

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER
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DESCRIPTION

1330

2001 HOUSE JUDICIARY

HB 1330

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330

House Judiciary Committee

Conference Committee

Hearing Date 01-29-01

Tape Number	Side A	Side B	Meter #
TAPE I	X		1187 to 6257
TAPE I		X	01 to 6258
TAPE II	X		01 to 6261
TAPE II		X	01 to 2400
Committee Clerk Signature <i>Joan Deers</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1330. Relating to priority of agister's lien and relating to priority of agricultural processor's and agricultural supplier's lien.

Rep Klemin: District 47 introduced HB 1330 as cosponsor of the bill. We passed out a major bill dealing with secured transaction. Part of article nine, sets out a section for obtaining security interests in collateral by lenders, also rules for priority for determining which lien has priority in the event of conflicting security interests in the same collateral. North Dakota has some non-uniform provisions also that are not found in other states, those deal with certain types of agricultural liens, which is what HB 1330 is about. In North Dakota law we have established the priority of agricultural liens. These take priority over all other liens, included those included in the under the uniform commercial code. He then goes on to explain the bill.

Vice Chr Kretschmar: If this bill becomes law, the liens would have priority in order in which they were filed?

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Rep Klemm: Yes, that is my understanding.

Rep Mahoney: The super priority on the collateral are supplies, much as a mechanics lien, why should that be taken out of the law?

Rep Klemm: There are already provisions in the Uniform Commercial Code, for purchase money security interests, which would have priority over other existing liens. The problem arises here as to certain priority over unharvested crops.

Rep Mahoney: That is what the lien was on, wasn't it?

Rep Klemm: This lien is on everything.

Rep Mahoney: What do you mean everything?

Rep Klemm: Everything that the proceeds, cash, could apply to. Went on to say he had amendments to the bill to be passed out at a later time.

Rep Mike Brandenburg: District 26 from LaMoure. I am here today to speak in opposition to this bill. His opposition had to do with co-ops. The coop had no way of knowing how a person stands with their financial ability. What this bill does, as a board member I have to recommend that we go to a no credit policy. What is the guarantee that we will be paid for our product is this bill passes.

Rep Dennis Johnson: District 12, Eddie, Benson Counties. What I am here to address today is the area of custom harvesting. He wanted the bill to receive a DO NOT PASS, leave the bill as it is.

Rep Mahoney: The liens are only those that apply to persons attaching the lien.

Rep Johnson: That is correct.

Rep Renner: District 31, I signed on this bill because it was brought to my attention that there are problems in the lending committee. It was undermining security position by providing funds. 1

think that local suppliers need some protection and I know that there are some amendments coming that would address that. I urge the committee to review the bill and come up with a compromise.

Rep Mahoney: Supplier can supply product to the farmer, on credit and have a lien. By eliminating that lien is that going to eliminate a source of credit for the farmer.

Rep Renner: Maybe it would make us make everyone to operate a little smarter. We can't expect dealers to carry us, maybe we can have the priority capped at a smaller figure.

Joel Gilbertson: Executive Vice President of the Independent Community Banks of North Dakota. (see attached testimony)

Rep Pollert: District 29, I am here to oppose HIB 1330. This bill is anti small business. I'm a grain elevator operator. This will take away the tool that guarantees our funds. Banks loan 80% to a producer, now are they going to loan more money. Are the banks going to let us go in front of them. I see this bill as not being supportive to small business.

Rep Mahoney: Have you seen the amendments?

Rep Pollert: Yes.

Rep Mahoney: Do you approve those amendments.

Rep Pollert: No..

Rep Grande: I would clarification of the amendments, are you looking at removing the repealer of section 35-35-03?

Joel Gilbertson: Yes.

Rep Grande: Are you also taking in the exception of petroleum products.

Joel Gilbertson: Yes.

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Rep Grande: May I ask why?

Joel Gilbertson: The petroleum product part is not a problem.

Vice Chr Kretschmar: What are banks and other financial institutions doing today to operate under current law?

Joel Gilbertson: We have some bankers here that can address that in more detail.

Rep Delmore: Don't the amendments give the bankers total control? Aren't there circumstances when farmers need extra credit in addition to what the banks will give?

Joel Gilbertson: The lien is going to be there no matter what, this bill will only effect the super priority of the lien.

