

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
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ROLL NUMBER

DESCRIPTION

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Deanna Hall  
Operator's Signature

10/2/03  
Date

2003 HOUSE JUDICIARY

HB 1234

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2003 HOUSE STANDING COMMITTEE MINUTES

BIJ./RESOLUTION NO. HB 1234

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
2	xx		10-end
2		xx	27-36
Committee Clerk Signature <i>Al Penrose</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the hearing on HB 1234.

**Charles McCay, Farm Credit Services:** Support (see attached testimony and amendments).

Chairman DeKrey: I sponsored these three bills and this is how I see this package, is back in the 1980's lending was done on 65% of the assets. If he had the assets, he got the loan. That is why there was such a financial crisis in the '80s when inflation topped out, values started to drop, now you didn't have the 65% anymore. They were in trouble. With these policies that we have in place now, we've gone strictly to the other side of the spectrum which is strictly cash flow. These bills are trying to establish a happy medium, moving us closer to the middle, would you agree with that.

**Mr. McCay:** Yes. What it does is made the real estate collateral slightly more secure and certain as to the value. We will give greater consideration in loans.

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*Dennis Holbrook*  
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Date

Page 2  
House Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 2-11-03

**Chairman DeKrey:** So the chances of having the opportunity for being able to access more operating money is going to be better for the producer, right.

**Mr. McCay:** Yes.

**Rep. Klemin:** On line 15 and 16, we're talking here about the period of redemption, must be six months for a redemption under subsection 1, or one year. How does that sentence tell us which redemption period we're using.

**Mr. McCay:** Our purpose in this bill is not to change the length of the redemption period, it just changes when the clock starts ticking.

**Rep. Klemin:** So what we're saying is that the redemption period would still be one year, but the time that the redemption period expires would be the same as under the short term, with regard to the date of the sheriff sale, so it would be 60 days after the date of the sheriff sale or one year after they've filed a summons and complaint with the clerk of court, whichever is longest.

**Mr. McCay:** I believe that is the intent.

**Chairman DeKrey:** When the time period keeps getting stretched out, assets start to disappear, no income going to the lender and assets are being sold off but not paid to the lender.

**Mr. McCay:** Yes. This deals directly with the real estate portion.

**Chairman DeKrey:** When the producer loses, the bank loses, all those costs are going to be borne by the operator who are making it.

**Mr. McCay:** It is part of doing business. We make money from the interest off loans.

**Chairman DeKrey:** Are you aware of many foreclosure situations, where the time period has gotten stretched out and the producer has improved his position.

Deanna Ballantyne  
Operator's Signature

10/2/03  
Date

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 2-11-03

**Mr. McCay:** There have been instances where they have offered a defense, and we have gone to trial and have resolved the issue reasonably quickly, there is no bankruptcy involved, and we are always in the position that it only makes good business to negotiate until there is nothing left to negotiate, and even after winning the trial, getting judgment, we continue to negotiate and find ways to help the farmer continue. When they filed bankruptcy, I don't know of any situation where it got better.

**Rep. Onstad:** The bank has already established lending practices on certain criteria.

**Mr. McCay:** I'm not sure of the question.

**Rep. Onstad:** Initially when you start a loan procedure, the bank institution does have lending practices already established, we can lend you the money if this criteria is met?

**Mr. McCay:** Yes. We look at the financial position of the borrower, their ability to pay debt, credit history, available collateral, etc. If there is a strength in one area, that allows us to be a little weaker in another area.

**Rep. Onstad:** You made the loan, what you're trying to say is by shortening up the redemption period, is going to help the initial lending practices.

**Mr. McCay:** What it does is take a little bit of uncertainty out of the value of their collateral. If there is default on the loan and we have to foreclose, having the ability to stretch out that period before the redemption period starts ticking, costs us money. We're accruing interest, taxes, insurance, etc. while that is going on. This just says that the borrower can offer all the defenses that he has always has, but that the redemption period starts ticking a little sooner.

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Page 4  
House Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 2-11-03

**Rep. Onstad:** I guess the point is, you're lending money on the basis upfront, but you are turning around and say we're going to be a little more liberal. I don't think the bank is going to be anymore liberal.

**Mr. McCay:** What are you saying? Are you saying that the fact that we considered collateral, or the value of the collateral important, means that we're expecting the loan to fail.

