

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 am 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.

North Dakota Century Code 41-09-40

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.