

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2273
(Senators Stenehjem, O'Connell, Schobinger)
(Representatives Keiser, Mahoney, Weisz)

AN ACT to create and enact thirteen new sections to chapter 39-22 of the North Dakota Century Code, relating to the licensing of motor vehicle dealers; to amend and reenact sections 39-05-17, 39-22-04, 39-22-05.1, 39-22-06, and 39-22-11 of the North Dakota Century Code, relating to vehicle title transfer requirements and motor vehicle dealer licensing; to repeal sections 39-22-02, 39-22-07, and 39-22-08 of the North Dakota Century Code, relating to motor vehicle dealer licensing; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-17 of the North Dakota Century Code is amended and reenacted as follows:

39-05-17. Transfer of title of vehicle - Endorsement required - Certificate of title delivered - New certificate obtained - Penalty. The owner of a motor vehicle who sells or transfers title to a vehicle shall endorse an assignment and warranty of title upon the certificate of title for the vehicle, with a statement whether there are liens or encumbrances thereon, which statement must be verified by the owner. The owner shall include on the assignment and warranty of title the name of the purchaser and the selling price of the vehicle. The owner shall deliver the certificate of title to the purchaser if title passes to the purchaser. If the title does not pass to the purchaser under the terms of the contract for sale of the vehicle, the lienholder shall endorse thereon a statement that the lienholder holds the lien, the date thereof, and the name of the purchaser, and shall send the certificate of title to the department with an application of the purchaser for a new certificate of title showing the name of the owner, lienholder, and the date of the lien of the lienholder, which certificate of title when issued must be returned by the department to the lienholder, who shall retain the same in the lienholder's possession until the terms of the contract are complied with by the purchaser, and thereupon, after showing the lien has been paid and satisfied the lienholder shall deliver the certificate of title properly assigned to the purchaser. The purchaser or transferee shall present the endorsed and assigned certificate to the department, within thirty days after the receipt thereof, accompanied by a transfer fee of five dollars, and shall make an application for and obtain a new certificate of title for the vehicle. In addition to any other penalty, the registration to a motor vehicle may be suspended or revoked whenever the purchaser or transferee fails to present the endorsed and assigned certificate of title to the department for transfer and make application for a new certificate of title within the prescribed thirty days. The department shall deliver the new certificate of title to the lienholder with priority. If there is no lienholder, delivery is made to the purchaser. A violation of the provisions of this section ~~constitutes an infraction~~ is a class B misdemeanor.

SECTION 2. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Motor vehicle dealer license - Fees - Penalty. It is unlawful for any person to engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license. A person may not advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer license or used motor vehicle dealer license. The motor vehicle dealer license fee is one hundred dollars per year and with which must be issued one dealer plate. A nonrefundable fee of one hundred dollars must be charged for the initial inspection of an application for a dealer license and must accompany the initial application for a new or used motor vehicle dealer license. The applicant shall provide the business's federal employer identification number or, in the case of an application from an individual, social security number. Any person violating a provision of this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the

department for a second violation within two years of the first violation. The department must suspend the license of a motor vehicle dealer licensed under to this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 3. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Established place of business - Penalty. A dealer license may not be issued until the applicant furnishes proof satisfactory to the director that the applicant has, does, and will continue to maintain in North Dakota an established place of business adjacent to the primary motor vehicle display lot maintained by the dealer. An established place of business means a permanent enclosed building of at least two hundred fifty square feet [23.22 square meters] either owned, rented, or leased at which a permanent business of bartering, trading, and selling of motor vehicles will be conducted and does not mean a residence, tents, temporary stands, or other temporary quarters. The established place of business and primary motor vehicle display lot must cover at least two thousand five hundred square feet [232.26 square meters] and be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The established place of business must be adequately heated and lighted so as to be comfortable for customers and employees and be equipped with standard office equipment necessary for the conduct of the business. All records related to the business, including titles or other documents showing ownership of the vehicles, must be kept and maintained at the established place of business. An established place of business must have a telephone publicly listed in the name of the dealership, be open to the public during normal business hours, and have a sign identifying the business to the public as a motor vehicle dealership. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. A business sign approved by a motor vehicle manufacturer may be used in lieu of the sign requirements of this section. If the licensee desires to move from the established place of business occupied when the license was granted to a new location, the licensee shall first secure from the director permission to do so. The licensee must furnish proof satisfactory to the director that the premises to which the licensee proposes to move conform with the requirements of this section. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 4. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Application for new motor vehicle dealer license - Franchise required - Selling vehicles without a franchise - Penalty. In the case of an application for a new motor vehicle dealer license, the applicant shall furnish proof satisfactory to the director that the applicant has a bona fide contract or franchise in effect with a manufacturer or distributor of the new motor vehicle or motor vehicles in which the dealer proposes to deal. A new motor vehicle dealer license entitles the holder to deal in both used motor vehicles and in those new motor vehicles only for which the dealer has a bona fide contract or franchise in effect with a manufacturer or distributor. A used motor vehicle dealer license entitles the holder to deal in used motor vehicles only.

