

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

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 *Jane Diers*

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 Klemin: 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 Klemin: 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 Klemin: This lien is on everything.

Rep Mahoney: What do you mean everything?

Rep Klemin: 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 Brandenberg: 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 if 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. I

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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 HB 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 Pancrat: 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.

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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.

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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.

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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 and 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.

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Richard Schlosser: I guess I would weight those. At this time of year we are still looking at four to five per cent discounts.

Rep Delmore: Would there be a time because of cash flow, that you would need a length of time to do the opposite.

Richard Schlosser: I have done that in the past.

Rep Klemin: If you have credit established and you pay by the end of the month, there would be no interest.

Richard Schlosser: The fear is that they would go to a cash only basis and we would have to pay cash at that time.

Rep Klemin: They could have an established procedure that they could follow, where they expect to be paid at the end of the month.

Richard Schlosser: Yes, that is the situation at present.

Rep Klemin: If you don't pay at the end of the month, that is when they can start charging up to 21%.

Richard Schlosser: There is a finance charge, yes.

Brian Kramer: North Dakota Farm Bureau We do stand in opposition to HB 1330. Banks have collateral option from a farmer but a supplier does not. We feel it would become a cash and carry business.

Chairman DeKrey: Have you looked at the amendments?

Brian Kramer: We have seen a draft of the amendments, but it goes back to the bankers once again whether or not the supplier would be placed first in line, they may or may not allow that option.

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Rep Klemin: What if we put a dollar amount on the consent, would you have any comments on that, if that was put on the bill.

Brian Kramer: That concept is worth considering, where do you set the dollar amount? Prices are changing all the time.

Lance Hagen: North Dakota Grain Growers, we oppose HB 1330. The under lying issue here is if the bigger companies had not gotten into the lending business, we would not be standing here today. We feel the system is not broke so don't fix it.

Gary Knutson: Executive Director of the North Dakota Ag Association. We oppose the change to suppliers lien. The system is in good shape now.

Chairman DeKrey: Are there any questions, thank you for appearing.

Jay B Lindquist: North Dakota Aero Applicators Association. I am here in opposition to the bill. The lien for me is an ace in the hole. I have 90 days to file the lien and only on the land on which I am spraying. If I tell them that I will have to file a lien, they usually come up with the money. The lender has many kinds of options. I only have the crop and land lien.

Rep Onstad: The credit provider feels that you have the advantage.

Jay B Lindquist: Yes, but only on my services.

Rep Klemin: Under the amendments, the notice that is presented to the bank lender, it would be to the advantage to the bank and all concerned if they did save the crop, wouldn't it?

Jay B Linquist: Yes, it would be. One thing that I did hear in regard to the amendment is a time frame, I was concerned about that.

Rep Klemin: There would be a 10 day maximum time.

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Tony Johannesson: President of the North Dakota Grain Dealers Association. Currently we do have the different types of liens in North Dakota, all of them are important. I am a little miffed that the lenders think that fuel is less important than the supplies mentioned. We do have to notify the producers and we do. The Minnesota plan with the 10 day provision for the lender to give his approval, I think for the most part, the good customer is going to pay the bill. It is the few percentage points of customers that don't pay their bill in a timely manner, and they are the ones that we are going to have problems with. Lenders do have the opportunity for additional security. We are all in the risk business. We only have the ability to use the suppliers lien to limit our risk. This comes at a cost to us. In order to hold up our part of the agreement, we have to put the lenders name on the checks to the farmers, we do the lien searches to do this. For this we have to pay \$120.00 a quarter, to keep current on the central notice system. Failure to get the name on the check means that we have to pay the bill again. The current plan, the lenders are getting a great deal. We urge a no vote on HB 1330.

Rep Grande: Going to a credit provider, you go with a business plan, a budget, would I not include all my expenses in the list.

Tony Johannesson: That is correct.

Rep Grande: Why do I have to go out and get another loan to buy this, why two loans for one thing?

Tony Johannesson: In some cases that the lender did not give you enough money., so you go to the suppliers to get the loan.

Rep Grande: If I pay for everything?

Tony Johannesson: There are a lot of other expenses too, and he names them.

Rep Grande: Doesn't the lender understand that you need these to produce?

Tony Johannesson: I think it comes down to the risk involved. So there may be a gap.

Rep Grande: If I have this loan, that I am buying certain products and I proceed to not do that, have I not defaulted on the loan.

Tony Johannesson: That would be a question to ask a banker, but yes.

Rep Grande: As a business owner, and knowing what is required of me and my loan, the banker can call the loan on me. It seems to me there is something illegal here.

Tony Johannesson: If you spend all your dollars where you are supposed and for some reason your lender does not give you enough money to buy all the supplies you need. You buy from a supplier and he is going to put it on your accounts receivable for 30 days. If you don't pay it within 120 days and he puts a lien on it.

Rep Grande: If I start up a business and things are going a little slower than I thought, I am going to have to go back to my lender and tell him, I need an extension, would not the farmer do the same?

Tony Johannesson: Majority of them do, ninety per cent of them, but what about the ten per cent that are on the fence?

Rep Grande: The banker holds all that you have, you would have to stay in constant contact with them.

Tony Johannesson: You should.

Rep Klemin: What rate of interest do you charge?

Tony Johannesson: We charge 18%. If you charge one month and the bill goes out at the end of the month and you have until the end of that month to pay you have 60 days free.

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Rep Klemin: This 18% is that the going rate?

Tony Johanneson: Yes,

Rep Klemin: Does that not compensate you for the extra risk involved?

Tony Johanneson: I would rather have the cash.

Chairman DeKrey: My question would be is, we seem to be talking about this 5 or 10 per cent that are on or in the bubble, why do you take the risk.

Tony Johanneson: In some cases we may not know there is a problem.

Chairman DeKrey: If there are no questions, thank you for appearing.

Terry Burkhart: on the elevator at Berthold, and chairman of an agronomy board in Berthold, and he also a farmer, he testified that he wants the lien to stay as is. He opposes HB 1330.

Chairman DeKrey: It has been stated today, we might have to go to cash, manager says that it is the best thing that ever happened. Is it the worse thing or is everything equal.

Terry Burkhart: It is the inconvenient.

Chairman DeKrey: Are there any other questions, if not thank you for appearing in front of the committee.

Stan Hepper: owner operator of Hepper Oil Company, Selfridge North Dakota. I have been through all of this, the problems before the ag lien. Producers need loans, we provide a service when the people need them and we have a recourse when needed. The situation is working fine.

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

Keith Brandt: General Manager of the Elevator at Enderlin. First Vice President of the North Dakota Grain Dealers Association. Our local banker supports this bill.

TAPE II SIDE B

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Keith Brandt testimony continues. Sometimes it is difficult to access a producer to see if they need additional funds. We don't use the suppliers lien extensively, but we do use it. Recommend a DO NOT PASS on HB 1330.

Clyde Krebs: North Dakota Grain Dealers Association of Glen Ullin. He spoke in opposition of HB 1330. He gave some examples and stated that his only recourse if a lien. Urge a DO NOT PASS.

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

Wade Moser: North Dakota Stockman's Association. Our concerns are a little different, so many of our producers now are doing work for people outside of North Dakota. We want to make sure that when the product leaves the state that they get their money. I don't know what the amendments do, I think it is very wise there is communication between lenders and feeders. I have concern over the lender having veto power. We also have some situations where there are more than one lender.

Rep Klemin: What is the procedure that a lien holder would enforce a lien in another state once the cattle are gone.

Wade Moser: What this one feeder was doing was making sure that he was filing in the county that the residence of the person was.

Rep Klemin: What validity would this have in Kansas if they don't have priority laws.

Wade Moser: I don't know but apparently it works because he has had no problem.

Chairman DeKrey : If there no other question, thank you for appearing.

Rep Grande: Once the crop is in the field, and you need to fix the crop right away, can I call you and say I need, would you extend out the loan.

Charles McCay: I would say generally yes, there may be exceptions.

Rep Grande: If you say no, and the crop fails, you are out everything.

Charles McCay: Correct.

Rep Grande: The supplier takes the risk, shouldn't he get to go first?

Charles McCay: I can't think of a time when the lender would refuse the loan.

Rep Grande: If an ag lender does give 70 to 80 per cent of a farmers needs and he spends all of that, can he come back for another 20 per cent?

Charles McCay: Yes, and goes on to explain.

