

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2061

2005 SENATE JUDICIARY

SB 2061

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		2296 - 4736
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Relating to a landlord's mobile home lien.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Sen Judy Lee** - Dist #13 Introduced the bill (meter 2296) Gave Testimony - Att #1

**Sen. Traynor** asked questions in regards to a Fargo Mobile home park and the history of the bill.

**Terry Traynor**- NDACo Asst Dir. (meter 3113) Gave Testimony Att #2.

**Sen. Trenbeath** discussed the statutory lien by name vs. number. **Sen. Nelson** compared process to the purchase of a home (meter 3533)

**Testimony in Opposition of the Bill:**

**Kent French** - ND Mfg Housing Assoc. gave his testimony (meter 3765)

**Sen. Traynor** discussed a notification being placed on a door. **Mr. French** said with out penalty the paper would only be taken down. (meter 3980). **Senator Syverson** wondered how the new

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Senate Judiciary Committee

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owner could get personal belongings back out of repossessed home. Discussion of purchase process and the difference between this and a house purchase.

**Rock Gordman** testified (meter 4500) against bill.

**Sen. Trenbeath** stated that if we relate a trailer with a motor vehicle (Side 2, tape 1) it would not show up anywhere but by name. **Sen. Traynor** discussed a mechanics lien. Sited that if using of a trailer I.D., that it would generate a new index system with the courthouse. Discussions of contracts, lien filing process, leasing Rights of the lien holder. Discussion of giving a notice, but needing the notice to have "teeth" so they hold.

There is only one case that was heard of that this bill has been an issue. **Sen. Traynor** wanted committee to come up with a way to word this so it not be a great hardship on any of the parties.

For example a notice on the trailer door, with a penalty of removal.

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 19 , 2005

Tape Number	Side A	Side B	Meter #
1		X	4045 - end
2	X		0.0 - 490
Committee Clerk Signature <i>Maria R. Salvey</i>			

Minutes: Committee Work

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All Senators were present.

**Sen. Traynor** submitted an amendment (att #1) Discussed if using a "Notice" of a lien on the out side of the trailer it would have to have "teeth". Senator Syverson wanted to know how we could prevent what happened in Fargo from happening again. All felt that this amendment would help a situation like that, at least for the new owner to retrieve her belongings from the trailer that she thought she purchased. It was discussed that the Fargo incident was a matter of bad timing and not much could be done to have changed this.

**Sen. Trenbeath** moved to do pass amendment and Senator Triplett second the amendment. Five were in favor, one not ( Senator Syverson- oppose), motion passed.

Senator Syverson stated his unhappiness. **Sen. Traynor** responded that when this bill came it stated the mobile home park owner had the only access to the back rent trailer. We all agree that

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Senate Judiciary Committee  
Bill/Resolution Number SB 2061  
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this is wrong and we took it out. We also took out that the door could not be sealed that it could only be posted on the door with a penalty of removal. The landlord would only possess the trailer not the contents in the trailer.

**Sen. Trenbeath** made the motion to Do Pass as amended and **Senator Syverson** seconded the motion. All were in favor..

Carrier: **Senator Syverson**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
1		X	5,890
Committee Clerk Signature <i>Maria L Solbey</i>			

Minutes: Relating to landlord's mobile home lien.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All Senators were present. **Sen. Traynor** opened meeting with the motion to reconsider SB 2061 so we may have it before us.

**Senator Syverson** made the motion and **Sen. Trenbeath** seconded all were in favor.

Discussion was that the amendment put on the bill for the floor hearing were incorrect with the final amendments committee wished to have adopted.

Motion to correct amendment by **Senator Syverson** and seconded **Sen. Trenbeath**. All were in favor.

Motion to Do Pass Corrected Amended Bill by **Sen. Trenbeath** and seconded by **Senator Syverson**. All were in favor. Motion passes.

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Senate Judiciary Committee

Bill/Resolution Number SB 2061

Hearing Date January 25, 2005

Carrier: **Senator Syverson**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing



PROPOSED AMENDMENTS TO SENATE BILL NO. 2061

Page 1, line 2, after "lien" insert "; and to provide a penalty"

Page 1, line 6, after "lien" insert "**- Penalty**"

Page 1, line 14, replace "maintain possession by securing the" with "post a signed and dated notice of the lien on the primary entrance to the mobile home. A person who without authorization from the landlord willfully removes the notice is guilty of a class B misdemeanor."

Page 1, remove lines 15 through 20

Renumber accordingly

Date: 1/19/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Amendment Att #1

Motion Made By Sen Trenbeath Seconded By Sen Triplett

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	<del>✓</del>	✓	Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 5 No 1

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 1/19/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move to Amend w/ Amend 5026

Motion Made By Sen Trenbeath Seconded By Sen. Triplett

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment \_\_\_\_\_

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

Date: 1/19/05  
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

Do Pass As Amended

Motion Made By

Sen Trenbeath

Seconded By

Sen Syverson

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment

Sen Syverson

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

**REPORT OF STANDING COMMITTEE**

**SB 2061: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2061 was placed on the Sixth order on the calendar.

Page 1, line 2, after "lien" insert "; and to provide a penalty"

Page 1, line 6, after "lien" insert "- Penalty"

Page 1, line 14, replace "maintain possession by securing the" with "post a signed and dated notice of the lien on the primary entrance to the mobile home. A person who without authorization from the landlord willfully removes the notice is guilty of a class B misdemeanor."

