

LICENSING OF SNOWMOBILE AND ALL-TERRAIN VEHICLE DEALERS - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4030 (attached as an appendix) directs a study of the requirements for the registration and licensing of snowmobiles and all-terrain vehicle dealers. The resolution states that this state does not have licensing requirements for snowmobile and all-terrain vehicle dealers but has requirements for other vehicle dealers. The resolution states that there have been problems with snowmobile and all-terrain vehicle dealers who have failed to deliver certificates of title or remit fees collected on behalf of customers. The testimony on the resolution indicated there have been dealers that have gone out of business and have not returned deposits on equipment paid for by customers or have not delivered titles on equipment on which customers have already paid fees and taxes.

LICENSING OF SNOWMOBILE AND ALL-TERRAIN VEHICLE DEALERS

Although there are specific licensing requirements for motor vehicle dealers under North Dakota Century Code (NDCC) Chapter 39-22, trailer dealers under Chapter 39-22.1 and motorcycle dealers under Chapter 39-22.3, there are no specific dealer licensing requirements for snowmobile, all-terrain, or low-speed vehicle dealers. In an Attorney General's letter opinion, 2003-L-29, the Attorney General stated there is no statutory authority for the Department of Transportation to license dealers of these kinds of vehicles. The Attorney General's opinion states:

"Motor vehicle" includes "every vehicle that is self-propelled." N.D.C.C. § 39-01-01(38). "Vehicle" includes devices transported or drawn upon a public highway. N.D.C.C. § 39-02-01(89). The definition of "motor vehicle" specifically excludes snowmobiles, N.D.C.C. § 39-01-01(38), and, therefore, a snowmobile dealer does not need a motor vehicle dealer license. An all-terrain vehicle is an "off-highway vehicle," N.D.C.C. § 39-29-01(1), and, with narrow exception, it is forbidden from being used on roadways, N.D.C.C. § 39-29-07. As such, it is not a motor vehicle to which dealer licensing under N.D.C.C. ch. 39-22 applies. . . . While there is no licensing requirement for snowmobile, all-terrain vehicle or low speed vehicle dealers, all of these vehicles must be registered in order to be operated.

The opinion further states that all provisions of NDCC Title 39 are under the jurisdiction of the Department of Transportation, and the department may adopt administrative rules necessary to carry out the responsibilities and functions of that title. However, the department may not adopt rules for licensing snowmobile, all-terrain, or low-speed vehicle dealers because the

department has no licensing responsibility concerning those dealers.

Snowmobile and all-terrain vehicle dealers do have certain duties and privileges. A snowmobile dealer may receive dealer registration numbers to be used on snowmobiles owned by the dealership. Under NDCC Section 39-24-03 a snowmobile dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers upon the payment of the appropriate fee. Under Section 39-29-03 an all-terrain vehicle dealer has the same privilege. Under Section 39-29-01.1 an all-terrain vehicle dealer has a duty to collect a \$5 safety fee from each buyer and send the fee to the Parks and Recreation Department for deposit in the all-terrain vehicle fund for the purpose of all-terrain vehicle safety education and promotion. In addition, snowmobile and all-terrain vehicle dealers follow the procedures for title registration under Chapter 39-05 which impose duties, including a dealer's duty to make specific inquiry as to the buyer's street address, city, and county, or township and county of residence and to have a separate certificate of title or other documentary evidence of the dealer's right to the possession of every vehicle in the dealer's possession.

LICENSING OF MOTORCYCLE DEALERS

Motorcycle dealers are licensed under NDCC Chapter 39-22.3. Under Section 39-22.3-01 a person in the business of buying, selling, or exchanging motorcycles must have a motorcycle dealer's license. The motorcycle dealer's license fee is \$25 per year and includes one dealer's plate. Additional dealers plates may be obtained for \$10 each. Under Section 39-22.3-06 all fees for the licensing of dealers are deposited in the highway tax distribution fund.

Under NDCC Sections 39-22.3-02 and 39-22.3-03 a prospective dealer must pay \$50 and apply on a form provided by the department and provide proof that the applicant has and will continue to maintain an established place of business. The central place of business must be within the state of North Dakota. An established place of business is a building at which the permanent business of bartering, trading, and selling motorcycles; the repair, maintenance, and servicing of motorcycles; and the storage of parts and accessories for motorcycles will be carried in good faith. The term does not include a residence or temporary quarters. If the established place of business is made of more than one building, no building may be located beyond 1,000 feet from any other building.

Under NDCC Section 39-22.3-05 the license applicant is required to furnish a surety bond that must be filed with the director of the Department of Transportation prior to the issuance of a license. The bond must

run to the state of North Dakota in the amount of \$10,000. The bond must be conditioned on the faithful compliance of the applicant with all statutes and indemnify any person having a motorcycle transaction with the dealer from any loss or damage occasioned by the failure of the dealer to comply with these statutes.

Under NDCC Section 39-22.3-04 the director may deny an application or suspend, revoke, or cancel a license for any material misstatement in the application, for willful failure to comply with Chapter 39-22.3 or any rule; for violating any law relating to the sale, distribution, or financing a motorcycle, for ceasing to have an established place of business; or knowingly permitting a salesman to sell a motorcycle for someone else other than the dealer or assign any benefit to another dealer. Under Section 39-22.3-07 a dealer is guilty of an infraction if the dealer permits any other dealer to use the license for the benefit of any other dealer. The director shall revoke the license of a dealer that allows another dealer to benefit from that dealer's license.

Under NDCC Section 39-22.3-11 the director is responsible for the administration of Chapter 39-22.3. Under Section 39-22.3-09 the director has the power to cancel, revoke, or suspend a dealer's license; to make rules; and to employ individuals to inspect dealers in connection with any prosecution or action against a dealer. Under Section 39-22.3-10 the director may inspect the records of a licensed motorcycle dealer relating to any specific complaint for which the dealer is held to be in violation of any provisions of Chapter 39-22.3.

Under NDCC Section 39-22.3-12 any person violating a provision of Chapter 39-22.3 for which another penalty is not specifically provided is guilty of a Class B misdemeanor.

The following are the instructions given to the employees of the department for registering a motorcycle upon its purchase:

1. License fee of \$22 plus \$1 unsatisfied judgment, if applicable.
2. Title fee is \$5 when applying for a title.
3. Abandoned vehicle fee of \$2 is not due.
4. Motor vehicle excise tax (5 percent) must be remitted when applying for a title.
5. Motorcycle plates are issued.
6. All motorcycles must comply with the provisions of NDCC Chapter 39-27 relating to motorcycle equipment.
7. If a motorcycle does not meet licensing requirements, it cannot be titled or licensed and the dealer must collect sales tax on this transaction and submit the sales tax to the Tax Commissioner.
8. Liability insurance is required on all registered motorcycles.

SUGGESTED STUDY APPROACH

The main purpose of this study is to determine whether there is a need for the licensing of snowmobile and all-terrain vehicle dealers. If the committee determines that licensure is needed, a bill draft could be prepared based on similar laws in effect in North Dakota for motorcycles or in other states. Testimony from the Department of Transportation and snowmobile and all-terrain dealers and customers could provide the information required to determine if there is a need for the licensure of these dealers.

ATTACH:1