Rep Onstad: On one hand we hear the system isn't broke, but now we have introduction of new players (big companies) has that been questioned at any point?

Charles McCay: Yes and no. When everyone gets paid, there is no problem, only when the lien is improper is there a problem.

Rep Delmore: Under the current law, what is the loss to the lenders, is there a dollar amount that would change this bill.

Charles McCay: I don't have numbers now.

Rep Delmore: If I can't see a dollar amount that affects the lender why should I vote for this bill?

Charles McCay: Because of the very fact that the super priority lien is there, requires us to treat the farmers that are on the bubble different.

Chairman DeKrey: In my area bankers collateral is shrinking, farmers are leasing more machinery and they don't have much collateral, is that fact a reality.

Charles McCay: I don't know for sure, I would say that in general that farmers have more assets then in the past.

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Rep Maragos: What did banks lose in their farm portfolio in 1999.

Charles McCay: I don't know.

Bob Schlibely: Through June 30, 1999 from the figures of the Secretary of States Office there were 1622 ag liens. July 1 through Oct we had 198 filing have taken place.

Chairman DeKrey: We are in recess until 3:00 pm. Chairman DeKrey reconvened the hearing on HB 1330. We will be holding HB 1330 for a week to ten days before he take this bill up again.

Steve Strege: I have a comment on the listing of crop liens or mortgages. They have a listing of the ag liens and there is an on line subscription service for this. We still put lenders names on the checks. In reference to Minnesota, large companies can operate as ag lenders.

Chairman DeKrey: If there is no further testimony, we will close the hearing on HB 1330.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330a

House Judiciary Committee

Conference Committee

Hearing Date 02-07-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 6264
TAPE I		x	10 to 973

Committee Clerk Signature

Joan Deers

Minutes: Chairman DeKrey called the committee to order. The bankers have an amendment to HB 1330 and they can explain it now. We have the grain dealers amendments, the bankers amendments and ones drawn up by Rep Klemin with the Legislative Council. We will use the ones from Legislative Council because they are the ones that is the one we will be actually using if we use the amendments.

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

A discussion was held on those amendments with questions being asked by Rep Delmore, Rep Klemin, Rep Fairfield, Rep Mahoney, all asking for clarification on some points of the amendments and the bill. At one point Chuck McCay was asked to come forward to clarify further points of the amendments. Again questions were asked by Rep Mahoney, Rep Kingsbury, Rep Onstad, Rep Klemin, Rep Fairfield for clarifications.

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Steve Strege: of the Grain Dealers Association came forward with opposition to the amendments to HB 1330. He was still concerned with the notice requirement, He stated that the first part of the amendments would be a bill that they could support. He answered questions from the committee. Committee members Chairman DeKrey, Rep Klemin, Rep Mahoney all asked questions for clarification on Mr Strege's points on the amendments. They went over many points on line of credit and extending credit that was covered in previous testimony.

Chairman DeKrey: Anyone else wishing to make comments on the proposed amendments?

Gary Knutson: North Dakota Agricultural Association, testified in opposition to the amendments and the bill, his point was that the ag supplier would have to go to a cash only basis if this bill becomes a law. Rep Mahoney, Rep Disrud questioned him at length as to his position and the effect of this bill.

Brad Davis: US Custom Harvesters Executive Directors, spoke in opposition to the bill and the amendments. Rep Klemin, Vice Chr Kretschmar, Rep Mahoney, all questioned him at length about his position on the amendments and the bill.

Eric Omenstad: President of the North Dakota Farm Bureau, testified in opposition to the amendments and the bill. His concern is the 45 days. Rep Eekre, Rep Maragos, rep Klemin all questioned him on the position of the Farm Bureau and why they were in opposition to this bill and the amendments.

TAPE I SIDE B

Eric Omenstad continues with his testimony with his objections to the length of days for the reporting. Rep Grande, Vice Chr Kretschmar, Rep Mahoney all questioned Mr Omenstad on the notification and the length of days and the reasons for his objections.

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Jim Schlosser: North Dakota bankers Association, had comments on liens such as repair liens, mechanics liens and how they file notices. A survey was taken of ag lenders, lenders will take another look at the risk of the super priority lien of producers on the bubble. 30% had denied credit and 70% said that it has effected terms of the loan. Vice Chr Kretschmar, Rep Fairfield had questions to clarify points of his testimony.

Chairman DeKrey: at 3:00 pm we are going to take a look at the amendments. So you have until then to clean up the language and compromise on any problems.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1330b

House Judiciary Committee

Conference Committee

Hearing Date 02-07-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		2509 to 6247
TAPE II		x	01 to 303
Committee Clerk Signature <i>Jean Diers</i>			

Minutes: Chairman DeKrey opened the hearing on HB 1330. Rep Renner had amendments for the bill. He reads and then explains the amendments.

DISCUSSION

Discussion was held on the amendments. After much discussion was held, Vice Chr Kretschmar moved the amendments 104830104, seconded by Rep Grande. A voice vote was taken on the amendments. Amendments carry. Rep Delmore moved to further amend the amendments by changing the 45 days to 60 days, seconded by Maragos.

DISCUSSION was held. There was strong objections by those who had testified to changing the number of days. A voice vote was taken, the motion fails. More discussion ws held on the bill.

COMMITTEE ACTION

Chairman DeKrey: We have the bill before us as amended, what are the wishes of the committee.
Rep Grande moved a DO PASS as amend, seconded by Rep Maragos.

Page 2

House Judiciary Committee

Bill/Resolution Number HB 1330

Hearing Date 02-07-01

The clerk will call the roll on a DO PASS as amend to HB 1330. The motion passes with 9 YES,

6 NO and 0 ABSENT

Carrier is Chairman DeKrey

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1330

Page 1, line 1, after "A BILL" replace the remainder of the bill with "to create and enact a new section to chapter 35-30 and a new section to chapter 35-31 of the North Dakota Century Code, relating to notices for priority of agricultural processor's liens and agricultural supplier's liens; and to amend and reenact sections 35-30-01 and 35-31-01 of the North Dakota Century Code, relating to agricultural processor's liens and agricultural supplier's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-30-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-30-01. Agricultural processor's lien authorized. Any person who processes any crop or agricultural product is entitled to a lien upon the crop or product processed for the reasonable value of the services performed. A lien taken pursuant to this section upon anything other than the crop or product processed is void. As used in this chapter, the term "processor" includes persons threshing, combining, drying, or harvesting any crop or agricultural product. The agricultural processor's lien is effective from the date the processing is completed. An agricultural processor's lien filed as a security interest created by contract to secure money advanced or loaned for any purpose is not effective to secure a priority over liens filed under section 35-05-01. In a civil action brought under this section in which it is alleged that an agricultural processor's lien is filed to secure an extension of credit for money advanced or loaned for any purpose, the court shall award to the prevailing party reasonable actual and statutory costs and reasonable attorneys' fees.

SECTION 2. A new section to chapter 35-30 of the North Dakota Century Code is created and enacted as follows:

Notice of services provided - Requirement to secure priority.

1. To be eligible for priority status under section 35-30-03, a processor shall deliver to a lender, which must be a person in the business of lending money, written notice that lists the services provided which are eligible for a processor's lien. Delivery of a notice under this section must be made by certified mail, facsimile transmission, or other verifiable method. The processor shall deliver the notice to the lender within forty-five days after the services are performed.
2. The notice must include the:
 - a. Name and business address of the lender receiving notification;
 - b. Name and address of the processor claiming the lien;
 - c. Price agreed upon for processing, or if a price is not agreed upon, the reasonable value of the processing; and
 - d. Name and residential address of the person to whom the services were or will be furnished.

3. The processor shall deliver a copy of the notice to the person to whom the services were or will be furnished.
4. If a processor fails to give a lender notice as provided under this section, a lien on the services is not eligible for priority under section 35-30-03.

SECTION 3. AMENDMENT. Section 35-31-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-31-01. Agricultural supplier's lien authorized. Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies. An agricultural supplier's lien filed in accordance with section 35-31-02 is effective from the date the supplies are furnished or the services performed. An agricultural supplier's lien filed as a security interest created by contract to secure money advanced or loaned for any purposes is not effective to secure a priority over liens filed under section 35-05-01. In a civil action brought under this section in which it is alleged that an agricultural supplier's lien is filed to secure an extension of credit for money advanced or loaned for any purpose, the court shall award to the prevailing party reasonable actual and statutory costs and reasonable attorneys' fees.