Page 1, remove lines 15 through 20

Renumber accordingly

Date: 1/25/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Motion to Reconsider Bill

Motion Made By Sen Syverson Seconded By Sen Trenbeath

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment \_\_\_\_\_

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

Date: 1/25/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2041

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50206.0102

Action Taken Correct Amend. (line 15, 1457 to the period.)

Motion Made By Sen Syverson Seconded By Sen Trenbeath

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 7/25/05  
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2061

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Motion To Do Pass corrected Amended Bill

Motion Made By Sen. Trenbeath Seconded By Sen Syverson

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) \_\_\_\_\_ 6 No \_\_\_\_\_ 0

Absent \_\_\_\_\_ 0

Floor Assignment Sen. Syverson

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



**REPORT OF STANDING COMMITTEE**

**SB 2061: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2061 was placed on the Sixth order on the calendar.

Page 1, line 2, after "lien" insert "; and to provide a penalty"

Page 1, line 6, after "lien" insert "- Penalty"

Page 1, line 14, replace "maintain possession by securing the" with "post a signed and dated notice of the lien on the primary entrance to the mobile home. An individual who without authorization from the landlord willfully removes the notice is guilty of a class B misdemeanor"

Page 1, remove lines 15 and 16

Page 1, line 17, remove "the county of the location of the mobile home"

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2061

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2061

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/28/05

Tape Number	Side A	Side B	Meter #
1	xx		6.9-45
2	xx		20.8-30.3
Committee Clerk Signature <i>Rawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Bernstein).

**Chairman DeKrey:** We will open the hearing on SB 2061.

**Sen. Judy Lee:** Sponsor of the bill, explained the bill (see written testimony). =

**Representative Delmore:** So if an individual without authorization removes it would include the owner himself, as well.

**Sen. Judy Lee:** Yes. Whoever would remove it, that's my understanding from Sen.

Traynor, when he was explaining the changes that they were considering, and what they finally adopted and we voted to support in the Senate. If they willfully removed it. Obviously the wind can blow or something like that, it would need to be willful.

**Representative Meyer:** If you have a lien, doesn't it have to be on file at the courthouse.

Doesn't it have to be recorded at the courthouse.

**Sen. Judy Lee:** The lien is not now on file. I don't know why. There was no way for this member of the public, the father in this case of the young buyers to learn that the lien could be

filed because there isn't any place for it, for a matter of public record where you can see that that's the case.

**Representative Maragos:** Obviously the father didn't ask the mobile home owner, whether there were any liens against it, did he, he just went to the courthouse.

**Sen. Judy Lee:** I can't say what the buyer's father did, I also think that the owner of the mobile home was unscrupulous enough also, he hadn't paid several months of lot rent. So anything he could do to get rid of this albatross around his neck was a good thing. The mobile home park owner certainly had the legal right to attach the lien to the mobile home. The seller of the mobile home certainly should have been honest enough to say that there's a lien on this, but wasn't honest in the first place. There was no other way for the father to discover this information according to the family.

**Representative Galvin:** Was there a third party involved here, like a bank or financial institution. I wondered why there wasn't a title search or anything like that done.

**Sen. Judy Lee:** The answer to the first question is that there was no lender, so there wouldn't have been any kind of attorney review, and the other thing is that a mobile home is treated like a car, and not like real estate, because it's not attached, it was in a rental park. So it has a little different process. There was no official review of that situation.

**Representative Klemin:** Doesn't somebody who is going to take over the rent on a lot in a mobile home park, have some obligation to contact the mobile home park owner to make arrangements to do that before they buy this mobile home; otherwise they might have to move it if the lot owner won't rent to them.

**Sen. Judy Lee:** Yes, I would certainly say that they should, but I don't think it would be unusual for somebody who is purchasing a mobile home to perhaps figure that they would do that when they had transacted. The mobile home park owner is very tight about letting anybody else rent, and so there have been situations in which mobile homes have been sold on a contract for deed or some other kind of arrangement where there wasn't a lender involved, and the original owner is selling it, and I'm buying it, I would make payments to the owner because the mobile home park owner, you trust the owner who has been making the monthly payments. He's selling to me, but I'm a little shady, I don't have a good credit rating, I have had some problems, so you don't want to rent to me. So the only way I can leave that mobile home in this owner's park, is if his name is still on it, and I make payments to the owner. The owner passes the payments to the mobile home park owner. That's the way this park works.

**Representative Klemm:** The mobile home park owner has an interest in making sure he's got tenants that can pay the rent, and if somebody is going to buy a mobile home in a park where you have to rent the lot that it sits on, it seems to me that the person has some obligation to make sure you can keep the mobile home there once you buy it.

