

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1359

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Dennis Hall
Operator's Signature

10/3/03
Date

2003 HOUSE TRANSPORTATION

HB 1359

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10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1359

House Transportation Committee

☐ Conference Committee

Hearing Date 2-13-03

Tape Number	Side A	Side B	Meter #
1	xx		10.5-end
1		xx	0- 20.7
Committee Clerk Signature <i>Laurie B. Zink</i>			

Minutes:

Chairman Weisz: We will open the hearing on HB 1359. A bill for an act to create and enact a new section to chapter 39-22 of the North Dakota Century Code, relating to collector motor vehicle auctions; and to amend and reenact section 39-22-21 of the North Dakota Century Code, relating to the sale of consignment vehicles.

Rep. Thorpe: Introduced the bill and the reason he brought the bill forth.

Chairman Weisz: Thank you. We will take testimony in favor of HB 1359.

Rep. Thorpe: I have an amendment that cleans up one area, that is in Code 39-22-20, which included an exemption.

Rep. Weiler: You mentioned in your testimony that you were hoping that we would pass this bill so that you could proceed in the future legally. Are you currently operating illegally the way it is.

Rep. Thorpe: Well I will let these folks explain that when they come up.

Chairman Weisz: Thank you. Further testimony in support.

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House Transportation Committee

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Dick Sundhagen, Vick's Auto in Minot: I deal mostly with classic cars. We also hold a classic car auction over Labor Day weekend. (Read letters, see attached copies and attached Sundhagen testimony).

Chairman Weisz: Why can they operate legally and the other ones can't.

Mr. Sundhagen: Because they are wholesale, they're not open to the public.

Rep. Thorpe: Are consignments which are from dealer to dealer which would include the auction stuff, are the franchise dealers right now consigning to the auction in Minot & Bismarck. Are they consigning to them right now.

Mr. Sundhagen: I am not real familiar with the one in Bismarck. I know they consign. They have to take dealer consignments.

Rep. Thorpe: Just to remain part of their business.

Mr. Sundhagen: Yes, I know the one in Minot would be, I'm sure would be the biggest percentage of them.

Chairman Weisz: Thank you. Anyone wishing to testify on HB 1359 in support. Neutral testimony.

Keith Keiser, Director of Motor Vehicle Division, DOT: The Department does not have a position on this bill. We did work with Rep. Thorpe in drafting some of the language. I do have some concerns that I think need to be addressed. Contrary to what you heard earlier, there is no permit required under the statute of the current bill that is in front of you. Although the heading in Section I says Permit Required - there is actually no language in Section 1 that talks about any type of a permit. As I interpret what Section 1 says, it's that if you meet the other qualifications you can have a classic car auction, there is no permit required from the state in order to do that.

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The state doesn't have the authority to limit who can or what can't be sold in those sales.

Another concern is that it doesn't define what a collector vehicle is, and like many things, I think a collector vehicle is in the eye of the beholder. We suggested a definition that said 25 years be in the bill, which would constitute a classic vehicle. That is consistent with what the legislature has done in the past in defining a collector vehicle for a limited registration purposes at 25 years.

Chairman Weisz: Currently an antique vehicle is 25 years of age.

Mr. Keiser: Antiques are considered at 40 years in the statute and collector vehicles at 25 years.

To add to some of the testimony Mr. Sundhagen gave, one of the positions we have taken is that vehicles sold through auto auction companies, whether that be Tri-State or Northern Auction here in Bismarck/Mandan, or the auction in Minot, that those are not consignments. Those are vehicles which are sold on behalf of the dealership by the auction house, but they are not consignment. Consignment in our view, is when you reach an arrangement with the dealership or someone to take possession of your vehicle, hold it for a period of time under the terms of some agreement or contract and then sell that vehicle at that agreed upon price or return it to you at some point in time. Generally, consignment contracts talk about a specific period of time in which the dealer will hold that vehicle for sale for you with specified terms, price, so on. We don't believe that the statute that was enacted last session was related to auto auction is in anyway discriminatory against any particular auction house. The three auctions which have been mentioned here, are all licensed as used car dealers with us under the provision of the statute. We also don't believe that probably the auction that Mr. Sundhagen talked about truly is an auto auction as defined as referenced in the statute. The issue on the consignment for vehicles from dealer to dealer was part of the bill that was enacted last session. As you recall, the bill was a

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joint effort of the used car industry of ND and the Motor Vehicle Division. We worked for a couple of years to put together that bill. I understand the problems with moving inventory in small towns, there are some options available to do that right now.

Chairman Weisz: Current law if somebody wants to have a collector auction sale, what do they have to do and how do you look at it, if it is a one time deal, for example.