SECTION 4. A new section to chapter 35-31 of the North Dakota Century Code is created and enacted as follows:

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 - a. Name and business address of the lender receiving notification;
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 - c. Description of the transaction;
 - d. Date or anticipated date of the transaction;
 - e. Retail cost or anticipated cost of the supplies furnished and services performed; and
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3. The processor shall deliver a copy of the notice to the person to whom the supplies and services were or will be furnished or performed.
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Renumber accordingly

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Renumber accordingly

VR
2/7/01
1063

HOUSE AMENDMENTS TO HB 1330 HOUSE JUDICIARY 02-08-01

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Renumber accordingly

3 of 3

Date: 02-07-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB-1330

House JUDICIARY Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By Rep Franck Seconded By Rep Maragos

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore		✓			
Rep Rachael Disrud	✓				
Rep Bruce Eckre		✓			
Rep April Fairfield		✓			
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury		✓			
Rep Lawrence R. Klemin	✓				
Rep John Mahoney		✓			
Rep Andrew G Maragos	✓				
Rep Kenton Onstad		✓			
Rep Dwight Wrangham	✓				

Total (Yes) 9 No 4

Absent 0

Floor Assignment Chr DeKrey

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

REPORT OF STANDING COMMITTEE

HB 1330: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (9 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1330 was placed on the Sixth order on the calendar.

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4. If a supplier fails to give a lender notice as provided under this section, a lien on the supplies or services is not eligible for priority under section 35-31-03."

Renumber accordingly

2001 TESTIMONY

HB 1330

35-30-02. Procedure to obtain lien.

To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a verified statement in the office of the register of deeds in any county in this state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person for whom the processing was done.
2. The name and address of the processor.
3. A description of the crops or agricultural products and their amount, if known, subject to the lien together with a reasonable description, including the county as to the location where the crops or agricultural products were grown and the year the crop is to be harvested or was harvested.
4. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.
5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the processing was done.
6. A description of the processing services and the first date the services were furnished.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. Before a processor's lien is filed, a billing statement for the services performed must include notice to the agricultural producer that if the amount due to the agricultural processor is not satisfied a lien may be filed.

35-31-02. Procedure to obtain lien.

To obtain an agricultural supplier's lien, except an agricultural supplier's lien for furnishing petroleum products, the person entitled to the lien, within one hundred twenty days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of any county in this state or in the office of the secretary of state. To obtain an agricultural supplier's lien for furnishing and delivering petroleum products, the person entitled to the lien, within one hundred fifty days after the petroleum products are furnished or delivered, shall file a verified statement in the office of the register of deeds of any county in the state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with a reasonable description, including the county as to the location of the crops, agricultural products, or livestock and the year the crop is to be harvested or was harvested.
4. A description and value of the supplies and the first date furnished.
5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person to whom the supplies were furnished.

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Testimony in Support of H.B. 1330
Joel Gilbertson, Executive Vice President
Independent Community Banks of North Dakota

Good morning, Mr. Chairman and members of the Committee. My name is Joel Gilbertson. I am Executive Vice President of the Independent Community Banks of North Dakota, an association of 94 independent banks located in communities of all sizes all over our great state.

I am here this morning to give you an overview of H.B. 1330, the problems it is meant to address and the amendments we will propose to this bill. Following me will be a number of speakers who will include bankers and others who work in this area every day.

H.B. 1330 relates to the "superpriority" of certain ag-related liens. It is before this committee because it is essentially an addendum to the amendments you recently adopted to Article 9 of the Uniform Commercial Code. It relates, just as Article 9, to "secured interests" and "lien priorities." Present North Dakota accords "superpriority" to certain ag-related liens. To date to my knowledge, no state that has adopted amendments to Article 9 has included the superpriority of ag supplier and processor liens in those amendments.

The procedure of establishing secured interest, the priority of liens and the superpriority of liens is a complex procedure and I will not go through it. How it all fits, however, is really quite simple. It is where you as a creditor stand in line when the borrower has problems paying. The general rule under the Uniform Commercial Code is "first in time, first in line." When liens are filed, whoever files them first goes to the head of the line. Whoever files them second, goes next.

The "superpriority lien" is different, however. If you get a superpriority lien, you go to the head of the line whenever it is filed. This, as you might guess, is the problem.

A banker will sit down with a farmer in February and, after reviewing much

Information, set up a financial plan for operational financing of the farm for the next year. The banker bases the credit decisions on the picture he or sees that day. Under present law, the farmer can then go to a supplier sometime the next July to get some fertilizer. The supplier then goes to the head of the line, ahead of the banker.

It is the unfairness of this procedure and the uncertainty it causes for the lender and the farmer that has caused significant problems in ag lending in North Dakota. I say North Dakota, because we are one of the few states in the country have this type of statutory setup.

Others will go into this in more detail, but it is important to point out that this is a problem for the farmer because of the uncertainty or unpredictability it creates for the lender. Because of that uncertainty, the lender cannot take as many chances or perhaps may have to use a higher interest rate to reflect the additional risk.

Briefly, H.B. 1330 would eliminate the superpriority of those liens. It would continue to allow the liens, but those suppliers and others would have to be treated the same as the lenders and other creditors, i.e., first in time, first in line. It was introduced at the request of a coalition of groups that represent very strong competitors in the financial services industry. The mere fact this coalition exists is perhaps historical because they are often very strong competitors in the legislative arena as well. In addition to the Independent Community Banks of the North Dakota, it includes the North Dakota Bankers Association, the North Dakota Credit Union League and Farm Credit Services. I think it reflects the strongly-held belief that a serious problem exists and is getting worse.

As soon as the bill was introduced, we continued our discussions with many legislators and industry representatives. Some kind of compromise was encouraged. We have met numerous times with that in mind. The amendments represent a compromise in our position and reflect our desire to address the problem yet leave as much as possible of the present system.

We wanted to reach four goals with this compromise:

- (1) Change the superpriority status only for those industries or sectors for which we believe it is necessary;
- (2) Reduce the impact on the small, local suppliers;
- (3) Address the "predictability" problem I discussed earlier that lenders have in determining loan quality; and
- (4) Address the abuse problem in present law.

We believe we have done so.

I will now distribute three sheets. The first two are the actual amendments to the bill. It is essentially a rewrite of the bill or hoghouse amendment. The final page reviews in a nutshell the procedure we are proposing.

I will go through the amendments.

First, we have eliminated some groups. In talking to bankers, credit union personnel and Farm Credit Service workers all over the state, we have determined that historically there are few problems with custom harvesters and petroleum products sales. Therefore, we have eliminated them from the bill. For them, everything will continue the way it is now. The entire chapter on farm processors liens and their superpriority stays in as is.

This procedure is based on the Minnesota model, which has been used in Minnesota, I understand, since 1994. However, it adapts that model to our state to initiate the least change necessary to our present procedure. For perhaps 95% of the ag supplies transactions, nothing will change. It will only change for the problem borrower, the borrower who is on the "bubble," so to speak.

Simply put, it requires notice to the lender who is providing operational financing for the farmer. This is not just financing for supplies but for everything else. Once the lender receives notice from the supplier, the lender can approve the notice and request. If that is done, the supplier gets a superpriority lien. If the lender fails to respond to the notice within 10 days, the supplier also gets a superpriority lien. If the lender says it cannot approve the sale, the supplier can make the sale and get a lien, but it will not be a superpriority lien.

There are additional burdens on the lender under this system. The lender now becomes an active participant and must respond to any request timely or the superpriority continues regardless of the risk. There is no limitation on the seller to sell goods or, for that matter, to get a supplier's lien. The only limitation is on the superpriority status. However, the supplier is still treated the same as all other creditors, i.e., first in time, first in line.

We are told by those working in Minnesota that this works particularly well with the local supplier. The lender knows the supplier and the farmer, often the supplier is a customer of the lender, and typically the amount is low. The farmer gets notice of any decision of the lender and the lender is in danger of losing a customer when the request is denied.

This compromise solves the problem of the present abuses in the system by those, primarily large national companies, that have used this lien as a line of credit. This is something the statutes were never intended to be used for.

This system works. You will hear those testify about how this type of system is working in Minnesota -- they will say it is working well for all concerned. We also will have a couple of bankers who work with the present system every day that will discuss present problems and address and questions you may have. Finally, we will have representatives of other groups who support this change.

