

FISCAL NOTE
Requested by Legislative Council
01/14/2019

Bill/Resolution No.: HB 1218

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1218 identifies conditions when a vehicle may be towed, towing charges allowed, and creates a towing regulation process where the NDDOT is required to issue a towing company certificate.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB 1218 identifies conditions when a vehicle may be towed, towing charges allowed, and creates a towing regulation process in Section 7 where the NDDOT is required to issue a towing company certificate. In addition, in Section 7, NDDOT would be required to create a complaint process for consumers and insurers.

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.*

A complete revenue impact for this bill cannot be determined at this time. NDDOT has not regulated towing companies in the past. We have no way of estimating the number of towing companies and storage facilities the NDDOT would be responsible for regulating. The bill allows for NDDOT to set an application fee, however, does not authorize where the certificate fee should be deposited to determine the state revenue impact. At this time, NDDOT is unable to determine what the appropriate certificate fee would be for this process.

Since the motor vehicle division is funded “off the top” of motor vehicle revenues before such revenues are distributed through the Highway Tax Distribution Fund, the Motor Vehicle revenue impact will be the same as their corresponding cost impact.

The net amount of the change in revenues over the change in expenditures is allocated through the Highway Tax Distribution Fund to NDDOT (61.3%, counties (22%), cities (12.5%), townships (2.7%), and transit (goes to NDDOT) (1.5%).

- 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.*

NDDOT Motor Vehicle Division will incur one-time costs of approximately \$300,000 for computer programming costs.

NDDOT would also incur staffing costs dependent upon this bill's intent for NDDOT's role in the towing regulations. At this time, we are unable to determine the level of staffing that would be necessary to support this process. Therefore, we cannot provide detail for those additional expenditures.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The NDDOT Motor Vehicle Division will see increased expenditures of \$300,000 for the 2019-2021 biennium. This covers only those costs that we can estimate at this time; significant costs are unknown and cannot be estimated for appropriation purposes at this time. Accordingly, NDDOT would need an appropriation increase related to this bill.

Name: Lindi Michlitsch

Agency: NDDOT

Telephone: 328-2734

Date Prepared: 01/16/2019

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1218

- 1 A. **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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill identifies conditions when a vehicle may be towed, the allowed towing charges for an abandoned vehicle and method of payment.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There is no fiscal impact to the Department of Environmental Quality (DEQ). This bill provides language that clarifies the conditions in which a vehicle may be towed.

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Brenda M. Weisz

Agency: Department of Environmental Quality

Telephone: 328-4542

Date Prepared: 01/11/2019

2019 HOUSE TRANSPORTATION COMMITTEE

HB 1218

2019 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1218
1/17/2019
#31003

- Subcommittee
 Conference Committee

Committee Clerk: Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A BILL relating to consumer towing protection, relating to custody of abandoned vehicles, notice to owners of abandoned vehicles, and right to reclaim an abandoned vehicle; to provide a penalty; and to provide a penalty and an effective date.

Minutes:

Attachment #1-5

Chairman Ruby opened the hearing on HB 1218.

Pat Ward, representing the Association of North Dakota Domestic Insurers, spoke in support of HB 1218 and provided written testimony. See attachment # 1. (4:37)

Chairman Ruby: Were you involved in some of the changes that came up last session and since then?

Pat Ward: I was following the bills last session, but our domestic companies were not as proactively concerned about some of these issues as they are now. However, I do recall the bankers having some concerns.

Chairman Ruby: I remember they had to try to do their best to notify any lien holder or owner of the vehicle.

Pat Ward: I remember Mr. Kuntz, and the fine job that he did testifying. There was compassion and concern from the towers for the problems in the oil patch and the DAPL situation. You will hear some stories and examples that point out some other issues that may be older or current.

Representative Kading: Aside from number 4, I don't see how these are issues that can be resolved with just contractual language with different towers. Insurance companies are fairly sophisticated entities and familiar with the courts. If someone is withholding a vehicle how are the courts not handling the situation? If the rates are too high, how come the insurance companies are not contracting with the different bodies?

