

House Bill 1366
Testimony before House Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
Pioneer Equipment Dealers Association
February 11, 2021

01/29/21

Mr. Chairman and members of the committee. My name is Matthew Larsgaard, and I am appearing in support of House Bill 1366 on behalf of the Automobile Dealers Association of North Dakota and the Pioneer Equipment Dealers Association. Collectively, these organizations represent over two hundred of our state's franchised new car and farm equipment dealerships.

In many cases, when a motor vehicle, tractor, or other farm equipment breaks down, the owner of the property will ask a dealer to fix it. The dealer conducts the repair after the customer has agreed to the repairs and the cost. The vast majority of customers pay for the repairs that they have asked for. The problem exists with the few that do not. That is why the Repairman's Lien law was created. It gives the repairman an opportunity to place a lien on property and retain possession of it until the repair bill is paid.

The purpose of the Repairman's Lien law is to protect the investment of parts and labor the repairman adds to the property. It is important to understand the vast majority of these repairs also increase the value of the property.

In many instances, both a lender and a repairman will have a lien on the same piece of property. In this case, there is a question of lien priority, or who gets paid first: the lender or the dealer? Current law allows the repairman's lien on farm equipment to have first priority only up to the greater of \$9,000 or 30% of the value of the equipment in its repaired condition. The threshold for motor vehicles is currently the greater of \$4,000 or 30% of the vehicle value.

The Issue:

From time to time, customers ask our dealers to repair low-value vehicles, tractors, or other equipment. In some instances, the value of the repair is close to the value of the property in its repaired condition. As a result, we have had many people decide to abandon vehicles and equipment at our dealerships and forgo paying the repair bill. In some cases, the owner simply tells the dealer that they are not going to pay the repair bill and the dealer may keep the property. In other cases, individuals simply abandon the property and do not respond to our repeated attempts to communicate with them. This was especially prevalent in Western, ND after the downturn in the oil sector. Some of our dealers have had abandoned property sitting on their lots for years.

In these situations, the dealer must initiate lien foreclosure proceedings in order to get paid and dispose of the property. Under current law, the only way for a repairman to foreclose on their lien is to sue the property owner and pursue a judgment against them. This is often a burdensome and time-consuming task. In addition, it is also costly for the owner and any lienholders because the expenses associated with the judgement process are taken out of the sales proceeds....which doesn't benefit anyone.

This legislation was modeled after the abandoned motor vehicle bill that was unanimously passed out of this committee last session (HB 1263). Like that legislation, this bill provides repairmen with the ability to dispose of property that has been abandoned and left in the dealers' possession. HB 1366 allows repairmen a better method through which they may dispose of or sell abandoned vehicles and equipment while still protecting the interests of all involved parties through waiting periods, maintaining the current lien priority thresholds, and requiring the repairmen to provide certified notices to all parties.

HB 1366 Notes:

- 1) Allows a repairman who is a lienholder to sell property subject to a lien without bearing the **undue burden and cost of taking the matter to court.**
- 2) At least 20 days before selling the property, the repairman must send a **Certified Notice** to all interested parties including: the owner, all lienholders, and all secured parties.
- 3) The **owner, lienholders, or secured parties may** pay the repair bill (lien) and **reclaim the property** at any time prior to the sale.
- 4) Requires the repairman to **return to the owner and lenders any sales proceeds that remain** after the repairman's lien priority has been satisfied.
- 5) Allows a repairman to **recoup costs** associated with storage and transportation of property subject to a lien, **which can be a significant expense for the repairman.**
- 6) **Not all of these vehicles and equipment are subject to a banker's lien.**
 - However our dealers have an investment and lien on EVERY single one of these vehicles and equipment and need to dispose of them.
- 7) The sale provision **applies only to property** that a **repairman has possession of.**
- 8) HB 1366 **does NOT reduce the bankers' lien priority threshold.**

Mr. Chairman, we respectfully request a DO PASS on this legislation. Thank you.

Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
Pioneer Equipment Dealers Association

Exhibit A: Realistic Scenario Under Current Law:

1/22/21

A bank has a mortgage on 100% of the value of a tractor. The tractor, worth \$40,000, blows an engine. The dealer replaces the engine and makes other repairs totaling \$20,000.

Tractor value before break-down: \$40,000

Repair cost: \$20,000

Tractor value after break-down: \$20,000

At this point in the scenario the bank has experienced an unrealized loss of \$20,000. The risk that they took in making the loan has now become a reality.

Dealer now enters into the scenario

Tractor value: \$20,000

Dealer adds value through their parts & labor: \$20,000

Tractor Value (after dealer repair): \$40,000

Increase in value of property through dealer repair: \$20,000

Under current law, if the tractor is foreclosed on and sold for \$40,000, the bank would get \$28,000 and the dealer would only get \$12,000 (30%). The Dealer added \$20,000 in parts & labor but, they only get \$12,000.

Net result: the bank gets \$8,000 of the dealer's parts & labor!!

Even with HB 1366 being Passed, the bank would still get \$8,000 of the dealer's parts & labor.

HB 1366 Explanation

1/29/21

Section 1, Page 1, line 15. Section 35-13-01 states that a Repairman that repairs certain property has a lien on that property for reasonable charges for work done and materials furnished...essentially the parts and labor they put into that property. The amendment on line 15 will include storage fees and transportation costs as part of the lien.

This amendment is important for several reasons:

TRANSPORTATION

In some cases, transportation is an absolutely necessary function in order to repair property:

- 1) Some vehicles in need of repair have to be towed in to the dealer. Some of our dealers have tow trucks and pick up the vehicle, but others need to hire a tower to pick up the vehicle. In this situation, it is usually the dealer that actually pays the tow truck company. The dealer then simply adds the tow truck charge to the vehicle repair order.
- 2) Regarding farm equipment, in some cases, a dealer is required to pick up a tractor or combine and bring it back to the dealership for repair, or, and in most cases, they drive their service trucks to the location of the equipment and perform the repair. This is a cost for dealers, and they need a way to recover it.

STORAGE

The storage of vehicles and equipment is also a cost that needs to be recovered by dealers for several reasons:

- 1) Dealers must purchase and maintain adequate lot space in order to store vehicles that are either 1) repaired or, 2) are waiting to be repaired.
- 2) Dealers must maintain, preserve, and protect vehicles they are storing. If a vehicle is damaged while it is being stored, the dealer is the one that generally must pay to fix the damage.

Section 2, Page 2, lines 2-18 allow the vehicle or equipment to be sold after the dealer has provided at least 20 days' notice by certified mail to both the owner of the property and all lienholders as they may exist. Notice must include a number of things, such as a description of the property, reason for the lien, and amount owed.

Section 3 is simply cleanup language to harmonize with other sections of the Repairman's Lien law.

Section 4, Page 3, lines 2-7 allow the dealer to sell the property only if both the owner and any lienholders refuse to pay the repair bill and take possession of the vehicle.

It is important to understand that before any property can be sold, notice (certified mail) must be sent to all interested parties, which includes owners and all other lien holders. Once notice has been given, any owner or lien holder has the right to pay the repair bill and reclaim the vehicle.

Lines 8-13 outline the items for which a repairman may retain funds from the proceeds of the sale of the property.

Lines 14-16 require the repairman, after satisfying their lien, to remit any remaining proceeds to lienholders and secured parties.

Lines 17-22 requires that any remaining sales proceeds must be held for the owner of the property for 90 days after the date of the sale. After that time, the repairman must deliver the remaining funds to the state abandoned property office.

Section 5, lines 26-30: In the case of a titled motor vehicle, this section allows a repairman, after they send certified notice to all interested parties and fulfill the 20-day waiting period, to obtain title to the vehicle so that they may dispose of it. Again, either the owner or any lienholders may pay the repair bill and take possession of the vehicle. This provision is nearly identical to the abandoned vehicle bill that was passed last session.

END