Thank you for your time. I will be pleased to respond to any questions.

Proposed Amendments to H.B. 1330

1. Section 35-31-03 is amended as follows:

35-31-03. Priority. Except as otherwise provided in this chapter, A an agricultural supplier's lien obtained under the provisions of this chapter has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances except any agricultural processor's lien.

2. A new section to Chapter 35-31-03 of the North Dakota Century Code is created and enacted as follows:

Determination of Priority Status.

1. **Definitions.** In this section, "lender" means a person in the business of lending money identified in the lien notification statement and request and "supplies" has the same meaning as in section 35-31-03, with the exception of petroleum products.
2. **Lien notification statement and request.**
 - a. A supplier may notify a lender of a supplier's lien by providing a lien notification statement and notice to the lender in an envelope marked "IMPORTANT - LEGAL NOTICE." Delivery of the notice must be made by certified mail or another verifiable method.
 - b. The lien notification statement and request must disclose:
 - (i) the name and business address of the lender that is receiving notification;
 - (ii) the name and address of the supplier claiming the lien;
 - (iii) a description and the date or anticipated date or dates of the transaction and the retail cost or anticipated costs of the supplies furnished;
 - (iv) the name, residential address and signature of the person to whom the supplies were or will be furnished;
 - (v) the name and residential address of the owner and a description of the real estate where the crops to which the lien attaches are growing or are to be grown; and
 - (vi) a statement that products and proceeds of the crops are to be covered by a supplier's lien and a request for approval of the amount of the supplies furnished.
3. **Response of lender to notification.**

- a. Within ten days after receiving a lien notification statement and request, the lender must respond to the supplier with either an approval of part or all of the amount in the lien notification statement and request or a written refusal to approve the amount requested in the lien notification statement and request. A copy of the response must be mailed to the person for whom the financing was requested.
- b. If a lender responds to the lien notification statement and request with approval, the supplier's lien has priority over other liens and encumbrances as provided in Section 35-31-03 up to the amount approved.
- c. If a lender fails to respond to lien notification statement and request within ten days after receiving the statement, the supplier's lien has priority over other liens and encumbrances as provided in Section 35-31-03 in the amount requested.
- d. If a lender responds to the lien notification statement and request with a written refusal, the supplier's lien has priority by time of filing under the Uniform Commercial Code and does not have the priority over financing statements or other agricultural liens and encumbrances previously filed.

Amendments proposed by Independent Community Banks of North Dakota

Procedure - H.B. 1330 Proposed Amendments

1. Farmer gets operating loan from lender.
2. Farmer goes to supplier to purchase supplies.
3. Supplier notifies lender.
4. If lender approves lien notification statement and request, lien filed by supplier would have superpriority status for amount approved.
5. If lender fails to respond within 10 days, lien filed by supplier would have superpriority status.
6. If lender disapproves lien notification statement and request, lien filed by supplier would not have superpriority status.

HOUSE BILL 1330

**Presented by Charles McCay representing Farm Credit Services
January 29, 2001**

BACKGROUND

Various types of liens on agricultural production have been available since early in the century. They allowed harvesters, repairmen, seed dealers and many others to take a security interest in crops or livestock without the farmers signature and gave the various secured parties different and often conflicting claims on the farm products. In 1987 the legislature consolidated these liens into three: the processor's lien with first priority over all other security interests in crops or livestock, the supplier's lien with priority over all liens except the processor's lien, and the agister's lien with priority over all but processors and suppliers. Other security interests, such as FCS crop or livestock mortgages created under the uniform commercial code, get paid after the above statutory liens.

These types of liens were appropriate for the way farmers, suppliers and lenders conducted their business sixty or seventy years ago, but not today.

Most farmers are capable of sound business planning and many use contracting and hedging to manage risk in selling products and buying inputs.

Although it varies from farm to farm and crop to crop, on average the amount of money needed for fuel, fertilizer, seed, and chemicals is less than the amount needed for other inputs like rent, land taxes, repairs, insurance premiums, and labor. Just being able to get supplies on a dealer lien won't keep a modern farmer in business.

More and more of the production inputs are provided by financially strong suppliers that use credit as a part of their marketing effort. Only 3 of the 11 states in the Agribank district allow super priority liens. Supplier sales and supplier credit programs are similar in states with or without the liens.

The availability of super priority liens presents a source of risk that primary lenders are not able to manage.

The process of borrowing money from investors and lending it to farmers is well developed, diversified and competitive. The two factors contributing to most of the interest cost that farmers pay are the interest that investors need to put their money into the ag credit system and the risk involved in ag lending. When investors see increasing risk they want higher interest rates to allow them to continue investing.

A major part of primary ag lenders' work (FCS, credit unions and banks) is identifying and managing risk. Lenders gather and analyze financial information from their borrowers, search public records, require insurance, finance hedges and use other strategies to manage risk. When risk can't be managed, lenders either increase interest rates for some categories of borrowers or limit the amount loaned. Super priority liens take away the option of reducing the amount loaned.

We would like to see an increase in livestock feeding in North Dakota, especially by co-op or custom feed yards. The primary lenders that finance the feeders being placed in a custom lot have an uncontrollable risk because the feed lot can file an agister's lien and get paid first when the animals go to market. The finished animals have to sell for only enough to cover the cost of feed and yardage for the feed lot to be paid. Most of the risk is passed to the primary lender that financed the feeders.

Lenders and borrowers have been negatively affected due to super priority liens. The attached paper outlines three such cases.

AG LENDERS' PROPOSAL

House Bill 1330, with the proposed amendments, will continue to allow liens for processors, suppliers and agisters, but will require three way communication between the farmer, the lender and the party seeking the lien in order to get a super priority.

The primary lender has a better opportunity to manage the risk in individual loans.

Suppliers have more information about the farmer's ability to pay for the supplies or services being requested.

Small suppliers or processors that cannot afford their own staff to evaluate credit risk will have information from the lenders to help make sound credit decisions.

The individual farmer is better served because the parties with the farming expertise, those with the product/process expertise, and those with the financial expertise are required to communicate.

The individual farmer will have liens filed only with his knowledge and approval.

PRIORITY LIENS

The following are examples of the negative impact of the present statutory lien statute.

Example #1

Lender had a conventional loan established with a family farm. A operating budget including projected income and expenses for the year was developed jointly with husband and wife in the spring prior to planting. Because of prior years adversities and clients desire to continue to farm, lender obtained a FSA loan guarantee in order to meet the needs of the operating budget. Disbursement and repayment controls were established on account in order to administer risk of loan and comply with FSA loan guarantee.

Farmer hired the services of a local input supplier to provide crop consulting for the year and also was the business where majority of his inputs would be purchased. Consultant was responsible for monitoring crops and making recommendations on fertilizer, fungicide, herbicide, and insecticide application throughout the growing season. Discussions between lender and supplier included fertilizer and chemical budget established with farmer for the year and adequate loan proceeds available to pay suppliers per this budget.

During periodic search of chattel records in early fall, it was discovered that the same input supplier had filed a statutory lien against farmer for an amount that exceeded discussed budget by 305% or and additional \$155,000. This filing was completed the day before their deadline to file and with no notification to lender or farmer. Upon discovery of the action, we as the lender were forced to shut off remaining budget as our loan was in default and out of compliance. The crop was harvested and the first proceeds from the crop went to the input supplier to be paid in full. The lender was left in an undersecured position and the farmer suffered a substantial earning loss for the year and was forced out of farming. The farmer's income was 111% of projection completed with lender in the spring. However, his expenses were 178% of projection and majority of the difference was provided by input suppliers and paid with priority statutory liens.

The family farm is now out of business and all remaining assets sold. They are left with a small house in town and a huge income tax problem. They are seeking employment however are having a difficult time after farming 30 years and trying to meet family living needs as well as approaching retirement.

The lender suffered a loan loss and recovered a percentage back on the FSA loan guarantee. All input suppliers, including the main supplier who also provided and was paid for crop consulting and made recommendations for chemical applications at 265% above original budget without lender's knowledge or approval.

Example #2

Lender had a operating loan with large farm operation per annual budget established with farm operators. A perfected multi-year crop mortgage remained in effect to secure lenders advancement of Operating funds.