Pat Ward: I think some of your questions would be better answered by my clients. Most of the time we would get involved in towing in an emergency situation or a private property situation. There may be an accident, the police come, call the tow truck, and the car is taken away. We insure the car. It may be damaged, in storage, or undrivable. We get involved after-the-fact. We have no direct contract with the towing company. (9:25)

(9:30)

Shawn Rampelberg, spoke on behalf of **NoDak Insurance Company and a member of the Association of North Dakota Insurers,** to support HB 1218 and provided written testimony. See attachment #2. (16:30)

Representative Westlind: Does this happen regularly, or these just rouge events? Are they from reputable companies that are in the book, or fly-by-night companies?

Shawn Rampelberg: They are companies that are in the phone book. The examples were from 2013, 2016, and 2017.

Representative Hanson: Are there laws for notification from the towing companies to the individuals now?

Shawn Rampelberg: I believe it is 10 days per the new bill that was proposed. Before that I don't think there was anything.

Representative Grueneich: The law we put into effect last session puts into effect ten days to notify. I think that 24 hours is unrealistic.

Chairman Ruby: Would you agree that 24-hour notification is unrealistic?

Shawn Rampelberg: I wouldn't disagree that a 24-48-hour notification to the owner is realistic. I think those time frames would be more toward law enforcement and addressing specifically in HB 1218 vehicles that are removed from private property in which the individual isn't requesting the removal. We are asking in 1218 that in those cases, it would be reduced to 5 business days versus 10.

Chairman Ruby: You have read the other bill. (1263) Other than the five days, do you think the notification requirements that have to be sent to contact the owner and law enforcement are workable?

Shawn Rampelberg: Yes, I am in favor of combining HB 1263 and 1218 together.

Attachment # 3 from **Timothy Lynch, Senior Director, Government Affairs, National Insurance Crime Bureau,** was provided by e-mail in support of HB 1218.

There was no further support for HB 1218.

Bill Kalanek, North Dakota Towing Association, spoke in opposition of HB 1218 and provided written testimony. See attachment #4. (29:45)

Chairman Ruby: You heard the suggestions to your bill. Are those things you are receptive to?

Bill Kalanek: Today is the first time that I have heard them. I don't know that I would have heard about the bill if a third party had not asked that I be notified. I think what we had last session was a pretty good bill. We have had no complaints from lending institutions. The insurance companies were silent on it. I know that things can be changed, and I would be willing to sit down and have a conversation on this. I have concerns on the time period.

Chairman Ruby: For the committee's information, I had some concerns about some of the provisions, such as rates and requirements of estimates that had to be provided. Also some of the notification on site and consent were concerning. We will have the discussion and not act on these two bills right away. (1218 and 1263) A subcommittee can be set up to put together the information. We don't have to put them together though.

Representative Jones: Have you heard complaint about the ten days for notification?

Bill Kalanek: In my discussions with the members it has not been a hot topic. We have not had feedback from other industry groups. Members of the towing industry that are here today could tell you if they have directly been complained to. I don't have any knowledge of that.

Chairman Ruby: Would taking pictures on the scene of an accident be something that should be done?

Bill Kalanek: There could be a place for that, but the reason that we wouldn't be agreeable to that is that if we happen to not photograph adequately enough, then it may cause a problem. We are tow truck drivers. If something is missed because an angle isn't right, do we become liable? Law enforcement that has been asked about the bill, have questioned if we want to delay clearing a roadway to take pictures? It may not be possible to take pictures of a vehicle in a snow bank, for example. Doing the job of a claims adjustor is not something we are willing to do.

There was no further testimony in opposition to HB 1218.

(38:30)

Lindi Michlitsch, Motor Vehicle Division Director, North Dakota Department of Transportation, spoke in a neutral capacity on HB 1218 and provided written testimony. See attachment # 5.

Chairman Ruby: I don't see any information on the fiscal note in the area for dollar amounts.

Lindi Michlitsch: We didn't put any expenditures in there because we don't know what they are. It all depends on what we have to create in order to do the towing regulations. The \$300,000 is just for programing costs. That doesn't include any other expenditures.

Chairman Ruby: Your testimony seems to be in opposition because there are things in here that you do not want to do.

Lindi Michlitsch: You make a good point.

Chairman Ruby opened the hearing to more testimony in opposition.

George Kuntz, Owner of Ace Towing in Bismarck, President of North Dakota Towing Association, and the Presidential appointee to the Towing Association of America, spoke in opposition to HB 1218.

