

2017 HOUSE TRANSPORTATION

HB 1352

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1352

2/2/2017

#27850

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to custody and disposition of abandoned motor vehicles.

Minutes:

Attachments #1-3

Chairman Ruby opened the hearing on HB 1352.

Rep. Mary Johnson, District 45 in Fargo, spoke to introduce HB 1352 and to support the bill. The bill seeks to provide a method by which towing companies may title abandoned property and rid themselves of the property. Currently, there is a provision in the law that lets law enforcement auction cars off. There are notification requirements. This bill would extend that provision to private towing companies that tow vehicles at the request of private property owners. The private towing companies have not been able to get title after a certain period of time and cannot rid themselves of these vehicles (abandoned property).

Chairman Ruby: Is there a time limit on how long a vehicle has to be abandoned before it can be towed?

Mary Johnson: Because this mainly addresses law enforcement, and the need to clear the roadways, it refers to 48 hours.

Chairman Ruby: Does the 48 hours, both in Subsection 1 and 2, apply for a motor vehicle to qualify as being abandoned?

Mary Johnson: When it comes to private property, there is no time frame. If someone parks their car on my front lawn, I don't have to wait 48 hours to have the car towed.

Representative Jason Dockter, District 7, spoke to support HB 1352. This affects all the tow truck operators across the state. There are thousands of unclaimed vehicles. Sixty percent of all abandoned vehicles that are towed to lots go unclaimed. Some are still there up to five to seven years. It is a waste of resources and real estate.

This extends the process of commercial towing services. The only distinction between tow truck operators and units of government is that tow truck operators wait 90 days to be able to dispose of a vehicle compared to 15 days for a government unit.

William Sherwin, North Dakota Towing Association, spoke to support HB 1352. Written testimony was provided. See attachment #1, pages 1-6.
15:45

Vice Chairman Rick C. Becker: Would you think there should be an emergency clause on this bill, because of the situation down south? It would otherwise be November before you can dispose of the vehicles.

William Sherwin: We would appreciate the ability to remedy the situation that will be coming up very soon for our operators.

Representative Weisz: If a unit of government asks you to remove them, they will dispose of them in 15 days, right?

William Sherwin: They have the ability to dispose of the vehicle in 15 days. It depends on where the property is towed to, and if it is towed from state or federal land or private land.

Representative Weisz: Repeat question, if a unit of government asks you to remove them, they will dispose of them in 15 days, right?

William Sherwin: If a vehicle is on state land and at the order of a state entity, we will tow some of the vehicles. If a vehicle is on private property, those would be tows from private property and the private property owner has to make the order. We have to have a signature from the private property owner.

Chairman Ruby: The vehicles that are on government land would be taken to the impound lot if there is one. If there is not a lot, then the vehicle would go to the private towing company's lot, but is the government entity is still on the hook for the vehicle? Do they still have the ability to dispose of it?

William Sherwin: Yes, some of those vehicles will go to the government lots. The smaller entities do not have impounds. Any vehicles located on private property still have to go through the notification process, disposal process, and be stored for an indefinite time until we can clear the title. We are looking for a tool that will let us dispose of the vehicles in a shorter amount of time.

Representative Sukut: When you send out certified notices, does the 90 days start after you get a return receipt? What if you never get a return receipt?

William Sherwin: Once we get a return receipt, that starts the 90-day period. If we don't get a return receipt, we can resend the certified notice, but we have not had an issue serving local businesses.

Representative Sukut: You ultimately get some kind of response back from someone?

William Sherwin: That is correct, but we do have issues from some owners that go off the books. Some of the vehicles in the camps for instance. We will serve all lienholders and all secured parties.

Representative Sukut: If you end up with a vehicle, and don't get a response back, does it just have to sit there forever?

William Sherwin: I am not sure about the specifics of that issue, if we have no return receipt of notice. I can check into it for you.

Chairman Ruby: If the bank isn't interested, then do you have to wait for the owner?

William Sherwin: We are required to serve notice to all interested parties. Once we have a party on notice of custody of a vehicle, the towing would start on the vehicle.

Vice Chairman Rick C. Becker: It is my understanding that all of the cars from the protest camps are on public land, but the land is leased to a private person. That person, in my understanding, is entirely responsible for the clean-up. Do you know who will be responsible, or is that a gray area for you at this time?

William Sherwin: If the land is under lease, and the lease holder has absolute rights to the property, then that individual would be able to sign the consensual form to remove those vehicles as the controlling party of the property. Therefore, the notices could be sent in ten days, and in 90 days the titles could be cleared.

Representative Paur: You talk about the banks, and they will respond to your letter. What about the vehicles that don't have a lien? Then all you have is the name of the owner, and you probably won't get a response. Then, none of this will apply, right?

William Sherwin: That is correct. Typically, vehicles that are on liens, have some value. Older vehicles, that don't have much value, are deemed unsalvageable and crushed.

Representative Paur: What happens to vehicles that are over seven years of age?

William Sherwin: Those vehicles are being crushed. They still have a waiting period, but I don't know the exact time period is.

Representative Grueneich: Why would you want 90 days if the state can do this in 15 days? It seems like the process is burdensome. I am wondering why you wouldn't have asked for fewer days, like 60 days.

If a vehicle that is 7 years or older can be crushed, how do you end up with so many vehicles on a lot?

William Sherwin: The 90 days is an issue that we are willing to change. We understand that there are concerns about a shorter time period. We just want a **tool** to work with right now, and that is why we went with three months. We are willing to work with all of the parties

to come and get the vehicles. We do feel like if they don't come in 30 days, they probably won't come in 90 days, but we are willing to wait. We know that 15 days could be a little short, so we were willing to extend it and felt that 90 days is reasonable.

In regards to the gap issue, and how can there be so many cars on a premise, the exact designation of when they are crushing vehicles is open on the vehicle. If the vehicle is salvageable, and how it is evaluated comes into play. I don't understand the intricacies of when they decide to crush a vehicle, and when they are allowed to. I just know that vehicles under seven years of age do not get crushed. We want to stay consistent with the state line on that.

Representative Owens: You crush everything over seven years, but you can't crush a vehicle that is over 20 years and hasn't been altered? It also can't be considered an abandoned vehicle. Do you have any of those?

William Sherwin: I am not sure about that.

Chairman Ruby: Is abandoned motor vehicle the best term to use in this bill?

William Sherwin: It is the term used for public property, but on private property it should just be unauthorized vehicle on the premise. That was a potential oversight.

34:48

George Kuntz, Ace Towing in Bismarck, stood to support HB 1352.

George Kuntz: My company is involved with the vehicles down south. We have removed over 100 vehicles already. There are a large number of vehicles that will need assistance to be removed. We are asking for help with this bill, so that we can get rid of the vehicles that no one is willing to take responsibility for. We have had many individuals leave their vehicles in parking lots and just walk away. We are called to private property, and the owner of the property signs the ticket to authorize the tow, and the drivers are instructed to tow immediately by law enforcement. We start the process by coming to the state to see who the last registered owner was. Then the registered letter is sent out to notify the lienholder or the last registered owner. Many of the owners have left the vehicles, and we are the unpaid garbage collectors of North Dakota. We need help to get rid of these vehicles. What if we refuse to tow these vehicles?

As far as what tells us to crush a vehicle; we use the seven-year rule. We wait until crusher comes when we get a number of cars together. If this bill passes, a lot of these vehicles could be gone much sooner.

Chairman Ruby: Do vehicles that are over seven years but still have some value, still sit there until they lose value and then get crushed?

George Kuntz: Legally in the state of North Dakota we can't even crush a vehicle unless we have ownership of it.

Chairman Ruby: So, you can go through the process to get the title after that?

George Kuntz: The true professional towers in North Dakota do go through the process of the registered letters, come to the state of North Dakota, and ask them. We can get titles on some of them and dispose of them, others that have a lien, we can't. They just sit. It is not fair to us.

Representative Grueneich: If the bill were passed, would the industry support moving the waiting period to 30 days?

George Kuntz: We would support whatever you feel is in the best interest of the industry.

Representative Grueneich: Will passing this bill help you to clean your lot?

George Kuntz: Absolutely.

Representative Westlind: Of all the vehicles on your lot, can you tell me how many are lienholders, and does the lienholder usually come and pick up the vehicle?

George Kuntz: Few and far in between have lienholders that come forward to help with the problem. Out of the vehicles on my lot, 800-100, I estimate that probably 35-40% have liens. They get certified letters and do nothing about it. Our biggest problem with lienholders is the major manufacturers.

43:00

Scott Raddick, Director for the Division of Waste Management at the Department of Health, spoke to clarify the wording in HB 1352. For the purpose of this chapter the word, department, means the "State Department of Health" – under definitions. On page 5, the first two lines say, "The commercial towing service may obtain a release from the department which is sufficient title to dispose of the vehicle." It appears that the Health Department is being designated as the state agency to authorize an individual company to dispose of these vehicles. I have some question as to what documentation we would need in order to give that authorization. It isn't spelled out here; I think that would be necessary to keep the records clear and correct, in case someone would come back at a later date and try to challenge the sale of a vehicle.

