

2011 HOUSE JUDICIARY

HB 1328

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1328
January 25, 2011
13374

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1328.

Al Jaeger, Secretary of State: Support (see attached testimony 1).

Rep. Onstad: On section 2 on the fees, it talks about filing with the county recorder. Those fees go to the county recorder or the Secretary of State's office.

Al Jaeger: We have a split, so much goes to maintain the database and so much goes to the county. That split is the same for all of our liens. That's already been established. They will receive the same amount as they have been getting. Actually these filings have occurred, it's just that they weren't identified where they should have been in the law.

Rep. Onstad: What is your cut.

Al Jaeger: We get \$8 for filing and \$2 for search of the total fee. The split is what it has been for pretty much the entire time that I've been in office.

Chairman DeKrey: Thank you. Further testimony in support of HB 1328.

Christopher Friez, ND Grain Dealers Association: Support (attached testimony 2).

Rep. Kingsbury: When the notarization has gone electronic what is the purpose of removing it from this process. Wouldn't it be pretty simple to do, like it is with other electronic signature processes.

Al Jaeger: At this point, we do not have electronic notarization. That's really not the point of the removal. The removal is that we do not require the notarization on anything else; it's just to be consistent. If you don't need it for UCC, you don't need it for this form (see attached testimony 3).

Chairman DeKrey: Reopened in afternoon. What are the committee's wishes in regard to HB 1328. I am passing out amendments from the Secretary of State's office, they are in agreement. If we pass this amendment, it's ready to go.

Rep. Hogan: I move the amendment.

Rep. Kingsbury: Seconded.

Chairman DeKrey: Voice vote, motion carried. What are the committee's wishes in regard to HB 1328 as amended.

Rep. Kretschmar: I move a Do Pass as amended.

Rep. Beadle: Seconded.

12 YES 0 NO 2 ABSENT DO PASS AS AMENDED

CARRIER: Rep. Klemin

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: HB 1328

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill amends procedures for the filling of certain liens. There is no fiscal impact. The changes are revenue and expenditure neutral and the fees are only changed to match other fees currently in state law.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Changes are revenue neutral.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Changes are expenditure neutral.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

None

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/18/2011

January 25, 2011

VR
1/26/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1328

Page 5, line 3, remove "under chapter 35-31 regarding agricultural suppliers."

Page 5, line 4, remove "or to gain protection"

Page 5, line 4, remove "both"

Renumber accordingly

Date: 1/25/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1328

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Kretschmar Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad		
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos					
Rep. Steiner	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1328: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1328 was placed on the Sixth order on the calendar.

Page 5, line 3, remove "under chapter 35-31 regarding agricultural suppliers."

Page 5, line 4, remove "or to gain protection"

Page 5, line 4, remove ", both"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1328

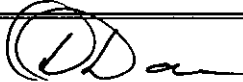
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1328
3/15/11
Job #15434

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the procedure for filing liens

Minutes:

There is written testimony

Senator Nething – Chairman

Al Jaeger – Secretary of State – See written testimony. Proposes an amendment.

Chris Friez – ND Grain Dealers Association – See written testimony- In favor of the bill with the amendments.

Jack McDonald – Independent Community Banks of ND and the ND Bankers Association
In support of this bill with the amendments.

Senator Nething – Asks why the bill got negative votes in the House.

Jaeger – Explained that someone saw the bit about fees and interpreted incorrectly what the bill was doing.

Opposed – 0

Closed the hearing on 1328

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1328
3/21/11
Job #15772

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the procedure for filing liens

Minutes:

Senator Nething – Chairman

Committee work

Committee discusses this is a clean-up bill. They discuss and amendment brought in by the Secretary of State.

Senator Sitte motions to adopt the amendment

Senator Lyson seconds

Verbal vote – all yes

Roll call vote

Senator Sorvaag motions a do pass as amended

Senator Sitte seconds

Vote – 6 yes, 0 no

Motion passes

Senator Sorvaag will carry

March 21, 2011

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1328

Page 5, line 1, replace "features of" with "information from"

Page 5, line 2, remove "as a real estate recording under this section and which also"

Page 5, line 3, replace "meets the requirements for a lien under" with "in"

Renumber accordingly

Date: 3/21/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1328

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sitte Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Senator

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

Verbal yes

Date: 3/21/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1328

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Sorvaag

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

REPORT OF STANDING COMMITTEE

HB 1328, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1328 was placed on the Sixth order on the calendar.

