

2009 HOUSE TRANSPORTATION

HB 1218

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1218

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01/16/09

Recorder Job Number: 7126

Committee Clerk Signature

*Jeanette Cook*

Minutes:

The hearing on HB 1218 was called to order. The clerk read the bill title. The purpose of this bill is to include motorcycles in the North Dakota Lemon Law.

**Representative James Kerzman** introduced the bill and spoke in support of the bill. He presented written testimony. (See attached testimony #1).

**Rep. Kerzman** also provided written testimony (See attached testimony #2.) from **William Naasz** that explained the problems that he had had with a motorcycle; and why he thought the lemon law could have helped him, had it included motorcycles.

**Representative Weisz:** Not having looked up this of code dealing with lemon laws, what protection will this offer to a motorcycle owner?

**Rep. Kerzman:** I think it will give you the same protection that you have now with automobiles or farm equipment. If you can show that a problem is the fault of bad manufacturing, you can almost force them to take it back or recall it.

**Chairman Ruby:** Do you know why motorcycles are excluded from this law? Could it be possible that they are excluded because it says "passenger vehicle"?

**Rep. Kerzman:** I just know that when we asked the State's Attorney, he said that they (motorcycles) were not included. The Legislative Council said the same thing.

**There was no other support for HB 1218.**

**There was no one present to speak in opposition of HB 1218.**

The hearing was closed on HB 1218.

**Discussion was continued on HB 1218.**

**Chairman Ruby:** A handout that was prepared by **Travis Goulding for the Motorcycle Industry Council** was distributed with **testimony in opposition of HB 1218**, urging that motorcycles continue to be excluded from the North Dakota Lemon Law. See attached testimony #3.

**Representative Weisz** looked up the definition of "motor vehicle" in the Century Code. It states: any vehicle designed principally for the transportation of persons. There is some different language for truck chassis. It is not a clear definition of what a passenger motor vehicle is.

**Representative Vigesaa:** If we have some time, I would like to review the Lemon Law. It was decided that more information was needed to make a educated decision. Some time will also be required to examine the opposition testimony.

**Chairman Ruby:** We will hold the bill and everyone will have time to look at it.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1218

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01/22/09

Recorder Job Number: 7613

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Chairman Ruby:** We will take up HB 1218. It dealt with the adding motorcycles to the Lemon Law.

**Chairman Ruby:** I think we understand why they want motorcycles listed in the Lemon Laws. The opposition said it was a problem because motorcycles are seasonal. There might be a problem if a motorcycle is purchased in the fall and not used all winter, the problem will arise much later.

**Representative Weisz:** I'm inclined to support this, but I know that motorcycle manufacturers are opposing this. Do other states put motorcycles in under their Lemon Laws? As it has been pointed out, today's motorcycles can be very expensive. I'm curious if there are some practical matters that would cause problems for sales in North Dakota for a manufacturer.

**Chairman Ruby:** Should we ask Rep. Kerzman to provide some of that information? Let's hold this bill until we get more information.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1218

House Transportation Committee

Check here for Conference Committee

Hearing Date: 02/06/09

Recorder Job Number: 8946

Committee Clerk Signature

*Jeanette Cook*

Minutes:

**Chairman Ruby** asked the committee's wishes on HB 1218.

The intent of the bill and some of the testimony was reviewed. The committee felt that the current "Lemon" law probably covers motorcycles the way that it is stated.

Short discussion followed.

**Representative Weiler** checked the code in the "Lemon Law", and it states that a motor vehicle must be returned in six months.

**Representative Vigesaa** moved a Do Not Pass on HB 1218.

**Representative Schmidt** seconded the motion.

A roll call vote was taken. Yea 10 Nay 2 Absent 2 ( **Representative R. Kelsch,**

**Representative Griffin**)

**Representative Sukut** will carry the bill.

Date: 2-6-09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 1218

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 Schmidt

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

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 1218: Transportation Committee (Rep. Ruby, Chairman) recommends DO NOT PASS**  
(10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1218 was placed on the  
Eleventh order on the calendar.

2009 TESTIMONY

HB 1218



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



Representative James Kerzman  
District 31  
6152 87th Avenue SW  
Mott, ND 58646-8874  
[jkerzman@nd.gov](mailto:jkerzman@nd.gov)

**COMMITTEES:**  
Appropriations - Human Resources Division

Mr. Chairman

Members of House Transportation Committee

HB 1218 comes before you today to include motorcycles in ND's motor vehicle lemon law.

I had assumed that motorcycles were covered under our present laws until about a year ago when an individual contacted me with a problematic bike he had purchased. In checking things out, sure enough motorcycles were not included specifically.

As many of you may know, a motorcycle may cost as much as a midsize car, sometimes more. If a motorcycle is purchased close to or during the 'off' season, as we refer to times when our weather doesn't

permit riding, the motorcycle may sit for an extended period of time without being ridden or miles put on it. By the time an individual gets to utilize his or her bike the warranty may have expired, leaving the individual with little recourse.

