

Senate Bill 2312
Testimony before Senate Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
February 4, 2021

2/1/21

Mr. Chairman and members of the committee, my name is Matthew Larsgaard, and I am appearing in opposition to SB 2312 on behalf of the Automobile Dealers Association of North Dakota that consists of our state's franchised new car dealers.

This bill provides a "replacement motor vehicle" excise tax credit to an individual who sells a vehicle to either a dealer or an individual in a private sale. The credit must be claimed by the purchaser of the replacement vehicle within three years of the date of sale.

We have several concerns and questions regarding this legislation.

Consumer Protection – Motor vehicle dealers are highly regulated by the government and must comply with many consumer protection laws *<regulatory maze handout>*; private sale transactions are not subject to those same regulations. SB 2312 incents individuals to sell their vehicles privately, which exposes consumer purchasers to many risks, such as fraud, misrepresented vehicles, overestimated prices, etc. These are just a few examples of why the consumer protection laws exist. Again, private sale transactions are not subject to these consumer protection laws. In addition, vehicle manufacturers adamantly require dealers to meet specific customer satisfaction goals which further compel dealers to ensure all customers are well treated and are taken care of.

Child Support – Child Support Enforcement automatically places a lien on a motor vehicle owned by an individual who is past-due on their child support obligation. Every time an individual trades a vehicle in to a North Dakota dealer, the dealer is required, by law to identify whether there is a child support lien on that vehicle. If there is a lien, the dealer must pull the amount of the child support obligation out of the vehicle deal and send that money to Child Support Enforcement. It is very important to understand that the child support lien is not effective in private sales unless the lien is marked on the title, which is extremely rare, or the buyer is aware of the lien, which is also rare. Without a doubt, this bill will further motivate individuals to sell their vehicles in a private sale and attempt to avoid paying their past-due child support.

Tax Fraud – Although there is a penalty for misrepresentation, the bill does not appear to provide a sound method to validate the purchase price or date of purchase, and thereby avoid tax fraud. On page 4, lines 1-2 the bill requires "[t]he purchaser of the vehicle being replaced shall provide the seller a copy of the *motor vehicle purchaser's certificate* required under section 57-40.3-05." This "certificate" is embedded within SFN 2872, which is an Application for Certificate of Title....not a bill of sale.

We also have several unanswered questions: is there a requirement to have a notary or third party authenticate the purchase price and date of sale? How would it be confirmed that a vehicle was even sold in the first place? How do you police an individual from using multiple copies of the same certificate throughout the three year period? What happens if the holder of the "certificate" claims that three years ago the vehicle was sold to someone who lives in California and now that someone cannot be found? What if the VIN was written down in error or a handwritten VIN is illegible and it cannot be confirmed that a vehicle was actually sold?

Lost Tax Revenue – SB 2312 will result in decreased motor vehicle excise tax collections.
<See handouts regarding potential fiscal effects>

There is already a partial solution to what this bill intends to accomplish. "In and Out" or "Paper Trade" are common terms in the retail motor vehicle industry for people who may want to purchase vehicles from a dealer, yet they want to sell their trade-in privately or to someone else *through the dealer*. Instead of selling directly to the third party, the dealer purchases the trade-in and immediately sells it to the third party at cost with zero fees. The benefit for the consumer is that they will be able to realize a tax credit on the trade-in. The benefit for the dealer is that they will sell a vehicle from their inventory. The benefit for the state is that the dealer fills out the true value of the private sale/trade, which allows the state to collect the proper amount of tax and past-due child support if applicable.

Mr. Chairman, due to the negative aspects and unknown consequences of SB 2312, we respectfully suggest a DO NOT PASS on this legislation. We believe that a greater understanding of the implications of this bill need to be established first....before passage.

SB 2299, introduced by Senator Veda, proposes to study the desirability and feasibility of providing a motor vehicle excise tax credit for the private sale of the vehicle being replaced which is exactly what this bill, SB 2312, is contemplating. This study should reveal answers to the many questions and concerns that we have presented today. Thank you Mr. Chairman.

Matthew C. Larsgaard, MBA
President/CEO
Automobile Dealers Association of North Dakota

APPLICATION FOR CERTIFICATE OF TITLE & REGISTRATION OF A VEHICLE

North Dakota Department of Transportation, Motor Vehicle
SFN 2872 (7-2019)

MOTOR VEHICLE DIVISION
ND DEPT OF TRANSPORTATION
608 E BOULEVARD AVE
BISMARCK ND 58505-0780
Telephone (701) 328-2725
Website: <https://dot.nd.gov>

I. This Application is for:

(Check only one) SEE INSTRUCTIONS ON REVERSE SIDE.

