

1999 SENATE JUDICIARY

SCR 4035

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR4035

Senate Judiciary Committee

Conference Committee

Hearing Date February 15, 1999

Tape Number	Side A	Side B	Meter #
1	x		5640 - end
1		x	0 - 1382
Committee Clerk Signature <i>Jackie Tollman</i>			

Minutes:

SCR4035 is to study the substance and procedure of statutory agricultural liens.

SENATOR STENEHJEM opened the hearing on SCR4035 at 10:00 A.M.

All were present.

SENATOR THOMPSON, District 12, testified in support of SCR4035. I have been concerned with this process we use with the agricultural supply liens. With this study, we can get everyone together and work through the problems

SENATOR ROBINSON, District 24, testified in support of SCR4035.

JOSEPH O'BRIAN testified in support of SCR4035. Testimony attached.

DWAYNE STREYLE, Independent Community Banks, testified in support of SCR4035.

Testimony attached



Page 2  
Senate Judiciary Committee  
Bill/Resolution Number SCR4035  
Hearing Date February 15, 1999

JOEL GILBERTSON, Independent Community Banks, testified in support of SCR4035.

Testimony attached.

DAN KUNTZ, Grain Dealers Association, testified in opposition to SCR4035. We don't think the present process has a problem. We are concerned that this may change the priority of the lien.

SENATOR STENEHJEM CLOSED the hearing on SCR4035.

SENATOR TRAYNOR made a motion for DO PASS ON THE CONSENT CALENDAR,

SENATOR NELSON seconded. Motion carried. 6 - 0 - 0

SENATOR BERCIER will carry the bill.

Date: 2-15-99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SCR 4035

Senate Judiciary Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass on Consent Calendar

Motion Made By Traynor Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Bercier

REPORT OF STANDING COMMITTEE (410)  
February 15, 1999 1:57 p.m.

Module No: SR-30-2993  
Carrier: Bercier  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SCR 4035: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SCR 4035 was placed on the Tenth order on the calendar.**

1999 HOUSE AGRICULTURE

SCR 4035

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4035

House Agriculture Committee

Conference Committee

Hearing Date 3-12-99

Tape Number	Side A	Side B	Meter #
One SCR 4035		x	30.8 to 44.0
Two SCR 4035	x		0.2 to 2.8
Committee Clerk Signature <i>Olivia Hanson</i>			

Minutes:

Summary of Resolution: Directs the Leg Council to study the substance and procedure for Statue Agriculture liens.

Sen Vern Thompson: This resolution is to basically look into Agriculture liens. Putting this into context with the testimony presented by Scott Stofferan, St ASCS, you understand why I wanted to introduce this study resolution. My concern with the future of Agriculture in the State of ND and the credit crisis that we can have relating to that Industry. Possibly that curve that farmers and ranchers in the State of ND are in regarding agr credit. Theirs a lot of confusion out there today.

Rep Johnson and I and I can't remember if the Chairman was with us on that bill last session whereby we made some positive progress towards these Agr liens. It's probably not doing everything we wanted it to do but it had some positive results.

Joe Gilbertson: Ex V Pres of the Independent Community Bankers Assoc. (Testimony attached)

What this resolution is attempting to solve is what happens when creditors are standing in line waiting when a bankruptcy is filed who gets stand at the front of the line and who's second and who's third. There's only enough assets to divide up and some get paid and some don't. That's what this relates too. The important point I want to make this morning that this is important for the availability of Agriculture Credit. Its important for the farmers because all of these liens play a roll in the availability of loans for farmers and ranchers. Lets take a look at it and at what other states are doing.

Jim Slosser: Independent Bankers Assoc. I've done a little research after this bill was introduced and over the last five sessions we've had over 20 bills introduced dealing with this matter in the state, last session there was 6, Joe referred the fact one of the bills was made out in the hallway. One of the bills this session was to clarify one of the provisions that was added in that bill in order for Agr producers to waive the right to not have a termination paper filed each year. There is some confusion out there.

Charle McKay: Representing Farm Credit Services, in support of Study.

Clyde Krebs: Director ND Grain Dealers Assoc. In opposition to the study resolution, (testimony attached) We think the system is working as good as can be expected considering the times.

Rep Renner: Do you or the ND Grain Dealers know how much credit is supplied to ND Farmers with these Agr Liens?