**Sen. Judy Lee:** I don't disagree. The thing in this situation, is that the seller is the bad guy and the good guy is the person who is buying it. It's a different kind of situation. I understand what you're saying and I certainly support the idea that someone should be checking with the park owner. But I think if you think about the folks that might be buying mobile homes, they aren't always the people who might be learned in the law, as many of the rest of us are not either. But they are just going to go, somebody ran an ad in the paper, they're going to go and see the mobile home, they look at the home, they think, "I can afford the lot rent, the payments will be

okay” and it’s very difficult to finance mobile homes now; so part of the deal for both the owner and the purchaser, is going to be how in the world are we going to be able to transact this, because the big lender on mobile homes has pulled out of this lending a few months ago, and so it’s become a real challenge for anybody to buy and sell mobile homes, that are financing them. So the park owner is very much a player in this, and yet I don’t disagree that the buyer of the mobile home probably should go and do some communicating with the lot owner, but I don’t think it would be unusual that somebody might not until it’s toward the end of the process. I think there still needs to be some protection for somebody who is actually thinking of paying the money, because they figure they can leave it there and keep on making payments on the lot rent, and they know they’re going to make the payments, and it wouldn’t occur to them that there is a problem.

**Representative Klemin:** This new section, would that apply if the person who owes the rent is not selling, and he’s still living there, does the landlord have to come and post this notice on the door too.

**Sen. Judy Lee:** I am unable to answer that question. The intent is not to have a red “A” on the door for the current mobile home owner, but it is to make sure that somebody, who is not knowledgeable in the situation, doesn’t step into a situation that creates a hardship for them.

**Representative Klemin:** As I read this, the landlord that owns the mobile home park, is not necessarily going to know that the mobile home is for sale, that has a lot with unpaid rent. So in order for him to protect himself, isn’t he going to have to go around every month and start posting all of these mobile homes any time there is a late payment in the rent, just to protect his lien.

**Sen. Judy Lee:** Maybe he should, I don't know. There is probably a better way to do that, I hadn't thought about that, it was not heard in the committee on which I served, so I can't tell you what all the discussion might have been there, but I would certainly welcome your improvement on that particular section. If there's a way we can protect the buyer from the kind of experience that this young family had that was on the news, in the paper, and this particular mobile home lot owner has a reputation for being particularly difficult in some circumstances. He pushes the envelope, and the loser in this situation is the innocent party. That's what I'm trying to avoid.

**Representative Klemin:** Let's say it's not for sale, but the landlord has posted this notice because he doesn't know that it might not become for sale, and so he's got to protect himself by posting this notice every time there is a late payment in the monthly rent, in order to have a lien here in case the person does later decide to sell it. So now we've got your young family, they've gotten behind on their lot rent and the father says, I'm not going to allow this to be posted on the door of my mobile home, so he takes it off of there, and the lot owner charges with a Class B misdemeanor, isn't that what the second sentence of this says.

**Sen. Judy Lee:** I think that if someone willfully removes it, no matter who that person is, they would be cited under this section. It's a new concern, and I share Representative Klemin's concern. Since the Senate Judiciary committee felt it was too difficult to handle this through the courthouse, where someone might ordinarily search for that kind of information, they felt that the notice being posted would be adequate to let a potential buyer know about this. The goal is to make sure that a buyer isn't going to be unable to get the information that's available.

**Representative Klemin:** Maybe the notice should contain a warning that removal might result in a Class B misdemeanor, the bill says what needs to be in the Notice, but it doesn't say anything about what happens if you take it off.

**Sen. Judy Lee:** I will leave that to the wisdom of your committee to figure out what the best way is to word the Notice.

**Representative Koppelman:** Do you know, you mentioned earlier that mobile homes are treated like cars, rather than as real property. Are there other types of liens that are made typically against mobile homes and do they need to be recorded, or is this the only time that it doesn't have to be recorded publicly.

**Sen. Judy Lee:** After 30 years in the real estate business, in which I have made it a point not to deal in mobile homes, I am not an expert in that area. The challenge is that if they are attached to a foundation, then it is real property and then it's a different kind of thing. But otherwise you are parking it in somebody else's park and they own the land and it's not the same. They don't pay real estate taxes the way you do on a standard house that is attached to a lot.

**Chairman DeKrey:** Thank you. Further testimony in support of SB 2061. Testimony in opposition to SB 2061. Testimony neutral.

**Representative Meyer:** In order for a lien to be valid, doesn't it have to be on file with the courthouse.

**Rep. Tom Kelsch:** The purpose of the law is to allow these without having to file at the courthouse. There was testimony in the Senate from the county, the difficulty of where you put the lien, what kind of lien it is, and how you would handle it, who would find it, I think that was



one of the reasons that the Senate committee decided to try and approach this like this, rather than trying to put it at the courthouse.

**Representative Koppelman:** It seems to me that this bill needs to be looked at.

**Kent French, ND Manufactured Housing Association:** As the bill was originally written, we did oppose it. In its present state, we would not oppose it. It actually gives us a little bit of a backbone to be able to try and collect some rents. We don't really feel comfortable with a law being passed because of one situation, but given that, when we take a look at this bill, we would like to be able to have a warning put on the lien, that would be put on the house, so that somebody would understand that if they did tear that off, which is going to happen all the time, unless the warning is on there, that that would be a part of that. That would be the only thing that I have to add.

