's (FMCSA) requirements for rear impact guards.

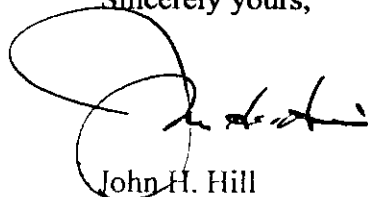
Although the 2007 law makes North Dakota ineligible for grants under the Motor Carrier Safety Assistance Program (MCSAP), you asked that FMCSA consider providing MCSAP funds for fiscal year (FY) 2009 in order to avoid disrupting the State's commercial vehicle safety programs, pending legislative action to repeal the impact-guard exemption.

Unfortunately, the law allowing the exemption takes effect on October 1 of this year, while the legislature will not meet until January 2009, and may not act on the repeal initiative immediately. I cannot stay the date of the MCSAP sanctions. The FMCSA will withhold all of North Dakota's basic and incentive funding beginning on October 1, 2008. However, we can release MCSAP funds later in FY 2009 if the law in question is repealed and the State returns to compliance.

I appreciate your support for a legislative solution to this problem. North Dakota has always been a strong safety partner, and we cannot achieve our common safety goals without that continued partnership. My staff is available to assist you in any way we can.

Should you or members of your staff have any questions or need assistance, please contact Craig B. Chesek, Director of Governmental Affairs, at (202) 366-1927 or via e-mail at [craig.chesek@dot.gov](mailto:craig.chesek@dot.gov).

Sincerely yours,



John H. Hill

cc: William Paden, FMCSA Field Administrator, Western Service Center  
Jeffrey Jensen, FMCSA Division Administrator, North Dakota



1401 32nd Street SW • Fargo, ND 58103 • Phone: 701-239-4151 • Fax: 701-239-4276

email: [information@rrvsga.com](mailto:information@rrvsga.com)

January 13, 2009

Senator Gary A. Lee  
Transportation Chairman  
North Dakota State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Chairman Lee:

The Red River Valley Sugarbeet Growers would like to thank you and all the members of the transportation committee, Chairman Weisz and members of the House Transportation Committee, the State Highway Patrol, and the Governor's Office for your efforts in applying for a Federal exemption to the rear end protection requirement for farm trucks. This exemption would have been similar to Minnesota's farm truck exemption. We understand the financial penalty the State would endure for having a state exemption and, therefore, we do not oppose legislation to repeal the "rear end protection" bill NB 1359.

*SB 2092*

Sincerely,

*Nick Sinner*

Nick Sinner  
Executive Director  
Red River Valley Sugarbeet Growers Association

NS:sjn

Senate Transportation Committee  
Senate Bill 2092  
Submitted by  
Mark Nelson, NDHP

*Same testimony +  
handout given  
to House.*

# 7

*Back to  
Bill*

January 15, 2009

Good morning, Mr. Chairman and members of the Senate Transportation Committee, I am Colonel Mark Nelson, Superintendent of the North Dakota Highway Patrol. I appear today in support of SB 2092 to repeal section 39-21-55 of the North Dakota Century Code and for the act to be declared an emergency measure.

In 2007, during the 60<sup>th</sup> Legislative Assembly, HB 1359 was passed which created section 39-21-55 NDCC. This section of law states that the superintendent of the highway patrol may not adopt or enforce any law or rule requiring rear-end protection on rear-end dump trucks or other rear unloading trucks or trailers while being used for hauling agricultural and other farm products from a place of production or on a farm storage site to a place of processing or storage.

The effective date of this legislation was contingent on the superintendent submitting an application for exemption to the federal motor carrier safety administration (FMCSA) for vehicles described in HB 1359.

A request for exemption was submitted in a letter dated June 6, 2007. A copy of the request addressed to Mr. Jeffrey Jensen, Division Administrator for the Federal Motor Carrier Safety Administration, is attached.

In a letter dated March 20, 2008, I was notified by FMCSA that the request for exemption was denied. Furthermore, the letter stated that when this new law goes into effect, North Dakota would be ineligible to receive any MCSAP Basic and Incentive grant funding. With the effective date of section 39-21-55 being October 1, 2008, North Dakota is no longer in compliance with federal motor carrier safety regulations and all FY2009 funding associated with our MCSAP program has been withheld since that time.

The Motor Carrier Safety Assistance Program (MCSAP) provides funding to our state to partner with FMCSA in programs that will help reduce commercial motor vehicle related crashes. These safety programs focus on consistent and effective enforcement of the FMCSA and Federal Hazardous Material Regulations. MCSAP supports roadside safety inspections, new-entrant safety audits, data improvement efforts, and educational outreach.

