2011 SENATE TRANSPORTATION

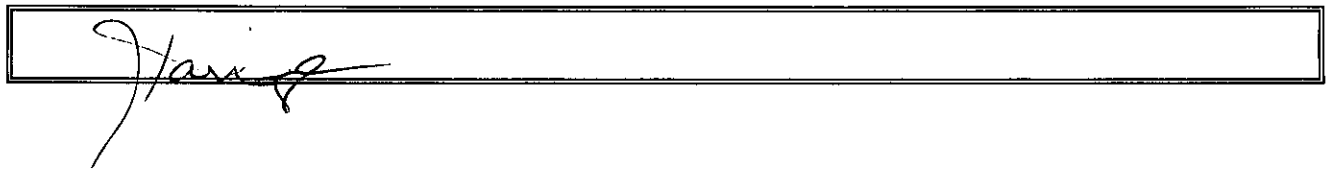
SB 2255

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

SB 2255
February 17, 2011
14664

☐ Conference Committee



Minutes: *Discussion/Action*

Chairman Senator G. Lee opened SB 2255 for discussion.

Senator Oehlke said that he and Senator Sitte had amendments that incorporate the other two amendments that we previously passed. He explained amendment # 11.0565.01003. He said that the main changes made were concerning primary and secondary locations in North Dakota, allowing transporting of trailers, excluded bathroom facilities, primary and secondary locations must have signs and changes in language on records and penalty. He said the emergency clause on the bill applies only to section 1, which is the garage liability requirement. The emergency clause is still in the amendment for the garage liability but he stated that they forgot to add that the remainder of the bill should take place on December 31st or January 1st.

Senator Nodland asked, "To be a dealer in North Dakota you can have branches but you do have to have an established place of business. "

Senator Oehlke said that you do have to have a primary location in the state of North Dakota to have a secondary location.

Senator Lee summarized the bill with the amendments. He asked if licenses were required for secondary locations.

Senator Oehlke said that if the amendments are passed, the bill will read, (a license dealer may establish secondary trailer display lots in the conduct of the dealer's business if there is a primary place of business established in this state. 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.) It does not require that they have to pay an extra fee or fees. They don't need another license.

Senator Oehlke moved to reconsider our action on amendments 11.0565.01001 and 11.565.01002.
Senator Nething seconded the motion.

Roll call vote: 5-0-1. **Motion passed.**

Senator Oehlke moved for adoption of amendments 11.0565.01003 and adds the later implementation date of 1-1-12.

Senator Nething seconded the motion

Roll call vote: 5-0-1. **Amendment adopted.**

Senator Oehlke moved a **Do Pass as amended.**

Senator Nodland seconded the motion.

Roll call vote: 5-0-1. **Motion passed.**

Senator Oehlke is the carrier.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Transportation Committee
Lewis and Clark Room, State Capitol

SB 2255
February 10, 2011
14332

☐ Conference Committee

Explanation or reason for introduction of bill/resolution:

Minutes: *Attached testimony*

Chairman Senator G. Lee opened the hearing on SB 2255 relating to the licensure of trailer dealers.

Senator Wardner, District 37, said that he had introduced SB 2255 at the request of a constituent who is here today to testify. This is a bill that talks about licensing trailer dealers and puts in place guidelines and laws in statue on sales of trailer dealers.
He said that they already have this in car and truck dealerships.

Linda Sitz, Director of the Motor Vehicle Division at the North Dakota Department of Transportation, presented information on SB 2255 and presented amendment 11.0565.01001 and explained why it was necessary. Written testimony #1

Senator Sitte asked why boat trailers were not included.

Ms. Sitz answered that boat trailers are under the Game and Fish.

Senator Lee commented that section 2 follows the car dealership language laying out the guidelines for an established place of business. It is his understanding that if he had an approved location with building, display area, etc. in one part of the state he could not display his trailers in another city or another part of the state for sale unless he meet all of these qualifications on that location.

Ms. Sitz replied that his assumption was correct.

Tom Balzer testified in support of SB 2255 and offered an additional amendment (11.0565.01002). He said that they have a number of trailer dealers that are members of the ND Motor Carriers Association. He explained the amendment that Senator Wardner had drafted to address their concern. One of their concerns was with the title and the requirement that the dealer have the titles on hand and at their location. He said that sometimes in financing the titles are held by the bank. They also included "transporting" to

allow for moving these trailers. In their amendments they also allowed for language that would include equipment shows. They also had a problem with the allotted fifteen days and amended that language to address that concern.

Senator Sitte asked what the problem was and why would we want to limit free enterprise.

Mr. Balzer said that they are asking for some order to the sale. This would also address the concern whether they were a reputable company and the requirement to have a building so they can do the required paperwork and service area. He said that there are some basic business needs in this industry.

Senator Lee asked if he had a trailer dealership in one part of the state with an office and service area and all the other requirements set forth in this bill, can I have a sales lot in a different part of the state or does this bill not allow me to do this.

Mr. Balzer said that was correct. He said that you would actually have to have a place of business on the second lot.

Perry Boespflug, Boespflug Trucking, testified in support of SB 2255. He said that it was at his request that Senator Wardner introduced this bill. He said that this bill gives trailer dealers a level playing field. He said that a trailer is considered a motor vehicle. It is taxed and titled, as such, and in his opinion should be regulated or at least policed as such. He gave an example of what DOT told them fifteen years ago about expanding and their advice mirrored car dealerships. He showed some photos from a trailer lot in Dickinson. He said that this individual takes all profit derived from here and takes it out of state and nothing stays here. He said that they are not trying to hamstring free enterprise, they just want a level field.

Senator Sitte asked if the other 257 trailer owners were in support of SB 2255.

Mr. Boespflug said that he had not polled them personally. He did say that he was invited last year to a roundtable discussion that was instituted by the Motor Vehicle Department of DOT and despite a poor turnout he felt very strongly about it.

Senator Sitte said that if you have 257 trailer owners, how many do you think would comply with this.

Mr. Boespflug said that if he had to guess, he would say about half would be in compliance.

Senator Mathern asked if manufacturers had requirements.

Mr. Boespflug said that the more reputable companies do have specific requirements.

Senator Lee asked if the dealer in Dickinson that we have seen the photos of, meets the city's requirements and standard that they have put forward.

Mr. Boespflug replied that as long as he keeps that property maintained, he is in compliance with the city.

Discussion followed on the absence of other dealers speaking in support of SB 2255.

There was no opposition to SB 2255.

Senator Lee closed the hearing on SB 2255.

Senator Mathern said that he hoped they would adopt the amendments that were offered before we act on the bill.

Discussion followed on whether or not this bill is needed.

Senator Mathern indicated that the committee might want to look at the possibility of delaying implementation of this bill.

There was discussion about adopting a delayed date and the question whether the century code already addresses these problems, including penalties. The bill offers more details like how big your office needs to be and size of sign etc..

Senator Oehlke talked about the need for the language change in the garage liability amendment. He stated that all this amendment does is offer more generic language in the place of garage liability.

Senator Sitte moved to adopt amendment #11.0565.01001.

Senator Mathern seconded the motion.