**Representative Koppelman:** It seems to me that this could be beneficial I think to a lot of owners, to have this notice and you could make the case that it is fair to both the tenant and the landlord to say that your rent is late and here's the notice; but I can also understand people saying, I forgot about it or I'm a little short this month, but I don't want this scarlet letter hanging on my front door and tearing it off, and do you see this potentially creating a rash of Class B misdemeanors and all kinds of law enforcement issues, etc.

**Kent French:** I think this would be used as the exception, and not the rule. I believe that we have laws on the books now that allow us to start eviction process within 30 days and we would continue with that. This would just give us a situation where we could have a little more backbone.

**Representative Koppelman:** If you chose not to, and I assume from what you said that you wouldn't do it in most cases, or not all the time, and then you have a scenario like Sen. Lee described came up, where someone is selling their mobile home, then you don't have the whole point of the bill, which is to have notice to a potential buyer. Is there a way to provide for that and still not put you as the lot owner in a position where you are going to have to go out and post every one of these if a day late in paying rent every month. It could work to your benefit, but it could also be nuisance and maybe not something you'd want to do in every case.

**Kent French:** In the industry, I can speak for the majority of the industry, but not everybody, but in a 30 day period, if they are late, there is some sort of notification that goes out to start a process so that we have some legal information, a process that's already started so that if they do not make the payment, we've already started the process. This would be something that is totally different, I can't imagine this being used in that situation.

**Representative Koppelman:** So if it weren't, then you don't have the protection for potential buyers that the bill seeks to provide, that's my point.

**Kent French:** I would like you to tell Sen. Lee that I did not oppose this bill. I am not opposing this bill.

**Representative Klemin:** I can see in here, where under that scenario, where somebody has paid money for this mobile home and now finds out that there is a lien for the lot rent. They're going to have to pay the lot rent or they'll be forced to go into court to contest this lien. Then we get into a proof situation, of whether or not there actually was a signed and dated notice of the lien posted. The person who brought it, there was no notice there posted when I was there. The landlord will say I posted one and how do we prove that, because you have a proof problem,

because the penalty here would only apply to anybody who removed that, but that still doesn't help the person that paid money for that, and now we're in court arguing over whether or not there really was a notice posted, because if there was no notice posted, then the purchaser prevails. But if there was a notice posted and removed, then the lot owner prevails. How do we keep from getting into that proof problem every time.

**Kent French:** When we do an eviction, when we start the eviction, and we start it within the 30 day period so that we have the time behind us, so if they make the payment, we're fine and then we continue on. But there are those people that suddenly decide something, something happens in their life, or they are just not going to make the payments anymore. That's the exception to the rule, and after a period of time where they won't answer any of the legal notices that we send out, this would work for us to place the notice up there. The question is, what do they do if they tear that notice down. I don't know. In my situation, I would take a picture of it, with the date on it, so that we would have that for our documentation. I would encourage everyone in our industry to do the same thing. But legally, I don't know.

**Representative Charging:** Does it matter to you on line 19, it says to also post the amount of the lien in a public place. Would this make any difference to you, it seems like it may infringe on privacy of the person.

**Kent French:** That would make no difference to me.

**Representative Charging:** So we could take that out, the amount.

**Kent French:** Yes.

**Representative Galvin:** I'm trying to get this straight in my mind, how this could have happened without this person finding out that there is a lien. If you bought a used car, the first

thing we have to do is pay the sales tax, then you get the title. You don't get the title unless you pay the sales tax. Is there any kind of scenario or any kind of title on that trailer that would require the state sales tax in order to get any kind of document that says that the mobile home is clear and free of problems.

**Kent French:** There is a title, and there is a place on the title for a lien. And that lien can be filed. It's just never done. More times than not, the lien that would be on there would be a lien from the finance company.

**Representative Galvin:** Does he have to pay sales tax.

**Kent French:** Yes, he did when it was new.

**Representative Galvin:** Don't you still have to pay sales tax.

**Kent French:** That was worked out many years ago, there isn't a sales tax on the used home. The only sales tax we pay is when the home is first purchased. They paid the sales tax at that time. So there isn't any mechanism there to be able to stop the problem we are talking about here.

**Representative Koppelman:** You said that there might be a lien filed against the title of the mobile home if there is a finance company or a mortgage/loan on it. As I understand the original bill, was how it was introduced, that's what you opposed. What don't you like about that, it seems like there are all sorts of potential problems with this fix. What don't you like about the idea that you, as a mobile home park owner/manager, would simply file a lien if some one was late with their rent and then a potential buyer would be notified through that process.

**Kent French:** I would answer that question by saying that the situation that Sen. Lee talked about, where the guy went and checked for a lien, in my 35 years of being in the business, I've

never once heard of someone going down to the courthouse and checking for a lien. Never. That was the first time, I was very surprised that someone would go and check a lien, instead of going to the park operator and checking to find out if there was back lot rent owed.