Chairman Ruby: That is a good point. We can find out the intent of that.

Scott Raddick: The Department is authorized under another section of code to conduct what is called an abandoned automobile collection project, through the abandoned auto fund. That is funded by the \$1.00 collection fee on each registration each year. It is capped at \$250,000 per biennium. I still think this needs more clarification.

Chairman Ruby: What do you envision the release to be, a form?

Scott Raddick: I would have to think about that. We would probably need for our records copies of the certified notices that were returned, or notice from the towing company certifying that they did not receive a notice back with dates included.

Representative Weisz: Why don't we just put this under the Department of Transportation, since they are the ones that issued the title to start with?

Representative Mary Johnson: It was intended to be the Department of Transportation.

Chairman Ruby: I think that we can make that correction.

Representative Mary Johnson: Anecdotal story about an abandoned vehicle. I think that 90 days might seem long, but it is to protect folks in some situations.

There was no further testimony in support of HB 1352.

Gregory W. Tschider, Jr., Credit Union Association of the Dakotas, spoke to oppose HB 1352 as it is written. Written testimony was provided. See attachment # 2, pages 1-3, and an amendment was also suggested. See attachment #3.

59:00

Chairman Ruby: Why do you think the state has any claim to the vehicle? It is a completely private transaction.

Gregory W. Tschider: The question is, should the towing companies receive an unjust enrichment? If the money is there, and we can't find the owner to give it to, what happens to the money?

Chairman Ruby: If it is a \$20,000 vehicle, the owner will be there. In most cases it is not a vehicle that is worth that much. Where did you come up with the \$20 price per day?

Gregory W. Tschider: Twenty dollars was what we discussed two years ago when this same bill was presented to the legislature. Various people indicated that they thought that \$20 was fair. The question is what is a fair price? We determine what state abstractors can be paid by state law. The problem is that if a towing company is holding a vehicle, you are at their mercy to get it from them. If they give you a price of \$50 to \$60 a day, there is not much you can do about it.

Representative Grueneich: It seems if the bank responds in a timely manner as soon as they get a certified letter, then the storage fees would not be excessive.

Gregory W. Tschider: The law says it should be sent in 10 days, but when do we actually get the notice? If it is sent out, and it is fiddled around in the mail, it may be 30 days. Instead of dealing with dates sent, we should be talking about **dates that notices are received**. Then we have reasonable basis for doing the calculations and requirements.

Representative Owens: If I heard you correctly, you said that Rule 4 of the Rules of Civil Procedure included Certified Mail return receipt requested?

Gregory W. Tschider: That is correct.

Rick Clayberg, President and CEO of the North Dakota Bankers Association, stood to oppose HB 1352 as written. Mr. Tschider shared his amendments with me, and I believe that they are a good starting point, and we would be supportive of that concept.

Rick Clayburgh: I want to express the concern that we had two years ago when similar legislation was up before this body. It deals with more of the public policy perception in a period of time when our banks may have a lien on a vehicle, that is a lower equity vehicle. When you deal with the towing of a vehicle, it could have been due to a storm or many other things. That person may have to get to work, and the vehicle may have to stay in the spot for a few days while they get money to repair it or get new tires. Then it gets towed away. It is not just storage costs; it is also the towing costs up front. In a very short period of time you can turn a lower income individual upside down in a vehicle that they need for their employment. They have nowhere to go or turn; they can't go to their lender; they have no equity or collateral. They feel lost and they abandon the vehicle. That is our issue in the reason about capping storage fees. We cap all of our fees in statute, like dealing with mechanic's liens, and other types of repairman's liens. Those caps are not unusual. It is not just a protection to the lienholder; it is a protection to the property owner who you do not want to put upside down because of \$50-\$60 a day storage fees or more. We are not opposed to the idea of allowing the towing companies to be able to clear their lots and address the issues. We also don't believe that there should be non-just enrichment. It is just like any other unclaimed or abandoned property in North Dakota, the dollars don't go to the state in many respects, they go to the unclaimed property division and sit in the Common Schools' Trust Fund. Those dollars can be recouped by that individual years later. We turn over abandoned bank accounts; the banks do not keep those dollars; we turn those over to the state. We think the same thing should occur here, so that unjust enrichment does occur. We don't want to create a situation where someone can take control over a vehicle, seven years and newer, and take it as their own possession. That is our public policy concern with this. We have an issue and concern with notice. It also creates issues with the borrower on one of these vehicles. We do not support the bill as written, but believe that it can be adjusted to take care of the issues in terms of the towing companies. I speak not only on behalf of the lenders but also the customers of our institutions in the state.

Representative Paur: If we used the suggestion of starting storage fees after the date of receipt of the notice to the lienholder, if there weren't any caps, do you see the potential for the storage fees to go to \$100 or \$150 a day?

Rick Clayberg: Without something specific in code, just saying that you can recoup fees, what decides that fee? There was a range of storage fee across the state two years ago, from \$45 to \$65.

Representative Paur: If we shorten the length of time for storage fees, I can see the storage fees increasing per day.

Rick Clayberg: I don't know if I can respond to that. It would be a decision that would be made by a business individual. Remember that there are already fees for towing the vehicle.

Representative Jones: How often does this happen to someone whose vehicle has been towed?

Rick Clayberg: I don't know how often. I know that issues can happen. There was an incident where an older individual parked his car at a library. He left the library and forgot that his car was there. He reported the car stolen, and it took 30 days to determine where the car was and what had occurred. Simple issues can occur that take time.

Specific to institutions, I can't give you specific numbers. I would say that it is relatively smaller for banks because we don't do as much activity in the commercial paper market as we used to. That is done more by the finance companies and credit unions.

Jack McDonald, Independent Community Banks of North Dakota, stood in opposition to HB 1352 for many of the same reasons that have already been mentioned. We would be glad to work with sponsors of the bill to try to fix the bill.

There was no further opposition to HB 1352.
There was no neutral testimony on HB 1352.

The hearing on HB 1352 was closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1352
2/3/2017
#27891

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to custody and disposition of abandoned motor vehicles.

Minutes:

Inaudible conversation.

Chairman Ruby: Okay, it is something we can talk about and maybe fix as we go.

Representative Owens ...it addresses the bank's issues, the credit union....so we don't kick this can down road another two years. We just keep ignoring the issue, and it is something that we need to take care of one way or the other. So, all of (inaudible) is included in mine as well, so it is not a problem, except that we have a little difference on when (we apply the part) ? that is no consequence. It is an either/or situation. So other than that we can go ahead and talk about it. I need to ask you to wait until I get mine. There is still should not be fiscal note.

Chairman Ruby: Okay, so you want to wait until...

Representative Owens: If you want to take up Representative Grueneich's bill that is fine. I would ask you to wait on the rest of mine, so you can see.

Chairman Ruby: Let's just talk about it together. We will hold it.

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1352
2/9/2017
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☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to custody and disposition of abandoned motor vehicles.

Minutes:

Attachments #1-3

Chairman Ruby brought HB 1352 back before the committee.

Representative Grueneich explained proposed amendments. See attachment #1 and 2.
17.0687.01004

6:13

Vice Chairman Rick C. Becker: I agree with the aspect of consistency of the 30 days. If you park your vehicle on public property, and you leave your vehicle there, you know that it is not your property. I am concerned about weird situations where you thought you were fine to have a vehicle parked at a place. Maybe there are situations where a longer time is more reasonable, or is the idea of consistency between public and private a better idea.

Representative Grueneich: They can't tow from private property unless the vehicle has been signed for.

Vice Chairman Rick C. Becker: Yes, but it is the property owner that signs, not the vehicle owner, so they don't have any say while they are gone. I just wonder if there is a downside to having a greater amount of time for private.

Representative Weisz: I have several concerns. The 48 hours was taken out. Then the tow could be immediate, even if I didn't realize that I was parking where I shouldn't park. I'm not sure why you went to thirty days, when it appeared that the commercial assets were all happy with ninety. Where does it specify that it is limited to charging \$50 for 30 days?

Representative Grueneich: After 30 days the vehicle would owned by...

Representative Weisz: It CAN be, but it doesn't HAVE to be. So, if they sit on the vehicle for six months, it will reach the point where the cost exceeds the value of the vehicle, then they turn around and take ownership of the vehicle. They are not required to sell the vehicle

or shut off the fees. It just says they can go ahead in thirty days. So, is 30 days enough time for people to get money together, get to the bank, and do whatever they need to do to get their car back? There are lots of examples of things that could happen.

Representative Grueneich: Is 30 days enough time? I thought that we should make the time period the same between the state and commercial towers.

Chairman Ruby: I know that the thirty days came about because the banks and credit unions said that they were okay with that time line. If we want to leave the 48 hours on private property, we could strike that from the amendment.

Maybe the limitation of \$1500 could be written into the amendment at \$50 a day limited to \$1500, in Subsection 2. Or at least if it were a separate Subsection 3, it would be written to be more specific to the instance where a vehicle title is being transferred.

Chairman Ruby: Mr. Sherwin, is what I just stated something that is workable?

William Sherwin, North Dakota Towing association, asked for the question to be repeated.