**Rep. Onstad:** A new customer comes in, you use your criteria and you work with that individual. I can't understand the argument that you and the Chairman are trying to make, that on the end is going to make the whole lending practice that much easier. I don't know how to tie the two together.

**Mr. McCay:** Right now, if you wanted to buy some land, we would probably start with the assumption that we would lend 65% of the appraised value. We would look at all the credit package and if you were exceptionally in your payment ability, that may affect that 65%, but let's just say that you were a so-so, that if you default on the loan, it's going to take us a minimum of 18 months to acquire the property so that we can sell it and get our money back. During that time, we are absorbing all the interest, taxes, insurance, attorney fees, etc. In order for us to get our money back, we can't lend anymore than 65%.

**Rep. Klemin:** This will apply to any case, not just farm land, in which a standard mortgage is used where the redemption period would otherwise be one year from the date of the sheriff sale.

**Mr. McCay:** That is correct.

**Rep. Klemin:** We are talking about commercial property, whatever, even residential if the party used a standard mortgage instead of a short term redemption.

Page 5  
House Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 2-11-03

**Mr. McCay:** I think that is correct, even on residential if the debt is less than about 2/3 of the value, it goes to a 12 month redemption.

**Rep. Klemm:** In that case, the short term redemption act does say when the redemption period starts.

**Rep. Wrangham:** As I view lending, I think of their increased risk or the increased length of time it takes you to secure the property, more the risk, the higher the interest rate. Would interest rates go down a little.

**Mr. McCay:** Risk can be dealt with in two ways. Raise your income enough to cover it, or else change your underwriting standards to eliminate as much as you can. Typically lenders are going to work with both of them. I can't tell you that it's going to reduce the cost of lending money. It's easier for us to drop our interest rates to beat competition because our costs are less, so we can project those costs.

**Chairman DeKrey:** Thank you. Any further testimony in support? Any testimony in opposition to HB 1234.

**Jeff Knudson, Ag. Dept.:** Opposed (read testimony on behalf of Roger Johnson, see attached testimony).

**Chairman DeKrey:** Thank you. Any further testimony in opposition.

**Mark Sitz, ND Farmers Union:** Opposed. This is one of three bills that deal with debtor protection. We feel these bills are really are eroding our debtor protections. When the three bills are put together, it draws some concern. They make it more restrictive for borrowers. Ag lenders in North Dakota are in good shape, because of current laws. Earnings are high, we need to go slow.

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Page 6  
House Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 2-11-03

**Rep. Klemm:** I have one question, it deals with the party that has the right to use of the land during the redemption period, which would be the mortgagor, and current law the mortgagor has the right to use of the property during redemption period. Right now, it is one year from the date of the sheriff's sale. Now farm land, from a hypothetical standpoint, let's say the date of the sheriff sale was July 15th. Under the current law, that farmer would have the right to the use of that land until July 15th of the following year. That kind of a date is too early for him to actually harvest any crops that he might have planted in the following year, so in that sort of a situation, that land is just going to be sitting there because the farmer certainly isn't going to plant any crops that he can't harvest, so that land is just going to sit there, and nobody is going to take care of it and the weeds are going to grow, would you expect that under that hypothetical, is that a reasonable hypothetical, or would you expect the farmer to actually plant the crops and take care of the property, even though he is not going to get anything from it.

**Mr. Sitz:** That's a good point. I would say that there are cases out there just like that, and could potentially be like that. I can't answer that. It depends on the farmer in that situation; what other alternatives he might be working on for financing.

**Rep. Boehning:** You see people doing contract for deed with their neighbor, and then the borrower can't make the payments and the lender needs the money to live on. He would have to wait 1 or 2 or 5 years in some cases to get his property back. Put yourself in his position, would you want your land just sitting there not making any profit, you're losing your money.

**Mr. Sitz:** I don't dispute these situation occur, but will this make the ag lender better? Might still happen even if redemption period is shorter.

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Page 7  
House Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 2-11-03

**Rep. Onstad:** If a person makes a contract for deed with someone, and they fail to pay, isn't the contract null and void; therefore, that person who sold the property under contract for deed can take his property back.

**Mr. Sitz:** I don't know.

**Rep. Klemin:** We have statutes on procedures to follow to cancel a contract for deed sale. One is by notice, one is by action asking the court to set an equitable redemption period, and the third is by foreclosure, which is typically only used if these other judgments don't work. ND law controls on that.