Clyde Krebs: I guess I'm not the one to ask that question. Maybe the bankers can give you an answer.

Closed

Page 3  
House Agriculture Committee  
Bill/Resolution Number Scr 4035  
Hearing Date 3-12-99

Motion by Rep Berg for a DO PASS second by Rep Renner

Vote total    YES    10    NO    2    ABSENT    3

Carrier Rep Renner

Date: 3-12-99  
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 4035

House AGRICULTURE Committee \_\_\_\_\_

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass ~~Renner~~

Motion Made By Berg Second By Renner

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chaiman	✓		Bob Stefonowicz	✓	
Dennis E. Johnson, Vice Chm	✓				
Thomas T. Brusegaard	✓				
Earl Rennerfeldt	✓				
Chet Pollert	.				
Dennis J. Renner	✓				
Michael D. Brandenburg		✓			
Gil Herbel	✓				
Rick Berg	✓				
Myron Koppang	.				
John M. Warner	.	✓			
Rod Froelich	✓				
Robert E. Nowatzki	✓				
Phillip Mueller					

Total (Yes) 10 No 2

Absent 3

Floor Assignment Renner



1999 TESTIMONY  
SCR 4035

Mr. Chairman and Committee members

My name is Joseph J. Davis of 11307-35R-S.E.  
Valley City, N. Dak.

a former tenant and his legal people have  
filed liens against myself and our property.  
I and my wife informed him in April of 1997, we  
expected the land rent paid on time namely  
April 1, 1997 at the rate of 1000<sup>00</sup> per quarter, and  
the balance on Oct 1, 1997. He had dragged out  
paying 1996 rent to almost April of 1997.

His comment, "no problem", but he stalled off  
paying his April 1st payment until Oct 3rd, 1997.  
Before Oct 1st of 1997 he mentioned the fertilizer,  
and I told not to apply any fert. as the first  
thing for him, was to pay the rent, because  
it was agreed when he first started to farm  
the land, now - payment of rent and he was <sup>done</sup>.  
Unknown to us, he apparently asked <sup>some</sup> Harvest  
Stores, to apply ~~fertilizer~~ fertilizer on the land  
owned by us and my brother Charles, as  
well as the other lands he farmed belonging  
to his former wife, aunts, parents etc.

On Jan 1st 1998 he has a liens against  
my brother and us for fertilizer that has not  
been paid for, as well as chemical, that if he  
put any on, I doubt because the wet areas  
he could not seed, the weeds grew uncontrolled.

and further more it was his duty as operator to control weeds & grasses.

This fertilizer, I have found out did not have to be paid for until April 1st of 1998.

When we visited Cenex Harvest States at Soubon, N. Dak., attempting to find out what had gone on, the manager, referred to other employees, who promised to send maps, some arrived, but others did not, until mid summer of 98 one showed up for N.W. 1/4 sec 22-139-61

claiming fertilizer had been spread on it, the crop indicated, that little if any fertilizer had been used. on Jan 19, 1999 another map shows up claiming they had spread fertilizer of S.W. 30 acres of S.E. 1/4-140-59.

My new tenant and I had determined in the early spring of 1998 no fertilizer had been applied on that ground, so he applied fertilizer on it. I was over in that area in late Oct 1997 and did not see any evidence of fertilizer, having been applied in that area.

Cenex Harvest States placed a lien thru the Secretary of States office a Bismarck, as we discovered after letters arrived from one Randy Nelson from Cenex Harvest States of St. Paul attempting to assign us Lynn Joits so called open account, while he had

not paid.

Randy Nelson called here at the house a few times, attempting to order me to write them a check for Lynn's open account, as you have Lynn's fact and Cenex Harvest States attempting to swindle money out of us, there is no proof any product was applied, and if it was, it was unwanted, and not ordered by us, and should be considered damaging.

Lynn's fact then filed out mortgages a lien against our new tenant, tying up his chances of getting a loan or selling his product.

According to Cenex Harvest States secretary, our new tenant paid Lynn's fact open account, \$19,190.11 which is far above the cost of any product placed on Obrien land.

The placing of these liens, has shredded us and our titles forever.

To correct this damage need to be assessed against these parties, Lynn's fact and Cenex Harvest States.

Then any chemical or fertilizer needs to have the written consent of the owner, and the party that orders products, will be the party that pays for the product.

