

2021 HOUSE TRANSPORTATION

HB 1366

2021 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee Room JW327E, State Capitol

HB 1366
2/11/2021

A bill relating to the sale of property subject to a repairman's lien and sale proceeds; and relating to repairman's liens, notice requirements, and assignments.

9:00 Chairman Ruby opened the hearing.

Attendance

| Representatives | |
|----------------------------------|---|
| Representative Dan Ruby | P |
| Representative Tom Kading | P |
| Representative Rick Becker | P |
| Representative Cole Christensen | P |
| Representative LaurieBeth Hager | P |
| Representative Jared C. Hagert | P |
| Representative Karla Rose Hanson | P |
| Representative Terry B. Jones | P |
| Representative Emily O'Brien | P |
| Representative Mark S. Owens | P |
| Representative Bob Paulson | P |
| Representative Gary Paur | P |
| Representative Robin Weisz | P |
| Representative Greg Westlind | P |

Discussion Topics:

- Process for a dealer to sell an abandoned vehicle with a lien and claim the expenses.
- Examples of situations.
- Reasonable transportation and storage fees.

Rep. Vigesaa introduction.

Matthew Larsgaard, MBA, Automobile Dealers Association of ND and Pioneer Equipment Dealers Association testified in support #6378.

Jeff Albers, Sales Manager at Schwan Buick, GMC, and Cadillac, supportive testimony # 6386.

Marc Taylor, owner of Northern Plains Equipment, Case IH Dealer, supportive testimony # 6389.

Steve Zaun, General Manager of Puklich Chevrolet, Bismarck, and Puklich Chevrolet - Buick GMC in Valley City supportive testimony #6387.

Jeff Olson, CEO and President, North Dakota Credit Union Association, oppositional testimony # 6328 and proposed amendments # 6327.

Barry Haugen, President of Independent Community Banks of North Dakota, oppositional testimony # 6395.

Rick Clayberg, President and CEO of ND Banker's Association, oral oppositional testimony.

Dana Bohn, Executive Director, ND Farm Credit Council, oppositional testimony #6289.

Hearing closed 10:29.

Additional written testimony:

Vance Reinbold, CEO Capital Credit Union, oppositional testimony # 6330

Jeanette Cook, Committee Clerk

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

HB 1366
Repairman's Lien

1/22/21

Mr. Chairman and members of the committee, my name is Jeff Albers. I am the General Sales Manager at Schwan Buick, GMC, Cadillac, and I am here to testify in support of this bill. I would like to describe a couple situations we have experienced to emphasize why we as a vehicle repair shop need this bill passed.

In February 2019, we serviced a customer's vehicle that required approximately \$6,000 worth of repairs. The retail value of the vehicle was around \$8,000. We told the customer what the repairs would consist of, and the customer approved the repairs and asked us to fix their vehicle. After we fixed the vehicle, we notified the customer that it was ready for pickup. They never responded. Over the course of time, we sent out 60, 90, and 120 plus day past due notices, asking the customer to come and get their vehicle. The customer finally communicated with us and decided that they did not want to pay for the repairs. Instead, they were going to abandon the vehicle with us and walk away from it. The customer also said they had a bank loan and were not going to pay that either.

Our next step was to contact the bank to see when they would be repossessing the vehicle and to let them know we had a Repairman's Lien on the vehicle that needed to be satisfied. We told the bank that they can pay the repair bill and take the vehicle. The bank, after doing the calculations, decided that it was not worth it for them to repossess the vehicle and abandoned it with us as well.

Other than suing the customer, there were no more options for us to recover our losses on the vehicle that both the customer and the bank abandoned. We were left with a \$6,000 repair bill, many hours of work trying to collect on this repair, and a vehicle that was essentially worthless because we could not get a title.

I could give many other examples that underline our need for this bill. Sometimes, a customer's car stops running, and they ask us to tow their vehicle into our shop for repair. We do not have a tow truck, so we hire the towing company to pull the vehicle into our shop. We then diagnose the problem and inform the customer what the repair will consist of. Depending on the repairs, the cost can approach the value of the vehicle, but the customer approves the work anyways. The problem is that the customer later decides they no longer want to put that money into the vehicle and they abandon the car with us. We are now stuck with both the towing bill and the repair bill. HB 1366 helps to clarify that **transportation is part of the repair process** and should be recoverable under the current Repairman's lien law.

With this legislation, repair shops like ours will be able to provide an opportunity for both the customer and the bankers to come, pay the repair bill, and take the vehicle...or, if they all choose to abandon the vehicle with us, we can sell the vehicle, pay our repair bill, and then turn over the remaining sales proceeds to the bank, owner, or state according to priority.

Mr. Chairman, thank you very much for the opportunity to testify.

Jeff Albers
Schwan Buick, GMC, Cadillac

HB 1366
Repairman's Lien

2/1/21

Mr. Chairman and members of the committee, my name is Marc Taylor. I am an owner of Northern Plains Equipment, a Case IH dealer, and I am here to testify in support of HB 1366. This bill will help to allow dealerships to recover their contribution to the increased value of a customer's repaired equipment in the event the customer does not pay for the repairs they requested.

I would like to identify a couple of incidents where equipment that we have repaired has been "abandoned" with us to illustrate the need for this bill.

Example 1 – My dealership overhauled the engine of a Steiger four-wheel drive tractor per the customer's instructions. The repair order was approximately \$6,700, and the value of the tractor was about \$15,500. We contacted the customer repeatedly and were assured he would be in to pay the bill and take possession of the tractor. At some point the customer quit responding, and his address was no longer valid. Rumor was he had moved out of the area. We have never been able to re-establish contact with this individual.

Example 2 – A customer brought in a John Deere four-wheel drive tractor because there was "an unusual noise" in the drive train. Our service tech began the repair, diagnosed the issue, and identified the problem as a complete differential failure. The customer then decided they did not want the tractor and it has been sitting on our lot for years.

Example 3 – Occasionally, we see equipment that a customer wants repaired simply for sentimental reasons and not actual utility. In some cases, the repairs exceed the value of the equipment. However, the customer still directs us to perform the repair. So, in order to take care of the customer, we perform the repair for them. Sometimes the customer changes their mind and abandons the property with us.

The abandonment issue really pertains to low value equipment. Dealers simply do not see farmers abandoning high value equipment with us.

In many cases, transportation is an absolutely necessary part of the repair process. There are many instances when we need to send our service trucks out to the field to repair equipment. These service trucks cost close to \$200,000 and it is a significant cost for us to operate them. Current law is not exactly clear on whether transportation is included in our lien. This bill provides that clarity.

Storage costs are also associated with many repairs. We have to ensure that we have purchased enough land to store this large equipment. This is obviously a cost for us. In addition, dealers are held responsible for any damage that may occur while the equipment is in the dealership's possession. That can include anything from hail, high winds, or vandalism. When vandalism does occur with "Precision Equipment" – a frequent target – there is often more damage to the machine than the value of what was stolen. If the equipment is damaged or vandalized while it is in our possession, we have to pay to repair or replace it. Storage fees help to mitigate the costs associated with both the repair process and damaged equipment.

Mr. Chairman, in summary, this bill is pretty simple in concept. It allows dealers to sell equipment that has been abandoned with them, and it also recognizes that both storage and transportation are part of the repair process. Thank you, Mr. Chairman and members of the Committee.

Marc Taylor
Northern Plains Equipment

House Bill 1366
Testimony before House Transportation Committee
Steven J Zaun, General Manager
Puklich Chevrolet Inc.

02.07.21

Mr. Chairman and Members of the Committee. My name is Steve Zaun, and I am the General Manager of Puklich Chevrolet in Bismarck and Puklich Chevrolet Buick GMC in Valley City. I am here in support of HB 1366. The issue of abandonment has unfortunately increased in recent years, becoming an expensive issue for business owners and, subsequently, the customers using our services.

We do our best to provide exceptional service to the motoring public, our customers, in an effort to keep their transportation safe and reliable. It is our practice to repair a vehicle in good faith when the customer makes the request. We provide cost estimates before we proceed and repair a vehicle only after a customer gives us permission to perform the repair. A great majority of our customers pay their bill. However, some do not and instead choose to abandon the vehicle at our facilities. Most of these customers cut off all communications with us, making it difficult to do anything to collect the repair bill or take action to foreclose on our repairman's lien.