Chairman Ruby: If we leave 48 hours on private property, as it is currently in law, then when dealing with the \$50 per day up to \$1500 maximum when the vehicle title will be transferred, will that be workable?

William Sherwin: The language dealing with the 48 hours was removed because it is not needed. It is civil trespass. The owner has a right regardless of whether it is in the law or not to have the vehicle towed from his property immediately.

On Page 4 Line 4 we changed the 30-day period to start on date of "receipt of notice".

Chairman Ruby: When does the \$50 a day storage start?

William Sherwin: The \$50 per day would start upon custody of the vehicle. In our opinion, we want to have the ability to clear the title as soon as possible. We were willing to meet in the middle with the banks on this. We just want a tool to get rid of these vehicles. The proceeds after the sale of the vehicle, in excess of the fees, are held for ninety days for lienholders or the owners of the vehicle for the parties to come forward and claim before they are turned over to the state. When they are turned over to the state, they go into the Permanent School Fund for abandoned property.

We did want to limit this to the vehicles under one ton.

Representative Weisz: Would you be opposed to language that said, "reimbursed for the cost of towing that coincides with your current fee schedule"? Then you couldn't exceed that schedule.

William Sherwin: We have no issue with language that treats all vehicles that we are towing from public and private property equally, outside of the private contracts that we have with state and local entities.

Discussion on the thirty days.

Chairman Ruby: On the front page of the amendment, Page 2, line 7 and Page 2, line 8, I would like to remove those from the amendment. I think that language should stay in the law. I suggest we talk about this amendment without those. I also see there is an emergency clause, which I agree with. Is the committee okay with the way the \$50 per day is limited?

Representative O'Brien: What is the purpose of the \$50 per day? Why would we set that cap on it, and not leave it up to the private industry that is taking care of it? Do we want to get into the business model of how they are doing things?

Chairman Ruby: There are areas where something is set in law with the ability to take property, we do set limitations.

Vice Chairman Rick C. Becker: Normally, I would never want to put floors or ceilings on what a private business charges for anything. The reason that I am okay with it here is that the free market doesn't really apply, because the person asking for the services is not the person paying for them. There would be no inherent reason for there to be any competition amongst towing companies to charge lower fees. I understand the idea that if there is no limit, you could effectively seize and forfeit every car because the charges are more than they are worth.

More repetitive discussion on the 48-hour issue and civil trespass.

William Sherwin: The bill will be more consistent with the change as proposed in the amendment. The proposal was made to bring it into line with how civil trespass is defined by the North Dakota Supreme Court.

Chairman Ruby: Then I would support leaving Page 2, line 7 and Page 2, line 8 on the amendment then.

Rick Clayburgh, President/CEO of the North Dakota Bankers' Association: We don't have a concern from the lenders perspective on the 48-hour issue. We understand the difference between public and private issues.

The amendments were worked on with Representative Grueneich and the banks and credit unions. The question about why should the state be concerned about the fee at all was asked. This bill will allow the severing of a person's property rights. It may not only be the vehicle owner, but also the lienholder. So, you are allowing a private party to sever someone's rights. The legislature now caps repairman's liens and liens for automobile and agricultural equipment. That is already done now as part of public policy when someone else's property rights are being impacted. The financial industry understands what the towing companies are dealing with and trying to address. We support the concept and believe that the towing companies should recoup their costs. Our only concerns were the storage fees and the length of time. We think that once the notice goes out and the thirty-day clock starts running, and the receipt comes back, it can minimize the potential that someone can be totally driven out of any value in their vehicle.

**Representative Grueneich made a motion to approve amendment 17.0687.01004.
Representative Schobinger seconded the motion.**

A voice vote was taken. The motion carried.

**Representative Grueneich made a motion to approve the second set of amendments.
(Attachments 2-3).
Representative Owens seconded the motion.**

A voice vote was taken. The motion carried.

Representative Paur: Are we going to address Representative Weisz's concerns about standard towing charges?

Chairman Ruby: I don't believe that there is a way that we can do that fairly and effectively.

**Representative Paur moved a DO PASS as amended on HB 1352.
Representative Anderson seconded by the motion.**

**A roll call vote was taken: Aye 13 Nay 0 Absent 1
The motion carried.**

Representative Grueneich will carry HB 1352.

2017 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1352
2/16/2017
#28463

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to custody and disposition of abandoned motor vehicles.

Minutes:

Attachments # 1-2

Chairman Ruby brought HB 1352 back before the committee. He stated that when we passed HB 1352 out of committee, the weight of the vehicle came up. We put the \$50 a day for storage, but it mentioned for a weight of less than one ton. That is why we pulled it off.

Representative Weisz moved to reconsider HB 1352.

Representative Owens seconded the motion.

A voice vote was taken. All aye. The motion carried. (Vote #1)

Chairman Ruby: The suggestion for the amendment is to go off of the registered gross weight, which is double the manufactured weight. See attachment #1.

Representative Owens moved the amendment – attachment #1.

Vice Chairman Rick C. Becker seconded the motion.

Chairman Ruby: We pulled this off before the amendments were adopted. Basically, the amendments that we did before, these would be additional amendments that will have to be adopted on the Sixth Order. We are working off of the original bill that we have amended, and now would be further amending.

A voice vote was taken on the amendment – attachment #1. (Vote # 2)

All aye. The motion carried.

Chairman Ruby: Another amendment that came up had to do with the age of a vehicle to be crushed. The idea is that there is still some value in vehicles that are over 7 years old, and they should be able to sell them to recoup the cost. Then the additional money would go to the state. I think that this is a reasonable change to the bill. See attachment #2.

Representative Paur: Both of these amendments are off the marked up version.

Chairman Ruby: Terry will have to do some work to fix it.

Representative Jones moved the amendment – see attachment #2. (Vote #3)

Representative Weisz seconded the motion.

A voice vote was taken. All aye. The motion carried.

Chairman Ruby: The third issue was one that Linda Fisher brought to us. Linda, is there a difference between “abandoned property” as compared to “unclaimed property”?

Linda Fisher, Deputy Commissioner for the North Dakota Department of Trust Lands:

In Section 6, where it says it will be delivered to the state abandoned property office, that works. What happens when it comes to the state abandoned property office, it gets deposited into the Common Schools Trust Fund, which is a statutory fund, a perpetual fund that cannot be spent, except for formulated distributions once a year. If you put this Section 6 into the bill, and the money comes to the abandoned property administrator, then it would be administered within 47-30.1. That means that the person would always have the ability to claim that money. If that is the intent of the committee, then this paragraph up here, would suffice by itself. If it is not the intent of the committee that the person who originally owned the vehicle would be able to claim anything that was left over, then you would need to do something different. Because the permanent school fund that is referenced in Subsection 2, Section 7, there is no such thing.

Chairman Ruby: In the original bill on Page 4 on Subsection 2, Section 6 starting on Line 28, it says: “provided in Section 1 of article 9 of the constitution of North Dakota and credited to the permanent school fund.”

Linda Fisher: I grabbed Article 9 Section 1. I went through it and looked for that terminology, but it is not there. The only trust fund that is referenced in Article 9 is the Common Schools Trust Fund. If you were only to adopt the earlier part of the bill on unclaimed property, it would be deposited to the Common Schools Trust Fund. By eliminating the second portion of the bill, then it will go into the Common Schools Trust Fund, and it will be available for claim by the person forever. I’m not sure what the intent of the committee was, if they want it to be available to claim or not. If they wanted it to be treated like fines and fees, then that would be more appropriate for the money to go to the State Tuition Fund, which is expendable.

Representative Owens: The intent was that the additional money, after the costs were taken, would go to the unclaimed property for the owner to claim.

Chairman Ruby: I asked if there is a lien holder on the vehicle, which one get the money? She said what they currently do now is list both. Then it might take both signatures to claim the money.

Chairman Ruby: Do you think that we need to take out the words “permanent school fund” in existing language?

Linda Fisher: It would clarify things by changing permanent school fund to Common Schools Trust Fund.

Chairman Ruby: Add that to the amendment, Terry.

Representative Grueneich moved the amendment (changing permanent school fund to Common Schools Trust Fund).

Representative Owens seconded the motion.

A voice vote was taken. All aye. The motion carried.

Representative Jones moved a DO PASS as amended on HB 1352.

Representative Grueneich seconded the motion.

A roll call vote was taken on HB 1352. Aye 14 Nay 0 Absent 0

The motion carried.

