

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m. ~~pm~~ on January 19, 1983 in room 514-S of the Capitol.

~~All~~ members were present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar,
Gaines, Hess, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Jerry F. Donahy, Collingwood Grain, Inc.
Tom R. Tunnell, Kansas Grain and Feed Dealers Association
Jim Maag, Kansas Bankers Association
Dee Likes, Kansas Livestock Association
Dwayne Sackman, Principal Budget Analyst
Jon Josserand, Office of the Secretary of State

Senate Bill 7 - Filing of security statements.

The chairman announced this bill is a result of an interim committee study, and that staff had reviewed the work of the interim committee including the work on this particular proposal. He directed the committee's attention to the memorandum prepared by the Legislative Research Department (See Attachment No. 1).

Jerry F. Donahy testified in support of the bill. He read his statement to the committee (See Attachment No. 2).

Tom Tunnell testified in support of the bill. He read his statement to the committee (See Attachment No. 3).

Jim Maag testified in support of the bill. He read his statement to the committee (See Attachment No. 4).

The chairman pointed out a printing error in the bill on page 6; all of lines 212, 213 and the first word in line 214 should be stricken.

Dee Likes testified in support of the bill. He stated his association believes the current system is cumbersome. It is too easy to file incorrectly; too hard to check in right place, and it should be changed. He said they think the system needs modernization. Committee discussion with him followed.

The chairman called upon Dwayne Sackman to make comments on the fiscal note (See Attachment No. 5). He stated it was extremely difficult to estimate the cost.

The chairman directed the committee's attention to the copy of the Attorney General's Opinion (See Attachment No. 6). He reviewed the opinion briefly.

Jon Josserand appeared before the committee to discuss the impact this bill will have on their office. A copy of his statement is attached (See Attachment No. 7). Considerable discussion with him followed. The chairman asked Mr. Josserand to return tomorrow for further questions.

The meeting adjourned.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
MaryAnn Holzapfel	Seneca, Ks.	Register of Deeds
Linda Finckham	Marysville, KS	Register of Deeds
Kary Mary Moore	Hitchinson, Ks.	Register of Deeds
Belen Jagers	Salina, Ks	" " "
Jusie Palmer	Leavenworth	" " "
Sue Neustifter	Douglas	" " "
Tom Groneman	Wyandotte Co	" " "
Randy Job	Topeka	Kans Co-op Council
Tom Wilder	Topeka	KSLU
Gregory F. Donahy	Hitchinson	Collingwood & Main Sts
Donald J. Letourneau	Topeka	IBP, INC + PACKERS
John W. ...	"	"
Harry ...	"	Sen. Steineger
Kenneth M. Wilke	Topeka	Kansas Board of Agriculture
John ...	Marion	KCFD
Harold Beard	Topeka	Sec of State
William G. Leonard	Topeka	Ks. Livestock Assn
Martin ...	Topeka	KCM
Cindy ...	Topeka	Leg. Intergov
Nancy Kantola	Topeka	Ks Co-op Council
WAYNE SACKMAN	"	DIV OF BUDGET

1-19-83
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REVISED
MEMORANDUM

December 21, 1982

TO: Special Committee on Judiciary
FROM: Kansas Legislative Research Department
RE: Proposal No. 12 -- Security Interest Survey

As a part of its study of Proposal No. 12, the Special Committee on Judiciary directed staff to conduct a survey of the 105 county register of deeds to gather information regarding Uniform Commercial Code Article 9 security interests. Questionnaires were mailed to the 105 register of deeds on October 5, 1982, with a requested return date of November 3, 1982. A second mailing subsequently was made to the 20 counties which did not respond to the first mailing.

A total of 97 counties returned completed questionnaires. A tabulation based on the completed questionnaires follows below. The nine questions which appeared on the questionnaires are listed. After each question the number of counties which responded is noted and a total figure is given where appropriate.

Attached to this memorandum is a listing of the 105 counties and the responses of 97 counties to each of the nine questions asked.

1. What was the total number of Article 9, Uniform Commercial Code financing statements (Form UCC-1) filed in your office in 1981?

147,953 financing statements were reported by the 94 counties which responded.

2. What was the estimated percent of these financing statements listed above that applied to farm products? (Farm products include crops, livestock stock, and farming equipment. Contract rights are not included unless they arise from the sale of farm products, livestock, or farming equipment.)

An average of 57 percent of the financing statements applied to farm products based on 92 counties' responses.

Atch. 1

3. What was the total number of information searches conducted by your office in 1981? (Each debtor's name searched is a search whether the request was made in writing or by phone.)

33,757 searches were reported by 94 counties. Some counties indicated the figure reported included only written search requests.

4. What was the total number of documents filed in 1981? (Documents include financing statements, Form UCC-1, and statements of continuation, release, and assignment, Form UCC-2.)

236,449 document filings were reported by 96 counties.

5. What was the total amount of revenue collected for all activities associated with Article 9, Uniform Commercial Code filings and searches in 1981?

\$499,438.45 in revenue was reported by 88 counties.

6. What was the estimated total expenses of your office related to Article 9, Uniform Commercial Code filings and activities?

The responses to this question varied to such a degree that no meaningful total can be arrived at.

7. Do you provide telephone searches, i.e., allow persons to call in, request a name search, and hold until the information is provided?

90 counties said yes; 6 counties said no. Some of the yes responses were qualified. See the attached listing.

8. If you provide telephone searches do you charge for this service?

16 counties said yes. 76 counties said no. Some of the yes responses were qualified.

9. Do you allow persons to call in a search request but your office responds to this request only in writing?

10 counties said yes. 67 counties said no.

UCC ARTICLE 9 SURVEY
(PROPOSAL NO. 12)

<u>County</u>	<u>Total 1981 UCC Filings</u>	<u>Est. % Farm Prod.</u>	<u>Total Searches in 1981</u>	<u>Total Doc. Filed 1981</u>	<u>Total Rev. Art. 9, 1981</u>	<u>Est. Art. 9 Total Exp.</u>	<u>Are Phone Searches Permitted?</u>	<u>Charge for Phone Searches?</u>	<u>Call In Search- Written Resp.</u>
Allen	985	29%	115 written 200 phone 315 total	1,515	\$3,530.75	\$1,800.00	Yes	No	No
Anderson	648	66 2/3%	Many	3 times more	Don't know.	--	No. Will charge if do so.	Yes	No
Atchison	1,257	33%	200	2,262	\$4,074.25	\$800.00	Yes	Yes if out-of-town or a copy is re- quested.	
Barber	512	50%	50 written 1,000 phone 1,050 total	653	--		Yes	No	No
Barton	2,681	33%	174	4,432	\$8,946.75	--	Yes	No	No
Bourbon	1,130	50%	89 written	1,558	\$3,905.50	\$2,800.00	Yes	No	No
Brown	781	71%	239	1,051	\$2,956.50	\$350.00	Yes	No	No
Butler	3,125	25%	212	7,089	\$10,303.75	\$6,473.50	Yes	No	No
Chase	236	50%	35	385	\$912.00	Can't deter- mine.	Yes	No	No

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Chautaugua									
Cherokee	1,970	--	101 written	2,043	\$6,432.00	--	Yes	No	No
Cheyenne									
Clark									
Clay	529	35%	90	920	\$1,898.50	--	Yes but prefer not to.	No	This has not been practice.
Cloud	834	35%	93 written	1,300	\$3,449.25	\$100 for postage.	Yes	No	No
Coffey	564	33 1/3%	68	934	\$2,235.00	\$3,500.00	Yes	No	No
Comanche	263	80%	140	518	\$315.00	\$100.00	Yes	No	No
Cowley	467	75%	500	5,122	\$286.75	\$600.00	Yes	No	No

