2009 HOUSE TRANSPORTATION

HB 1570

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1570

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 02/05/09

Recorder Job Number: 8788

Committee Clerk Signature

Minutes:

Chairman Ruby, district 38, introduced HB 1570.

Chairman Ruby: This bill is a repeal of a section that deals with damage disclosures on titles. See attachment #1. Currently someone who is in an accident and has vehicle damage above a certain level, they must have a damage disclosure that gets put on the title. If a vehicle is totaled, it has a salvage title, that is not what this deals with. Initially you might think this is a consumer protection issue. This actually might hurt the consumer. In Section 3, it is the best interest to eliminate the dollar amount.

Representative R. Kelsch: I as a purchaser of a used vehicle would certainly want to know what kind of damage had been done. The reason that we have full disclosure is to make sure that when you purchase a vehicle you have that information. I am concerned that we are going to do something that will not protect the citizens.

Chairman Ruby stated that the coming testimony will explain why this bill is also in the best interest of citizens. It will be valuable to have this discussion.

Representative Thorpe: How many other states have rescinded this damage disclosure information?

Chairman Ruby: I didn't research that.

Representative Potter confirmed that the only time damage needs to be disclosed is when the damage exceeds $8,000 or 40% of the vehicle.

Jerome Lundeen who has been in the collision repair business for thirty-five years from Minot spoke in support of HB 1570. See attachment # 2.

Jay Lundeen runs the day to day operations of a collision center. He feels that this law doesn't affect them as a body shop, but it does hurt the consumer, not the person who purchases the vehicle from a dealership, but the person who sells the vehicle. He distributed testimony from **Ken Schwanke, Quality Auto Body in Fargo, ND** and talked about the testimony. See attachment #3.

Jay Lundeen feels that the law as it is written does not protect the consumer at all. It creates a watered down vehicle market that says that collision repair professionals are NOT collision repair professionals. The dealer should make check the car over to see if it has had damage that is not fixed properly.

Representative Weiler: If I get in an accident and have $10,000 worth of damage to my vehicle. I bring it to you, and you repair it. The next day, I go and trade it in. How am I losing on that, is it going to be worth less money, even though it has been repaired back to the condition it was in before the collision?

Jay Lundeen: You are losing money because if the vehicle is worth $20,000 and you take it to trade it in, you will get asked if it has damage. When you sign the damage disclosure, the car dealership is not going to give you the trade-in value ($16,000) for it. A customer will not give that amount for a vehicle that has been damaged. So, you will lose money.

Representative Gruchalla: Before we had this law, there were people in the car repair business that would buy wrecked cars, fix them, and resell them. The cars may have been

very poorly fixed. There are a lot of backyard body shops in the state. How are you going to stop that?

Jay Lundeen: You won't be able to, even with a stricter law.

Representative Vigesaa related an example of a vehicle that his car dealership had taken in trade. *He* had the seller sign a damage disclosure statement. The vehicle was then sold to a local customer, who drove the vehicle for three years until he had an accident. When the vehicle was taken to the body shop to be repaired, it was discovered that the vehicle had had major damage previously and been repaired. The owner of the vehicle can back to Representative Vigesaa's dealership, and he had to make it right with the buyer. It cost him thousands of dollars. How does repealing the law make this happen less often?

Jay Lundeen: This is an honest person's law. If the first seller had been honest, you wouldn't have been hurt. I feel that the dealers have to make sure that they have to examine the vehicle.

Kent Olson, lobbyist for the Professional Insurance Agents Association, spoke in support of HB 1570. We support the bill because we bear the brunt of the questions after an automobile accident. One issue is the "salvage title" which this bill doesn't deal with. The "branded title" happens after an accident if you trade a vehicle in or sell it. It doesn't cause decreased value until you sell the vehicle. An insurance contract does not insure diminutive value. Our experience has been negative with the law, it doesn't work. We would like to see it go away. It only hurts the honest person.

Matthew Larsgaard spoke in opposition to HB 1570 on behalf of the Automobile Dealers of North Dakota. See attachment #4. He corrected information that Montana, Minnesota, and South Dakota **do** have disclosure laws.