George Kuntz: Many of the professional towers in North Dakota feel that the bill that was passed in 2017 has worked wonderfully. I have a good relationship with the Department of Transportation and have made myself available, so that they can reach me at any time about complaints. The time allowance has not always been working because of the fact that we cannot get the last registered owner from some states. We at least file the information, so that it is done within the required ten days. There is a process to notify insurance. As soon as we hook a vehicle from private property, we call law enforcement. We give them type of vehicle, license plate, vin number, and where it was towed from. We in return require the dispatcher's name who took the call. It is put on the top of our tickets with the time we call it in. We have not had issues with that. Our companies are open 24/7. The things that HB 1218 want us to do are not only exposing the towers but emergency personnel as well. It is asking us to be on a roadway to take pictures and expose ourselves to getting killed. The national average of losing a tower is one every six days in the United States. In 2019 the average is one every four days. A police officer was just killed last week in the eastern part of the state who was assisting on a motor vehicle accident when an individual did not move over and slow down.

I ask for help from insurance companies; instead of trying to put us into danger in situation that we have no control over. Help us with that. Help get awareness out there. We don't know the amount of damage on a vehicle. We come to the scene to get the job done and try not to cause any further damage. We may miss something if we have to take pictures. We cannot take pictures in the dark. If there is a fatality do you want us to give a family member an estimate? We have been at wrecks that take 6-7 hours to clear the roadway. Should we make an estimate in five minutes? I would ask that you vote NO on HB 1218.

There was no further testimony on HB 1218.

The hearing was closed on HB 1218.

A subcommittee was appointed to work on HB 1218 and 1263. **Representative Grueneich, Representative Westlind, and Representative Hanson** were assigned to the committee. **Representative Grueneich** will be the chairman of the committee. The meeting should be announced on the floor.

The meeting will be scheduled Monday, the 28th at 12 noon for anyone interested on participating.

(Meeting date was changed to 8:30 AM 1/24/19 and was announced on the floor.)

2019 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1218
1/21/2019
No recording

- Subcommittee
 Conference Committee

Committee Clerk Signature Jeanette Cook

A BILL relating to custody of abandoned vehicles, notice to owners of abandoned vehicles, and right to reclaim an abandoned vehicle; to provide a penalty; and to provide an effective date.

Minutes:

Representative Grueneich, Representative Hanson, and Representative Westlind met to discuss HB 1218 and HB 1263.

Representative Grueneich brought HB of 1218 before the committee.

Representative Hanson moved a DO NOT PASS HB 1218
Representative Westlind seconded the motion.

A roll call vote was taken: Aye 3 Nay 0 Absent 0
The motion carried.

The subcommittee will recommend a DO NOT PASS on 1218.

2019 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1218
1/24/2019
#31407

- Subcommittee
 Conference Committee

Committee Clerk Signature Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A BILL relating to custody of abandoned vehicles, notice to owners of abandoned vehicles, and right to reclaim an abandoned vehicle; to provide a penalty; and to provide an effective date.

Minutes:

Chairman Ruby called HB 1218 back to the committee.

Representative Grueneich: Our subcommittee met. We came to the conclusion that we could effectively kill HB 1218 and use HB 1263 as a vehicle to get us where we needed to go.

Representative Grueneich moved a DO NOT PASS on HB 1218.

Vice Chairman Rick C. Becker seconded the motion.

A roll call vote was taken: Aye 11 Nay 0 Absent 3

The motion carried.

Representative Nelson will carry HB 1218.

Date: 1-21-19
Roll Call Vote #:

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

HB 1218

House Transportation Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Rep. Hanson Seconded By Rep. Westlund

Representatives	Yes	No	Representatives	Yes	No
Rep. Grueneich	X				
Rep. Hanson	X				
Rep. Westlund	X				

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

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

Date: 1-24-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1218**

House Transportation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Grueneich Seconded By Becker

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN RUBY	X		REP LAURIEBETH HAGER	A	
VICE CHAIR BECKER	X		REP KARLA ROSE HANSON	A	
REP JIM GRUENEICH	X		REP MARVIN NELSON	X	
REP TERRY JONES	X				
REP TOM KADING	X				
REP EMILY O'BRIEN	A				
REP MARK OWENS	X				
REP BOB PAULSON	X				
REP GARY PAUR	X				
REP ROBIN WEISZ	X				
REP GREG WESTLIND	X				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Nelson

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

REPORT OF STANDING COMMITTEE

HB 1218: Transportation Committee (Rep. D. Ruby, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1218 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

HB 1218

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#1
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Testimony of Pat Ward on HB 1218

Good afternoon Chairman Ruby and members of the House Transportation Committee. My name is Pat Ward and I am an attorney with the Zuger, Kirmis & Smith law firm in Bismarck. I am here today representing the Association of North Dakota Domestic Insurers. Some of our domestic insurers, including Nodak Mutual Insurance Company, are here today and will be testifying.