I realize this will not help the individual that contacted me, but I think it would be good to change ND's lemon law to include motorcycles, so that in the rare case of a problematic motorcycle an individual may have recourse.

It also sends a message to manufacturers, dealers and others involved in the motorcycle business that ND people are not to be taken advantage of.

Thank you for your positive consideration.

Representative James Kerzman

test. #2

**Kerzman, James A.**

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**From:** Bill N [wnaasz@bis.midco.net]  
**Content:** Tuesday, January 13, 2009 8:05 PM  
**Subject:** Kerzman, James A.  
Motorcycle Lemon Law

Hello my name is William Naasz.

On May 3, 2007, I bought a hold-over 2006 Yamaha off the show room floor at a cost of over \$14,000 with extras. This is a lot of money, but it was to be my last bike as I will be 62 this year. So I fixed it up the way I liked.

To start with, when I walked in to look at the Yamaha dealership I told the sales person I needed a bigger bike with more ccs then my 1100cc Honda that could pull my trailer. I was shown the bike I know own. It is a 1700cc 2006 RoadStar Cast Wheel Edition which has had a bad clutch from day one. I have had trouble with starting it in neutral or in any gear. The first time I tried to start the bike at home in neutral it pulled me about 5 feet across my garage floor. Thank God I had the room. I adjusted the clutch at the handlebar so it was out of gear in neutral. Now I could get it out of the garage to try starting it again. I took it back to the dealer and had it looked at by their tech. After that I found that the only way I could start the bike was with the clutch in and in neutral because it jumped when in any other gear. I would not trust it to start in neutral and not have the clutch fully applied. I still didn't think the clutch felt right but I was assured at the dealership all was well. I had the hitch put on by the service department, **NOT** knowing it would cancel my warranty. I talked again to the tech about my thoughts on the clutch, but he said I would have to talk to who ever took his place because he just quit.

The bike was working and I never had an air-cooled motor or this kind of bike before. I thought maybe it was all in my head. Took a 200 mile trip with the trailer and all went well. The next day I went on a 100 mile ride without the trailer and all went well till I got caught in a parade. The clutch got hot. I was in first gear and I couldn't stop the bike. I was able to get out of line so as not to hit the bikes that had stopped ahead of me, but now I had people and children I was heading for. I hit the kill switch which saved the day. (Thank you ABATE of North Dakota for the training!) Then I tried to get away from all the people and the parade and take a side street and let it cool down. I put the bike in neutral and started it and it jumped taking me into a parked car.

I took the bike back to the dealership and was told it will cost me \$400 to fix the clutch as I no longer had a warranty. I didn't have the money to fix it, so I had them put it back together with the old parts. It only had a little over 1500 miles on it. It worked better than when I first got it. After getting it home and sitting over night, the next day I went to fill gas and go for a ride and found oil dripping from the bike so took it by trailer back to the dealer and found the gasket failed on the clutch. I was then told that the warranty covered the clutch, but I have also heard that the dealer ate the cost of the new clutch and a new one was put in. Meanwhile, I went to Sturgis for the rally. I got stuck in traffic and the motor stopped as if I used the kill switch. I tried starting it and it would not start. It seemed like the motor couldn't spin fast enough to start, like it was too tight inside. I had to be pushed out of the road and sat about 45 minutes or more letting it cool down and then it started. I went to the campground where I parked and it sat for an hour or longer. Then I started it back up, stopped twice for instructions and it quit again. I was told I could leave it where it quit till I could get help or get it fixed. The next day it started up. Got hold of a Yamaha Rep in Sturgis who sent me to Black Hills Power Sports in Rapid City where the clutch was adjusted again. So far it hasn't given me any problems. After getting hot 3 times, how much damage was done to the motor and how long will it last - a month, a year? No way can I afford to put the money into this bike. I bought the bike 5/08/07 do not have a lot miles on it. I would have had more if I could have trusted it to ride in the Black Hills, or anywhere else since it got hot.

The Yamaha rep is convinced that everything wrong with the bike is my fault and by putting a hitch on (whether or not you use it) that lets them off the hook so canceled my warranty.

As far as I'm concerned the bike was bad from the factory and now it is in the shop with electric problems; I think I have a lemon. I think this bike is unsafe and should be sent back to the factory. I don't trust going anywhere by myself for fear of it stopping in traffic or the clutch hanging up when coming to a stop (which it may not) and taking me into a busy intersection or locking up at 75mph on the interstate and putting me to the asphalt. I have spent over \$2000 on extras plus the cost of the bike. Why would I do anything to harm the last bike I planed to own?

