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2003 HOUSE TRANSPORTATION

HB 1359

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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 #
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Committee Clerk Signature <i>Laura K. Ford</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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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 an 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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