Roll call vote 6-0-0. **Amendment adopted**.

Senator Mathern moved to adopt amendment #11.565.01002.

Senator Oehlke seconded the motion.

Roll call vote 6-0-0. **Amendment adopted.**

Senator Mathern moved the Mathern amendment for a delayed implementation.

Senator Nethng seconded the motion.

Discussion followed on the date. It was decided that the committee needs information from the department of transportation before they act on this amendment.

#1

11.0565.01001
Title.

Prepared by the Legislative Council staff for
Senator Wardner
February 9, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2255

Page 1, line 3, after "sections" insert "39-22-19,"

Page 1, line 4, after the first "to" insert "insurance for motor vehicle dealers and"

Page 1, after line 6, insert:

"**SECTION 1. AMENDMENT.** Section 39-22-19 of the North Dakota Century Code is amended and reenacted as follows:

39-22-19. 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 for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as appropriate to the business operation. 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."

Renumber accordingly

Date: 2-10-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0515.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☑ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sitte Seconded By Senator Mathern

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		**Senator Tim Mathern**	✓	
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

#2

11.0565.01002
Title.

Prepared by the Legislative Council staff for
Senator Wardner
February 9, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2255

Page 1, line 2, remove the first "and"

Page 2, line 5, after "trailers" insert "unless held by the manufacturer or financial institution as security"

Page 2, line 12, after "of" insert "transporting,"

Page 3, line 23, replace "and" with "lots,"

Page 3, line 23, after "lots" insert ", and equipment shows"

Page 4, line 13, overstrike ", and that"

Page 4, line 13, replace the second "the" with "or the return of the title from the department, if the title was sent to the department within fifteen days of the sale. The"

Renumber accordingly

Date: 2-10-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.5655.01002

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Mathern Seconded By Senator Oehlke

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern	✓	
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 2-10-11
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Senator Mathern amendment

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Mathern Seconded By Senator Nething

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee			**Senator Tim Mathern**		
Vice Chairman Dave Oehlke					
Senator Dave Nething					
Senator George Nodland					
Senator Margaret Sitte					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

didn't vote

Date: 2-17-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Senator Oehlke Seconded By Senator Nething

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern		
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

~~Second~~

Reconsider Amendments
11.0565.01001
11.0565.01002

11.0565.01003
Title.

Prepared by the Legislative Council staff for
Senator Oehlke
February 16, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2255

Page 1, line 3, after "sections" insert "39-22-19,"

Page 1, line 4, after the first "to" insert "insurance for motor vehicle dealers and"

Page 1, line 4, remove "and"

Page 1, line 5, after "penalty" insert "; and to declare an emergency"

Page 1, after line 6, insert:

"**SECTION 1. AMENDMENT.** Section 39-22-19 of the North Dakota Century Code is amended and reenacted as follows:

39-22-19. 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 for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as is appropriate to the business operation. 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."

Page 2, line 2, replace "an" with "a primary"

Page 2, line 4, after "records" insert "or copies of records"

Page 2, line 6, after "the" insert "primary"

Page 2, line 12, remove "or"

Page 2, line 12, after "selling" insert ", or transporting"

Page 2, line 14, remove the overstrike over "~~does not include~~"

Page 2, line 14, remove "includes"

Page 2, line 18, replace "**Established**" with "**Primary established**"

Page 2, line 20, replace "an" with "a primary"

Page 2, line 22, replace "An" with "A primary"

Page 2, line 25, remove "and does not include a residence, tents, temporary stands, or other"

Page 2, line 26, remove "temporary quarters"

Page 2, line 26, after "The" insert "primary"

Page 2, line 26, remove "and primary display lot"

Page 2, line 27, remove "cover at least two thousand five hundred square feet [232.26 square meters] and"

Page 2, line 29, after "The" insert "primary"

Page 2, line 30, remove ", must include restroom"

Page 2, remove line 31

Page 3, remove line 1

Page 3, line 2, remove the first "business"

Page 3, line 2, after "records" insert "or copies"

Page 3, line 3, after the second "the" insert "primary"

Page 3, line 5, replace "An" with "A primary"

Page 3, line 6, remove ", be open to the public during normal business hours, with those hours"

Page 3, line 7, remove "posted"

Page 3, line 7, after "dealership" insert "with business hours posted"

Page 3, line 11, after the second "the" insert "primary"

Page 3, line 12, remove "first"

Page 3, line 12, remove "secure permission"

Page 3, line 13, replace "from" with "notify"

Page 3, line 17, remove "within five miles [8.05 kilometers] of the dealer's established place of"

Page 3, line 18, replace "business" with "if there is a primary established place of business in this state"

Page 3, line 23, replace "and" with an underscored comma

Page 3, line 23, after "lots" insert ", or equipment shows"

Page 5, line 7, remove "or with any rule adopted by the director;"

Page 5, remove line 8

Page 5, line 9, remove "trailer except for the licensed trailer dealer by whom the person is employed"

Page 5, line 10, replace "an" with "a primary"

Page 6, after line 11, insert:

"**SECTION 9. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

Date: 2-17-11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0561.01003

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Oehlke Seconded By _____

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern		
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 2-17
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2255

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.056.01063

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Oehlke Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern		
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething	✓				
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2255: Transportation Committee (Sen. G. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2255 was placed on the Sixth order on the calendar.

Page 1, line 3, after "sections" insert "39-22-19,"

Page 1, line 4, after the first "to" insert "insurance for motor vehicle dealers and"

Page 1, line 4, remove "and"

Page 1, line 5, after "penalty" insert "; to provide an effective date; and to declare an emergency"

Page 1, after line 6, insert:

"**SECTION 1. AMENDMENT.** Section 39-22-19 of the North Dakota Century Code is amended and reenacted as follows:

39-22-19. 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 for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as is appropriate to the business operation. 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."

Page 2, line 2, replace "an" with "a primary"

Page 2, line 4, after "records" insert "or copies of records"

Page 2, line 6, after "the" insert "primary"

Page 2, line 12, remove "or"

Page 2, line 12, after "selling" insert ", or transporting"

Page 2, line 14, remove the overstrike over "~~does not include~~"

Page 2, line 14, remove "includes"

Page 2, line 18, replace "**Established**" with "**Primary established**"

Page 2, line 20, replace "an" with "a primary"

Page 2, line 22, replace "An" with "A primary"

Page 2, line 25, remove "and does not include a residence, tents, temporary stands, or other"

Page 2, line 26, remove "temporary quarters"

Page 2, line 26, after "The" insert "primary"

Page 2, line 26, remove "and primary display lot"

Page 2, line 27, remove "cover at least two thousand five hundred square feet [232.26 square meters] and"

Page 2, line 29, after "The" insert "primary"

Page 2, line 30, remove ", must include restroom"

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Page 3, remove line 1

Page 3, line 2, remove the first "business"

Page 3, line 2, after "records" insert "or copies"

Page 3, line 3, after the second "the" insert "primary"

Page 3, line 5, replace "An" with "A primary"

Page 3, line 6, remove ", be open to the public during normal business hours, with those hours"

Page 3, line 7, remove "posted"

Page 3, line 7, after "dealership" insert "with business hours posted"

Page 3, line 11, after the second "the" insert "primary"

Page 3, line 12, remove "first"

Page 3, line 12, remove "secure permission"

Page 3, line 13, replace "from" with "notify"

Page 3, line 17, remove "within five miles [8.05 kilometers] of the dealer's established place of"

Page 3, line 18, replace "business" with "if there is a primary established place of business in this state"

Page 3, line 23, after "lots" insert "or equipment shows"

Page 5, line 4, remove "deny an"

Page 5, remove lines 5 through 10

Page 5, line 11, remove "place of business"

Page 5, line 11, overstrike the comma and insert immediately thereafter "deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license after it has been granted for making any material misstatement by an applicant in the application for a license; willfully failing to comply with this chapter; willfully violating a law relating to the sale, distribution, or financing of trailers; ceasing to have a primary established place of business;"

Page 5, line 11, overstrike "for"

Page 6, after line 11, insert:

"**SECTION 9. EFFECTIVE DATE.** Except as otherwise provided in this Act, this Act becomes effective on January 1, 2012.

