

2009 HOUSE AGRICULTURE

HB 1169

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1169

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7539

Committee Clerk Signature

Re. Mae Kuch

Minutes:

Representative Jeff Delzer (Bill Sponsor): I put this bill in when a situation was brought forward to me probably about a year ago. I was in a local elevator and the elevator manager had just received some information from his corporate lawyers.

(Written testimony attached #1)

The essence of the bill is to make it that the only one whose name should be on---the lien holder should only be on the share of the crop that the lien is against. If the land owner is part of the lien, his name would be on the lien registry. If he's not part of the lien, his name would not. There is a section of the bill that allowed if they do take part of the responsibility and part of the lien, then the name could be on. I don't believe the situation happens very often. However, I believe that if we do not make the law read right, it will start to happen because corporate lawyers from outside the state are looking at this. I went to the local bank. He said what they've done in the past is written a letter to the local elevator saying you don't need to put our name on the land owner's share. But if that went to court, I don't think that would hold up.

Chairman Johnson: I would have thought the landlord would have had to have his name on the central files of the lien against that crop to qualify for this.

Representative Delzer: That's what this bill would do is make it so the land owner's share would have to be on central file's part of the lien. The way it reads, it's on all crop that's raised on that.

Representative Uglem: Would this require the elevator to have a copy of every rental agreement?

Representative Delzer: I wouldn't think so. Because they go off of the registry.

Representative Boe: What would happen in a verbal agreement? Does this all have to be a written agreement?

Representative Delzer: Whenever I go in the elevator I tell them what the share is. They don't put the bank's name on the land owner's check. Not in the past. But if we don't change the law, they'll start.

Representative Holman: Some crop share leases have the land owner as providing part of the input. This would deal with apportioning the bill for the inputs.

Representative Delzer: If there's a lien against his share, then the name would have to be on.

Vice Chairman Brandenburg: Just to clarify, as the law is right now, if I sharecrop with my dad and it's $\frac{3}{4}$ -- $\frac{1}{4}$, if my name was on central file, my dad's share would then have to be ????

Representative Delzer: Then the lien holder's name would go on your dad's share under the current law. I don't think this is done a lot. But if the corporate lawyers are looking at it, they are going to start.

Vice Chairman Brandenburg: What elevators are doing that now?

Representative Delzer: I'm not sure how many are doing it now. The local bank that I talked to was Garrison.

Representative Froelich: Is there somebody from the banking industry here?

No

Opposition:

Steve Strege, Executive VP of ND Grain Dealers Assn.:

(Written testimony attached #2). Also makes reference to the third sheet of attachment #2, items shaded in #6 & #7.

Representative Froelich: I own the land with a sharecropper—50/50. Would he put 50% in my name and 50% in his name?

Steve Strege: When the sharecropper delivers the grain to the elevator, he would tell the elevator manager this is a shared crop with you. The elevator would look on the central notice system for liens filed on the sharecropper's name. He would put the lien holder's and lender's name on that check. He would look for your name as the owner and there would be nothing on there. Only if you are responsible for paying for some of the supplies and then not pay them and then you have a lien. This bill only affects suppliers' lien. It does not affect lenders' security interest. You can make the argument, if this is necessary for liens, then it would be necessary for lenders' security interest too.

Representative Froelich: How often does this occur?

Steve Strege: I think it's moving more to cash rent.

Representative Holman: If we go back to the ex. of 50/50, if the sharecropper had all of the inputs and they were on his account. The owner was just going to take half the crop without any inputs. My impression from Rep. Delzer was that the lien could be applied to both of them if there wasn't enough money on half the crop.

Steve Strege: Lien does apply to the entire crop up to the value of the supplier. The problem here that Rep. Delzer is trying to get at is whose name goes on the check. If they want one

check for the entire amount made out to both of them, if one of them had lien holders, that name would go on also. But if the checks were separate, then the one who had liens or security interest with the bank, he would have those on the check, the other ones would not have to be on there. This provision of law is written for the very purpose of taking the buyers off the hook. North Dakota was the first state to create a central notice system.

Vice Chairman Brandenburg: We have security agreements with operating loans which is one portion—we have suppliers' liens which is one portion. Why would ADM say that they are going to take the land owner's check when the land owner's name is not on central file?

Steve Strege: I don't think they understand the central notice system. The bill deals only with agricultural suppliers.

Representative Boe: According to Mr. Strege, if we're going to make this work, we would have to put an end to a handshake deal. Everything would have to be documented.

Steve Strege: There used to be many separate liens. After we got the central notice system set up, now the processor liens come first and then the suppliers.

Vice Chairman Brandenburg: I'm trying to figure out why the ADM lawyer is trying to look at this. This may be an issue where ADM is extending lines of credit a little larger than they should.