The length of time it takes to break in a motorcycle is long; we only have a few months of riding time in N.D. and it takes 1000 miles at slow and different throttle positions till you get it broke in then you can finally put some highway miles on which count up fast. Until then it could take over a year or so of N.D. seasons just to break it in. If you got it in fall just before winter you lose a lot of warranty and time to test your bike. So you really don't know what you have till you put some miles on after breaking it in. Also, riding habits vary and some riders may put in only 500 miles in a summer, so it would be more reasonable to set a mileage limit rather than time limit for a warranty.

I have tried to resolve my problem by talking to my Yamaha dealer, Yamaha direct, and Attorney General's office, all of which got me no where. So it looks like I am stuck with a lemon and no where to go.

I don't think a lemon law will help me now after this long of time; but I hope it will help others.

Bill Naasz

testimony # 3



**Motorcycle Industry Council**

January 15, 2009

House Transportation Committee Members  
North Dakota House of Representatives  
State Capital  
600 East Boulevard  
Bismarck, ND 58505-0360

**RE: Opposition to HB 1218**

Dear Transportation Committee Members:

The Motorcycle Industry Council (MIC) is a nonprofit national trade association that represents motorcycle manufacturers and distributors and over 300 other companies involved in allied trades.

I am writing to express MIC opposition to HB 1218, which would add motorcycles to the "lemon" law. There are several factors unique to the motorcycle industry and some inherent differences between motorcycles and passenger cars that complicate and make inappropriate the inclusion of motorcycles in passenger car-oriented laws. In fact, the Model Lemon Law adopted by the National Conference of State Legislatures specifically excludes motorcycles.

For example, the lemon law stipulates that 30 business days out of service for repair is enough to trigger the refund provisions. Because of the seasonal nature of motorcycle use, it is not uncommon for customers to leave their motorcycles for service at dealerships for extended periods of time in the off-season. If the 30-day stipulation is applied to motorcycles, such services will certainly no longer be offered to consumers. The manufacturer's exposure to risk will overshadow the owner's convenience and the dealer's efficiency. It will wipe out a long-standing goodwill practice to remedy an issue of questionable magnitude.

While car-related problems consistently rank high among consumer complaints, probably because of their sheer numbers and the high purchase price involved, motorcycle-related complaints historically have been low. The Council of Better Business Bureaus compiles statistics gathered nationwide and ranks businesses on the basis of complaints received. While automobile manufacturers ranked 118<sup>th</sup> in 2007, motorcycle manufacturers were not even on the list of 3,798 complaint categories. Good service and positive relations are a part of any business. But in a competitive industry that promotes a culture and lifestyle, not just a product, good service is critical.

Motorcycle manufacturers view warranty repair policies as an investment in good customer relations and future repeat sales. Motorcycles are largely a discretionary purchase and if a consumer is dissatisfied, he simply won't buy another motorcycle of that make or perhaps any make. A dissatisfied car buyer usually will not nor cannot abandon the automobile market, since for most people a car is a necessity. Motorcycle manufacturers must be responsive to complaints if they want to retain their customer base. It is not uncommon for motorcycle manufacturers to authorize goodwill repairs on vehicles, even though the repair is not required under warranty or the vehicle's warranty has expired. If motorcycles were included in a lemon law, these goodwill repairs would surely end since they would be included in the number of repairs allowed before a vehicle is considered a lemon. The motorcycle industry is somewhat unique in its generally

close dealer-consumer relationship. Imposing a law that sets arbitrary limits and encourages lawsuits could only serve to weaken this bond and put an end to goodwill attempts to repair suspected problems in the absence of definite defects. In effect, a lemon law could prove to be detrimental, rather than beneficial to consumers. It would also be detrimental to the local North Dakota dealers.

The majority of motorcycle dealerships are small businesses. The average dealership has 18 full-time employees. It is a common misconception that lemon laws are only a manufacturer concern with regard to compliance. The dealer is and will continue to be the customer's focal point in all matters having to do with the purchase. The manufacturers' responsibilities and ability to comply are very much dependent upon the dealers' performance of their responsibilities with regard to service management and particularly the extensive record-keeping that is required.

Motorcycles are very different from cars. Equating them for purposes of this legislation is inappropriate when taking into consideration both the size and nature of the industries and the costs and use differences of the products. The motorcycle industry is very small compared to the auto industry and including motorcycles in legislation will impose a proportionally much greater burden on our industry than on the larger automobile industry, not only in terms of increased dealer burden, but in the high cost of establishing formal dispute resolution mechanisms when effective customer service procedures are already in place. Increases in the costs of doing business are ultimately borne by all consumers.

In view of the small number of motorcycles (roughly 3.9% of all vehicle registrations in North Dakota), the even smaller incidence of problems in this area and the fact that motorcycle manufacturers are currently acting in a responsible and conscientious manner to achieve customer satisfaction, motorcycle inclusion in North Dakota's lemon law is neither needed nor justified.

We urge that motorcycles continue to be excluded from the current North Dakota Lemon Law.

Thank you for your consideration.

Sincerely,



Travis Goulding  
Manager, Legislative Affairs