

**2011 HOUSE TRANSPORTATION**

**HB 1441**

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Transportation Committee  
Fort Totten Room, State Capitol

HB 1441  
02/10/2011  
Job #14335

☐ Conference Committee

Committee Clerk Signature

*Jeannette Cook*

## Explanation or reason for introduction of bill/resolution:

HB 1441 is a bill relating to securing loads on vehicles.

## Minutes:

Attachments #1 and #2

**Representative Onstad** introduced HB 1441 and spoke in support of the bill. He provided written testimony. See attachment #1.

**Chairman Ruby:** Some of the vehicles have ledges along the sides and the hitch areas that wouldn't be protected by the tarp. Wouldn't aggregate be resting and falling off these areas too?

**Representative Onstad:** This doesn't address the problems that have always been there. We are asking that they tarp the gravel and scoria trucks in the concern of safety and the constituents. If you are following a truck, and the constant sand is peppering your windshield, it would be beneficial if the driver could take an extra time to tarp the load, especially the ones that already have tarps. It would increase safety.

**Chairman Ruby:** What would be the penalty if they didn't do this?

**Representative Onstad:** I think that the Highway Patrol can address that, and they have statistics of how many citations they have given out over the last few months.

**Chairman Ruby:** Do you have any idea how much it costs to put a tarp on a truck?

**Representative Onstad:** Probably \$1000-\$1500. There are different types of tarps.

**Representative Gruchalla:** How do we compare with surrounding states on this issue?

**Representative Onstad:** Most of the states have a tarping law. Montana and Minnesota have laws, and they do give Ag. and the Department of Transportation exemptions.

**Representative Gruchalla:** So, as far as conforming to the other states, we would be in line with them with these exemptions and the penalty?

**Representative Onstad:** I am not sure about the penalty. We would not be exactly the same as the others but similar.

**Vice Chairman Weiler:** How frequently is this happening? Do we have any data about this?

**Representative Onstad:** We will be getting some testimony from law enforcement about that.

**Corey Bristol, Chief Deputy Mountrail County Sherriff's Office in Stanley:** (Short section inaudible because of recorder dysfunction.) We are the ones that get the complaints, almost on a daily basis. They are about rocks falling off trucks and broken windshields. The biggest problem is the scoria. Our highways are like scoria roads. It is light, and they pile it high on the trucks. The drivers don't look at the trucks, they get loaded and go. The neighboring State's Attorney in McKenzie County ordered his troopers to cite a trucker for a sifting load if they even see a rock on the side of a truck. Our State's Attorney won't let us cite unless we see the rock fall off of the truck because then the load has moved. So many times when you are meeting a big truck, and the rock falls off, it may not only damage the windshield, but it could put a dent in the vehicle. By the time this happens, you find a place to turn around, and try to catch up with the truck, the truck is gone, and the driver is unable to tell us who did the damage. If you could pass this law, it would at least make them get out, check the loads and sides, and put the tarps on. It would make our state highways safer. We need to do something. Most states do have an aggregate tarping laws. Ninety percent of our complaints about trucks are gravel or scoria trucks. I would encourage a DO PASS on HB 1441.

**Representative Louser:** Will people driving down the road, pull over and call you to tell you that their windshield has been damaged, and what do you do?

**Corey Bristol:** Absolutely, and we do what we can. If we can find the truck, we will cite the trucker. They are responsible if a piece falls off the truck. If it is kicked up from the road, they are not responsible.

**Representative Louser:** You pursue the trucker based on the word of the driver telling you that it was a blue truck, for example?

**Corey Bristol:** Yes.

**Wayne Evans, owner and manager of Prairie Ford in Stanley:** I am here to testify in support of HB 1441. I do a lot of traveling in western North Dakota. I have two basic concerns. The first is the dropping of aggregate: sand, gravel, and scoria. When you meet trucks, you get a sand blasting effect. That is why I would like to see the covering of the trucks. Most farmers are already covering their trucks because they don't want to lose their commodity. Many of the aggregate trucks have tarps that they are not using because they are not required to do it in North Dakota like they are in other states. The cost for many of the companies will be minimal because they already have tarps on the trucks. Six out of ten trucks in our area have out-of-state plates, and most have tarps on them. Not all of the aggregate on the roads is coming off of the trucks related to the oil industry; I realize

that, but the majority of it is. At the intersection of Highway 8 & 2, where the trucks come around the corner, the aggregate is spread out at that intersection because it has come off of the top of the trucks. It is a dangerous intersection anyway. My brand new 2011 truck made it 500 miles before it got its first rock chip. This happens often in my situation as a dealer. At least 50% of the vehicles that I trade in need windshields. My wife and I ride motorcycle; we have to wear face masks. It would be a great help for the motorcyclists if we could control the aggregate on the roadway.