Gary Knutson, ND Agricultural Assn.: We feel like the system works. (Opposed to the bill)

Tom Silbernagel, Ag Mediation Services Administrator, Agriculture Dept.: (Neutral)

We work with credit problems. If we're going to protect the suppliers, it must be secured by the entire crop.

Representative Froelich: Do run into situations like this?

Tom Silbernagel: Yes, but it is almost entirely cash rents.

Steve Strege: I just want to point out, the lien is on the crop. We can't take any interest in crop insurance.

Chairman Johnson: Closed the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1169

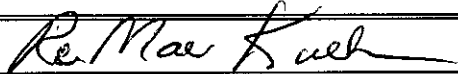
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 6, 2009 (**Committee Work**)

Recorder Job Number: 8932

Committee Clerk Signature



Minutes:

Vice Chairman Brandenburg: In the bill brought forth by Representative Delzer, names of banks were put on landlords that were not on the Central Notice File. The amendment just clarifies Section 35. Section 41 has this language in there now as this amendment says "as referenced in the Central Notice System." If your name is not in the Central Notice System, you can't put the bank's name on that check. So if your landlord is not in the Central Notice File, Section 41, which is another section dealing with liens, clarifies that issue. But Section 35 does not clarify that issue. So if your name is not on there, the bank cannot put their name on the check.

Chairman Johnson: You're referring to the landlord's check.

Vice Chairman Brandenburg: Yes. The person that's renting the land, their name is on the Central Notice File, their name should have the bank's name put on the check. But if the landlord that has that one-third portion or one-fourth, they would not be able to put the landlord's name on the check.

Representative Boe: That would include anyone whose name is not on the Central Notice System?

Vice Chairman Brandenburg: That's right. Anyone whose name is not in the Central Notice File, their name is not on the check.

Representative Boe: Moved the amendment

Representative Belter: Seconded the motion.

Voice vote taken. Motion carried

Steve Strege, Executive VP of ND Grain Dealers Assn.: We're opposed to this bill as it came in and as amended. We're mixing apples and oranges. 35-31 is the lien statute. 41-09-40 concerns payment. I talked to Representative Delzer last week. I didn't think this amendment was going to do anything about banks. Because it's in the lien section of the code. This amendment also effectively voids the lien if it isn't in the Central Notice System. Taking a lien on a person is one thing. Putting it in the notice system is another. I can't imagine why someone would want to do both. But they might. If they are not in the notice system, it voids the lien because of the language of the amendment. The other problem we have with it is, is the Federal Clear Title Law. It was first adopted in the 1985 Farm Bill. The current language after amended is as follows: It provides that a banker or lien holder can send a direct notice to buyers in the area. "A buyer of farm products takes subject to security interest if within one year before the sale of the farm products the buyer has received from the secured party or the seller written notice of the security interest." It lists the items that have to be on here. The name and address of the secured party, the name and address of the person indebted to the secured party, the social security number or other approved identification number and the description of the farm product." By amending the bill like this, you're putting us in a position that if we are to comply with the state law, we wouldn't put those names on there that we have received by direct notice. That does happen with lien holders. If they would take a lien in June, put it in the Central Notice System after the 20th of June, that lien is

not going to show up on the Central Notice System until August 1st. Everything filed up to June 20th shows up on the July list. Everything filed after June 20th wouldn't show up until August 1. This is a CD that goes out to the elevators that subscribe to the system. They pay for that. So then the lien holders in the area may send direct notice to the buyer because as you know some of the crop might be harvested in July. I know this all came up because of one company. That was ADM Benson Quinn. They happen to have an elevator in Rep. Delzer's district. We've talked to them. They said they've had to pay twice for grain. That's why they are so cautious about this. The example they gave me concerned a couple brothers on the Minnesota side. One had a lien on him and the other one didn't. They bought the grain in North Dakota. They put the bank name on one check and not on another. Then they ended up having to pay twice. That didn't involve the landlord/tenant relationship. It involved a border issue where the Minnesota system is not the same as ours. What ADM BQ does when they know the grain being sold is on share crop, they get on the phone and they call the lender or lien holder of the seller. They ask that banker or lien holder if they want their name on the landlord's check. It hardly ever happens. They typically would get back an email or a fax that says "No you don't have to do that." I've pointed out to ADM BQ the protections that are in 41-09-40. Right now the landlords are not in the Central Notice System unless they purchased supplies and are liable for payment of those supplies. We think this whole bill is a solution in search of a problem. We don't think there is a problem. The possibility that one company might get a tenant's banker's name on a landlord's check doesn't seem to us to be a reason to muddy the waters on the current lien statute and also put us at odds with the Federal Clear Title Law or divide the lien into attachable and unattachable portions.