We stand in support of HB 1218. The purpose of HB 1218 is to establish minimum standards for towing vendor services and to promote fair and honest practices in the towing and vehicle storage business. HB 1218 addresses several of the problems that our companies have seen in North Dakota with respect to towers and vehicle storage facilities.

Before going into the specifics of the bill, I'd like to give you some background on where the language of HB 1218 came from. HB 1218 is based on the National Council of Insurance Legislators ("NCOIL") Consumer Protection Towing Model Act, which was adopted by NCOIL in July 2018. Those provisions begin at Section 7 of the bill on page 4. The first six sections were issues Legislative Council implemented into our draft to reconcile with the amended vehicle towing law adopted last session.

Now, I'd like to address some of the problems that our domestic insurers have seen in North Dakota and how a bill like HB 1218 will remedy those problems.

(1) Documentation of Damage / Damage to Vehicles

HB 1218 requires towers to take photos of a vehicle prior to towing the vehicle to evidence vehicle damage. This protects both the consumer and the towing company when a dispute arises regarding the source of the vehicle damage.

(2) Excessive Towing Rates and Storage Fees

HB 1218 aims to limit excessive fees charged by towers and storage facilities. Our domestic insurers have given us examples in North Dakota where we believe fees for accident cleanup, towing, and vehicle storage have been excessive.

Example: For instance, a North Dakota towing company charged an insurance company a \$5,000 fee for cleanup of a motorcycle at a fatality accident. The towing company gathered the pieces of the motorcycle and placed them in a container. Then, weeks later, the insurance company was notified it was being charged a \$50/day storage fee for the motorcycle while the pieces were in the container.

(3) Getting Towed Vehicle Back

Our insurers have had difficulty in having towed vehicles released. HB 1218 requires that upon payment of all costs, the towing company or storage facility must release the vehicle to the insurer, if the vehicle is covered by an active insurance policy or if the vehicle owner approves the release of the vehicle to the insurance company.

(4) Caution in Private Property Tows

HB 1218 puts limits on private property towing. For instance, HB 1218 requires a private property owner to establish a tow away zone, which requires posting signage. With North Dakota's existing "abandoned vehicle" definition, private property tows may be initiated too quickly and without any notice to the vehicle owner.

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The members of the Association of North Dakota Domestic Insurers will be following me and will provide you with additional examples for why HB 1218 is needed.

We would like to eliminate these issues, control costs, and resolve the problems. As I said in my earlier testimony today on HB 1263, we would like to blend the best of these two bills to get the fairest and most equitable towing law for all concerned.

Please vote "do pass" on HB 1218. I would be happy to answer your questions.

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#2
p. 1

Testimony on House Bill 1218
House Transportation
January 17, 2019

Mr. Chairman and members of the committee. My name is Shawn Rampelberg and I am appearing before you today in favor of House Bill 1218 on behalf of Nodak Insurance Company a domestic insurer in the state of North Dakota and a member of the Association of North Dakota Insurers.

House Bill 1218 needs to become a law in order to protect the consumers of North Dakota. Currently there is no uniformity to billing practices, documentation, storage, notification or a consumers ability to have a say in what happens to their property. The following are examples of why there is a need for this law and how the law would prevent it from happening

An insureds vehicle was reported stolen to the authorities and the insurance company. Prior to settling the claim the owner of the vehicle contacted all the local towing companies multiple times in hopes the vehicle might have been recovered but none of towing companies claimed to have the vehicle. The claim was handled in accordance to the policy and payments were made. Thirty days after the vehicle had been reported stolen the owner of the vehicle received a letter from one of the towing company (which had been previously contacted by the owner trying to find the vehicle) stating they had possession of the vehicle and wanted to be paid for the towing and storage fees in excess of \$1500. The fee was paid by the insurance company in order to take possession of the vehicle. As prescribed in 39-35-04.5 of this bill the towing company would have to notify law enforcement having jurisdiction of where the vehicle was taken from within 2 hours after completing the tow. As you can see a vehicle theft report could have been avoided, all the time and effort the consumer had trying to locate the vehicle, a greatly reduced recovery expense of the vehicle and no insurance claim would have been submitted against the consumers' policy.

