MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m./p. m., on February 15, 1979.

All members were present except: Senators Gaar and Mulich

The next meeting of the Committee will be held at 3:45 a.m./p. m., on February 15, 1979.

These minutes of the meeting held on ~~XXXXXXXXXXXXXXXXXXXX~~, 19~~XXX~~ were considered, corrected and approved.

Elwaine F. Pomeroy
Chairman

The conferees appearing before the Committee were:

Lynn R. Johnson - Kansas Trial Lawyers Association
Judy Teusink - Kansas Women's Political Caucus
Ronald Williams - Kansas Association of Defense Counsel
Mark L. Bennett - American Insurance Association
Ed Johnson - Kansas Association of Property and Casualty Insurance Companies, Inc.
Glenn D. Cogswell - Alliance of American Insurers
Harold Stones - Kansas Bankers Association
Senator Bill Morris
Tuck Duncan - Assistant Attorney General
Jim J. Marquez - Kansas Retail Liquor Dealers Association
Gary Kershner - Kansas Wine and Spirits Wholesalers Assoc., Inc.
Kathleen Sebelius - Kansas Trial Lawyers

Staff present:
Art Griggs - Revisor of Statutes
Jerry Stephens - Legislative Research Department
Wayne Morris - Legislative Research Department

Senate Bill No. 190 - Abrogation of interspousal immunity.
Kathleen Sebelius testified in support of the bill, and introduced Lynn Johnson, who also spoke in support of the bill. A copy of the position paper of the Kansas Trial Lawyers Association is attached. Mr. Johnson testified a total of 26 states have significantly abrogated interspousal tort immunity.

Judy Teusink spoke in support of the bill. She stated it would be of help to women with the battered housewife syndrome.

Ron Williams spoke in opposition to the bill. He testified it would be disrupting the marital relationship, and there would be the possibility of collusion.

Mark Bennett spoke in opposition to the bill. He stated he would support the portion of the bill relating to intentional torts.

Ed Johnson spoke in opposition to the bill. He said this would encourage additional law suits.

CONTINUATION SHEET

SB 190 continued -

Glenn Cogswell also spoke in opposition to the bill, agreeing with the statements of others who had appeared in opposition to the bill.

Senate Bill 206 - Release of certain liens on vehicles. Harold Stones testified in opposition to some of the provisions of the bill. He distributed copies of letters he received concerning the problems; copies are attached hereto. He explained that House Bill 2125 deals with the same subject. Committee discussion with him followed.

Senate Bill No. 221 - Penalties for lending certain ID's to minors for purchase of liquor or beer. The author of the bill, Senator Morris, testified in support of it.

Tuck Duncan, an assistant attorney general assigned to Alcoholic Beverage Control office, testified in support of the bill. A copy of the letter he distributed from General Tom Kennedy is attached hereto. He stated this bill would serve as a deterrent. He also stated that he supported SB 231. Committee discussion with him followed.

Jim Marquez representing the Kansas Retail liquor Dealers Association testified that the association supports the bill.

Senate Bill No. 231 - Crime of dealing in false identification documents. Mr. Marquez also testified that his association in principle supports this bill.

Gary Kershner stated that the Kansas Wine and Spirits Wholesalers Association supports the bill.

The chairman reminded the committee that there would be a working session this afternoon.

Senate Bill No. 190 - Abrogation of interspousal immunity. Following committee discussion, Senator Gaines moved to report the bill unfavorably; Senator Werts seconded the motion, but the motion failed. Senator Burke moved to amend the bill in line 25 by striking everything after the word "tort"; the motion died for lack of a second. Senator Parrish moved to report the bill favorably; Senator Hein seconded the motion, and following committee discussion, the motion carried.

Senate Bill No. 221 - Penalties for lending certain ID's to minors for purchase of liquor or beer. Following committee discussion, Senator Hein moved to report the bill favorably; Senator Burke seconded the motion, and the motion carried.

Senate Bill No. 231 - Crime of dealing in false identification documents. Senator Burke moved to report the bill favorably; Senator Hein seconded the motion. Following committee discussion, the motion was withdrawn. The committee discussed changing the

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 15, 19 79.

SB 231 continued -

penalty provided for in the bill.

The meeting adjourned.

These minutes were read and approved by the committee on 4-25-79.