Last year, we had a situation where a customer owed us several thousand dollars on a repair. Between the time the repair was authorized and when it was completed, the customer quit his job and made the decision to move back to his home state of Texas. This particular customer did stay in contact with us for a while, assuring us that he was trying to make it right. After several months of working with this customer, he finally admitted he didn't want to pay the bill because he did not feel it was worth it to come back to ND to get the vehicle. He promised to send the title but never did and then he simply stopped communicating with us. We next reached out to the lienholder and informed them that we had the vehicle and, if they would like to reclaim it, they would need to pay our repair bill. The lender informed us that they were not interested in the collateral as its value didn't make it worth their costs and effort to reclaim it. Thus, the lender decided to abandon the vehicle as well.

Last summer, we also had a situation with an abandoned vehicle that created potential liability for our company and employees. It was discovered that a person had broken into one of these cars and was sleeping in it at night. We had to have the Bismarck Police physically remove this person several times before the person finally stopped coming back. We had several frightened employees that observed this person early in the morning when coming in before dawn to do their job.

Many dealers could recite numerous cases like the two I mentioned today. We do our best to take care of our driving public in the most customer-friendly way possible. I support this bill as it gives us a better path to dispose of these abandoned vehicles while, at the same time, protecting the rights of our customers, other lienholders, and the citizens of our great state.

I thank you for your time today and your consideration of this crucial legislation. I urge you to please support HB 1366.

Steve Zaun
Puklich Chevrolet Inc.

**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 property 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.

**FINANCIAL COALITION
PROPOSED AMENDMENTS TO HOUSE BILL NO. 1366**

Page 1, line 15, delete “storage fees, and transportation costs,”.

Page 2, line 15, replace “the date after which the property subject to the lien will be offered for sale” with the following language “State the time, date and place of a public sale or the time after which any other sale is to be made.”

Page 3, line 8, insert new #2 - 4; renumber accordingly. Insert the following language:

2. A lien arising under 35-13-01 must be enforced by private or public sale at a time, place and on terms which are commercially reasonable or by bringing an action for foreclosure of the lien.

3. A person holding the lien under this chapter is prohibited from purchasing the property at a private sale.

4. A person holding the lien under this chapter is liable for damages caused by failure to comply with this chapter.

Page 3, line 10, delete “b. the reasonable costs of transporting, storing, and maintaining the property.” Re-letter accordingly.

Page 3, line 14 - replace “subsection 2” with the following language “subsection 5.”

Page 3, line 18 – replace “subsection 3” with the following language “subsection 6.”

Page 3, line 30 – insert the following language, “The motor vehicle shall be sold at private or public sale according to this chapter.



House Bill 1366

Presented by: Barry Haugen
President
Independent Community Banks of North Dakota ("ICBND")

Before: House Transportation Committee
Representative Dan Ruby, Chairman

Date: February 11, 2021

Chairman Ruby and members of the House Transportation Committee, my name is Barry Haugen and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals nearly 60 independent community banks throughout our state. ICBND opposes HB 1366 as introduced and requests a "Do Not Pass" recommendation from the Committee.

First and foremost, ICBND believes HB 1366 is unnecessary and overreaching. This bill does not just affect low value vehicles as the proponents of this bill might lead you to believe. Chapter 35-13 of the North Dakota Century Code already states that any blacksmith, machinist, farm equipment dealer, construction equipment dealer, welder, garage keeper, mechanic, or aviation operator having an established place of business in this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, construction equipment, well machine, aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien on that property, and on any accessories and parts placed on the property, for reasonable charges for work done and materials furnished, until the charges are paid. The statute goes on to outline the process to perfect that lien and achieve remedies for the associated costs with those repairs. It is a reasonable and comprehensive process. Changes are not needed.

The Repairman's Lien statute already provides for priority over all other mortgages or liens. But Section 1 of HB 1366 seeks additional unnecessary relief in the way of storage fees and transportation costs. Statute already allows for reasonable charges for work done and materials furnished until the charges are paid. What would constitute reasonable storage fees and transportation costs? There is no cap nor any bounds

of what those costs could amount to or who determines reasonableness. This seems to shift additional financial burden to the consumer or other lienholders and clearly puts that control with one party.

Related to additional costs, Section 4 subsection 2 further states that the lienholder (repairman in this case) may also retain from sale proceeds amounts related to reasonable costs of maintaining the property. As proposed in the measure, this is in addition to storage and transportation costs previously mentioned. What would constitute "maintenance costs" for various vehicles or pieces of equipment? These are all newly proposed recoverable costs that the bill attempts to insert into statute. Again, as determined solely by the repairman and to the detriment of the property owner or other lienholders.

Section 5 of the House Bill 1366 is particularly problematic. It seeks to seemingly create a convenient, nonjudicial, unilateral process for the lienholder in possession to obtain a certificate of title for a motor vehicle from the department of transportation free and clear of all liens, encumbrances and other claims of ownership. Once completed, that vehicle is simply the property of the lienholder. This seems to be significantly anti-consumer and lacks provisions and protections that are required under the Uniform Commercial Code and Judicial Foreclosure Actions. Uniform Commercial Code requires that "every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable". This proposed legislation and this section in particular speaks nothing to these requirements and seems ripe for potential abuse at the expense of consumers and other lienholders.

Chairman Ruby and members of the House Transportation Committee, ICBND respectfully requests a "Do Not Pass" recommendation to House bill 1366. Changes are not needed to the current Repairman's Lien statute which already provides lien priority and a defined process for a repairman to foreclose on such a lien. Thank you for your time and consideration.



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1366
February 11, 2021**

Chairman Ruby and members of the House Transportation Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I would like to express our opposition to HB 1366.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit associations provide about \$14.6 billion in credit in addition to providing financial services to approximately 26,000 customers.

A repairman's lien is a lien that may be placed against a vehicle or a piece of farm equipment when the repairs completed on the property are not paid for by the owner of the property.

The repairman's lien already has first priority over other security interests or liens on the property. HB 1366 would increase the eligibility for a repairman's lien to allow for storage fees and transportation on top of any repairs. This would shift liability from the repair shop or implement dealer to the lender and create an adverse effect on the lending industry.

In 2013, the legislature broadened the eligibility requirements for filing a repairman's lien by including construction equipment and increasing thresholds for the dollar amounts and percentage entitled to priority. The changes made in 2013 shifted very substantial and additional risks (up to \$9,000 or 30 percent of the repaired value of farm machinery or construction equipment, whichever is greater) to the lender. It also increased the maximum amount of a lien on automobiles to \$4,000 or 30 percent of the repaired value of the vehicle, whichever is greater.

The proponents of the bill in 2013 argued the law had not kept up with increasing costs. Statue is based on a dollar amount or a percentage of the value of the equipment, whichever is greater, so as the value of the equipment increases so does the threshold. Therefore, we saw no need to change it then, and we see no need to broaden it now.

In addition, we believe it should be the responsibility of the repairman to make sure the payment for the repair is provided before the repair is made or the repaired equipment is released back to the owner, not the responsibility of the lender. Simply broadening the eligibility of qualifying expenses for a repairman's lien does not increase communication between the lender, farmer and repairman, which we would prefer in negotiating a settlement between the parties. Rather, HB 1366 transfers title to the repairman and sticks the lender with the loss. This, in turn, increases the cost of credit for our customers, North Dakota farmers and ranchers.

Finally, current statute already permits a viable and well-defined process for a repairman to foreclose on a lien. The current process allows for repairmen to maximize the amount of their recovery and does so with far less anti-consumer issues, fewer concerns about taking personal property, and better protections for other lienholders, including secured creditors such as Farm Credit, than the proposed bill does. Therefore, we oppose HB 1366, and ask you to give it a Do Not Pass recommendation.

Independently owned and operated associations serving North Dakota.