**Chairman DeKrey:** Thank you. Any further testimony. We will close the hearing.

(Reopened later in the afternoon)

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1234.

**Rep. Grande:** I move the amendments.

**Rep. Maragos:** Seconded.

Voice vote: Carried.

**Rep. Grande:** I move a Do Pass as amended.

**Rep. Maragos:** Seconded.

10 YES 3 NO 0 ABSENT

DO PASS AS AMENDED CARRIER: Rep. Klemin

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10/2/03  
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30418.0101  
Title.0200

Prepared by the Legislative Council staff for  
Representative DeKrey  
January 27, 2003

VR  
2/12/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1234 JUD 2-12-03

Page 1, line 1, replace "section" with "sections" and after "28-24-02" insert ", 28-24-04, and 32-19-18"

Page 1, after line 20, insert:

**"SECTION 2. AMENDMENT.** Section 28-24-04 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-04. Successive redemptions - Time.** If property is redeemed by a redemptioner, another redemptioner, even after the expiration of ~~one year from the day of sale~~ the period of redemption, may redeem from the last redemption if the redemption is made within sixty days after ~~such~~ the last redemption. This sixty-day limitation does not apply to any redemption made within ~~one year after the sale~~ the period of redemption by whomsoever or from whomsoever ~~such~~ the redemption is made, but all persons entitled to redeem in all cases have the entire period of ~~one year from the day of sale~~ redemption in which to redeem. The property, as often as a redemptioner is so disposed, may be redeemed again from any previous redemptioner within sixty days after the last redemption.

**SECTION 3. AMENDMENT.** Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

**32-19-18. Redemption.** All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed ~~at any time within one year after such sale~~ as prescribed by chapter 28-24."

Renumber accordingly

Date: 2/11/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1234

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30418.0101 .0200

Action Taken Do Pass As Amended.

Motion Made By Rep. Grande Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre		✓
Rep. Bernstein	✓		Rep. Onstad		✓
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar		✓			
Rep. Wrangham	✓				

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep. Klemm

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

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10/2/03  
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REPORT OF STANDING COMMITTEE (410)  
February 12, 2003 4:29 p.m.

Module No: HR-27-2497  
Carrier: Klein  
Insert LC: 30418.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

HR 1234: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1234 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections" and after "28-24-02" insert ", 28-24-04, and 32-19-18"

Page 1, after line 20, insert:

**"SECTION 2. AMENDMENT.** Section 28-24-04 of the North Dakota Century Code is amended and reenacted as follows:

**28-24-04. Successive redemptions - Time.** If property is redeemed by a redemptioner, another redemptioner, even after the expiration of ~~one year from the day of sale~~ the period of redemption, may redeem from the last redemption if the redemption is made within sixty days after ~~such~~ the last redemption. This sixty-day limitation does not apply to any redemption made within ~~one year after the sale~~ the period of redemption by whomsoever or from whomsoever ~~such~~ the redemption is made, but all persons entitled to redeem in all cases have the entire period of ~~one year from the day of sale~~ redemption in which to redeem. The property, as often as a redemptioner is so disposed, may be redeemed again from any previous redemptioner within sixty days after the last redemption.

**SECTION 3. AMENDMENT.** Section 32-19-18 of the North Dakota Century Code is amended and reenacted as follows:

**32-19-18. Redemption.** All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may be redeemed ~~at any time within one year after such sale~~ as prescribed by chapter 28-24."

Renumber accordingly

2003 SENATE JUDICIARY

HR 1234

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1234

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/12/03

Tape Number	Side A	Side B	Meter #
1	X		21.6 - End
Committee Clerk Signature <i>Mina L. Selby</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

**Testimony in Support of HB 1234**

Charles McCay - Farm Credit Services, Introduce Bill Read Testimony - Attachment #1.

Went through foreclosure process (meter 23.9)

Sen. Trenbeath discussed Short Term Mortgage Redemption Act 32-19.1 allows shorter redemption period, partially if not totally, because you give up the right of a deficiency judgment under that act? I am not completely clear if it is so. Sen. Trenbeath under the normal twelve month period you do have the right to do it to a deficiency judgment? Yes-that has some limitations. Discussed this issue (meter 28) and cutting back the time and time line process. You could possibly only leave him 60 days? Yes. Is this good public policy for our agricultural community to take advantage of there rights to defend there property and having the

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Page 2  
Senate Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 03/12/03

consequences of possibly only having a 60 day redemption right? Yes we do. Discussion of this.