SECTION 10. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE TRANSPORTATION

SB 2255

2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

SB 2255
03/10/11
Job # 15277

☐ Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

SB 2255 is a bill relating to the licensure of trailer dealers; relating to insurance for motor vehicle dealers and requirements for the licensing of trailer dealers; to provide a penalty; to provide an effective date; and to declare an emergency.

Minutes: Attachment #1, #2, and #3

Senator Rich Wardner, District 37 in Dickinson, introduced SB 2255 and spoke to support the bill. The bill relates to the licensing of trailers, and also relates to insurance of motor vehicle dealers and requirements. A problem occurs when someone comes into the state and starts a business with nothing but a lot, a mailbox, and an e-mail. This bill requires criteria for someone to be in business in North Dakota. He briefly reviewed the sections of the bill. He stated that page 3 is the most important part of the bill. The bill is modeled after the automobile dealer's regulations. This bill was amended in the Senate.

Representative Gruchalla: Would a business that has a few trailers to sell, such as an insurance company, be in violation of this law?

Senator Wardner: It is my understanding that they would not be, because they would be doing it for other reasons, such as reclaiming a trailer.

Representative Gruchalla: How many trailers could an individual sell before he would be in violation of this?

Senator Wardner: I can't answer that.

Chairman Ruby: On page 2 if a dealer fails to renew by a certain day, why would there be another $100 fee if they got it in late?

Senator Wardner: I can't be specific, but I believe that is what they do with the automobile dealers. They have to be on time.

Chairman Ruby: On page 2 line 22 it talks about records or copies. If you make copies, and they are in a home office, is that not allowed?

Senator Wardner: I can't answer that. The Department of Transportation should be able to answer that. I wasn't in the committee when they amended the bill.

Representative Heller: On page 3 it even says how big the sign has to be. Is that patterned after the automobile dealer bill as well?

Senator Wardner: Yes, that is my understanding. Most of the language is patterned after that bill.

Representative Gruchalla: Couldn't trailer dealers just be added to the automobile dealer statute? It looks like it is a mirror of that bill.

Senator Wardner: We took this bill to the Department of Transportation, and they worked on it. So, they will have the answers for you. The big issue in this bill is fairness.

Perry Boespflug, Boespflug Trailers in Dickinson, spoke to support SB 2255. He explained that he has been in the trailer business for 28 years. He feels that the challenge is that not everyone has to follow the same rules.

Perry Boespflug: The trailer dealer requirements spelled out in the Century Code are somewhat vague and do not represent a fair situation for all of us that make our living selling and servicing trailers. Trailers are titled as a motor vehicle, and by that definition alone, I feel that they should be regulated as such. At this point they are not. In the past the rules applying to a motor vehicle dealer was the implied criteria for a trailer dealership. However, the Century Code at this point has very vague language and is not enforceable. It is difficult to police those that are not following protocol. There has been a mixed standard through the years. About a decade ago our dealership opted to possibly locate in a second location in another city. The director of the Motor Vehicle Dealer Licensing at that time denied that license, unless we established a complete new dealership with licensing and bonding. He interpreted the language to mirror that of the motor vehicle dealerships, which did state that. However, over the years that rule seemed to have lost its clout, and many dealers have shown up since then that do not follow the criteria. In turn due to lack of definition in the statute, Motor Vehicle has been unable to enforce anything different. My frustration with taking these issues to the Department of Transportation spurred me to get Senator Wardner to sponsor this bill. Many times the individuals that operate a dealership, that aren't following these criteria, do not operate within a permanent location. They do not staff it or run regular hours. In turn it puts those of us that do operate within the criteria at a huge disadvantage because of overhead costs. I feel that in order to bring fairness to the situation, there needs to be some type of policing available. SB 2255 is designed to do that. I have some photos showing what I am talking about. See attachment #1. These pictures show a lot that is not up to standards with the same criteria that you would see with a vehicle dealership. This lot is in Dickinson and is a dealer from out-of-state that has a few trailers, does not staff, and does not provide a place of business with regular hours. This individual had three operations like this operating in North Dakota. Not one of them was staffed. You will see in the photos that there is a sign with a phone number that gets answered in Elbow Lake, Minnesota. At no time was anyone employed to run an office in the state. There is a mailbox that is attached to a post that is stuck in a stake hole on a trailer. That is considered his established mailing address, but he doesn't have a street

number or box number, and there is no mail delivered there. I don't feel that this is what an individual should have to deal with when going shopping for a trailer. The fact remains that existing trailer dealerships have had to follow or been implied to follow the rules over the years. We all took for granted that everyone would be held to the same standards. Now it is not enforceable. These types of individuals do not support our North Dakota economy. Businesses like mine employ people and pay payroll taxes. Those dollars that our employees earn stay in our economy to stimulate the rest of the businesses in the state. Those that operate without having a place of business, hiring staff, etc., put the rest of us at a disadvantage. They don't have the same overhead. I just feel that we have to have fairness within the industry. I would request that you support the bill. When we as dealers make requests to the Motor Vehicle Department to enforce issues that we feel are relevant, they have no place to go with it. It may not be a perfect policy, but it is something we should be building on.

The fee of $100 would have to be paid again if it were late. That does mirror what is in the automobile dealership bill. It makes sense to me. Any other agency that we are required to register with has a penalty for being late.

I support the bill as it passed the Senate with two minor exceptions. The Senate Transportation Committee did amend the bill to extend the effective date to be enforceable January 1st of 2012. I don't see the necessity of that.

Also in Section 2 Item 5 has a line that currently exempts trailers which are currently exempt from registration. That would be trailers that are under 1,500 pounds capacity and are designated for recreational and/or personal use. For fairness and from a dealer's standpoint I would like to have that line removed and have all trailers included. That type of unit is retailed by chain or big box stores, and at this time they are not regulated by anything at all.

Representative Delmore: How many trailers do these people have that they are trying to sell?

Perry Boespflug: Those that are operating currently in this fashion might have anywhere between two to six. The individual in the pictures sometimes had from 16 to 20 at one time.

Representative Gruchalla: Was the individual in the pictures a licensed dealer?