AgCountry FCS

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February 11, 2021

HB 1366

House Transportation Committee

Chairman Ruby and members of the House Transportation Committee,

My name is Vance Reinbold and I am the President/CEO of Capital Credit Union in Bismarck. I am opposed to HB 1366.

HB 1366 is not a good bill for the credit union or the lender. Current statute 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. These protections are not present in the bill, possibly allowing for a lienholder to purchase the collateral for him/herself.

As a lender, we have a process that we follow. We first try and work with our member before we repossess. In the event we do, we have a consistent process of using a broker to sell and ensure consistency. We ensure there are no self-dealings and the transaction is arms-length. We believe that allowing a repairman lien process that entails only "notice" to the existing lien holder, is not in the best interests of the property owner or the existing lien holder. This would entice fraud and also harm the consumer and the existing lien holder.

Finally, expanding "reasonable charges" to now include storage fees and transportation costs will increase the cost of credit to our members. Allowing storage and transportation costs to the lien amount, will require the credit union to invest in additional oversight and costs. Adding warranty requirements on all collateral will increase borrowing costs and will price out lower income borrowers.

Thank you for the opportunity to testify today.

2021 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee Room JW327E, State Capitol

HB 1366
2/18/2021

A bill relating to the sale of property subject to a repairman's lien and sale proceeds; and relating to repairman's liens, notice requirements, and assignments.

9:00 Chairman Ruby opened the meeting.

Attendance

| Representatives | |
|----------------------------------|---|
| Representative Dan Ruby | P |
| Representative Tom Kading | P |
| Representative Rick Becker | A |
| Representative Cole Christensen | P |
| Representative LaurieBeth Hager | P |
| Representative Jared C. Hagert | P |
| Representative Karla Rose Hanson | P |
| Representative Terry B. Jones | P |
| Representative Emily O'Brien | P |
| Representative Mark S. Owens | P |
| Representative Bob Paulson | P |
| Representative Gary Paur | P |
| Representative Robin Weisz | P |
| Representative Greg Westlind | P |

Discussion Topics:

- Amendments

Chairman Ruby brought the bill back to the committee.

Barry Haugen, President of ND Independent Community Banks, introduced **Tracy Kennedy, Counsel for ND Banker's Association**, who explained Chapter 35-13 of the ND Century Code, #6924, and amendments, #6922 and 6923 mark-up language.

Barry Haugen mentioned additional grammatical corrections.

Jeff Olson, Dakota Credit Union Association, proposed an additional amendment. (Page 1 line 15, remove "storage fees".) #6932

Dana Bohn, Executive Director for the ND Farm Credit Council, supports both amendments.

Matthew Larsgaard, MBA Automobile Dealers Association of ND and Pioneer Equipment Dealers Association, presented proposed amendment. #6935

Barry Haugen, President of ND Independent Community Banks, oppositional response to previous amendment.

Representative O'Brien moved the proposed amendments by ND Bankers Association #6922.

Representative Hagert seconded.

Voice vote carried.

Representative Westlind moved further amendments # 6935.

Representative Christensen seconded.

Voice vote carried.

Representative Weisz proposed amendment # 6942.

Representative Weisz moved the amendment with language to update lien priority thresholds. #6942

Representative Westlind seconded.

Voice vote carried.

Representative Christensen moved a Do Pass as amended with **LC 21.0191.02002 Title .05000**

Representative Hagert seconded.

Representative O'Brien proposed verbal amendment.

Matthew Larsgaard responded.

Roll Call Vote

| Representatives | Vote |
|----------------------------------|-------------|
| Representative Dan Ruby | Y |
| Representative Tom Kading | Y |
| Representative Rick Becker | A |
| Representative Cole Christensen | Y |
| Representative LaurieBeth Hager | Y |
| Representative Jared C. Hagert | Y |
| Representative Karla Rose Hanson | Y |
| Representative Terry B. Jones | Y |
| Representative Emily O'Brien | Y |
| Representative Mark S. Owens | Y |
| Representative Bob Paulson | Y |
| Representative Gary Paur | Y |
| Representative Robin Weisz | Y |
| Representative Greg Westlind | Y |

Motion Carried 13-0-1 Representative **Westlind** carrier.

10:35 Adjourned.

Jeanette Cook, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1366

Page 1, line 16, remove the overstrike over "~~would exceed~~" and remove "exceeds"

Page 1, line 19, overstrike "the mortgage or financing statement" and insert "any liens"

Page 1, lines 20-21, overstrike "recordholder of the mortgage or financing statement" and insert "lienholder of record"

Page 2, line 1, overstrike "to prior mortgagee"

Page 2, line 3, overstrike "previously by mortgage" and insert "by prior liens of record"

Page 2, line 4, remove "or for sale of the property under sections 3 and 4 of this Act."

Page 2, line 5, overstrike "twenty" and insert "ten"

Page 2, lines 5-6, remove ", or intention to initiate a sale of the property under sections 3 and 4 of this Act."

Page 2, line 7, overstrike "recordholder of the mortgage" and insert "lienholders of record"

Page 2, line 8, overstrike "recordholder" and insert "lienholders of record"

Page 2, line 9, overstrike "recordholder's" and replace "lienholders"

Page 2, line 10, insert "before foreclosure" after "notice"

Page 2, line 22, remove "recordholder of any mortgage" and insert "record lienholder of any lien"

Page 2, line 25, replace "recordholder" with "lienholder"

Page 2, line 26, replace "recordholder" with "lienholder" and "recordholder then" with "lienholder then"

Page 2, removes lines 28 through 29

Page 3, remove lines 1 through 30

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1366

1 **SECTION 1. AMENDMENT.** Section 35-13-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **35-13-04. Priority of lien.**

4 A lien obtained under this chapter has priority over all other liens, chattel mortgages, or
5 encumbrances against the personal property upon which the lien is secured, but if the repairman
6 has failed to notify the ~~recordholder of the mortgage or financing statement~~ lienholder of record
7 as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or~~
8 ~~financing statement~~ lienholder of record, within five days after receiving such notice,
9 communicated in writing to the repairman an objection to all the proposed repair costs becoming
10 a lien against the property with priority over the ~~mortgage or financing statement~~ existing
11 lienholder of record, then only that portion of the repairman's lien up to four thousand dollars or
12 thirty percent, or nine thousand dollars or thirty percent for property used for agricultural or
13 construction purposes, of the retail value, whichever is greater, in the property's repaired condition,
14 has priority over the ~~mortgage or financing statement~~ existing lienholder of record.

15 **SECTION 2.** Section 35-13-07 of the North Dakota Century Code is created and enacted
16 as follows:

17 **35-13-07. Non-judicial disposition of property.**

18 The person holding a lien under this chapter shall have the rights of a secured party under
19 Article 9 of the Uniform Commercial code for purposes of non-judicial disposition of the property.
20 A person holding a lien under this chapter who chooses to use non-judicial disposition of the
21 property shall dispose property in the manner prescribed for security interests under Article 9 of
22 the Uniform Commercial Code.

House Bill 1366
Testimony before House Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
Pioneer Equipment Dealers Association
February 18, 2021

02/17/21

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.

After the February 11th hearing of HB 1366 there was a question regarding when storage charges would begin to accrue. The following proposed amendment is an attempt to address that question and also add a measure of "fairness" for all parties regarding the storage issue. The amendment states:

Page 1, line 22, after the word "condition." insert:

"Storage fees under this chapter may not begin to accrue until fifteen days after the owner is requested to take possession of the property."

This language prohibits a repairman from charging storage until just over two weeks have passed since the owner was asked to come and get the property. We believe this language to be both fair and reasonable.

Mr. Chairman, we respectfully request a DO PASS on this amendment and HB 1366. Thank you.

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

HB 1366 Amendment

2/17/21

Language to update lien priority thresholds:

Page 1, line 16, replace "four" with "six" and replace "nine" with "¹⁵~~sixteen~~".

35-13-04. Priority of lien. A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the recordholder of the mortgage or financing statement as provided in section 35-13-01, or if such notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the repairman's lien up to ~~four~~¹⁵six thousand dollars or thirty percent, or ~~nine~~¹⁵sixteen thousand dollars or thirty percent for property used for agricultural or construction purposes, of the retail value, whichever is greater, in the property's repaired condition, has priority over the mortgage or financing statement.