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Crawford	3,281	20%	451	5,656	\$10,565.00	\$7,500.00	Yes	Yes, if the information is found.	No
Decatur	496	90%	70 written <u>300 phone</u> 370	761	\$1,999.50	\$25.00	Yes	No	--
Dickinson	1,254	75%	65 written	1,748	\$4,642.75	--	Yes	No	No
Doniphan	780	75%	75	1,450	Several thousand dollars	--	Yes	No	Yes
Douglas	3,167	16%	385	5,201	\$10,648.00	--	Yes	No	No
Edwards									
Elk	259	80%	34	466	\$1,156.50	--	Yes	No	No
Ellis	2,308	18%	307	10,703	\$7,939.75	\$876.00	Yes	Yes; also send written copy.	No
Ellsworth	501	65%	100	520	\$1,503.00	\$300 for materials.	Yes	No	No

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Finney	2,737	22%	2,376	4,081	\$10,419.00	\$8,400.00	Yes	No. If an out-of-county person calls, will give them the information by phone and send a written copy and charge them for it.	--
Ford	2,517	75%	159 written	4,081	\$ 8,963.25	--	No	No	No
Franklin	1,920	33 1/3%	84 written <u>160 phone</u> 244 total	2,630	\$6,450.55	\$3,500.00	Yes, but at our convenience.	No	No
Geary	3,715	3%	34	5,683	\$17,276.00	\$8,505.00	For elevators and grain feed dealers only.	No	No
Gove	488	90%	430	772	\$1,978.25	\$200.00; does not include salary.	Yes	No	No
Graham									
Grant	786	85%	254	1,034	\$3,927.50	\$200.00	Yes; usually.	Yes; usually.	No
Gray	1,053	90%	500	150; does not include terminations.	\$3,159.00	\$270.00	Yes	For grain crops, no. For others, yes.	If they ask.
Greeley	350	80%	143 written <u>50 phone</u> 193 total	556	\$1,820.00	\$75.00	After September, no.	No	No

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Greenwood	805	54%	70	1,345	\$2,971.25	\$2,332.00	No	--	No
Hamilton	359	80%	110	1,838	\$1,647.65	None. Just regular of- fice expense.	Yes, if urgent.	Yes	Yes
Harper	750	60%	60 written 75 phone <u>135 total</u>	1,082	\$2,301.00	--	Yes	No	No
Harvey	2,570	75%	1,900	3,601	\$9,000.00	\$8,000.00	Yes	No	No
Haskell	--	--	--	--	--	--	Yes	Yes	Yes
Hodgeman	430	75%	60	540	\$1,500.00	No way to figure.	Yes, in most cases.	No	No
Jackson	741	90%	49 written	1,333	\$2,938.25	--	Yes, unless list too long.	No	Yes
Jefferson	1,219	50%	85	2,045	\$3,898.25	Supplies = \$615.00	Yes	No	No
Jewell	--	80%	60	934	--	--	Yes	No	No

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Johnson	8,681	5%	1,022	12,956	\$32,047.00	\$18,912.00 Sal. 500.00 Env. 2,160.00 Pstg. \$21,572.00 Total	No	No	No
Kearny	560	85%	340	676	\$3,301.20	\$135.00	Yes, unless list is too long.	No	No
Kingman	701	95%	250	1,163	\$ 2,198.00	--	Yes	No	--
Kiowa	589	33 1/3%	296	976	\$2,244.50	\$6,000.00	Yes; elevators and grain companies.	Usually and will send copy.	Not usually.
Labette	2,210	22%	122	3,127	\$7,550.00	\$4,450.00	Occasionally.	Yes, with writ- ten report.	--
Lane	365	90%	240	500	\$1,700.00	--	Yes, if not busy.	No	No
Leavenworth	2,700	--	49 written	3,580	--	--	Yes	No	--
Lincoln	323	50%	40	433	\$1,460.00	\$1,565.50	Yes	No	No
Linn	780	80%	200	1,327	\$2,644.50	\$2,500.00	Yes	No	No

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Logan	404	90%	120	738	\$1,480.75	\$600.00	Yes	No	Yes; if they want.
Lyon	379	6½%	69 written 500 phone 569 total	2,379	\$1,269.75	½- time clerk @ \$4.20 per hr.	Yes	No	Yes, if they request.
Marion	1,238	70%	34 written; many more by phone.	1,751	\$3,813.00	--	Yes	No	Usually require written request.
Marshall	664	70%	45 written 300 phone 345 total	1,614	\$3,859.00	\$1,642.06	Yes	No	No
McPherson	--	--	122 written 960 phone 1,082 total	3,393	\$7,036.00	--	Yes	No	No
Meade	542	70%	282 written 50 phone 332 total	920	\$3,053.25	--	Yes	No	No
Miami	1,195	70%	112	1,736	\$4,170.50	\$400.00	Yes, occasionally.	No	No
Mitchell									
Montgomery	4,200	12%	300	7,097	\$13,500.00	\$8,544.00	Yes	No	Yes

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Morris	570	65%	49 written <u>20 phone</u> 69 total	689	\$2,038.30	\$1,225.00	Yes	No	--
Morton	387	58%	150 written <u>100 phone</u> 250 total	593	\$1,768.50	--	Yes	No	No
Nemaha	675	84%	113 written	1,197	\$2,901.75	\$1,550.00	Yes, if grain ele- vators or govern- ment.	No	Yes
Neosho	1,562	28%	201	2,592	\$6,545.25	\$2,665.00	Yes	Yes	No
Ness	310	95%	131	684	\$750.00	--	Yes, beginning in 1982.	No	--
Norton	421	90%	90	593	--	\$50.00	Yes	No	No
Osage	949	50%	60	1,823	\$4,110.75	\$6,910.00	Yes	No	No
Osborne	467	65%	70 written <u>250 phone</u> 320 total	962	\$2,155.00	--	Yes	No	Rarely happens.
Ottawa	683	66%	38 written <u>300 phone</u> 338 total	945	\$2,100.00	\$190.00	Yes	No	--

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Pawnee	793	15%	187 written <u>100 phone</u> 287 total	1,342	\$3,612.75	--	Yes	No	--
Phillips	545	60%	44 written <u>170 phone</u> 214 total	849	\$2,122.25	--	Yes	No	--
Pottawatomie	832	30%	35	857	\$2,721.00	\$7,930.00	Yes	No	--
Pratt									
Rawlins	327	90%	200	771	\$1,841.50	--	Yes	No	No
Reno	5,356	25%	201 written <u>5,200 phone</u> 5,401 total	8,757	\$18,325.75	\$9,500.00	Yes	No	No
Republic									
Rice	936	--	79	1,480	--	--	Yes	No	No
Riley	2,013	15%	82	3,693	\$6,039.00	\$7,582.00	Yes	Yes	No

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Rooks	579	50%	16 written	1,154	\$2,389.75	--	--	--	--
Rush	358	68%	65	638	\$1,275.00	--	Yes	No	No
Russell	492	60%	122 written	864	\$2,148.25	--	Yes	No	No
Saline	3,070	30%	163 written <u>1,900 phone</u> 2,063 total	4,383	\$13,371.00	\$6,200.00	Yes	No	No
Scott	594	70%	170	1,050	\$2,500.00	--	Yes	No, unless many calls from same company.	No
Sedgwick	23,604	35%	No actual count. Do not keep track of phone searches.	23,840	\$72,432.75	--	Yes	No	Yes
Seward	2,001	20%	285	2,836	\$7,390.50	--	Yes	If long distance, no; if local, yes.	--
Shawnee	10,106	10%	127; avg. 10 walk-ins per day.	17,059	\$30,165.00	\$9,580.00	No	--	No
Sheridan	441	90%	53 written <u>80 phone</u> 133 total	534	\$1,831.50	10%	Yes	No	No
Sherman	862	55%	97 written <u>500 phone</u> 597 total	1,229	\$3,606.00	\$4,740.00	Yes	No	No