Perry Boespflug: Currently he is, but he was not initially. He showed up in the state about four years ago, and operated within the state for well over two years without a license. There was some conflict, but they ended up giving him a license, due to the fact that there were no criteria to follow. I believe that Motor Vehicle could answer that better than I can.

Representative Gruchalla: On the amendments on Page 2 Line 30 it says, "must remove restroom". I didn't see that in here.

Perry Boespflug: I'm not familiar with that, but that is one of the requirements for a car dealership.

Chairman Ruby: What we handed out are the amendments that the Senate added. What you see in the bill before you is engrossed.

Representative Gruchalla: So, it has already been removed, and it would be a deviation from the auto dealer requirements?

Chairman Ruby: Yes.

Perry Boespflug: In my opinion it should still be in there because if it is going to be classed as a motor vehicle and taxed as such, it should mirror the motor vehicle bill and be regulated the same.

Chairman Ruby: You did say that the person in these pictures is now licensed.

Perry Boespflug: Yes.

Chairman Ruby: I understand that your operation is bigger, and you have personnel to show people trailers. Don't you think that there are some trailers that people can take a look at, and call the number on the sign, and buy them?

Perry Boespflug: I would agree with that, but I don't think that it comes down to how the trailer should be sold, as much as those dealers should have to follow the same regulations as the rest of the trailer dealerships. It would be like the automobile dealerships that are all regulated the same.

Chairman Ruby: We do title and license them, and that does mirror the automobiles other than the fees. Don't you see a difference between the two types of dealerships?

Perry Boespflug: I would agree to a certain point, but we also offer the service of demonstrating the unit for the client. One of the things that I can't emphasize enough is the fact that it not only creates an unfair situation for those dealers that are doing this full time, it is also the fact that in this situation where this individual is out-of-state and does nothing to stimulate the economy in North Dakota. The dollars spent with those type of businesses leave the state and do nothing to create extra buying power for local employees or extend the tax base for a local economy.

Chairman Ruby: Your service is what sets you apart. So, that is almost an advantage, isn't it?

Perry Boespflug: Yes, it is. However, the fact remains that since they don't have to staff an office and incur these overhead costs, it, again, creates an unfair advantage within the marketplace.

Chairman Ruby: If I call this number on the picture and tell them that I would like to buy that. Who would they send over to let me take it away?

Perry Boespflug: I can't say for sure. The reports that I have had from my past customers and those individuals that have conducted business in that fashion, say that they mail a check and pick up the trailer without someone being present. At one time there was a local individual that came down to help people hook up. We have even had people come to us to hook up or repair trailers that they picked up from them. That tells me that they aren't getting any service on the trailers that they buy.

Chairman Ruby: I think that is one of the weaknesses of buying from someone like that.

Representative Gruchalla: Did you turn this business in to Motor Vehicle when this business came to Dickinson?

Perry Boespflug: Yes I did, many times. When he initially showed up at our doorstep a little over three years ago, the directors of the Motor Vehicle at that time used a go slowly and walk softly approach, in my opinion. I also attempted to get local and county law enforcement to portray the urgency of something like this, to no avail. We were told that the criteria that we have to deal with are totally non-enforceable. There is nothing that we can do.

Representative Gruchalla: According to the current statute, he wasn't complying with the law.

Perry Boesfhlug: No, he was not.

Representative Frantsvog: Would the trailers that are sold by big box stores and farm supply stores be out of compliance under this law?

Perry Boespflug: If they are handling units in excess of 1,500 pounds, they would be out of compliance if they are not currently licensed.

Representative Frantsvog: In your business do you have other items that you sell as well.

Perry Boespflug: Yes, we do handle a small amount of livestock equipment as well. We also provide the servicing for trailers and a full line of parts.

Dwayne Wahl, D & S Auto & Trailer Sales on the strip in Mandan, spoke to support SB 2255.

Dwayne Wahl: There has been a lot of discussion about fairness for the dealer. Let's talk about what is fair for your constituents. I will give you an example of a man in Mandan that sells a few trailers out of his home. He tells a prospective customer to pick a trailer out on a lot, and he will order it out of a book. He then picks up a couple of trailers when he goes to get the trailer. I asked someone how they get a title. He didn't know. If the seller is not a registered dealer, he doesn't pay sales tax on the item the first time. He has an open MCO and just gives the customer the title and no taxes have been paid. That hurts the state and everybody's pocket. He didn't buy a license for it; again, that hurts the state.

Think about what will happen if something major is wrong with the trailer, will the buyer have to take it back to Wisconsin to get it fixed or get warranty? So, by allowing individuals to sell one or two trailers out of their yard, the state is losing money on sales tax and registration. The buyers have no protection for warranty or service. We are opening up a huge problem that needs to be fixed. This bill would be a start.

I feel that we need tighter regulation, and we need to allow our Motor Vehicle to be able to do what they are supposed to do, and to enforce things that are already in the books. The law doesn't have any teeth right now, and there are too many loop holes. We should have a new and used trailer dealer license. Instead of rewriting everything, we should just scratch out cars and put in trailers because they are so similar. We need to take care of the consumers, taxes need to be paid, and dealers need to be accountable.

Sometimes I get people that bring in a trailer in to trade, and it still has an open MCO. Nothing has been filled in. How do I even know that he owns the trailer? They definitely didn't have to pay sales tax the first time. I will trade in the trailer, but I will charge the customer the sales tax on the whole purchase.

Another thing comes into the picture. We should make the dealer do the title transfer. Maybe that is something that should be added to this bill. There are problems with the title transfer process.

We need a larger window than fifteen days for the title transfer; I think 30 days is more appropriate. Sometimes we don't get the title in fifteen days. The way this is written, I could get fined or lose my license.

We sell used cars as well. I have to have three bonds available. We should allow the dealer to attach this bond to another bond if the coverage is enough. It will save me money, and the bond will still cover both licenses.

We need something to regulate the trailer dealership. I urge you to support SB 2255.

Representative Gruchalla: How many trailers do you think it would be fair for a person to sell out of his yard every year before he gets a license?

Dwayne Wahl: I think they all should be made to pay sales tax and be made to license every trailer he sells.

Chairman Ruby: What if someone builds their own trailer? They title and license it, and then they need to sell it in a few years. Would a person need to be a dealer? Is there a problem with that?

Dwayne Wahl: No, as long as the person titles and licenses a trailer and pays taxes, that is not a problem. I don't know about the regulations for building trailers.

Representative Delmore: Why should a trailer situation be different than an automobile? If I have a trailer that I want to sell myself, why couldn't I do that? You seem to be saying that I should be licensed.

Perry Boespflug: That is not the intent of the bill. It is not for the individual that is selling something that they already have for personal use. It is for those that are buying something to generate income from a sale, as in a retail situation.

There was no further support for SB 2255.
There was no opposition to SB 2255.

Linda Sitz, Director of the Motor Vehicle Division of the North Dakota Department of Transportation, spoke in a neutral position on SB 2255. She provided written testimony. Linda also addressed the amendments. See attachment #2 and #3. She also brought with her Kelvin Zimmer, the head of the Motor Vehicle Dealer Services, to answer questions if necessary.