Law enforcement was notified by the owner of an enclosed trailer their trailer had been stolen. A claim was filed with the insurance company and the claim was paid in accordance of the insurance policy. Almost a year later the owner of the enclosed trailer received a letter from a towing company stating their trailer had been impounded and is located at their

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facility. The letter further stated the towing charges plus a per day storage fee must be paid before the vehicle would be released. If the owner of the trailer would have picked up the trailer the same day they got the letter the charges would have been over \$10,000.00. This situation would not happen with the proposed bill under 39-35-06.1 requiring the towing company to search data bases to obtain owner information and giving written notice to the owner within 5 business days.

My last examples involved a consumer who was involved in a motor vehicle accident and was injured in the accident. The owner was taken by ambulance to the hospital. The authorities contacted a local towing company to move the vehicle off the roadway and secure it. The owner of the vehicle was never contacted by the towing company. The owner was able to speak with the law enforcement officer at the scene who advised the owner as to the name of the towing company. Due to the injury sustained by the owner and not knowing where the vehicle was 3 weeks had passed before they were able to locate the vehicle. Under 39-35-06.1 the law would require the towing company to notify the owner in a timely manner of where their property was located.

This bill will give protection to the citizens of North Dakota by creating a unified set of guidelines for all those who consume the products provided by the towing industry. The towing industry will be able to provide its services to the consumers without ambiguity.

Mr. Chairman this concludes my testimony in favor of House Bill 1218.
Thank you for the opportunity to testify.

Shawn Rampelberg
Director of Claims
Nodak Insurance Company.



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#3

January 16, 2019

North Dakota House of Representatives

House Committee on Transportation

House Bill 1218

Dear Representative Keiser and Members of the Committee,

The National Insurance Crime Bureau (NICB) is a national, not-for-profit organization supported by approximately 1,100 property/casualty insurance companies, including many who write business in North Dakota. Working with our member companies and law enforcement, we investigate organized criminal conspiracies dealing with insurance fraud and vehicle theft.

Because of our strong interest in towing-related abuses, we wanted to express our support for House Bill 1218. The language in 1218 appears to closely mirror the Consumer Protection Model Towing Act recently adopted as a model bill by the National Council of Insurance Legislators (NCOIL).

NICB was highly involved in the formation of the model, which we view as an effective legislative remedy to combat rogue towing operators who fleece accident victims with overzealous solicitation tactics, excessive fees and other forms of exploitation.

We urge the passage of House Bill 1218.

If you need additional information or have any questions, please feel free to contact me at tlynch@nicb.org or at 847-544-7080.

Regards,

A handwritten signature in black ink, appearing to read "Timothy J. Lynch". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Timothy J. Lynch

Senior Director, Government Affairs

National Insurance Crime Bureau

e-mail/support

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Testimony
House Bill 1218
House Transportation Committee
January 17th, 2019
Bill Kalanek
ND Towing Association

Good afternoon Chairman Ruby and members of the committee. My name is Bill Kalanek and I am a lobbyist for the ND Towing association. I appear before you this morning in opposition to House Bill 1218.

House Bill 1218 lays out framework for regulating the towing companies and storage facilities. There are many important sections in this bill that need to be understood. I want to thank you in advance for allowing me to provide testimony in opposition to the following:

First, I would like to focus on **39-35-02 General Provisions subsection 5**. This indicates that ‘the department has exclusive regulatory jurisdiction over the towing and storage services of towing companies and vehicle storage companies. The department shall establish a complaint mechanism for consumers and insurers’. This is an attempt by the insurance industry to regulate towing and storage costs. By implementing subsection 5, not only is this in direct contrast with the free market, but it also expands government and allows it to control an entire industry.

39 - 35 – 03. Emergency Towing. (Page 6)

Subsection 1: Mandates towing companies to take “visual documentation” before towing a vehicle. This section wants towing companies “to evidence any vehicle damage, debris, cargo or “complications to the recovery process”. This section basically implies that the towing companies are responsible of damaging property unless they prove their innocence with visual documentation. Guilty until proven innocent? Subsection 2 does not allow a tow truck driver/company to stop and help an injured person due to an accident unless they are called by the police. So if you’re a tow truck and you see somebody you know injured and in desperate need of help you can’t stop? Subsection 11 requires “reasonable effort” to secure motor vehicle property including weather damage. Does this section mandate that the tow company have 1st party insurance coverage for all vehicles that are towed (or it’s cargo)? This is basically saying they will be responsible for weather damage such as hail. Also, what is “reasonable effort”? Is it security cameras? Barbwire fences? Security guards? This language is open and ambiguous.