Rep Delmore: Aren't there instances that in addition to the lien, the bank give a farmer, the person can still go to a supplier and get additional funds that are not covered in the lien.

Joel Gilbertson: This won't effect that, the farmer can still do that.

Rep Mahoney: Priority is everything with liens.

Joel Gilbertson: It can be.

Rep Fairfield: Would you speak a little bit about the history of the prior lien, how long has it been in effect and why the change.

Joel Gilbertson: It was established in 1987 as a super lien in its present form. This is not a problem that has not come up just recently. The time is now to address this. There are very few states that have the super priority status.

Rep Fairfield: Is part of the reason, the increasing burden on the farm economy?

Joel Gilbertson: There are bankers here that can better respond to that.

Chr DeKrey: Could that 10 days be shortened?

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Joel Gilbertson: We can look at that and shorten it.

Charles McCay: Farm Credit Service (see attached testimony)

TAPE 1 SIDE B

Charles McCay testimony continues.

Rep Fairfield: Just prior to your testimony, it was stated that lenders are ok with priority liens, because if the farmer is turned down, the farmer would go to another lender. But you said the farmer has been to three or four lenders and been turned down. Who is in the cat bird seat here.

Charles McCay: If you have a farmer with a good business plan, the risk isn't great. He goes on to explain with several examples.

Rep Fairfield: It is becoming more prevalent to use credit as a marketing tool, would you say that is true.

Charles McCay: I can't answer that.

Greg Tschider: North Dakota Credit Union League (see testimony attached).

Chr DeKrey: I have been told that a bank is reducing the credit that they used to extend to a farmer because of the fear of the supplier lien out there, is that common with the credit unions?

Greg Tschider: Yes, over 50% of the credit unions are doing that.

Rep Grande: Do you see that if this bill is passed as amended, that lenders would proceed as they are now, or do you see them giving them fuller loans?

Greg Tschider: The loan officers will have one less concern and will be more willing to give the credit.

Chr DeKrey: Are there any questions, thank you for appearing in front of the committee.

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Orlan Panerat: Vice President of lending of the Town and Country Credit Union of Minot. It is our goal to work with the producer to keep the farmer on the farm. It is important for the producer to live within that budget. The producer must keep in line with the budget. There shouldn't be any need for the ag supplier to give the farmer a blank check.

Chr DeKrey: Are there any further questions, if not thank you for appearing.

Dale Roemmich: Union State Bank of Hazen (see attached testimony)

Rep Onstad: The central notice system is that working up to the way it was intended.

Dale Roemmich: In most cases I think it is.

Chr DeKrey: If there are no further questions, thank you for appearing before our committee.

Howard Schaan: President of First State Bank of Harvey . (see attached testimony)

Rep Delmore: when you are giving out a loan, what if the maximum is not enough for the farmer to meet his needs?

Howard Schaan: We look at a total farm plan and his ability to pay back farm loans. Loan is based on budget, we do jointly. We are looking at the total farm picture. Often we do increase the line of credit later in the year.

Rep Delmore: The bank still has the collateral to go back to pay the debt.

Howard Schaan: Yes, we have the collateral and we could foreclose but we don't want to do that. We want to keep the farmer on the land.

Rep Onstad: You see the suppliers changing their credit policies, going to a cash or 30 day only.

Howard Schaan: Yes. I did make a copy of the Ward County's supplier liens and what we are seeing is an abuse of ag suppliers system. Not by our local smaller suppliers but the bigger suppliers.



Vice Chr Kretschmar: The proposed amendments that Mr Gilbertson showed us, is there a practical difficulty with the time shortened.

Howard Schaan: I have no problem with that. I would like to see that we would be able to document that.

Vice Chr Kretschmar: As a practical matter, when you make a loan to a farmer, or grant him a line of credit in March, do you advise him, is you need more , would you let me know?

Howard Schaan: What our bank started doing when we first noticed the problem, we built in covenant into our loan documents. We reserve their line of credit or freeze it, and also demand they pay the loan in full, if we found an ag supplier lien.

Rep Klemin: The amendments purposed here are similar to a repairman's lien law. There is a dollar amount limit in the repairman's lien. Would it be workable to have a dollar limit in this bill? Would take away some of the abuse?

Howard Schaan: A dollar figure could be established, the notice requirement as it is, from a practical standpoint it would work. Without trying to figure what that number is, I think this system would work.