My second concern is the leaking part. One mile south of us there is a salt water disposal well. At one time there were 50 to 60 trucks dumping in a day, now there are probably only 25-30 a day because there have been more sites built. I think the problem is that the drivers are being paid by the load, so time is money. They don't completely empty the truck at the salt water disposal site. They go down the gravel road prior to the highway. Then they stop and open their valve. By the time they get down to their next pick up site their truck is empty. The drivers are dumping fluids up to a mile from the site. We had a major dump on our road last summer, and it took eleven days to kill three 70 foot cottonwood trees. They dumped directly into the ditch, left the valve open, and went down the road. There was no way to prove the quantity of the dump. I have seen salt water on the highway. A bill like this should put more eyes out there. I have had the State Health Department out to look at the situation. They know that it is happening, but they have to be caught. I need a truck name and license number in order for the Health Department to do something about this. I am very concerned about the dumping of these fluids. I would recommend a DO PASS on HB 1441.

**Representative Gruchalla:** Are they dumping the salt water on the road intentionally or accidentally?

**Wayne Evans:** It is intentional.

**Representative Gruchalla:** Was the dump that killed the trees investigated by the Health Department?

**Wayne Evans:** That one was not. The Mountrail County Sheriff's office was advised of it. I had one about a year and one half earlier that killed a single tree and the grass in the ditch. The Health Department came out on that one, and the site was investigated.

**Representative Gruchalla:** Did the Health Department investigate the kind of chemicals that killed the trees there? What kinds of chemicals were there?

**Wayne Evans:** I am not qualified to answer that. I don't know the chemical make-up that is coming out of the wells. It is salt water after the fracking situation, and there are all sorts of chemicals in there. It is very potent.

**There was no further support for HB 1441.**

**Tom Balzer, North Dakota Motor Carriers Association** spoke in opposition to HB 1441.

**Tom Balzer:** We understand that this is a bill that is directed toward the oil industry, but if it is passed, it will affect all industries. The conversation about of rock chips has been held numerous times. Gravel, sand, salt, and aggregate are all part of the process of a road. I know that it is unfortunate. It is a matter of fact of driving on a road. The issue of tarping has very little to do with the time. The tarps that go on these trailers are extremely expensive. A hand crank tarp is about \$3000, but an electric one is between \$5000 - \$8000. That cost is for a normal trailer that dumps underneath. A side dump trailer would cost between \$5000 - \$6000 for a manual one and between \$8000 - \$10,000 for an automatic one. There is a significant expense per unit. Multiply that times the hundreds of vehicles that these companies have. Most companies don't have the tarps; they are an option when you buy a trailer. As far as shifting of loads and losing aggregate, even tarpped, the load will still shift out because there is not a tight seal. I don't see the salt water side of this issue addressed in this bill. The other issue is that this will require people who are moving agricultural products to tarp as well. There are a lot of issues that this bill doesn't address. We have concerns with it and do not support it.

**Representative Delmore:** Are you worried about the liability side of this? Insurance costs may go up.

**Tom Balzer:** In most cases the chipped windshields are not put back on the trucker's insurance, they are being put back on the premiums of the vehicle with the chip.

**Representative Delmore:** It is difficult to get a license plate off of a truck or car when you get a rock chip. That is a complication.

**Russ Hanson, representing the Associated General Contractors of North Dakota:** We are also concerned about the bill. The concern from our industry standpoint it is not the insurance type. Our concern is the investment that companies would have to make to purchase these tarps. I have e-mails from two companies that show the cost of these tarps. See attachments #2 and #3. One quoted that an electric tarp will range from \$1500 to \$2000. This company had more than 300 trucks, so the investment would be over \$600,000.

**Chairman Ruby:** Is that for a dump truck or a semi-trailer?

**Russ Hanson:** I am not sure and will get clarification for you about that. I have another quote from the Strata Corporation that was similar. We would like you to have these costs for you in your deliberations because when a company is making a business plan that would be part of the cost, and someone will have to pay for it. From a personal perspective from the office that I sit in at the AGC, the complaints that I get the most from the public is the damage from the chip seal projects. So, even if this bill passes, the concern and annoyances of damage from construction projects will still be there.

**Representative Gruchalla:** You mentioned a couple of clients that also do business in other states. Don't they have to use tarps when they are in those states? We heard testimony that some of the trucks have tarps, but don't use them in North Dakota because they don't have to.