Mr. Keiser: I would answer in part by responding that we are not aware of the other auctions that were mentioned here. So we haven't taken any approach to those auctions. We did speak with Mr. Sundhagen, he called us last summer regarding what he was doing, planning to do, he had some concerns that he had dealers from outside the state, as well as other from within the state coming to his auction. That is permitted under the statutes in North Dakota; however, those dealers are required to obtain a permit. Part of the legislation passed last session, said that if you obtain a dealer's license to sell new or used cars, you are licensed in the city in which you are licensed. If you want to sell in another city for a car show, etc. you can obtain a permit for \$25 if you are within the state, if you are an out-of-state dealer, the permit fee is \$100. The other issue we spoke to Mr. Sundhagen about was the fact that we didn't think that dealers could participate in the auction on a Sunday, because there was a restriction on Sunday sales by auto dealers. So I think part of what Rep. Thorpe is trying to do, was provide language that would exclude the auction of classic cars from that.

Chairman Weisz: So currently if the sale is on a weekday, you don't consider it a consignment if the dealer just brings the vehicle to a sale for that day.

Mr. Keiser: That's correct.

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Chairman Weisz: In this case, the issue is that the sale was on a Sunday, licensed dealers aren't authorized to sell vehicles.

Mr. Keiser: Yes. The issue of selling on Sunday and issuing permits for out-of-state or out-of-town dealers that did participate didn't have permits.

Rep. Weisz: Is that \$100 permit per vehicle or is ?

Mr. Keiser: No that is per dealership and is valid for the sale up to seven days.

Rep. Thorpe: You got my attention when you said a car brought by a dealer to an auction -- you don't consider that a consignment? They use the same procedure -- if it isn't a consignment -- I am confused.

Keith Keiser: I think what I said was that a consignment is a more formal and for a longer period of time. We treat all three auction companies in North Dakota the same -- it is our belief that you or an individual or a dealer go to consign a vehicle -- means entered into a written agreement -- you can hold the vehicle for a period of time -- sell it at this price -- this my remuneration if I do sell the vehicle at that price within that time frame and there is a formal written agreement required under the statute. whereas if you go to an auction company -- certainly there is an arrangement -- you pay to have the auction service there but we don't believe that is a consignment in the same way you turn your car over to a local dealer for him to sell the car -- here how much I want for it and here how long (time) you to sell it and if it doesn't sell I get my car back and if you do sell it here what you will be paid for selling it. We think there is a difference between a consignment and an auction where you move the car through and you take what it brings.

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Rep. Thorpe: As I recall when I was associated in this business -- taking someone's car on the lot certainly was paper work and we always called it a consignment -- had to determine if there was a lien, if the car was covered by insurance - - fire theft all those things -- you have to have quite conclusive paper work.

Keith Kyser: I agree with you if -- if I consign my car to a dealer -- certainly I am going to provide that information. I don't think that when you go through an auction I don't think it is nearly as involved -- the process isn't as nearly involved in an auto auction.

Rep. Schmidt: As an auctioneer this subject is pretty close to me -- I sold the Devils Lake auction all by myself until it grew to a thousand cars -- we turned the paper work over to the auction -- that is a consignment auction -- it brings in thousands of people.

Keith Kyser: I don't believe there is anything that we do to discourage those auction but there are certain things out of state dealers are required to do and when it is a Sunday sale issue-- also if you are a dealer from another city -- there is some paper work (a permit) for you to be able to participate. There is \$25 fee but we certainly don't discourage anyone from participating but nonetheless the paper work is there.

Rep. Ruby: Isn't the two things clouding the issue -- one is the consignment and the other is the auction -- from what you are saying is that if the dealer wants to consign a vehicle that's not a collector -- that's fine he can do that.

Keith Kyser: Yes he can do that.

Rep. Ruby: so if some one from out of state is sending one up to be sold in a classic car auction -- that could be done under our present law.

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Keith Kyser: Yes, -- two caveats -- the Sunday sale requirements and the permit that is required.

Rep. Ruby: So this really has nothing to do with consignments -- other than they are selling through the auction and not a formal consignment through dealers - unless two dealers would go through that process to put something into an auction -- why would they?

Keith Kyser: The is exactly correct. Consignments in our view are longer term prearranged contractual arrangements have any regulatory involvement with the auction company -- we are not looking at their records -- we are not looking to see if they call theirs a consignment agreement. If there is a consignment between a dealer and individual or between dealers we need to approve that form -- not every agreement --- the form. The contract contents.

Rep. Thorpe: Going back to the dealer to dealer -- the consignment if you will -- which ever it is -- how many complaints have you had since this law went into effect and how many fees have you collected?

Keith Kyser: We have not had any nor have we collected any fees -- for dealer to dealer -- if there had been any complaints we would have investigated.

Opposition:

Bob Lamp: I am here representing the North Dakota automobile Dealers Association of North Dakota. I represent all the franchised dealers across the state. Some of the used car dealers are larger than some of my franchised dealers -- yes I represent big dealers but I also represent a lot of small dealers. We are a highly regulated industry in the name of consumer protection. What you have in this bill is an attempt to carve out a "specific kind of car auction". Apparently there are numerous collector car auctions that are held in North Dakota and this bill is trying to get

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them special consideration and exemption from state law for these types of auctions. We don't take issue with some of these special considerations. They attempt to define the kinds of cars they will include in these auctions -- up through the antique cars were are fine with that --- but when they or we get into special interest vehicles we think this open a Pandora's box of problems. What is a special interest vehicle. In our opinion that could be just about anything. If you are going to carve out an exemption for these auctions you need to define what a special interest vehicle is. If that clear definition is made our association would have no problems with legislation at all. We are especially opposed the second part of the bill on page two and there has been discussion about these dealer consignments -- in the 2001 legislation a bill was passed I guess to improve the quality of dealer licensing law. That law came about not by the big dealers but by the legislature itself. For 18 months between the 1999 and the 2001 session we worked with big dealers, small dealer, the DOT, used car dealers, antique dealers, auto auctions so it wasn't a flippant approach to the bill --- one things that was discussed at that time was the dealer consignments -- about dealers moving vehicles from town to town -- unregulated -- we had concerns about that ourselves from a consumer protection standpoint -- so that was in there. No if you enact this law a dealer in Grand Forks could move his inventory to Finley -- my question then on behalf of the consumer is whom I am is buying this vehicle from if I buy it is Finley and it is actually owned by a dealer in Grand Forks. Who is going to give me the documentation on the damage disclosure, the odometer statement, the warranty disclosure, -- where I am I going to get my title? Can the dealer in Finley send me to Grand Forks for all that I need -- is that good public relations? We are opposed to the bill as it is written but I have told you we could accept the first part of the bill if it is rewritten with the definition we discussed.

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Rep. Weisz: There has been questions here about what is a consignment -- under the 2001 legislation and the way the DOT is interpreting under the current law is that acceptable.

Bob Lamp: I have had discussions with Keith Kyser - so I understand it and it is acceptable to us.

Rep. Hawken: If you have dealership in two different places you can move cars back and forth between the two locations?

Bob Lamp: No you can not those are two separate dealerships.

Rep. Hawken: So if there is a car I want and I am in Fargo and there is a car in Grand Forks can't they go get that car?

Bob Lamp: They can because that is a sale.

Rep. Hawken: Why can't you sell cars on Sunday?

Bob Lamp: Because the law says we can't.

Rep. Hawken: So -- but is this something the car dealers don't want to do?

Bob Lamp: That is true -- the problem we have is the type of transaction the sale of a car is -- there is the financing, the title work, insurance, having people work -- mechanics, etc.

Rep. Thorpe: I mentioned two years ago -- I mentioned then there would be problems with this law. There was an auction between a dealer in Williston and Minot -- I think the franchisor took care of that because there hasn't been a problem since and I think this is where this should be handled. We are throwing a handicap at small businesses to move his inventory.

Bob Lamp: There is a difference between and used cars -- and franchise dealers -- auctions and I think this bill addresses used vehicles.

Rep. Price: Is my understanding correct that right now dealers can trade inventory?

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Bob Lamp: Absolutely -- used inventory -- and there has to be a paper trail with the transfer without any tax implications.

Rep. Thorpe: As this law is written -- it says that "no consigned vehicle sales are permitted between licensed dealers" -- is that right?

Bob Lamp: I am looking at bill -- the language I see is on page 2 -- lines 1 thru 3 -- may sell a vehicle consigned to a dealer except when consigned by a licensed dealer. that is correct.

Rep. Thorpe: In the 2001 law -- all auto auctions must be licensed as auto dealers -- they must keep records for two years -- and make those records available to the DOT. I am not sure that is in the bill but that is what Mr. Sundhagen had received from the DOT.

End of hearing (20.2)

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1359b

House Transportation Committee

☐ Conference Committee

Hearing Date February 14, 2003

Tape Number	Side A	Side B	Meter #
1	x		38.4 to end
1		x	0.0 to 13.6
Committee Clerk Signature <i>Lauren B. Zink</i>			

Rep. Weisz opened the discussion for action on HB 1359. Rep. Thorpe explained the proposed amendment which everyone had -- LC ---.0102 . Omit "permit required". Page 1 line 12 remove --- a copy of the amendment is attached.

Rep. Weiler: A vehicle could be 1 year old and still be a collector vehicle?

Rep. Thorpe: That is correct.

Following discussion of a definition of a collector vehicle and antiques, ages, etc.

Discussion continued on Side B Tape 1

Rep. Price: Moved amendments which would on p1. lines 11 and 12 "is a collector, antique, or special interest vehicle" and on line 21 antique would be 40 years as now; and collector would be 25 years or older; and, special interest vehicles would be the definition which Rep. Thorpe wanted. Rep. Delmore seconded the motion. Motion carried on a voice vote.

Rep. Ruby moved a "Do Pass as Amended" motion for HB 1359. Rep. Zaiser seconded the motion.

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Bill/Resolution Number HB 1359
Hearing Date February 14, 2003

On a roll call vote the motion carried 12 Ayes 0 Nays 1 Absent and not voting.

Rep. Schmidt was designated to carry HB 1359 on the floor.

End of record 13.5.

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10/3/03
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FISCAL NOTE
Requested by Legislative Council
02/18/2003

Amendment to: HB 1359

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The fiscal impact of this bill, as amended, is expected to be less than \$5,000.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Keith Kiser	Agency:	NDDOT
Phone Number:	328-2734	Date Prepared:	02/19/2003

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FISCAL NOTE
Requested by Legislative Council
01/17/2003

Bill/Resolution No.: HB 1359

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The fiscal impact of this bill is expected to be less than \$5,000.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Keith Kiser	Agency:	NDDOT
Phone Number:	328-2734	Date Prepared:	01/22/2003

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10/3/03
Date

30579.0101
Title.

Prepared by the Legislative Council staff for
Representative Thorpe
February 11, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1359

Page 1, line 20, replace "section" with "sections" and replace "does" with "and 39-22-20 do"
Renumber accordingly

Page No. 1

30579.0101

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30579.0102
Title.

Prepared by the Legislative Council staff for
Representative Thorpe
February 13, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1359

Page 1, line 7, remove "Permit required"

Page 1, line 12, remove "that includes antique and special interest vehicles"

Page 1, line 20, replace "section" with "sections" and replace "does" with "and 39-22-20 do"

Page 1, after line 21, insert:

"3. A collector motor vehicle is a vehicle that is at least fifteen years old or has an appreciating value because of rarity, originality, or limited production of an anniversary edition."

Page 2, line 2, remove the overstrike over "except when the owner is a licensed"

Page 2, line 3, remove the overstrike over "motor vehicle dealer,"

Page 2, line 4, after the period insert "However, a motor vehicle dealer may sell a collector motor vehicle consigned to the dealer by an owner that is a licensed motor vehicle dealer."

Renumber accordingly

30579.0103
Title.0200

Adopted by the Transportation Committee
February 14, 2003

VR
2/14/03

HOUSE AMENDMENTS TO HB 1359 htrn 2-17-03

Page 1, line 7, remove "Permit required"

Page 1, line 11, replace the second "motor" with an underscored comma

Page 1, line 12, remove "vehicle that includes", replace "and" with ", or", and replace "vehicles" with "vehicle"

Page 1, line 20, replace "section" with "sections" and replace "does" with "and 39-22-20 do"

Page 1, after line 21, insert:

"3. A collector motor vehicle is a vehicle that is at least twenty-five years old; an antique motor vehicle is a vehicle that is at least forty years old; and a special interest vehicle is a vehicle that has an appreciating value because of rarity, originality, or limited production of an anniversary edition."

HOUSE AMENDMENTS to HB 1359 htrn 2-17-03

Page 2, line 2, remove the overstrike over ", except when the owner is a licensed"

Page 2, line 3, remove the overstrike over "motor vehicle dealer,"

Page 2, line 4, after the period insert "However, a motor vehicle dealer may sell a collector motor vehicle consigned to the dealer by an owner that is a licensed motor vehicle dealer."

Renumber accordingly

Page No. 1

30579.0103

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10/3/03
Date

Date: 2/14/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1359

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30579.0102

Action Taken De Pore is amended

Motion Made By Rep. Ruby Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe	✓	
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby	✓				
Dave Weiler	A				

Total Yes 12 No 0

Absent 1

Floor Assignment Rep. Schmidt

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

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REPORT OF STANDING COMMITTEE (410)
February 17, 2003 8:39 a.m.

Module No: HR-30-2858
Carrier: Schmidt
Insert LC: 30579.0103 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1359: Transportation Committee (Rep. Welsz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1359 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "- Permit required"

Page 1, line 11, replace the second "motor" with an underscored comma

Page 1, line 12, remove "vehicle that includes", replace "and" with ", or", and replace "vehicles" with "vehicle"

Page 1, line 20, replace "section" with "sections" and replace "does" with "and 39-22-20 do"

Page 1, after line 21, insert:

"3. A collector motor vehicle is a vehicle that is at least twenty-five years old; an antique motor vehicle is a vehicle that is at least forty years old; and a special interest vehicle is a vehicle that has an appreciating value because of rarity, originality, or limited production of an anniversary edition."

Page 2, line 2, remove the overstrike over "~~except when the owner is a licensed~~"

Page 2, line 3, remove the overstrike over "~~motor vehicle dealer,~~"

Page 2, line 4, after the period insert "However, a motor vehicle dealer may sell a collector motor vehicle consigned to the dealer by an owner that is a licensed motor vehicle dealer."

Renumber accordingly

2003 SENATE TRANSPORTATION

HB 1359

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Deanna Halliwell
Operator's Signature

10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1359**

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-07-03

Tape Number	Side A	Side B	Meter #
1	X		4230-end
1		X	0-340
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Senator Thomas Trenbeath opened the hearing on HB 1359 relating to collector motor vehicle auctions and relating to the sale of consignment vehicles.

Representative Elwood Thorpe (District 5) Introduced HB 1359 which came about from when the dealer licensing laws were rewritten last session.

Senator Trenbeath asked how many collector vehicles would be sold in North Dakota over a biennium and if it is a big business in North Dakota.

Representative Thorpe said it is a big business in North Dakota for the communities. He knows of three who each sell from 100-150 cars a year.

Dick Sundhagen (Minot ND) See attached testimony in support of Engrossed HB 1359.

Senator Mutch asked how often sales are held.

Dick Sundhagen answered that each auction is a once a year auction.

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Dorinda Hallmark
Operator's Signature

10/3/03
Date

Page 2
Senate Transportation Committee
Bill/Resolution Number HB 1359
Hearing Date 03-07-03

(Side 1, Meter 5480-end. Side B, Meter 0-130) Discussion on holding an auction. They need to have a dealers license. The problem of not being able to take dealer consignments was addressed. About 1/3 of the cars that come to auctions are from dealers. Limited production vehicles don't sell in North Dakota. A problem with the \$100 fee is that it is a fee to the state of ND and there is no one at the auctions to collect it.

Bob Lamp (Automobile Dealers Association of North Dakota) Neutral on HB 1359. Originally opposed to the bill. They had concerns but they don't have opposition to the bill as it is written now.

The hearing on HB 1359 was closed.

Senator Espegard moved a **Do Pass**. Seconded by **Senator Nething**. Roll call vote 5-0-1.

Passed. Floor carrier is **Senator Espegard**.

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10/3/03
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Date: 3-7-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1359

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Senator Espgaard Seconded By Senator Nething

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espgaard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Espgaard

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

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10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
March 7, 2003 1:41 p.m.

Module No: SR-41-4268
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1359, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)
recommends DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1359 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-41-4268

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10/3/03
Date

2003 TESTIMONY

HB 1359

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Operator's Signature

10/3/03
Date

TESTIMONY
HOUSE BILL 1359
FEBRUARY 13, 2003

- ☐ Mr. Chairman and members of the House Transportation Committee, my name is Bob Lamp and I am appearing in opposition to HB 1359 on behalf of the Automobile Dealers Association of North Dakota.
- ☐ Prior to the bill introduction and this hearing, Representative Thorpe and I had several conversations regarding our dealers' concerns with this bill.
- ☐ The automobile industry is a highly regulated industry. Over the years, legislative bodies have seen fit to put restrictions on how this industry operates. Nearly all of the regulations were put into place in the name of consumer protection and to provide regulatory oversight.
- ☐ House Bill 1359 seeks a "carve-out" for a specific type of auto auction. Apparently, there are numerous collector car auctions that are held in North Dakota. This bill requests special consideration and exemption from state law for this particular type of auction. We do not take issue with these special considerations if indeed they are exclusively collector car auctions.
- ☐ Unfortunately, in our opinion, HB 1359, does not adequately define a collector motor vehicle and in fact leaves these auctions open to not only collector motor vehicles BUT "...special interest vehicles..." as well. In our estimation, this opens the collector motor vehicle auction to a variety of vehicles far beyond the collector class.
- ☐ If the legislature enacts this exception and does not specifically control the type of vehicles sold at these public auctions, it will put dealers in the communities where these auctions are held at a competitive disadvantage. After all, licensed dealers are required to meet all of the licensing requirements outlined in the NDCC 39-22.
- ☐ An acceptable definition of a collector motor vehicle would remove our objection to this section of the bill. There is reference in the NDCC to collector vehicles as those 25 years old or older. That would be an acceptable definition.
- ☐ We are also opposed to the portion of the bill on page 2 that removes the prohibition of dealer-to-dealer consignments. The automobile industry worked on this dealer licensing legislation over an 18-month period before it was brought before the 2001 legislature. The committee included new car dealers, used car dealers, auto auctions and DOT personnel. It was the unanimous consensus of the participants that dealer-to-dealer consignments should not be allowed. If you remove this prohibition, these consignments become totally unregulated.
- ☐ The unregulated movement of motor vehicles from location to location opens a Pandora's box of potential problems. As a consumer, whom am I buying from? Who is responsible for assuring I receive my damage disclosure, my odometer disclosure, my warranty disclosure, my finance disclosure? Whose name will be on the buyers guide disclosure? Who has the title to the vehicle? The list goes on and on.
- ☐ Nothing in this bill prohibits a dealer from moving their entire inventory to another location either within their city or to another city. Or across the street from one of the local dealers in your town. We do not believe this is good public policy and certainly not in the best interest of North Dakota's consuming public.
- ☐ Thank you for this opportunity to testify.

Robert L. Lamp
Automobile Dealers Association of North Dakota

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Deanna Hallmark
Operator's Signature

10/3/03
Date

North Dakota House of Representatives Transportation Committee
House bill 1359

Committee members: February
4, 2003

Last year a bill was passed doing several things that hinder and reduces competition with in the used car industry in the state. The requirement of all auctions to now be licensed dealers (subject to interpretation) and the restriction of one dealer to consign to another dealer, eliminates competition and prevents small dealers from using options to sell their inventory.

Four years ago I started a Classic Car business which uses the internet to sell classic cars (1970 and older vintage). Since then over 90% of my sales are to the East, West and Southern coasts of the US, with some possibilities of International sales. This is new money, transportation, fuel etc. coming into the state.

As a licensed dealer in ND, the law as it is today prohibits me from working with other Classic Car dealers to help them sell their units to a broader and more lucrative market, thus limiting competition and business growth of both our companies. It also prohibits me working with larger car dealers that take older classics in on trade from time to time. In addition it prohibits me and other classic dealers to work with Classic Auctions in the state (Fargo, Devils Lake, Minot) as well as any auctioneer (subject to interpretation) in the state. This cuts off one of the main avenues for small Classic Dealers to move their units.

Bill 1359 is designed to eliminate this non-competitive and anti-business regulation by eliminating the phrase "except when owner is a licensed dealer". North Dakota is spending millions of dollars to bring business into the state. The legislation passed last year works against small business growth, limits competition and prevents business cooperation and needs to be reversed. What does this do to our right to "free enterprise"??

My understanding is the legislation passed last year was because of larger new car dealers fighting over a "company franchise" issue, should the state be legislating what we see as a manufactures franchise dispute at the expense of small struggling dealers??

Please approve bill 1359 and allow North Dakota free competitive avenues for smaller Classic Car dealers to grow! We are a "right to work state" what about a "right to sell state"??

Respectfully,
Harlan Goerger, President
Hot Rods by HG, Inc.

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Donna Hallworth
Operator's Signature

10/3/03
Date

My name is Dick Sundhagen and I am from Minot, N.D. I am here today to testify in support of House Bill #1359. Section #1 of this Bill pertains to classic car auctions and would be a new section of Chapter 39-22 of the North Dakota Century Code if approved.

At the present time, to my knowledge, there are four auctions of this type in the state, each one being held once a year. One is at Devils Lake, N.D. held in conjunction with the Devils Run. This has a tremendous impact on the Devils Lake area and brings in thousands of people to the area for that weekend. Another auction which is held in Fargo is sponsored by the Valley Vintage Car Club and is called the Valley Classic Car Auction. They use this as a fund raiser for charitable activities. The third auction, also held in Fargo is put on by ICA of Gilbert, Arizona. In visiting with Stanley Torgerson of ICA recently, he indicated that they have not yet signed a contract to hold their Fargo auction this year and because of the anti-business laws in North Dakota in regard to dealers, he felt they would be spending their time and money on a sale in Sioux Falls, S.D. instead this year. Myself and two others hold an auction in Minot on Labor Day weekend in conjunction with Motor Magic. In visiting with Marsha Dupre of the Minot Convention and Visitors Bureau, she indicates that in their report just released for the year 2000, they note that Motor Magic had an attendance of 30,000 people and that three million dollars was spent during this event. Ms. Dupre indicated that the three million is only dollars spent and does not reflect the turning of these dollars, and the actual economic impact to the area. As you can see, we are talking about a significant economic impact to the Minot area and to the State of North Dakota.

Silver Auction of Spokane, Washington, has held auctions in the past in Beach and Bismarck, North Dakota, and I have visited with them about future auctions. They indicated that under the current laws, they would not consider returning to North Dakota to participate in any auctions.