Chairman Ruby: Why would all the copies have to be on the premises as well as regular records?

Linda Sitz: We ask that the copies be there in case we do a spot inspection; then they would have a copy on the lot. We require that they have the original documentation **OR** copies.

Chairman Ruby: Why wouldn't the dealer's representatives or agents be able to use the dealer plates?

Linda Sitz: Currently with auto dealers, it is implied that any individual that has anything to do with an auto dealership can use the dealer plates. It is implied.

Chairman Ruby: Why was that taken out then, if it was in law?

Linda Sitz: It was suggested by the Senate that we remove that section.

Representative Gruchalla: Is there a minimum amount of trailers that you would have to sell to maintain a dealership?

Linda Sitz: It is four.

Kelvin Zimmer: Under state law currently, trailer dealers do not have a requirement for minimum number of sales. In current statute there is no minimum requirement, and this bill does not indicate that a trailer dealer has to have so many sales a year to keep his license.

Chairman Ruby: How many would you need to sell to GET a dealer's license?

Kelvin Zimmer: There is no number. We tell them that if they are in the business of buying and/or selling trailers, you need to be a dealer.

Representative Owens: Chapter 39,22.1 is trailer dealers' license and bonding. I see a whole section on how to suspend and revoke a dealer's license and how to provide for a

dealer's license and what to do. It may not be as detailed as what is in this bill. What we have heard is that there are people operating without licenses. There is a penalty in code for it, and I am wondering why we are told there is "no teeth", when there is a penalty. So, have these not been investigated by Department of Transportation, and gone after if they don't have a license, and shut down?

Linda Sitz: Currently the Department of Transportation has limited authority to go after those that are selling without a dealership license (curb stoners). We do recognize the complaints that come into our office, and often report them to the local authorities in that area. However, we are limited as to what we can do. It becomes an enforcement issue.

Representative Owens: Are you saying that you are not getting any assistance from local law enforcement to support your requirements?

Linda Sitz: Because a class B misdemeanor is much like a slap on the fingers, it is too time consuming in some cases. So, it is an enforcement issue.

Representative Delmore: If you let them know enough times, and they have enough slaps on the hands, I would think that the accumulation of that would do something to help. You know that they are out there, and you are getting enough complaints. I would think that there would be some way of following through with local law enforcement.

Linda Sitz: Since these are curb stoners, they are not following the law of a dealership. We have NO authority over them. If a dealership is in violation, we do have those steps to deny their license or establish penalties.

Representative Delmore: Is this bill going to change anything if they still say that they are not dealers?

Linda Sitz: No, it is not going to change anything.

Representative Hogan: How many complaints do you get about this in a year?

Linda Sitz: If we get a phone call, we ask for a written statement. I would say we get about two to five a year.

There was no further testimony on SB 2255.
The hearing was closed on SB 2255.

Chairman Ruby brought SB 2255 back before the committee in the afternoon session.

Representative Weisz: It seems like more and more we just keep limiting the opportunity for anyone to start a business. I don't think the argument about the sales tax is true. Mr. Whal doesn't pay the sales tax either. If a person purchases a trailer to sell it to his neighbor, it is no different than if Mr. Whal buys a trailer and sells it to someone. The same amount of sales tax will be collected. There is still an issue of some not having licenses, but the state is not losing any revenue.

Representative R. Kelsch: Why did we need to create a new section? Was there clarification on that?

Chairman Ruby: We already have a separate section dealing with trailer dealers that we are just enhancing. In Minot there are some that sell larger trailers in combination with their business, and they are probably licensed. But, their other business probably qualifies them in other ways. They may not have a specific sign that says they have trailers.

Representative R. Kelsch: Could this bill be modified to meet the concerns of the licensed dealers?

Chairman Ruby: Even with this bill, Linda Sitz stated that the same situation can exist.

Representative Onstad: They just want someone who is in the business to be registered. It did seem odd that the Department of Transportation made the statement that because someone in not a dealer, they have no authority.

Representative Weisz: The ***Department of Transportation*** has no authority over that so called "dealer" if they are not registered as a dealer. That is the State's attorney's decision. If they are holding themselves out to be a dealer, and they are not registered, it is up to the local law enforcement to file charges against them. It seems to me that they feel that there is not enough "teeth" in the law, and we need to give them more ability to enforce requiring a license. I think that if you are a dealer, you should have to follow the rules. They should also be able to enforce the current rules.

Representative Delmore: I find it interesting that we have gone from 19 trailer dealer in 2010 to 257. It would seem to me that most of them are registering.

Representative Gruchalla: Department of Transportation is neutral on this bill. Maybe we should have asked them if they are happy with the way things are now. It seems the problem is the enforcement issue of those that are not registered dealers. In the language of the auto dealers it says that if you are a dealer you have to sell four cars to maintain your license, but the Department of Transportation has no control over the enforcement side of that. If someone is violating one of these rules, all they can do is assess the penalties. This bill will not change that.

Chairman Ruby: They might not have the authority, but the State's Attorney certainly would. It is in law that you cannot put yourself out like a dealer to sell trailers. You would think that someone could sue them on that.

Representative Gruchalla: The Department of Transportation doesn't have the authority, and normally the State's Attorney are not interested in this type of thing, and neither is law enforcement.

Representative R. Kelsch: Do we need the bill at all, and if we do, do we just need the section that the department thinks is important?

Chairman Ruby: I think that the part the Department of Transportation wants needs to be added. If we amend the bill down to just that, it may go to conference committee.

Vice Chairman Weiler: I would like to look at the bill from Section 2 on. We should do something for the dealers that are playing by the rules.

Representative Heller: I talked to Linda Sitz, and she said that Spark's Trailers has been closed down since this was brought to their attention.

Representative Weisz: The dealers talk about their disadvantages, but really they have all the advantages. They are at their business during normal working hours, they are going to be there to hook up the trailer, and they will provide service. Very few people will buy an expensive trailer from someone that provides no service. They are probably not true competition. Some of these are $100,000 trailers, and people care about a warranty and service.

Representative R. Kelsch: I agree that they are not a lot of competition, but I also agree with Vice Chairman Weiler that perhaps we need to do something to help the dealers that are now licensed. Especially out west, there will be a lot more of this type of activity.

Representative Owens: This bill is about protectionism, but what Linda said in testimony was that for a B misdemeanor, they can't even get law enforcement to enforce it. I would certainly support changing the "teeth" at that point. Some of this other stuff bothers me.

Representative Sukut: We are really looking at doing some turf protecting here. How many other doors are we going to open if we do this? I think that we do need to be somewhat careful.

Representative Heller: I do think that the dealers with an established business have an advantage, because when we went to buy a trailer, we didn't even consider buying from the lot that had no one there for representation.

Chairman Ruby: Let's form a sub-committee to look at this bill. **Representative Weisz**, **Vice Chairman Weiler**, and **Representative Onstad** will be on the committee. We will hold this bill until the committee has had time to meet.

2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee
Fort Totten Room, State Capitol

SB 2255
03/18/2011
Job # 15673

☐ Conference Committee

Committee Clerk Signature Jeanette Cook

Chairman Ruby brought SB 2255 before the committee.