**Russ Hanson:** That could be a correct statement. The one company that I quoted does have presences and companies in South Dakota, Wyoming, and Arizona. If they have fleets there, they would have that taken care of.

**Representative Gruchalla:** In the interest of safety if I had a tarp on my truck, I think that I would tarp the load if I was hauling gravel.

**Russ Hanson:** If it was there, I would think that could be the case.

**Representative Onstad:** Do you know what the cost of a triple-axle gravel truck?

**Russ Hanson:** I do not know, but it is a lot.

**Representative Onstad:** To add an additional \$2000 to a \$100,000 item, is that a huge expense to the industry?

**Russ Hanson:** The equipment and materials that go along with the industry are expensive. Adding on \$2000 to a \$200,000 truck may seem to be minor, but if you have 300 trucks, it is still \$600,000. In the big picture it still is a cost.

**Tyler Rupp, representing the North Dakota Petroleum Council,** spoke in opposition to HB 1441. He thinks the problem is the trucks on the road, and this piece of legislation doesn't solve the problem. It seems to be a band aid on a much bigger wound. If all of the trucks were tarpped, there would still be rocks that are kicked up from the enormous amount of truck traffic that there is on western roads. There is an issue in western North Dakota, but more of it has to do with truck traffic than it does with tarpping. He also has concern with the expense of adding the tarps. He suggested that legislation requiring trucks to use tarps that are already there would be good common sense, but not requiring all the trucks that are out there to install new equipment. He thinks that it would be an expensive fix that may or may not solve the problem.

**Representative Onstad:** You referenced the rocks on the highway. How do you think a good portion of the rocks got on the highway to start with? As the traffic goes and kicks them up, they go into windshields.

**Tyler Rupp:** I could only guess how the rocks got on the highway. It could be from sitting on sills, from the tires, I have no idea. There are going to be rocks on the highway whether we put tarps on the trucks or not. Unfortunately, when the semis go by, they may kick them up, and it is part of the process.

**Representative Onstad:** As far as the oil production companies owning these trucks, they contract these items to prepare sites. Is that correct?

**Tyler Rupp:** In the majority of the cases, yes.

**Representative Onstad:** How does the bidding process work?

**Tyler Rupp:** I am not an expert on that. However, I think in most cases the bid goes to the best price. All the costs of transporting material go into their overhead which is then passed on. The larger companies may be able to absorb the cost, but this could have a detrimental effect on the smaller companies.

**Representative Delmore:** Don't you think the companies have an obligation to public safety? It can be much more than a rock in the windshield.

**Tyler Rupp:** Absolutely, we are very concerned about safety. Our focus in western North Dakota has been safety. The most dangerous part of it is on the roads. We as an association try to take steps toward safety, but ultimately it is something the companies have to do.

**There was no further opposition to HB 1441.**

**James Prochniak, Superintendent of North Dakota Highway Patrol** spoke in a neutral capacity on HB 1441. He provided written testimony and information pertinent to the bill. See attachment #2.

**Representative Delmore:** Can you stop someone currently for leaking on the highway?

**James Prochniak:** Yes, that is correct. It is a primary violation.

**Representative Delmore:** Is that the same \$20 fine and no points?

**James Prochniak:** Yes.

**Representative Delmore:** Do you have any way of enforcing the federal regulations?

**James Prochniak:** Yes, the Highway Patrol can enforce those regulations.

**Representative Hogan:** How did the numbers in 2009-2010 compare with those in 2005-2006?

**James Prochniak:** I did not go back that far.

**Representative Hogan:** I am concerned about the leaking salt water issue. Do you know how many cases like that that you have been involved with?

**James Prochniak:** I don't have specific examples. It has been a concern, and we are seeing an increase.

**Chairman Ruby:** Can you do the same thing that this language allows without this law?

**James Prochniak:** Yes, we can from the enforcement side. There would possibly be a reduction in debris flying off by adding a tarp.

**Representative Gruchalla:** Does South Dakota have an Ag exemption?

**James Prochniak:** They do not list it there. Their example was very short and vague.

**Representative Gruchalla:** In Montana does, and Minnesota has the federal regulations, which means that there is no Ag exemption, is that correct?

**James Prochniak:** Yes, the federal language seems to be a broad stroke interpretation that their officers would utilize for that enforcement level.

**Representative Gruchalla:** So, if we continued with this legislation, would we be equal to Montana yet less restrictive than Minnesota or South Dakota in our tarping law?

