



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.