2-15-79
A.M.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Chuck Engel	Topeka	K. Motor Car Dealers
Bill Gough	Topeka	KACI
Mary Mittelstadt	Topeka	NASW
Max Moses	Topeka	KBDA
Ronald Williams	Topeka	KADC
JOHN DOUCE	TOPEKA	A.B.C.
TUCK DUNCAN	TOPEKA	Asst. A.G. A.B.C.
Marvin A. Umbehr	Lawrence	KUL
Harold Stone	Topeka	KBA
Ed Johnson	Topeka	Lawyers Prop. Cas. Ins. Co.
Frances Kastner	Topeka	Ks Food Dealers Assn
Mark Bennett	Topeka	a/a
Jim Wallace	Topeka	IIBK
Lynn R. Johnson	KC	KTLA
Kathleen G. Sebelius	Top	KTLA
Judy Tevsink	Top	KWPC
Gary Kershner	Topeka	KWSWA

2-15-79

CONCERNING
INTERSPOUSAL TORT IMMUNITY

A POSITION PAPER

PREPARED BY

THE KANSAS TRIAL LAWYERS ASSOCIATION

FEBRUARY, 1979

TABLE OF CONTENTS

INTERSPOUSAL TORT IMMUNITY
POSITION PAPER

I. LEGISLATIVE HISTORY.

In the 1975 Legislative Session, H.B. 2011, which changed Kansas laws with regard to loss of consortium and provided that either spouse should be allowed to recover for the loss of such companionship where it is impaired by an injury by a third party, was passed and signed into law. The original bill contained an amendment to K.S.A. 23-205 which reads as follows: "...nor shall a spouse be prohibited from suing one another for any cause." This clause, which was amended out by a Senate Legislative Committee after passing the House of Representatives, would remove the common law doctrine of interspousal tort immunity. KTLA supports the abrogation of interspousal immunity.

In the 1978 Session, KTLA appeared before the Senate Judiciary Committee to request consideration for the introduction of a Committee bill to finish the task begun in 1975 and abrogate the doctrine of interspousal tort immunity. The Senate Judiciary Committee drafted and filed the bill, S.B. 845.

Following extensive testimony from the representative of the insurance industry about the potential for collusion between spouses in home accident situations, S.B. 845 was amended to apply only to bodily injury or death resulting from the negligent use of a motor vehicle or intentional torts. This amendment was intended to eliminate the suspicion of collusion while abrogating, in large part, an outmoded and unjust doctrine.

S.B. 845 passed the Senate, was considered by the House Judiciary Committee and recommended favorable for passage. The bill never was considered by the full House.

Representatives from KTLA went before the Senate Judiciary Committee in January to request re-introduction of S.B. 845. The Committee agreed and S.B. 190 was submitted for consideration to the 1979 Legislature as a Senate Judiciary Committee bill.

II. THE LEGISLATION.

A. S.B. 190 READS AS FOLLOWS:

AN ACT relating to married persons; concerning the rights of spouses to sue one another; amending K.S.A. 1977 Supp. 23-203 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1: K.S.A. 1977 Supp. 23-203 is hereby amended to read as follows: 23-203. A person ~~may~~, while married, may sue and be sued in the same manner as if he or she were unmarried. Spouses shall not be prohibited from suing one another for any damages for personal injury or wrongful death arising from an intentional tort or from the negligent use of a motor vehicle.

B. ELIMINATION FOR INTENTIONAL TORTS.

In the most recent Kansas case dealing with interspousal tort immunity, even though a divorce action was pending, the wife in Fisher v. Toler, 194 Kan 701 (1965) could not bring an action against her husband for an intentional injury because the couple was still married and the court felt it would result in marital disharmony. S.B. 190 would allow an action by a spouse who had been intentionally injured by the other spouse. While the injured spouse could bring a criminal action, this is, for various reasons, many times not used. The availability of a civil action can serve as an additional deterant. Since an intentional tort is never covered by insurance, it could not be considered as an opportunity for collusion between spouses.

C. AUTO NEGLIGENCE.

Under current Kansas law a spouse is severely limited on the amount of recoverable damage resulting from a spouse's automobile

negligence. The elimination of interspousal tort immunity, as included in S.B. 190, allows the wife, who is injured through the negligence of her husband, to recover for full compensatory damages like any other injured party. As one legal authority expressed it, a head of a household may protect everyone in the world from his negligence through insurance, except those nearest to him.