**Representative Koppelman:** I assume that if someone has ever dealt in real estate or real property, or purchased a piece of property, checking to see if that property has a clear title is normal course of business. This scenario, where the father of a young couple, it would be logical if my son or daughter came to me and said to me, I'm thinking about buying a mobile home, that might be my train of thought, because when I bought property, I wanted to make sure it was a clear title, I might have gone. It might be unusual, I'm not sure it's unconscionable or unexpected. What is it about the idea of the lot owner simply registering that lien publicly; the cost, the hassle, or what.

**Kent French:** The situation, we're really making this difficult, the situation is if you were purchasing a home from me, at the point of closing you would give me a check, I would give you a title. If there is nothing on that title, that's a clear title. It's that simple to make the deal.

**Representative Koppelman:** Isn't that what happened in this case. The guy got a clear title and later found out it wasn't a clear title.

**Kent French:** It was a clear title. The individual who purchased the home, made the mistake of not going to the individual that owned the property where the house was sitting and asking whether the lot rent was paid. If they had a willing buyer and willing seller, you had a buyer who did not do due diligence to check that out and it fell to the owner of the property, where the home was sitting, and find out if there was some lot rent that was owed on it. That's a standard, common sense.

**Representative Koppelman:** It might be standard in the industry, but I think from the buyer's perspective, I can very easily understand how that could occur. If I'm not familiar with how mobile homes work and mobile home parks work, if I go to buy something from somebody, and I've done my due diligence and even checking if there's a public lien on that piece of property, there's not, and I go to that seller, and I'm the buyer, I paid the money and I get a clear title, to say that I'm not doing due diligence, because I didn't check with the park owner. When I buy a car, I don't go and find out if the owner of the car lot charged rent for having that car sit on the spot for three weeks or a month, while it was for sale. Do I owe something, I'm just buying the car.

**Kent French:** In that situation, then allow us to have the tag to put on the house and we'll place it up there. I doubt whether there will be very few put up on a home, I think that will be the last resort, but it gives us something to protect this. It'll satisfy Sen. Lee.

**Representative Maragos:** Did the fact that there was lien stop the purchaser of that mobile home from picking up that mobile home and taking it because he was the owner of it. Did the father that bought the mobile home, did he have a right to pick up that mobile home and move it.

**Kent French:** I don't know the particulars on that. Sen. Lee is familiar with that. I do not know. I would approach this as 1) they wouldn't move it off our property unless it was paid. I say they wouldn't move it off, the truckers, the transit people always check with the park operators to make sure the lot rent is paid. It's a courtesy that they've done for all the years I've been in business. And if the lot rent isn't paid, then they don't pick it up, they go to the person and say pay the rent lot and then we'll move the house. That isn't something that has to be done, it's just something that has been done and it's a procedure that we've used. I don't know how it

would work in a court of law. Although many times, if they want to move the house out, there is a reason, we're usually in a situation where we want the house to go anyway, to make the situation go away.

**Representative Klemin:** I just don't want the committee to be left with the impression that there's no place to file a lien on a mobile homes, because there is. Because if you're in the business of financing mobile homes, and so when you sell one that's financed, isn't it routinely done that you would take a security interest in that mobile home and perfect it by filing the financing statement either with the county recorder or the Secretary of State.

**Kent French:** No sir. They put the lien on the title itself. It's not filed. The only time I've ever heard of someone going down to check to see if there was a lien put on, is this particular case in Fargo. I have never heard of it before. The lien that a bank or lending institution would put on a home, is put on that particular title and not filed, they may file a UCC form, but it's not filed as a lien with the county.

**Representative Klemin:** I guess if we look on line 10 of this bill, you have that, it says that the lien in this section does not have priority over a prior perfected security interest in the property. That prior perfected security interest is exactly what I'm talking about, is to get a security interest, you perfect a security interest by filing a financing statement giving notice to the public that you have a security interest in this particular mobile home. Now that financing statement can be filed either with the county recorder or with the Secretary of State. You can go down to the county recorder's office and do a search, you don't have to go to the Secretary of State to do that, so if someone is talking about generically going to the courthouse to check on a lien, maybe that's what they did in this particular case. They went down to the county and did a UCC search,

and that apparently did not show that there was a prior perfected security interest, like what's referred to on line 10 of this bill, which is in existing law. Admittedly, what you're talking about, putting the wording on the title to the mobile home is an alternative, but I thought we did something about that at one time, because the other alternative is not put it on the title, but just keep possession of the title.

**Kent French:** No, the only thing that a finance company would do is retain the title. They get the title and retain it until the loan is taken care of. At that point, they would sign the title off and give it back to them. They do not file, maybe they should. I'm not saying that they shouldn't do that. It's the title itself that gives them the security that they need. To my knowledge, it's the same way in all the states around us. I do not believe that they file.

**Representative Maragos:** If the father paid cash and got clear title, there's nothing on the title that clouds the purchase, would he have had a perfected security interest in that mobile home.

**Representative Klemin:** No, a perfected security interest only applies when there is a creditor/debtor relationship. In that scenario, he would be the owner, not a creditor.