39-35-04. Private property towing. (Page 8)

Subsection 1: Again focuses on the towing company taking “visual documentation” to show damage to either the vehicle itself or the cargo. As previously mentioned, it is unreasonable to have the towing company document damages to every vehicle (or cargo) they tow. This would allow insurance companies to accuse towing companies of damage that they didn’t cause because it was missed in a photograph. Taking photographs of vehicles is typically the job of the insurance company as they need this information regarding their liability investigation.

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Subsection 6: (Page 9) A towing company that performs private property towing shall secure a towed motor vehicle properly and take all reasonable efforts to prevent further damage, including weather damage or theft of a towed motor vehicle, including the motor vehicle's cargo and contents.

Same argument as indicated 39-35-03 subsection 11: What is "reasonable effort"? Security cameras? Fence? Barbwire? Security guards? This language is open and ambiguous. In order to insure against weather damage, tow companies and storage facilities would have to have "Direct Primary" coverage in terms of liability. This is mandating a "Cadillac" type insurance policy on the towing industry which drives up costs of doing business.

39 - 35 - 05. Estimates and invoices for towing services. (Page 10)

Subsection 1: Requires tow companies to provide the customer an itemized estimate before engaging in the towing process. It also requires that the estimate provide a "rate sheet" listing all rates for towing services, including all rates for towing and associated fees, cleanup charges, labor, storage, or any other services provided by the towing company. The towing company must furnish the rate sheet to the motor vehicle owner's motor vehicle before attaching a motor vehicle to a tow truck.

Mandating a towing company to write an itemized estimate prior to engaging in the service could be very time consuming if not impossible depending on the circumstance. Having a rate sheet for all the different types of towing methods and debris clean-up is unreasonable. There are simply too many different circumstances to list.

Subsection 1. c (1). The towing company must furnish the rate sheet to the motor vehicle owner's motor vehicle before attaching a motor vehicle to a tow truck.

What if the owner does not agree to the tow charges? Does this person still owe for the driver's time to come to the scene?

Subsection 1. c (2) Indicates "charges in excess of the rates listed may not be authorized without the consent of the motor vehicle owner"

What if the owner is present but incapacitated? What if they disagree?

Subsection 4. The towing company shall maintain the records described in this section for three years and shall make the records available for inspection and copying within forty - eight hours of a written request from law enforcement , the attorney general, the state's attorney, the city attorney, the motor vehicle owner, or the agent of the motor vehicle owner.

So they need to maintain records of every tow for 3 years? This seems excessive.

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39 - 35 - 06. Notice requirements. (Page 12)

Subsection 1 mandates towing companies to search a “national data base” within 24 hrs of commencement of towing to find the owner of the motor vehicle. According to this subsection, the towing company cannot charge for storage (beyond the initial 24hr charge) until this notice requirement has been met.

In previous subsections we learned that towing companies will be liable for the both vehicle (and cargo) in their care, custody and control. This section takes it a step further and does not allow towing companies to charge storage fees which would be needed to help cover the costs of insurance or other “reasonable efforts to protect the owner’s property.

Subsection 2 requires that, once towing companies obtain the name and address of the owner or lienholder, not only do they have 5 days to send out the notice, but they also have to notify the insurance company that the vehicle has been towed and is in their possession. It needs to be stated that it is not the job of the towing industry to file insurance claims. If the towing company has to search a national data base to find the owner or lien holder, it is very likely that they haven’t filed an insurance claim. Tow companies cannot be held responsible for filing insurance claims.

Notice goes to the owner AND the Insurance Company? There is no way to figure out the insurance company info. Also, if there is no claim number set up, the insurance company will most likely not going to respond. The towing company cannot be responsible for setting up a claim number.

Subsection 3 requires towing companies to hold corporately owned vehicles up to 60 days. Are corporately owned vehicles tractor trailers, heavy equipment? This subsection also mandates that a storage charge similar to a “comparative standard daily rate” be applied to corporate vehicles. This is a problem because they occupy a significantly larger space on the lot.