An example of such a situation concerns a husband/driver who is involved in an accident with his wife as passenger. The husband is found by the court to be 40% negligent. The driver of the other car is found 60% negligent. The wife is awarded a total of $10,000 damages. Because Kansas retains interspousal tort immunity the wife can recover only the 60% negligence attributed to the driver of the other car. If the wife had been any other passenger in the husband's car she would have been able to recover her total damages.

III. BACKGROUND OF INTERSPOUSAL TORT IMMUNITY.

The doctrine of interspousal tort immunity is a carry-over from early English common law, and at one time was recognized in virtually all states. Now, however, as the original rationales for the doctrine are disappearing, a majority of states have substantially eroded or totally abolished the doctrine. Following are the major historic reasons for the creation of interspousal immunity and questions as to their continuing validity.

A. MARRIED COUPLES AS A CONCEPTUAL UNIT.

The original reason for the doctrine of interspousal immunity was the common law view that a married couple was a conceptualistic unit: in other words a couple was one, and that "one" was the husband. Married women could not sue in their own name, and suits were brought on their behalf by their husbands. Therefore, a suit between spouses

would have resulted in the husband being both plaintiff and defendant, and in effect, suing himself.

However, all states passed acts which gave married women those rights denied them at common law, including the rights to own their own property and to sue and be sued. (In Kansas, these rights were granted in the Married Women's Act, K.S.A. 23-201, et. seq.) The passage of these acts had two effects on interspousal immunity: Suits were now permitted between spouses on contracts or to determine property rights, and the idea that a married couple was a conceptual unit was totally removed, thus removing the original basis for the interspousal immunity doctrine.

B. MARITAL DISHARMONY.

Despite the fact that the original rationale for interspousal immunity was statutorily removed and interspousal suits were permitted to determine property and contract rights, states still maintained a prohibition on interspousal suits for tort claims. A new rationale which was developed to justify interspousal tort immunity was that to allow tort suits between spouses would create marital disharmony.

This argument has been widely rejected by state legislatures and courts. One typical example of a tortious action between spouses is the beating of a wife by a husband, often occurring when the couple is separated. In the first place, when intentional torts like this are committed, marital harmony has already been disrupted by the acts themselves. Secondly, many family authorities contend that although the desire of one spouse to sue the other may create marital disharmony, the ability to carry out this desire will not make the situation any worse.

Finally, it is sometimes contended that spouses do not need actions in tort, because they may sue for divorce or bring criminal

charges for intentional torts. This argument does nothing to justify interspousal tort immunity, since a divorce petition or a criminal complaint is at least, if not more, as disruptive to marital harmony than a tort action.

C. COLLUSION.

A final argument advanced in favor of interspousal tort immunity by insurance interests is that permitting suits between spouses would lead to collusive suits designed to defraud insurance companies. This contention ignores several facts. In the first place, having insurance doesn't create liability. Both liability and injury would have been established in any action between spouses, as it would in any other case. Second, courts must always guard against and watch for collusive or fraudulent actions, and there is no reason why this duty would become impossible if interspousal suits were permitted.

IV. LEGISLATIVE ACTION.

A. THE LAW IN OTHER STATES.

Because the rationales for interspousal immunity have disappeared or are no longer viable, many states have sought to soften the injustices of the doctrine by creating numerous exceptions to it. Spouses may bring criminal actions against each other, and suits in property and contract. And in the remaining remnant of the doctrine, interspousal tort immunity, significant inroads have also been made. In Kansas, as in Illinois and Nebraska, spouses may bring actions for pre-marital torts. Spouses may bring actions against each other for torts occurring during the marriage following an annulment in Tennessee and Massachusetts; and following separation in Ohio and Utah. Actions may be brought against the estate of a dead spouse in Illinois. New Mexico and Oregon permit interspousal suits for willfull torts, and

Vermont includes negligence as exceptions to the doctrine. In other states the doctrine of spousal immunity may not be used as a defense in an action against a spouse's employer, partnership, or other business entity.