The North Dakota Highway Patrol currently has a total of 23 FTEs that are funded by FMCSA in three programs: the Motor Carrier Safety Assistance Program, Border Inspection Program, and the New-Entrant Program.

We are currently funding 16 FTEs in the Motor Carrier Safety Assistance Program with carryover funding; however, that funding will be exhausted by the end of March 2009. Therefore, it is not only critical for our continued participation in this program to pass Section 1 of SB 2092, but in order for funding to be reinstated in a timely manner, we also support passage of the emergency clause found in Section 2.

June 6, 2007

Mr. Jeffrey Jensen  
Division Administrator  
Federal Motor Carrier Safety Administration  
1471 Interstate Loop  
Bismarck, ND 58501

Dear Mr. Jensen:

As you are aware, the Sixtieth Legislative Assembly passed HB 1359, "exemption from rear end requirements." While the bill does not specify "intrastate," that was the legislative intent. This is based on testimony in both the House and Senate Transportation Committee hearings and in discussions with the bill's sponsors.

We are requesting an exemption under 49 CFR Part 350.343. While we understand the Federal Motor Carrier Safety Administration strongly discourages these types of exemptions, it is our position that several states currently have this exemption and we do not feel such an exemption would adversely impact highway safety in North Dakota. Attached is supporting information for evaluation of this request.

The state of North Dakota has worked very hard to develop a strong motor carrier safety program and the granting of an exemption will allow us to continue in our safety efforts.

Thank you for your consideration of this request. If you have any questions or need additional information, please contact me.

Sincerely,

BRYAN KLIPFEL  
Colonel, NDHP  
Superintendent

bk/gs  
Attachment  
c/Governor John Hoeven  
/Senator Byron Dorgan  
/Senator Kent Conrad  
/Congressman Earl Pomeroy  
/Senator Bob Stenehjem  
/Senator David O'Connell  
/Senator Gary Lee  
/Representative Rick Berg  
/Representative Merle Boucher  
/Representative Robin Weisz

- A. Type and scope of the industry exemption requested, including percentage of industry affected, number of vehicles, mileage traveled, and number of companies.

This exemption is being requested for farm trucks operating in the state of North Dakota. This would include both straight trucks and tractor-trailer units hauling farm commodities in the state. 49 CFR 393.86, rear impact guards and rear end protection, addresses the general requirements for trailers and semi-trailers manufactured on or after January 26, 1998, which have a gross vehicle weight of more than 10,000 pounds and more than a 12 inch overhang from the rear tires to the rear most extremity of the truck. Further, it addresses those motor vehicles manufactured after December 31, 1952, in which the rear most part of the vehicle is greater than 30 inches above the ground and with greater than a 24 inch overhang from the rear tires to the rear most point on the truck. North Dakota, under 49 CFR Part 350.341(a) has exempted all intrastate vehicles less than 26,001 pounds from the regulations, not to include those listed as not to be exempted.

The agricultural community informs us that this requirement would affect most of the farm trucks on North Dakota roads today. The state of North Dakota currently has over 36,000 farm trucks registered in the state as of January 1, 2007, which haul farm commodities. The commodities hauled would include but not be limited to: barley, canola, corn, durum, dry edible beans, dry peas and lentils, flax, potatoes, soybeans, sugar beets, sunflowers, and wheat. The vast majorities of these vehicles are privately owned and travel from farm to market and are only used during planting and harvesting season, they are not required to record their mileage. The number of farms in North Dakota listed with the National Agriculture Statistic Services (NASS) as of 2002 is 30,619. Many of these farms could be impacted by the requirement. Not having the ability to inspect all 36,000 vehicles, the exact number impacted is impossible to determine.

- B. Type and scope of the requirement to which the exemption would apply.

The exemption is from the Federal Motor Carrier Safety Administration 49 CFR 393 Parts and Accessories Necessary for Safe Operation, section 393.86, rear impact guards and rear end protection. This section has reference to 49 CFR 571 Federal Motor Vehicle Safety Standards, section 571.224 Standard No. 224; rear impact protection. This request is for "intrastate" vehicles only.

- C. Safety performance of that specific industry (e.g., accident frequency, rates, and comparative figures).

The presence of a rear impact guard is not part of our normal crash reporting requirements thus we have no data on this. Our collective experience in discussion with our personnel has not found any indications of crashes where the absence of a rear impact guard aggravated the situation. The North Dakota Vehicle Crash Facts for 2005 indicate that all truck tractor crashes including rear end crashes only accounted for 1.9 percent of the total state crashes. All truck crashes, which include 2 & 3 axle vehicles only accounted for 1.1 percent of all state crashes.