Vice Chairman Weiler reviewed the bill.

Vice Chairman Weiler: The very least that needs to be done if someone is going to sell trailers is that they need to contact Department of Transportation and get licensed.

Chairman Ruby: But, the issue is, who will enforce that if they don't?

Representative Weisz: The problem is that we can't make the Department of Transportation into a law enforcement agency. No matter what, we can't make everyone comply. We toughened up the language as far as penalties and ability to revoke the license. If someone shows up and doesn't get a license, and the local state's attorney doesn't care, it doesn't matter what we put in this bill, the Department of Transportation doesn't have the power to go in and shut them down. I think, from an enforcement standpoint, the bill goes as far as it can to allow the Department of Transportation to do what is necessary.

Representative Vigesaa: Is only Section 1 about automobile dealers?

Chairman Ruby: Yes, the rest is about trailers.

Vice Chairman Weiler addressed the amendments. See attachment #1. He stated that the only changes the committee really made were in Section 3. They took out what the committee felt were unnecessary requirement for someone starting a business.

Vice Chairman Weiler moved the amendment to SB 2255.
Representative Weisz seconded the motion.
A voice vote was taken. The motion carried.

Representative Weisz moved a DO PASS as amended on SB 2255.
Representative R. Kelsch seconded the motion.
A roll call vote was taken. Aye 12 Nay 1 Absent 1
The motion carried and Vice Chairman Weiler will carry SB 2255.

#1
3/18

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2255

Page 2, line 21, remove the overstrike over "~~In addition, the dealer shall maintain that person's~~"

Page 2, line 22, remove the overstrike over "~~business records in one central location.~~" and remove "All records or copies of records related to the"

Page 2, remove lines 23 and 24

Page 3, line 6, remove "A dealer license may not be issued until the applicant furnishes proof satisfactory to"

Page 3, remove lines 7 through 22

Page 3, line 23, remove "3."

Page 3, line 25, remove "The licensee must furnish proof satisfactory to the director that the premises"

Page 3, remove line 26

Page 3, line 27, replace "4." with "2."

Page 3, line 28, after the first "business" insert a period and remove "if there is a primary established place of business in this state."

Page 3, line 29, after "operation" insert a period and remove "with a"

Page 3, remove lines 30 and 31

Page 4, remove lines 1 through 3

Page 4, line 4, replace "5." with "3."

Renumber accordingly

Amendments proposed by Subcommittee

Date: 3/18/11

Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2255

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Weiler Seconded By Weisz

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby			Representative Delmore		
Vice Chairman Weiler			Representative Gruchalla		
Representative Frantsvog			Representative Hogan		
Representative Heller			Representative Onstad		
Representative R. Kelsch					
Representative Louser					
Representative Owens					
Representative Sukut					
Representative Vigesaa					
Representative Weisz					

Voice Vote Motion Carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Adopted by the Transportation Committee

VR 3/18/11

March 18, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2255

Page 2, line 21, remove the overstrike over "~~In addition, the dealer shall maintain that person's~~"

Page 2, line 22, remove the overstrike over "~~business records in one central location.~~"

Page 2, line 22, remove "All records or copies of records related to the"

Page 2, remove lines 23 and 24

Page 3, line 6, remove "A dealer license may not be issued until the applicant furnishes proof satisfactory to"

Page 3, remove lines 7 through 22

Page 3, line 23, remove "3."

Page 3, line 25, remove "The licensee must furnish proof satisfactory to the director that the premises"

Page 3, remove line 26

Page 3, line 27, replace "4." with "2."

Page 3, line 28, remove "if there is a primary established place of business in this state"

Page 3, line 29, remove "with a"

Page 3, remove lines 30 and 31

Page 4, remove lines 1 and 2

Page 4, line 3, remove "primary and secondary lots or equipment shows"

Page 4, line 4, replace "5." with "3."

Renumber accordingly

Date: 3/18/11

Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2255

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Weisz Seconded By R A Kelsch

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Representative Delmore	A	
Vice Chairman Weiler	X		Representative Gruchalla	X	
Representative Frantsvog	X		Representative Hogan	X	
Representative Heller	X		Representative Onstad	X	
Representative R. Kelsch	X				
Representative Louser	X				
Representative Owens	X				
Representative Sukut	X				
Representative Vigesaa		X			
Representative Weisz	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Weiler

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

REPORT OF STANDING COMMITTEE

SB 2255, as engrossed: Transportation Committee (Rep. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2255 was placed on the Sixth order on the calendar.

Page 2, line 21, remove the overstrike over "~~In addition, the dealer shall maintain that person's~~"

Page 2, line 22, remove the overstrike over "~~business records in one central location.~~"

Page 2, line 22, remove "All records or copies of records related to the"

Page 2, remove lines 23 and 24

Page 3, line 6, remove "A dealer license may not be issued until the applicant furnishes proof satisfactory to"

Page 3, remove lines 7 through 22

Page 3, line 23, remove "3."

Page 3, line 25, remove "The licensee must furnish proof satisfactory to the director that the premises"

Page 3, remove line 26

Page 3, line 27, replace "4." with "2."

Page 3, line 28, remove "if there is a primary established place of business in this state"

Page 3, line 29, remove "with a"

Page 3, remove lines 30 and 31

Page 4, remove lines 1 and 2

Page 4, line 3, remove "primary and secondary lots or equipment shows"

Page 4, line 4, replace "5." with "3."

Renumber accordingly

2011 TESTIMONY

SB 2255

HOUSE TRANSPORTATION COMMITTEE
Date: February 10th – 9:00 a.m. – Lewis and Clark

North Dakota Department of Transportation
Linda Sitz, Director, Motor Vehicle Division

SB2255

Mr. Chairman and members of the committee. I'm Linda Sitz, Director of the Motor Vehicle Division at the North Dakota Department of Transportation (DOT). I have with me, Kelvin Zimmer, who heads our Motor Vehicle Dealer Services. Thank you for giving me the opportunity to present information to you today.

Motor Vehicle is neutral on this bill; however I will lead the committee through each section discussing implications of those section.

