

ALTERNATIVE METHODS FOR RECORDING AND DISCHARGING MOTOR VEHICLE LIENS STUDY - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4011 (attached as Appendix A) directs a study of the alternative methods for recording and discharging a lien on a motor vehicle. The resolution states the reasons for the study include problems with a lien on a motor vehicle not being properly recorded or discharged and the availability of new technologies to simplify the procedures and requirements relating to recording and discharging a motor vehicle lien. The main problem discussed in the testimony related to this study arises when a lending institution releases a lien on a motor vehicle and mails it to the owner and the owner has moved or the owner receives the title with the lien release and thereafter loses the title. Although either situation may be remedied, a later sale of the motor vehicle may be delayed.

TITLE REGISTRATION

North Dakota Century Code (NDCC) Chapter 39-05 provides for title registration for vehicles. There is a different procedure under Chapter 39-04 for vehicle registration. A title registration is done to show ownership, while vehicle registration is done to license the vehicle for operation on the public highways in this state. This study relates to title registration.

Title registration is done by making or transferring a certificate of title (attached is Appendix B). Generally, the owner of a vehicle is required to obtain a certificate of title for that vehicle. A vehicle that is not titled may not be registered. A vehicle that is not registered may not be driven on the highways of this state.

This study focuses on liens in the title registration process. There are different instances for which a lien, sometimes called a security interest, may be noted on the face of the title. The most common instance is when a buyer purchases a new or used motor vehicle with borrowed money for which the buyer gives a lien on the vehicle as collateral for the loan by the person that loaned the money. Another instance is when the owner of a vehicle uses a motor vehicle as collateral for a loan made for a purpose other than buying the vehicle. Another instance occurs when a storage or repairman's lien is placed on a vehicle for unpaid storage or repair bills.

The instances in which a lien may be removed from the title are threefold. In the first instance, the loan is paid off and the owner retains the motor vehicle, i.e., the lien or security interest is satisfied and there is no transfer of the vehicle. In the second instance, the lien is satisfied as part of a transfer of a motor vehicle to a dealer as a trade-in on another vehicle. In the third instance, the motor vehicle is sold and as part of that sale the proceeds are used to satisfy the lien so that the buyer has clear title.

The different instances of when a lien is noted on or removed from the title are explained because in practice there are different practical considerations for each instance. Any change in the title registration procedure should be applied to each of these situations to determine if the change will have the desired result. For example, although the owner is required to obtain a title when purchasing from a dealer, the dealer may prepare the appropriate paperwork for the owner, but when purchasing from a private party, the owner may provide the paperwork and the purchaser may complete the paperwork.

The law deals with liens in the following manner. One rule permeates the law. In every instance, the person with the first lien has or should have the title.

North Dakota Century Code Section 39-05-05 provides for the application for a certificate of title. Under subsection 1, an applicant for a certificate of title must provide among other information a statement of the applicant's title and other liens and encumbrances on the vehicle along with the names and addresses of any lienholders in the order of their priority with the dates of the security agreements to the Department of Transportation. Under subsection 4, if a new vehicle is purchased from a dealer, the applicant is required to submit a certificate of origin with a statement of the transfer by the dealer and any lien retained by the dealer or other lienholder before the department issues a certificate of title. The lienholder is considered the legal title owner, and the department sends the title to the lienholder.

North Dakota Century Code Section 39-05-09 provides for the contents of a certificate of title. Under this section, a certificate of title must contain, among other things, a statement of the owner's title, of all liens and encumbrances upon the vehicle, and whether possession of the certificate of title is held by the owner or lienholder. The reverse side of the certificate contains a space for the notation of liens and encumbrances on the vehicle at the time of a transfer. The amount of the lien is not required to be placed on the certificate of title, and the department is to deliver the certificate of title to the owner or first lienholder.

Under NDCC Section 39-05-09.1, if a certificate of title is lost or destroyed, the first lienholder or, if none, the owner, shall make application for a duplicate title. The title is mailed to the first lienholder named on the title or, if none, to the owner.

North Dakota Century Code Section 39-05-16.1 provides for the release of a security interest. This section requires the lienholder upon the satisfaction of a security interest to execute a release. The release must be issued within 10 days after demand and in any event within 30 days. The lienholder is to deliver the certificate of title and release to the next lienholder or, if none, to the

owner. If the next lienholder receives the title and release, the lienholder is to deliver the title and release to the department. The delivery must occur within 10 days after demand and in any event within 30 days. The department then issues and delivers the title to the first lienholder on the title. If the owner receives the title and release, the owner is to deliver the title and release to the department within 30 days. The department then issues a new certificate of title and delivers it to the owner.