**James Prochniak:** That is the correct assessment.

**Representative Delmore:** Do you know what would be charged in bordering states for leaking?

**James Prochniak:** There is quite a range, I don't have the bordering states.

**Representative Hogan:** Do you think that we have the lowest fees for this kind of violation in the region?

**James Prochniak:** Our fee is very low.

**Grant Levi, Deputy Director of Engineering with the North Dakota Department of Transportation:** We appreciate the discussion that is occurring in the committee as it relates to the exemptions for the Department of Transportation activities. For the committee's information we have a truck fleet of about 350.

**Representative Delmore:** Does your department get a lot of complaints about broken windshields?

**Grant Levi:** Yes, we do get complaints. Many of the complaints do come when we do chip seals, as was stated earlier. We also get some complaints during winter activities. We try to make sure that the salt we used is sized, so it doesn't cause damage to the vehicles.

**Representative Louser:** Of the trucks that you have, how many have tarps?

**Grant Levi:** None of our trucks have tarps.

**The hearing was closed on HB 1441.**

**Chairman Ruby brought HB 1441 back to the committee in afternoon committee work. He stated that this bill was for the tarping of aggregate.**

**Representative Gruchalla:** I don't the idea of companies coming into North Dakota and not using the tarps on their trucks, just because we don't have a law. It is a reason for concern.

**Representative Owens:** Grand Forks County or Grand Forks has a tarping requirement. Every county is free to enact it, or we could do this at the state level.

**Representative R. Kelsch:** If is such a big issue, then perhaps if a truck is equipped with a tarp, then they must use it in the state. We could perhaps put a fine in there of \$1000 for a sifting or leaking load. It may be a deterrent.

**Representative Owens:** People would probably start to take their tarps off.

**Representative R. Kelsch:** The point is that many of these companies have fleets, some only run in North Dakota, some in Montana, Minnesota, or South Dakota. I suppose there is a chance with a smaller company the fleet would operate in multi-states. They would have to have tarps to run in other states, why not use them in North Dakota? Make the fines substantial enough to be a deterrent. I'm not so sure about snow. There is a lot of debris in snow. I'm just saying, where does it stop?

**Vice Chairman Weiler moved a DO NOT PASS on HB 1441.**  
**Representative Weisz seconded the motion.**

**Representative Onstad:** I am going to resist the motion. We do have to start somewhere. To use the argument that adding a tarp will be financially difficult for any particular company that is doing this line of work, is invalid. Remember it is a piece of equipment, it is depreciated over the life of the equipment, and it is not a hardship for any particular company. I hope that we can resist the motion.

**Chairman Ruby:** As I read the bill it doesn't say how they will secure the load. It doesn't say a tarp. As I read existing language, it says a covering that is securely fastened. I think that we already have this in code. I'm not sure this bill does exactly what you want it to do.

**Representative Onstad:** Starting on line 20, it says that if a load is not higher than the sides of the truck, it does not have to be tarped.

**Chairman Ruby:** In existing language, it would if it could blow out.

**Representative Onstad:** All that Subsection 2 says is that what you currently have on your vehicle has to be securely fastened. In Subsection 3 it outlines that aggregate needs to be covered.

**Representative Gruchalla:** I think that if you are six inches or more on the sides of the truck then you don't need a tarp. I think this is getting at the trucks that are fully loaded and it is falling off. I don't think that this is quite as restrictive as it looks.

**Representative Owens:** I agree with your interpretation, Chairman Ruby.

**Representative Weisz:** I disagree. I think it says that *if there is a covering*, then it must be securely fastened. It doesn't require a covering, but I think that Subsection is clear that the load has to be secure. I wanted to make a point. Currently under the law, if contractor is graveling the roads, the contractors don't have to worry about the weight restrictions, because they have an agreement with the counties that they will repair the roads to where it needs to be when they are done. They are hauling loads well above this level, running 25 mph and not worrying about the aggregates blowing off the loads, but under this law it says that they have to cover the loads. The law currently allows flexibility, but it is clear that you have an obligation not to let the load come loose, detached, or a hazard to other users. Putting a covering on does not necessarily guarantee that the load will not come out.

**Chairman Ruby:** My trucks are required to cover a load if it can blow out.

**A roll call vote was taken on HB 1441. Aye 10 Nay 4 Absent 0**  
**The motion carried and Representative Weisz: will carry HB 1441.**

Date: 2/10/11

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

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1441

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	X		Representative Delmore		X
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) 10 No 4

Absent 0

Floor Assignment Weisz

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

**REPORT OF STANDING COMMITTEE**

**HB 1441: Transportation Committee (Rep. Ruby, Chairman)** recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1441 was placed on the Eleventh order on the calendar.