Sen. Trenbeath questioned if some of this fault might be due to insufficient underwriting.

Sen. Traynor discussed a case that went back 5 years. (meter 34)

Sen. Trenbeath questioned that you can go to court and have a stay to be lifted. (meter 35)

Sen. Trenbeath (meter 36) The socialized cost of this redemption period, how is that reflected; application fee, interest charge or how? First in underwriting standards. Gave an example.

Sen. Trenbeath wondered based on history have they not figured out the underwriting.

Sen. Lyson discussed his experience in servicing papers. The difference in time of the court filing and the person being served. Discussed "Sheriffs" roll.

#### Testimony in Opposition of HB 1234

Mark Sits - Farmer and Spokesperson for Farmers Union, In Opposition This bill erodes away at our debtor protection. Ag lending is in good shape with the present Law

Sen. Traynor questioned how ND compares to other states and would Mr. MaCay be satisfied if the clock did not start ticking until "proof of service". Mr. MaCay would have to discuss this with his attorney. Discussion of Mineral rights.

#### Testimony Neutral to HB

None

Motion Made to DO PASS HB Sen and seconded by Sen

Roll Call Vote: 6 Yes. 0 No. 0 Absent

Motion Passed

Floor Assignment: Sen

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Page 3  
Senate Judiciary Committee  
Bill/Resolution Number HB 1234  
Hearing Date 03/12/03

Senator John T. Traynor, Chairman closed the hearing

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12/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1234

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/12/03

Tape Number	Side A	Side B	Meter #
3	X		12 - 16.5
Committee Clerk Signature <i>Maria L. Allberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Sen. Traynor discussed with Sen. Trenbeath his proposed change on line 17. It would read "the period of redemption would begin at the time of the filing of summons of complaint accompanied by proof of service"...

Discussed short term redemption law presently. Socializing Underwriting. Do we want to leave the guy loosing the farm the longest time reasonable to redeem himself and stay on the farm?

Discussion of Gov. Langers tenure when he called out the national guard to stop foreclosures....

We do not know how many foreclosures have we had this past year.

Motion Made to DO NOT PASS HB 1234 Sen. Carolyn Nelson and seconded by Sen.

Dever

Roll Call Vote: 6 Yes. 0 No. 0 Absent

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Operator's Signature

*10/2/03*  
Date

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1234

Hearing Date 03/12/03

Motion Passed

Floor Assignment: Senator Thomas L. Trenbeath

Senator John T. Traynor, Chairman closed the hearing

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Deanna G. Ball  
Operator's Signature

10/2/03  
Date

Date: March 12, 2003

Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1234**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

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

Action Taken DO NOT PASS

Motion Made By Sen. Nelson Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment Sen. Trenbeath

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

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Dennis Bercier  
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10/2/03  
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**REPORT OF STANDING COMMITTEE (410)**  
March 12, 2003 3:59 p.m.

Module No: SR-44-4613  
Carrier: Trenbeath  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1234, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1234 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-44-4613

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*10/2/03*  
Date

2003 TESTIMONY

HB 1234

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Doreen Hall  
Operator's Signature

10/2/03  
Date

Roger Johnson  
Agriculture Commissioner  
www.agdepartment.com



Phone (701) 328-2231  
Toll Free (800) 242-7535  
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602  
Bismarck, ND 58505-0020

Testimony of Roger Johnson  
Agriculture Commissioner  
House Bill 1234  
House Judiciary Committee  
Prairie Room  
February 11, 2003

Chairman DeKrey and members of the House Judiciary Committee, I am Agriculture Commissioner Roger Johnson. I am here today in opposition to HB 1234, which proposes to amend section 28-24-02 of the North Dakota Century Code, relating to redemption.

I am neither an attorney nor an expert in the area of legal defense. However, I do have an extensive background in working with financially distressed farmers and their lenders. North Dakota's agricultural debtor protection laws are designed to provide certain protections and time to attempt financial recovery for producers facing farm foreclosure.