Crop proceeds brought into lender early fall had several input suppliers(15) names on the check. These suppliers had filed statutory liens without farmer or lenders knowledge. The original cashflow plan indicated that these proceeds were to be applied against established loan in order to advance for harvesting expenses. With several names on check and no input suppliers willing to sign off, the operating could not meet payroll requirements during harvest and was delayed in getting crop off timely and with good quality. This two week delay was very costly to operation and has yet to recover.

Example #3

Lender had a client with a past due real estate loan. Client requested loan mediation to present a plan of repayment. All creditors were notified of mediation.

Client and his credit counselor presented a plan of repayment which included application of crop proceeds. As part of lender's preparation for the mediation, a chattel record search is completed. Lender disclosed to client and credit counselor all of the statutory liens that were filed against the crop which they were planning to utilize within their mediation plan. They were not aware of any of these liens. None of these input suppliers were present at mediation.

Since clients did not have the ability to meet their plan of restructure without the cooperation of the various input suppliers, additional legal costs as well as increased interest rate was charged to farmer before he was able to pay loan installment 5 months later.

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 1330

GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the Judiciary Committee, I am Greg Tschider and I represent the North Dakota Credit Union League.

SURPRISE! SURPRISE! That is the result of the existing law giving agricultural supplies priority over crop liens held by financial institutions or anyone who is accepting crops as collateral for loans.

Under the present law, a farmer will request an operating loan and as collateral for the operating loan, the farmer will give the crop as security. The financial institution then gives notice to the public of its crop lien by filing a financing statement with the Secretary of State's Office. The records at the Secretary of State's Office will then reflect that the financial institution is the first to file a lien on the crop with the obvious assumption that first in time to file grants the first right to the proceeds to the crop.

That is certainly reasonable and logical, however, that is not necessarily the result. Unbeknown to the financial institution, the farmer may decide to charge supplies but fails to pay for them. Within 120 days after the supplies are provided, ag suppliers have the right to file a lien and claim the proceeds of the crop proceeds to the extent of the ag supplier's lien.

The result of this existing law is that the financial institution which thought it was in first place because it had properly perfected its security interest in the crops, could find itself in third, fourth, fifth, or worse place. This is not fair or reasonable.

As a result of the existing law, when a farmer requests an operating loan and intends to use his crops as collateral for the loan, the financial institution must evaluate the request based on the potential ag supplier problem. Especially for farmers with a marginal financial statement, the financial institution may be required to deny the operating loan or reduce the amount of the operating loan to factor in the exposure of ag supplier claims. Neither of those solutions benefits farmers or ag suppliers.

Ag suppliers can now sell products without regard to the credit worthiness of the farmer and without any notice or input from the financial institution which provided the operating loans.

It should be noted that not one of the nearly 30 states that have enacted the revised Article 9 of the Uniform Commercial Code has adopted a supplier's lien that has a super priority.

Farmers need operating loans to continue their business operations. If the farmer does not have sufficient other collateral to properly secure the loan, the farmer will offer the crop as collateral. Other farmers cannot or do not want to offer other collateral. Farmers normally feel that the crop is sufficient collateral for the loan. What incentive is there for a financial institution to secure a loan with the

crop if the priority to the crop proceeds can be claimed by another creditor? If the super priority law continues, farmers requests for operating loans will be negatively impacted.

The North Dakota Credit Union League has examined the Minnesota law which appears to be a compromise between financial institutions and ag suppliers. Legislators have emphasized that a compromise is appropriate.

The Minnesota law appears to be a workable solution to the disagreement between financial institutions and ag suppliers.

The North Dakota Credit Union League respectfully requests that the committee adopt the amendments incorporating the Minnesota law and send this bill to the House floor with a "Do-Pass" recommendation.

January 29, 2001

Testimony on HB 1330 by Dale L. Roemmlch, Union State Bank, Hazen, ND.

Mr. Chairman and members of the House Judiciary Committee

My name is Dale Roemmlch. I am Vice President and Senior Loan Officer at the Union State Bank in Hazen. For the past 19 years, I have also been the principal agriculture loan officer at the bank. I am also a past Chairman of the NDBA AG Committee.

This past summer, our Ag loan portfolio peaked at just over \$11 million in agriculture loans. This makes up just under 40% of our loan portfolio. In addition, we have another \$1.3 million in Ag loans that we service but are sold to the Bank of North Dakota participating in their various loan programs. Of our existing direct loan portfolio, approximately \$8.6 million is for farm chattel financing and operating lines of credit to our crop and livestock producers.

I am here this morning to offer my support to the passage of HB 1330 which changes a portion of the state law which provides that Ag suppliers have a priority over all other Ag liens filed under the Uniform Commercial Code.

In the past three years, our bank has experienced at least two instances where we believe the existing statute has been abused by a borrower/supplier and by a supplier.

In the first instance, we had developed a farm plan projection and had approved an operating loan to fund 100% of the annual farm operating expenses. Late in the spring, our

borrower's father rented a section of cropland. Because the father did not secure additional operating credit from his primary lender, and because his credit limit was used up at the supplier, he offered a share arrangement to his son and proceeded to charge chemical and fertilizer to his son's account. The total amount charged exceeded the total of the son's entire operating loan that we had previously approved. Our bank was not made aware of this until later in the fall.

When we did a preliminary reconciliation after harvest, the son, our borrower provided an inventory listing indicating there was sufficient grain on inventory to pay our operating loan in full. He did not disclose the supplier's lien that had been filed and later claimed he was unaware of it. He also believed the account with the supplier was the responsibility of his father and didn't report that to us either.

When our borrower started to market his grain, the supplier's name showed up on the checks. In researching the situation, we discovered what had happened but there was almost nothing that we could do because of the existing law. As a result, our borrower's entire share of the crop on the new land plus a majority of the crop in his original projection was used to satisfy the supplier's lien, leaving our bank holding an unpaid operating line of credit that had shown a reasonable cash flow margin in the spring. We were fortunate in that our lien also encumbered the borrower's cattle and his few, limited pieces of equipment. As a result, we restructured the unpaid loan with an FSA Guarantee and termed it out with repayment to come from the sale of calves. We have since refused to lend any further operating funds to raise crops because we discovered it has been a pattern and practice of the family to have supplier's liens filed on their crops.

In the second situation, we had also approved an operating line of credit to a borrower and participated this loan with the Bank of North Dakota and the family farm loan program. We had also taken a crop mortgage to provide repayment security on this loan. The borrower also does custom farming and spraying for other farmers in the area however; he did not have any financing for his custom farming operation.

Because of other credit problems related to charge accounts and his custom farming operation, he filed a chapter 7 in 2000. When the bankruptcy papers were filed, we again found a supplier's lien, which superceded our original crop lien and would have taken the entire crop on inventory.

In this instance, because of the size of the lien that was filed in relation to the amount of acres farmed we researched the lien and obtained copies of the purchase invoices. The lien was exclusively for farm chemicals and amounted to almost \$100/acre of cropland. The supplier had failed to file the lien in a timely manner and we were able to void some of the invoices, however, we were still left with a deficit in repayment of our loans. We were finally able to determine, with assistance from the borrower, that he had charged his chemicals for his custom spraying operating and now the supplier was attempting to collect the account by filing a priority crop lien. The borrower maintained he had used less than \$500 of chemical on his own crops. We were finally able to negotiate a settlement with the supplier, however for substantially more than the borrower claimed he had spent. As a result, both our bank and the Bank of North Dakota will experience a loss on this account.

The current lending policy at our bank now requires that a borrower provide supplemental collateral to secure operating

lines of credit for crop production in addition to a crop lien and assignment of insurance. That collateral must be in the form of a tangible asset such as equipment, vehicles, livestock or real estate.

As I indicated previously in my comments, we have already denied additional operating credit to one specific producer because of the crop lien issue. That has also been a factor when we have denied other loans to borrowers seeking refinancing from other creditors.

I anticipate that with the 2001 projections being tighter than ever and the costs of supplies increasing significantly we will certainly look much harder at loans with crops as the only or primary source of repayment because of the suppliers lien provision that is currently in effect. It is common that seasonal operating lines of credit exceed 6 figures and the risk continues to escalate.

In addition, if those loans are approved, they will certainly carry a higher risk rating classification and as a result, a potential for a higher rate of interest.

In conversations with other bankers, I can assure you that I am not alone in my experiences and in the way we address lending to borrowers using crop liens. If we cannot depend on that lien being a first lien and staying a first lien, then there is no doubt that lending will be priced higher or curtailed to those borrowers carrying a higher degree of risk.