February 18, 2021

JP
2/18/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1366

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, replace "sale of property subject to a repairman's lien and sale proceeds" with "nonjudicial disposition of property by lienholders"

Page 1, line 3, after the first comma insert "35-13-04,"

Page 1, line 4, after the second comma insert "priority of liens,"

Page 1, line 16, remove the overstrike over "would exceed"

Page 1, line 16, remove "exceeds"

Page 1, line 16, overstrike "four" and insert immediately thereafter "six"

Page 1, line 16, overstrike "nine" and insert immediately thereafter "fifteen"

Page 1, line 19, overstrike "the mortgage or financing statement" and insert immediately thereafter "any liens"

Page 1, line 20, overstrike "recordholder of the"

Page 1, line 21, overstrike "mortgage or financing statement" and insert immediately thereafter "lienholders of record"

Page 1, line 22, after the period insert "Storage fees under this chapter may not begin to accrue until fifteen days after the owner is requested to take possession of the property."

SECTION 2. AMENDMENT. Section 35-13-04 of the North Dakota Century Code is amended and reenacted as follows:

35-13-04. Priority of lien.

A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the ~~recordholder of the mortgage or financing statement~~ lienholder of record as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or financing statement~~ lienholder of record, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the ~~mortgage or financing statement~~ existing liens of record, then only that portion of the repairman's lien up to ~~four~~ six thousand dollars or thirty percent, or ~~nine~~ fifteen thousand dollars or thirty percent for property used for agricultural or construction purposes, of the retail value, whichever is greater, in the property's repaired condition, has priority over the ~~mortgage or financing statement~~ existing lien of record."

Page 2, line 1, overstrike " to prior mortgagee"

Page 2, line 3, overstrike "previously by mortgage," and insert immediately thereafter "by prior liens of record or"

Page 2, line 4, remove "or for sale of the property under sections 3 and 4 of this Act."

Page 2, line 5, overstrike "twenty" and insert immediately thereafter "ten"

Page 2, line 5, remove ", or"

Page 2, line 6, remove "intention to initiate a sale of the property under sections 3 and 4 of this Act."

Page 2, line 7, overstrike "recordholder of the mortgage" and insert immediately thereafter "lienholders of record"

Page 2, line 8, overstrike "recordholder" and insert immediately thereafter "lienholders of record"

Page 2, line 9, overstrike "recordholder's" and insert immediately thereafter "lienholders"

Page 2, line 10, after "notice" insert "before foreclosure"

Page 2, line 16, replace "recordholder" with "lienholder of record"

Page 2, line 21, overstrike "**Mortgagee**" and insert immediately thereafter "**Lienholder**"

Page 2, line 22, remove "recordholder"

Page 2, line 22, overstrike "of any mortgage" and insert immediately thereafter "record lienholder of any lien"

Page 2, line 25, replace "recordholder" with "lienholder"

Page 2, line 25, remove "the"

Page 2, line 26, replace the first "recordholder" with "the lienholder"

Page 2, line 26, replace the second "recordholder" with "lienholder"

Page 2, remove lines 28 and 29

Page 3, replace lines 1 through 30 with:

"SECTION 5. A new section to chapter 35-13 of the North Dakota Century Code is created and enacted as follows:

Nonjudicial disposition of property.

The person holding a lien under this chapter has the rights of a secured party under article nine of the Uniform Commercial Code for purposes of nonjudicial disposition of the property. A person holding a lien under this chapter who chooses to use nonjudicial disposition of the property shall dispose of the property in the manner prescribed for security interests under article nine of the Uniform Commercial Code.

Renumber accordingly

2/18/21

REPORT OF STANDING COMMITTEE

HB 1366: Transportation Committee (Rep. D. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1366 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "a"

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, replace "sale of property subject to a repairman's lien and sale proceeds" with "nonjudicial disposition of property by lienholders"

Page 1, line 3, after the first comma insert "35-13-04,"

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Page 1, line 16, remove the overstrike over "~~would exceed~~"

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Page 1, line 16, overstrike "four" and insert immediately thereafter "six"

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Page 1, line 19, overstrike "the mortgage or financing statement" and insert immediately thereafter "any liens"

Page 1, line 20, overstrike "recordholder of the"

Page 1, line 21, overstrike "mortgage or financing statement" and insert immediately thereafter "lienholders of record"

Page 1, line 22, after the period insert "Storage fees under this chapter may not begin to accrue until fifteen days after the owner is requested to take possession of the property."

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A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the ~~recordholder of the mortgage or financing statement~~ lienholder of record as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or financing statement~~ lienholder of record, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the ~~mortgage or financing statement~~ existing liens of record, then only that portion of the repairman's lien up to ~~four~~ six thousand dollars or thirty percent, or ~~nine~~ fifteen thousand dollars or thirty percent for property used for agricultural or construction purposes, of the retail value, whichever is greater, in the property's repaired condition, has priority over the ~~mortgage or financing statement~~ existing lien of record."

Page 2, line 1, overstrike " to prior mortgagee"

Page 2, line 3, overstrike "previously by mortgage," and insert immediately thereafter "by prior liens of record or"

Page 2, line 4, remove "or for sale of the property under sections 3 and 4 of this Act."

Page 2, line 5, overstrike "twenty" and insert immediately thereafter "ten"

Page 2, line 5, remove ". or"

Page 2, line 6, remove "intention to initiate a sale of the property under sections 3 and 4 of this Act."

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Page 2, line 8, overstrike "recordholder" and insert immediately thereafter "lienholders of record"

Page 2, line 9, overstrike "recordholder's" and insert immediately thereafter "lienholders"

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Page 3, replace lines 1 through 30 with:

"SECTION 5. A new section to chapter 35-13 of the North Dakota Century Code is created and enacted as follows:

Nonjudicial disposition of property.

The person holding a lien under this chapter has the rights of a secured party under article nine of the Uniform Commercial Code for purposes of nonjudicial disposition of the property. A person holding a lien under this chapter who chooses to use nonjudicial disposition of the property shall dispose of the property in the manner prescribed for security interests under article nine of the Uniform Commercial Code."

Renumber accordingly



TESTIMONY OF RICK CLAYBURGH, PRESIDENT AND CEO OF THE NORTH DAKOTA BANKERS ASSOCIATION, REGARDING HOUSE BILL 1366

HOUSE BILL 1366 REPAIRMAN'S LIENS

HB 1366 affects Chapter 35-13 of the North Dakota Century Code, which governs repairman's liens. North Dakota Bankers Association OBJECTS to HB 1366 based upon the following:

ISSUE #1. FORECLOSURE WITHOUT JUDICIAL ACTION SHOULD BE COMPLETED IN ACCORDANCE WITH ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE.

Liens are property interests arising by law or contract and everyone with a property interest is entitled to due process under the law. Article 9 of the Uniform Commercial Code has a non-judicial method of providing that due process when a secured lienholder has possession of the property being foreclosed. The process is clear, reasonable and well established. It provides adequate protection to owners of property and lienholders of record (like the Secured Creditors, other Repairman Lienholders and State and Federal Tax Liens) as well as provides protections for the lienholder selling the property.

North Dakota law currently requires that those with a repairman's lien foreclose said lien by action or proceeding.¹ One goal of the bill is to allow for repairmen to foreclose their liens and sell (or otherwise dispose) of the property without judicial action. For this reason, Section 4 of the bill covers the non-judicial sale of property.

The creation of these new provisions is unnecessary, as Article 9 of the Uniform Commercial Code (adopted in North Dakota as Chapter 41-09, N.D.C.C.) addresses every part of the disposition of personal property in sections 41-09-107 (9-610) through 41-09-123 (9-628). For instance, 41-09-110 (9-613) provides the contents of a notice before disposition, which is similar to the notice proposed as subsection 2 of 35-13-05 in the bill. A sample notice of disposition is attached to this testimony to illustrate how simple it is to create.