Subsection 2 of NDCC Section 39-05-16.1 provides for the procedure of releasing a security interest when the lienholder does not have possession of the title, e.g., the possession of the title lies with another lienholder. In this instance, the lienholder whose security interest is satisfied is to execute a release and deliver the release to the owner. The lienholder in possession of the title upon receipt of the release is to deliver the release and the title to the department. The department then issues a new certificate to the lienholder.

North Dakota Century Code Section 39-05-17 provides for the transfer of a title. Under this section the owner of a motor vehicle who sells the vehicle endorses an assignment and warranty of title on the back of the certificate of title and verifies whether there are liens or encumbrances on the vehicle. The owner is to deliver the certificate of title to the purchaser if title passes to the purchaser. If the title does not pass to the purchaser, the lienholder endorses a statement that the lienholder holds a lien and sends the title to the department with the application of the purchaser for a new certificate of title showing the name of the owner and lienholder which is returned by the department to the lienholder who retains the title until the terms of the lien are satisfied by the purchaser. After showing the lien has been satisfied, the lienholder is to deliver the certificate of title to the purchaser. The purchaser is required to present the title to the department within 30 days, and the department is required to issue a new certificate of title. If there is another lienholder, the department shall deliver the title to the lienholder with priority.

The following are instructions given to the employees at the department for transferring a title. The instructions combine the statutory provisions contained in NDCC Sections 39-05-16.1, 39-05-17, and 39-05-17.1. The "Part 1," "Part 2," and "Part 3" references refer to the labeled parts on the certificate of title. The end result is the title attached as Appendix C.

TITLE TRANSFER:

1. Lien (if any) on front of title must be released.
2. Part 1 must be signed by the owner as shown on front of title. If the title is in the name of a company, it must be countersigned. Name and address of the new owner must be typed or printed legibly. Odometer information must be completed, if applicable, and the purchaser must sign and print the purchaser's name.
3. Part 2 must be completed if vehicle is sold by a dealer. Dealer must sign and show dealer number. Name and address of the new owner must be typed or printed legibly. Odometer

information must be completed, if applicable, and purchaser must sign and print the purchaser's name.

4. Part 3 (purchaser's certificate) must be completed and signed by the new owner. If coowned, Part 3 must be signed by both or countersigned (i.e., John and Mary Doe - by John Doe). If in the company name, it must be countersigned (i.e., Smith Company by John Smith, President).
5. Seller must deliver title to purchaser within 15 days.
6. Purchaser must submit title to the division for transfer within 30 days of receipt.
7. Title transfer fee is \$5.

Under NDCC Section 39-05-17.1, when a vehicle is sold, the seller is to deliver the certificate of title within 15 days to the buyer, unless the vehicle is subject to any liens, then the title must be delivered to the first lienholder.

Under NDCC Section 39-05-17.3 a transaction does not create a security interest because an agreement provides that the rental price may be adjusted by reference to the amount realized upon sale.

North Dakota Century Code Section 39-05-33 provides that any person violating a provision of Chapter 39-05 for which another penalty is not provided is guilty of a Class B misdemeanor. The chapter places duties on lienholder's owners, the department, repair shops, and police officers. Violations of any of these provisions, some being merely procedural, would theoretically be a Class B misdemeanor.

SUGGESTED STUDY APPROACH

The legislative history reveals the main reason for the study was that owners, upon the release of a lien and the delivery of the title with the lien released to the owner, sometimes lost the title, and this creates a problem in the resale of the vehicle. Although instances like this may be remedied, they do require a certain amount of days, which may not be fast enough for an owner who has an eager buyer. The solution to this problem and a general improvement on the efficiency of the administration of titles and liens could be for liens to be filed electronically. Other states provide for or are investigating the electronic filing of titles and liens. A review of other states' experiences may be useful to the committee.

According to a representative from the Department of Transportation, legislative action would not be required for the implementation of an electronic title and lien system; however, legislative action may be advantageous so as to clarify existing statutory language to comply with the new system or if there would be a significant cost to the system. The committee may want to receive testimony from the Department of Transportation, motor vehicle dealers, and financial institutions on these expected costs and any savings.

ATTACH:3