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Smith	617	80%	93 written <u>750 phone</u> 843 total	899	\$2,305.00	--	Yes	No	No
Stafford	642	68%	97 written	926	\$2,396.50	\$650.00	Yes	No	--
Stanton	550	80%	143	1,080	\$2,463.50	\$150.00	Yes	No	Yes
Stevens	536	75%	175	693	\$2,350.00		Yes	No	No
Sumner	2,533	50%	196	3,968	--	\$8,565.00	Yes, for local firms.	No	No
Thomas	1,031	80%	1,900	1,672	\$4,946.00	\$500.00	Yes	No	No
Trego	370	85%	70 written	666	\$1,689.00	\$800.00	Yes	No	--
Wabaunsee	538	75%	60	725	\$1,870.00	\$220.00	No, except for grain companies.	NO	No
Wallace	390	90%	150 written <u>50 phone</u> 200 total	992	\$2,128.75	\$50.00	Yes	No	No
Washington	626	72%	200	792	\$3,076.00	Very little.	Yes	No	--

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Wichita	399	79%	427	738	\$2,709.75	\$75.00 postage	Yes	Only if persons want copies and/or certification.	--
Wilson	709	65%	148	1,171	\$3,371.50	\$2,500.00	Yes	Yes	No
Woodson	397	75%	125	603	\$1,708.00	\$2,000.00	Yes	No	No
Wyandotte	5,683	.015%	520	5,808	\$18,465.00	\$15,000.00	Yes	Yes	--

1-19-83
#2

CENTRAL FILING

BY

JERRY F. DONAHY

COLLINGWOOD GRAIN, INC.

Atch. 2

CENTRAL FILING

My name is Jerry Donahy. I am Credit Manager for Collingwood Grain of Hutchinson, Kansas. Collingwood Grain is a corporation active in the purchasing and handling of grain and also the sale of most all farm crop production items such as fertilizer, chemicals and fuel.

Collingwood Grain Incorporated has Twenty-seven (27) stations in Kansas covering at least Thirty-five (35) Kansas Counties. Our concentration of facilities are mainly in South Central and South Western Kansas.

My job as Credit Manager consists mainly of problems relating to accounts receivable. However, it is also my job to handle grain conversion cases for the company. Grain conversions occur when we pay the producer for his grain unaware of an existing lien. The producer subsequently defaults to the lien holder and turns to us for restitution. We have now purchased the grain twice. It only takes a moment to realize the importance and necessity of proper grain transactions when you compare account receivable dollars to the amount of dollars used in the purchase of farmers grain. Just two or three sizable grain conversions at a given station could make One Hundred Fifty (150) customer accounts receivable look rather small. Being aware of liens against grain purchased by us is not only extremely important but mandatory.

I would like to take a few moments to relay to you some of the problems our managers face every day with regard to the purchasing of grain and how central filing of financing statements can help.

Atch. 2

Not only must our managers worry about collecting accounts which originated from the sale of fertilizer, chemicals, fuel, etcetera for the production of the grain but also runs the risk of having to buy the grain twice because of conversion.

First, let us look at the law and how it puts purchasers of farmers grain into the position we are in. The Uniform Commercial Code section 84-9-307 reads as follows, and I quote. "A buyer in ordinary course of business other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. For the purpose of this section only, "farm products" does not include milk, cream and eggs." End of quote.

My first choice for an easy simple and direct solution to the problem of purchasing encumbered grain would be to add "grain" to milk, cream and eggs as "farm products" bought free of a security interest.

Now consider the problem of "where to look" for filed liens. UCC 84-9-401 (a) states the following "when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the Register of Deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the Register of Deeds in the county where the goods are kept, and in addition when

the collateral is crops growing or to be grown in the office of the Register of Deeds in the county where the land is located."

It is not uncommon for a larger Western Kansas farmer to farm land in two, three or more counties. How is the purchaser of the farmers grain to know which grain came off which land in which county and whether a financing statement was filed in two or more counties.

Central filing would provide immediate awareness of who had the lien filed so that one call could be made to satisfy the above questions.

The next problem to consider is grain mobility. The day has long since passed when a crop was harvested in the field and hauled to the closest elevator. Now once grain is on the highway - distance means little. Availability of storage space for the harvested crop may cause grain to be moved great distances and putting the elevator operator in a position of dealing with new farm customers he knows little or nothing about. Many times the farmer is selling the grain immediately after harvest completion allowing little time for a lien search. Central filing would aid in this situation with immediate information.

Availability of oral information. Many times, as in the previous situation, there is no time for a written request on filed liens. We must rely upon the telephone for immediate information on crop liens. I wish to say in most instances the county Register of Deeds are very cooperative in supplying the necessary crop lien information. However, there are Register of Deeds offices in our trade territory

who will not give out oral lien information over the telephone. The only other options in this situation is either a written request or a personal visit to the Register of Deeds office for a lien search. When time is of the essence this is not possible. Central filing would assist with this problem.

The financial situation of farmers. Many articles have recently been written about agricultural economy and the financial plight of the farmers. It seems when times are good and prices for agricultural products are good the bills are paid, conversion of grain is minimum. Now farmers have their backs to the wall with high interest, high cost of production and low commodity prices. I have heard of articles written suggesting the farmer receive twice the sale price of his grain by using conversion. We as grain purchasers try to know our customers and maintain good customer relationship but we are not their bankers. We should not be required to know each farmers financial condition as would their primary lender. There must still be a trust and confidence between us and our farm customers. However, during the past year due to the agricultural situation we have checked for liens on more of our customers than ever before. The bottom line is this - if we can not have my first choice, that is buying grain free of a security interest, then the next best thing is central filing. If we are compelled to abide by the law with regard to crop liens we should then have available central filing to comply. We need immediate and accurate information.

Thank you for your consideration.

1-19-83

3

TESTIMONY

of

KANSAS GRAIN AND FEED DEALERS ASSOCIATION

on

SENATE BILL 7

Submitted by:

Tom R. Tunnell
January 19, 1983

Atch. 3

I am Tom R. Tunnell, Executive Vice President of Kansas Grain and Feed Dealers Association, Hutchinson, Kansas. Our association is a voluntary organization that has as members approximately 95% of all grain and feed firms doing business in Kansas. Our membership includes both private and cooperative owned country and terminal grain operations with a total licensed storage capacity of approximately 750,000,000 bushels.

As most of you are aware, the Kansas grain industry is a vital link in the marketing chain necessary to move Kansas produced farm commodities from the field to end user - both domestic and foreign. Services performed by Kansas grain elevator operators includes the receiving, conditioning, storing and merchandising of Kansas grown grain. However, you have just heard from Mr. Donahy of Collingwood Grain Co. how increasingly difficult it has become for Kansas grain firms to continue to serve Kansas farmers in this capacity. The delays, difficulties and confusion caused by the elevator manager not being able to determine whether grain being purchased from the farmer is mortgaged or not is a serious problem.

As legislators, you may ask yourself, why has this problem suddenly become so acute that an immediate change in the filing procedures for farm products liens, as called for in Senate Bill 7, is required?

The answer to this question can be found in two areas:

1. The current severe farm economy depression has placed many Kansas farmers in a desperate situation causing the potential for intentional grain conversion to be much greater today than at any point in recent history.