The approval of this bill would bring our state in line with 45 other states that also do not have suppliers liens with a priority lien position.

In conclusion, our bank also provides financing for companies and businesses selling Ag supplies so we do understand what these businesses are facing. We work with these businesses encouraging them to have established credit policies to prevent the abuse of supplier credit and to do their homework before accounts get out of hand.

Our bank has good working relationships with suppliers in our area. One in particular, requires its customers to submit a credit application at the start of the season and then calls their creditors to insure there have been arrangements made to cover the purchased supplies before they leave the business.

HB 1330
Jim Schlosser
North Dakota Bankers Association

My name is Jim Schlosser and I am the executive vice president of the North Dakota Bankers Association, a state banking association with member banks and thrifts with nearly 300 facilities in our state. Our 32 member Legislative Committee set as its number one priority this year a change in our suppliers lien law. Ag lenders throughout the state are concerned with the impact of the current law on the ability of ag producers to obtain operating loans and we support the amendments proposed this morning as a "compromise" on this important issue.

NDBA conducted a survey of ag lenders in North Dakota recently which resulted in the following responses:

- ▶ Approximately 30 percent of ag lenders stated they had denied financing to an ag producer in the past because of the risk involved with the "super priority" ag suppliers lien.
- ▶ 75 percent of ag lenders stated that existing law allowing a priority lien for ag suppliers is a factor the bank considers making loans to ag producers and the terms of the loan may be affected by the additional risk, including the following: higher interest rates, lower amount of credit available and additional collateral required.
- ▶ It was reported that many payments made by lenders under the suppliers lien law go to firms/companies located outside of the state who use the suppliers lien law for operating lines of credit.

NDBA also surveyed other state banking associations to determine whether states that have adopted the revised UCC Article 9 have included a provision creating a suppliers lien with priority over previous liens filed. Of the 28 states that have passed the revised UCC Article 9, as of January 2001, not one adopted language creating a suppliers lien with priority.

The banking industry in this state strongly urges your support for HB 1330, as amended.

Mr. Chairman and Members of the Judiciary committee:

My name is Howard Schaan, I am president of the First State Bank of Harvey and a past president of the Independent Community Banks of North Dakota. I am here today to speak in favor of bill 1339 to eliminate the superpriority lien for ag suppliers.

As a banker in rural North Dakota, my life blood and that of the other rural banks, comes from the farmers. We have approximately 60% of our loan directly to farmers with another 20% farm related. I can assure you that our primary concern is to keep farmers on the land!

While I can't speak for all banks, I can tell you the problems and concerns we are having. We sit down with our farmers and do a careful budget planning process figuring all costs of production and debt repayments and then set up a line of credit for the farmer to pay all his operating expenses as they are needed. On those customers who do not have sufficient other collateral, we take a crop mortgage for the upcoming year.

Under the current system, that same farmer can then go to the local elevator and buy fertilizer, chemical, seed and essentially "charge it". He is then free to use the money designated for those same inputs by the bank for any other purchases or expenses. The local supplier has a vested interest in selling his product and because he has the convenience of superpriority lien he does not have to worry about whether the farmer can pay the bank, the elevator and other creditors, but just if there will be enough crop to pay the elevator.

It is important to note that I do not disagree with any ag supplier getting a lien, but in the interest of fairness, how are the inputs they are supplying in July any different than the cash we are giving them in April for those same input costs. If the ag supplier received their priority based on first in time first in line, they would need to analyze the "whole" farm picture, in much the same manner as the bank, to ensure there would be money for all properly perfected creditors. (Keep in mind, first in time - first in line, is the rule in nearly every state in the country).

We must remember that the only farmers that we are seeing problems with are the beginning farmer and those other lines that are very tight and controls are essential for the farmer to survive. Because, the banks, credit unions, and farm credit services have no way of knowing what position they will be in at the end of the crop season we are seeing increasing reluctance on the part of those financial institutions to make operating loans to those operators who have extremely tight margins. Certainly our own bank has taken a much tougher stance with those customers. With low commodity prices and uncertainty about government farm programs I only see this getting worse.

As margins for farmers tighten and more financial institutions find themselves the victims of losses because of this superpriority situation I think you are going to see much greater reluctance on the part of those financial institutions to provide operating funds to the riskier borrowers because they will have no way of protecting their interests. Additionally, banks will feel more pressure from regulators on problem loans and marginal credit. In the long run, I firmly believe this will cause a decrease in available credit to farmers not an increase, which is the whole reason for the superpriority ag suppliers liens.

I would like to conclude by asking you to please not get mislead into thinking that the superpriority ag suppliers lien is for the farmer. It's not! First, it encourages the farmer to over-extend by making it so easy and convenient to just charge the inputs and still have access to their credit line. Second, it is often a more expensive form of credit then what is available thru the local financial institution. Finally, if the system is not changed it is going to lead to a decline in available credit for those farm customers who need it most.

We ask for your support!

Suppliers Lien Filed

Date

Ref#

Nature

Case Number

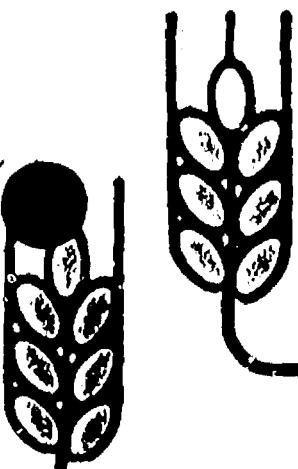
Filed Date

Miscellaneous

Last Amend.

Ward County

00000955553	072400	Crops	\$7,500.00
00000955637	072400	Crops	\$22,000.00
00000955646	072400	Crops	\$15,000.00
00000955648	072400	Crops	\$22,000.00
00000955674	072400	Crops	\$17,000.00
00000955687	072400	Crops	\$12,000.00
00000955694	072400	Crops	\$65,000.00
00000955699	072400	Crops See Filing	\$13,000.00
00000955710	072400	Crops See Filing	\$65,000.00
00000955715	072400	Crops	



NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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TESTIMONY ON HB 1330 HOUSE JUDICIARY COMMITTEE REPRESENTATIVE DUANE DEKREY, CHAIRMAN JANUARY 29, 2001 – 8:30 A.M.

Good morning Mr. Chairman and members of the Committee. My name is Steve Strege. I am the Executive Vice President of the North Dakota Grain Dealers Association. Nearly all the country grain elevators in our state are members.

Our Association is strongly opposed to HB 1330 and urges you to give it a DO NOT PASS recommendation. Attached to this testimony on gold paper is a resolution passed at our annual business meeting just this past Tuesday during our 89th Annual Convention here in Bismarck. It shows organization-wide opposition to HB 1330.

Also attached to this testimony is a sheet, front and back, titled THE AG LIEN ISSUE. You can read it at your leisure. I'm guessing that most of the points in there will be covered by testimony today.

The point I want to focus on is just how little the supplier has a priority on and how little we are trying to keep by opposing this bill. Under the assumption that a picture is worth a thousand words, please take a look at the back of the gold sheet attached. The circle represents all the assets I could readily think of that a lender could have a security interest on. On the right hand side we have the crops which a farmer might raise. The shaded area in the wheat slice represents the value of the wheat seed that a supplier

might furnish on credit to the farmer. The supplier's lien attaches to only the wheat crop and only up to the value of the seed. He doesn't interfere with the lender's security interest in everything else. If the wheat crop fails, the supplier's lien has nothing to back it up. On the other hand, the lender has everything else to fall back on.

The shaded area in sunflowers represents some insecticide that might be necessary in the middle of the growing season to save the crop from major or total destruction. The farmer gets the insecticide from the supplier, who may put a lien on after going 90 days without being paid. But again, it is only on the sunflowers, and only for the value of the insecticide.

Is this so terrible? Is the current balance so terrible that the lenders want you to change the law so that they can be ahead on everything? The fact is that without the seed or without the insecticide the security interest the lender has in these crops may be worthless. But remember, he has the rest of the pie to fall back on.