The five states of Arizona, Louisiana, Missouri, Oregon, and Virginia have substantially modified the doctrine of interspousal tort immunity and have succeeded in eroding most of its effect. Other states, having begun by making exceptions to the immunity doctrine, have finally totally abolished interspousal immunity. They include Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Idaho, Indiana, Kentucky, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Washington, and Wisconsin. A total of twenty-six states have significantly abrogated interspousal tort immunity.

B. JUDICIAL CALL FOR LEGISLATION.

The Kansas Supreme Court in Fisher v. Toler stated:

> "The abrogation (of interspousal tort immunity), if desirable, is one calling for legislative action and should be without the sphere of judicial decisions."

The passage of S.B. 190 would in large part, dispel the outmoded doctrine of interspousal tort immunity. KTLA feels that it is a desirable reform in the Kansas statutes, and we urge favorable consideration by the Kansas Legislature of S.B. 190, as amended.

2-15-79

KANSAS BANKERS ASSOCIATION

February 7, 1979

TO: Consumer Credit Commission

FROM: Paul Lewis

Dear Commission Members:

Enclosed is a copy of Senate Bill 206 pertaining to motor vehicle liens. I would appreciate it if you would examine the amendments (in italicized words) and communicate to me by early next week your reactions on the effect such amendments would have on banks, bank customers, and prospective bank customers.

Sincerely,

Paul S. Lewis
Assistant Director of Research

PSL/ljs

Enclosure

cc: Bob Georgeson, ABA Instalment Lending Division
Harry Funke
Carl Bowman
Harold Stones

Office of Executive Vice President 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 235-3448

Harold

HB 2125 - Back to Paul & SB 206

DEAN S. CARR, SENIOR VICE PRESIDENT

AMERICAN STATE BANK & TRUST COMPANY / BROADWAY AT MAIN / P.O. BOX 227 / GREAT BEND, KANSAS 67530 / (316) 792-2103

February 8, 1979

Kansas Bankers Association
707 Merchants National Building
8th and Jackson
Topeka, Kansas 66612

To the Attention of Paul S. Lewis

Dear Paul:

In answer to your letter of February 7, 1979, we wish to make the following comments:

We see no reason for the bank to release liens on titles unless requested by the customer. Much of our business is repeat business and we feel that it would be an added expense for our customers since many of them will pay off a loan and very shortly return to the bank to borrow more money using their vehicle for security. If the lien has previously been released then it is an added expense to our customer to apply and secure a new title with our lien shown and perfected. In many instances our customers would rather leave the lien on their title knowing that any time they wish to sell or trade the vehicle all they need do is request a lien release from the bank.

We certainly feel that there is no need for the amendment to Senate Bill 206 as it will only create more expense and time both for the bank and their customers.

We trust the above are the reactions you requested in your letter.

Sincerely yours,

Dean S. Carr

Dean S. Carr

DSC:jm

TheFourth IV

February 12, 1979

Mr. Paul Lewis
Assistant Director
Kansas Bankers Association
707 Merchants National Building
Eighth and Jackson
Topeka, Kansas 66612

Dear Paul:

I am in receipt of your February 7 correspondence with reference to Senate Bill 206

All we need is a few more penalities and fines against the banks to increase their cost and drive up interest rates a little bit higher. If you really want to improve that piece of legislation, I would suggest that on line 51 behind the "($2)" you insert per day or per week or even per month to force these individuals to go down and register their cars after they have traded and to eliminate them putting illegal tags off their trade-ins onto their new purchases before registering the vehicles and perfecting our liens.

Now to get to the amendments "in italicized words" on page 7 between lines 243 and 262, I certainly do not object to a fine against a lienholder when a release of lien was not furnished after a reasonable number of days when requested. But to make it mandatory to send a release of lien within 30 days and subject to a $100 fine is ridiculous. Now place yourself in the lendors position. A good customer pays a loan in full. He does not obtain a release of lien and six months later comes into borrow again on the same automobile. He brings his title in, the bank sees the lien is still on the title, and he reloans against that title without filing a new application for a secured title. You let this law

Fourth National Bank & Trust Co.
Wichita, Kansas 67201

P.O. Box 1090
telephone 316 - 261-4444

pass that we automatically send a release of lien on all bank contracts and then it will be necessary that we apply for a new secured title on every loan we make because a customer can have a release of lien tucked away at home and have a lien shown on the face of his title. Not only that, but as you know, it is possible to change the names on the titles without the lienholder's permission, therefore, you are going to complicate matters more by subjecting the lender to a $100 fine when they can't even find a record of financing a car in question when we don't know the original customer's name.