Because the law is already settled, it makes sense for the repairman lien statutes to direct the repairman to Article 9 of the UCC for disposition. This is in line with other states. For instance, Minnesota provides for similar liens (for personalty in possession), but specifically states that the lien "shall be considered a security interest under the Uniform Commercial Code and foreclosure thereon shall be in the manner prescribed for security interests under article 9 of the Uniform Commercial Code."²

For this reason, NDBA proposes adding similar language to Chapter 32-13, N.D.C.C., through the creation of a new section 35-13-07. Directing repairmen to the UCC for *non-judicial* disposition will negate the need to create the statute proposed in Section 4 and the need for Section 35-13-06, N.D.C.C.

It is also beneficial to repairmen to be treated as secured creditors because the UCC allows secured creditors to sell the owner's rights in the property, and is therefore never considered an owner of the property. This protects the repairman selling the property, as such property is not sold with warranties and representations of the repairman as owner.

¹ See N.D.C.C. § 35-13-05.

² Minn. Stat. § 514.18, subd. 3.

ISSUE #2. THE CHANGE IN SECTION 1 (FROM “WOULD EXCEED” TO “EXCEEDS”) IS INCONSISTENT WITH SECTIONS 35-13-01 AND 35-13-04.

Both sections 35-13-01 and 35-13-04 require the repairman who seeks a super priority lien for repair costs to give notice of the proposed repair, estimated cost of repair, and estimated value of the property in its repaired condition to lienholders of record. As stated in section 35-13-04, the lienholder has five days to object to the proposed repair costs becoming a super priority lien against the property. In other words, the repairman must give notice of proposed repairs and the lienholder has an opportunity to object to the repair.

In part, Section 1 of the bill amends section 35-13-01, N.D.C.C, in the following manner:

If the cost of repair ~~would exceed~~exceeds four thousand dollars or thirty percent or nine thousand dollars or thirty percent for property used for agricultural or construction purposes, of the value of the property, in the property's repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the recordholder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

Using the language “exceeds” rather than “would exceed” implies that the repair has already been completed and the costs have exceeded the statutory limit. “Would exceed” is preferable, because it makes it clearer that the repairman must determine whether a potential repair “would exceed” the statutory amount, thereby requiring notice to other lienholders of record prior to completing the repair.

For this reason, NDBA has proposed that Section 1 of the bill be amended to remove the overstrike over “would exceed” and remove “exceeds”. This will make it clearer that notice must be provided prior to the repairs being done.

ISSUE #3. “STORAGE FEES” SHOULD NOT BE INCLUDED AS PART OF THE REPAIRMAN’S LIEN.

The current version of section 35-13-01 authorizes a repairman’s lien for work done and materials furnished. The bill proposes to add storage fees and transportation costs.

NDBA proposes that “storage fees” not be included because the lien under Ch. 35-13, N.D.C.C.

ISSUE #4. SECTION 5 IS UNNECESSARY BECAUSE THE LAW OF MOTOR VEHICLES ALREADY PROVIDES FOR SUCH SCENARIO.

Section 5 of the bill provides that a lienholder in possession of a motor vehicle subject to 39-05 may obtain a certificate of title from the DOT free and clear of all liens if a lien is not satisfied. This newly proposed

statute should not be created because Chapter 39-05 of the North Dakota Century Code already directly provides how one should go about obtaining a certificate of title for a vehicle when ownership is obtained by other than voluntary means in section 39-05-19. Thus, a new section which is contrary to existing law should not be passed/enacted.

ISSUE #5. TECHNICAL CHANGES ARE REQUIRED THROUGHOUT.

A. The Statutes Should Not Refer to "Mortgages" or "Mortgagees" Because A Repairman's Lien is on Personal Property.

Section 35-13-01 authorizes a repairman's lien on "any automobile, truck, engine, combine, tractor, farm equipment, construction equipment, well machine, aircraft, or watercraft." The property listed falls under the category of *personal property*. Thus, the repairman lien statutes have no effect on *real property*.

Nonetheless, parts of 35-13 refer to "mortgagee," "recordholder of the mortgage," and property encumbered by a "mortgage". The term "mortgage" is associated with *real property*,³ as is the term "mortgagee." The repairman lien statutes should not use such language because they do not deal with *real property*. Referring to a "mortgage" or "mortgagee" is simply confusing and inaccurate. For this reason, NDDBA proposes that "mortgage" be replaced with "lien" and "mortgagee" be replaced with "lienholder."

B. Reference to "the Recordholder of the Mortgage or Financing Statement" is Limiting and Should Be Replaced by the Broader Term "Lienholder of Record"

As previously stated, "recordholder of the mortgage" has no place in Chapter 35-13, N.D.C.C., as it does not deal with real property. Moreover, referring to the "recordholder of the mortgage or financing statement" is limiting because other creditors might have liens on the property that do not fit within this language.

A "financing statement" refers to the UCC-1 Financing Statement filed by a secured creditor with the Secretary of State in order to provide notice of its security interest in certain personal property. Thus, the repairman statutes' reference to a "recordholder of the financing statement" means a secured party who has filed a UCC-1 with the SOS.

However, there may be several other creditors with liens on the property that are not required to and have not filed a "financing statement" to provide evidence of their interest. One such creditor is the repairman himself, who files a "lien statement" (rather than a financing statement) with the SOS.⁴ Other creditors with statutory liens would also be excluded by the language, including those with child support liens and federal tax liens. For this reason, it is suggested that a more general term be used, such as "lienholders of record."

³ See N.D.C.C. § 35-03-01.1(1) ("A mortgage is a contract by which specific real property capable of being transferred is hypothecated for the performance of an act without requiring a change in possession, and includes a transfer of an interest in real property, other than a trust, made only to secure the performance of an act.").

⁴ N.D.C.C. § 35-13-02.



TESTIMONY OF RICK CLAYBURGH, PRESIDENT AND CEO OF THE NORTH DAKOTA
BANKERS ASSOCIATION, REGARDING HOUSE BILL 1366

NDBA has also proposed to amend 35-13-04 for consistency.



NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of Debtor, Obligor, or other person to which the notification is sent, address]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For Public disposition]

We will sell [or lease, or license, as applicable] the [describe collateral] to [the highest qualified bidder] in public as follows:

Day and Date:

Time:

Place:

[For Private disposition]

We will sell [or lease, or license, as applicable] the [describe collateral] privately sometime after [date and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease, or license as applicable] [for a charge of \$_____]. You may request an accounting by calling us at [telephone number]

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1366

- Page 1, line 16, remove the overstrike over "~~would exceed~~" and remove "exceeds"
- Page 1, line 19, overstrike "the mortgage or financing statement" and insert "any liens"
- Page 1, lines 20-21, overstrike "recordholder of the mortgage or financing statement" and insert "lienholder of record"
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- Page 2, line 3, overstrike "previously by mortgage" and insert "by prior liens of record"
- Page 2, line 4, remove "or for sale of the property under sections 3 and 4 of this Act."
- Page 2, line 5, overstrike "twenty" and insert "ten"
- Page 2, lines 5-6, remove ", or intention to initiate a sale of the property under sections 3 and 4 of this Act."
- Page 2, line 7, overstrike "recordholder of the mortgage" and insert "lienholders of record"
- Page 2, line 8, overstrike "recordholder" and insert "lienholders of record"
- Page 2, line 9, overstrike "recordholder's" and replace "lienholders"
- Page 2, line 10, insert "before foreclosure" after "notice"
- Page 2, line 22, remove "recordholder of any mortgage" and insert "record lienholder of any lien"
- Page 2, line 25, replace "recordholder" with "lienholder"
- Page 2, line 26, replace "recordholder" with "lienholder" and "recordholder then" with "lienholder then"
- Page 2, removes lines 28 through 29
- Page 3, remove lines 1 through 30

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1366

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2 amended and reenacted as follows:

3 **35-13-04. Priority of lien.**

4 A lien obtained under this chapter has priority over all other liens, chattel mortgages, or
5 encumbrances against the personal property upon which the lien is secured, but if the repairman
6 has failed to notify the ~~recordholder of the mortgage or financing statement~~ lienholder of record
7 as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or~~
8 ~~financing statement~~ lienholder of record, within five days after receiving such notice,
9 communicated in writing to the repairman an objection to all the proposed repair costs becoming
10 a lien against the property with priority over the ~~mortgage or financing statement~~ existing
11 lienholder of record, then only that portion of the repairman's lien up to four thousand dollars or
12 thirty percent, or nine thousand dollars or thirty percent for property used for agricultural or
13 construction purposes, of the retail value, whichever is greater, in the property's repaired condition,
14 has priority over the ~~mortgage or financing statement~~ existing lienholder of record.

15 **SECTION 2.** Section 35-13-07 of the North Dakota Century Code is created and enacted
16 as follows:

17 **35-13-07. Non-judicial disposition of property.**

18 The person holding a lien under this chapter shall have the rights of a secured party under
19 Article 9 of the Uniform Commercial code for purposes of non-judicial disposition of the property.
20 A person holding a lien under this chapter who chooses to use non-judicial disposition of the
21 property shall dispose property in the manner prescribed for security interests under Article 9 of
22 the Uniform Commercial Code.

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1366

Introduced by

Representatives Vigesaa, D. Ruby, Weisz, Westlind

Senators Bakke, Clemens, Dwyer

1 A BILL for an Act to create and enact two new sections to chapter 35-13 of the North Dakota
2 Century Code, relating to the sale of property subject to a repairman's lien and sale proceeds;
3 and to amend and reenact sections 35-13-01, 35-13-05, and 35-13-06 of the North Dakota
4 Century Code, relating to repairman's liens, notice requirements, and assignments.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 35-13-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **35-13-01. Repairman's lien authorized.**

9 Any blacksmith, machinist, farm equipment dealer, construction equipment dealer, welder,
10 garage keeper, mechanic, or aviation operator, having an established place of business in this
11 state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm
12 equipment, construction equipment, well machine, aircraft, or watercraft at the request of the
13 owner or legal possessor of the property has a lien on that property, and on any accessories
14 and parts placed upon the property, for reasonable charges for work done ~~and~~, materials
15 furnished, storage fees, and transportation costs, until the charges are paid. If the cost of repair
16 ~~would exceed~~ would exceed ~~exceeds~~ four thousand dollars or thirty percent or, nine thousand
17 dollars or thirty percent for property used for agricultural or construction purposes, of the value of
18 the property, in the property's repaired condition, whichever is greater, and the repairman intends
19 to have the entire repair bill constitute a lien with priority over ~~the mortgage or financing statement~~
20 any liens of record, the repairman shall give notice by registered or certified mail to the
21 ~~recordholder of the mortgage or financing statement~~ lienholder of record of the proposed repair,
22 the estimated cost of repair, and the estimated value of the property in its repaired condition.

23 **SECTION 2. AMENDMENT.** Section 35-13-05 of the North Dakota Century Code is
24 amended and reenacted as follows:

35-13-05. Notice before foreclosure ~~to prior mortgagee.~~

1. A person holding a lien under this chapter on property ~~which has been~~ encumbered ~~previously by mortgage~~ by prior liens of record, before beginning any action or proceeding for the foreclosure of the lien, ~~or for sale of the property under sections 3 and 4 of this Act~~, shall give ~~twenty~~ ten days' notice in writing of the lienholder's intention to foreclose the lien, ~~or intention to initiate a sale of the property under sections 3 and 4 of this Act~~, to the ~~recordholder of the mortgage~~ lienholders of record and the owner of the property. The notice may be served by registered or certified mail addressed to the ~~recordholder~~ lienholders of record and property owner at the ~~recordholder's~~ lienholders and property owner's last-known post-office address.

2. The notice before foreclosure must include:

- a. A description of the property subject to the lien;
- b. The grounds for the lien;
- c. The name, address, and telephone number of the lienholder;
- d. The amount owed;
- e. The date after which the property subject to the lien will be offered for sale; and
- f. A statement that the recordholder or property owner may reclaim the property subject to the lien before the property is offered for sale by paying the amount owed.

SECTION 3. AMENDMENT. Section 35-13-06 of the North Dakota Century Code is amended and reenacted as follows:

35-13-06. Mortgagee may pay amount of lien - Assignment of lien.

The holder ~~recordholder of any mortgage~~ record lienholder of any lien against property on which a lien has been filed under the provisions of this chapter may pay the amount due on the lien at any time ~~previous to~~ before a sale upon the foreclosure thereof of the property. Upon payment of the lien by a mortgageholder ~~recordholder~~ lienholder, the holder of the lien shall assign it to such mortgageholder ~~recordholder~~ lienholder, and thereafter the mortgageholder ~~recordholder then~~ lienholder then is entitled to all the rights which the person filing the lien had before the lien was paid.

~~**SECTION 4. A new section to chapter 35-13 of the North Dakota Century Code is created and enacted as follows:**~~

Sale of property.

~~1.— A lienholder in possession of property may sell the property as provided under this chapter if:~~

~~a.— The recordholder of the property subject to the lien does not pay the amount due pursuant to section 35-13-06 within the time specified under section 35-13-05; or~~

~~b.— The property owner does not reclaim the property before the date the property is offered for sale under section 35-13-05.~~

~~2.— A lienholder that sells property under this chapter may retain from the sale proceeds:~~

~~a.— The amount owed on the lien;~~

~~b.— The reasonable costs of transporting, storing, and maintaining the property;~~

~~c.— The notice and publication costs incurred by the lienholder under this chapter;~~

~~and~~

~~d.— The costs associated with the sale of the property.~~

~~3.— After a lienholder has been compensated as authorized under subsection 2, the lienholder shall remit any remaining proceeds to entitled lienholders and secured parties.~~

~~4.— If sale proceeds remain after satisfying entitled lienholders and secured parties under subsection 3, the lienholder shall hold the remaining sale proceeds for the benefit of the property owner for ninety days after the date of the sale. If the property owner fails to claim the remaining sale proceeds within the ninety-day period, the lienholder shall deliver the proceeds to the administrator of the state abandoned property office in accordance with chapter 47-30.1.~~

SECTION 5. A new section to chapter 35-13 of the North Dakota Century Code is created and enacted as follows:

Sale proceeds – Vehicle title.

~~If a lien is not satisfied under subsection 1 of section 4 of this Act, a lienholder in possession of a motor vehicle that is subject to chapter 39-05 may obtain from the department of transportation a certificate of title for the motor vehicle, free and clear of all liens, encumbrances, and other claims of ownership. Upon receipt of the title to the motor vehicle, the lienholder shall remove and destroy the original number plates displayed on the motor vehicle.~~

1 **SECTION 1. AMENDMENT.** Section 35-13-04 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 **35-13-04. Priority of lien.**

4 A lien obtained under this chapter has priority over all other liens, chattel mortgages, or
5 encumbrances against the personal property upon which the lien is secured, but if the repairman
6 has failed to notify the ~~recordholder of the mortgage or financing statement~~ lienholder of record
7 as provided in section 35-13-01, or if such notice was given and the ~~holder of the mortgage or~~
8 ~~financing statement~~ lienholder of record, within five days after receiving such notice,
9 communicated in writing to the repairman an objection to all the proposed repair costs becoming
10 a lien against the property with priority over the ~~mortgage or financing statement~~ existing
11 lienholder of record, then only that portion of the repairman's lien up to four thousand dollars or
12 thirty percent, or nine thousand dollars or thirty percent for property used for agricultural or
13 construction purposes, of the retail value, whichever is greater, in the property's repaired
14 condition, has priority over the ~~mortgage or financing statement~~ existing lienholder of record.

15 **SECTION 2.** Section 35-13-07 of the North Dakota Century Code is created and enacted
16 as follows:

17 **35-13-07. Non-judicial disposition of property.**

18 The person holding a lien under this chapter shall have the rights of a secured party under
19 Article 9 of the Uniform Commercial code for purposes of non-judicial disposition of the
20 property. A person holding a lien under this chapter who chooses to use non-judicial
21 disposition of the property shall dispose property in the manner prescribed for security
22 interests under Article 9 of the Uniform Commercial Code.

Page 1, line 15, remove "storage fees,"

House Bill 1366
Testimony before House Transportation Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
Pioneer Equipment Dealers Association
February 18, 2021

02/17/21

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.

