

MINUTES OF THE SenateSub COMMITTEE ON SB 289The meeting was called to order by Senator Arasmith at _____
Chairperson3:35 ~~XXX~~ p.m. on March 4, 1985 in room 529-S of the Capitol.All members were present ~~except~~

Committee staff present: Raney Gilliland, Research Department

Conferees appearing before the committee:

Dee Likes, Kansas Livestock Association
John Blythe, Kansas Farm Bureau
Tom Tunnell, Kansas Grain and Feed Dealers
Association
Gerald Riley, Kansas Association of Wheat
Growers
Rebecca Crenshaw, Committee of Kansas Farm
Organizations
Jim Maag, Kansas Bankers' Association

Senator Arasmith, Chairman, called the Agriculture Subcommittee on SB 289 to order at 3:35 p.m. Senators Gannon and Montgomery and Raney Gilliland were present.

Senator Arasmith turned the meeting over to Dee Likes of Kansas Livestock Association.

Mr. Likes discussed some of the feelings and positions as they now stand on SB 289. He stated that farm organizations feel if a seller diverts the proceeds of a sale and puts that money to other uses and fails to pay off a loan the lender may still go back to the buyer and require that the buyer pay again for those same products. The farm groups feel that is a basic inequity in the law and that it ought to be changed. "We and other ag groups have met with the bankers association on numerous occasions and attempted to work out some kind of an agreeable compromise; basically we start from a position of wanting clear title. So we have met and worked in the area of prior notification. We have worked in the area of prior notice thinking that if we formalize a system defined to a prior notice put into the code that a lender must request a list from the borrower at the time a loan is made of the most likely places for those products to be sold; require the lender to furnish that list to the potential buyers and then put into the code that a debtor could still sell to someone that is not on the list as long as they apply the proceeds to the note in 15 days." Mr. Likes distributed copies of their suggested draft that is the basic concept they have been working on. (see attachment A). Mr. Likes stated the major disagreement they have is that they want the people who do not receive prior notice to get clear title.

John Blythe, Kansas Farm Buteau, spoke next. Mr. Blythe stated he felt Mr. Likes had given a good description of what agricultural groups would like to see in a compromise. He also stated that a lot of farmers felt that agriculture should be able to receive good clear title same as anybody else.

Tom Tunnell, Kansas Grain and Feed Dealers Association, was the next speaker. He stated one problem with the compromise to be: Who is responsible for the person who intentionally circumvents the system that is outlined in the prior notice - who is responsible the buyer or the lender?

CONTINUATION SHEET

MINUTES OF THE SENATE SUBCOMMITTEE ON SB 389
room 529-S, Statehouse, at 3:35 ~~am~~ p.m. on March 4, 1985

Gerald Riley, Wheat Growers Association, reported he felt his organization could live with the compromise that Mr. Likes presented to the subcommittee.

Rebecca Crenshaw, Kansas Farm Organizations, stated the organization she represented voted to support the concept of clear title and support the draft that Mr. Likes presented.

Jim Maag, Kansas Bankers' Association, spoke next. He stated: "It is the people at the point of sale who are really in a position to find out whether a lien exists. The prior notification approach seemed to be the one area where he had the most agreement. The one big area we feel there is still a difference on is what happens when the debtor sells someplace other than the places he had listed he was going to sell on his listing at the bank. There is a need to add one sentence to subsection A which requires specifically that once the bank has the list from the debtor then they must then forward that to each one of the parties listed. The rationale for the sunset date is good." (see attachment B).

Senator Arasmith summarized with these statements:

All agree on the 'notice portion'.

All agree on the 'sunset'.

All are not in agreement on that situation about a person who sells someplace other than where he had listed.

There are still differences concerning when a 'lender shall submit a notice to the potential buyers that are listed on the list'.

Senator Arasmith thanked all and stated the full subcommittee would get together as soon as possible so that a recommendation could be made to the full committee.

Meeting adjourned at 4:35 p.m.

See
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S.B. 289

BILL NO. _____

By

AN ACT

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

Section 1. K.S.A. 84-9-307 is hereby amended to read as follows: 84-9-307. (1) A buyer in ordinary course of business (subsection (9) of section 84-1-201) ~~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-purposes-of-this-section-only, "farm-products" does-not-include-milk, cream-and-eggs.~~

The following apply whenever a person is buying farm products from a person engaged in farming operations who has created a security interest on the farm products:

(a) A person buying farm products in the ordinary course of business from a person engaged in farming operations or agricultural endeavors is not protected by this subsection if he has received prior written notice of the security interest. "Written notice" means notice on a form prescribed by the secretary of state and containing the following:

- (i) The full name and address of the debtor;
- (ii) the full name and address of the secured party;
- (iii) a description of the collateral;
- (iv) the date and location of the filing of the security interest;
- (v) the date and signature of the secured party;
- (vi) the date and signature of the debtor.

A notice expires 12 months after the date the secured party signs the notice or at the time the debt that appears on the notice is satisfied, whichever occurs first. Notice must be

attachment A
3/4/85

received before a buyer of farm products has made full payment to the person engaged in farming operations for the farm products if the notice is to be considered "prior written notice."

(b) If requested by the debtor, a secured party shall within 15 days of the satisfaction of the debt inform a buyer in writing whenever a debt has been satisfied and written notice, as required by subdivision (a), had been previously sent to that buyer.