I think the KBS should strongly oppose these amendments in their entirety, especially the section with reference to release of lien without a written request.

Sincerely,

H. A. Funke, Jr.
Vice President

HAF:ks

cc: Bob Georgeson
Vice President
First National Bank
Lawrence, Kansas

Clarence Casey
President
Rosedale State Bank and Trust Company
3500 Rainbow Blvd.
Kansas City, Kansas 66103

Carl Bowman
Harold Stones

NICKERSON STATE BANK
NICKERSON, KANSAS 67561
AC 316-422-3256

MEMO: From the desk of R. CLARK WESLEY

2-8-79

Dear Paul:

Thank you for your letter of Feb. 7th regarding Senate Bill 206. My reaction to the proposed amendments is that I do not like them. A couple of problems I see are (1) what if the customer claims he did not receive the release and the bank says they mailed it (2) often customers like to leave the lien on the vehicle so they can continue to use it as collateral in the future - would get expensive as well as a nuisance to put on a lien and take it off each time.

Hope the KBA lobbies against the amendments.

Yours truly,

Clark Wesley

The First National Bank
of Lawrence

February 14, 1979

Mr. Paul S. Lewis
Assistant Director of Research
Kansas Bankers Association
707 Merchants National Building
Eighth and Jackson
Topeka, Kansas 66612

Dear Paul:

I have received a copy of Senate Bill No. 206 relating to vehicle liens.

It appears to me that the Kansas Bankers Association, and all other consumer lenders, should oppose the proposed amendment.

Our present statute provides adequate and equitable consumer protection for the occasional instance where a lender fails or refuses to release a lien. The proposed amendment provides for a disproportionate penalty on the lender who might suffer a computer program failure, or who employs a clerk who does not understand the importance of making mass lien releases on a timely basis.

I am certain that there are an insufficient number of instances of a lender refusing to release a lien to justify this amendment. The proposal resembles our federal government's solution to every consumer complaint, which is to use the scatter-gun approach and disregard the consequences. It appears to me that the present legislation adequately takes care of those situations where a lender would refuse to release a lien. Consequently, I oppose the proposal and solicit your efforts to see that it is defeated.

Pat Alexander and I have explored the eventual consequences if this legislation is passed. In our particular case, we

9th & Massachusetts • Lawrence, Kansas 66044
(913) 843-0152

are very hesitant to issue separate lien releases, since a consumer could return to our bank with the original title and insist that our lien is noted on his title and still valid. It is difficult for us to keep any sort of current record as to the separate releases of lien that we issue. It simply gives the consumer the prerogative of withholding a lien release, and then applying for a new title after we make an additional loan. While this has not happened to us very often, it is certainly a hazard that we would like to avoid. It is our opinion that the passage of the proposed amendment would result in additional expense to the consumer.

Thank you for the opportunity to comment on this issue.

Sincerely,

Robert K. Georgeson
Executive Vice President

RKG:jaf

2-15-79

MEMORANDUM

TO: Elwaine F. Pomeroy, Chairman
Senate Judiciary Committee

FROM: Thomas J. Kennedy, Director
Alcoholic Beverage Control Division
Kansas Department of Revenue

RE: Senate Bill 221

DATE: February 15, 1979

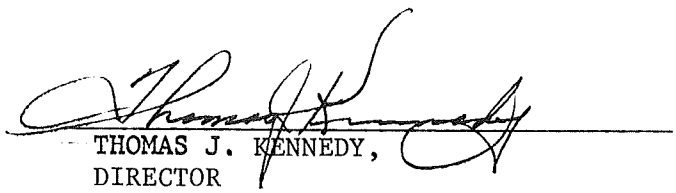
PURPOSE

Senate Bill 221, if enacted, would prohibt the unlawful lending or use of drivers licenses and further prohibit the unlawful use of any false identification card by minors in an attempt to purchase alcoholic liquor.

COMMENTS AND/OR RECOMMENDATIONS

The Director supports S.B. 221 in that during FY 1978 one hundred thirty-two (132) retail liquor licenses were suspended by the Alcoholic Beverage Control Division for making illegal sales to minors. In many cases the retailers or clerks on duty were presented a borrowed or altered driver's license or some other fictitious type of identification.