- ☐ Title Process
☐ Vehicle Registration
☐ Registration Change - Reason:
☐ Utility Trailer License \$5
☐ Permanent Trailer Plate - Check one: ☐ Farm ☐ Semi

REQUIRED: Reason for Duplicate (Circle: lost, stolen, mutilated)

- ☐ Duplicate plates, tabs & registration card \$5.00
☐ Duplicate tabs & registration card \$3.00
☐ Duplicate registration card only \$2.00
☐ Duplicate title \$5.00

DO NOT SEND CASH

II. Applicant Information

Applicant's Legal Name <input type="checkbox"/> Individual (first, middle, last) <input type="checkbox"/> Business <input type="checkbox"/> Lessor <input type="checkbox"/> Trust <input type="checkbox"/> Govt.		<input type="checkbox"/> Driver's License <input type="checkbox"/> FEIN		Telephone Number
Mailing Address	City	State	ZIP Code	County
Co-Applicant's Legal Name <input type="checkbox"/> Individual (first, middle, last) <input type="checkbox"/> Business <input type="checkbox"/> Lessee <input type="checkbox"/> Trust <input type="checkbox"/> Govt.		<input type="checkbox"/> Driver's License <input type="checkbox"/> FEIN		Telephone Number
Mailing Address	City	State	ZIP Code	County
Must Check One (If Co-Applicant is included on application) <input type="checkbox"/> Or <input type="checkbox"/> And <input type="checkbox"/> And/Joint Tenants with Right of Survivorship			<input type="checkbox"/> Vehicle is Leased	
North Dakota Title Number				

III. Vehicle Information

Year	Make	Model	Body Style
Vehicle Identification Number		Fuel Type <input type="checkbox"/> Electric <input type="checkbox"/> Plug-In Hybrid <input type="checkbox"/> Other <input type="text"/>	Color
Weight	Previous Weight	Motor Home/Trailer Length	ND License Plate Number
Date 1st used on ND Highways	ATV/UTV Only <input type="checkbox"/> Straddle <input type="checkbox"/> Side by Side	Odometer Reading	Odometer Indicator (Check One) <input type="checkbox"/> Actual Mileage <input type="checkbox"/> Exceeds Mechanical Limits <input type="checkbox"/> Not Actual
Credit Plate Number			

IV. Motor Vehicle Purchaser's Certificate

Full Purchase Price (less Rebate)	
Less Trade-In Allowance	
Less Total Loss Allowance	
Difference / Subtotal	
Tax (5% of Difference / Subtotal)	
Abandoned Vehicle Disposal Fee (\$1.50)	
Title Fee (\$5.00)	
Vehicle License Fee	
SRP <input type="text"/> (\$25.00)	
License Plate Credit Amount	
Plate or Credit Transfer Fee (\$5.00)	
Branch Fee	
Duplicate Plate Fee (\$5.00)	
TOTAL FEES DUE: DO NOT SEND CASH	
Year and Make of Trade-In <input type="text"/>	
VIN of Trade-In <input type="text"/>	
<input type="checkbox"/> Tax Exempt (see instructions on reverse)	

V. Dealer and Lienholder Information

Date Acquired	Check One <input type="checkbox"/> New Vehicle <input type="checkbox"/> Used Vehicle	
Acquired From	ND Dealer No.	
First Lienholder		
Mailing Address		
City	State	ZIP Code

VI. PENALTY: Any person making any false statement on this application for license or title for which another penalty is not specifically provided is guilty of a class B misdemeanor.

NDCC Chapters 39-04 and 39-05. Applicant certifies this vehicle will be insured as required by law. The applicant, under penalties of law and as rightful owner of the vehicle described on this application declares that the information set forth is correct.

If vehicle is company owned, company name and title of authorized agent signing the application must be noted.

NDCC Chapter 57-40.3-08. Submitting this application presumes this vehicle is being driven on North Dakota streets and highways.

Signature	Date
Business Name (If applicable)	

ATTENTION TRUCK OWNERS HAULING HAZARDOUS MATERIALS:

I declare, with my signature on this application that I am knowledgeable of the Federal or State Motor Carrier and Hazardous Materials Safety Regulations.

VII. Tax Exemption NDCC 57-40.3**(CONTINUATION OF MOTOR VEHICLE PURCHASER'S CERTIFICATE)**

If vehicle is exempt from tax, enter number corresponding to exemption in Section IV. (front of this form)