SB 2255 relates to requirements for the licensing of trailer dealers and to provide a penalty for those who do not comply. Currently Motor Vehicle does not have established guidelines for trailer dealers, yet we are asked to issue a dealer license upon application. In other areas of dealership law, we are required to inspect the premise upon initial application and in some cases establish guidelines. This bill attempts to provide the same treatment to trailer dealers as is currently applied to new and used motor vehicle dealers and the motor powered recreation dealers. In fact much of the language in the bill is pulled from current motor vehicle dealer law. Given our growing economy we have seen an increase of 19 trailer dealers in 2010, and currently have 257 active trailer dealers. Trailer Dealers include:

- New or used trailers
- Flat bed trailers
- Goose neck trailers
- Bumper pull trailers
- Semi Trailers
- Enclosed cargo trailers
- Car trailers

Section 1:

1. Defines the guidelines for buying, selling or exchanging trailers
2. Lays out the fees associated with obtaining a trailer dealer license
3. Describes the circumstances under which a dealer license will be issued: 1) has a established place of business and 2) retains all business related records at that location
4. Discusses the use of dealer plates. Brings stores that sell trailers under 1,500 pounds into the trailer dealer law requirements

Section 2:

1 & 2 Lays out the guidelines for an established place of business

3. Requires permission from the NDDOT Director before moving to a new location
4. Sets fees for violations of these business standards

Section 3:

- Covers surety bond requirements for consumer protection

Section 4:

- Outlines the procedure to suspend, deny or cancel the dealer's license

Section 5:

- Establishes the procedure for the Director to audit the trailer dealer books, records, letters and contracts

Section 6:

- Gives the NDDOT Director the ability to conduct inspections and address complaints

Section 7:

- Makes a violation of this statue a Class B misdemeanor

I would also like to address an amendment to the bill. § 39-22-19, states Motor Vehicle must required Garage Liability in order to relicense dealerships. However it has been brought to our attention that this type of coverage is, in some cases, no longer written, rather it is part of a Business Operation Policy. As such we are seeking the ability to recognize these types of policies as ones that offer equivalent protection to the consumer. If this amendment is not adopted Motor Vehicle may be required to close dealers whose insurance coverage does not acknowledge Garage Liability.

I understand Mr. Balzer has also submitted amendments to present. I may have follow up comments after his presentation.

Thank you, Mr. Chairman, I would be happy to answer any questions.

CHAPTER 39-22.1
TRAILER DEALER'S LICENSING AND BONDING

39-22.1-01. Trailer dealer's license - Fees - Plates. No person, partnership, corporation, or limited liability company may engage in the business of buying, selling, or exchanging of trailers, or advertise or hold oneself or itself out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license must be made to the director on such forms as the director prescribes and furnishes, and the application must be accompanied by an annual fee of thirty dollars for which must be issued one dealer plate. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license.

A trailer dealer's license may be issued only to those who will maintain a permanent office and place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain that person's business records in one central location.

Upon the payment of a fee of ten dollars for each additional plate, the director shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and the trailers bearing the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by the dealer or the dealer's agents or representatives during the year of the registration. A dealer's license plates expire on December thirty-first of each year.

The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

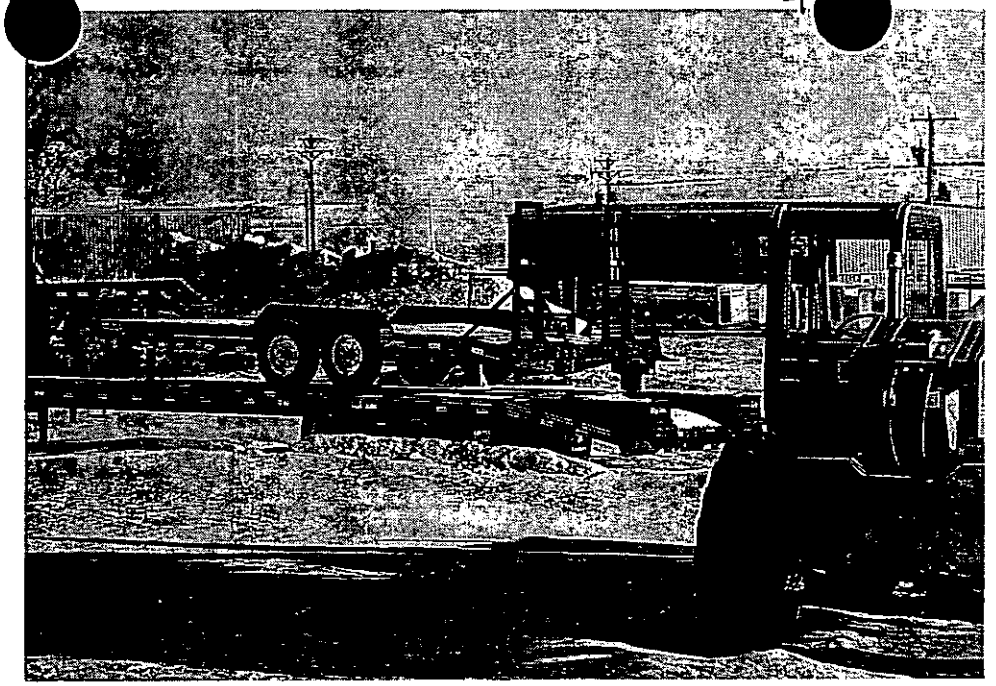
39-22.1-02. Bond required. Before the issuance of a trailer dealer's license, as provided by law, the applicant for such license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by said applicant as a dealer, if such license be issued to the applicant, that such dealer will comply with all the laws of the state of North Dakota pertaining to such business, and regulating or being applicable to the business of said dealer as a dealer in trailers, and indemnifying any person dealing or transacting business with such dealer in connection with any trailer from any loss or damage occasioned by the failure of such dealer to comply with the provisions of the laws of the state of North Dakota, including, but not limited to, the furnishing of a proper and valid certificate of title to the vendee of a trailer within fifteen days of the sale of such trailer, and that such bond shall be filed with the director prior to the issuance of the license herein provided for. Provided, however, that the aggregate liability of the surety to all such persons for all such losses or damages may, in no event, exceed the amount of such bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any such proceedings. Any applicant bonded pursuant to the provisions of chapter 39-18 or 39-22 may not be required to furnish the surety bond provided for in this section whenever the bond issued pursuant to chapter 39-18 or 39-22 is written to include the requirements of this section. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability thereafter arising. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

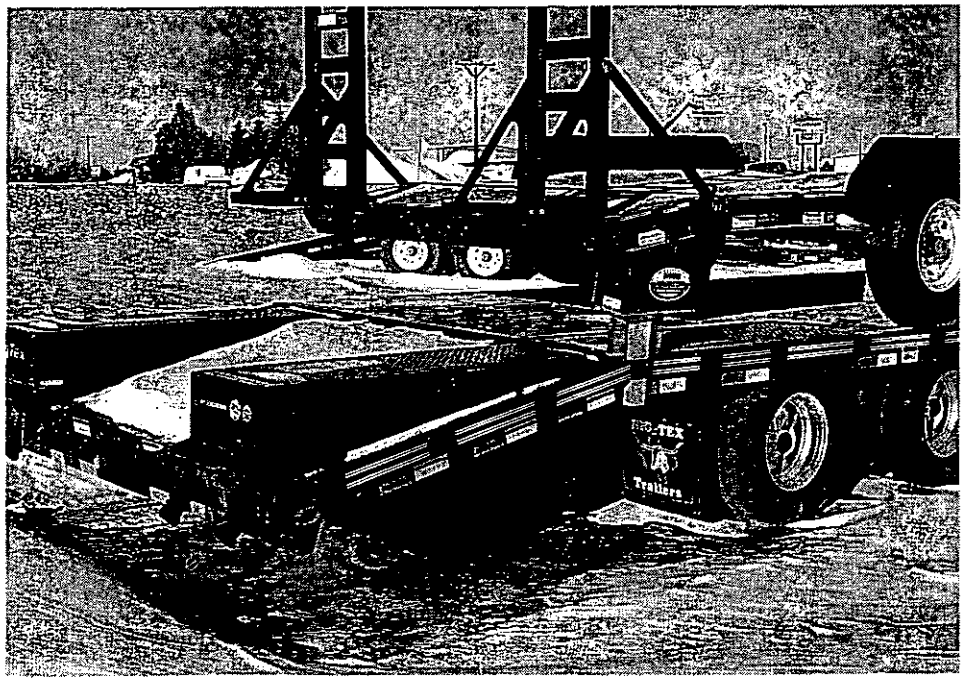
39-22.1-02.1. Disposition of fees. Fees from registration of dealers must be deposited with the state treasurer and credited to the highway tax distribution fund.