After the February 11th hearing of HB 1366 there was a question regarding when storage charges would begin to accrue. The following proposed amendment is an attempt to address that question and also add a measure of "fairness" for all parties regarding the storage issue. The amendment states:

Page 1, line 22, after the word "condition." insert:

"Storage fees under this chapter may not begin to accrue until fifteen days after the owner is requested to take possession of the property."

This language prohibits a repairman from charging storage until just over two weeks have passed since the owner was asked to come and get the property. We believe this language to be both fair and reasonable.

Mr. Chairman, we respectfully request a DO PASS on this amendment and HB 1366. Thank you.

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

HB 1366 Amendment

2/17/21

Language to update lien priority thresholds:

Page 1, line 16, replace "four" with "six" and replace "nine" with "¹⁵~~sixteen~~".

35-13-04. Priority of lien. A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the recordholder of the mortgage or financing statement as provided in section 35-13-01, or if such notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the repairman's lien up to ~~four~~¹⁵six thousand dollars or thirty percent, or ~~nine~~¹⁵sixteen thousand dollars or thirty percent for property used for agricultural or construction purposes, of the retail value, whichever is greater, in the property's repaired condition, has priority over the mortgage or financing statement.

2021 SENATE TRANSPORTATION

HB 1366

2021 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

HB 1366
3/11/2021
AM Meeting

A BILL for an Act to create and enact a new section to chapter 35-13 of the North Dakota Century Code, relating to the nonjudicial disposition of property by lienholders; and to amend and reenact sections 35-13-01, 35-13-04, 35-13-05, and 35-13-06 of the North Dakota Century Code, relating to repairman's liens, priority of liens, notice requirements, and assignments.

Chair Clemens calls the meeting to order. Present are Chair Clemens, Vice Chair Fors, Senators Bakke, Conley, Dwyer, D. Larsen. [10:57]

Discussion Topics:

- Abandoned motor vehicles
- Costs to motor vehicle dealerships
- Disposition of properties

Representative Vigesaa [10:57], representing district 23, introduces the bill and offers oral testimony in favor.

Matthew Larsgaard [10:59], representing the Pioneer Equipment Dealers Association and the Automobile Dealers Association of ND, testifies in favor and submits testimony #8828.

Jeff Albers [11:15], General Sales Manager at Schwann Buick GMC Cadillac, testifies in favor and submits testimony #8829.

Marc Taylor [11:19], insurance agent and broker at Northern Plains Equipment Company Inc., testifies in favor and submits testimony #8832.

Steven J. Zaun [11:24], General Manager at Puklich Chevrolet, testifies in favor and submits testimony #8833.

Rick Clayburgh [11:28], director of the ND Bankers Association, offers neutral oral testimony.

Chair Clemens adjourns the meeting. [11:43]

Sheldon Wolf, Committee Clerk

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

03/07/21

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.

Furthermore, dealers do not want to have to sue someone for a \$4,000 repair bill on car that's worth \$3,500. Dealers don't want that person to have a **judgement on their record** simply because they don't pay the repair bill. This legislation provides the solution.

HB 1366 was originally modeled after the abandoned motor vehicle bill that was passed last session (HB 1263). However, at the request of our banking colleagues, we worked with them to develop an amendment which replaced our proposed sales provisions with the provisions that are already outlined within the Uniform Commercial Code. Those amendments are reflected within Section 5 of the bill.

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.** (NDCC 41-09-107)
- 2) At least 10 days before selling the property, the repairman must send notice to all interested parties including: the owner, all lienholders, and all secured parties. (NDCC 41-09-109)
- 3) The **owner, lienholders, or secured parties may** pay the repair bill (lien) and **reclaim the property** at any time prior to the sale. (NDCC 41-09-118)
- 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. (NDCC 41-09-111)
- 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.**
 - **NOTE:** HB 1366 adds a level of consumer protection by prohibiting a repairman from charging storage until just over two weeks (15 days) have passed since the owner was asked to come and get the property.
- 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 **adjusts for inflation the lien priority thresholds.** Under current law, only that portion of the repairman's lien up to the greater of (\$4,000 auto)(\$9,000 Ag) or 30% of the value of the property has priority over a lender's lien. This bill adjusts for inflation the static thresholds to (\$6,000 auto)(\$15,000 Ag equipment).

It is important to understand that, in some cases, the adjustment to the static lien priority thresholds only helps to close the gap between our dealers' repair bills and the amount that they are actually able to collect. In many cases, the bank will still be able to collect money that should be paid to the dealer.

Exhibit A: Realistic Scenario Under Current Law:

3/07/21

A bank has a mortgage on 100% of the value of a tractor. The tractor, worth \$45,000, blows an engine. The dealer replaces the engine and makes other repairs totaling \$25,000.

Tractor value before break-down: \$45,000

Repair cost: \$25,000

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

At this point in the scenario the bank has experienced an unrealized loss of \$25,000. 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: \$25,000

Tractor Value (after dealer repair): \$45,000

Increase in value of property through dealer repair: \$25,000

Under current law, if the tractor is foreclosed on and sold for \$45,000, the bank would get \$31,500 and the dealer would only get \$13,500 (30%). The Dealer added \$25,000 in parts & labor but, they only get \$13,500.

Net result: the bank gets \$11,500 of the dealer's parts & labor!!

Even with HB 1366 being Passed, the bank would still get **\$11,500** of the dealer's parts & labor.

HB 1366 allows the lenders to continue to be very well protected with the 30% thresholds. Any repairs that exceed this value, assuming it is greater than the dollar threshold, would require the dealer to contact the bank and **ask for their permission** to allow the entire repair bill to have first priority.

HB 1366 provides repairmen with the ability to dispose of property that has been abandoned and left in the dealers' possession. This bill 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, updating the current lien priority thresholds, and requiring the repairmen to provide notice to all parties.

I have three dealers here to testify and provide some real-world examples of the need for this bill. However, I would be happy to try to answer any questions.

Thank you for the opportunity to testify. We respectfully request a DO PASS on this legislation.

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

HB 1366 Explanation

3/8/21

Page 1, Section 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. Current language, on line 14, requires the storage and transportation charges must be "reasonable". Repairman are not allowed to price gouge.

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 and equipment that are either 1) repaired or, 2) are waiting to be repaired.
- 2) Dealers must maintain, preserve, and protect vehicles and equipment they are storing. If the property is damaged while it is being stored, the dealer is the one that generally must pay to fix the damage.
- 3) Many other businesses, including tow truck companies, charge storage. This is a reasonable business practice and this bill recognizes that.
- 4) The bill requires that storage charges MUST be "reasonable". Repairmen are not allowed to charge inflated storage fees. It is important to note that the word "reasonable" is used throughout the NDCC and is also used 49 times in Title 9 of the UCC.

continued....

HB 1366 Explanation

Page 1, line 16 adjusts for inflation the lien priority thresholds.

Page 1, lines 22-24 adds a level of consumer protection by prohibiting a repairman from charging storage until 15 days after the owner was asked to come and get the property.

Page 2, lines 19-31 and Page 3, lines 1-4 outline the process a repairman must follow before they begin a judicial disposition of the property.

Page 3, lines 7-13 are simply cleanup language.

Page 3, lines 17-21 allow the dealer to conduct a nonjudicial disposition of the property. The entire disposition process must adhere to the requirements set forth within the Uniform Commercial Code. It is our understanding that this is the same process lenders must use in order to dispose of repossessed property.

Mr. Chairman and members of the committee, my name is Jeff Albers. I am the General Sales Manager at Schwan Buick, GMC, Cadillac, and I am here to testify in support of this bill. I would like to describe a couple situations we have experienced to emphasize why we as a vehicle repair shop need this bill passed.

In February 2019, we serviced a customer's vehicle that required approximately \$6,000 worth of repairs. The retail value of the vehicle was around \$8,000. We told the customer what the repairs would consist of, and the customer approved the repairs and asked us to fix their vehicle. After we fixed the vehicle, we notified the customer that it was ready for pickup. They never responded. Over the course of time, we sent out 60, 90, and 120 plus day past due notices, asking the customer to come and get their vehicle. The customer finally communicated with us and decided that they did not want to pay for the repairs. Instead, they were going to abandon the vehicle with us and walk away from it. The customer also said they had a bank loan and were not going to pay that either.