Representative Delmore: I would be interested in seeing the statutes from surrounding states.

Matthew Larsgaard: I do not have that information, but can get that information for you.

Chairman Ruby: Could you comment on the loopholes that allow people to bring vehicles in from other states without showing damage on the title or someone not disclosing damage when it gets traded in.

Matthew Larsgaard: Before this law was in effect, North Dakota was considered a "title washing" state. Minnesota had disclosure. An individual would be able to take a Minnesota vehicle and bring it into North Dakota to register, then when they took it back to Minnesota the title would be "washed" because the damage didn't have to be disclosed.

Glen Jackson, Director of Motor Vehicle Division at the North Dakota DOT, spoke on behalf of the North Dakota DOT in opposition to HB 1570. See attachment # 5.

Glen Jackson: In response to Representative Delmore question. Currently twenty-eight states do not have a damage disclosure law. Twenty-six of those twenty-eight do have reconstructive or rebuilt brand status that mirrors our vehicle law. Every state has a salvage law. Thirty-five states have more than three different types of brands. Mr. Jackson reported the laws of Minnesota, Montana, Wisconsin, and South Dakota.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1570

House Transportation Committee

☐ Check here for Conference Committee

Hearing Date: 02/12/09

Recorder Job Number: 9391

Committee Clerk Signature Jeanette Cook

Minutes:

Chairman Ruby brought HB 1570 before the committee. He reviewed the intent of the bill. There has been some thought to moving the $8,000 to $12,000 as an adjustment for inflation. A salvage title right now is 75%. The Lundeens thought that for these purposes 60% would be good. The auto dealers would prefer 50%.

Representative Vigesaa: I think that 60% would be too high, in my opinion. The vehicles are getting more expensive. There used to be a lot of vehicles in the $40,000 - $50,000, so you could have $30,000 worth of damage and not have to disclose it. If I was purchasing a vehicle, I might want to know if a vehicle had $29,500 worth of damage. The purpose of this legislation of this law is to protect the consumer that is purchasing the vehicle. They should know that there has been damage.

Chairman Ruby: How do you answer that there can be just as much damage from hail, and it would never be disclosed?

Representative Vigesaa: I don't think that is a problem because hail does absolutely nothing to the structure of the vehicle. The vehicle may have been hammered on the top and hood, but that is way different than getting into a $20,000 collision. Then you are getting into suspension, all the frame, and the wheels.

Representative Thorpe: The information that I have read in regards to this states that there are more people hurt by the law that there are protected. Having to make a disclosure statement ends up costing the people money when trading in vehicles. I think the law hurts more people than it helps.

Representative Vigesaa moves an amendment to change the threshold to 50% or $12,000 whichever is the highest.

Representative Delmore seconded the motion.

Representative Weiler: This is only in regards to what year of vehicle?

Representative Vigesaa: It is the current year and would go back seven years. Anything 2001 or older, it wouldn't apply.

A voice vote was taken. All were in favor and the motion passed.

Representative Vigesaa moved a Do Pass as amended.

Representative Gruchalla seconded the motion.

A roll call vote was taken. **Aye 10 Nay 2 Absent 2**

The motion passed.

Representative Sukut will carry HB 1570.

Adopted by the Transportation Committee
February 11, 2009

VR
2/13/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1570

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 3 of section 39-05-17.2 of the North Dakota Century Code, relating to body damage disclosure on titles to motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-05-17.2 of the North Dakota Century Code is amended and reenacted as follows:

3. As used in this section, "motor vehicle body damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of ~~eight~~ twelve thousand dollars or ~~forty~~ fifty percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair."

Renumber accordingly

Date: 2-12-09

Voice Vote
~~Roll Call Vote #:~~ 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1570 Amendment

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do pass ☐ Don't Pass ☐ Amended

Motion Made By Vigesaa Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman			Representative Delmore		
Rep.Weiler – Vice Chairman			Representative Griffin		
Representative Frantsvog			Representative Gruchalla		
Representative Heller			Representative Potter		
Representative R. Kelsch			Representative Schmidt		
Representative Sukut			Representative Thorpe		
Representative Vigesaa					
Representative Weisz					

Total Yes _____ No _____

Absent _____

Bill Carrier _____

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

Date: 2-12-09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1570

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do pass ☐ Don't Pass ☒ Amended

Motion Made By Vigesaa Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep.Weiler – Vice Chairman	✓		Representative Griffin		✓
Representative Frantsvog	✓		Representative Gruchalla	✓	
Representative Heller	✓		Representative Potter	A	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe		✓
Representative Vigesaa	✓				
Representative Weisz	A				

Total Yes 10 No 2

Absent 2

Bill Carrier Sukut

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

REPORT OF STANDING COMMITTEE

HB 1570: Transportation Committee (Rep. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1570 was placed on the Sixth order on the calendar.

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Renumber accordingly

2009 TESTIMONY

HB 1570

Attachment #1

39-05-17.2. Body damage disclosure Rules When required Penalty.

1. The department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department may not transfer the title without the required damage disclosure statement.

2. Motor vehicle body damage disclosure requirements apply only to the transfer of title on motor vehicles of a model year which have been released in the current calendar year and those motor vehicles of a model year which were released in the seven calendar years before the current calendar year. When a motor vehicle has been subject to this disclosure requirement and a motor vehicle of a model year has not been released in the current calendar year or the seven calendar years before the current calendar year, the holder of the certificate of title with the damage disclosure may have the disclosure removed and a new certificate of title issued for a fee of five dollars.

3. As used in this section, motor vehicle body damage means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of eight thousand dollars or forty percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.

4. A person repairing, replacing parts, or performing body work on a motor vehicle of a model year which was released in the current calendar year or the seven calendar years before the current calendar year shall provide a statement to the owner of the motor vehicle when the motor vehicle has sustained motor vehicle body damage requiring disclosure under this section. The owner shall disclose this damage when ownership of the motor vehicle is transferred. When a vehicle is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, the person repairing, replacing parts, or performing body work on the motor vehicle of a model year which has been released in the current calendar year or the seven calendar years before the current calendar year shall also advise the owner of the motor vehicle that the owner of the vehicle must comply with section 39-05-20.2.

5. The amount of damage to a motor vehicle is determined by adding the retail value of all labor, parts, and material used in repairing the damage. When the retail value of labor has not been determined by a purchase in the ordinary course of business, for example when the labor is performed by the owner of the vehicle, the retail value of the labor is presumed to be the product of the repair time, as provided in a generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.

6. A person who violates this section or rules adopted pursuant to this section is guilty of a class A misdemeanor.

Attachment #2

Jerome Lundeen ?

Subject: [redacted] HB1570

This is a testimonial regarding the Salvage Law and the Damage Disclosure Law. Dealership body shops must NOT do quality repairs because they are behind this law. The North Dakota Dealership Association drafted this law in either 1997 or 1998, and from my understanding they are still opposing it. They must not trust their shops to do quality repairs because they have to have a marked title because of the damage disclosure law. The only one that loses on this is the consumer; it decreases the value of their vehicle. Another thing, is why they have an eight year period where you can get the title cleaned. In other words, they can eliminate the damage disclosure which makes no sense at all. What benefit is that to the consumer? If it is to be marked, then it should stay marked. 'And there is no reason it should be marked in the first place. We have a Total Loss Salvage Law which is fine, and it should be that way. This law actually protects the consumer, unlike the Damage Disclosure Law which hurts the consumer. The Dealership Organization in this state wanted that law to make it easier for them selves so they didn't have to do a decent appraisal inspection when they are taking trade-ins in. If they open the hood and go underneath the car, inside the car, and drive the car, they will be able to tell if there is any damage to the vehicle. It is very easy to see if the work has been done improperly. The dealerships know that and they have body shop people and mechanics that can check it, and detail people that do their detail. So, it

would mean a little bit more work on their part to check out cars when they take them in trade instead of trying to mark everybody's title that has an accident with a damage total of over $8,000 or 40% It is very unfair to the consumer to mark the title for any amount. We, collision repair businesses, which have been in the business continually go through certification classes and keep updated. A lot of our technicians are trained in Wahpeton for two years and come out into the field and work under a journeyman while continuing to attend corresponding classes through ASE or ICAR. They keep up on our changing automobile designs, frames, suspensions, and mechanical work and they are recertified in their training of all parts of the car. It is an ongoing thing that we do, and any shop worth its salt does it. So, there is no reason to have these cars marked because we are professionals, just like a plumber or an electrician. The repairs are guaranteed in quality. Another point in my shop, Jerome's Collision Center in Minot, ND, is that we give a lifetime warranty on the repairs. So, as far as I know, any shop that does business in Minot or throughout the state gives a lifetime warranty on their repairs. If we were not doing them properly and correctly, we surely couldn't do this. All they have to do is call the shops and verify what I am saying regarding this warranty question. The legislatures that are going to vote on this can call the shops in Minot, Bismarck, Fargo, and wherever to verify the warranty process of the shops throughout the state. We could not afford to give warranties such as this if the repairs were not done right.

We get paid to repair these cars to their pre-loss condition, and we wouldn't be in business if we didn't accomplish this. We would loose our customers trust, and they would quit coming to us. I would like to thank the commity for their time with H.B.1570. A new or next to new car owner should not have to loose money because of a properly repaired automobile.

 Attachment #3

From: Quality Auto Body in Fargo.

Regarding the North Dakota damage disclosure:

- The consumer is at a disadvantage. Very few consumers are even aware of the disclosure law until they are selling or trading in their vehicle and even fewer consumers realize it could cost them again because of an accident they had in the past.

- **The diminished value assessed to a consumer by a dealer because of the ND** Damage Disclosure will many times exceed $3000.00 depending on the retail value of the vehicle being traded in.

- Insurance companies do not recognize a loss based on diminished value even though many consumers experience the additional loss when signing the ND Damage Disclosure. The insurance companies' responsibility is to pay for the repairs to return it to its pre-accident conditions.

- The law in its current form shelters the dealer but costs the consumer. Regardless of the quality of repair the damage discloser will diminish the value of the consumers' car by virtue of what the disclosure is. In the defense of the dealer It can also diminish the local resale market for the car but the dealer usually has purchased it for less protecting his margins. On the other hand many other markets are open to the dealer where the North Dakota disclosure isn't required and the signed damage disclosure, unneeded by others can remain in the dealer company file. In this case the ND consumer is penalized by the requirement of the disclosure and the dealer gets to take complete advantage of it.

- Put another way, the damage disclosure disclaimer is not printed on the title until the title has been renewed by the NDDOT by another ND resident. Before this happens however the title is clean, but the seller is obligated by law to diminish the value of his vehicle by virtue of signing the damage disclosure. The buyer then receives a clean title and a signed damage disclosure form from the seller. The dealer on the other hand if selling the vehicle out of state is not compelled by another state to disclose the damage or give the damage disclosure form, only the clean, unmarked title, thereby taking advantage of the seller by nature of the law that required the dealer to require the disclosure form from the seller in the first place.

- The law was intended to protect consumers but in turned into a law that costs many consumers outrageous amounts of dollars simply because they're car was properly repaired.

- The best financial choice for the ND consumer is to sell or trade his car outside of our state and avoid the need for the discloser in the first place. No one should want this.

- Discrimination: A $50,000 vehicle can have $20,000 worth of damage before a disclosure is required a $22,000 vehicle only needs $8,800 to require a disclosure.

- **Unfair: A hail damaged vehicle can require all new panels, be completely ripped apart to be repaired, but does not require a disclosure. Who's that protecting?**

Ken Schwanke

Attachment # 4

TESTIMONY ON **HOUSE BILL 1570**
HOUSE TRANSPORTATION
FEBRUARY 5, 2009

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing before you today in opposition to House Bill 1570 on behalf of the Automobile Dealers Association of North Dakota which consists of approximately 100 franchised new car dealers in our state.

Body damage disclosure was added to Section 39-05 by the legislative assembly in 1991. It was the result of over two years of discussions among representatives of the various motor vehicle related industries and government regulators. Prior to the 1989 legislative session, the Motor Vehicle Department established an informal "Motor Vehicle Advisory Committee". This committee consisted of the new car dealers, used car dealers, lenders, insurance companies, rebuilders, dismantlers, body shops, Tax Department, Consumer Fraud Division of the Attorney General's Office, Highway Patrol, and the Department of Transportation.