Page 5, line 1, replace "features of" with "information from"

Page 5, line 2, remove "as a real estate recording under this section and which also"

Page 5, line 3, replace "meets the requirements for a lien under" with "in"

Renumber accordingly

2011 TESTIMONY

HB 1328



SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 25, 2011

TO: Rep DeKrey, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1328 – Pertains to the removal of the signature notarization requirement on agriculture liens, fees for filing federal tax liens, and filing procedures for landlord's liens

I appreciate and thank Rep. Steiner for introducing this bill on behalf of the Secretary of State.

The Secretary of State's office maintains a database called the Central Indexing System (CIS), which is a centralized statewide filing system for various liens. These liens are filed in the office of one of the state's 53 County Recorders or in the Secretary of State's office. The CIS contains almost 300,000 filings.

Within the CIS, there is a separate database called the Central Notice System (CNS). In this database are recorded the various liens that are associated with agricultural products and livestock (see reverse side copied from page 21 of the Secretary of State's 2007/2009 biennial report).

In sections 1, 3, and 4, the requirement is removed that the signature must be notarized on agister's liens, agricultural processor's liens, and agricultural supplier's liens. The word "verified" (which means notarized) is removed and replaced with "signed by the filer" on page 1, line 12, page 3, line 13, and on page 3, line 31.

The removal of the notarization requirement on agriculture liens is consistent with the notarization of a signature not being required for many years already on Uniform Commercial Code (UCC) filings as well as on most business related documents filed with the Secretary of State.

In Section 2, the bill establishes the same fees for the filing of federal tax liens, which are consistent with the fees charged for the filing of other liens.

Section 5 pertains to a landlord's lien and amends a section of law that was last amended in 1987. Currently, the Central Notice System (CNS) only contains 32 such liens, the earliest filed in 1996 and the latest in 2007. As this section is currently stated, it is ambiguous whether these liens should be filed in the CNS. Therefore, based on the counsel of the Office of the Attorney General, the new text makes it clear that landlord liens are to be filed in the CNS and it provides the applicable procedure, a form, and filing fee.

Central Notice System (CNS)

The Central Notice System gives notice of perfected liens filed against the farm products of certain debtors.

In 1985, the United States Congress first debated the provisions of the Food Security Act, which was a part of that year's farm bill. The bill included several provisions and language taken from Article 9 of the UCC law. This was a unique subject for the federal government because it was an area of law considered to be in the realm of state responsibility. The "farm products rule" allowed a creditor, with a security interest in a farmer's crops or livestock, to seek payment from the purchaser of those commodities if the farmer did not pay the creditor. The act approved by Congress allowed states the choice of two options. One option was to create a central filing or notice system. This option, the Central Notice System (CNS) was first discussed by the 1983 Legislature Assembly and ultimately adopted by the 1985 session. On December 16, 1985, the Packers and Stockyards Administration of the United States Department of Agriculture approved the North Dakota CNS as meeting the requirements of the federal law. It is believed that North Dakota may have been as early as the third state in the nation in having its program approved.

Since 1985, the Secretary of State's office has provided subscribers with a Central Notice System Farm Products list, which names the individuals who have given a security interest in a crop, product, or livestock to a lender. To begin with, the list was only made available on a paper printout or microfiche. Then, in July 1998, the information was also made available to customers on a compact disc (CD), which was well received by subscribers. The same information, on July 1, 1999, became available online through the agency's Central Indexing System direct access search option available through the Internet.

Agricultural Statutory Liens

In 1987, the Legislative Assembly authorized the use of an agricultural processor's lien/notice, an agricultural supplier's lien/notice, and agricultural agister's lien/notice. Any person entitled to a lien by statute or otherwise is authorized to file a verified statement with the county recorder (formerly known as register of deeds) or the Secretary of State's office, which together represent the state's 54 filing locations.

Within ninety days, any agricultural processor may file a lien on crops or agricultural products processed by threshing, combining, drying, or harvesting. Agricultural suppliers are allowed to file liens on the crop or product produced with supplied seed, petroleum products, fertilizer, farm chemical, insecticide, feed, hay, pasturage, veterinary services, or in the delivery or applying of such supplies.

Individuals entrusted with the animals by the owner for feeding, herding, pasturing, or ranching may file an Agister's Lien upon the animals and are authorized to retain possession of the animals until the amount is paid.