**2011 TESTIMONY**

**HB 1441**

Testimony for HB 1441

Mr. Chairman and Members of the Transportation Committee

Kenton Onstad, District 4, Parshall

HB 1441 makes changes to our section of code for sifting or leaking loads.

HB 1441 requires the covering of loads carrying sand, gravel, aggregate, dirt, lime rock, silica or similar material on a highway.

Subsection 1 provides the exemption of putting sand or water on a road

Subsection 2 provides when you have a covering it is securely fastened.

Subsection 3 requires a vehicle transporting aggregate must be tarped.

This definition of aggregate exempts sugar beets and potatoes.

I offer the amendment to provide an exemption for public entities engaged in snow and ice operations that was over looked.

Western North Dakota has seen a huge increase in traffic. The increae is mostly large trucks of which one is aggregate, Rocks, gravel and Scoria. HB 1441 asks that these loads be securely covered, or keep the loads below the sides of the container hauling the material.

Safety is the concern and also the pocket book of constituents for replacing windshields, window doctor etc.

Many of these trucks do already have coverings but just aren't used.

Mr. Chairman and members of the committee, I hope you can give HB 1441 a Do Pass

Thank you

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 1, line 17, replace "An" with "Except for public entities engaged in snow and ice control operations, an"

Renumber accordingly

#2

## Russ Hanson

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From: Molly Barnes [mbarnes@nicnd.com]  
To: Wednesday, February 09, 2011 3:30 PM  
Subject: Russ Hanson  
Cc: Brad Ballweber  
Subject: RE: Tarping Costs

Russ,

The electric tarps range from \$1500-\$2000 depending on the box type. We have 300+ trucks.

Do you need anything else?

Molly B

-----Original Message-----

From: Russ Hanson [mailto:RHanson@agcnd.org]

Sent: Wednesday, February 09, 2011 3:15 PM

To: Molly Barnes; Brad Ballweber

Subject: Tarping Costs

<http://www.legis.nd.gov/assembly/62-2011/documents/11-0357-01000.pdf>

Hi Guys;

See the attached bill. Could you provide me with costs of various tarps?

How many you'd need to purchase for certain jobs?

I'm attempting to illustrate the costs association with such a mandate.

Thanks,

#3

**Russ Hanson**

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**From:** Mike Venaccio [Mike.Venaccio@stratacorporation.com]  
**Sent:** Monday, February 07, 2011 11:45 AM  
**To:** Russ Hanson  
**Cc:** Gerald Brorby; Gene Johnson; Art Passa; Lynn Toso; Dennis Berg; Mike Johnson; Troy Coleman; Todd Boguslawski; Roger Noel; Lynn Ondracek; Russ Gohl; Russ Gohl; Dan Syrup; Steve Griffin; Tom Morehouse; Rob Vakoc; Carl Lill; Mike Brorby  
**Subject:** COMMITTEE HEARING FOR HB 1441, TARP BILL  
**HI RUSS..**

We hope that all is well with you and that you had a great weekend. We hope that one of our Western Area supervisors can be at the hearing for HB 1441, but here are some of our concerns if we are not able to be present.

First of all, there would be the cost of a tarp system for all an operator's trucks. These tarp systems are priced at \$ 3,000 to \$ 3,500 per truck, depending on the size and if you use powered or manual systems to extend and retract the tarp. This an operator with 10 trucks is looking at least at a \$ 35,000, with the cost going up with the number of trucks.

Secondly, with the weight of the tarp system, the useful loads of trucks are reduced by the added weight of the system, thus requiring possibly more trips to complete a project. This would increase the cost to both the operator and project owner, not to mention the added wear on the roads.

Third, there would be the increase in the maintenance costs for operators to make sure that the tarp systems are fully functional at all times. This again decreases already thin margins and when put together with the first two items we mentioned could possible price some operators out of the business, especially those with one, two or three trucks.

With the number of out-of-state contractors that are coming to ND because of the work available, how do ND-based businesses know that, if they have to install tarp systems on their trucks, that they can bid competitively against others that might not have such a law in their home state??

Lastly, there is the issue of which poses a greater danger to the public? If you have observed how farm-plated trucks are loaded for potato, beet and grain harvest, you will agree that a falling beet or potato can cause much more damage, not to mention the hazards that beets and potatoes cause when dropped on roadways. Again, do not ask for enforcement against one group and ignore the other when the other group has the potential to cause greater damage with loose or spilled loads.

If I get a name for your from one of our supervisors, I will pass it on.

Thanks very much and have a great week.