Representative Grueneich will carry HB 1352.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "39-26-08" insert ", and 47-30.1-23"

Page 1, line 3, after "vehicles" insert "and deposit of funds; and to declare an emergency"

Page 2, line 7, overstrike "has remained for a period of more than"

Page 2, line 8, overstrike "forty-eight hours" and insert immediately thereafter "is located"

Page 3, replace lines 11 through 22 with:

"SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 3, line 29, overstrike "fifteen" and insert immediately thereafter "thirty"

Page 4, line 4, replace "ninety" with "thirty"

Page 4, line 4, replace "the date" with "receipt"

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert:

- "4. From the proceeds of the sale of an abandoned motor vehicle, the commercial towing service may reimburse itself for the cost of towing.

preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 7. AMENDMENT. Section 47-30.1-23 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-23. Deposit of funds - Continuing appropriation.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under this chapter, including the proceeds from the sale of abandoned property under section 47-30.1-22.
2. The administrator shall promptly deposit in the state treasury to the credit of the permanent school fund all funds received from the sale of abandoned property under section 47-30.1-22 which were delivered to the administrator in accordance with section 39-26-08.
3. There is appropriated annually the amounts necessary to pay all expense deductions under this section, including:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing, publication, and outreach efforts in connection with any abandoned property;
 - c. Reasonable service charges;
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
 - e. Funds for the payment of claims; and
 - f. Funds for the payment of holder refunds.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Prepared by Legislative Counsel Intern 7 for
Rep. Grueneich
February 7, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 4, line 6, after “3.” insert “Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned vehicle weighing less than one ton [907.18 kilograms].”

Renumber accordingly

Prepared by Legislative Counsel Intern 7 for
Rep. Grueneich
February 3, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 2, Line 7, remove “has remained for a period of more than”

Page 2, Line 8, replace “forty-eight hours” with “is located”

Page 3, after line 22, insert the following

“2. The notice must be ~~sent by mail to~~served in accordance with rule 4 of the rules of civil procedure on the register owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.”

Page 4, line 4, replace “ninety” with “thirty”

Page 5, line 2, after “department” insert “of transportation”

Page 5, after line 5, insert emergency clause.

Renumber accordingly

Below is the proposed amendment language that we discussed for HB 1352. The language we are amending is found in a "marked up" version of the bill (version 17.0687.01005). Thank you.

Page 4, revise lines 27 and 28 as follows:

Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned passenger vehicle, pickup, van, or truck that do not exceed twenty thousand registered gross weight pounds [9071.84 kilograms].

Prepared by Legislative Counsel Intern 7
February 15, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 5, Line 10, remove “not more”

Page 5, Line 11, remove “than seven model years of age”

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 1, line 1, remove the second "and"

Page 1, line 2, remove "subsection 1 of"

Page 1, line 2, remove "and sections"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "39-26-08" insert ", and 47-30.1-23"

Page 1, line 3, after "vehicles" insert "and deposit of funds; and to declare an emergency"

Page 2, line 7, overstrike "has remained for a period of more than"

Page 2, line 8, overstrike "forty-eight hours" and insert immediately thereafter "is located"

Page 3, replace lines 11 through 22 with:

"SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 3, line 29, overstrike "fifteen" and insert immediately thereafter "thirty"

Page 4, line 4, replace "ninety" with "thirty"

Page 4, line 4, replace "the date" with "receipt"

Page 4, line 6, after "3." insert "Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned vehicle weighing less than one ton [907.18 kilograms].

4."

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert:

"4. From the proceeds of the sale of an abandoned motor vehicle, the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 7. AMENDMENT. Section 47-30.1-23 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-23. Deposit of funds - Continuing appropriation.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under this chapter, including the proceeds from the sale of abandoned property under section 47-30.1-22.
2. The administrator shall promptly deposit in the state treasury to the credit of the permanent school fund all funds received from the sale of abandoned property under section 47-30.1-22 which were delivered to the administrator in accordance with section 39-26-08.
3. There is appropriated annually the amounts necessary to pay all expense deductions under this section, including:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing, publication, and outreach efforts in connection with any abandoned property;
 - c. Reasonable service charges;
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
 - e. Funds for the payment of claims; and
 - f. Funds for the payment of holder refunds.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

February 16, 2017

2/16/17 DP
10f2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

In lieu of the amendments as printed on pages 477 and 478 of the House Journal, House Bill No. 1352 is amended as follows:

Page 1, line 1, remove the second "and"

Page 1, line 2, remove "subsection 1 of"

Page 1, line 2, remove "and sections"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "39-26-08" insert ", and 47-30.1-23"

Page 1, line 3, after "vehicles" insert "and deposit of funds; to provide for a continuing appropriation; and to declare an emergency"

Page 2, line 7, overstrike "has remained for a period of more than"

Page 2, line 8, overstrike "forty-eight hours" and insert immediately thereafter "is located"

Page 3, replace lines 11 through 22 with:

"SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 3, line 29, overstrike "fifteen" and insert immediately thereafter "thirty"

2/16/17 DO
2 of 2

Page 4, line 4, replace "ninety" with "thirty"

Page 4, line 4, replace "the date" with "receipt"

Page 4, line 6, after "3." insert "Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned vehicle, pickup, van or truck that does not exceed twenty thousand registered gross weight pounds [9071.85 kilograms]."

4."

Page 4, line 29, overstrike "permanent school" and insert immediately thereafter "common schools trust"

Page 4, line 30, remove "not more"

Page 4, line 31, remove "than seven model years of age"

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert:

"4. From the proceeds of the sale of an abandoned motor vehicle, the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2-9-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 17.0687.01004 #1

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 Schobinger

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz	A				
Rep. Greg Westlind					

*All aye
Motion Carried*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-9-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: Attach #2 + #3

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 Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz	<u>A</u>				
Rep. Greg Westlind					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

#1 Page 4 Line 6 \$50 limit

#3 Page 2 Line 7, remove "has removed for..."
Page 2 Line 8, replace "forty-eight hours..."
Page 3 after line 22 insert, "The notice must..."

p. 4 Line 4 replace "ninety..."
p. 5 Line 2 after department...
Emergency Clause

Date: 2-9-17
Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1352

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 Paur Seconded By Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Gretchen Doberovich	✓	
Vice Chair. Rick C. Becker	✓		Rep. Marvin Nelson	✓	
Rep. Bert Anderson	✓				
Rep. Jim Grueneich	✓				
Rep. Terry Jones	✓				
Rep. Emily O'Brien	✓				
Rep. Mark Owens	✓				
Rep. Gary Paur	✓				
Rep. Randy Schobinger	✓				
Rep. Gary Sukut	✓				
Rep. Robin Weisz	A				
Rep. Greg Westlind	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Grueneich

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

Date: 2-16-17
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HJR 352

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 Weisz Seconded By Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz					
Rep. Greg Westlind					

Vote 1 All aye
Motion Carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 2-16-17
Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO: HB 1352

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: Storage charges

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 Owens Seconded By Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz					
Rep. Greg Westlind					

*Voice Vote
All aye
motion carried*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Attachment #1

Date: 2-16-17
Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1352

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: p. 5 line 10 remove "not more"
p. 5 line 11 "than seven model years..."

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 Jones Seconded By Weisz

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz					
Rep. Greg Westlind					

*Voice Vote
All aye
Motion carried*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Attach #2

Date: 2-16-17
Roll Call Vote #: 34

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1352

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 Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Gretchen Dobervich		
Vice Chair. Rick C. Becker			Rep. Marvin Nelson		
Rep. Bert Anderson					
Rep. Jim Grueneich					
Rep. Terry Jones					
Rep. Emily O'Brien					
Rep. Mark Owens					
Rep. Gary Paur					
Rep. Randy Schobinger					
Rep. Gary Sukut					
Rep. Robin Weisz					
Rep. Greg Westlind					

*Voice Vote
all aye
Motion Carried*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Change "Permanent school fund" to
Common Schools Trust Fund."*

Date: 2-16-17
Roll Call Vote #: 5

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1352

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 17.0687.01006

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 Jones Seconded By Grueneich

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	✓		Rep. Gretchen Dobervich	✓	
Vice Chair. Rick C. Becker	✓		Rep. Marvin Nelson	✓	
Rep. Bert Anderson	✓				
Rep. Jim Grueneich	✓				
Rep. Terry Jones	✓				
Rep. Emily O'Brien	✓				
Rep. Mark Owens	✓				
Rep. Gary Paur	✓				
Rep. Randy Schobinger	✓				
Rep. Gary Sukut	✓				
Rep. Robin Weisz	✓				
Rep. Greg Westlind	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Grueneich

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

REPORT OF STANDING COMMITTEE

HB 1352: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1352 was placed on the Sixth order on the calendar.

Page 1, line 1, remove the second "and"

Page 1, line 2, remove "subsection 1 of"

Page 1, line 2, remove "and sections"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "39-26-08" insert ", and 47-30.1-23"

Page 1, line 3, after "vehicles" insert "and deposit of funds; and to declare an emergency"

Page 2, line 7, overstrike "has remained for a period of more than"

Page 2, line 8, overstrike "forty-eight hours" and insert immediately thereafter "is located"

Page 3, replace lines 11 through 22 with:

"SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 3, line 29, overstrike "fifteen" and insert immediately thereafter "thirty"

Page 4, line 4, replace "ninety" with "thirty"

Page 4, line 4, replace "the date" with "receipt"

Page 4, line 6, after "3." insert "Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned vehicle weighing less than one ton [907.18 kilograms]."

4."