- D. Inspection information (e.g., number of violations per inspection, driver and vehicle out-of-service information).

For Federal Fiscal year 2006 the North Dakota Highway Patrol conducted 18,832 total inspections of all commercial motor vehicles. Their cargo is inspected and reported on the individual inspection reports. Our out-of-service rate for a full level one inspection is 19.58 percent. Our average out-of-service rate for level one, two, and three drivers is 4.44 percent. During this period a total of nine violations of Part 393.86 were noted. These inspections included all types of vehicles and cargo. We have no specific data on rear-dump vehicles hauling agricultural products. The majority of our inspections take place at locations where there is a high volume of interstate traffic and very seldom encounter farm vehicles that operate on farm to market roads.

E. Other CMV safety regulations enforced by other state agencies not participating in the MCSAP.

The North Dakota Highway Patrol is the only agency authorized to enforce the Federal Motor Carrier Safety Regulations which were adopted by reference.

F. Commodity transported (e.g., livestock, grain).

The commodities transported by these trucks will include but not be limited to: barley, canola, corn, durum, dry edible beans, dry peas and lentils, flax, potatoes, soybeans, sugar beets, sunflowers, and wheat. In addition, farm trucks regularly transport farm inputs such as chemicals, fertilizer, water, seed, and animal waste.

G. Similar variations granted and the circumstances under which they were granted.

Our neighboring states of Minnesota and Montana already have this type of exemption for farm trucks conducting intrastate commerce. A survey conducted by the Commercial Vehicle Safety Alliance of the 50 states indicates that of the 24 respondents in addition to Minnesota and Montana the states of Tennessee, Georgia, Michigan, Illinois, and Oregon currently have this exemption; these states had the exemption in place prior to April 1, 1988. In Minnesota, road construction controlled horizontal discharge trailers have also been given an exemption to this regulation. A road construction controlled horizontal discharge trailer is very similar to many of the farm trucks operating within the state which transport sugar beets and potatoes. All of these trailers have to deliver their product into a hopper where the rear impact guard would interfere with the proper discharge of their products.

H. Justification for the exemption.

As farm trucks perform their job, which is to transport commodities from a field to a point of storage or from a point of storage to a point of processing, they are required to deliver a commodity into a hopper. These hoppers are of sufficient height to be able to receive the commodity and not incur damage or spillage to that commodity. A rear end protection device will often time come into contact with these hoppers, causing damage to the hopper as well as the rear end protection device.

I. Identifiable effects on safety.

We feel that giving an exemption of rear end protection devices to farm trucks will not have a detrimental effect on safety to other motorists on the highways. This is based on years of investigating traffic crashes by the North Dakota Highway Patrol and in interviews with other states and local jurisdictions. We are a low traffic volume state with minimal congestion which reduces the incidence of rear end collisions.

J. State's economic environment and its ability to compete in foreign and domestic markets.

The requirement to install rear end protection on farm trucks will cause a financial burden to the farmers of North Dakota. 49 CFR 393.86(b) (1) addresses non certified rear end protection for straight trucks built after December 31, 1952, and trailers built before January 26, 1998. We know of only one metal fabrication business in the state of North Dakota currently making and installing rear end protection. The cost for these devices can be substantial. In addition to the cost of the device is the issue of liability this business would be taking on with respect to these devices. There are concerns if any other businesses would be willing to assume this level of liability.

For certified rear end protection devices which are required on trailers built after January 26, 1998, we have not been able to find one metal fabricating business which is manufacturing these devices. We are aware of one trailer manufacturing firm that is working with a local university to design and test a certified rear end protection device for one model of their trailers. Because of different configurations of framework on the other trailers, this device will not be applicable for certification on those other models. This will require the trailer company to design and test a separate bumper for each trailer



model. This trailer company has invested over \$15,000 in testing and research on this one bumper style.

Because of these issues of product development cost, timeline of development, testing, compliance approval and the general lack of availability of the product, the farm truck owners in the state of North Dakota that are in need of a device for their trailer find it virtually impossible to acquire a product that performs according to the law.

The requirement of part 393.86 has been in place for many years and is not new to our inspectors. But due to the fact that we concentrate on high volume interstate traffic, our observance of farm vehicles has been minimal and the exact number not in compliance is unknown. We are aware of the problems in the agricultural industry that have led many farmers to purchase larger truck "boxes" to carry more commodity and that rear impact guards are not part of the refitting operation.