New motor vehicle dealers who have been issued surrounding communities as a part of their dealer area of responsibility may be issued additional new motor vehicle dealer licenses if the manufacturer provides the department written approval of additional sites for display and sale of motor vehicles. Applicants for additional new car dealer licenses must meet all of the requirements of this chapter.

Whenever a motor vehicle dealer purchases or holds for sale a new motor vehicle for which the dealer does not have a bona fide contract or franchise in effect with a manufacturer or distributor, the new motor vehicle becomes, at the time of purchase or possession, subject to the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, and the motor vehicle excise tax provisions of chapter 57-40.3. Any person violating this section must be assessed a two hundred fifty dollar fee by the department for a first violation and a five hundred dollar fee by the

department for a second violation within two years of the first violation. The department must suspend the license of a motor vehicle dealer licensed under to this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 5. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Additional dealer plates - In-transit plates - Demonstration plates - Fees - Use of dealer plates - Penalty. Additional dealer number plates must be issued to the dealer upon payment of a fee of twenty-five dollars each. These number plates may be used on any vehicle owned by the dealership and used in the direct functions of demonstrating, buying, or selling vehicles. Dealer plates may not be used on service vehicles or vehicles used in other functions of the business, sold units in the possession of the purchaser, by family members not residing at the dealer's residence, or by other persons not directly involved in the operation of the dealership. The director may issue to any dealer an in-transit license plate for a fee of five dollars per plate and a demonstration plate for a fee of five dollars per plate. A dealer in-transit plate may be used on vehicles in lieu of dealer's plates while a motor vehicle is in transit from its place of manufacture, or any other place, to the dealer or in transit from the dealer, by a direct route, to another destination. A dealer demonstration plate may be used only on a vehicle which is owned by the dealership and being demonstrated to a customer. A dealer demonstration plate is valid for use only within a radius of one hundred miles [160.93 kilometers] of the dealer's established place of business. Any dealer plate, in-transit plate, or demonstration plate displayed on a vehicle must be displayed on the rear of the vehicle. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under to this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 6. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Renewal of dealer license - Fees - Minimum sales requirement. A dealer license issued under this chapter expires on December thirty-first of each year. A licensed dealer may apply for renewal of the dealer's license on forms prescribed by the department and payment of the dealer license and dealer plate fees required by this chapter. The department shall not renew the dealer license of any applicant who has made less than four retail motor vehicle sales during the previous year. The department may adopt administrative rules to limit the number of dealer plates available to an applicant based on the applicant's motor vehicle sales history.

SECTION 7. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Garage liability insurance requirement. Before the issuance of a motor vehicle dealer license, the applicant must provide proof to the department of a continuous policy of garage liability insurance. The insurance company that issued the policy must notify the department of any cancellation, suspension, or revocation of the coverage. Any motor vehicle dealer who fails to maintain the insurance coverage required by this section shall return the dealer license and dealer number plates to the department on or before the effective date of the cancellation, suspension, or revocation. Failure to return the dealer license or dealer number plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer license or dealer number plates not returned to the department as required in this section. The department shall reinstate the dealer license and dealer number plates only when proof of insurance coverage is received.

SECTION 8. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Display and sale of vehicles by out-of-state dealers - Offsite display and sale by instate dealers - Penalty. An out-of-state motor vehicle dealer who possesses a current motor vehicle dealer license from the dealer's home jurisdiction may participate in bona fide North Dakota automobile shows and sales promotions after obtaining a permit from the department. The permit must be issued upon

the payment of a fee of one hundred dollars and is valid for a period of time, not to exceed seven days, to be determined by the department. A motor vehicle dealer licensed under this chapter may participate in bona fide automobile shows and sales promotions in this state after obtaining a permit from the department. The permit must be issued upon the payment of a fee of twenty-five dollars and is valid for a period of time, not to exceed seven days, to be determined by the department. The department shall deny an application for a permit if it determines the applicant does not intend to participate in a bona fide show or promotion. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 9. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Consignment vehicles - Penalty. A motor vehicle dealer may sell a motor vehicle consigned to the dealer by a motor vehicle owner, except when the owner is a licensed motor vehicle dealer, under the terms of a consignment contract between the owner and the dealer. The consignment contract form must specify the terms of the agreement between the owner and the dealer, specify the location of the motor vehicle certificate of title, and must be approved by the department. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall revoke the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 10. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Operators of motor vehicle display lots - Permit required - Fee - Records required - Penalty. A person not licensed as a motor vehicle dealer may operate display lots on which the owner of a vehicle may display the vehicle for sale. The display lot must be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The display lot operator must obtain an annual permit from the department to operate such a lot. The annual fee for the permit is fifty dollars. The display lot operator must provide the department with proof of a liability insurance policy with a minimum coverage of three hundred thousand dollars. The display lot must have a prominent sign identifying the business and the telephone number of the business owner. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the display lot operator in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. The display lot operator, before providing space to a vehicle owner, must verify that the person renting the space is the owner of the vehicle that will be displayed and keep records for at least one year thereafter verifying compliance with this requirement. A licensed motor vehicle dealer shall not be permitted to operate display lots except on property that is not otherwise a part of the licensed dealership. The department may inspect the records of the display lot operator related to any complaint made against the operator. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the permit if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 11. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Auto auction operators - License required - Records required - Penalty. A person may not operate a wholesale or retail auto auction business without being licensed as a motor vehicle dealer. An auto auction operator must keep records related to the seller and purchaser of all vehicles sold through the operator's business for at least two years and make those records available to the director or an authorized representative of the director upon reasonable request. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The