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert:

- "4. From the proceeds of the sale of an abandoned motor vehicle, the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 7. AMENDMENT. Section 47-30.1-23 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-23. Deposit of funds - Continuing appropriation.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under this chapter, including the proceeds from the sale of abandoned property under section 47-30.1-22.
2. The administrator shall promptly deposit in the state treasury to the credit of the permanent school fund all funds received from the sale of abandoned property under section 47-30.1-22 which were delivered to the administrator in accordance with section 39-26-08.
3. There is appropriated annually the amounts necessary to pay all expense deductions under this section, including:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing, publication, and outreach efforts in connection with any abandoned property;
 - c. Reasonable service charges;
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
 - e. Funds for the payment of claims; and
 - f. Funds for the payment of holder refunds.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1352: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1352 was placed on the Sixth order on the calendar.

In lieu of the amendments as printed on pages 477 and 478 of the House Journal, House Bill No. 1352 is amended as follows:

Page 1, line 1, remove the second "and"

Page 1, line 2, remove "subsection 1 of"

Page 1, line 2, remove "and sections"

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "39-26-08" insert ", and 47-30.1-23"

Page 1, line 3, after "vehicles" insert "and deposit of funds; to provide for a continuing appropriation; and to declare an emergency"

Page 2, line 7, overstrike "has remained for a period of more than"

Page 2, line 8, overstrike "forty-eight hours" and insert immediately thereafter "is located"

Page 3, replace lines 11 through 22 with:

"SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale~~disposal~~ of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 3, line 29, overstrike "fifteen" and insert immediately thereafter "thirty"

Page 4, line 4, replace "ninety" with "thirty"

Page 4, line 4, replace "the date" with "receipt"

Page 4, line 6, after "3." insert "Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned vehicle, pickup, van or truck that does not exceed twenty thousand registered gross weight pounds [9071.85 kilograms].

4."

Page 4, line 29, overstrike "permanent school" and insert immediately thereafter "common schools trust"

Page 4, line 30, remove "not more"

Page 4, line 31, remove "than seven model years of age"

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert:

"4. From the proceeds of the sale of an abandoned motor vehicle, the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2017 SENATE TRANSPORTATION

HB 1352

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

HB 1352
3/9/2017
28965

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Menden

Explanation or reason for introduction of bill/resolution:

Relating to custody and disposition of abandoned motor vehicles and deposit of funds; to provide for a continuing appropriation; and to declare an emergency.

Minutes:

Attachments #1-3

Chairman Laffen opened the hearing on HB 1352. Welcome Representative Mary Johnson.

Rep. Mary Johnson. HB 1352 came about because there were no statutory provisions for allowing towing services to obtain title for abandoned vehicles. As a result, there are abandoned vehicles that have sat on some towing lots for years. The bill starts out with a little clean-up language and getting into the meat of it draws commercial towing services into this code. The changes will allow a towing service through methods of notice and waiting periods to obtain the title to a vehicle so that they may dispose of it. House transportation did a good job making changes, the period of notice from 15 days to 30 days for public and 30 days for a private towing service. They also limited the storage charges to \$50.00 for a vehicle that doesn't exceed 20,000 gross vehicle weight.

Chairman Laffen: Do I have to wait until the title comes before I can dispose of it?

Rep. Mary Johnson: You have to wait for the title to transfer the ownership before you can do a thing with it.

Chairman Laffen: So I have to wait the 30 days before I can start the process of getting the title and then whatever time that takes before you can get rid of it.

Rep. Mary Johnson: The information you have to provide is very exacting. Who, what, where and how.

Senator Casper: What language in this legislation keeps a towing truck from just towing anything?

Rep. Mary Johnson: The information you have to provide the DOT is exact and it all has to be provided to them before you can get a release. Also the House Transportation committee

included an emergency because we got some problems going on south of here with some vehicles.

Chairman Laffen: Any other questions for Rep. Johnson? None. Thank you. Further testimony in favor?

Representative Jason Dockter: (6:26) I am co-sponsor of the bill and I support it. The House transportation has worked hard on this bill and got some issues resolved and I think HB 1352 is a good bill and I ask for your support.

Chairman Laffen: What are we really doing here? Are you looking for a process for the private towing companies?

Rep. Jason Dockter: Yes, currently the law is open ended. The private towing companies have vehicles sitting in their lots for years and they can't do anything with them. It is very costly for them to keep these vehicles and the towing association is just looking to help them out. There is a process for the public towing through the government and the private companies need a process too.

Senator Nelson: The cars that we see by the side of the road, are they just waiting for a tow or what? Who puts the orange tags on?

Rep. Jason Dockter: I believe those are public, so the towing truck takes them to their place and they then have to try find the owners and deal with them, which in most cases is where the issue of trying to find a title for them comes in. The Highway Patrol puts the tags on but then the towing company has to come get them and take care of the vehicle.

Chairman Laffen: Any other questions? None. Thank you. Further testimony in favor of HB 1352.

William Sherwin: (10:12) I am representing the members of the North Dakota Towing Association and I am asking for your support on HB 1352. See Attachment #1

Chairman Laffen: If I need to tow a vehicle off of my private property who pays the towing bill?

William Sherwin: It should be paid by the person leaving the vehicle. If not, you will have to negotiate with the culprit. Most likely they won't come back and you will have to give us a deposit to have it towed off your property.

Senator Nelson: When the unclaimed property list comes out in the paper whose name would you put on the abandoned car?

William Sherwin: All interested parties would be listed as on any unclaimed property. Lien holders, also would be listed as having a right in that property.

Senator Clemens: Owners can still get property out of the vehicle after it has been towed?

William Sherwin: Yes, they can. If they are coming for medications absolutely. We are very careful about how we allow individuals to procure items from the towed vehicle. Truck and trailer as an example...truck is owned by the person and trailer is rented. We have to be careful how it is handled.

Chairman Laffen: So you have people taking property out of the vehicles but not taking the vehicle?

William Sherwin: Yes, it does happen and we are trying to help these people out. They can't pay the fine but need the personal property in the vehicle. We work in the repro business and we need to work with the people. We are the towing service we are not having them towed. We really think this is a good bill and hope for your support.

Chairman Laffen: Any further questions? Thank you. Further testimony in favor of HB 1352.

George Kuntz, President of Ace Towing in Bismarck: (31:35) I am also Vice President of the Towing Association. I have been in the business for over 30 years and this is a difficult process to getting this terrible situation handled. We have vehicles that have been in our lot for years. We cannot go to just anyplace and tow a vehicle. We have to have a signature to tow it and then we can go ahead and try get ahold of the information that we need. We pay the fees to get that information. The state of ND tries to be very prompt about it but sometimes they are backed up too. We are all trying to do the best that we can. We are unpaid garbage collectors. Out of sight, out of mind. I am happy when someone calls and comes to pick up a vehicle, as I don't want the stuff and also want the lending companies to get their compensation. I am constantly asked why do you do it? I do it for the future. I have a 9-year old and a 7-year old who are very interested in this business. If they keep seeing the battles we are going through they may not want to go into this business. Is it really worth it? With this bill, here we have an answer and it is a tool that we need. I ask your support on it.

Senator Rust: Refresh my memory, why do you do this?

George Kuntz: I feel we can make a difference. I enjoyed it in my younger years. I got into it when I was 16 and saw that I could make a difference.

Chairman Laffen: You are a towing company and tow all kinds of vehicles. You tow vehicles out of my lots and they pay the fine, but occasionally we have the one that doesn't and that is what we are trying to take care of with this bill.

Senator Rust: Can you refuse to pick up a vehicle?

George Kuntz: I could but I don't see that as something in my vocabulary.

Senator Clemens: In the case of the abandoned vehicles south of here, are you going to get compensated for removing them in this type of situation?

George Kuntz: We are not 100% sure on that, we are still in conference with the Corp of Engineer in Morton County. We are trying to get the information together to get it sorted out and it had to be done now!

Chairman Laffen: Any other questions? None. Thank you.

Linda Fisher, (41:00) Deputy Commissioner of ND Department of Trust Lands: See attachment #2

Senator Casper: Does this make any changes for the funds going to the Common School Trust Fund?

Linda Fisher: No it does not. Common School Trust Fund is the fund that benefits from unclaimed property that is not claimed.

Chairman Laffen: Any other questions? Brady please draft that for us and we can take a look at it. Thank you. Further testimony in favor on HB 1352.

Pat Ward: (44:40) See Attachment #3. I support the bill and hope to have your support.

Chairman Laffen: Any questions? Any further testimony in favor of HB 1352?

Chairman Laffen: We have heard testimony that 5 days is not long enough to get the information.

Pat Ward: Depends on the towing company if they are sitting on the vehicles or not.

Mary Johnson: Just one more comment. It does take 2 days for mail to get somewhere and 2 days to get it back so 5 days is not long enough time for the information to get to where it has to go.

Senator Rust: My car has been stolen and it was towed and it has been 10 days and I go to get it and I am told I have to pay a \$500.00 fee for them holding it. So I figure out what I owe on it and paying the fee and say you can keep it.

William Sherwin: It would depend on what was owed on it and if it would be to their benefit to pay the fee and take it home.

Senator Nelson: When we see these semis driving down the road carrying banged up cars, where are going to.

George Kuntz: That is the last resort, going to a shredder. We have one young lady and all her job is, is to mail out notices as soon as we need them and to gather the information we need for the abandoned vehicles.

Chairman Laffen: Not every vehicle gets crushed right? You might end up with a vehicle worth a lot of money or does that never happen? What happens to those nice vehicles?