**Representative Maragos:** What if did it as a creditor to his daughter.

**Representative Klemin:** Loaned them the money and became a creditor and had a financing arrangement, as far as I know, he could have done exactly the same thing that Mr. French is talking about, having his name put on the title as a creditor, as a lien holder.

**Representative Maragos:** Then that lien would not have had priority over his security interest, according to this section.

**Representative Klemin:** Security interest is a whole different matter, the father financing the purchase for his son, could have become a security creditor by following the provisions of the



UCC, could have had a security agreement which provided for a security interest, and then perfected that, and the way you perfect it, is by filing it with the Secretary of State or the county recorder.

**Representative Charging:** After listening, and I think you've mentioned it twice now, that this is the only case that you're aware of. I mean, is it necessary, do you feel it is a necessary step to put in code.

**Kent French:** I don't feel that this is going to harm the consumer or the business person. I think this will take care of any future problems, no matter how small they would be and I would encourage you a Do Pass.

**Chairman DeKrey:** Thank you. Further testimony in support, testimony in opposition. We will close the hearing.

(Reopened later in the same session)

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2061.

**Representative Klemin:** I think there should be something else in that notice. I have a suggestion.

**Representative Meyer:** When you file a lien, in order to have a lien, doesn't it have to be on file with the courthouse. If you file a lien against somebody's property, doesn't it have to be filed. I have a real problem with this.

**Representative Kretschmar:** For example, you hire a carpenter to come in and redo your kitchen, that person has a lien when he does the work, and the lien is there, it's someplace out in the air, then if he wants to go further, he can perfect the lien, by filing papers in the courthouse. But lots of time, if I sell something to someone and they haven't paid for it, I have a lien against

her, against the property for the purchase price until she pays me, but maybe it's an oral contract and it's not perfected. So there are all kinds of liens. Under this statute, section 1, beginning on line 7, the landlord has a lien for the accrued rents and so forth, but he doesn't have to file it, but it does say that this lien is subordinate to say the finance company's lien on the mobile home, so he's behind that. The statute is trying to set up some kind of procedure to try and perfect that lien, so the public is aware of it.

**Representative Meyer:** So a lien can be an informal bill.

**Representative Kretschmar:** Sure.

**Representative Boehning:** I don't pay my rent, can the landlord come in and lock my door, keep all my possessions and then charge the next person who moves in there my back rent. That's what this seems like.

**Chairman DeKrey:** There is a formal procedure that they have to go through, but the long and the short of it, is if you don't pay your rent long enough, they can take the possessions out of your apartment, lock them in storage and charge you rent on the storage until you pay your rent. Then in a certain amount of time, if you don't do anything, they can sell the stuff.

**Representative Boehning:** What if I sold all my possessions and I have a bill of sale that says that everything there is sold to somebody else.

**Representative Maragos:** Somebody is going to be in trouble, because buyer beware...

**Chairman DeKrey:** Possession is 9/10th of the law.

**Representative Klemin:** The landlord would just as soon get the junk out of the apartment so he can rent to somebody else.

**Representative Galvin:** I think if I were going to solve this problem, I would have approached it by having this mobile home, before it could be sold, have some kind of a document, like a title, that has to be free and clear before you could assume that title, and why they took off the sales tax on the sale of a used trailer is beyond me. If they would cure that problem, they would generate a little revenue on top of this.

**Representative Klemin:** I don't think we want to start putting sales tax on used mobile homes. Amendment as follows: on line 19 we remove the word "and" and then on line 20, add the following language, "and a recitation of the penalty provisions of this section."

**Representative Kretschmar:** Seconded.

**Chairman DeKrey:** Motion carried.

**Representative Maragos:** I move a Do Pass as amended.

**Representative Koppelman:** Seconded.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED CARRIER: Rep. Maragos

Date: 2/28/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2061

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Maragos Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	A		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	—				
Representative Galvin	—				
Representative Kingsbury	—				
Representative Klemin	—				
Representative Koppelman	—				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Maragos

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

**REPORT OF STANDING COMMITTEE**

SB 2061, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2061 was placed on the Sixth order on the calendar.

Page 1, line 19, remove the first "and"

Page 1, line 20, after "home" insert ", and a recitation of the penalty provisions of this section"

Renumber accordingly

2005 TESTIMONY

SB 2061

Att # 1

Testimony on SB 2061  
Senate Judiciary Committee  
Senator Judy Lee  
January 11, 2005

Same testimony given to  
The House

SB 2061 would require mobile home lot owners who take over a mobile home for non-payment of lot rent to file a lien, along with other information, at the county court house and to have total control over access to the interior of the mobile home. This bill was introduced in response to a problem which a family in Fargo had with a mobile home park owner. A young couple was looking for a home and located a mobile home which the owner was interested in selling. The father of the young woman purchased the mobile home, paying cash, after checking at the court house to see if there were any liens against the mobile home. Finding none, he wrote the check to the mobile home owner, and the young couple and their newborn baby prepared to move in.