MICHAEL V.  
MICHAEL G. VENACCIO  
CORPORATE RISK MANAGER  
SAFETY AND COMPLIANCE DIRECTOR  
701-792-3045  
701-792-3046 FAX

4

**Testimony – House Bill 1441**  
**House Transportation Committee**  
**Submitted by**  
**James Prochniak, NDHP**

February 10, 2011

Good morning, Mr. Chairman, and members of the House Transportation Committee. My name is James Prochniak, Superintendent of the North Dakota Highway Patrol. I'm here today to provide neutral testimony and information regarding HB 1441.

I would like to share with you today the latest enforcement levels and agency procedures related to 39-21-44.1 and the federal statute that applies to load securement. Lastly, I will cover additional information regarding what some other states have considered with sifting or leaking load legislation.

In 2009-2010, the NDHP reported 33 cases/incidents involving 39-21-44.1. Many of these cases involve some sort of damage claim by the reporting party. Troopers issued 184 citations for the same time period for leaking or sifting loads.

The usual procedure for a case or complaint involves NDHP officers trying to make contact with both owners/drivers of the vehicles. Information is gathered and often the parties either work out an agreement or have totally opposite stories. In either example, brief statements are gathered and may be forwarded to a states attorney or insurance company. In cases that the officers don't personally witness, enforcement is seldom taken.

Currently, state statute 39-21-44.1 addresses leaking or sifting loads. It should also be noted that USDOT Federal Motor Carrier standards also have language under CFR standard 393.100. Federal regulation language addresses "prevention against loss of load and prevention against shifting of load." Should the violation occur, it is documented against the company. The ability to enforce the Federal standards doesn't apply to local agencies.

Tennessee, South Carolina, Indiana, and Missouri are just a random sampling of states that offer some sort of farm exemption and/or DOT exemption. Our neighboring states of South Dakota, Minnesota, and Montana all vary in their language. South Dakota doesn't list exemptions, Minnesota simply adopts federal language, and Montana lists an agriculture and DOT exemption.

Copies of neighboring states' information and the federal regulation are included with my testimony.

Mr. Chairman, members of the committee, I hope my information will provide some clarity to your decision-making process. I would be happy to answer any questions you may have.

**Cargo Securement Policies from Several States  
Information Provided By  
North Dakota Highway Patrol**

February 10, 2011

**USDOT Federal Motor Carrier Safety Administration**

**§393.100 Which types of commercial motor vehicles are subject to the cargo securement standards of this subpart, and what general requirements apply?**

(a) **Applicability.** The rules in this subpart are applicable to trucks, truck tractors, semitrailers, full trailers, and pole trailers.

(b) **Prevention against loss of load.** Each commercial motor vehicle must, when transporting cargo on public roads, be loaded and equipped, and the cargo secured, in accordance with this subpart to prevent the cargo from leaking, spilling, blowing or falling from the motor vehicle.

(c) **Prevention against shifting of load.** Cargo must be contained, immobilized or secured in accordance with this subpart to prevent shifting upon or within the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected.

[67 FR 61226, Sep. 27, 2002].

**North Dakota** (current NDCC)

**39-21-44.1. Vehicle to be constructed to prevent sifting or leaking loads.** No vehicle may be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway. No person may operate on any highway any vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

**South Dakota**

**32-15-18.** Improperly loaded vehicle unlawful--Violation as misdemeanor. No person may drive or move any vehicle on any highway unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom. A violation of this section is a Class 2 misdemeanor.

**Minnesota**

Minnesota applies federal regulations when enforcing leaking or sifting load violations.

**Montana**

**61-9-414. Logging trucks.** (1) A truck or truck trailer combination, except pole trailers, actively engaged in transporting logs must be equipped with chains, cables, steel straps, or fiber webbing with working load limits that meet or exceed the manufacturer's marked value. The number of tie-down assemblies must be determined by the working load limits and the total weight of the load. The working load limits must equal or exceed 1 1/2 times the total weight of the load.

(2) A pole trailer actively engaged in transporting logs upon the highways of the state must be equipped as follows:

(a) At least three wrappers are required as standard equipment. The wrappers must:

(i) have a minimum working load limit of at least 3,000 pounds; and

(ii) be long enough to encompass any load when secured by a binder.

(b) (i) Wrappers used to secure loads of logs together must be fastened by means of a binder.

(ii) The complete wrapper and binder assembly must have a working load limit of at least 3,000 pounds.

(iii) The handle, or leverage portion of the binder, when in use in tightening and holding the wrapper, must be securely fastened to the wrapper or to the binder so that it cannot be accidentally loosened.

(c) At least two wrappers must be in use on all loads. The wrappers must be placed as close as reasonably possible to the front and rear bunks.