Senate Bill 221, if enacted, would of course, not eliminate all of the illegal sales to minors. However, it would in my opinion, reduce the number of violations significantly. With the aforementioned in mind, the Alcoholic Beverage Control Division supports S.B. 221.



THOMAS J. KENNEDY,
DIRECTOR

TJK:cjs

2-15-79

Senate Bill 206 - An Act relating to vehicles; relating to release of certain liens

Purpose: To insure that a lienholder furnishes a release of lien to the holder of the title of a vehicle whenever the titleholder's indebtededness is paid in full.

Contents of Bill: KSA 1978 Supp 8-135(c)(6) would be amended by:

(1) requiring a lienholder to furnish the titleholder with a release of lien within 30 days after the indebtedness is paid in full.

(2) the lienholder may discharge this obligation by mailing the release to the last known address of the titleholder.

(3) the provisions of the bill would apply only to liens created after July 1, 1979.

(4) for failure to furnish such release within 30 days the lienholder would be liable to the titleholder for $100 plus any loss caused by such failure.

(5) NOTE: This Amendment essentially places the same requirement upon a vehicle lienholder as that which is presently upon a secured party insofar as release of a financing statement is concerned. (see KSA 84-9-404 attached)

Comment: An identical Amendment has been made to HB 2125 which passed the House on Wednesday February 7, 1979 by a vote of 117 to 6. HB 2125 has been assigned to Senate CFI.

The theory of this Article is that the public files of financing statements are self-clearing, because the filing officer may automatically discard each financing statement after a period of five years plus the year after lapse required by subsection (3), unless a continuation statement is filed, or the financing statement is still effective under subsection (6). This theory materially lessens the tension that would otherwise exist to have the files cleared by termination statements under Section 9-404. Similarly, a person searching the files need not go back past this five years plus one year; and if the indices are arranged by years, he has a limited and defined search problem. The section asks the filing officer to attach financing statements whose life has been continued by continuation statements to the latter statements, so that anything contained in the files of old years can be discarded.

Subsection (6) provides certain special filing rules, namely, filings against transmitting utilities (Section 9-105), for which financing statements are filed in the office of the [Secretary of State]; and real estate mortgages which serve as fixture financing statements and which are filed in the real estate records. In both of these cases the financing statement is valid for the life of the obligations secured. No confusion as to the required scope of search should result, because of the special nature of the filings involved.

3. Under subsection (2) the security interest becomes unperfected when filing lapses. Thereafter, the interest of the secured party is subject to defeat by purchasers and lienors even though before lapse the conflicting interest may have been junior. Compare the situation arising under Section 9-103(1) (d) when a perfected security interest under the law of another jurisdiction is not perfected in this state within four months after the property is brought into this state.

Thus if A and B both make non-purchase money advances against the same collateral, and both perfect security interests by filing, A who files first is entitled to priority under Section 9-312(5). But if no continuation statement is filed, A's filing may lapse first. So long as B's interest remains perfected thereafter, he is entitled to priority over A's unperfected interest. This rule avoids the circular priority which arose under some prior statutes, under which A was subordinate to the debtor's trustee in bankruptcy, A retained priority over B, and B's interest was valid against the trustee in bankruptcy. *In re* Andrews, 172 F.2d 996 (7th Cir. 1949).

4. Subsection (7) makes clear that the filings in real estate records (Sections 9-401 and 9-402 (3) and (5) shall be indexed in the real estate records, where they will be found by a real estate searcher. Where the debtor is not an owner of record, the financing statement must show the name of an owner of record, and the statement is to be indexed in his name. See Sections 9-313(4) (b) and (c); 9-402(3); 9-402(5).

Cross References:

Point 3: Sections 9-103(3), 9-301 and 9-312(5).

Point 4: Sections 9-313(4) (b) and (c), 9-401 (1), 9-402(3) and (5), and 9-405(2).

Definitional Cross References:

"Debtor". Section 9-105.
"Financing statement". Section 9-402.
"Fixture". Section 9-313.
"Fixture filing". Section 9-313.
"Secured party". Section 9-105.
"Security interest". Section 1-201.
"Transmitting utility". Section 9-105.