Representative Kingsbury: My elevator has called and asked me to oppose this bill because they think it's working fine the way it is. It is just an incidence of one company.

Chairman Johnson: I visited with the manager of the elevator in Minot. He traced it back to one secretary in an elevator that's really pushing this.

Representative Uglem: If we pass this law we may cause more problems than good.

Representative Holman: Passed out email (**attachment #1**). This is from Gary Fuglesten. He says the same, that this is a solution in search of a problem.

Representative Boe moved Do Not Pass.

Representative Uglem seconded.

Vice Chairman Brandenburg: I understand all of the issues. Two years from now if someone says the bank put their name on my landlord's check and I lost the land That's what this is about.

A Roll Call vote was taken on **Do Not Pass as amended**. Yes: 8, No: 4, Absent: 1,
(Representative Froelich).

Representative Kingsbury will carry the bill.

VR
2/6/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1169

Page 1, line 7, replace "a. Except as provided in this subsection, a" with "A"

Page 1, line 9, after "lien" insert "as referenced in the central notice system"

Page 1, remove lines 11 through 14

Renumber accordingly

Date: 2/6/09Roll Call Vote #: 12009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1169House Agriculture Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 90030.0202Action Taken ☐ Do Pass ☒ Do Not Pass ☒ AmendedMotion Made By Rep. Boe Seconded By Rep. Uglem

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	✓		Tracy Boe	✓	
Mike Brandenburg, Vice Chair		✓	Rod Froelich		AB
Wesley R. Belter		✓	Richard Holman	✓	
Joyce M. Kingsbury	✓		Phillip Mueller	✓	
David S. Rust		✓	Benjamin A. Vig	✓	
Mike Schatz		✓			
Gerry Uglem	✓				
John D. Wall	✓				

Total (Yes) 8 No 4Absent 1Bill Carrier Rep. Kingsbury

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

Date: 2/6/09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1169

House Agriculture Committee☐ Check here for Conference Committee

Legislative Council Amendment Number 90030.0202

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Rep. Boe Seconded By Rep. Belter

[illegible]

	Yes	No
Total	10	10

Absent

Bill Carrier

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

Amendment Clarifies Section 35

REPORT OF STANDING COMMITTEE

HB 1169: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1169 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "a. Except as provided in this subsection, a" with "A"

Page 1, line 9, after "lien" insert "as referenced in the central notice system"

Page 1, remove lines 11 through 14

Renumber accordingly

2009 TESTIMONY

HB 1169

1169
Rep. Holman

NDLA, H AGR

From: Holman, Richard G.
Sent: Wednesday, January 28, 2009 8:34 AM
To: NDLA, H AGR
Subject: FYI:HB 1169

#1

2/6/09

FYI. Gary has been in the business for quite a long time.

From: Gary [mailto:gary@centralvalleybean.com]
Sent: Tuesday, January 27, 2009 8:29 PM
To: Holman, Richard G.
Subject: HB 1169

Hi Richard,

As General Manager of Central Valley Bean Co-op of Buxton, ND, I appose bill (HB 1169). The law now states that lien holders must get their name in to the Central Notice System and that the elevator is covered as long as we list those names on the check. This is the best way to handle this. The system works now, there is no need to change it. CVBC (and every other elevator and bean plant) spends a lot of time and money now to protect other lienholders. This bill came about because someone did not understand the laws and how they work now. Please oppose this bill.

Thanks,

Gary W. Fuglesten
701-847-2622

1/22/09
#1

1169
Jeff Delzer

Mr. Chairman and members of the agriculture committee, for the record I am Jeff Delzer state rep for dist 8, which is part of Mclean and Burleigh counties and it is indeed a pleasure to appear before you today in support of 1169.

1169 would make clear in our century code that supplier and operating loans which banks and others put on as crop liens go only on the ones who have responsibility for the loan. During the interim a local elevator passed on to me that their corporate legal division studied ND's code and believe that our code puts all crop from a production acreage under the requirement of putting the lien holders name on the check for sale of production. In other words if a land owner rents the land for a share of the crop and the renter borrows operating money and then has a assignment on his check the elevator needs to put that lien holders name on the landowners share as well or they may be liable if the renter defaults on payment. I have never talked to anyone who wants someone without any responsibility for the loan to have a banks name on their check.

1169 would make sure our code reflects what only makes common sense and that landowner who is not responsible for borrowed money does not have an institutions name on their share of crop sales when there is no reason for the assignment.

Thanks for hearing the bill and I would ask for your favorable consideration. I would try to answer any questions you may have.