If lien holders intend to impose liability for a lien against a crop or livestock buyer, the lien holder must file a statutory lien notice document in the Central Indexing System. Such liens take precedence over UCC liens (N.D.C.C. § 54-09-10).

As with the CNS, the Secretary of State provides both a microfiche and a compact disc listing of these liens.

TESTIMONY ON HB 1328
HOUSE JUDICIARY COMMITTEE

January 25, 2011

Presented by Christopher Friez, on behalf of the
North Dakota Grain Dealers Association

Good morning Mr. Chairman and members of the Committee. My name is Christopher Friez from the Crowley Fleck law firm and I'm here on behalf of the North Dakota Grain Dealers Association.

The North Dakota Grain Dealers Association supports Section 3 and 4 of HB 1328. These eliminate the notarization requirements for agricultural processor's and supplier's liens. This will facilitate electronic filing of these liens, saving time and cost for both dealers and the Secretary of State.

We have some concerns with Section 5 however. We are afraid the inclusion of the language "and which also meets the requirements for a lien under chapter 35-31 regarding agricultural suppliers," opens the door to an argument that these landlord liens comply with and gain the same lien priority status as agricultural suppliers' liens. We are afraid the inclusion of this language could be used to interpret these landlord liens as agricultural suppliers' liens, which they clearly are not. Because of this concern, the North Dakota Grain Dealers Association offers the amendment to HB 1328 which is attached to my testimony. The amendment would simply remove the following language beginning on Page 5, Line 2 of HB 1328: "and which also meets the requirements for a lien under chapter 35-31 regarding agricultural suppliers,."

With those changes the North Dakota Grain Dealers Association stands in full support of HB 1328 and urges a Do Pass.

Thank you.

Proposed Amendment to House Bill No. 1328

Proposed by the North Dakota Grain Dealers Association

House Judiciary Committee – January 25, 2011

Page 5, line 2, remove "and which also"

Page 5, remove line 3



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ETARY OF STATE
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SECRETARY OF STATE
STATE OF NORTH DAKOTA
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BISMARCK ND 58505-0500

January 10, 2011

The Secretary of State's office maintains a central database of liens that is called the Central Indexing System (CIS).

Within the CIS, a Central Notice System is included that pertains to liens on agricultural products and livestock. Liens related to these items can be filed in the office of one of the state's 53 County Recorders or in the Secretary of State's office.

This bill removes the requirement that the signature must be notarized on agister's liens, agricultural processor's liens, and agricultural supplier's liens. The elimination of the need for signature notarization has been eliminated for several sessions already on Uniform Commercial Code (UCC) filings as well on most documents filed with the Secretary of State.



In Section 5, the bill provides a form and process for filing a landlord's lien, which is already allowed in state law. The new text in this section clarifies the procedures, options, and fees.

In Section 2, the bill establishes fees for federal tax liens that are consistent with the fee charged for other filings.



PROPOSED AMENDMENTS TO HOUSE BILL 1328

Page 5, line 3, remove "under chapter 35-31 regarding agricultural suppliers,"

Page 5, line 4, remove "or to gain protection"

Page 5, line 4, remove "both"

ALVIN A. JAEGER
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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 15, 2011

TO: Senator Nething, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1328 – Pertains to the removal of the signature notarization requirement on agriculture liens, fees for filing federal tax liens, and provides filing procedures for landlord's liens

I appreciate and thank Rep. Steiner for introducing this bill on behalf of the Secretary of State.

The Secretary of State's office maintains a database called the Central Indexing System (CIS), which is a centralized statewide filing system for various liens. These liens are filed in the office of one of the state's 53 County Recorders or in the Secretary of State's office. The CIS contains almost 300,000 filings.

Within the CIS, there is a separate database called the Central Notice System (CNS). In this database are recorded the various liens that are associated with agricultural products and livestock (see reverse side copied from page 21 of the Secretary of State's 2007/2009 biennial report).

Section 1, page 1, line 12: The requirement that a signature must be "verified" (notarized) is removed from an agister's lien form and replaced with "signed by the filer". The removal of the notarization requirement on agricultural liens is consistent with the removal, for many years already, of that requirement for Uniform Commercial Code (UCC) filings, as well as on most business related documents filed with the Secretary of State.

Section 2, page 2, lines 7 through 19: The changes establish the same fees for the filing of federal tax liens, which are consistent with the fees charged for the filing of other liens.