(d) If short logs are loaded on top of longer logs, sufficient wrappers must be used to secure both ends of the short logs to the main body of the load. A log may not extend laterally beyond the stakes that form the

outer boundary of the load at the top of the stakes. Logs or poles loaded above the tops of the stakes must be loaded in a pyramidal fashion.

(3) For the purposes of this section:

- (a) "binder" means a device attached to a wrapper that provides tension on and secures a wrapper; and
- (b) "wrapper" means an indirect tie-down device, the tension of which is intended to secure a stack of logs.

**61-8-370. Securing of load -- requirement -- exemptions.** (1) A person operating a loaded vehicle on a public highway shall load the vehicle or secure the load sufficiently to prevent littering or creating an obstruction dangerous to the public traveling on the highway.

(2) The following vehicles are exempt from the provisions in subsection (1):

- (a) a commercial motor vehicle that is operating in compliance with state and federal laws and requirements governing the securing of loads;
- (b) a vehicle transporting processed or unprocessed agricultural products or inputs, including but not limited to fertilizer, manure, and pesticides;
- (c) a vehicle performing road maintenance; and
- (d) a vehicle in a marked construction zone.

### Kansas

#### 8-1906. Securing loads on vehicles

(a) No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that:

(1) This section shall not prohibit the necessary spreading of any substance in highway maintenance or construction operations; and

(2) subsections (a) and (c) shall not apply to trailers or semitrailers when hauling livestock if such trailers or semitrailers are properly equipped with a cleanout trap and such trap is operated in a closed position unless material is intentionally spilled when the trap is in a closed position. Paragraph (2) shall not apply to trailers or semitrailers used for hauling livestock when livestock are not being hauled in such trailers or semitrailers.

(b) All trailers or semitrailers used for hauling livestock shall be cleaned out periodically.

(c) No person shall operate on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. (effective 7-1-89)

### Tennessee

#### **55-7-109. Loose material hauled in open truck bed — Restrictions — Penalties for violations — Exceptions. —**

(a) Any truck, or other motor vehicle, with an open bed, that is operated on any highway, road, or street open for public use in this state, shall be loaded so that any loose material transported in truck or other motor vehicle remains at least four inches (4") below the walls of the open bed, measured at the front, back and sidewalls; but the load may be piled higher in the center of the open bed. "Loose material" includes any substance that could spill, drop off, or blow away from the open bed when the vehicle is operated. "Loose material" does not include materials such as sand or salt that are purposely discharged from truck beds to clear roadways or improve traction, and does not include water sprayed on streets for purposes of sanitation.

(b) (1) A violation of this section is a Class C misdemeanor.

(2) A charge for violation of this section shall be brought against the hauler whose vehicle is found in violation; however, the hauler may recoup one half (½) of the fine from the producer or loader of the material hauled in violation of this section.

(c) As used in this section, "hauler" includes both the owner and the driver of a vehicle, and both parties shall be jointly liable. Only one (1) fine shall be imposed on a hauler, regardless of a difference between ownership and operation, and the party or parties paying the fine shall have a right of recoupment against the producer or loader either in whole or in accordance with the producer's or loader's share of payment.

(d) (1) This section shall not include farm produce going to market.

(2) The provisions of this section shall not apply to motor vehicles which transport crushed stone, fill dirt and rock, soil, bulk sand, coal, phosphate muck, asphalt, concrete, other building materials, forest products, unfinished lumber, agricultural lime and agricultural products and that are loaded in compliance

with the four inch (4") requirement of this section. The exemption shall not apply to any load if any law enforcement officer sees any part of this material blowing off the vehicle.

### **South Carolina**

**SECTION 56-5-4100.** Preventing escape of materials loaded on vehicles; cleaning the highways of escaped substances or cargo.

(A) No vehicle may be driven or moved on any public highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping from the vehicle, except that sand, salt, or other chemicals may be dropped for the purpose of securing traction, and water or other substance may be sprinkled on a roadway in the cleaning or maintaining of the roadway by the public authority having jurisdiction.

(B) Trucks, trailers, or other vehicles when loaded with rock, gravel, stone, or other similar substances which could blow, leak, sift, or drop must not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point; or, if the load is not level, unless the height of the sides of the load against all four walls does not extend above a horizontal line six inches below their tops, and the highest point of the load does not extend above their tops, when loaded at the loading point; or, if not so loaded, unless the load is securely covered by tarpaulin or some other suitable covering; or unless it is otherwise constructed so as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping from the vehicle. This subsection also includes the transportation of garbage or waste materials to locations for refuse in this State.