Under laws enacted during the last legislative session, it has become economically impossible to hold a legal classic and special interest car auction in North Dakota. A couple of

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Dennis Hallmark
Operator's Signature

10/3/03
Date

the main problems with the last legislation in regard to classic car auctions is that it requires the auction to be a dealer and then it requires that they cannot take consignments from other dealers. In another section the law requires out of state dealers to pay a \$100.00 fee to participants in the auction. An example of this is a dealer in Moorhead, MN. would be required to pay a \$100.00 fee to bring a car to the ICA Auction in Fargo, ND. It also requires a North Dakota dealer to pay a \$25.00 fee. These auctions will not survive under these laws.

The Section 1. that we proposed in HB #1359 is meant to be short and simple. In short, it will allow individuals or organizations to hold classic and special interest motor vehicle auctions in North Dakota after obtaining a permit from the state of North Dakota without being a licensed dealer and will allow dealers to participate without obtaining a permit and paying a fee.

It also allows these auctions to be held on Sundays. As you know, many celebrations and functions are held around weekends and holiday weekends. In the case of Motor Magic held in Minot on Labor Day weekend, Sunday sales work well in scheduling the many activities of the event. The state will still have regulatory control over these sales as they will be permitted by the State. It is my understanding that there is a concern about the definition of a classic or special interest vehicle. It is our intent that this issue can be dealt with on the permit issued by the state if need be rather than the legislature trying to come up with a definition. Myself and many others in the industry will work with the state in coming up with a workable definition of what is a classic and special interest auto.

The second part of this bill being Section 2 is an amendment of Section 39-22-21 of the North Dakota Century Code. What this Amendment does is strike the words, "except when the owner is a licensed motor vehicle dealer".

Under current law passed by the last legislative session, North Dakota dealers are not allowed to consign vehicles to other dealers. It is my understanding that this bill was prepared by the new car dealers association and was introduced and passed last session because a certain car dealer in North Dakota was transferring new cars from one dealership to another dealership in

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Operator's Signature

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another town. I think you will all agree that this is a franchise issue and not a legislative one. I will give you a few examples of the inequities of this law and I hope common sense will prevail over big business in regard to this law.

I own Dick's Auto of Minot, N.D. I deal primarily in classic cars and I sell the vast majority of the cars over the internet on my website. I sell cars in North Dakota and all over the U.S. and have shipped cars overseas. Most of the cars I sell are owned by me, but I do get many requests from dealers to market a classic car for them. Usually I get this request because dealers have taken a classic in trade on a car or motor home, and they are not in the business of marketing classic cars. Under current law, I cannot do this.

Another example of the problems associated with dealer to dealer consignment laws that were passed the last legislative session are Northland Auctions of Mandan and Northern Auction of Minot. If current law is enforced, these auctions, being dealers, would not be permitted to take consignments from other dealers. This appears to be a great law for Tri State Auction of Fargo as the legislature has made them the only auction in North Dakota that can legally take dealer consignments. Without selective enforcement of current law, Northern Auction and Northland Auction would probably not survive.

I have talked with numerous small dealers in North Dakota in the past weeks that do take dealer consignments. It has been a part of their business in the past and will be a part of their business in the future. The reason they are not here today is for fear of incrimination and possible penalty from the state. If the present laws were enforced, they will be forced to close their doors and the "out migration" continues.

In visiting with one small town used car dealer in North Dakota, he indicated he has plans to open another dealership in another small town in North Dakota but has his plans on hold because under current law, he would not be allowed to rotate his inventory from one dealership to the other. It would appear to me that this is a very selective law that is meant to benefit very few large dealers.

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If when I am applying for my used car dealers license to the North Dakota Department of Transportation, I decide to get a license instead to sell motor homes, it is my understanding in talking to these dealers that they have no restrictions on dealer consignment or no special provisions for shows, yet the car dealers do.

Capitol R.V. of Bismarck can rotate stock with Capitol R.V. of Minot. That's marketing 101; why shouldn't the car dealer be allowed to do the same.

This issue is mostly a small town or small dealer issue as most new car dealers and large dealers do not consign cars but rather use the auctions to move their trades if necessary, although many do use Northern Auction and Northland Auction. But keep in mind that there are approximately 400 used car dealers in North Dakota and the vast majority would be considered small dealers. These small car dealers are not well organized, have no lobbyists or paid representatives that I am aware of but they most definitely have a huge impact on the economy of North Dakota. Every sale they make is tax money for the state of North Dakota.

It is my understanding that the New Car Dealers Association in North Dakota is objecting to permitting dealer to dealer consignments as a large dealer could "flood the market" in another town if they were permitted to consign to other dealers. A simple solution to this would be to limit the consignments to 10 at any given time. This would take care of the concerns of the big dealers and would allow the small dealers to survive.