- | | |
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| <p>1. Gift from: <input type="checkbox"/> Spouse <input type="checkbox"/> Parent(s) <input type="checkbox"/> Child <input type="checkbox"/> Sibling(s)
 <input type="checkbox"/> Grandparent(s) <input type="checkbox"/> Grandchild
 Gift to (Specify relationship between ALL NEW owners) <input type="text"/></p> <p>2. Joint Tenants with Right of Survivorship and now vehicle is being put in one name only</p> <p>3. Inheritance</p> <p>4. Change of name by: <input type="checkbox"/> Marriage <input type="checkbox"/> Adoption <input type="checkbox"/> Court Order</p> <p>5. Vehicle acquired through a lease purchase agreement (Check one)
 <input type="checkbox"/> A. If tax was paid on the total lease consideration, tax is due on the lease buyout amount.
 <input type="checkbox"/> B. If tax was paid on the full purchase price and you have been in possession of the vehicle over one year, no tax is due.
 <input type="checkbox"/> C. If tax was paid on the full purchase price and you have been in possession of the vehicle for less than one year, tax is due on the lease buyout amount.</p> <p>6. State Fleet</p> <p>7. Lien change --- CURRENT ODOMETER READING <input type="text"/></p> <p>8. Interstate carriers --- Account Number: <input type="text"/></p> <p>9. Tax paid to state that grants reciprocity to North Dakota (Proof required)</p> <p>10. Public Transportation provided under contract with NDDOT</p> <p>11. Dealer resale - USED vehicle</p> <p>12. Dealer resale - NEW vehicle</p> | <p>13. Tribal (SFN 18085 required)</p> <p>14. Disabled American Veteran or Former Prisoner of War - Letter of Eligibility from the Department of Veteran's Affairs is required</p> <p>15. Nonprofit senior citizens' or mobility impaired persons' corporation owned vehicle used for the transportation of the elderly or disabled</p> <p>16. Mobility impaired person(s) purchasing specially equipped vehicle</p> <p>17. Homemade vehicles</p> <p>18. Newly formed <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (Check One)
 Date formed: <input type="text"/></p> <p>19. Dissolved <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (Check One)
 Date dissolved: <input type="text"/></p> <p>20. Parochial or private non-profit school buses</p> <p>21. Assembled vehicles by motor vehicle dealer (SFN 21859 required)</p> <p>22. Transfer into family trust</p> <p>23. Military home of record: <input type="checkbox"/> Entry <input type="checkbox"/> Discharge (SFN 17147 required)</p> <p>24. Mobile Home (SFN 3004 required) or Manufactured Home (SFN 53658 required)</p> <p>25. North Dakota political subdivisions</p> <p>26. Repossession (SFN 2880 required)</p> <p>27. Non-resident military lease</p> <p>28. Total loss settlement or Salvaged</p> <p>29. Other - Specify <input type="text"/></p> |
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VIII. Damage Disclosure NDCC 39-05-17.2

The damage disclosure law includes passenger cars, trucks, pickup trucks, motorcycles, and motor homes that are less than nine years old. It EXCLUDES all trailers, off-highway vehicles, and snowmobiles. A Damage/Salvage Disclosure Statement (SFN 18609) must be completed. Motor vehicle body damage disclosure requirements apply only to the transfer of certificate of title on vehicles less than nine (9) model years old.

If applicable, please submit SFN 18609 Damage Disclosure Statement with this application.

Any person who makes a false statement on this form is guilty of a Class A Misdemeanor.

Instructions:**SECTION NO.**

- I. Check the type of application you are submitting (check only one).
- II. Complete applicant information in **FULL** for each owner.
- III. Complete **ALL** applicable vehicle information. Odometer reading required on all vehicles 10 years old and newer.
- IV. Complete **ALL** applicable purchaser's certificate information.
 - Abandoned vehicle disposal fee of \$1.50 is due on all new and out-of-state passengers, trucks, buses, and motorhomes when first titled in North Dakota.
 - Title fee is \$5.00.
 - Enter license fee and pay applicable plate credit using the appropriate fee schedule.
 - If applying plate credit, enter \$5.00 plate transfer fee.
 - If a trade allowance, year, make, and VIN are required.
 - Enter the appropriate tax exemption number if an exemption for tax is claimed (see tax exemptions Section VII).
- V. Complete **ALL** applicable dealer and lienholder information. If needing to add a second lienholder complete SFN 2475 Part 3: Purchaser's Certification and Application to **include all lienholders**.
- VI. Application must be signed with applicant's legal signature and dated.
- VII. Applicable tax exemptions.
- VIII. Damage Disclosure statement SFN 18609 must be completed for all vehicles less than nine (9) model years old.

Matthew Larsgaard

From: Fleming, James C. <jfleming@nd.gov>
Sent: Tuesday, February 2, 2021 8:07 AM
To: Matthew Larsgaard
Subject: Senate Bill 2312

Hello Mr. Larsgaard:

Senate Bill 2312 has been brought to my attention, and I understand you will be testifying about the potential impact of the legislation on child support collections.

As you know, North Dakota law creates a lien by operation of law on any titled personal property held by a person who owes unpaid child support. For the protection of private buyers who are not in the business of buying and selling cars and thus not aware of the law, there is a good-faith purchaser exception which provides that the lien is not "effective" against any good faith purchaser. Over 870 child support payments are made each year based on the lien registry, either as a result of third-party payments to satisfy a lien or payments by delinquent parents in order to be relieved from the lien and be able to sell the vehicle without a cloud on the title. The Child Support Division is grateful for the cooperation of North Dakota's motor vehicle dealers in using the website and facilitating these collections.

The precise impact of the bill is hard to determine. However, it would be fair to say that any change in law that decreases trades at dealerships and increases private sales would have a negative impact on child support collections because of the good-faith purchaser provision in the lien registry law.

Should you choose to share this letter with the committee, you are free to do so.

Jim

James Fleming
Director

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