After a bitter battle in the 1983 legislative session about grain buyers having to put lenders' names on farmers' grain checks, a compromise was reached in the 1985 and 1987 legislative sessions. In 1985 the Central Notice System was created. Grain buyers agreed to put lenders' names on farmers' grain checks, and take all the flack for doing so. Then the lenders and Grain Dealers supported a study resolution to clean up the lien statutes. Vice Chairman Kretchmar chaired the 1985-87 Interim Judicial Process Committee which crafted the current ag processor's and ag supplier's lien statutes, that were enacted in the 1987 session.

Let me read to you a quote from ND Bankers Association lobbyist Tom Kelsch at the October 6, 1986 final meeting of that interim committee: "*He said if the banks dislike having a lower priority in crops than*

agricultural processors or agricultural suppliers they can look to other collateral of the farmer to support the loan." Now these lenders want to unravel this 14 year old balancing of interests and get it all.

At a meeting of lender representatives with Grain Dealer representatives in early January we mentioned to the lenders a possible "compromise". It was that if they insist on taking away the priority for our liens, then the other half of the bargain should also unravel. We should not be responsible for putting lender's names on farmers' grain checks. There are plenty of farmers in the state who would embrace that idea wholeheartedly.

We should all be proud of how the grain elevators and ag input suppliers continue to serve their farmer customers in these difficult times. We submit to you that the Legislature should not be taking away from these mostly small town business the tools to continue doing that. Your DO NOT PASS on HB 1330 will keep these lien tools in place.

I will try to respond to any questions you may have.

THE AG LIEN ISSUE
Prepared by the North Dakota Grain Dealers Association

THE ISSUE: Lenders* want to get ahead of ag processor and ag supplier lien holders in priority of security on crops and livestock. House Bill 1330 has been introduced in the ND Legislature to accomplish that. THE NORTH DAKOTA GRAIN DEALERS ASSOCIATION IS STRONGLY OPPOSED TO HB 1330.

CURRENT LAW: If properly and timely filed, the ag processor's lien comes first, the ag supplier's lien comes second, and lenders' security interests follow in the order of their filing. The processor's lien includes threshing, combining, and drying. It includes the old "thresher's lien". The ag supplier's lien includes seed, petroleum products, fertilizer, farm chemicals, insecticide, application services, feed, hay, pasturage and veterinary supplies.

WHY AG LIENS HAVE PRIORITY: If a crop is not harvested there is no value for other lenders or lien holders. That is why processors (combining) come first. If supplies such as insecticides, farm chemicals, fertilizer, and fuel are not provided, the value of a growing crop deteriorates and could go to nothing. That's why suppliers are second. Lenders will say that suppliers "jump ahead" of them in priority, but lenders have their own version of "jumping ahead" through the purchase money security interest. It is much broader than any processor's or supplier's lien would be. It allows the lender to get ahead of lenders who've gone before it and have taken security in the next maturing crop, crops grown in future years and other collateral. Lenders have the opportunity to get ahead and stay ahead by loaning enough funds so the farmer can pay cash for his supplies. Most suppliers would prefer that, so they wouldn't have to get into the credit business.

WHO GETS WHAT? Suppliers can take a lien up to the value of the supplies and services furnished, and only on the crop where the supplies or services were used. A lien taken to cover the value of wheat seed does not attach to that farmer's sunflower crop. A lien taken to cover insecticide used on sunflowers does not attach to the wheat crop. And the lien covers only the value of the supplies and services furnished. On the other hand, lenders' security agreements generally cover all crops, farm machinery, maybe some personal assets or land, farm program payment and insurance assignments. Suppliers are looking for only a thin slice of the pie. If the crop fails, the lien is worthless to the supplier. Lenders have those other assets to fall back on.

TIME OF FILING: These liens can't be filed until AFTER the supplies are furnished. Lenders normally make their financing arrangements with farmers before spring fieldwork starts. If these ag liens are not given a priority position in law then suppliers and processors will always be behind lenders. Many of them can be expected to go to a cash-only basis.

A MONEY AND CONVENIENCE ISSUE FOR FARMERS: A loan from a lender to pay for supplies starts costing the farmer interest on day one. On the other hand, suppliers generally don't start charging interest for 30 or 60 or 90 days. If the priority lien is taken away then many suppliers will go on a cash-only basis, costing the farmer. Farmers can generally pick up their supplies at will, and the supplier puts them on credit. If his secured position is jeopardized, the

supplier may demand immediate payment before the supplies leave his property. This is both a money and convenience issue for farmers.

THE RECORD: These liens have been in the statutes for decades. They were under different names until being combined into processors' and suppliers' in the 1987 legislative session. Current law balances the interests between lenders and suppliers as they seek to serve the credit and supply needs of North Dakota farmers. When asked how much money they have lost because these liens are in the law, lenders haven't given an answer. It seems to us that there is no justification for such a radical change in state law as the lenders are now proposing.

SOME HISTORY: The Uniform Commercial Code, as adopted into North Dakota law, has what is called the "farm product buyer exception" in it. If any customer goes to a retail store and buys clothes or sporting goods or whatever, he doesn't have to worry about those goods having an inventory mortgage against them that he could be held responsible to pay. But the farm product buyer exception says that grain and livestock buyers ARE responsible to the lender who has a security interest in those crops or livestock. In the 1983 legislative session the Grain Dealers and livestock buyers tried to get that exception out of the code. Lenders strongly opposed. A Certificate of Ownership process was created, which didn't work very well. In 1984 the bankers and the Grain Dealers agreed on a Central Notice System that would serve as one accurate source of crop mortgage information, rather than having to check in several counties where the farmer might live or have cropland. In the 1987 session the lien statutes were overhauled into processors and suppliers. There was a gentlemen's agreement between the lenders and the buyers that buyers would go along with watching out for lender loans through a Central Notice System and that lenders would leave the ag liens alone. Now the lenders are coming back to upset the priority on those liens. If that is going to happen, then maybe someone should introduce a bill that would relieve grain and livestock buyers of any obligation to put lenders' names on grain and livestock checks. Let the lender watch out for his own interests, and let the farmer cash his check free of all attachments.

WHAT YOU CAN DO: Urge your legislators to VOTE NO on HB 1330.

*Lenders include the North Dakota Bankers Association, Independent Community Banks of North Dakota, Farm Credit Services, and North Dakota Credit Union League.

RESOLUTION #1

RESOLUTION ON HB 1330

WHEREAS North Dakota grain elevators sell seed, fertilizer, chemical and application services on credit to farmers for them to produce a profitable crop, and

WHEREAS these elevators must be able to protect their interest in those products and services they sell to farmers by filing ag supplier's liens, and

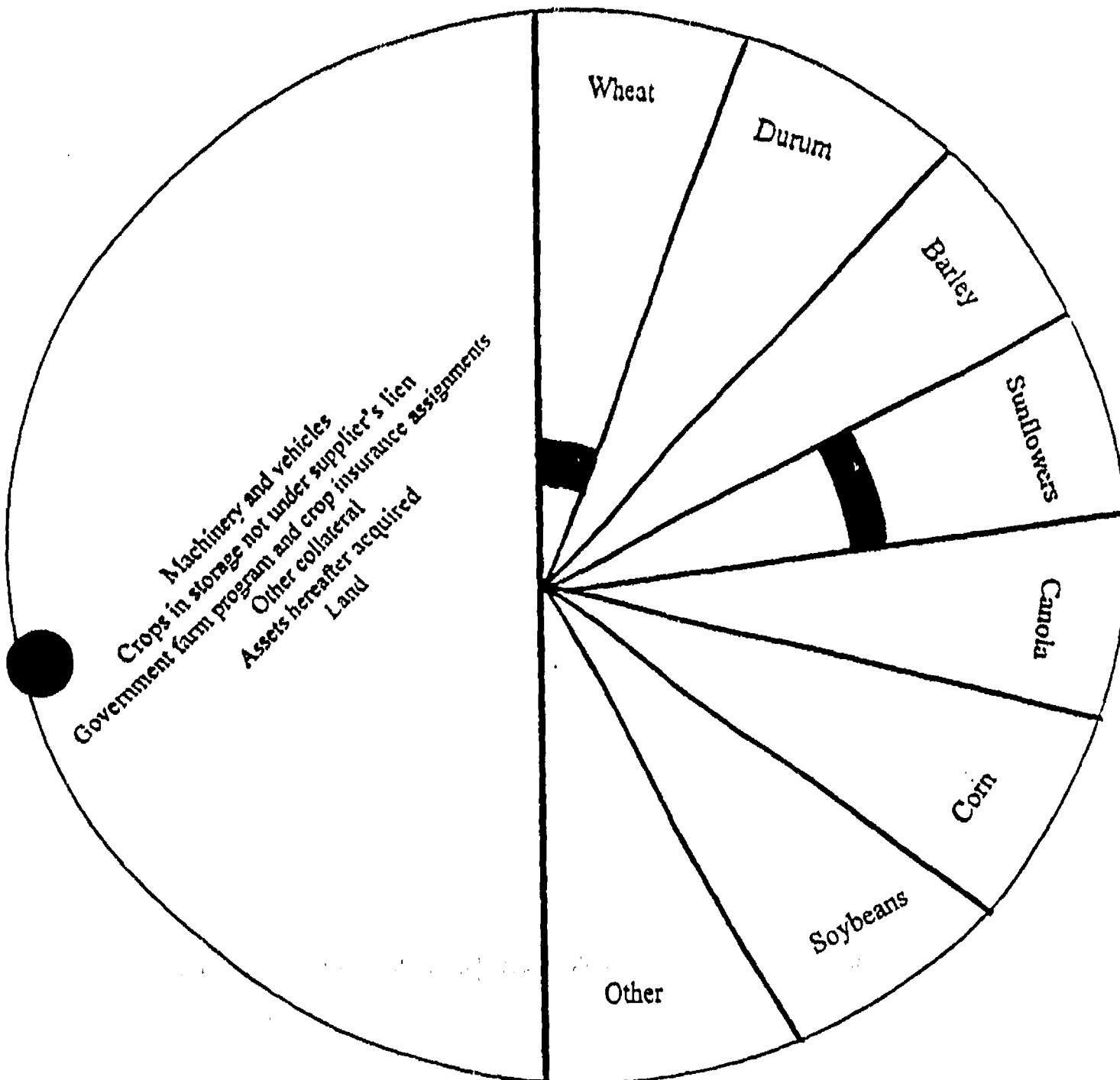
WHEREAS lenders do not always finance all the farmers' necessary ag inputs, and