2. The distance grain is transported today from where produced to first purchaser is much greater than in the past. This situation is caused by increasing numbers of large multi county farming operations

and by rapidly fluctuating rail freight rates, making it advantageous at times to truck grain greater distances to achieve higher prices. (This condition can be contributed to the passage of the Staggers Rail Deregulation Act of 1980 making it possible for large grain firms to negotiate special "volume contract rail rates" with the railroads, thus creating favorable grain prices for farmers hundreds of miles distant, provided the grain is transported to the grain firm's unit train loading point.)

Under current county filing requirements for farm products liens, a buyer, purchasing grain produced hundreds of miles from where it is being offered for sale, is at an extreme disadvantage and in most cases is unable to determine if the grain being purchased is mortgaged or not. In fact, he may not even be able to ascertain what county register of deeds office should be searched to determine if a lien is in existence.

A system of filing farm products liens centrally at the office of Secretary of State, as called for in Senate Bill 7, would eliminate this uncertainty and greatly facilitate a smoother transaction between grain buyers and the Kansas farmer.

The problem I have cited is not unique to Kansas. In fact, several other agricultural states have already amended their Uniform Commercial Code in some manner in an attempt to alleviate this situation. The information I passed out earlier is a research paper done by the National Grain and Feed Association, Washington, D.C., on the subject of UCC filing changes. You will note on page one of the paper that already U.C.C. amending legislation has been passed by nine other states in an attempt to address the problem. Also, the research paper describes action currently being contemplated by twelve additional state legislatures.

In our opinion Senate Bill 7 is the most direct, cost effective solution for Kansas and is supported by the Kansas Livestock Association, Kansas Committee of Farm Organizations, Kansas Bankers Association and the Kansas Co-op Council.

Currently the Senate Agriculture and Small Business Committee is considering six different bills (SB 1 thru 6) that would tighten the grain warehouse licensing provisions of the Kansas Warehouse Act and greatly strengthen the criminal penalties for violation of the Act. These bills represent an effort by the Kansas Legislature to prevent the occurrence of future grain elevator insolvencies. In our opinion, Senate Bill 7, too, can be categorized with this legislation, as its provisions could also conceivably prevent a future elevator failure.

In closing, Senate Bill 7 still has several areas that require further refinement and I beg the indulgence of this Committee to go slow in its deliberation to allow Secretary of State Brier's office adequate time to develop appropriate implementation procedural language. Our organization, along with several others, has discussed the potential impact of this legislation with representatives of the County Registers of Deeds organization and believe that a reasonable, mutually beneficial compromise can be achieved to enable each county register of deeds to become involved in a paid local lien search program. The details of such a program are not fully developed but when finalized should also become a part of the language of the bill.

I appreciate the opportunity to be here today to testify on this important issue and would be happy to respond to questions.

Nov. 5, 1982

UCC Liens - State Activity and NGFA InvolvementThe Problem

Section 9-307 of the Uniform Commercial Code states, "A buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence."

The Uniform Commercial Code has been adopted in all 50 states. This section of the code which treats agricultural producers differently than all other businessmen means that the purchaser of producer's grain or livestock is liable to the secured lender in case of failure to collect the debt from the producer. With the current depressed economic conditions come growing risks to the grain buyer.

The liability to the lender exists regardless of whether the farm products buyer is aware of the security interest. If the buyer is aware of an existing lien, the liability can be avoided by drafting a check payable jointly to both the producer and the lending agency. Possibly the most difficult problem is in obtaining reliable information about all outstanding liens on grain being sold. To perfect a security interest, the UCC requires that a financing statement be filed in the county of the debtor's residence or the county in which the crops are being grown or both. Therefore, if a grain buyer is purchasing from farmers with operations in several counties, all county record files must be checked. This situation creates obvious problems when harvest is proceeding at a fast pace.

State Solutions

There have been a variety of legislative proposals in various grain producing states to alleviate the problem of buying mortgaged grain. The attached appendix contains a brief summary of legislation that has been passed in nine states thus far. The appendix also summarizes the recent actions of 12 additional states and one 4-state region in attempting to deal with the problem.

In general, proposed solutions that have been devised can be classified into one of five general categories:

1. Deleting the Exception for Farm Products

In 1976, California amended its commercial code to remove the exception provided for farm products. This action makes transactions for farm products subject to the same laws governing all other commercial transactions and effectively limits the risks of liability to the grain purchaser. California is the only state in which the UCC has been amended in this way.

II. Require Lenders to Notify Grain Buyers About Liens

In 1982 two states, Kentucky and Indiana, passed legislation amending the UCC to require lenders to notify grain buyers by mail of existing crop liens. However, there is a significant difference in the laws passed by these two states because of the penalties imposed on lenders failing to provide advance notification. If the lender fails to provide prior written notice in Kentucky, the grain buyer is no longer liable in purchasing mortgaged grain. In Indiana, the penalty for banks failing to notify grain buyers is set at \$100 to \$500 and does not alter the legal liability of the buyer of mortgaged grain.

This type of a law can be of great help to the grain buyer in determining outstanding liens that are current, but obviously the success of such a change in the law is closely dependent on the penalties confronting the lender. Since its passage, the Kentucky law has drawn widespread interest from other states. However, a large number of those states considering amendments to the UCC see the Kentucky approach as unacceptable politically. The banking lobby is generally very strong and offers staunch opposition.

III. Central Filing of Grain Liens

Information gathered thus far indicates 7 states have passed legislation to set up a dual system of filing for grain liens, one in the county of the debtor's residence and one in a central location, usually in the office of secretary of state. States that currently have such legislation include Indiana, Iowa, Nebraska, Oregon, South Dakota, Washington and Mississippi.

Central filing laws generally require the filing in a central location as part of the necessary action to perfect a grain lien. This does not change the liability status of the grain buyer but provides for much easier access to lien information than having to search county records. The success of this kind of approach to the mortgaged grain problem depends on several elements: 1) Reliability of the System (every law passed thus far includes a disclaimer to protect the state agency collecting and disseminating lien information for any errors or omissions in the lien information); 2) Time required to process information (in some states it can take anywhere from one day to three weeks to obtain grain lien information); and 3) Responsiveness to telephone requests (some states permit telephone requests while others honor only written requests).

Central filing bills in state legislatures have been met with mixed responses from lenders. It is more troublesome for bankers to file in two locations and may cost additional filing fees. However, bankers also see some value to the information for their own purposes in finding out about farmers trying to secretly sell mortgaged grain and in learning about other outstanding liens. If bankers become convinced that some form of legislation will be passed, a central filing system is generally viewed as the preferred alternative. Another significant problem facing a central filing program is in obtaining the funding necessary to staff and operate such a program.

IV. Industry-Operated Voluntary Central Filing

For various reasons, some states have met substantial opposition to legislation requiring filing of grain liens in a central location within a state. This has led to some consideration being given to a central lien filing system operated by state

Appendix

States - Legislative Changes and Proposed Changes to UCC on Farm Product Collateral Loans

States That Have Passed Legislation

California

In January, 1976 California's UCC was amended so as to provide equal treatment to all purchasers buying goods "in the ordinary course of business." The UCC was amended to delete the exception given to farm products. Although some grain buyers believe the change in the law permits purchase of mortgaged grain clear of any perfected security interests, some believe that until the law is tested in the courts, county records should continue to be searched for any outstanding liens.

Indiana

An amendment passed by the Indiana legislature in 1982 will establish a central filing system for crop liens beginning in January 1984. The law requires dual filing in both the county of residence and the secretary of state's office. In addition the lender must supply written notification of such liens to all licensed grain dealers and warehousemen in the county of residence within 10 days after the security interest attaches. Penalty for failure to notify grain handlers is set at a fine of \$100 to \$500. To finance the central filing in the secretary of state's office a filing fee of \$5.00 is assessed to the lender. The secretary of state is required to maintain a listing of all existing liens and make the listing available to the public for a reasonable fee.