When they went to the home, they found it locked and were told by the mobile home park owner that he had taken over the mobile home for non-payment of lot rent by the former owner. He declared the purchase by the young couple and her father to be invalid. Of course, the mobile home owner now had the money and the young couple had no home. They had to move in with her parents, while trying to work something out.

It seemed unreasonable to me that someone should risk losing his/her money in a situation like this, when there was no way for the buyers to know that the mobile home park owner had put a lien on the mobile home. The mobile home park owner and his attorney were clever enough to know that, even though what they were doing could certainly be considered unethical, it was not illegal.

SB 2061 will require a mobile home owner to make a lien a matter of public record, so that a potential buyer of a mobile home will be able to find out if there is any back rent that needs to be paid in full before the home can be sold and ownership transferred. It also will assure that potential buyers will not be able to see a mobile home without knowing the situation. No one else should have to go through what this young family did.

I urge the Judiciary committee to give SB 2061 a favorable review.

#2

Testimony to the  
Senate Judiciary Committee  
January 11, 2005  
Terry Traynor, NDACo Assistant Director

### Regarding SB2061

The County Recorders have asked that I appear on their behalf regarding this bill - not in opposition, but to raise several questions that the bill does not clearly answer. These are:

What type of lien is this to be? For Recorders this means where in our offices is this to be filed?

1. Is it to be just a filed document?
2. Is it to be a normal Uniform Commercial Code <sup>Central Index Sys.</sup> (UCC) filing?
3. Is it to be a statutory lien in the UCC indexing system?

#### **If just a filed document:**

It would carry a \$10.00 filing fee and is just that, a filed document, not placed in any recording system such as real estate records or the Uniform Commercial Code system.

#### **If it is to be a Uniform Commercial Code filing:**

It would carry a \$15.00 filing fee and the notice must contain a social security number to be filed. The wording in the bill does not require a social security number. Additional sections would need to be amended to include it among the UCC filings.

#### **If is to be a statutory lien:**

It would carry a \$15.00 filing fee and must be a verified statement, meaning it would need to be signed by the person placing the lien in front of a notary.

Also if indeed it is to be a statutory lien, would it be placed in the misc. statutory lien index portion of the UCC system or is a separate index area to be created within the joint system used for these filings by the Secretary of State and the Recorders? If so the Secretary of State would need to look at making additions to the current system.

Recorders are not charged with being certain a person has secured their lien in the matter they intended, but they would like to raise these issues for the bill supporters to ensure what is truly intended is indeed accomplished by this bill.



**Fundamental Interests of Parties.**

Although Supreme Court could not consider matter as an appeal because there was no N.D.R.Civ.P., Rule 54(b) certification, the issues in case about trial court's authority to grant interim relief affected fundamental interests of litigants. Therefore, Court considered appeal as request to exercise supervisory jurisdiction and, exercising its discretion considered issues in case on their merits. *Vorachek v. Citizens State Bank* (1990) 461 NW 2d 580.

**Improvident Exercise of Jurisdiction.**

While this section authorizes the Supreme Court to transfer any matter to any proper

court when the jurisdiction of any court has been improvidently invoked, it does not say that such power is within the exclusive authority of the Supreme Court. The Supreme Court may allow such a transfer invoked by another court, if it is deemed proper. *Hayden v. North Dakota Workers Comp. Bureau* (1989) 447 NW 2d 489.

**Scope of Power Conferred.**

Statute empowers supreme court to designate a district judge to have jurisdiction in connection with administrative receivership of insolvent bank. *First American Bank & Trust Co. v. George* (1976) 239 NW 2d 284.

**27-02-05.2. State juvenile services coordinator — Powers and duties — Selection and salary — Administrative support.** The position of state juvenile services coordinator is hereby created and established within the office of the North Dakota supreme court administrator. The coordinator must be selected by the supreme court and must have a background of experience in the juvenile justice system. The coordinator's salary must be determined by the supreme court. For administrative, budgetary, and organizational purposes the coordinator position must be considered a part of the supreme court administrator's office; and that office shall provide whatever administrative support is required by the coordinator. The coordinator shall work to establish uniform practices and procedures within the state's juvenile justice system; shall conduct research and planning on methods to improve the juvenile justice system; shall prepare and conduct training programs for juvenile justice personnel; shall work to improve communications and contacts among juvenile justice personnel; shall prepare, after consultation with juvenile justice personnel and juvenile judges, standards for various juvenile justice personnel such as referees, supervisors, and probation officers, which could be adopted by the judicial conference and the supreme court; and shall perform such other duties and projects as may be directed by the judicial conference or the supreme court to improve the state's juvenile justice system. The juvenile services coordinator shall make recommendations to the legislative assembly concerning any legislative action he deems necessary or desirable.

Source: S.L. 1977, ch. 256, § 1; 1985, ch. 333, § 1.

**27-02-06. Terms.** Repealed by S.L. 1981, ch. 316, § 2.

**27-02-07. Rules relating to the unauthorized practice of the law may be made by supreme court.** The supreme court of this state may make all necessary rules for the restraint of persons unlawfully engaging in the practice of the law in this state.