Cenex Harvest States contends they have the right to enter our property, because we were not there, to order them off.

The person who signed as notary on Lynn  
Fait's lease, was his attorney for his  
divorce proceedings in 96 and 1997.

We turned the matter over to Mr. John  
Gosbee, attorney at Mendon, and he soon  
discovered that Lynn Fait had moved to  
Ralph Hooper for attorney.

Mr. Gosbee was a disappointment, and  
pulled out June 2nd 1998, wanting another  
\$2000<sup>00</sup> in his trust fund.

With this I will close, and ask if there  
are any questions - Thank you.

**COPY**



LIEN AMENDMENT/ASSIGNMENT/TERMINATION ASL  
NORTH DAKOTA SECRETARY OF STATE/REGISTERS OF DEEDS  
SFN 17780 (5-95)

**42609**

FILE NUMBER: 98-000791612  
DATE: 07/23/1998  
TIME: 04.13.53.6 PM  
FILING OFFICE: BARNES  
OFFICER: LAVONNE E. ZINCK

PLEASE TYPE. Please read directions on back before completing.

A. Filing Fee Instructions  Check Enclosed

OR  Please Bill Customer Billing Number:

B. File In:  Statutory Agricultural Lien Index  Statutory Agricultural Lien Note

C. Name and Address of Person/Entity Furnished Goods or Services

Joseph J. O'Brien  
11307 35 R St. SE  
Valley City, ND 58072  
SSN/TIN: 501-26-0149

FILE NUMBER: 98-000791612  
NUMBER OF PAGES: 1  
O'BRIEN, JOSEPH 501260149 SL/SLN  
ORIG. FILE NUMBER: 98-000741121  
FEE: 5.00  
PAID: 5.00  
BALANCE: .00

D. Name and Address of Lien Holder

Lynn Tait  
11449 35 R St. SE  
Valley City, ND 58072

SSN/TIN: 501-74-2231

Telephone Number: (701) 845-1704

E. ASSOCIATED STATEMENT

Lynn Tait hereby certifies that the lien filed on the 9th day of January, 1998 and bearing the document number 98-000741121 is

amended  assigned  terminated.

F. AMENDMENT ASSIGNMENT

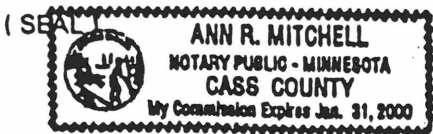
Debtor Name Changed To <u>Colin Conley, a/k/a Cole Conley</u>	From (Lienholder)
Debtor Address Changed To <u>301 8th St. SW Jamestown, ND 58401</u>	
Debtor SSN/TIN Changed To <u>503-64-0385</u>	To (New Lienholder)
Name of Lienholder Changed To	
Address of Lienholder Changed To <u>508 South Main Sauk Centre, MN 56378</u>	

G. Dated this 22 day of July, 19 98.

Lynn Tait  
Signature

\_\_\_\_\_  
Type Name, Company and Title

Subscribed and sworn to before me on this 22<sup>nd</sup> day of July, 1998.



Ann R. Mitchell  
Notary Public

My commission expires \_\_\_\_\_

# COPY



LIEN AMENDMENT/ASSIGNMENT/TERMINATION- ASL  
NORTH DAKOTA SECRETARY OF STATE/REGISTERS OF DEEDS  
SFN 17780 (5-95)

42610

FILE NUMBER: 98-000791617  
DATE: 07/23/1998  
TIME: 04.31.57.5 PM  
FILING OFFICE: BARNES  
OFFICER: LAVONNE E. ZINCK

PLEASE TYPE. Please read directions on back before completing.

A. Filing Fee Instructions  Check Enclosed

OR  Please Bill Customer Billing Number:

B. File In:  Statutory Agricultural Lien Index  Statutory Agricultural Lien Note

C. Name and Address of Person/Entity Furnished Goods or Services  
Charles O'Brien  
3814 114 R Ave. SE  
Valley City, ND 58072  
SSN/TIN: 502-40-1247

FILE NUMBER: 98-000791617  
NUMBER OF PAGES: 1  
O'BRIEN, CHARLE 502401247 SL/SLN  
ORIG. FILE NUMBER: 98-000741111  
FEE: 5.00  
PAID: 5.00  
BALANCE: .00

D. Name and Address of Lien Holder  
Lynn Tait  
11449 35 R St. SE  
Valley City, ND 58072  
SSN/TIN: 501-74-2231 Telephone Number: (701) 845-1704

E. ASSOCIATED STATEMENT  
Lynn Tait hereby certifies that the lien filed on the 9th day of  
January, 1998 and bearing the document number 98-000741111 is  
 amended  assigned  terminated.