Our next step was to contact the bank to see when they would be repossessing the vehicle and to let them know we had a Repairman's Lien on the vehicle that needed to be satisfied. We told the bank that they can pay the repair bill and take the vehicle. The bank, after doing the calculations, decided that it was not worth it for them to repossess the vehicle and abandoned it with us as well.

Other than suing the customer, there were no more options for us to recover our losses on the vehicle that both the customer and the bank abandoned. We were left with a \$6,000 repair bill, many hours of work trying to collect on this repair, and a vehicle that was essentially worthless because we could not get a title.

I could give many other examples that underline our need for this bill. Sometimes, a customer's car stops running, and they ask us to tow their vehicle into our shop for repair. We do not have a tow truck, so we hire the towing company to pull the vehicle into our shop. We then diagnose the problem and inform the customer what the repair will consist of. Depending on the repairs, the cost can approach the value of the vehicle, but the customer approves the work anyways. The problem is that the customer later decides they no longer want to put that money into the vehicle and they abandon the car with us. We are now stuck with both the towing bill and the repair bill. HB 1366 helps to clarify that **transportation is part of the repair process** and should be recoverable under the current Repairman's lien law.

With this legislation, repair shops like ours will be able to provide an opportunity for both the customer and the bankers to come, pay the repair bill, and take the vehicle...or, if they all choose to abandon the vehicle with us, we can sell the vehicle, pay our repair bill, and then turn over the remaining sales proceeds to the lender or owner according to priority.

Mr. Chairman, thank you very much for the opportunity to testify.

Jeff Albers
Schwan Buick, GMC, Cadillac

Mr. Chairman and members of the committee, my name is Marc Taylor. I am an owner of Northern Plains Equipment, a Case IH dealer, and I am here to testify in support of HB 1366. This bill will help to allow dealerships to recover their contribution to the increased value of a customer's repaired equipment in the event the customer does not pay for the repairs they requested.

I would like to identify a couple of incidents where equipment that we have repaired has been "abandoned" with us to illustrate the need for this bill.

Example 1 – My dealership overhauled the engine of a Steiger four-wheel drive tractor per the customer's instructions. The repair order was approximately \$6,700, and the value of the tractor was about \$15,500. We contacted the customer repeatedly and were assured he would be in to pay the bill and take possession of the tractor. At some point the customer quit responding, and his address was no longer valid. Rumor was he had moved out of the area. We have never been able to re-establish contact with this individual.

Example 2 – A customer brought in a John Deere four-wheel drive tractor because there was "an unusual noise" in the drive train. Our service tech began the repair, diagnosed the issue, and identified the problem as a complete differential failure. The customer then decided they did not want the tractor and it has been sitting on our lot for years.

Example 3 – Occasionally, we see equipment that a customer wants repaired simply for sentimental reasons and not actual utility. In some cases, the repairs exceed the value of the equipment. However, the customer still directs us to perform the repair. So, in order to take care of the customer, we perform the repair for them. Sometimes the customer changes their mind and abandons the property with us.

The abandonment issue really pertains to low value equipment. Dealers simply do not see farmers abandoning high value equipment with us.

In many cases, transportation is an absolutely necessary part of the repair process. There are many instances when we need to send our service trucks out to the field to repair equipment. These service trucks cost close to \$200,000 and it is a significant cost for us to operate them. Current law is not exactly clear on whether transportation is included in our lien. This bill provides that clarity.

Storage costs are also associated with many repairs. We have to ensure that we have purchased enough land to store this large equipment. This is obviously a cost for us. In addition, dealers are held responsible for any damage that may occur while the equipment is in the dealership's possession. That can include anything from hail, high winds, or vandalism. When vandalism does occur with "Precision Equipment" – a frequent target – there is often more damage to the machine than the value of what was stolen. If the equipment is damaged or vandalized while it is in our possession, we have to pay to repair or replace it. Storage fees help to mitigate the costs associated with both the repair process and damaged equipment.

Mr. Chairman, in summary, this bill is pretty simple in concept. It allows dealers to sell equipment that has been abandoned with them, and it also recognizes that both storage and transportation are part of the repair process. Thank you, Mr. Chairman and members of the Committee.

Marc Taylor
Northern Plains Equipment

House Bill 1366
Testimony before Senate Transportation Committee
Steven J Zaun, General Manager
Puklich Chevrolet Inc.

03.06.21

Mr. Chairman and Members of the Committee. My name is Steve Zaun, and I am the General Manager of Puklich Chevrolet in Bismarck and Puklich Chevrolet Buick GMC in Valley City. I am here in support of HB 1366. The issue of abandonment has unfortunately increased in recent years, becoming an expensive issue for business owners and, subsequently, the customers using our services.

We do our best to provide exceptional service to the motoring public, our customers, in an effort to keep their transportation safe and reliable. It is our practice to repair a vehicle in good faith when the customer makes the request. We provide cost estimates before we proceed and repair a vehicle only after a customer gives us permission to perform the repair. A great majority of our customers pay their bill. However, some do not and instead choose to abandon the vehicle at our facilities. Most of these customers cut off all communications with us, making it difficult to do anything to collect the repair bill or take action to foreclose on our repairman's lien.

Last year, we had a situation where a customer owed us several thousand dollars on a repair. Between the time the repair was authorized and when it was completed, the customer quit his job and made the decision to move back to his home state of Texas. This particular customer did stay in contact with us for a while, assuring us that he was trying to make it right. After several months of working with this customer, he finally admitted he didn't want to pay the bill because he did not feel it was worth it to come back to ND to get the vehicle. He promised to send the title but never did and then he simply stopped communicating with us. We next reached out to the lienholder and informed them that we had the vehicle and, if they would like to reclaim it, they would need to pay our repair bill. The lender informed us that they were not interested in the collateral as its value didn't make it worth their costs and effort to reclaim it. Thus, the lender decided to abandon the vehicle as well.

Last summer, we also had a situation with an abandoned vehicle that created potential liability for our company and employees. It was discovered that a person had broken into one of these cars and was sleeping in it at night. We had to have the Bismarck Police physically remove this person several times before the person finally stopped coming back. We had several frightened employees that observed this person early in the morning when coming in before dawn to do their job.

Many dealers could recite numerous cases like the two I mentioned today. We do our best to take care of our driving public in the most customer-friendly way possible. I support this bill as it gives us a better path to dispose of these abandoned vehicles while, at the same time, protecting the rights of our customers, other lienholders, and the citizens of our great state.

I thank you for your time today and your consideration of this crucial legislation. I urge you to please support HB 1366.

Steve Zaun
Puklich Chevrolet Inc.

2021 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

HB 1366
3/11/2021
PM Meeting

A BILL for an Act to create and enact a new section to chapter 35-13 of the North Dakota Century Code, relating to the nonjudicial disposition of property by lienholders; and to amend and reenact sections 35-13-01, 35-13-04, 35-13-05, and 35-13-06 of the North Dakota Century Code, relating to repairman's liens, priority of liens, notice requirements, and assignments.

Chair Clemens calls the meeting to order. Present are Chair Clemens, Vice Chair Fors, Senators Bakke, Conley, Dwyer, D. Larsen. [2:04]

Discussion Topics:

- Vote on the bill

Senator D. Larsen [2:04] motions DO PASS.

Senator Bakke [2:04] seconds.

| Senators | Vote |
|-----------------------|------|
| Senator David Clemens | Y |
| Senator Robert Fors | Y |
| Senator Cole Conley | Y |
| Senator Michael Dwyer | Y |
| Senator Doug Larsen | Y |
| Senator JoNell Bakke | Y |

Motion passes 6-0-0. [2:04]

Senator Bakke will carry.

Chair Clemens closes the meeting. [2:04]

Sheldon Wolf, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1366, as engrossed: Transportation Committee (Sen. Clemens, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1366 was placed on the Fourteenth order on the calendar.