CASE ANNOTATIONS

1. Filing of financial statement pursuant to Kansas law binding under bankruptcy proceedings. *In re* McCoy, 330 F.Supp. 533, 535, 536.

2. Referred to; interest of holder of perfected security interest superior to interest of judgment creditor although failure to file financing statement within 10 days. Blair Milling & Elevator Co., Inc. v. Wehrkamp, 217 K. 122, 126, 535 P.2d 457.

84-9-404. Termination statement; fees. (1) If a financing statement covering consumer goods is filed on or after January 1, 1976, then within one (1) month or within ten (10) days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by the filing officer's file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of section 84-9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten (10) days after proper demand therefor the affected secured party shall be liable to the debtor for one hundred dollars ($100), and in addition for any loss caused to the debtor by such failure.

(2) On presentation of such termination statement, the filing officer must note it in the index. If the filing officer has received the termination statement in duplicate, the filing officer shall return one (1) copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing state-

ment, and of any related continuation statement, statement of assignment and statement of release, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if the filing officer has no such record, the filing officer may remove them from the files at any time after one (1) year after receipt of the termination statement.

(3) If the filing officer is the secretary of state and the termination statement is in the standard form prescribed by the secretary of state, the fee for filing and indexing the termination statement shall be three dollars ($3). If the termination statement is not the standard form prescribed by the secretary of state, the fee shall be five dollars ($5). If the filing officer is other than the secretary of state and the termination statement is in the standard form prescribed by the secretary of state, the fee for filing and indexing the termination statement shall be one dollar ($1), but if the termination statement is not in the standard form prescribed by the secretary of state, the fee shall be two dollars ($2). If the filing officer is other than the secretary of state, an additional fee of one dollar ($1) for each name more than one (1) against which the termination statement is required to be indexed shall be charged.

History: K.S.A. 84-9-404; L. 1975, ch. 514, § 27; L. 1977, ch. 359, § 2; July 1.

Law Review and Bar Journal References:

Cited in "The New UCC Article 9 Amendments," Barkley Clark, 44 J.B.A.K. 131, 179 (1975).

Discussed in legislative survey, "Changes in Article Nine of the Kansas Commercial Code," Alan Tipton, 15 W.L.J. 212, 225, 226 (1976).

OFFICIAL UCC COMMENT

Prior Uniform Statutory Provision:

Section 12, Uniform Conditional Sales Act.

Purposes:

1. To provide a procedure for noting discharge of the secured obligation on the records and for noting that a financing arrangement has been terminated.

Since most financing statements expire in five years unless a continuation statement is filed (Section 9-403), no compulsion is placed on the secured party to file a termination statement unless demanded by the debtor, except in the case of consumer goods. Because many consumers will not realize the importance of clearing the situation as it appears on file, an affirmative duty is put on the secured party in that case. But many purchase money security interests in consumer goods will not be filed, except for motor vehicles (Section 9-302(1)(d)); and in the case of motor vehicles a certificate of title law may control instead of the provisions of Article 9.

2. This section adds to the usual provisions one covering the problem which arises because a secured party under a notice filing system may file notice of an intention to make advances which may never be made. Under this section a debtor may require a secured party to send a termination statement when there is no outstanding obligation and no commitment to make future advances.

Cross Reference:

Point 2: Section 9-402(1).

Definitional Cross References:

"Consumer goods". Section 9-109.
"Debtor". Section 9-105.
"Financing statement". Section 9-402.
"Person". Section 1-201.
"Secured party". Section 9-105.
"Security interest". Section 1-201.
"Send". Section 1-201.
"Value". Section 1-201.
"Written". Section 1-201.

84-9-405. Assignment of security interest; duties of filing officer; fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in subsection (4) of section 84-9-403. If the filing officer is the secretary of state, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be three dollars ($3) if the statement is in the standard form prescribed by the secretary of state and otherwise shall be five dollars ($5). If the filing officer is other than the secretary of state, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be one dollar ($1) if the statement is in the standard form prescribed by the secretary of state and otherwise shall be two dollars ($2), plus in each case an additional fee of one dollar ($1) for each name more than one (1) against which the financing statement is required to be indexed.

(2) A secured party may assign of record all or a part of such secured party's rights under a financing statement by the filing in the place where the original financing statement was filed, of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a de-