Early meetings of the committee established the fact that problems related to the sale and distribution of damaged vehicles was the most important concern to members of the committee. The genesis of the body damage disclosure is a result of this committee's work.

During the 1991 legislative session the Director of the Attorney General's Consumer Fraud Section submitted testimony that the Attorney General believed that there is a need for a damage disclosure rule. That, from their perspective, both the consumer and the car dealer have a right to know whether or not the vehicle being bought or traded in had been in an automobile accident.

Since 1991 there have been several changes made to Section 39-05-17.2. In almost every case, initiatives were taken to raise the damage disclosure threshold to account for the increasing value of motor vehicles and the escalating costs of repair. In 1991 the threshold was set at $3,000; in 1997 it was raised to the greater of $5,000 or 40% of the predamage retail value; in 1999 it was raised to $8,000 with the 40% language remaining unchanged.

Members of the committee, damage disclosure is a **consumer protection issue**. Without it a vehicle could be "patched up", having the severe damage disguised, and re-enter the market. The vehicle might not have been repaired properly and conditions may still exist that would compromise the **vehicle's safety and handling**.

It is also widely recognized that a severely damaged vehicle, even after being repaired, is of less value than a similar undamaged vehicle. Without disclosure these vehicles will have clean titles; consumers might purchase these potentially overpriced vehicles without ever knowing the extensive damage they sustained.

continued...

Current law provides the best of both worlds for damaged vehicles; it sets the damage disclosure threshold at a reasonable level and provides for the inflationary costs for more expensive vehicles. It also allows consumers and dealers to have the information they need to make informed decisions about the safety and fair market value of used cars.

The dealers I represent have indicated the current law is working quite well and request that the proposed repeal be set aside.

Mr. Chairman, this concludes my testimony in opposition to House Bill 1570. Thank you for the opportunity to testify.

Matthew C. Larsgaard
Automobile Dealers Association of North Dakota

Attachment # 5

HOUSE TRANSPORTATION COMMITTEE
February 5, 2009
10:30 a.m. Fort Totten Room

North Dakota Department of Transportation
Glenn Jackson, Director Motor Vehicle Division

HB 1570

Good afternoon, Mr. Chairman and members of the committee. I'm Glenn Jackson, Director of the Motor Vehicle Division at the North Dakota Department of Transportation. Thank you for giving me the opportunity to present information to you today.

The NDDOT opposes House Bill 1570. This bill would eliminate the entire damage disclosure provisions of the century code. The damage disclosure provides a direct process to affect the type of branding for our titles. Branding is the process of establishing a status to a vehicle. For example the flood brand means a vehicle was involved in a situation that could lead to rust or wiring issues, even though the vehicle appears new. Current ND title brand statistics:

Previous Damage: 18,872
Previous Salvage: 32,089
Salvage: 14,683
Total Brands: 65,644
Total Title Records: 1,521,630

Currently, the statute seta a threshold to determine "motor vehicle body damage," which means that damage through a crash, accident, fire, vandalism or flooding equals or exceeds the greater of eight thousand dollars or forty percent of the pre-damage retail value as determined by the National Automobile Dealers Association official used car guide. The current damage disclosure enables a citizen to know at the time of purchase if a vehicle has received significant damage in its history. Removing this would remove a safeguard for our citizens. Also, ND could potentially be targeted as a "clearing" house to wash title brands from other states. Without these brands we effectively delete reciprocal agreements amongst the states, which could lead to other states not accepting ND vehicle titles.

In addition, the National Motor Vehicle Title Information System (NMVTIS) final rule from the Department of Justice was released on January 30, 2009, which requires full implementation of the system to be complete by January 2010. This system will require various brands to be sustained for all vehicles. Currently, the brands provided by North Dakota meet the needs of the NMVTIS system. Removing the damage disclosure may infringe on our ability to report effectively within this system and deny our citizens access to vehicle information the rule requires.

For these reasons, the department opposes HB1570.
Thank you, Mr. Chairman, I would be happy to answer any questions.