George Kuntz: In my 30+ years, the most expensive car or vehicle in my yard lot has been right around that \$12,000.00 mark. We do notify the banks if there is a lien on them. We can also take a picture of the vehicle and send it to GM.

Chairman Laffen: Any other testimony in favor of HB 1352? None. Opposition? None. Neutral?

Rick Clayburgh, Bankers Association: (1:00:34) Our concern is in the original bill it gave them 90 days and we didn't want the vehicle to sit that long as then they would just forget it and not come claim it or it would also lose value just sitting there. As soon as the word DAPL came up in the House we knew we were in trouble. We have come up with 30 days to help with this issue. Towing companies do have a problem with abandoned vehicles. We are open to an amendment also.

Chairman Laffen: We just can't understand why they wouldn't come get their vehicles.

Senator Nelson: My question deals with the contents of the towed car? What happens to the contents, child safety seats, anything of value, etc.? Would you call law enforcement if you found drugs or something like that in a vehicle?

George Kuntz: Most of the stuff left in a vehicle is all garbage. Any child restraint seat that is involved in an accident has to be disposed of. Very seldom do we ever see anything of value. We have a shredder to shred any paperwork that is found in the car. We absolutely would call the law enforcement if we found anything related to drug usage.

Chairman Laffen: Further neutral testimony? None. We will close the hearing on HB 1352. Committee I think we will hold this till we reconvene at 2:15 this afternoon.

2017 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1352
3/9/2017
28995

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Munder

Explanation or reason for introduction of bill/resolution:

Relating to custody and disposition of abandoned motor vehicles and deposit of funds; to provide for a continuing appropriation; and to declare an emergency.

Minutes:

Attachment #1

Chairman Laffen: Recalled the hearing on HB 1352 to order. We heard two possible amendments and one I am pretty sure we are all comfortable with. I will hand that one out and we can cover it. **See Attachment #1.**

William Sherwin: Explained the Amendment.

Chairman Laffen: Any questions?

Senator Nelson: Made a motion to accept Amendment (#1)

Senator Casper: Seconded

Roll Call taken: Yeas-5, Nays-0, Absent-1.

Chairman Laffen: Pat Ward brought an amendment and he wanted to back down from 10 days to 5 days. I heard from some of the towing companies that that could be a struggle in some cases depending on where they had to go to get the information needed.

Senator Casper: I agree with our chairman. I think what Pat is trying to do is to add language so the notice goes to both registered owner and the DOT.

William Sherwin: We have to apply to DOT and that is where we get our information from. They have the information before we do.

Senator Casper: I move for a Do Pass on HB1352 as amended.

Senator Campbell: Seconded.

Chairman Laffen: Any other discussion? None.

Roll Call taken: Yeas-5, Nays-0, Absent-1

Senator Nelson will carry the bill.

March 9, 2017

3/9-2017
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1352

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, remove ", and 47-30.1-23"

Page 1, line 3, remove "and deposit of funds; to provide for a continuing"

Page 1, line 4, remove "appropriation"

Page 2, line 1, overstrike "permanent school" and insert immediately thereafter "common schools trust"

Page 5, line 5, overstrike "From the proceeds of the sale of an abandoned motor vehicle, the unit of government"

Page 5, overstrike lines 6 through 10

Page 5, line 11, overstrike "the"

Page 5, line 11, remove "common schools trust"

Page 5, line 11, overstrike "fund."

Page 5, line 12, remove "3."

Page 5, line 19, replace "4." with "3."

Page 5, line 19, after the underscored comma insert "the unit of government or"

Page 5, remove lines 26 through 30

Page 6, remove lines 1 through 16

Renumber accordingly

Date: 3-9-17
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. "Enter Bill/Resolution No." 1352

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 17.0687.03001 Site # 04000

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 Nelson Seconded By Casper

Senators	Yes	No	Senators	Yes	No
Chairman Lonnie J. Laffen	✓		Senator Carolyn Nelson	✓	
Senator Tom Campbell	✓				
Senator David Rust					
Senator David Clemens	✓				
Vice Chairman Jonathan Casper	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

Date: 3-9-17
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. "Enter Bill/Resolution No." 1352

Senate Transportation Committee

☐ Subcommittee

Amendment LC# or Description: 17-0687-03001 Title # 04000

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 CASPER Seconded By Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Lonnie J. Laffen	✓		Senator Carolyn Nelson	✓	
Senator Tom Campbell	✓				
Senator David Rust					
Senator David Clemens	✓				
Vice Chairman Jonathan Casper	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Nelson

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

REPORT OF STANDING COMMITTEE

HB 1352, as engrossed: Transportation Committee (Sen. Laffen, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1352
was placed on the Sixth order on the calendar.

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, remove ", and 47-30.1-23"

Page 1, line 3, remove "and deposit of funds; to provide for a continuing"

Page 1, line 4, remove "appropriation"

Page 2, line 1, overstrike "permanent school" and insert immediately thereafter "common
schools trust"

Page 5, line 5, overstrike "From the proceeds of the sale of an abandoned motor vehicle, the
unit of government"

Page 5, overstrike lines 6 through 10

Page 5, line 11, overstrike "the"

Page 5, line 11, remove "common schools trust"

Page 5, line 11, overstrike "fund."

Page 5, line 12, remove "3."

Page 5, line 19, replace "4." with "3."

Page 5, line 19, after the underscored comma insert "the unit of government or"

Page 5, remove lines 26 through 30

Page 6, remove lines 1 through 16

Renumber accordingly

2017 TESTIMONY

HB 1352

HB 1352
2-2-17
#1
Page 1

Testimony on HB 1352
William Sherwin
North Dakota Towing Association
House Transportation Committee
February 2, 2017

Good Afternoon Chairman Ruby and members of the House Transportation Committee, my name is William Sherwin, here today representing the members of the North Dakota Towing Association. On behalf of our contractor members I'd like to voice our combined support of House Bill 1352.

HB 1352 addresses the issue of abandoned vehicles that commercial tow truck operators across the State are facing in Grand Forks, Fargo, Bismarck, Dickinson, Williston, and other places. Currently, many of these commercial tow truck operators have over 1000 vehicles on their premises that have not and will not be claimed. Some vehicles have been on their properties upwards of 5-7 years. Sixty percent(60%) of all abandoned vehicles that are towed go unclaimed. These tows are a complete loss to the business owner.

The process of clearing a title to an abandoned vehicle located on public property for a Unit of Government is already in statute(NDCC 39-26). HB 1352 extends this process to "Commercial Towing Services" towing from private property. The only distinction between Commercial Towing Services and Units of Government is that Commercial Towing Services must wait 90 days(3 months) after sending certified notice to interested parties before clearing title. When the Units of Government must only wait 15 days after sending certified notice to interested parties(NDCC 39-26).

Notice(certified mail) is sent to all interested parties which includes: Registered Owners, all Lien Holders, and all Secured Parties. Once Notice has been given, any Registered Owner, Lien Holder, or Secured Party has the right to reclaim the vehicle from the tow operator for 90 days. If after the 90 day period no party has come forward

to claim the vehicle a new clear title is issued to the Commercial Towing Service to dispose of the vehicle. Under current law no interested party is required to reclaim the vehicle in a set time period from the Commercial Towing Service. HB 1352 solves this issue by clearing title after 90 days allowing the commercial towing service to dispose of the vehicle.

For these reasons I would ask the committee to give HB 1352 a "Do Pass" recommendation and remedy the issue of abandon vehicles by giving tow truck operators a tool to deal with the thousands of vehicles sitting in tow yards across the State. These vehicles sitting unclaimed for years on end are a burden to these business owners and a waste of resources and real estate. HB 1352 is the solution to this problem.

Thank you.

Civil trespass is a common law tort in North Dakota and is not statutorily defined. This Court has defined trespass as “an ‘intentional harm,’ ” where a person “intentionally and without a consensual or other privilege ... enters land in possession of another or any part thereof or causes a thing or third person so to do.” *McDermott v. Sway*, 78 N.D. 521, 529–30, 50 N.W.2d 235, 240 (1951). A person who commits a trespass “is liable as a trespasser to the other irrespective of whether harm is thereby caused to any of his legally protected interests.” *Id.* at 530, 50 N.W.2d at 240. If there is no intent or “affirmative voluntary act” by the alleged wrongdoer, there cannot be a claim for trespass. *Id.*

Reaffirmed 2005 in: *Tibert v. Slominski*, 2005 ND 34, ¶ 15, 692 N.W.2d 133, 137

Reaffirmed 2016 in: *Gray v. Berg*, 2016 ND 82, ¶ 15, 878 N.W.2d 79, 84

William Sherwin
North Dakota Towing Association
House Transportation Committee
February 2, 2017

HB 1352 Fact Sheet

- The process of clearing a title to an abandoned vehicle located on public property for a unit of government is already in statute (NDCC 39-26).
- HB 1352 extends this process to "Commercial Towing Services" towing from private property.
- Tow truck operators cannot tow vehicles without the signed consent of the proper unit of government or private property owner/management.
- 60% of all abandoned vehicles towed will go unclaimed.
 - Many tow operators have over 1000 vehicles on premises.
 - Some vehicles upwards of 5-7 years.
 - These tows are a complete loss to the business owner.
- Notice (certified mail) is sent to all interested parties which includes:
 - Registered Owners
 - All Lien Holders
 - All Secured Parties
- Once Notice has been given, any Registered Owner, Lien Holder, or Secured Party has the right to reclaim the vehicle for 90 days.
 - If after 90 days no party comes forward to claim the vehicle a new clear title is issued to the commercial towing service to dispose of the vehicle.
 - Currently in statute the State must wait 15 days to receive a new clear title and dispose of the vehicle.
- Under current law no interested party is required to reclaim the vehicles in a set time period from the commercial towing service.
 - HB 1352 solves this issue by clearing title after 90 days allowing the commercial towing service to dispose of the vehicle.