In the event of a foreclosure action, the current law allows the debtor a period of one year following the sheriff sale to find alternative financing and redeem the property. This amendment would start the one year redemption period at the time of the filing of the summons and complaint and effectively shorten the redemption period by the time between the filing of the complaint and the sale.

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Operator's Signature

10/2/03  
Date

Granted, shortening the redemption period may make little or no difference in the outcome of many foreclosure actions. However, it is certainly possible that some debtor redemptions could be precluded by shortening the redemption period.

Redemption financing can take a substantial amount of time and is often predicated on several factors taking place within the redemption period. The annual production and marketing season of most farming and ranching enterprises presents such a variable, which can greatly affect the ability to secure redemption financing. The outcome of crops and/or livestock production, marketing of the production, and numerous other unknowns during the redemption period can make a difference in the ability to obtain the financing. Depending on the timing of the beginning of a redemption period, it is arguable that the current redemption period often leaves less than adequate time to assess the outcome of and obtain financing following a production season.

During the 1980's, agriculture experienced a severe farm credit crisis of declining commodity prices and a collapse in farm property values. As a result, the federal Ag Credit Act of 1987 required loan servicing and restructuring procedures, including mediation, for the Farm Service Agency (formerly FmHA) and Farm Credit System (FCS). In my judgment, these requirements have been very successful in facilitating distressed loan workouts outside the legal system, greatly improving the relationship between debtors and lenders, and reducing the number of farm foreclosures. However, it is important to note that these federal loan servicing and mediation participation requirements do not apply to other lenders in North Dakota.

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*Dennis Ballman*  
Operator's Signature

10/2/03  
Date

Chapter 12 bankruptcy has also proven to be an effective farm debt reorganization tool, but its survival is questionable. Chapter 12 bankruptcy has expired and been reauthorized on a short term basis numerous times in recent years.

My observations lead me to believe that our debtor protection laws serve purposes beyond providing certain protections of individual debtors. I believe the existence of these laws provides a strong incentive for lenders to pro-actively attempt negotiated settlements short of foreclosure proceedings. This is good for everyone. The laws also serve as a vivid reminder of the farm credit problems of the past and encourage lending practice vigilance, which would help minimize the magnitude of any agricultural credit crisis in the future.

We all know that the farm economy is cyclical and that farm survival during down cycles has become increasingly difficult. Certainly, tough times on the farm are also tough on agricultural lenders. However, I believe lending institutions are far better able to weather farm economy downturns than individual farm operations.

Will we see another major farm credit crisis in the future? I don't know, but I sincerely hope not. Again, it is impossible to say how many debtor redemptions might be affected by passage of this bill. I do, however, believe passage of this bill would be a mistake. It would send a wrong message and diminish North Dakota's reputation as a strong supporter and advocate of our agricultural industry.

Chairman DeKrey and committee members, I urge a do not pass on HB 1234. I would be happy to answer any questions you may have.

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*Dan DeKrey*  
Operator's Signature

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HH #1

TESTIMONY

HB 1234

Presented by Charles McCay on behalf of Farm Credit Services

This bill changes the beginning of the 12 month period for redemption after foreclosure from the day of the sheriff's sale to the day the summons and complaint are filed with the court.

Redemption after foreclosure is covered by two sections of the century code. Section 28-24-02 covers redemption for properties of 40 acres or more and requires a 12 month period for redemption starting at the time of the sheriff's sale. Section 32-19.1-04 governs properties under 40 acres and provides for a 6 month redemption period in most cases, that begins when the summons and complaint are filed with the court.

The 12 month redemption period for properties over 40 acres does not in itself create obstacles to lending because it is considered in establishing loan underwriting standards.

The problem is created when there is an excessive amount of time between the beginning of the foreclosure and the sheriff's sale. During the 1980s it was not unusual for debtors to extend this time to one or two years by the use of various defenses and bankruptcy filings and receive a full 12 month redemption period in addition.

In cases where the foreclosure is not contested this bill will cause the time for redemption to end about 60 days sooner than under current law. In cases where the foreclosure is delayed the debtor will still have at least 12 months after the foreclosure begins and at least 60 days after the sheriff's sale.

Passing this bill will reduce one of the uncertainties involved in farm lending.

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*Doreen G. Hall*  
Operator's Signature

10/2/03  
Date