WHEREAS the supplier's lien covers only crops on which the supplies or services were used and only up to the value of those supplies and services, in contrast to lenders' broad security interests which likely attach to all crops and other assets, and

WHEREAS North Dakota grain elevators are already looking out for lenders' interests by putting their names on grain checks, and

WHEREAS these elevators may not provide products and services on credit to farmers without the ability to protect their interests with the priority supplier's liens,

NOW THEREFORE BE IT RESOLVED THAT THE NORTH DAKOTA GRAIN DEALERS ASSOCIATION expresses its strong opposition to House Bill 1330 which repeals the priority for ag processor's and ag supplier's liens currently in Sections 35-30-03 and 35-31-03 of the North Dakota Century Code.



The ag supplier's lien on wheat seed attaches to only the wheat crop, and only up to the value of the seed (shaded area). If the wheat crop fails the supplier has no coverage. The ag supplier's lien on sunflower insecticide attaches to only the sunflower crop, and only up to the value of the insecticide (shaded area). If the sunflower crop fails the supplier has no coverage. On the other hand, lenders commonly have security agreements that cover most or all the pie. They can fall back on all of that if a crop fails.

TO HOUSE JUDICIARY COMMITTEE

PRAIRIE ROOM

STATE CAPITOL

BISMARCK, ND 58501

FROM FARMERS CO-OP ELEVATOR

THOMAS AMUNDSON, MANAGER

BOX 67

SHARON, ND 58277

JANUARY 27, 2001

TO CHAIRMAN DEKREY AND VICE-CHAIRMAN KRETSCHMAR:

PLEASE ACCEPT THIS LETTER AS WRITTEN TESTIMONY AGAINST HB 1330

CHAIRMAN DEKREY, VICE-CHAIRMAN KRETSCHMAR, AND COMMITTEE
MEMBERS;

I MANAGE A SMALL GRAIN ELEVATOR IN SHARON, ND. MY AREA HAS
BEEN HIT WITH AG DISASTERS FOR THE LAST FIVE TO SEVEN YEARS.

WE HAVE DEALT WITH TOO MUCH RAIN, DISEASE IN OUR CROPS, POOR
QUALITY HARVEST, AND HAVE SEEN OUR CUSTOMER BASE ERODE
AS MORE AND MORE FARMERS ARE GETTING OUT. WE CONTINUE TO
BALANCE THE NEEDS OF OUR CUSTOMERS WITH THE NEEDS OF OUR OWN
BANKERS. THE PRIORITY AG SUPPLIERS LIEN HAS BEEN A TOOL THAT
HAS KEPT US IN BUSINESS. WE NEED TO PROVIDE THE SERVICES AND
GOODS TO OUR FARMERS AND KEEP A MANAGEABLE BALANCE ON THE

BOOKS. WITHOUT THE PRIORITY LIEN, WE WOULD BE FORCED INTO A CASH ONLY BASIS FOR GOODS AND SERVICES.

EVERY LEGISLATIVE YEAR WE SEE AN ATTEMPT TO ADJUST THE PRESENT LEGISLATION. WE FEEL IT WAS A DEAL WORKED OUT BETWEEN THE SUPPLIERS AND THE LENDERS AND YOU'LL NOTICE WHEN THEY ASK FOR THE PRIORITY LIEN TO BE ELIMINATED THEY DON'T ASK TO HAVE THE OTHER HALF OF THE COMPROMISE OF OUR RESPONSIBILITY FOR PUTTING LENDERS' NAMES ON CHECKS TO BE REPEALED. WE NEED TO KEEP BOTH THE SUPPLIER'S AND PROCESSOR'S LIENS WITH THE PRIORITY STATUS THEY NOW HAVE AND WE WOULD ASK YOU TO SEND THIS BILL OUT OF YOUR COMMITTEE WITH A DO NOT PASS. THANK YOU FOR YOUR CONSIDERATION.

SINCERELY;

THOMAS AMUNDSON

HB1330 – Ag Suppliers' Liens

Mr. Chairman and members of the Judiciary Committee:

My name is Stephen Ashley. I am a farmer and rancher from the Velva area in McHenry County. I also am a long-time director and officer for an area elevator that furnishes crop inputs.

My involvement in both a farm and an elevator business is what brings me here today on this very important issue concerning agricultural suppliers' liens.

Personally I don't see why this issue is currently being raised because most lenders have extensive liens on other property as well as crop to protect them from losses. Also, I see no evidence of the current law creating a hardship when we consider the financial condition of lenders versus farmers or agricultural suppliers.

Perhaps I can shed some light on what changes may occur if HB1330 is approved.

First: Agricultural input suppliers would very likely go on a cash-only payment basis, causing disruption and time loss during the seasonal rush. This would also cost the farmer money because current short-term financing by ag suppliers is usually free for thirty days or more.

Second: The ag suppliers currently furnishing season-long financing would have a tremendous product-selling advantage over outlets not directly affiliated with large grain, fertilizer or chemical companies and their direct financing capabilities.

Third: There are many times during the production season when bugs or disease can affect a crop quickly and unexpectedly. Often, lenders' timing or financial formulas cannot respond to save a crop. Timing can be very critical and a crop may be lost and all would therefore lose.

While my discussion has referred to crop production, many of these points also apply to North Dakota livestock industry as well.

Thank you for your time and attention.

Testimony In Support of H.B. 1330
February Amendments
Joel Gilbertson, Executive Vice President
Independent Community Banks of North Dakota

My testimony this morning will be short and simple. We simply want notice.

The amendments I am distributing will assure that the lenders get notified of an oncoming superpriority lien.

Let me briefly discuss the changes from our last marathon session.

Our first goal has been to give this entire concept more teeth as it relates to abuse of this special superpriority privilege. We think that adding a provision for attorneys fees will do that. This will cover companies who seek to adopt this procedure to protect their credit lines.

Our second goal is to assure that lenders and farmers are brought inside the communications circle when the processor or supplier is contemplating a superpriority lien.

The amendments require notice to the lender. Notice can be given by fax, perhaps e-mail or dropping it off at the bank. Whatever can be verified is just fine.

The notice must be given within 45 days. Giving the notice is enough to make sure the superpriority, assuming other requirements are met, is assured. The lender has no option to do anything to the superpriority status of the lien.

We believe this is entirely reasonable. It is perhaps more than is necessary, in terms of a compromise, but we urge your support and a DO PASS AS AMENDED for H.B. 1330.