



**TESTIMONY OF JEFF OLSON
TO THE
HOUSE TRANSPORTATION COMMITTEE
ON
HB 1366**

February 11, 2021

Chairman Ruby and Members of the House Transportation Committee,

My name is Jeff Olson. I am President/CEO of Dakota Credit Union Association. We oppose HB 1366.

As currently written, HB 1366 is not good for consumers, businesses, or lenders. The bill lacks provisions and protections that are required under Uniform Commercial Code (UCC) as found at North Dakota Century Code 41-09 and Judicial Foreclosure of liens of personal prorty as found under North Dakota Century Code 32-20. For example, UCC requires that “Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable.” NDCC 41-09-107. (9-610)

This proposed legislation speaks nothing to these requirements. Furthermore, current statute, under NDCC 35-13-05, already provides that the repairman with a lien may bring an action or proceeding to foreclose on the lien after providing notice to existing recordholder of a mortgage. While it may be swifter and cheaper to conduct a sale under the proposed language of HB 1366 instead of proceeding with a judicial sale, we believe the protections afforded the consumer and other lienholders under UCC should not be ignored.

Our organization understands the bill sponsors intent for the legislation. So as a result, Dakota Credit Union Association, along with the North Dakota Bankers Association, Independent Community Bankers Association and Farm Credit Services, met to discuss how the financial community could make this legislation work for all parties affected. The “proposed amendments” document attached to my testimony is our combined efforts that we believe will ensure our neutrality on the bill moving forward. With the chairman’s permission, I will now go through each section of the bill, our amendments, and our intention for each amendment.

In section 1 on line 15, the bill HB extends “reasonable charges” to now include storage fees and transportation costs. Previously, the only charges included were accessories, parts, work done, and materials furnished. We do not believe storage and transportation fees should be included as part of the lien because these fees do not enhance the value of the property and therefore should not be entitled to the same priority as the charges for repairs made.

Under section 2 of the bill on line 15, inserting the language “state the time, date and place of a public sale or the time after which any other sale is to be made” will bring the bill in line with UCC. NDCC41-09-

110. (9-613). This will provide notice to property owners and other interested parties/recordholders of how the repairman intends to dispose of the property.

On page 3 under Section 4, we propose inserting new language at numbers 2 through 4. Subsection 2 reflects the methods of sale that a lienholder may dispose of the property through, including the very important requirement that the sale, private or public, terms must be commercially reasonable.

UCC only permits that a secured party may purchase collateral either at a public disposition or at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations. NDCC 41-09-107. (9-610) Again, these protections are not present in the proposed language of HB 1366, possibly allowing for a lienholder to purchase the collateral for him/herself for their own personal use. We proposed the subsection 3 to reflect this UCC consumer protection.

The deletion on page 3, line 10 echoes the same language as found previously in Section 1.

Finally, the proposed language for Section 5 creates new provisions regarding vehicle title. We are concerned that this may open the door for potential self-dealing and fraud. If the sale of collateral is not conducted in a commercial reasonable way to obtain the highest price and if there are not restrictions in place to prevent the lienholder from purchasing the collateral, the repairman may obtain the property for their personal use and a certificate of title for the motor vehicle, free and clear of all liens, encumbrances, and other claims of ownership for pennies on the dollar. We believe inserting the language requiring a private or public sale will serve as an assurance that the vehicle was sold in a judicious manner in accordance with the protections we are proposing under Section 4.

Thank you, Mr. Chairman. I welcome any questions the committee may have.