

LICENSING OF MOTORCYCLE AND LOW-SPEED VEHICLE DEALERS - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4030 directs a study of the requirements for the registration and licensing of snowmobile and all-terrain vehicle dealers. On September 29, 2003, the interim Transportation Committee approved a motion requesting the Legislative Council chairman to authorize the expansion of this study to include the licensing of motorcycle and low-speed vehicle dealers based on the reasons presented by the Department of Transportation.

Testimony from representatives from the Department of Transportation contained several reasons in support of the study expansion. First, licensing would provide consumer protection. In particular, if dealers are bonded, protection would be provided to customers who have paid fees or payments to a dealer without receiving documents or delivery when that dealer goes out of business. Second, low-speed vehicle dealers were combined with snowmobile and all-terrain vehicle dealers in a recent Attorney General's letter opinion, 2003-L-29, not allowing the department any regulatory authority over the dealers of these vehicles. Not including low-speed vehicle dealers in the study appears to be an oversight, considering the similar treatment of these dealers in relation to regulation by the department.

One reason for expanding the study to include motorcycle dealers is that certain motorcycle dealers have requested more regulation similar to the regulation over new and used motor vehicles. In addition, any bill draft resulting in the licensing of snowmobile or all-terrain vehicle dealers would most likely be based on the present licensing of motorcycle dealers; hence, any changes in the motorcycle dealers' law should be made at the same time to promote consistency in the law.

After considering these reasons, the Legislative Council chairman expanded the study as requested by the committee.

LICENSING OF MOTORCYCLE DEALERS

Motorcycle dealers are licensed under North Dakota Century Code (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 license. The motorcycle dealer license fee is \$25 per year and includes one dealer plate. Additional dealer 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. Money in the highway tax distribution fund is divided among the cities, counties, and the state highway 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. 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 out 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, each building may not 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.

LICENSING OF MOTOR VEHICLE DEALERS

New and used car dealers are licensed under NDCC Chapter 39-22. Under Section 39-22-14, a person is required to be licensed as a motor vehicle dealer to engage in the business of or advertise the buying, selling, or exchanging of motor vehicles. In addition, under Section 39-22-26, the brokering of motor vehicles and under Section 39-22-23, the auctioning of motor vehicles, unless the auction is of collector motor vehicles under Section 39-22-27, requires a dealer license. Under Section 39-22-22, an operator of a display lot does not need a motor vehicle dealer license. However, the operator needs to be licensed for \$50 a year and maintain proper signage and records. A display lot is a lot on which private owners may display their vehicles in a group.

Under NDCC Sections 39-22-24 and 39-22-25, factory stores and direct sales of new motor vehicles from the manufacturer are prohibited. These prohibitions maintain the tiered system of retail dealers and manufacturers.

Under NDCC Section 39-22-14, the fee for a motor vehicle dealer license is \$100 per year and that entitles the licensee to one dealer plate. Each additional dealer plate is \$25. Demonstration plates are \$5. These plates allow a vehicle to be demonstrated to customers. These fees, in addition to many other fees imposed for violations of Chapter 39-22, are required to be used for the enforcement of the chapter under Section 39-22-05.1.

To qualify for a motor vehicle dealer license, under NDCC Section 39-22-15, the dealer must have an established place of business in this state that includes a building of at least 250 square feet which is heated, lighted, and equipped and adjacent to a primary display lot of at least 2,500 square feet. An established place of business is a building at which the permanent business of bartering, trading, and selling of motor vehicles takes place. The term does not include a residence or a temporary facility. A dealer must have a telephone number and operate under normal business hours and have proper signage for the facility. Under Section 39-22-06, if the dealer has secondary lots, they must be within five miles of the principal place of business and be accompanied by appropriate signage.

Under NDCC Section 39-22-05, a motor vehicle dealer must have a bond of \$25,000 filed with the director of the Department of Transportation before the dealer may receive a license. The bond must run to the state of North Dakota and be conditioned on the faithful compliance by the dealer with all the statutes and indemnify any person transacting motor

vehicle business with the dealer for any loss or damage occasioned by the failure of the dealer to comply with motor vehicle laws, including furnishing a certificate of title for a transaction. Under Section 39-22-05.2, the dealer does not need a bid bond to submit a bid to the state or a political subdivision if the dealer has the \$25,000 bond. In addition, under Section 39-22-19, a dealer must provide proof of garage liability insurance.

There are two provisions particularly unique to motor vehicle dealers. Under NDCC Section 39-22-18, a dealer must make a retail sale of at least four motor vehicles during the previous year to renew a license. Under Section 39-22-07.1, it is a Class B misdemeanor for a dealer to sell a motor vehicle on Sunday.

Under NDCC Section 39-22-04, 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 the provisions of Chapter 39-22 or any rule; for violating any law relating to the sale, distribution, or financing of a motor vehicle; for ceasing to have an established place of business; for altering an odometer or vehicle identification number; or knowingly permitting any person, for example, a salesperson, to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom the person is employed.

Under NDCC Section 39-22-10, the director is responsible for the administration of Chapter 39-22. The director has the power to cancel, revoke, or suspend a license; to make rules; and to employ individuals to inspect dealers in connection to any prosecution or action against the dealer. Under Section 39-22-11, the director may inspect the records of a licensed dealer relating to any claim from which the dealer is held to be in violation of any of the provisions of Chapter 39-22.

LICENSING OF LOW-SPEED VEHICLE DEALERS

The registration of low-speed vehicles began with the passage in 1999 of House Bill No. 1216. A low-speed vehicle is a four-wheel vehicle that is able to attain a speed of 20 miles per hour and not more than 25 miles per hour on a paved surface and may not exceed 1,500 pounds. In particular, a low-speed vehicle is an electric car made by Global Electric Motorcars, LLC, a DaimlerChrysler Company located in Fargo.

Testimony on the bill stated the bill "will assist this firm in marketing its product in our state and will also place us on the cutting edge among states. . . . In other words, the bill would allow the cars to be test driven in this state and would allow these cars to be purchased and used in this state."

House Bill No. 1216 was codified into NDCC Chapter 39-29.1. Section 39-29.1-04 relates to

low-speed vehicle dealers. This section allows a dealer to apply for and receive registration numbers for use on vehicles owned by the dealer for a \$20 fee. This section specifically exempts low-speed vehicle dealers from obtaining a motor vehicle dealer's license.

SUGGESTED STUDY APPROACH

The committee may consider the differences and similarities among the vehicles being considered by this study. The committee may first consider the licensing of motorcycle dealers because motorcycles

are more regulated than the other vehicles considered by this study and it appears that motorcycle dealers may want more regulation. The committee may consider whether the other dealers considered during this study should be regulated as motorcycle dealers are presently, as motorcycle dealers are with any changes adopted by the committee, or differently. Testimony from motorcycle dealers and low-speed vehicle dealers could provide the information required to determine the similarities and differences among the vehicles and dealers and the appropriate regulation required of each dealer.