I suppose big business in North Dakota would like to see their competition disappear. Wouldn't it be nice to have a monopoly--or would it?

I grew up in northwestern North Dakota and I remember when there was an implement and car dealer in nearly every small town. Did it really help when big business forced them out? Look at these towns now!

Between the Department of Transportation and the New Car Dealer Association, we could easily write a book about the hypothetical "what ifs", but today we are talking about real people and real problems that we need to take care of now.

In closing, I would like to say I don't believe that when these laws were passed last

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session that they were intended to close any business down or be anti business. Hind sight makes it easy to analyze your jobs at the legislature. Hopefully we can now move forward in a positive direction.

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Deanna Halliwell
Operator's Signature


10/3/03
Date

DAVES CLASSICS

101 40TH ST SW
FARGO, ND 58103

2/11/05

To whom it may concern,
As a Licensed & bonded dealer of
North Dakota, I am voicing my
Support of "House Bill 1359". I am
a "specialty" car dealer as I only
sell classic and Antique automobiles.
This bill will limit my business in the
use of private auctions & brokers
among other areas. I am a small operation
and built it from the ground up. As
we all know it takes everything I have
to keep my doors open. But I also
love what I do I find it ironic
that the state of North Dakota is
trying to limit "Free Enterprise" in these
sombre economic times when all I hear is
our local representatives talking about
how to "promote" & keep new & existing
businesses in North Dakota. 


Operator's Signature

10/3/03
Date

My name is Dick Sundhagen from Minot, N.D. I am here today to testify in support of Engrossed House Bill #1359. Section #1 of this Bill pertains to classic car auctions and would be a new section of Chapter 39-22 of the North Dakota Century Code if approved.

At the present time, to my knowledge, there are four auctions of this type in the state, each one being held once a year. One is at Devils Lake, N.D. held in conjunction with the Devils Run. This has a tremendous impact on the Devils Lake area and brings in thousands of people to the area for that weekend. Another auction which is held in Fargo is sponsored by the Valley Vintage Car Club and is called the Valley Classic Car Auction. They use this as a fund raiser for charitable activities. The third auction, also held in Fargo is put on by ICA of Gilbert, Arizona. In visiting with Stanley Torgerson of ICA recently, he indicated that they have not yet signed a contract to hold their Fargo auction this year and because of the anti-business laws in North Dakota in regard to dealers, he felt they would be spending their time and money on a sale in Sioux Falls, S.D. instead this year. Myself and two others hold an auction in Minot on Labor Day weekend in conjunction with Motor Magic. In visiting with Marsha Dupre of the Minot Convention and Visitors Bureau, she indicates that in their report just released for the year 2000, they note that Motor Magic had an attendance of 30,000 people and that three million dollars was spent during this event. Ms. Dupre indicated that the three million is only dollars spent and does not reflect the turning of these dollars and the actual economic impact to the area. As you can see, we are talking about a significant economic impact to the Minot area and to the State of North Dakota.

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The Section 1. that we proposed in Engrossed House Bill #1359 is meant to be short and simple. In short, it will allow individuals or organizations to hold classic and special interest motor vehicle auctions in North Dakota without being a licensed dealer and will allow dealers to participate without obtaining a permit and paying a fee. It also allows these auctions to be held on Sundays. As you know, many celebrations and functions are held around weekends and holiday weekends. In the case of Motor Magic held in Minot on Labor Day weekend, Sunday sales work well in scheduling the many activities of the event.

The second part of this Bill being Section 2 is an amendment of Section 39-22-21 of the North Dakota Century Code. What this Amendment does is to allow licensed motor vehicle dealers to consign collector, antique, and special interest vehicles to another dealer.

Under current law passed by the last legislative session, North Dakota dealers are not allowed to consign vehicles to other dealers.

I own Dick's Auto of Minot, N.D. I deal primarily in classic cars and I sell the vast majority of the cars over the internet on my website. I sell cars in North Dakota and all over the U.S. and have shipped cars overseas. Most of the cars I sell are owned by me, but I do get many requests from dealers to market a classic car for them. Usually I get these requests because dealers have taken a classic in trade on a car or motor home, and they are not in the business of marketing classic cars. Under current law, I cannot do this. There are other dealers in the state that fall in this category such as Hot Rods by HG Inc. near Fargo, Dave's Classics of Fargo, Nodak Klassics of Minot, Greater Dakota Classics of Devils Lake, and numerous others.

At the last legislative session, when Senate Bill #2273 was passed, certain portions of

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that Bill created problems for many dealers. With the approval of Engrossed House Bill #1359, many of these businesses would be allowed to continue doing business in North Dakota and not be a part of the out migration.

Thank you for your consideration and support of this bill.

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