department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 12. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Factory store prohibited - Penalty. A manufacturer, importer, or distributor of new motor vehicles, or a subsidiary thereof, may not own, operate, or control a motor vehicle dealership in this state. This section does not apply if:

1. The ownership and operation is for a temporary period not to exceed one year during the transition from one owner or operator to another; or
2. The dealership is being sold under a bona fide contract or purchase option to the operator of the dealership, or a contract exists under which the operator of the dealership can expect to acquire full ownership of or a controlling interest in the dealership, and after the transfer of ownership is completed the dealership will not be owned, operated, or controlled by the manufacturer, importer, or distributor, or a subsidiary thereof; or
3. If the department determines there is no prospective independent dealer available to own or operate the dealership in a manner consistent with the public interest and meeting the requirements of this chapter.

Any person violating this section is guilty of a class A misdemeanor.

SECTION 13. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Direct manufacturer sales prohibited - Penalty. A manufacturer or franchiser may not offer to sell directly or sell indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line make covering the new motor vehicle. This section does not apply to manufacturer or franchiser sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer or franchiser. Any person violating this section is guilty of a class A misdemeanor.

SECTION 14. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Brokering of motor vehicles prohibited - Penalty. A person may not act as, offer to act as, or hold out to be a motor vehicle broker. As used in this section, a broker is a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale or exchange of a motor vehicle, and who is not:

1. A dealer or a bona fide agent or employee of a dealer;
2. A representative or a bona fide agent or employee of a manufacturer;
3. The bona fide owner of the motor vehicle involved in the transaction; or
4. A bona fide auctioneer conducting an auction involving motor vehicles not owned by the auctioneer.

Any person violating this section is guilty of a class A misdemeanor.

SECTION 15. AMENDMENT. Section 39-22-04 of the North Dakota Century Code is amended and reenacted as follows:

39-22-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license. The director may deny an application for a dealer's license or suspend, revoke, or cancel such a license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.

2. For any willful failure to comply with the provisions of this chapter or with any rule or regulation promulgated by the director.
3. For knowingly permitting any ~~sales~~ person to sell or exchange, or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom the sales person is employed, ~~or to offer, transfer, or assign any sale or exchange that the sales person may have negotiated to any other dealer.~~
4. For having violated any law relating to the sale, distribution, or financing of motor vehicles.
5. For having ceased to have an established place of business as herein defined.
6. For having violated any state or federal law relating to alteration of odometers or vehicle identification number.

SECTION 16. AMENDMENT. Section 39-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

39-22-05.1. Disposition of fees. Fees from registration of dealers and fees collected from dealers found in violation of this chapter must be deposited with the state treasurer and, credited to the motor vehicle registration fund, and used exclusively for enforcement of this chapter.

SECTION 17. AMENDMENT. Section 39-22-06 of the North Dakota Century Code is amended and reenacted as follows:

39-22-06. Motor vehicle lots - Location. A licensed dealer as described in this chapter may establish ~~open~~ secondary motor vehicle lots as may be necessary in the conduct of the dealer's business in an area not further removed than ~~three~~ five miles [~~4.83~~ 8.05 kilometers] from the ~~city limits of the city in which the dealer operates a licensed place of business. Such open dealer's established~~ place of business. Secondary lots must be identified as a part of the licensed dealer's operation with a sign displaying the name and telephone number of the licensed dealer. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. Motor vehicle dealers may not display vehicles except on their primary and secondary lots or as otherwise permitted in this chapter. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 18. AMENDMENT. Section 39-22-11 of the North Dakota Century Code is amended and reenacted as follows:

39-22-11. Examination of books and records. The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed motor vehicle dealer or any other person relating to any specific complaint made against such dealer or person and held to be in violation of any of the provisions of this title. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

SECTION 19. REPEAL. Sections 39-22-02, 39-22-07, and 39-22-08 of the North Dakota Century Code are repealed.

SECTION 20. EFFECTIVE DATE. This Act is effective for motor vehicle dealer licensing years beginning after December 31, 2001.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2273.

Senate Vote: Yeas 47 Nays 1 Absent 1

House Vote: Yeas 97 Nays 0 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State