Fargo  
forum

1-12-05

## State files suit against owner of home park

By Amy Dalrymple  
and Dave Olson  
Forum staff writers

The owner of a Moorhead mobile home park uses "abusive" business practices, including buying homes from money-strapped residents for a pittance and reselling them at greatly inflated prices without having titles to the homes, a lawsuit claims.

Jack Hoffner, owner of the Greenwood Communities Mobile Home Park, could face more than \$500,000 in civil penalties, restitution and other costs, according to

papers filed by the Minnesota Attorney General's Office, which filed the suit in Clay County District Court.

Hoffner declined to comment on the suit when contacted by phone Tuesday.

A response Hoffner filed with the court Monday states his practices are based on advice from legal counsel and city authorities.

Any technical violations of the law did not result in harm to any tenants, the response said.

**GREENWOOD:** Back Page

## GREENWOOD: Hoffner has been praised in past for cleaning up area

From Page A1

Papers filed by the state claim Hoffner would buy repossessed homes for a small amount or claim they were abandoned, and then resell them for more than fair market value without having title to the properties.

When selling a home, Hoffner would refuse to transfer the title to the new residents, holding the document in his office so he could repeat the process when that owner experienced default trouble, court papers say.

When residents left a home, Hoffner would strip any equity they had in the property by failing to pay them proceeds he gained in reselling the home, court papers state.

Hoffner said in depositions that residents paid 30 percent to 40 percent more for a home if they financed the deal through him.

"By his own admission, Hoffner has thus gouged residents," said a memo filed by the state.

Hoffner's attorney, Todd Zimmerman, said Tuesday Hoffner has made physical improvements to the park and has cooperated with police to make it a safer neighborhood.

"The Greenwood property has historically had a number of problems," Zimmerman said. "In our view, over the past seven years Mr. Hoffner has succeeded in bringing about a number of positive changes in Greenwood."

Hoffner takes the lawsuit seriously and is carefully assessing the issues that have been raised, Zimmerman said.

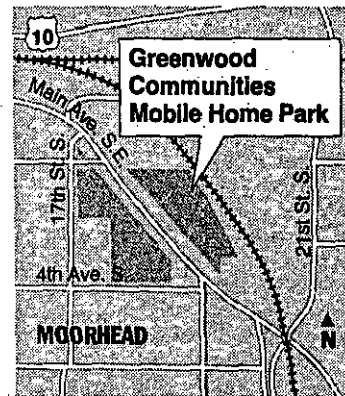
### 'Working poor'

Dara Lee, supervising attorney with Legal Services of Northwest Minnesota, said her office has received complaints about Hoffner since he bought the park in 1996.

In the past five years, 50 tenants have complained to her office about his sales practices and the condition of the trailers.

Many Greenwood residents are the "working poor," Lee said, and some have disabilities or limited English skills. Some have poor credit or have issues with their rental histories that prevent them from getting housing elsewhere, she said.

"He (Hoffner) believes that he's helping folks by giving



The Forum

them a second chance, but he ends up exploiting those who are the most vulnerable," Lee said.

After a fire destroyed three mobile homes in January 2003, Legal Services became more proactive and began documenting the complaints.

Lee then contacted the Minnesota Attorney General's Office, which has been involved since at least June 2003, she said.

Hoffner has agreed to sell Greenwood Communities to a commercial investor for about \$1 million, of which about half would go to cover liabilities, court documents state.

The Attorney General's Office has asked that if a sale

goes through, the remaining \$500,000 be held until the suit is resolved.

Civil restitution and penalties have yet to be determined, the Attorney General's Office said.

However, the state is asking for \$25,000 in penalties for each violation of law.

Among the liabilities facing the park is a \$104,000 special assessment the city imposed after it paid a contractor to fix Greenwood's outdated electrical distribution system after the 2003 fire.

Hoffner declined Tuesday to comment on the assessment.

In the past, he said he would contest it.

The Greenwood neighborhood had a reputation for problems in the mid-1990s, but a dramatic turnaround occurred about the time Hoffner bought the park and the city received \$250,000 in Weed and Seed grants to improve the area, said Nancy Taralson, crime prevention officer with the Moorhead Police Department.

In 1999, Moorhead Mayor Morris Lanning called Hoffner "a godsend."

City Council member and

postal carrier John Rowell, whose route included the Greenwood neighborhood, also praised Hoffner that year, stating, "What Jack Hoffner did was take care of a lot of small things to change the environment piece by piece. That neighborhood's got a real chance now."

The purpose of the Weed and Seed program, which lasted until 2000, was to prevent crime and promote neighborhood restoration, Taralson said.

Some improvements are still in place today, such as the neighborhood block club and park and recreation activities, she said.

The suit contends Hoffner required all residents to sign a lease "with a host of unlawful terms."

The suit also claims Hoffner increased rents without giving the notice required by law and he used unwritten criteria to deny prospective purchasers residency in the park complex, which has about 100 units.

The first court hearing on the suit is set for Jan. 24.

Readers can reach Forum reporter Dave Olson at (701) 241-5555 and Amy Dalrymple at 241-5590