Iowa

In 1975 Iowa passed legislation requiring central filing of liens on grain. A private group was hired to handle requests for file searches. The program is now computerized and being turned over to the secretary of state's UCC division. There is interest in pursuing amendments to the UCC to require lenders to notify grain buyers on existing liens, similar to the Kentucky law.

Kentucky

In March, 1982 Kentucky's UCC was amended so as to place the burden on banks and other secured lenders to notify purchasers of farm products (both grain and livestock). If the lender fails to give proper notice, the purchaser's liability is voided. The law states, "If any grain or soybean crop subject to the lien of a security interest is sold to any... (state or federally licensed warehouse)..., such entity shall take title to such crop free and clear of such lien...., unless written notice by certified mail, return receipt requested or by registered mail, of such lien, the name and address of the debtor and proper description of the property subject to the lien is given to the entity purchasing said crop prior to payment of the proceeds of purchase..."

Mississippi

In the last legislative session a bill was passed requiring a dual filing system for crop and livestock liens at the county and state level. The Secretary of State's office will be in charge of collecting and disseminating lien information, and plans to honor telephone requests. In passing the legislation, a strong push by livestock interests to remove the exception for farm products was resisted by legislators who did not want the UCC in Mississippi to be different from other states.

Nebraska

The Nebraska Uniform Commercial Code was amended in 1977 to provide for dual filing of crop liens: 1) With the county clerk in the county where the crops are grown and 2) with the state in the Office of the Public Service Commission (which is also charged with regulating state licensed warehouses). The law requires the duplicate filing to perfect the security interest of the lien holder.

The UCC was amended again to change the place of state filing to the secretary of state's office. The law requires the secretary of state's office to respond to both written and telephone requests for lien information filed on a computer. There are no fees charged to lending institutions for filing or to users of the service for access to the information (supported totally by state appropriations). The law states "the employees or agents (of the office of secretary of state) are exempted from all personal liability as a result of any error or omission in providing information as required by this section (of the law), except in cases of willful misconduct or negligence."

Oregon

Oregon has a central filing system in place. Thus far, the system seems to have served its function with no problems reported by grain buyers. Turn-around time on obtaining lien information is about one week.

South Dakota

In 1979, South Dakota's Uniform Commercial Code was amended to require secured lenders to file with both the registrar of deeds in the county of the producer's residence and with the secretary of state. The law requires the secretary of state's office to respond to telephone requests for lien information stating whether a financing statement has been filed, and if so, provide the caller with the name and address of the secured creditor. No written confirmation is required. To avoid error, filings are made on the basis of social security numbers of producers. The law relieves the secretary of state's office from liability by stating "the secretary of state is not responsible for accuracy or completeness of the information..."

Washington

Washington has a state law establishing a central filing system for liens. However, it is anticipated there will be a two-year delay in making the program operative. Even when operative, the central filing will have significant drawbacks. It is estimated that turn-around time on lien information requests will be about three weeks. A legislative committee of the Pacific Northwest Grain and Feed Association is meeting in September to consider a legislative proposal similar to the Kentucky law requiring lenders to notify grain buyers about existing liens.

States With Legislative Changes Being Considered

Colorado

The Colorado Grain and Feed Association has a committee assigned to research the issue of mortgaged grain and investigate alternative legislative options, but no legislative action has yet been taken.

or regional grain and feed associations. Under this system, lenders would cooperate on a voluntary basis. The possibility of an association-operated lien filing system is being considered by Kansas, Illinois and the Southeastern Grain and Feed Association (includes NC, SC, VA, GA). The Southeastern Grain and Feed Association recently passed a resolution directing the association to set up a pilot program on central filing.

There could be some serious problems with this approach to the problem: 1) What is the Cost? A computerized system that is responsive in a timely manner to industry requests for information could be very costly to set up. Programming costs can be a very big unknown factor. Additional staffing needs could also be substantial. Compared with present funding and operations of many state associations such a program could add a big financial burden and a completely new area of responsibility and service to its members. 2) How reliable is a voluntary system? Without nearly complete cooperation from lending institutions, such a program would not be satisfactory. 3) Legal liability issues? There appear to be two types of liability risk involved for the association. The voluntary central filing system might fail to identify a producer with an existing lien or the central file might identify a certain producer's grain as mortgaged that is actually under clear title to the producer. In states where central filing is established through legislation, the provisions of the law contain provisions protecting the agency in charge of the filing system. There is serious legal question as to whether an association can adequately protect itself through such disclaimers that are not a part of state law.

V. Insurance for the Grain Buyer

In 1982, the Ohio Senate passed a bill that would establish an insurance program to insure grain elevators in cases where mortgaged grain was purchased and the elevator was forced to repay the lender on the producer's loan. The program is funded through a checkoff on grain sold or stored in elevators. The insurance for elevators' losses on mortgaged grain would be set at a limit of \$10,000 with \$500 deductible for any one loss. Losses over \$10,000 are covered for 80% of their actual value. The companion House bill does not contain this insurance for elevators and the differences in the two bills should be resolved after the November elections.

Is There a National Solution?

The Uniform Commercial Code (UCC) is not actually law, but a draft of law that is recommended to states for passage. The official text of the UCC is promulgated by cooperative efforts of the American Law Institute (a body of legal experts that work on a variety of restatements and improvements in the wording of all aspects of law) and the National Conference of Commissioners on Uniform State Laws (a group comprised of government representatives from all 50 states). The first UCC appeared in 1951. As laws become obsolete, changes are considered by the Permanent Editorial Board of the UCC (a group of experts within the American Law Institute). The Permanent Editorial Board's recommended changes are then subject to joint approval by the two principal bodies.

Major revisions of the code were made in 1962 and 1972. Minor changes were adopted in 1977 and 1978. Passage of a revised code does not insure state acceptance. Most state commercial laws are based upon the 1962 version of the UCC. Only eight states have adopted the 1972 version thus far. None of the revisions affected the treatment of farm product transactions.

According to John C. Miller in an article in the 1981 Agricultural Law Journal, "Farm Collateral Under the UCC: "Those Are Some Mighty Tall Silos, Ain't They Fella?", there were two reasons why the draftsmen of the original UCC gave special treatment to farm products: "First, the original UCC was drafted by commercial financiers without detailed knowledge of farm financing. Second, the draftsmen of the UCC did not have much to work with because many of the various state laws were illogical and inconsistent." Miller notes that the current version of the code "approaches farming as an occupation peopled by simple, unsophisticated tillers of the soil who need the mantle of protective legislation to survive; it evidences a similar attitude toward the sophistication of the farm lender."

Because of the nature of development for the UCC and the process by which states act individually in accepting amendments, there does not appear to be a simple straight forward national solution to the mortgaged grain problem. Even if the grain industry could convince the American Law Institute that changes were needed, gaining ratification would probably be a slow process, requiring individual state legislative efforts.

The National's Involvement In The Mortgaged Grain Issue

At the NGFA 1982 convention in March, the Country Elevator Committee approved a motion for the National Grain and Feed Association to act as a clearinghouse for information relating to this issue. The National is currently maintaining a file on all state warehouse law changes and legislative changes addressing the mortgaged grain problem. We have received several requests for this information.

As a suggestion, the material contained in this briefing paper might be considered for general distribution to the Country Elevator Committee and Terminal Operations and Marketing Committee. At the Leadership Conference in November 1982, we will be sharing this information with all the secretaries of state and regional grain and feed associations.

Idaho

In the 1982 legislature, a bill establishing a central filing system for grain liens was considered by the committee on agriculture. The bill will come before the committee again in the 1983 legislative session to begin in January. They also will be considering including language similar to the Kentucky law in legislation to amend the warehousing code.

Illinois

The Illinois Grain and Feed Association attempted to attach a bill to recently passed warehouse legislation that would have required bankers to notify grain buyers about existing liens (like the Kentucky law). The effort was not successful with the banking industry being the principal opposition. A task force comprised of representatives from bankers, Farm Bureau, Dept. of Agriculture and the Grain and Feed Association will soon meet to study the problem and make recommendations on solutions.

Kansas

Kansas Grain and Feed Association actively pursued a bill (S.B.614) requiring central filing of crop liens in the 1982 legislative session. This legislation was not passed, but a similar bill will be attempted in 1983. If central filing gains approval, information access could be a problem. The association is investigating the possibility of having a private firm to do the records search or possibly offering the service within the association. There is also growing interest in trying to get a bill passed that would delete the exception for farm products under the UCC.

Michigan

The grain industry in Michigan has been working to gain passage of central filing legislation for 4-5 years without success. Opposition to the proposal has come from PCA's and other lenders. However, this opposition may be weakening because the lenders are finding that farmers may favor such a system. The alternative is a system of "scandal sheets" listing all outstanding liens, and the farmers would prefer a system in which private business dealings were less open to the general public.

Minnesota

There was a recent meeting of terminal elevators to review alternative legislative changes for dealing with mortgaged grain issue and also to review what is most feasible politically. No final decision has been reached on the best approach. Both country elevator and terminal operators see increasing amounts of risk and the need for legislative changes to protect the grain buyer.

Montana

Currently liens are filed only at the county level. Montana Elevator Association has been considering legislation to establish central filing, but no formal proposal has been drafted. There may be an amendment offered to warehousing legislation in the next session to provide for lender notification of grain buyers, similar to the Kentucky provisions.

North Dakota

In the next legislative session, North Dakota Grain Dealers Association plans to have a bill introduced to delete the exception for farm products. Potential for passage is uncertain. There will be many new faces in the state legislature. It is also planned to have a central filing measure introduced as a backup bill in case the effort for deleting the exception for farm products fails. It is possible that the bankers could be in support of a central filing bill.

Ohio

For several years the Ohio legislature has been considering changing the warehouse law to establish a grain insurance fund to protect grain depositors in the event of elevator bankruptcy. In 1982 House Bill 770 was introduced that contained provisions for a grain insurance program to be funded by a checkoff program on all grain sold or delivered for storage to Ohio elevators. This bill passed the Ohio House. In the Senate's consideration of the measure, two amendments were added. One amendment establishes a central filing system for UCC liens on farm products at the Office of the Secretary of State. The second amendment would provide for partial reimbursement to grain elevators that lose money in cases where farmers default to lenders (\$500 deductible, with payments up to \$10,000 on any one loss; Over \$10,000 is covered at 80% of the loss). It is expected that the measure will go to conference after the November elections.

Oklahoma

Oklahoma Grain and Feed Association has investigated several options, but no legislation has passed. There is a problem with central filing because state offices do not have ready access to computer processing. The association is now investigating the possibility of a bill to delete the exception for farm products from the UCC, but expect stiff opposition from the banking lobby.

Southeast

On July 15-16 1982, the Southeastern Grain and Feed Association adopted a resolution that the Association should work with lenders filing liens on farmers' crops to set up a pilot program for voluntary central filing for the four state region (VA, NC, SC, GA). The pilot program is to be developed by a committee in the association in cooperation with lending organizations. There are efforts underway to obtain financing from filing fees charged to lenders and processing fees to be paid by those requesting lien information. Apparently there is some interest in voluntary cooperation from lenders because banks, PCA's and FmHA see such a system being useful to them in determining which farmers are attempting to sell grain without notifying the lender and to determine whether other lenders may also have outstanding liens on farm commodities. An outside firm will be hired to do the information collection and search procedures.

Texas

Texas Grain and Feed Association has attempted to have legislation passed and plans a serious effort for 1983. The industry would prefer a law requiring direct lender notification of grain buyers but is viewing a central filing system as a more realistic alternative for legislative passage.

Wisconsin

There is an ad hoc committee of agriculture and banking interests now reviewing possible solutions to the mortgaged grain problem. At the present time it is uncertain which direction the state will take.

1-19-83

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January 19, 1983



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

TO: Senate Committee on Judiciary

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before the Committee on SB 7 concerning the filing of Uniform Commercial Code financing statements involving farm products with the office of Secretary of State. The members of the Kansas Bankers Association wish to express their appreciation for the fine work done by the Special Committee on Judiciary during the summer on this very important issue.

The KBA supports the final recommendations of the Special Committee concerning UCC financing statements and requests that SB 7 be passed by the 1983 session of the Kansas legislature. We agree with the Committee that this legislation would be a major step toward alleviating confusion over the proper filing location for financing statements involving "farm products" as defined under the Code. While it does not solve the issue which was raised in SB 615 of the 1982 session relating to the status of commercial feedlot cattle, it will certainly enhance the ability of the purchasers of feedlot cattle to quickly check as to whether there are any existing liens on the cattle. We also believe that the legislation will be of great benefit to grain elevators operators in checking for possible liens against grain.

In his testimony to the Special Committee in September KU law professor, Keith Meyer, pointed out several reasons why a central filing of UCC statements involving farm products is an improvement in the Code. He noted that "central filing, with a potential buyer having quick access to the file financing statements, should take care of most of the problems relating to purchases of farm products subject to a prior perfected security interest."

Kansas bankers are well aware that this is a complex issue and that such a change in the filing procedure cannot be accomplished quickly or without additional cost. We also strongly believe that in order for any type of a central filing process to work in the best interests of the creditors and debtors of Kansas that there must be ready and rapid access to the information contained in the financing statements. If such ready access is not available, then it would raise serious questions as to whether central filing would be a major improvement over the existing filing process. We, therefore, stand ready to work with the Secretary of State and the Registers of Deeds throughout Kansas to implement a reporting system which will be in the best interests of the Kansas citizenry.

Thank you once again for the opportunity to appear on SB 7 and we strongly urge favorable consideration on this bill by the Senate Judiciary Committee.

Atch. 4

1-19-83

6	7
Fiscal Note No.	Bill No.
1983 Session	
January 19, 1983	# 5

The Honorable Elwaine F. Pomeroy, Chairperson
 Committee on Judiciary
 Senate Chamber
 Third Floor, Statehouse

Dear Senator Pomeroy:

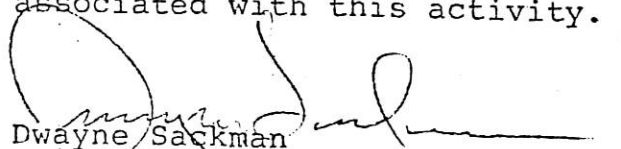
SUBJECT: Fiscal Note for Senate Bill No. 7 by Special
 Committee on Judiciary

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 7 is respectfully submitted to your committee.

Essentially, the subject act provides for centralized filings to perfect security interests in farm products. Other provisions relate to fees and immunity from liability for persons responding to inquiries concerning security interests in the affected farm product.

Though no information has been received from the Office of the Secretary of State concerning the potential cost of this bill if it is enacted, it is probably safe to estimate that the volume of filings in the Office of Secretary of State would increase substantially. Assuming that 57 percent of filings in county Register of Deeds offices relate to farm products (as was determined by a survey conducted by the Special Committee on Judiciary) and that of the total \$450,000 in reported fees collected by 80 counties approximately \$250,000 relates to farm products, then a very crude extrapolation would lead one to conclude that counties might forego at least \$200,000 and possibly as much as \$350,000 in annual revenue as a result of the passage of Senate Bill No. 7.

It is reasonable to assume that the Secretary of State would require additional resources (both personnel and services) to fulfill his obligations under the terms of Senate Bill No. 7, though the precise amounts cannot be predicted. At minimum, the activity may approximately double the size of the present Uniform Commercial Code program to 10.0 - 12.0 positions and \$260,000 in total expenditures. Since the act provides for the activity in the Office of the Secretary of State to be self-supporting through fee collection, receipts to the State General Fund would probably offset whatever costs are associated with this activity.


 Dwayne Sackman
 Principal Budget Analyst
 For the Director of the Budget

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1-19-83
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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 19, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 83 - 5

Arden Ensley
Revisor of Statutes
Office of Revisor of Statutes
Third Floor, Statehouse
Topeka, Kansas 66612

Re: Uniform Commerical Code--Secured Transactions--
Filing; Immunity of Public Officials

Synopsis: As introduced, 1983 Senate Bill No. 7 would amend K.S.A. 84-9-407, relating to the release of information concerning financing statements on file, so as to grant immunity to public officials from damages resulting from their negligence in releasing such information. Such a grant of immunity is permissible under the Kansas and United States Constitutions, and would act as an amendment by implication to the Kansas Tort Claims Act, K.S.A. 1981 Supp. 75-6101 et seq. Cited herein: K.S.A. 46-901 (repealed by L. 1979, ch. 186), K.S.A. 1981 Supp. 75-601, 75-6103, 75-6104, K.S.A. 84-9-401, 84-9-407, Kan. Const., Bill of Rights, §18, U. S. Const., Amend. XIV, L. 1981, ch. 357, L. 1981, ch. 358, 1983 Senate Bill No. 7.

* * *

Dear Mr. Ensley:

As Revisor of Statutes, you request the opinion of this office concerning the constitutionality of a provision contained in 1983 Senate Bill No. 7. At the request of State Senator Neil Arasmith, you inquire whether Section 4(3), which provides a

Atch. 6

limited form of immunity to certain public officials in the performance of specified duties, is constitutional. While you do not so specify, we presume that you refer to the question of whether such a statute would impermissibly grant immunity from suit in contravention of the principles of equal protection or due process under either the United States or Kansas Constitutions.

The provision in question is contained in a section of the bill which amends K.S.A. 84-9-407. That statute, contained in the Kansas Uniform Commercial Code (UCC), concerns the release of information by public officials who are designated as filing officers by K.S.A. 84-9-401. These officials, which include the Kansas Secretary of State and county registers of deeds, are required by K.S.A. 84-9-407(2) to release, upon request, information relating to any financing statements or statements of assignment which are currently on file that name a specific debtor. This duty is left intact by Section 4 of the bill, with subsection (3) limiting an official's liability for providing incorrect information. There, it is stated:

"Except with respect to willful misconduct, the state, counties and filing officers, and their employees and agents, are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this subsection."

An exploration of the history of governmental immunity, as well as other forms of immunity, would properly be the subject of an extensive work or treatise, and is not necessary or possible here. A concise history of two types of immunity (governmental and charitable) is found in the decision of Brown v. Wichita State University, 219 Kan. 2 (1976), commonly known as Brown II. In reversing a portion of the first Brown decision [217 Kan. 279 (1975)], the Brown II holding determined that the Kansas Legislature could, if it desired, establish governmental immunity by statute following the abrogation by the court of judicially imposed governmental immunity. Further, even if the grant of immunity was a blanket one, without exceptions, the court found that no provision of the Kansas Bill of Rights, the Fourteenth Amendment to the U.S. Constitution or any other constitutional provision was offended thereby. 219 Kan. at 9. However, such was not the case with charitable immunity, which was held once again to be violative of Section 18 of the Kansas Bill of Rights. Id. at 10. (See also Attorney General Opinion No. 81-87.)

In 1979 the legislature acted to reduce the degree of governmental immunity previously established by the statutes upheld in Brown II, i.e., K.S.A. 46-901 et seq. (repealed L. 1979, ch. 186). This change was motivated in part by further judicial limitations

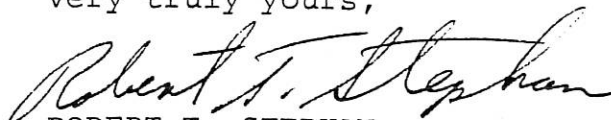
on the governmental immunity concept, most notably Flax v. Kansas Turnpike Authority, 226 Kan. 1 (1979), where K.S.A. 46-901 was held unconstitutional as applied to the Kansas Turnpike Authority. The legislature's response, the Kansas Tort Claims Act, K.S.A. 1981 Supp. 75-6101 et seq., made liability the rule and immunity the exception for negligent or tortious conduct by government officers or employees acting within the scope of their employ. K.S.A. 1981 Supp. 75-6103. Accordingly, unless other provisions of the Act were determined to be applicable to a particular case, officers filing UCC documents are subject to liability for their conduct when such results in damage or injury.

Exceptions to the general liability rule are found at K.S.A. 1981 Supp. 75-6104, which consists of a list of 17 different functions or activities for which governmental immunity has been reimposed. While legislative functions, judicial functions and discretionary functions are but a few of the areas exempted from the general liability created by the Act, no subsection would appear to presently limit the liability of filing officers. However, in our opinion nothing prevents the Legislature from so acting, as it has previously acted in creating the exceptions initially and in subsequent amendments. See, e.g., L. 1981, ch. 357 (injuries to a firemen's relief association member, abandoned cemeteries taken over by municipality), L. 1981, ch. 358 (minimum maintenance roads).

It would further be our opinion that, in light of the above, some revision of the bill as it presently reads would be desirable. While the bill proposes to amend only statutes contained in the UCC, the clear effect is to create another exception to the Tort Claims Act. While the result would be valid as it now reads, an amendment by implication would be created to the Act. As such indirect amendments are not favored by the law, perhaps because of their failure to provide clear notice of the change [State v. Rural High School Dist. No. 4, 126 Kan. 166 (1928)], a reference to the change should also be made at K.S.A. 1981 Supp. 75-6104.

In conclusion, 1983 Senate Bill No. 7 would amend K.S.A. 84-9-407, relating to the release of information concerning financing statements on file, so as to grant immunity to public officials from damages resulting from their negligence in releasing such information. Such a grant of immunity is permissible under the Kansas and United States Constitutions, and would act as an amendment by implication to the Kansas Tort Claims Act, K.S.A. 1981 Supp. 75-6101 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General



1-19-83
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STATE OF KANSAS
Secretary of State

CAPITOL

JACK H. BRIER
SECRETARY OF STATE

PHONE (913) 296-2236
TOPEKA, KANSAS 66612

January 19, 1983

The Honorable Elwaine Pomeroy
Room 143-N, State Capitol
Topeka, Kansas 66612

RE: SB 7 Filing of Security Interests

Dear Mr. Chairman:

The Uniform Commercial Code, which has been adopted in 49 of the 50 states is the body of law which controls transactions secured by certain personal property. Accompanying the U.C.C. is the requirement that for certain security interests to be perfected, a public notice type filing be made. Prior to the U.C.C. Chattel Mortgage Acts, the Uniform Conditional Sales Act and other conditional sales legislation, the geographical unit for filing or recording was local: the county or township in which the mortgage or vendee resided or in which the goods sold or mortgaged were kept. The Uniform Trust Receipts Act used the state as the geographical filing unit: under that Act statements of trust receipt financing were filed with an official in the State Capitol and were not filed locally. The state-wide filing system of the Trust Receipts Act has been followed in many accounts receivable and factor lien acts.

To quote from the official U.C.C. Comments about Section 401 of Article 9:

Both systems have their advocates and both their own advantages and drawbacks. The principal advantage of state-wide filing is ease of access to the credit information which the files exist to provide. Consider for example the national distributor who wishes to have current information about the credit standing of the thousands of persons he sells to on credit. The more completely the files are centralized on a state-wide basis, the easier and cheaper it becomes to procure credit information; the more the files are scattered in local filing units, the more burdensome and costly. On the other hand, it can be said that more credit inquiries about local businesses, farmers and consumers come from local sources; convenience is served by having the files locally available and there is not great advantage in centralized filing.

This section does not attempt to resolve the controversy between the advocates of a completely centralized state-wide filing system and those of a large degree of local autonomy. Instead the section is drafted in a series of alternatives; local considerations of policy will determine the choice to be made.

Atch. 7

The Uniform Commissioners, recognized that each jurisdiction might have a different set of competing interests, suggested three different drafts of subsection 1 of what is from K.S.A. 9-401.

Kansas adopted the second alternative, where consumer goods, farm products and other agricultural filings were retained at a local level.

According to Uniform Laws Annotated only seven states adopted the first alternative subsection, which requires truly central filing: Connecticut, Georgia, Iowa, Maine, Oregon, Utah and Washington. At least twenty-eight states adopted one of the other subsections which requires a local filing for farm products, consumer goods and certain other collateral.

The Kansas Uniform Commercial Code was adopted in 1965 and took effect on January 1, 1966. The recent experience of the workload of the department is demonstrated by the following chart:

	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>
Financing Statements (U.C.C. 1)	24,729	26,047	28,789	32,000
Other Filings	15,846	18,728	18,507	20,300
Information Requests	8,571	9,809	10,798	12,500
Revenues	177,990	174,009	192,213	200,000
Expenditures	171,787	121,270	100,832	138,750

IMPACT OF CENTRALIZED FARM PRODUCT FILINGS

As been mentioned, currently farm products, agricultural equipment, and livestock loans are filed locally. To determine the number of filings that might be made centrally in Kansas, the Kansas Legislative Research Department conducted a survey of the County Register of Deeds. According to that survey almost 60% of 147,000 of the filings made in 1981 were farm related.

Another gauge of the impact of centralized filing may be gleaned from the State of Iowa. Iowa, like Kansas, had decentralized filing until 1974. In the last fiscal year the Iowa Secretary of State had approximately 142,000 financing statements filed.

Our estimates are that 100,000 to 120,000 additional financing statements could be expected in Kansas in FY 84. Approximately 50,000 to 60,000 amendments, continuations, determinations and other subsequent filings could be expected. Approximately 60,000 to 70,000 information requests could also be expected.

INFORMATION REQUESTS UNDER THE U.C.C.

The purpose of the existence of the U.C.C. is for creditors and potential creditors to have the ability to find out about potential security interests for a particular debtor. Information requests are handled slightly differently from jurisdiction to jurisdiction, but made by broadly classified into two types.

- 1) Information only. When this type of request is made, a search of the files for a particular debtor is made and information is returned about financing statements and other documents found relating to that debtor. This information is limited to file number, time and date of filing and secured party name and address. The statutory cost for this information request is \$3.00 plus 25¢ for each listing found.
- 2) Photocopy request. In addition to the above information, the original filings can be photocopied to reveal with particularity the exact wording of the collateral statement and attachments. This information is provided for \$1.00 per page of information copied.

Providing this information is the heart of the system. This office performed 10,798 information requests in FY 82, and it is estimated that 12,500 will be performed in FY 83. Based on the Legislative Research Memorandum and the experience in Iowa, it is estimated that 60,000 to 70,000 information searches would be performed in the centralized environment. In FY 82, Iowa received 87,000 information requests. In the first 6 months of FY 83, they have already provided 85,000 information searches, many of which were requested by the U.S. Department of Agriculture for the processing of crop loans. Unfortunately, these requests are not evenly distributed as to time. In Iowa over 30,000 information requests, were performed in December 1982, which is close to three times the number processed by our office in the entire year.

Currently, the Kansas Secretary of State provides certified information to secured parties normally with a one-day service. If the information request is mailed, additional time must be added for the postal service between the requestor and Topeka. The level of activity is reasonably constant from month to month without major seasonal fluctuations. The experience in Iowa unfortunately demonstrates that the farm related activity, both filing and information requests, is highly seasonal. Both reach their peak in the months of November, December and January.

The dissemination of information is the essence of the U.C.C. filing system. The proponents of S.B. 7 contemplate that thousands of filings will be transferred to Topeka and that therefore warranty information will be available instantaneously over the phone. This office has consistently maintained that such a result is not possible or feasible and ignores the content and historical purpose of the U.C.C. files.

At the request of the proponents, we suggest an alternative to assist with the turnaround time in a centralized system. I would suggest the following alternative.

By placing telecopier equipment in county register of deeds offices, it would be possible for an inquiry to be telecopied back to the county to speed the search process. This would eliminate the normal mail time to and from Topeka.

A fee could be charged by the county for this service. Part of the fee could then be transferred to the Secretary of State. With a proper fee structure, the county could recover the cost of the telecopier as well to be compensated partially for the loss of fees that would occur through centralization, as well as being compensated for their service. This equipment costs between \$1,000 and \$1,500.

FISCAL IMPACT

The fiscal impact upon this agency of centralization based on the proposed bill is significant and would require general fund appropriations in excess of the currently recommended budget for FY 84.

Expenditures for FY 84 would reflect an additional 7.5 full time positions and additional seasonal assistance to assist with the peak load months. This would bring the department up to an authorized level of 13.5 full time positions. As additional filings are received, additional computer processor and disk storage would be required to handle the increased volume. Because of the exponential growth of the centralized filing, the capacity of the agencies System/34 would be exceeded. At the current estimates for future activity the agency would be required to upgrade to a System/38 or acquire an additional System/34 during late FY 85.

Also included in FY 1984 expenditures are system analyst fees associated with programming the System/34 to communicate to an intelligent microfilm reader/printer. This will assist in the retrieval time required for a record search.

One time expenditures in FY 84 for capital outlay include three computer terminals and office equipment for the additional personnel.

Assuming a July 1, 1983 implementation date, the following fiscal impact is estimated by this office for FY 84.

Revenues (State General Fund)

Financing Statements	\$330,000
Other Filings	90,000
Information Searches	<u>210,000</u>
Total Revenue	\$630,000

Expenditures (State General Fund)

<u>Object</u>		
100's	Salaries and Wages	\$107,790
200	Communication and Postage	37,440
230	Computer Rents	14,410
240	Maintenance	360
260	Microfilm Processing	5,410
270	System Analyst Fees	5,000
370	Office Supplies	3,100
400	Computer Terminals	9,900
400	Furniture and Equipment	<u>2,950</u>
	Total Expenditures	183,360

PROBLEMS WITH S.B. 7

It must be noted that there are certain technical problems with centralizing currently existing security agreements which may exist in a number of counties. The best example of a state which has experience with those problems is Iowa which passed legislation to centralize their files in 1974. To remedy the technical problems, Iowa found it necessary to enact a number of sections of new laws. (Iowa Code § 544.11101 (1982)). The new law created a new "transition filing" which was designed to transfer multiple county filings to the central files and give the filing officer guidance as to how to maintain the priority of those filings and how those filings may be continued. 1983 SB 7 as drafted does not address those problems, which are numerous and significant.

Finally, it should be noted that the focus of SB 7 is a significant philosophical change in the purpose underlying the U.C.C. public filing requirement. The U.C.C. files were designed to be utilized primarily as an information interchange between secured parties about potential security interests. The proponents of centralized filing desire to use it as a source of warranty information of farm products. Those familiar with the potential complexities of financing statements understand that assurances of warranty or of good title can not be made from inspections of the U.C.C. files.

Sincerely yours,



Jon Jossierand
Assistant Secretary of State

JJ:ds