HB 1352
2-2-17
#2
Page 1

TESTIMONY IN REGARDS TO HOUSE BILL NO. 1352

GREGORY W. TSCHIDER, JR., CREDIT UNION
ASSOCIATION OF THE DAKOTAS

Mr. Chairman and Members of the House Transportation Committee, I am Gregory W. Tschider, Jr. and I represent the Credit Union Association of the Dakotas.

Credit Unions do not object to House Bill No. 1352 if the Bill is amended to include the amendments submitted by the Credit Union Association to the Committee.

NOTICE TO LIENHOLDERS

The Bill provides for an Amendment (see page 3, line 13) to Subsection 1 of Section 39-26-06 however, it is submitted that Section 39-26-06 (2) should also be amended.

A substantial amount of consumer loans at credit unions are secured by motor vehicles. In addition, credit unions purchase retail installment contracts from automobile dealers. It appears that the purpose of this Bill is to provide towing companies with an easier method to obtain title to motor vehicles that have been abandoned by the owners. Section 39-26-06 (2) presently provides that "The notice must be sent by mail . . . to all identifiable lienholders or secured parties of record." That sounds good but what happens if the lienholder never receives the notice or the notice is not received for an extended period of time? This Bill

provides that the lienholder (credit union, bank, dealer, or any third party who is the lienholder) loses its secured interest in the collateral even if the lienholder never receives the notice or the notice is received late. Secured credit union loans are granted on the basis of the credit of the member and the value of the collateral. The credit union should not lose its interest in the collateral because the United States Post Office fails to deliver the mail or fails to deliver it within a reasonable amount of time.

We have all heard horror stories about mail that is lost. A gentleman from the northeastern part of North Dakota who mailed a letter over two weeks ago to his daughter in Fargo. She has not received it. I was informed that it took six (6) weeks for a letter to be delivered from Mandan to Bismarck and a letter sent from Bismarck to Phoenix which was delivered six (6) months later.

It is only fair, reasonable, and due process that property (the loss of the collateral) is not taken without receipt of such notices. The enclosed amendment provides that service of the notice must occur in any manner permitted by Rule 4 of the North Dakota Rules of Civil Procedure which would include service by a Sheriff or process server or by mail requiring a signed receipt. In addition, the time period should not commence until the notice has actually been received by the lienholder.

STORAGE CHARGES. Section 39-26-07 (2) (see page 4, line 3). There is no limit on the amount that towing companies can charge to store vehicles. In some locations, storage fees can range from \$40 to \$65 per day. That is \$1,200 to \$2,000 per month. Those fees are unreasonable and in fact are gouging parties who have

no control or opportunity to negotiate the fees. If you don't pay the unreasonable storage fees, then the vehicle will be lost.

It is submitted that \$20 per day – \$600 per month is more than a fair and reasonable amount for storing vehicles.

OBTAINING A TITLE. The proposed new language on page 4, lines 30 and 31, and on page 5, lines 1 through 5 serves only one purpose – to unjustly benefit the towing companies. Subsections 1 and 2 of Section 39-26-08 (see lines 14 through 29) provide the method for disposing of abandoned vehicles. The proposed additional subsection 3 negates what is provided in subsections 1 and 2. That does not make sense. As presented, subsections 1 and 2 describe what the towing company must do, but proposed new subsection 3 appears to negate those requirements. If subsection 3 becomes law, there is no incentive for the towing companies to sell the vehicle as is presently required. The towing company can simply obtain the title and then pocket 100% of the sales proceeds. Considering the price and value of vehicles, that would result in unjust enrichment to the towing companies.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

HB 1352
2-2-17
#3

Page 3, after line 22, insert the following:

“2. The notice must be ~~sent by mail to~~ served in accordance with rule 4 of the rules of civil procedure on the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.”

Page 4, line 3, after “charges” insert “, which shall not exceed twenty dollars per day for storage charges,”

Page 4, line 4, replace “date” with “receipt”

Page 4, remove lines 30 and 31

Page 5, remove lines 1 through 5

Renumber accordingly

Submitted by

Credit Union Association of the Dakotas

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 1, line 2, replace the second "and" with a comma

Page 1, line 2, after "39-26-08" insert ", and 47-30.1-23"

Page 1, line 3, after "vehicles" insert "and deposit of funds; and to declare an emergency"

~~Page 2, line 7, overstrike "has remained for a period of more than"~~

~~Page 2, line 8, overstrike "forty-eight hours" and insert immediately thereafter "is located"~~

Page 3, replace lines 11 through 22 with:

"SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale/disposal of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 3, line 29, overstrike "fifteen" and insert immediately thereafter "thirty"

Page 4, line 4, replace "ninety" with "thirty"

Page 4, line 4, replace "the date" with "receipt"

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert:

- "4. From the proceeds of the sale of an abandoned motor vehicle, the commercial towing service may reimburse itself for the cost of towing.

preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 7. AMENDMENT. Section 47-30.1-23 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-23. Deposit of funds - Continuing appropriation.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under this chapter, including the proceeds from the sale of abandoned property under section 47-30.1-22.
2. The administrator shall promptly deposit in the state treasury to the credit of the permanent school fund all funds received from the sale of abandoned property under section 47-30.1-22 which were delivered to the administrator in accordance with section 39-26-08.
3. There is appropriated annually the amounts necessary to pay all expense deductions under this section, including:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing, publication, and outreach efforts in connection with any abandoned property;
 - c. Reasonable service charges;
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
 - e. Funds for the payment of claims; and
 - f. Funds for the payment of holder refunds.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

HB 1352
2-9-17
#2

Prepared by Legislative Counsel Intern 7 for
Rep. Grueneich
February 7, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 4, line 6, after "3." insert "Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned vehicle weighing less than one ton [907.18 kilograms]."

Renumber accordingly

HB1352
2-9-17
#3

Prepared by Legislative Counsel Intern 7 for
Rep. Grueneich
February 3, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 2, Line 7, remove "has remained for a period of more than"

Page 2, Line 8, replace "forty-eight hours" with "is located"

Page 3, after line 22, insert the following

"2. The notice must be ~~sent by mail to~~ served in accordance with rule 4 of the rules of civil procedure on the register owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy."

Page 4, line 4, replace "ninety" with "thirty"

Page 5, line 2, after "department" insert "of transportation"

Page 5, after line 5, insert emergency clause.

Renumber accordingly

HB 1352
2-16-17
#1

Below is the proposed amendment language that we discussed for HB 1352. The language we are amending is found in a "marked up" version of the bill (version 17.0687.01005). Thank you.

Page 4, revise lines 27 and 28 as follows:

Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned passenger vehicle, pickup, van, or truck that do not exceed twenty thousand registered gross weight pounds [9071.84 kilograms].

HB 1352
2-16-17
#2

Prepared by Legislative Counsel Intern 7
February 15, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352

Page 5, Line 10, remove "not more"

Page 5, Line 11, remove "than seven model years of age"

Renumber accordingly

Attachment #, pg,
HB 1352 3/9/17

**Testimony on HB 1352
William Sherwin
North Dakota Towing Association
Senate Transportation Committee
March 9, 2017**

Good morning Chairman Laffen and members of the Senate Transportation Committee, my name is William Sherwin, here today representing the members of the North Dakota Towing Association. On behalf of our contractor members I'd like to voice our combined support of House Bill 1352.

HB 1352 addresses the issue of abandoned vehicles that commercial tow truck operators across the State are facing in Grand Forks, Fargo, Bismarck, Dickinson, Minot, Williston, and other places. Currently, many of these commercial tow truck operators have over 1000 vehicles on their premises that have not and will not be claimed. Some vehicles have been on their properties upwards of 5-7 years. Sixty percent (60%) of all abandoned vehicles that are towed go unclaimed. These tows are a complete loss to the business owner.

Chairman Ruby and the House Transportation Committee spent over 2 weeks working on HB 1352 to ensure the bill was legally sound and satisfactory to all interested parties. The bill before you today is the outcome of both collaboration and concessions between the Towing Association and the Financial Institutions. This collaboration and concessions by both parties resulted in HB 1352 being fully supported by both the Financial Institutions and the Towing Association. Ultimately, HB 1352 passed the House with near unanimous consent (89-1).