(#2) 1/22/09

#B-1169

Steve
Strege



NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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TESTIMONY ON HB 1169 HOUSE AGRICULTURE COMMITTEE JANUARY 22, 2009

Presented by Steve Strege, Executive Vice President

Good morning Mr. Chairman and members of the Committee. My name is Steve Strege and I'm the Executive Vice President of the North Dakota Grain Dealers Association. We are here to speak against 1169.

A supplier's lien attaches to the crop produced by the supplies, but only up to the value of the supplies sold. If a supplier provides \$5,000 worth of seed or fertilizer or chemical he can take a lien on the crop produced by that seed, or on which the fertilizer or chemical was applied. But his lien is good for only \$5,000.

You might think this bill simply makes common sense, that if the landlord is not responsible for payment then there should be no lien on his share. But this divides the lien into an attachable portion and a non-attachable portion. Please also keep in mind that the landlord benefited from those supplies. Without the seed there would have been no crop. Without the fertilizer there would have been less crop and without the chemical the crop might have been destroyed by insects or overtaken by weeds.

A more important point though is how things are handled in the Central Notice System. I'd like to draw your attention to North Dakota Century Code 41-09-40(6) and (7). Subsection 6 says if a secured party or lienholder intends to impose liability against a grain buyer the name of the debtor must appear on the most current list distributed by the Secretary of State. That is the central

notice list. Subsection 7 says if a buyer wants to take free and clear he puts on the check the names of the lenders or lienholders that are listed on the most current list from the Secretary of State.

If the landlord doesn't owe anyone for supplies then there should not have been a lien taken on him and his name should not appear on the Central Notice System. Therefore the buyer doesn't have to worry about putting extra names on the landlord's check.

Anyone putting the tenant's lenders and lienholders on the landlord's check is not taking advantage of the protections given in this 41-09-40(7).

The bill talks about provisions of a crop-share lease. Please don't put the grain buyers in a position of having to interpret a crop-share lease. There are many variations. I've heard an interpretation of this bill that the tenant would have to come in and show the grain buyer his crop-share lease so no extra names go on the landlord's check. I don't think so. That is not part of this bill. If enacted, the grain buyer would be in violation if he put those other names on a landlord's check.

We don't think this bill is necessary. The names of parties that go in the central notice system are specified in 41-09-40(6) and the names that go on a grain check are specified in 41-09-40(7). It is those secured parties who have a security interest and lien AND whose names appear on the most current list.

As an aside FYI, both subsections 6 and 7 are voluntary...if the lienholder intends to impose liability and in order to take free and clear. Lienholders don't have to file in central notice and grain buyers can take their chances if they want to.

We urge a do not pass on HB 1169.

I'll try to answer any questions.

4. A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.
5. Subsections 1 and 2 do not affect a security interest in goods in the possession of the secured party under section 41-09-33.
6. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise, which includes agricultural liens, intends to impose liability for the security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list distributed by the secretary of state pursuant to section 54-09-10. In order to appear on the list, secured parties or lienholders must file with the secretary of state or in the office of the recorder in any county in this state a form prescribed by the secretary of state which contains the information prescribed by the secretary of state under section 41-09-92 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.
7. When a crop or livestock buyer issues a check or draft to a person engaged in farming operations in payment for crops or livestock in order to take free of security interests or liens against such crops or livestock, the crop or livestock buyer must issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold and whose names appear on the most current list or lists distributed by the secretary of state at the time the check or draft is issued. A claim for relief may not be commenced by a secured party or lienholder against a crop or livestock buyer for a loss incurred as a result of issuing a check or draft after January 1, 1986, which does not include the name of a secured party or lienholder under this section more than eighteen months after the date of the check or draft unless within the eighteen-month period the secured party or lienholder sends a notice as provided under this section, but in no event can the action be commenced more than five years after the date of the check or draft. The notice must:
 - a. Be sent by certified mail to, or personally served upon, the crop or livestock buyer;
 - b. Name the person engaged in farming operations and the date of the check or draft that gives rise to the claim;
 - c. State the intention of the secured party or lienholder to make a claim;
 - d. State the amount the secured party or lienholder is claiming;
 - e. Give a description of and the amount of crops or livestock upon which the claim is based; and
 - f. State that the secured party or lienholder has commenced an action seeking judgment against the person engaged in farming operations or such person has filed or has been placed in bankruptcy or receivership proceedings under chapter 32-10.
8. A complaint by a secured party or lienholder may not be filed or served against a crop or livestock buyer for collection of any loss sustained by the secured party or lienholder through any transaction filed pursuant to subsection 6 until:
 - a. A judgment has been obtained and a good-faith effort made to collect that judgment against the person engaged in farming operations, or that proceedings against the person engaged in farming operations were stayed by