Section 3, page 1, line 26 and 27: The requirement that a signature must be "verified" (notarized) is removed from an agricultural processor's lien form and replaced with "signed by the filer" for the same reason given for Section 1.

Section 4, page 3, line 31: The requirement that a signature must be "verified" (notarized) is removed from an agricultural supplier's lien form and replaced with "signed by the filer" for the same reason given for Section 1.

Section 5, page 5, lines 1 through 14: These changes pertain to a landlord's lien and amends a section of law that was last amended in 1987. Currently, the CNS only contains 32 such filed liens – the earliest one filed in 1996 and the latest in 2007. However, as this section is currently stated, it is ambiguous as to whether these liens are to be filed in the CNS. Therefore, based on counsel provided by the Office of the Attorney General, the new text makes it clear that the CNS is the correct database depository for landlord liens. In addition, it provides an applicable procedure, a form, and filing fee that is consistent with other filing practices for documents recorded in the CNS.

An amendment to Section 5 is attached and I respectfully request its adoption. It was brought forward and endorsed by the North Dakota Banker's Association, Independent Community Banks of North Dakota, North Dakota Farm Credit Council, North Dakota Grain Dealers Association, and the Credit Union Association of the Dakotas.

When adopted, the first sentence beginning on page 5, line 1, will read, "The secretary of state may prescribe a form which includes the pertinent information from the lease that may be filed in the central notice system."

Central Notice System (CNS)

The Central Notice System gives notice of perfected liens filed against the farm products of certain debtors.

In 1985, the United States Congress first debated the provisions of the Food Security Act, which was a part of that year's farm bill. The bill included several provisions and language taken from Article 9 of the UCC law. This was a unique subject for the federal government because it was an area of law considered to be in the realm of state responsibility. The "farm products rule" allowed a creditor, with a security interest in a farmer's crops or livestock, to seek payment from the purchaser of those commodities if the farmer did not pay the creditor. The act approved by Congress allowed states the choice of two options. One option was to create a central filing or notice system. This option, the Central Notice System (CNS) was first discussed by the 1983 Legislature Assembly and ultimately adopted by the 1985 session. On December 16, 1985, the Packers and Stockyards Administration of the United States Department of Agriculture approved the North Dakota CNS as meeting the requirements of the federal law. It is believed that North Dakota may have been as early as the third state in the nation in having its program approved.

Since 1985, the Secretary of State's office has provided subscribers with a Central Notice System Farm Products list, which names the individuals who have given a security interest in a crop, product, or livestock to a lender. To begin with, the list was only made available on a paper printout or microfiche. Then, in July 1998, the information was also made available to customers on a compact disc (CD), which was well received by subscribers. The same information, on July 1, 1999, became available online through the agency's Central Indexing System direct access search option available through the Internet.

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Individuals entrusted with the animals by the owner for feeding, herding, pasturing, or ranching may file an Agister's Lien upon the animals and are authorized to retain possession of the animals until the amount is paid.

If lien holders intend to impose liability for a lien against a crop or livestock buyer, the lien holder must file a statutory lien notice document in the Central Indexing System. Such liens take precedence over UCC liens (N.D.C.C. § 54-09-10).

As with the CNS, the Secretary of State provides both a microfiche and a compact disc listing of these liens.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1328

Page 5, line 1, replace "features of" with "information from"

Page 5, line 2, remove "as a real estate recording under this section and which also"

Page 5, line 3, replace "meets the requirements for a lien under" with "in"

TESTIMONY ON HB 1328
SENATE JUDICIARY COMMITTEE

March 15, 2011

Presented by Christopher Friez, on behalf of the
North Dakota Grain Dealers Association

Good morning Mr. Chairman and members of the Committee. My name is Christopher Friez from the Crowley Fleck law firm and I'm here on behalf of the North Dakota Grain Dealers Association.

The North Dakota Grain Dealers Association is in support of HB 1328.

The Grain Dealers Association offered an amendment on the House side in January. That amendment was adopted by the House Judiciary Committee and resulted in the current version of HB 1328. Following its passage in the House, further clarification of the language in Paragraph 3 on Page 5 of the bill was recommended. The amendment offered by the Secretary of State's Office this morning is intended to further clarify that paragraph and the Grain Dealers Association supports that further clarification through the Secretary of State's Amendment.

The North Dakota Grain Dealers Association stands in support of HB 1328 as amended by the Secretary of State's offered amendment and urges a Do Pass.

Thank you.