The process of clearing a title to an abandoned vehicle located on public property for a Unit of Government is already in statute (NDCC 39-26). HB 1352 extends this process to "Commercial Towing Services" towing from private property. Notice (certified mail) is sent to all interested parties which includes: Registered Owners, all Lien Holders,

and all Secured Parties. Once Notice has been given, any Registered Owner, Lien Holder, or Secured Party has the right to reclaim the vehicle from the tow operator for 30 days. If after the 30 day period no party has come forward to claim the vehicle a new clear title is issued to the Commercial Towing Service to dispose of the vehicle.

Under HB 1352, a Commercial Towing Service is allowed to deduct its towing fees from the disposal proceeds of an abandoned vehicle. The remainder is held in escrow for any interested party (Registered Owners, All Lien Holders, All Secured Parties) for 90 days. After 90 days the remaining proceeds are turned over to the State and deposited into the Common Schools Trust Fund as unclaimed property. While in this fund the proceeds can still be claimed by any interested party or used by the State for future expenditures. Under current law no interested party is required to reclaim the vehicle in a set time period from the Commercial Towing Service. HB 1352 solves this issue by clearing title after 30 days allowing the Commercial Towing Service to dispose of the vehicle.

For these reasons I would ask the committee to give HB 1352 a "Do Pass" recommendation and remedy the issue of abandon vehicles by giving tow truck operators a tool to deal with the thousands of vehicles sitting in tow yards across the State. These vehicles sitting unclaimed for years on end are a burden to these business owners and a waste of resources and real estate. HB 1352 is the solution to this problem.

Thank you.



Attachment #1
Pg 3
3-9-17
NB1352



Attachment #1 pg 4
HB 1352 3-9-17

William Sherwin
North Dakota Towing Association
Senate Transportation Committee
March 9, 2017

Attachment #1 pg 5
HB 1352 3-9-17

HB 1352 Fact Sheet

- The process of clearing a title to an abandoned vehicle located on public property for a unit of government is already in statute (NDCC 39-26).
- HB 1352 extends this process to "Commercial Towing Services" towing from private property.
- Final bill is the collaboration of both the Towing Association and Financial Institutions finding common ground that **both parties fully support** to resolve this issue facing the State of North Dakota
- 60% of all abandoned vehicles towed will go unclaimed.
 - Many tow operators have over 1000 vehicles on premises.
 - Some vehicles upwards of 5-7 years.
 - These tows are a complete loss to the business owner.
- Tow truck operators cannot tow vehicles without the **signed consent** of the proper unit of government or private property owner/management.
- Notice (certified mail) is sent to all interested parties which includes:
 - Registered Owners
 - All Lien Holders
 - All Secured Parties
- Once Notice has been given, any Registered Owner, Lien Holder, or Secured Party has the right to reclaim the vehicle for 30 days.
 - If after 30 days no party comes forward to claim the vehicle a new clear title is issued to the commercial towing service to dispose of the vehicle.
 - Towing fees are deducted from the disposal proceeds and the remainder is held in escrow for any interested party for 90 days.

Attachment #1 pg 6
HB 1352
3-9-17

- After 90 days the remaining proceeds are turned over to the State and deposited in the Common Schools Trust Fund as unclaimed property to be claimed by any interested party or used by the State.
- Under current law no interested party is required to reclaim the vehicles in a set time period from the commercial towing service.
 - HB 1352 solves this issue by clearing title after 30 days allowing the commercial towing service to dispose of the vehicle.
- HB 1352 passed the House with near unanimous consent (89-1).

Attachment #1 pg 76

HB/352

3-9-17

Civil trespass is a common law tort in North Dakota and is not statutorily defined. This Court has defined trespass as "an 'intentional harm,' " where a person "intentionally and without a consensual or other privilege ... enters land in possession of another or any part thereof or causes a thing or third person so to do." *McDermott v. Sway*, 78 N.D. 521, 529–30, 50 N.W.2d 235, 240 (1951). A person who commits a trespass "is liable as a trespasser to the other irrespective of whether harm is thereby caused to any of his legally protected interests." *Id.* at 530, 50 N.W.2d at 240. If there is no intent or "affirmative voluntary act" by the alleged wrongdoer, there cannot be a claim for trespass. *Id.*

Reaffirmed 2005 in: *Tibert v. Slominski*, 2005 ND 34, ¶ 15, 692 N.W.2d 133, 137

Reaffirmed 2016 in: *Gray v. Berg*, 2016 ND 82, ¶ 15, 878 N.W.2d 79, 84

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Lance D. Gaebe, Commissioner

Date: March 9, 2017

To: Senate Transportation Committee

From: Linda Fisher, Deputy Commissioner, ND Department of Trust Lands

Re: Proposed Amendment to HB 1352

The North Dakota Department of Trusts Lands manages the statutes contained in 47-30.1 relating to the Uniform Unclaimed Property Act. We are here to offer proposed amendments to Sections 6 and 7 of the first engrossment of HB 1352.

Section 6, paragraph 2 refers to "unit of government" and requires that after ninety days, remaining funds ***"must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the common schools trust fund."***

Section 6, paragraph 4 refers to "commercial towing service" and is nearly identical in many respects but requires that after ninety days, remaining funds ***"must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1."***

To correct this inconsistency and reduce redundancy, we propose eliminating paragraph 2 and including "unit of government" in paragraph 4.

With that change, Section 7 of the bill would not be relevant as all funds reported to unclaimed property under 47-30.1 are handled in the same manner.

As such, the Department would offer the following amendments

- Page 1, line 2, after "39-26-07," insert "and"
- Page 1, line 2, overstrike "and 47-30.1-23"
- Page 5, remove lines 5 through 11
- Page 5, line 20, after "service" insert "or the unit of government"
- Page 5, remove lines 26 through 30
- Page 6, remove lines 1 through 16

Renumber accordingly.

Thank you for your consideration.

TESTIMONY OF PATRICK J. WARD
IN SUPPORT OF HB 1352
WITH SUGGESTED AMENDMENTS

Chairman Laffen and Members of the Senate Transportation Committee:

My name is Pat Ward. I am an attorney with the law firm of Zuger Kirmis & Smith in Bismarck. I represent the Association of North Dakota Insurers in regard to this bill.

This bill as originally drafted did not come to our attention and we did not participate in the House hearing. However, after the House amended the bill, we do have some questions about the bill and would like to suggest a couple of simple amendments.

As you know, property and casualty insurers often are involved in paying storage or towing charges involving motor vehicles which have either been stolen or involved in a motor vehicle accident.

This bill relates to permissible storage charges under subsection 3 of section 5 to be paid by the owner or a lienholder of an abandoned motor vehicle. We agree that in most cases a \$50/day cap is reasonable based on charges in certain parts of the state. However, we do have a concern that in other parts of the state, towing companies charging significantly less will raise their charges to meet this standard.

We did talk with Chairman Ruby about this bill on Tuesday night. He indicated he would support a couple of simple amendments which I am suggesting to you here.

We do have a concern with section 2, paragraph 1, as to why the 48 hour requirement is being removed as regard to vehicles located on private property. We

question the prudence of that as this could lead to breach of the peace. This seems to be saying that an illegally parked vehicle is an abandoned vehicle and can be towed.

We ask for a change in section 4 as to the requirement for providing notice to the owner of the abandoned vehicle. We believe that 10 days can be a fairly long time for a commercial towing service to provide especially since there will be a \$50/day charge incurring under the new language in section 5, subparagraph 3. We would therefore request that the time period to notify in section 4, paragraph 1, be changed from 10 days to 5 business days. We also believe a towing company should provide notice of the taking and the VIN# to DOT. We agree with the provision in section 2, paragraph 2, of section 4 that requires certified mail, and think that is a good idea.

We would urge the Committee to adopt the proposed amendments and give the bill a Do Pass Recommendation.

Attachment # 3 pg 3
HB 1352 39-17

Proposed Amendment to Engrossed HB 1352
Version 17.0687.0300

Pat Ward
ANDI
March 9, 2017
Senate - Transportation

Page 3, line 18, remove "ten" and replace with "five business"

Page 3, line 27, after vehicle insert ", the Department of Transportation," and

P:\PWARD\Legislative 2017\Proposed Amendments - HB 1352.doc

HB 1352

3-9-17

#1

Attachment pg 1

DRAFT PROPOSED AMENDMENTS TO HOUSE BILL NO. 1352
(Prepared by Legislative Intern Brady Pelton at the request of the Senate Transportation
Committee)

March 9, 2017

Page 1, line 2, after the first comma insert "and"

Page 1, line 2, remove ", and 47-30.1-23"

Page 2, line 1, overstrike "permanent school" and insert immediately thereafter "common
schools trust"

Page 5, line 5, overstrike "From the proceeds of the sale of an abandoned motor vehicle, the
unit of government"

Page 5, overstrike lines 6 through 10

Page 5, line 11, overstrike "the"

Page 5, line 11, remove "common schools trust"

Page 5, line 11, overstrike "fund."

Page 5, line 12, remove "3."

Page 5, line 19, replace "4." with "3."

Page 5, line 19, after the underscored comma insert "the unit of government or"

Page 5, remove lines 26 through 30

Page 6, remove lines 1 through 16

Re-number accordingly