39 - 35 - 07. Releasing towed motor vehicles. (Page 13)

Subsection 1 requires towing companies to release vehicles to the owner **OR AN INSURANCE COMPANY** despite whether or not it is authorized by the vehicle owner. This can expose the towing company to liability issues if the owner of the vehicle filed suit against the insurance company.

Subsection 2 indicates that the insurance company has the right to inspect the vehicle before accepting return of the motor vehicle. Again, towing companies could expose themselves legally if they allow insurance companies to inspect because they will not have knowledge of any lawsuits prohibiting the insurance companies inspecting the vehicle.

Subsection 5 mandates that the towing companies or storage facilities not only be open during normal business hours, but also be available by phone on a 24 hour basis and to return calls on a 24 hour basis.

39 - 35 - 08. Fees . (Page 14)

Subsection 1 indicates that “a towing company may not charge a fee for towing, clean-up services, or storage of a vehicle in excess of the greater of:

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a. The fee that would have been charged for towing, clean-up services, or storage made at the request of a law enforcement agency under an agreement between a towing company and the law enforcement agency

Price regulating. What other industry is regulated like this for an insurance company? What would motivate a company to expand business? If a company in Williston is charging ridiculous fees, it gives another company a chance to open a business and compete. When prices are regulated, this opportunity is minimized

Subsection 2 indicates "a charge may not be in excess of the estimated price without the prior consent of the motor vehicle owner or operator".

What if the owner doesn't agree with the estimate, is the tow truck driver supposed to just leave and the police would need to wait for another tow truck company to arrive?

39 - 35 - 09. Certification requirements. (Page 14)

Subsection 1 indicates "the department shall approve an application for a towing company certificate or certificate renewal and shall issue or renew a certificate if the applicant submits to the department a completed application on a form prescribed by the department and pays the application fee set by the department". *This is expanding government (Department of Environmental Quality would need to expand). Are they on board with this? Do we want the state government to issue a Certificate for towing license and dictate prices?*

39 - 35 - 10. Prohibited acts . (Page 15)

Subsection 2 a. indicates a towing company may not refuse to release the vehicle upon payment of towing and storage costs to either the owner OR THE INURANCE COMPANY.

This was previously covered: Releasing a vehicle to a non-owner (i.e., insurance company) has legal exposure.

Subsection 2 c. prohibits towing companies or a storage facility to charge a fee for a stored motor vehicle if they do not allow either the owner, lienholder or insurance company to inspect the vehicle during normal business hours.

As previously mentioned, towing companies or storage facilities are hesitant to allow insurance companies to inspect vehicles because they can have a legal exposure if there is a law suit between the owner of the vehicle and insurance company.

To Conclude, the unmanageable provisions presented throughout HB 1218 represent overreach by one industry trying to regulate another and cannot be enacted into law as they are not needed in North Dakota. The bill represents nothing more than an attempt to transfer liability unfairly from one industry to another. I ask that the committee give a Do Not Pass recommendation to House Bill 1218 and I will now attempt to answer your questions.

Thank you.

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HOUSE TRANSPORTATION COMMITTEE

Date: January 17, 2019 at 2:00 p.m.

**North Dakota Department of Transportation
Lindi Michlitsch, Motor Vehicle Division Director**

House Bill 1218

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

HB 1218 identifies conditions when a vehicle may be towed, towing charges allowed, and creates a towing regulation process in Section 7 where the NDDOT is required to issue a towing company certificate. In addition, in Section 7, NDDOT would be required to create a complaint process for consumers and insurers.

NDDOT has a few concerns regarding Section 7 of this bill. NDDOT has not regulated towing companies in the past, is unfamiliar with the process we would be tasked with regulating, and the number of towing companies these regulations would pertain to. The bill allows an application fee to be set, but does not address what fund this money would be deposited to. There is also a concern regarding the establishment of a complaint mechanism for consumers and insurers. NDDOT is not equipped to handle the items outlined in this bill.

The fiscal note attached will reflect that there would be \$300,000 in approximate IT programming costs. In addition, NDDOT would also incur staffing costs dependent upon this bill's intent for NDDOT's role in the towing regulations. At this time, we are unable to determine the level of staffing that would be necessary to support this process. Therefore, we cannot provide detail for those additional expenditures.

Thank you, Mr. Chairman, I would be happy to answer any questions.