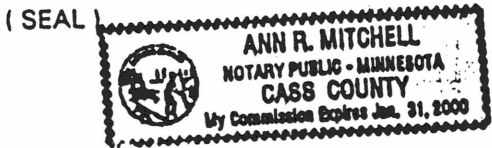
F. AMENDMENT	ASSIGNMENT
Debtor Name Changed To Colin Conley, a/k/a Cole Conley	From (Lienholder)
Debtor Address Changed To 301 8th St. SW Jamestown, ND 58401	
Debtor SSN/TIN Changed To 503-64-0385	To (New Lienholder)
Name of Lienholder Changed To	
Address of Lienholder Changed To 508 South Main Sauk Centre, MN 56378	

G. Dated this 22 day of July, 1998.

*Lynn Tait*  
Signature

\_\_\_\_\_  
Type Name, Company and Title

Subscribed and sworn to before me on this 22 day of July, 1998.



*Ann R. Mitchell*  
Notary Public

My commission expires \_\_\_\_\_

**Cenex Harvest States**  
*we grow value*

August 20, 1998

**CERTIFIED MAIL**

Return Receipt Number P966 595 938

H and K Scarage  
9725 33rd St. SE  
Spiritwood, ND 58481

Dear Sir/Madam,

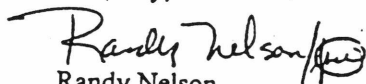
This letter is intended to inform you of Cenex Harvest States interests in grain produced on the land currently being farmed by Mr. Colin Conley. The lien originated from product purchased by Mr. Lynn Tait.

Because of our perfected Agricultural Input Lien on the crops being produced on a portion of Mr. Conley farmland, we request that Cenex Harvest States name be added to all future grain checks written to this individual.

You may reach me at 1-800-535-4470 with any questions on the above information.

Thank you for your cooperation.

Sincerely,

  
Randy Nelson  
Credit Manager  
Farm Marketing & Supply



Rec'd Jan 19, 1999

TK # 1390

**ARVEST STATES**



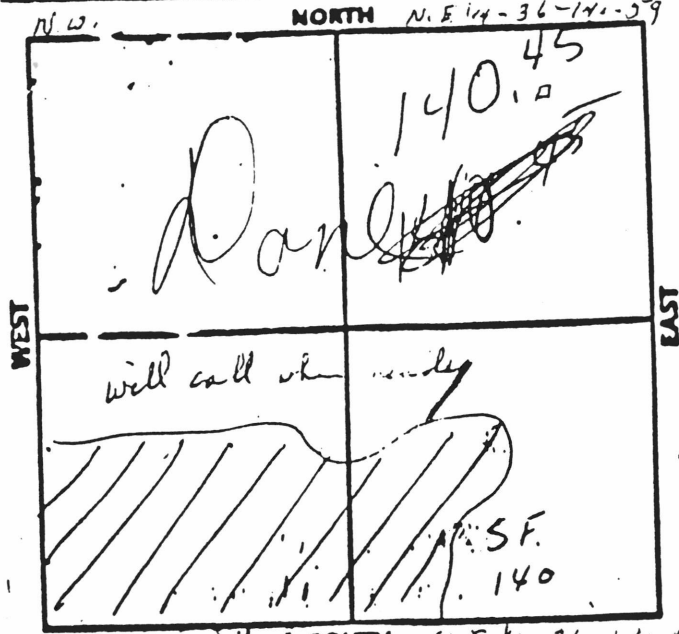
COOPERATIVES  
P.O. BOX 36  
NBORN, ND 58480

**Chemical Application Record**

**Location of Field**

Draw location of field in section and also the adjoining fields and name crops in them, including those in adjoining section. Draw location of trees, buildings and garden sites. Names of trees.

County: Burns  
Township: Bobart Section Number: 36  
SW 1/4 = SE 1/4



Date 10-26-97  
Sold To Lynn Lent  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

Previous Crop \_\_\_\_\_  
Present Condition \_\_\_\_\_  
Fertilizer To Be Used Urea  
Rate / Acre 150 #  
Total Fertilizer Used 21067.5 #

Chemical To Be Used \_\_\_\_\_  
Rate Per Acre \_\_\_\_\_  
Total Chemical Used \_\_\_\_\_

Remarks 140.45  
acres done

**NOTICE**

This custom applicator guarantees adequate coverage of that agreed upon by both buyer and himself. That Chemical be applied according to the recommendations of the manufacturer, state and local agencies, or specifically in writing by the buyer, and that he is a qualified knowledgeable expert to make this recommendation.

Signed \_\_\_\_\_ Cropowner  
Signed \_\_\_\_\_ Salesman

**REPORT OF SPRAYER OPERATOR**

Date Sprayer: 10-26-97  
Time Sprayer: 2:30 PM  
Wind Direction From: N, E, W, Ne, Nw, Se, Sw  
(Circle One)  
Wind Velocity: 0.5 Mph.  
Temperature: \_\_\_\_\_ °F  
REMARKS: \_\_\_\_\_

License No. \_\_\_\_\_  
Operator \_\_\_\_\_



AGRICULTURAL SUPPLIER'S LIEN - ASL-2  
 NORTH DAKOTA SECRETARY OF STATE/REGISTERS OF DEEDS  
 SFN 17899 (10-91)  
**42051**

FILE NUMBER: 98-000741111  
 DATE: 01/09/1998  
 TIME: 04.36.49.4 PM  
 FILING OFFICE: BARNES  
 OFFICER: LAVONNE E. ZINCK

*Page 5*

lease Type. Please read directions on back before completing.

A. Filing Fee Instructions  Check Enclosed

OR  Please Bill Customer Billing Number:

FILE NUMBER: 98-000741111  
 NUMBER OF PAGES: 1  
 O'BRIEN, CHARLE 502401247 SL/SLN

B. File In:  Statutory Agricultural Lien Index  Statutory Agricultural Lien Notice

C. Name and Address of Person/Company Furnished Supplies (Purchaser)

Charles O'Brien  
 3814 114 R Ave SE  
 Valley City, ND 58072  
 SSN/TIN: 502-40-1247

FEE: 10.00  
 PAID: 10.00  
 BALANCE: .00

D. Name and Address of Person/Company Supplying Goods (Supplier)

Lynn Tait  
 17449 35 R St SE  
 Valley City, ND 58072  
 SSN/TIN: Telephone Number: (701) 845-1704

E. STATEMENT OF LIEN

On January 1, 1998 Supplier made a credit sale to Purchaser of the following agricultural supplies:  
 (Date) (Year)  
 43.5 gallons of Fallow Master herbicide spray + application  
 52,665 pounds of 46-0-0 (Urea) fertilizer + application

The amount of \$ 12,472, which is the amount owing on the purchase of the supplies for which a lien is claimed under North Dakota Century Code Chapter 35-31 upon the following and their proceeds:

Crops	Products	Livestock
ALL CROPS		

G. Located: (Insert Legal Description)

NW 1/4 16-139-61  
 NE 1/4 16-139-61  
 SW 1/4 16-139-61  
 All in Barnes County, ND

H. Dated this 9<sup>th</sup> day of January, 1998.

Lynn Tait  
 Signature  
 Lynn Tait  
 Type Name, Company and Title

Subscribed and sworn to before me on this 9<sup>th</sup> day of January, 1998.

(SEAL)

Bradley A. Cruik  
 Notary Public  
 Barnes County, ND  
 My Commission Expires:

Bradley A. Cruik  
 Notary Public  
 My commission expires 06/23/00



AGRICULTURAL SUPPLIER'S LIEN - ASL-2  
NORTH DAKOTA SECRETARY OF STATE/REGISTERS OF DEEDS  
SFN 17889 (10-91)

42052

FILE NUMBER: 98-000741121  
DATE: 01/09/1998  
TIME: 04.42.50.4 PM  
FILING OFFICE: BARNES  
OFFICER: LAVONNE E. ZINCK

lease Type. Please read directions on back before completing.

A. Filing Fee Instructions  Check Enclosed

OR  Please Bill Customer Billing Number:

B. File In:  Statutory Agricultural Lien Index  Statutory Agricultural Lien Notice

FILE NUMBER: 98-000741121  
NUMBER OF PAGES: 1  
O'BRIEN, JOSEPH 501260149 SL/SLN

C. Name and Address of Person/Company Furnished Supplies (Purchaser)

Joseph J. O'Brien  
11307 35 R St SE  
Valley City, ND 58072  
SSN/TIN: 501-26-0149

FEE: 10.00  
PAID: 10.00  
BALANCE: .00

D. Name and Address of Person/Company Supplying Goods (Supplier)

Lynn Tait  
11449 35 R St SE  
Valley City, ND 58072

SSN/TIN: Telephone Number: (701) 845-1704

E. STATEMENT OF LIEN

On January 1, 1998 Supplier made a credit sale to Purchaser of the following agricultural supplies:

173.66 gallons of Fallow Master herbicide spray + application  
112,005 pounds of 46-0-0 (Urea) fertilizer + application

In the amount of \$ 25,565.10, which is the amount owing on the purchase of the supplies for which a lien is claimed under North Dakota Century Code Chapter 35-31 upon the following and their proceeds:

F.	Crops	Products	Livestock
	ALL CROPS		

G. Located: (Insert Legal Description)

NW 1/4 36-140-59 SE 1/4 16-139-61  
SE 1/4 36-140-59  
NW 1/4 22-139-61  
NW 1/4 16-139-61  
NW 1/4 15-139-61

All in Barnes County, ND

H. Dated this 9th day of January, 1998.

Lynn Tait  
Signature  
Lynn Tait  
Type Name, Company and Title

Subscribed and sworn to before me on this 9th day of January, 1998.

(SEAL)

Bradley A. Cruff  
Notary Public  
Barnes County, ND  
My Commission Expires: 06/23/00

Bradley A. Cruff  
Notary Public  
My commission expires 06/23/00

**SCR 4035**  
**Testimony by Joel Gilbertson**  
**Independent Community Banks of North Dakota**

Mr. Chairman, members of the Judiciary Committee, I am Joel Gilbertson. I am Executive Vice President and General Counsel for the Independent Community Banks of North Dakota. ICBND is a state-wide association of 95 banks in communities throughout the state.

A large number of our member banks devote a large amount of their time to ag lending. It is the area of ag lending that is addressed by SCR 4035. More specifically, this study resolution proposes an interim study in the area of statutory agricultural liens in North Dakota. Most of these are embodied in Title 35 of the North Dakota Century Code.

When a creditor has a "lien," it simply means that creditor can get in line at the courthouse when a debtor's limited assets are distributed because of bankruptcy or other foreclosure. Typically, your place in line is determined by the time you secured your lien. The saying is "first in time, first in line." That is not the problem with ag liens under our statutes.

The primary problem with ag liens under our statutes is that they are accorded a "superpriority" status. For example, if a feed supplier sells some feed to a farmer, that supplier can file an agricultural supplier's lien under Chapter 35-30, NDCC. Once that is done, the supplier goes to the front of the line -- the supplier goes in front of banker or credit union who provided the operating loan for the farmer. The operating loan, of course, was likely made without knowledge of an impending ag supplier's lien.

Despite first impressions, the person in this scenario who can lose by this setup is not the banker, it is the farmer. The present operation of this "super lien" system can operate more often to the detriment of the debtor. Unfortunately, this is becoming more and more true as

we have more and more problems in our ag areas around the state. What is occurring is that more often farmers are on the envelope, so to speak, of securing further operating credit. After they have purchased more feed, fertilizer and other supplies, they determine they need further operating loans from their community banker. The community banker, knowing that the new ag liens are out there, also knows that the bank will be further back in line with any more operating credit. The farmer may fail to get a further operating loan because the supplier's liens have lessened the value of any security from the farmer.

You will note that the resolution favors a study of the substance of these liens, which I have briefly discussed. It also favors a study of the procedure of the liens. This is another area of problems -- particularly administering the ag processor's and ag supplier's liens. The language in the statutes is often confusing. For example, we now have two decisions from two different district court judges on exactly the same question interpreting the same statute. It was an area we thought was clarified two years ago. Two years ago, numerous hearings in both the Senate and House Ag Committees attempted to get into this complex area. Attesting to the complexity and importance, co-sponsors of SCR 4035 include the Chairmen of both the Senate and House Agriculture Committees, as well as others who have worked in resolving problems with ag liens..

North Dakota stands alone in the midwest with its present form of superpriority ag liens. It is an area that is complex and an area that is important for agriculture. It is an area that is ripe for study by an interim committee.

We encourage your DO PASS recommendation for Senate Concurrent Resolution 4035.

Thank you.

February 15, 1999

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

Senator Wayne Stenehjem, Chairman  
Senator Darlene Watne, Vice Chairman  
Senator Jack Traynor  
Senator Stan Lyson  
Senator Berceir

Mister chairman and members of the committee:

Good morning!

My name is DeWayne Streyle. I am the President & CEO of the United Community Bank of ND and President elect of the Independent Community Banks of North Dakota.

I'm here to speak to you about Senate Concurrent Resolution No. 4035.

First, I would like to give you a brief background of our bank's commitment to agriculture. The United Community Bank has 5 locations including Leeds, Drake, Bottineau, Burlington, and Minot. With the exceptions of Minot and Burlington, our remaining banks lend primarily to farmers. Our loan to deposit ratio, over the past three years, has peaked at 83% in 1996, 85% in 1997, and 87% in 1998, with over 40% or \$27,000,000 dollars borrowed annually for

agricultural purposes. We indeed have a vast commitment to agriculture.

However, we have also experienced the sting and problems presented to lenders by agricultural suppliers liens.

Agricultural supplier's liens are a super priority lien on the future livestock, milk, or grain income of our farm borrowers. Before our bank borrows money for crop or livestock production purposes, we complete a cash flow projection with the farmer, and file a proper crop mortgage and/or livestock mortgage together with a central notice filing. The UCC filing provides the required notice to the public, including ag suppliers and processors, that our bank has a secured position in the farm products. Our production loans provide the farmer with funds for seed, fertilizer, chemicals, feed, repairs, fuel, other budgeted farm expense and even for living expense.

Under title 35-30 and 35-31 of the North Dakota Century Code, businesses may provide agricultural supplies and services to our farm borrower, and receive a super priority payment position, by way of an agricultural processors and supplier's lien. Because of the inability of our bank to insure a priority position for the repayment of money borrowed for agricultural production loans, we have begun seeking only the strongest agricultural borrower. And, we are not alone. Banks, FCS, and credit unions are all aggressively competing for the lowest risk farm customer. The weaker farm borrowers are having an increasingly difficult

time finding production loans due to the current commodity price crisis and exasperated by the past and current usage of agricultural liens.

There has been an argument made in the past that some farmer's inability to obtain credit has necessitated ag suppliers and processor's to provide credit under the super priority protection of ag liens. However, I am here today to speak from personal experience that ag liens have been and are now a hindrance to the marginal and high risk ag producer in obtaining production loans. Ag liens have very little affect on the ability of the top 25% of farm operations to obtain credit. But, they have a very definate affect on the middle 50% and drastic affect on the bottom 25%. These are farm operations whose cash flows do not allow any margin for additional lender risk. An agricultural supplier's or processor's lien is filed without any prior or subsequent notification to the farmer or secured lender. Even a repairman's lien requires prior notification to the record holder of the mortgage or financing statement by registered or certified mail.

I would ask that before we deeply debate the merits of agricultural processor's and supplier's liens, the Senate Judiciary Committee recommend the approval of the Legislative Council to study the substance and procedure of agricultural liens in North Dakota through the Senate Concurrent Resolution No 4035. It is my understanding that the State of Minnesota's agricultural suppliers and processors liens do not take a super priority over chattel mortgages but are treated as



equals, first-in-place, first-in-time. Neither businesses in South Dakota nor Montana have the expansive super priority agricultural liens available in North Dakota.

I sincerely believe that we are all looking forward to the future, with a deep commitment to the survival of agriculture in our state. The availability of credit to farmers will continue to be an interracial part of that commitment. Only through an interim study, will we be able to clearly evaluate North Dakota's agricultural lien laws and determine their impact on our farmer's ability to obtain reliable sources of funds for agricultural production. And, the study would thereby evaluate and address the protection required by lenders and requested by agricultural suppliers and processors.

I respectfully request your support for Senate Concurrent Resolution Number 4035.

**SCR 4035**  
**Testimony by Joel Gilbertson**  
**Independent Community Banks of North Dakota**

Mr. Chairman, members of the House Agriculture Committee, I am Joel Gilbertson. I am Executive Vice President and General Counsel for the Independent Community Banks of North Dakota. ICBND is a state-wide association of 95 banks in communities throughout the state.