(C) The loader of the vehicle and the driver of the vehicle, in addition to complying with the other provisions of this section, shall sweep or otherwise remove any loose gravel or similar material from the running boards, fenders, bumpers, or other similar exterior portions of the vehicle before it is moved on a public highway.

(D) Any person operating a vehicle from which any substances or cargo, excluding water, have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon the public highway, shall make every reasonable effort to immediately cause the public highway to be cleaned of all substances and shall pay any costs for the cleaning.

If the person does not make every reasonable effort to clean the public highway promptly, the Department of Transportation or any law enforcement officer may, without the consent of the owner or carrier of the substance or cargo, remove or have removed the substance from the public highway if the substance or cargo is blocking the public highway or endangering public safety. The State, its political subdivisions, and their officers and employees are not liable for any damages to the substance or cargo that may result from the removal or the disposal of the substance or cargo unless the removal or disposal was carried out recklessly or in a grossly negligent manner. The State, its political subdivisions, and their officers and employees are not liable for any damages or claims of damages that may result from the failure to exercise any authority granted under this section. The owner, driver of the vehicle, or motor carrier of the substance or cargo removed under this subsection shall bear all reasonable costs of its removal and subsequent storage or disposition.

Nothing in this section bars a claim for damages.

(E) Any person who violates the provisions of subsections (B), (C), or (D), is guilty of a misdemeanor and, upon conviction, must be fined one hundred dollars.

(F) The provisions contained in subsections (A), (B), and (C) are not applicable to and do not restrict the transportation of seed cotton, soybeans, tobacco, poultry, livestock or silage, or other feed grain used in the feeding of poultry or livestock or of paper, wastepaper utilized for the manufacture of industrial products, paper products, forest products, or textile products.

**SECTION 56-5-4110.** Loads and covers thereon shall be firmly attached.

No person shall operate on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

### **Kentucky**

**189.150 Escaping contents -- Shifting or spilling loads.**

(1) No vehicle shall be operated upon any highway unless it is so constructed as to prevent its contents from escaping.

(2) No vehicle shall be operated upon any public highway for a distance of over one (1) mile whose load is susceptible to shifting or spillage unless said load is covered with a device suitable for prevention of spillage.

#### **Indiana**

##### **IC 9-21-8-48**

##### **Vehicles with contents escaping; prohibition from operation; exceptions**

Sec. 48. A vehicle, except:

- (1) a vehicle containing poultry or livestock being transported to market; or
  - (2) a highway maintenance vehicle engaged in spreading sand or deicing chemicals;
- may not be driven or moved on a highway if the vehicle's contents are dripping, sifting, leaking, or otherwise escaping from the vehicle.

##### **IC 9-21-8-49**

##### **Violations; Class C infraction**

Sec. 49. Except as provided in sections 50, 51, 52, 54, 55, 56, and 58 of this chapter, a person who violates this chapter commits a Class C infraction.

#### **Missouri**

##### **Loads which might become dislodged to be secured--failure, penalty.**

**307.010.** 1. All motor vehicles, and every trailer and semitrailer operating upon the public highways of this state and carrying goods or material or farm products which may reasonably be expected to become dislodged and fall from the vehicle, trailer or semitrailer as a result of wind pressure or air pressure and/or by the movement of the vehicle, trailer or semitrailer shall have a protective cover or be sufficiently secured so that no portion of such goods or material can become dislodged and fall from the vehicle, trailer or semitrailer while being transported or carried.

2. Operation of a motor vehicle, trailer or semitrailer in violation of this section shall be a class C misdemeanor, and any person convicted thereof shall be punished as provided by law.

#### **New Jersey**

**"39:4-77. Loading so as to spill prohibited; rules and regulations; penalty.** No person shall cause or permit a vehicle to be so loaded or operate a vehicle so loaded that the contents or any part thereof may be scattered in any street. Whenever the load of any vehicle is of material other than farm products susceptible to scattering on a street and such load extends above the height of the sides or tail gate or rear of the body of the vehicle, such load shall be securely covered by a tarpaulin or other cover. The director, where public safety so warrants, shall, after a public hearing, prescribe by rule or regulations minimum safety standards for fastening loads on and fix loading procedure for any commercial type flat bed motor vehicle or motor-drawn vehicle. Any rule or regulation so promulgated by the director shall be filed in the Secretary of State's office and copies thereof shall be available, upon request, in the director's office.

The owner, lessee, bailee, or operator of any vehicle described above found on a highway in violation of any such safety standard or procedure that may be prescribed by the director shall be fined not more than \$500.00 for each violation."