Rep Klemin: Could the notice and response by done by fax, if the time frame was shortened.

Howard Schaan: Yes.

Rep Maragos: As a banker do you finance seed dealers?

Howard Schaan: Yes, we do.

Rep Maragos: Would you prefer that the seed dealer would have this as it currently stands?

Howard Schaan: If I am wearing just my hat as a lender to a seed dealer, yes, but I would prefer that they would be in communication with the lender working together is a much better system.

Jim Schlosser: Vice President of the North Dakota Bankers Association (see attached testimony)

Rep Maragos: Without the suppliers lien, if the supplier gave credit, he would be 100% exposed.

Jim Schlosser: If suppliers provided credit, I don't understand.

Rep Maragos: He explains.

Jim Schlosser: The bill allows for a lien, but with not priority.

Rep Maragos: Regardless of the amount of operating loan the bank gives, the bank is never exposed beyond a certain percentage of the collateral.

Jim Schlosser: I can't respond to that, I can't say that they are never exposed.

Vice Chr Kretschmar: Who gets the priority under two of these examples.

Jim Schlosser: It is based on the time of buying.

Rep Klemin: Why can't the suppliers use existing law?

Jim Schlosser: Could use that law.

Rep Klemin: There is a procedure for those truly giving supplies and not extending a line of credit.

Rep Fairfield: One of the problems is the line of credit, I am not sure why we can't deal with that directly?

Jim Schlosser: What we are talking about is a line of credit by a supplier.

Rep Fairfield: How much of the problem would that elevate.

Jim Schlosser: We are attempting to do that now.

Rep Fairfield: The previous speaker said that we can't talk about lines of credit because we would end up in court.

Jim Schlosser: That was in reference to large companies that extend lines of credit.

Chr DeKrey: If there anyone else wishing to speak in support of HB 1330, before we move to opposition?

Steve Strege: executive Vice President of the North Dakota Grain Dealers Association  
(see attached testimony)

TAPE II SIDE A

Steve Strege written testimony continues.

Rep Klemin: Gave two examples of his point, then asked - it has been stated that currently an abuse of the ag lien provision by some parties who are using it to secure a line of credit. Would you care to respond to that.

Steve Strege: Yes, that accusation has been made and it was made four years ago. Included in the testimony was a statement from Thomas Amulndson, manager of the Farmers Co-op Elevator of Sharon ND.

Stephen Ashley: (farmer, rancher from Kidder County) (see attached testimony)

Rep Klemin: One question on your comment in your testimony about current short term financing by suppliers is usually free for 30 days. We do have a late payment charges on accounts receivable which don't start until the 31 day, up to 21% a year.

Stephen Ashley: I am saying that credit is supplied for convenience for doing business. For the farmer there is no interest until the first billing takes place.

Rep Klemin: Under North Dakota law it says that you can't charge interest. What do you charge?

Stephen Ashley: 18, I believe.

Rep Onstad: If this HB 1330 passes as amended, how do you perceive your boards going to change your credit policy?

Stephen Ashley: We would have a no credit policy, cash only.

Rep Maragos: In your testimony, you state that ag suppliers currently season long financing, if you went to cash only, how much cost savings would a farmer realize if when buying seed, he paid cash.

Stephen Ashley: I don't know if the amount of financing is in question here.

Rep Maragos: Do people who come to you in the elevator pay cash, do they get a better price than those who use credit?

Stephen Ashley: Basically not.

Richard Schlosser: Vice President of the North Dakota Farmers Union, also a farmer near Edgely ND. As many producers, we all work with the ag lenders, the ag suppliers and the grain dealers in our community. We work with them to put the crops in, in a timely manner and to arrange financing. We need to maintain some fairness. We need the option to be able to get an ag supplier credit.

Chairman DeKrey: Have you looked at the amendments?

Richard Schlosser: I just saw them today, the concern of the supplier deem this to be an unnecessary burden to them, they may go to a cash only basis.

Rep Maragos: Buying seed, paying cash or borrowing the money, which would you rather do.

Richard Schlosser: I would have to weigh those options and see what would be in my best interest.

Rep Maragos: It would not make sense to me, what would be the advantage of paying cash if you could borrow it and put it in the bank and make some interest on it. I am pleased to hear that you had the opportunity to make a decision that was in your financial best interest.