A large number of our member banks devote a large amount of their time to ag lending. It is the area of ag lending that is addressed by SCR 4035. More specifically, this study resolution proposes an interim study in the area of statutory agricultural liens in North Dakota. Most of these are embodied in Title 35 of the North Dakota Century Code.

When a creditor has a "lien," it simply means that creditor can get in line at the courthouse when a debtor's limited assets are distributed because of bankruptcy or other foreclosure. Typically, your place in line is determined by the time you secured your lien. The saying is "first in time, first in line." That is not the problem with ag liens under our statutes.

The primary problem with ag liens under our statutes is that they are accorded a "superpriority" status. For example, if a feed supplier sells some feed to a farmer, that supplier can file an agricultural supplier's lien under Chapter 35-30, NDCC. Once that is done, the supplier goes to the front of the line -- the supplier goes in front of banker or credit union who provided the operating loan for the farmer. The operating loan, of course, was likely made without knowledge of an impending ag supplier's lien.

Despite first impressions, the person in this scenario who can lose by this setup is not the banker, it is the farmer. The present operation of this "super lien" system can operate more often to the detriment of the debtor. Unfortunately, this is becoming more and more true as we

have more and more problems in our ag areas around the state. What is occurring is that more often farmers are on the envelope, so to speak, of securing further operating credit. After they have purchased more feed, fertilizer and other supplies, they determine they need further operating loans from their community banker. The community banker, knowing that the new ag liens are out there, also knows that the bank will be further back in line with any more operating credit. The farmer may fail to get a further operating loan because the supplier's liens have lessened the value of any security from the farmer.

You will note that the resolution favors a study of the substance of these liens, which I have briefly discussed. It also favors a study of the procedure of the liens. This is another area of problems -- particularly administering the ag processor's and ag supplier's liens. The language in the statutes is often confusing. For example, we now have two decisions from two different district court judges on exactly the same question interpreting the same statute. It was an area we thought was clarified two years ago. Two years ago, numerous hearings in both the Senate and House Ag Committees attempted to get into this complex area. Attesting to the complexity and importance, co-sponsors of SCR 4035 include the Chairmen of both the Senate and House Agriculture Committees, as well as others who have worked in resolving problems with ag liens..

North Dakota stands alone in the midwest with its present form of superpriority ag liens. It is an area that is complex and an area that is important for agriculture. It is an area that is ripe for study by an interim committee.

The availability of ag credit to farmers is as high on the list of important issues as you can get. We need to study what is best to enhance the credit availability to farmers -- ag liens play an important role in finding answers to that problem. We encourage your DO PASS recommendation for Senate Concurrent Resolution 4035. Thank you.

## TESTIMONY ON SCR 4035

House Agricultural Committee-March 12, 1999 10:00 AM

Mr. Chairman, members of the committee, my name is Clyde Krebs, I am on the Board of Directors of the North Dakota Grain Dealers Association, and am the Vice-Chairman of the Legislative Committee. I own and operate a grain elevator at Glen Ullin, North Dakota. The North Dakota Grain Dealers Association is an 88 year old-voluntary membership industry trade association to which nearly all our state's grain elevators belong. We are here to oppose this resolution because it does not present sufficient justification to conduct a study. At a time of state budget restraints there are more important causes on which to spend taxpayer dollars.

The 1997 Legislative Session actually simplified the process for ag suppliers, and for lenders filing UCC-1 forms, by removing the requirement for legal descriptions. Ag suppliers taking a lien use a one-page form. Lenders usually require more complex paperwork.

Line 6 declares that present statutes require a procedure that is complex, and for that reason, in need of review. We do not agree. It is our members and other fertilizer and ag suppliers who file these agricultural liens. We do not believe the procedure to be overly-complex. What then is the reason for the study?

Statutory liens are the only method of securing payment on those all-important supplies like seed, fertilizers, chemicals and the like. With their lien, ag suppliers can attach to only the value of their supplies and application costs, if any, and only for the crop for which the supplies were furnished. On the other hand, lenders can attach a much broader range of collateral.

We believe the system to be working as well as can be expected. We therefore suggest a Do Not Pass on SCR 4035.

If a study is done, the North Dakota Grain Dealers Association will surely want to participate.