39-22.1-03. Suspension or revocation of dealer's license - Penalty. The director may suspend or revoke any dealer's license for failure of the licensee to comply with any of the laws

of the state of North Dakota governing trailer dealers, or for the failure to comply with the reasonable rules and regulations of the director as established under chapter 28-32, but no order suspending or revoking a dealer's license may be made without a hearing at which the licensee must be given an opportunity to be heard. Any dealer violating the provisions of this chapter 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 trailer dealer licensed under this chapter if a third or subsequent violation of the chapter occurs within five years of the first violation.

39-22.1-04. Penalty. Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.





#2

HOUSE TRANSPORTATION COMMITTEE
March 10, 2011 – 9:00 a.m. – Fort Totten

North Dakota Department of Transportation
Linda Sitz, Director, Motor Vehicle Division

SB2255

Mr. Chairman and members of the committee. I'm Linda Sitz, Director of the Motor Vehicle Division at the North Dakota Department of Transportation (DOT). I have with me, Kelvin Zimmer, who heads our Motor Vehicle Dealer Services. Thank you for giving me the opportunity to present information to you today.

Motor Vehicle is neutral on this bill; however I will lead the committee through each section discussing implications of those sections.

SB 2255 relates to requirements for the licensing of trailer dealers and to provide a penalty for those who do not comply. Currently Motor Vehicle does not have established guidelines for trailer dealers, yet we are asked to issue a dealer license upon application. In other areas of dealership law, we are required to inspect the premise upon initial application and in some cases establish guidelines. This bill attempts to provide the same treatment to trailer dealers as is currently applied to new and used motor vehicle dealers and the motor powered recreation dealers. In fact much of the language in the bill is pulled from current motor vehicle dealer law. Given our growing economy we have seen an increase of 19 trailer dealers in 2010, and currently have 257 active trailer dealers. Trailer Dealers include:

- New or used trailers
- Flat bed trailers
- Goose neck trailers
- Bumper pull trailers
- Semi Trailers
- Enclosed cargo trailers
- Car trailers

Section 1:
§ 39-22-19, states Motor Vehicle must required Garage Liability in order to relicense dealerships. However it has been brought to our attention that this type of coverage is, in some cases, no longer written, rather it is part of a Business Operation Policy. As such we are seeking the ability to recognize these types of policies as ones that offer equivalent protection to the consumer. If this amendment is not adopted Motor Vehicle may be required to close dealers whose insurance coverage does not acknowledge Garage Liability. This section of the bill is declared to be an emergency measure.

Section 2:

1. Defines the guidelines for buying, selling or exchanging trailers
2. Lays out the fees associated with obtaining a trailer dealer license
3. Describes the circumstances under which a dealer license will be issued: 1) has a established place of business and 2) retains all business related records at that location
4. Discusses the use of dealer plates.

Section 3:

1 & 2 Lays out the guidelines for an established place of business

3. Requires notification to the NDDOT Director upon moving to a new location
4. Guidelines for a secondary trailer display lot
5. Sets fees for violations of these business standards

Section 4:

- Covers surety bond requirements for consumer protection

Section 5:

- Outlines the procedure to suspend, deny or cancel the dealer's license

Section 6:

- Establishes the procedure for the Director to audit the trailer dealer books, records, letters and contracts

Section 7:

- Gives the NDDOT Director the ability to conduct inspections and address complaints

Section 8:

- Makes a violation of this statue a Class B misdemeanor

Thank you, Mr. Chairman, I would be happy to answer any questions.

#3

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Title.02000

Prepared by the Legislative Council staff for
Senator Oehlke
February 16, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2255

Page 1, line 3, after "sections" insert "39-22-19,"

Page 1, line 4, after the first "to" insert "insurance for motor vehicle dealers and"

Page 1, line 4, remove "and"

Page 1, line 5, after "penalty" insert "; to provide an effective date; and to declare an emergency"

Page 1, after line 6, insert:

"**SECTION 1. AMENDMENT.** Section 39-22-19 of the North Dakota Century Code is amended and reenacted as follows:

39-22-19. 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 for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as is appropriate to the business operation. 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."

Page 2, line 2, replace "an" with "a primary"

Page 2, line 4, after "records" insert "or copies of records"

Page 2, line 6, after "the" insert "primary"

Page 2, line 12, remove "or"

Page 2, line 12, after "selling" insert ", or transporting"

Page 2, line 14, remove the overstrike over "~~does not include~~"

Page 2, line 14, remove "includes"

Page 2, line 18, replace "**Established**" with "**Primary established**"

Page 2, line 20, replace "an" with "a primary"

Page 2, line 22, replace "An" with "A primary"

Page 2, line 25, remove "and does not include a residence, tents, temporary stands, or other"

Page 2, line 26, remove "temporary quarters"

Page 2, line 26, after "The" insert "primary"

Page 2, line 26, remove "and primary display lot"

Page 2, line 27, remove "cover at least two thousand five hundred square feet [232.26 square meters] and"

Page 2, line 29, after "The" insert "primary"

Page 2, line 30, remove ", must include restroom"

Page 2, remove line 31

Page 3, remove line 1

Page 3, line 2, remove the first "business"

Page 3, line 2, after "records" insert "or copies"

Page 3, line 3, after the second "the" insert "primary"

Page 3, line 5, replace "An" with "A primary"

Page 3, line 6, remove ", be open to the public during normal business hours, with those hours"

Page 3, line 7, remove "posted"

Page 3, line 7, after "dealership" insert "with business hours posted"

Page 3, line 11, after the second "the" insert "primary"

Page 3, line 12, remove "first"

Page 3, line 12, remove "secure permission"

Page 3, line 13, replace "from" with "notify"

Page 3, line 17, remove "within five miles [8.05 kilometers] of the dealer's established place of"

Page 3, line 18, replace "business" with "if there is a primary established place of business in this state"

Page 3, line 23, after "lots" insert "or equipment shows"

Page 5, line 4, remove "deny an"

Page 5, remove lines 5 through 10

Page 5, line 11, remove "place of business"

Page 5, line 11, overstrike the comma and insert immediately thereafter "deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license after it has been granted for making any material misstatement by an applicant in the application for a license; willfully failing to comply with this chapter; willfully violating a law relating to the sale, distribution, or financing of trailers; ceasing to have a primary established place of business;"

Page 5, line 11, overstrike "for"

Page 6, after line 11, insert:

"**SECTION 9. EFFECTIVE DATE.** Except as otherwise provided in this Act, this Act becomes effective on January 1, 2012.

SECTION 10. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly