

Approved 2/20/85
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by REPRESENTATIVE JOE KNOPP at
Chairperson

3:30 ~~am~~/p.m. on February 4, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Cloud, Duncan, Fuller and Vancrum were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statute's Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Karen McClain, Director of Governmental Affairs for the Kansas Association
of Realtors
Representative David Heinemann
John Wine, Legal Counsel in the Secretary of State's Office
Representative Tom Walker
Jerry Hanna, Social and Rehabilitation Services
Peter Rein, Chief Attorney in the Social and Rehabilitation Services' Office

Karen McClain, Director of Governmental Affairs for the Kansas Association of Realtors, requested a bill be introduced concerning the existing mechanics lien laws as they relate to real estate. Her testimony is Attachment No. 1.

It was moved by Representative Buehler and seconded by Representative Walker that this bill be drafted and introduced as a committee bill. The motion carried.

HB 2038 - Concerning farm tenancies; relating to termination of tenancy.

Representative Heinemann stated that this bill needed a clarifying amendment which is shown in Attachment No. 2. He said that the new subsection (c) was added and the old subsection (c) became subsection (d).

HB 2039 - Amending the uniform commercial code; relating to priority of certain security interests.

Representative Heinemann stated that Attachment No. 3 shows the clarifying amendments requested in this bill. Attachment No. 4 states changes in HB 2103 as related to HB 2039 and was presented by John Wine, Legal Counsel in the Secretary of State's Office.

HB 2043 - Concerning probate proceedings; relating to notice of sale of personal property.

Representative Walker made statements concerning this bill as shown in Attachment No. 5.

HB 2065 - Concerning state institutions for the mentally retarded; relating to confidentiality of records.

Jerry Hanna, Social and Rehabilitation Services presented statement on this bill as shown in Attachment No. 6. Peter Rein, Chief Attorney at SRS answered questions asked by the committee.

Vice Chairman Wunsch announced that final action would be taken on the first three bills discussed today, HB's 2038, 2039 and 2043, on Wednesday.

The meeting was adjourned at 4:05 p.m.

TESTIMONY BEFORE
THE HOUSE JUDICIARY COMMITTEE
FEBRUARY 4, 1985

BY

KAREN MCCLAIN

KANSAS ASSOCIATION OF REALTORS®

MR. CHAIRMAN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE.

MY NAME IS KAREN MCCLAIN, DIRECTOR OF GOVERNMENTAL AFFAIRS FOR THE KANSAS ASSOCIATION OF REALTORS®.

I'D LIKE TO THANK YOU FOR THIS OPPORTUNITY TO SPEAK TO YOU TODAY. I AM HERE TO REQUEST THIS COMMITTEE TO INTRODUCE A PIECE OF LEGISLATION WHICH WILL IMPACT UPON THE INTERESTS OF HOMEBUYERS ACROSS THE STATE.

THE BILL WHICH I AM PROPOSING WOULD CHANGE THE EXISTING MECHANICS LIEN LAWS AS THEY RELATE TO REAL ESTATE. THE CURRENT LAW ALLOWS EITHER THREE OR FOUR MONTHS TO FILE A LIEN AGAINST REAL ESTATE, DEPENDING UPON THE PRIORITY OF THE CONTRACTOR FILING THE LIEN. (K.S.A. 60-1102, 60-1103)

A PROBLEM ARISES WHEN A PERSON BUYS SAY, A NEW HOME IN A DEVELOPMENT PROJECT. HE PICKS OUT THE NEW HOME, SIGNS THE SALES CONTRACT, ARRANGES FOR THE MORTGAGE, (OR PAYS OUT, CASH WHATEVER THE CASE MAY BE) THE DEED IS SIGNED AND RECORDED AND THE NEW HOMEOWNER MOVES IN. EVERYTHING IS FINE, RIGHT? ONE DAY WHEN THE NEW HOMEOWNER IS SITTING IN FRONT OF HIS COZY NEW FIREPLACE HE IS NOTIFIED THAT ONE OF THE SUBCONTRACTORS WHO HELPED TO BUILD HIS NEW CASTLE HASN'T GOTTEN PAID BY THE DEVELOPER FOR THE WORK HE DID. THE BUILDER HAS NOW EITHER GONE BROKE OR SKIPPED TOWN ,AND SO IN ORDER TO GET PAID FOR HIS WORK, THE SUBCONTRACTOR HAS FILED A MECHANICS LIEN FOR THE AMOUNT DUE ON THE HOMEOWNERS CASTLE. THE AMOUNT OF THESE LIENS CAN RUN AS HIGH AS 50 TO 60% OF THE COST OF THE HOME, DEPENDING ON HOW MUCH THE BUILDER WAS IN TROUBLE BEFORE GOING BROKE.

BY LAW, THE NEW HOMEOWNER WHO ONE, HAD NOTHING TO DO WITH CONTRACTING WITH THE SUBCONTRACTOR, AND TWO, WAS GIVEN ASSURANCES BY THE BUILDER THAT EVERYTHING WAS PAID FOR, NOW HAS A GIANT LIEN AGAINST HIS PROPERTY WITH NO CHANCE OF RECOURSE AGAINST THE BUILDER BECAUSE THE DEVELOPER HAS EITHER SKIPPED TOWN OR GONE BANKRUPT. SOMEHOW, THE NEW CASTLE ISN'T WHAT HE THOUGHT IT WAS WHEN HE BOUGHT IT.

THE BILL WHICH WE ARE ASKING THE COMMITTEE TO INTRODUCE WOULD PROVIDE THAT THE RIGHT TO FILE A MECHANICS LIEN AGAINST REAL ESTATE TERMINATES UPON PASSAGE OF TITLE TO A BONA FIDE PURCHASER FOR VALUE. THIS LAW WOULD PROVIDE ASSURANCES THAT ANY LIENS EXISTING AT THE TIME OF CLOSING CAN BE TAKEN CARE OF AT CLOSING. THERE WOULD BE NO SURPRISES THREE OR FOUR MONTHS DOWN THE LINE WHILE THE NEW HOMEOWNER SITS IN FRONT OF HIS FIREPLACE.

THE PROPOSED LAW WOULD NOT DENY THE RIGHT OF THE SUBCONTRACTOR TO FILE A LIEN IF HE HAS NOT BEEN PAID WHAT IS DUE HIM. IT WOULD ONLY REQUIRE THAT THE LIEN BE FILED UP FRONT, BEFORE THE TIME OF CLOSING SO THAT EVERYONE--THE TITLE COMPANY, THE LENDING INSTITUTION AND MOST IMPORTANT, THE HOMEBUYER KNOWS AT THE TIME THE DEED IS RECORDED WHO EXACTLY HAS RIGHTS AGAINST THE PROPERTY, SO THAT THE INNOCENT PURCHASER IS NOT HIT THREE OR FOUR MONTHS LATER WITH BILLS UNPAID BY THE BUILDER.

THIS PROPOSAL WAS DEVELOPED IN CONCURRENCE WITH THE HOME BUILDERS ASSOCIATION OF KANSAS, THE LAND TITLE ASSOCIATION AND THE KANSAS LEAGUE OF SAVINGS INSTITUTIONS.

I CAN ANSWER QUESTIONS IF YOU HAVE THEM. JOHN DOZIER, EXECUTIVE VICE PRESIDENT OF THE COLUMBIAN NATIONAL TITLE INSURANCE COMPANY AND MEMBER OF THE LEGISLATIVE COMMITTEE OF THE KANSAS LAND TITLE ASSOCIATION IS ALSO HERE AND AVAILABLE FOR QUESTIONS.

estate mortgaged is located. Where the estate of such deceased has not been administered upon, or where the estate of such deceased has been administered and settled and the executor or administrator discharged, such assignment or release may be made by the heirs at law or legatee of such deceased mortgagee or assignee, and competent evidence must be furnished by them of the fact.

(c) Where the mortgagee or assignee of record is a firm or partnership, such mortgage shall be assigned or discharged by an instrument acknowledging the assignment or satisfaction of such mortgage as hereinbefore provided. Such instrument shall be signed either by each member of the firm or partnership, or by the firm or partnership, or by the firm or partnership by one of the members thereof.

(d) Any mortgage which, prior to July 1, 1977, has been released by a notation on the original mortgage instrument and signed by the mortgagee or the mortgagee's duly authorized attorney in fact, assignee of record or personal representative may be recorded in the office of the register of deeds of the county where the mortgaged property is located. When recorded, such release shall have the same force and effect as mortgages discharged in accordance with subsection (a).

Sec. 2. K.S.A. 1978 Supp. 58-2306 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 30, 1979.

CHAPTER 175

Substitute for House Bill No. 2232

AN ACT concerning farm tenancies; relating to terminating the tenancy for fall seeded grain crop; amending K.S.A. 1978 Supp. 58-2506 and repealing the existing section.

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

Section 1. K.S.A. 1978 Supp. 58-2506 is hereby amended to read as follows: 58-2506. (a) Except as may be otherwise provided by this section or by a written lease signed by the parties thereto, in cases of tenants occupying and cultivating farms the notice to terminate such a farm tenancy must be given in writing at least thirty (30) days prior to the first day of March and must fix the termination of the tenancy to take place on the first day of March.

(b) When a notice of termination is given pursuant to subsection (a) after a fall seeded grain crop has been planted, as to that part of the farm which is planted to a fall seeded grain crop on

cropland which has been prepared in conformance with normal practices in the area, the notice shall be construed as fixing the termination of the tenancy of such portion to take place on the day following the last day of harvesting such crop or crops, or August 1, whichever comes first.

(c) When a termination of notice is given pursuant to subsection (a) after the thirtieth day preceding March 1 and prior to the planting of a fall seeded grain crop on cropland which has been prepared in conformance with normal practices in the area, in any year in which a fall seeded grain crop has been or will be harvested, the notice shall be construed as fixing the termination of the tenancy of that part of the farm devoted to fall seeded grain crops on the day following the last day of harvesting such crop or crops in the succeeding year or August 1 of such succeeding year, whichever comes first.

(e) (d) Subject to the provisions of subsection (b) and (c), a farm tenant becomes a tenant from year to year by occupying the premises after the expiration of the term fixed in a written lease, in which case the notice of termination of tenancy must fix the termination of tenancy to take place on the same day of the same month following the service of the notice as the day and month of termination fixed in the original lease under which said tenant first occupied the premises. Such notice shall be written and given to the tenant at least thirty (30) days prior to such termination date.

Sec. 2. K.S.A. 1978 Supp. 58-2506 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 1979.

CHAPTER 176

Senate Bill No. 203

AN ACT amending the Kansas real estate brokers license act, relating to examination for licensure as a broker or salesman, amending K.S.A. 58-3007 and K.S.A. 1978 Supp. 58-3008 and 58-3014 and repealing the existing sections.

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

Section 1. K.S.A. 1978 Supp. 58-3014 is hereby amended to read as follows: 58-3014. (a) To pay the expense of the maintenance and operation of the office of the Kansas real estate commission and the enforcement of this act, the commission shall, at the time application for license is submitted, collect from each applicant for a broker's license a fee of fifteen dollars (\$15) for the

UNIFORM COMMERCIAL CODE

CHAPTER 383

House Bill No. 2490

AN ACT amending the uniform commercial code; relating to priority over unperfected security interests; amending K.S.A. 84-9-301 and repealing the existing section.

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

Section 1. K.S.A. 84-9-301 is hereby amended to read as follows: 84-9-301. (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) Persons entitled to priority under ~~section~~ K.S.A. 84-9-312, *and amendments thereto*;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that ~~he~~ *such buyer* gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that ~~he~~ *such person* gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ~~ten (10)~~ 20 days after the debtor receives possession of the collateral, ~~he~~ *the secured party* takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before ~~he~~ *such person* becomes a lien creditor or within ~~forty five (45)~~ 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

Attachment No. 3
House Judiciary
February 4, 1985

M E M O R A N D U M

To: Representative David Heinemann
From: Jon Josserand, Special Assistant Secretary of State
Date: February 4, 1985

Re: HB 2103 - Uniform Commercial Code

Section two of HB 2103 contains conforming language to make K.S.A. 84-9-407 conform with K.S.A. 84-9-411 and 84-9-412.

Because this amendment is a "conforming" amendment, we thought it was similar to the conforming amendment necessary in 84-9-312. As you know, the 1984 HB 2490 was enacted to change the purchase money security interest filing period from 10 to 20 days but but inadvertently missed amending one section of law.

When the 1983 Legislature enacted Substitute for Senate Bill 7 (commonly referred to as "central filing"), language was placed in the bill to specify the liability of the state and county filing offices. While this language was placed in two sections of SB 7, it appears that one section was inadvertently missed.

The language contained starting at line 118 in HB 2103 is identical to language which is currently contained in 84-9-411 and 84-9-412 which are adjacent to 84-9-407 and which also pertain to information requests performed under the U.C.C. We do not believe this is a policy question but is one of conforming the language of the various sections.

Attachment No. 4
House Judiciary
February 4, 1985

THOMAS F. WALKER
REPRESENTATIVE, SEVENTY-SECOND DISTRICT
15 CIRCLE DRIVE
NEWTON, KANSAS 67114



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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: GOVERNMENTAL ORGANIZATION
FEDERAL AND STATE AFFAIRS
JUDICIARY

Testimony by Thomas F. Walker

HB 2043 grows out of a discrepancy in the law that a lawyer in Newton noted when he researched the correct way to advertize and sell personal property at a public sale by the personal representative in an estate. K.S.A. 59-2243 requires that notice shall be given for public sale of personal property by --" a notice containing a description of the property to be sold, an stating the time, terms, and place of sale by publication for ten days in some newspaper, authorized to publish legal notices, of the county where the sale is to be had."

This places an onerous burden (if not impossible) on these types of sales. It is also a higher burden than that required for real estate. HB 2043 would simply conform personal property sales with real estate sales.

Note: the bill was amended in committee to require only one publication.

Attachment No. 5
House Judiciary
February 4, 1985

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding H.B. 2065

1. Title - This bill concerns the privilege pertaining to records of residents and former residents of state institutions for the mentally retarded; amending K.S.A. (1984 Session Laws) Chapter 339 or H.B. 2697.
2. Purpose - The purpose of this bill is to grant a privilege from disclosure with certain exceptions for records maintained on behalf of residents and former residents of state institutions for the mentally retarded.
3. Background - The 1984 Kansas Legislature passed a new comprehensive act concerning state institutions for the mentally retarded by enacting H.B. 2697, K.S.A. (1984 Session Laws), Chapter 339. The act did not have any specific regulations concerning the confidentiality or privilege status of records maintained by such institutions. The care and treatment act for mentally ill persons (K.S.A. 59-2901, et. seq.) has specific regulations concerning the privilege status of treatment records pursuant to the provisions of K.S.A. 59-2931. Records maintained by state institutions for the mentally retarded should enjoy the same or similar privilege as those afforded to psychiatric patients.
4. Effect of Passage - The passage of this bill would grant a specific privilege for records maintained on behalf of residents or former residents of state institutions for the mentally retarded. If the bill is not passed, the status to be afforded such records would be extremely unclear, and would result in falling back upon specific provider privileges such as the physician/patient privilege (K.S.A. 60-427), social work privilege (K.S.A. 75-5360), and psychologist privilege (K.S.A. 74-5323). It does not seem fair to provide different privileges depending upon what type of professional actually provided services.
5. SRS Recommendation - The department supports the bill because records of residents and former residents at state institutions for the mentally retarded should enjoy a privilege similar to that which is afforded to psychiatric patients in state psychiatric hospitals, and to avoid unnecessary difficulty associated with applying specific provider privileges to resident records.

Robert C. Harder
Secretary
Social and Rehabilitation Services
296-3271

February 4, 1985

Attachment No. 6
House Judiciary
February 4, 1985