(c) A debtor engaged in farming operations or agricultural endeavors who has created a security interest in farm products must provide the secured party with a written list of potential buyers of the farm products at the time the debt is incurred and such a list shall be requested by the secured party. The debtor may not sell farm products to a buyer who does not appear on the list (if the list is requested by the secured party) unless the secured party has given prior written permission to the debtor to sell to someone who does not appear on the list, or the debtor satisfies the debt for that secured party on the farm products he sells within 15 days of the date of sale. A debtor who knowingly or intentionally sells to a buyer who does not appear on the list (if the list is requested by the secured party) and who does not meet the exceptions commits a class C misdemeanor. A secured party commits a class C infraction if he knowingly or intentionally gives false or misleading information on the notice required by subdivision (a) or he fails within 15 days of satisfaction of the debt to notify purchasers to whom notice had been previously sent (under subdivision (a) of the satisfaction of the debt.

(d) A purchaser of farm products buying from a person engaged in farming operations or agricultural endeavors must issue a check for payment jointly to the debtor and those secured parties from whom he has received prior written notice of a security interest as provided for in subsection (a) except that in the case of livestock being purchased for slaughter, the purchaser of the livestock shall upon request issue an additional

separate check to the entity caring and feeding for such livestock for said feed and care. A purchaser of farm products (on which there is a perfected security interest) buying from a person engaged in farming operations or agricultural endeavors who withholds all or part of the proceeds of the sale from the seller, in order to satisfy a prior debt ("prior debt" does not include the costs of marketing the farm product or the cost of feed and care in the case of livestock or the cost of storage in the case of grain or the cost of transporting the farm product to the market) owed by the seller to the buyer, commits a class C infraction.

(e) A person buying farm products in the ordinary course of business from a person engaged in farming operations or agricultural endeavors takes free of a security interest created by the seller even though the security interest is perfected, unless the secured party has given written notice of his security interest to the buyer sent by registered or certified mail. Such notice shall contain the name and address of the seller, a statement generally identifying the farm products subject to the security interest, and an address of the secured party from which information concerning the security interest may be obtained.

(f) A commission merchant or selling agent who sells livestock or other farm products for others shall not be liable to the holder of a security interest in such livestock or other farm products, even though the security interest is perfected unless the secured party has given written notice as required in subdivision (2) of his security interest to such merchant or agent sent by registered or certified mail.

(2) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than ~~forty-five--(45)~~ 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the

expiration of the forty-five day period.

(3) The secretary of state shall prescribe a form to provide "written notice" as set forth in subsection 2 of this section.

Sec. 2. K.S.A. 84-9-307 is hereby repealed.

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

Handwritten notes in the top right corner: "Farm products 3/4/85" and "289".

Section 1. K.S.A. 84-9-307 is hereby amended to read as follows:

84-9-307. (1) Subject to subsection (2), a buyer in ordinary course of business (subsection (9) of section 84-1-902) 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 purposes of this section only, "farm products" does not include milk, cream and eggs.

(2) Whenever a buyer in the ordinary course of business buys farm products from a person engaged in farming operations who has created a security interest in the farm products:

(a) the buyer takes free of the security interest if the buyer has been listed pursuant to subsection (c) as a potential buyer and prior to making full payment the buyer has received and there is in effect written notice of the security interest. "Written notice" means notice in a form prescribed by the secretary of state, mailed by restricted mail to the buyer, containing the following information:

- (i) the name and address of the debtor;
- (ii) the name and address of the secured party;
- (iii) a description of the collateral;
- (iv) the date and location of the filing of any financing statement covering the collateral; and
- (v) the signature of the secured party and the date signed.

The description of collateral in the written notice is adequate if it satisfies the requirements for descriptions of collateral in financing statements.

Written notice is effective for twelve months following the date the secured party signs the written notice or until there is no outstanding secured obligation owed the secured party by the debtor, whichever occurs first.

(b) Within 15 days following written request by the debtor after there is no outstanding secured obligation, the secured party shall inform a buyer to whom written notice has been sent under subparagraph (a) of satisfaction of the obligation.

attachment B
3/4/85

(c) Whenever a security agreement is entered into covering farm products as collateral, the debtor shall provide the secured party with a written list of potential buyers of the farm products.

(d) The buyer shall make any check issued in payment payable jointly to the debtor and those secured parties from whom the buyer has received written notice as provided in subsection (a).

~~(2)~~ (3) A buyer other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than ~~forty-five (45)~~ 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the ~~forty-five~~ 45 day period.

(4) The secretary of state shall prescribe a form for providing written notice pursuant to (a) of subsection (2).

Sec. 2. On and after January 1, 1991, K.S.A. 84-9-307, as amended by section 1 of this act, shall be and is hereby amended to read as follows:

84-9-307. (1) Subject to subsection (2), A buyer in ordinary course of business (subsection (9) of section 84-1-902) 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 purposes of this section only, "farm products" does not include milk, cream and eggs.

~~(2) Whenever a buyer in the ordinary course of business buys farm products from a person engaged in farming operations who has created a security interest in the farm products:~~

~~(a) the buyer takes free of the security interest if the buyer has been listed pursuant to subsection (c) as a potential buyer and prior to making full payment the buyer has received and there is in effect written notice of the security interest. "Written notice" means notice in a form prescribed by the secretary of state, mailed by restricted mail to the buyer, containing the following information:~~

- ~~(i) the name and address of the debtor;~~
- ~~(ii) the name and address of the secured party;~~
- ~~(iii) a description of the collateral;~~
- ~~(iv) the date and location of the filing of any financing statement covering the collateral; and~~

~~(v) the signature of the secured party and the date signed.~~

~~The description of collateral in the written notice is adequate if it satisfies the requirements for descriptions of collateral in financing statements.~~

~~Written notice is effective for twelve months following the date the secured party signs the written notice or until there is no outstanding secured obligation owed the secured party by the debtor, whichever occurs first.~~

~~(b) Within 15 days following written request by the debtor after there is no outstanding secured obligation, the secured party shall inform a buyer to whom written notice has been sent under subparagraph (a) of satisfaction of the obligation.~~

~~(c) Whenever a security agreement is entered into covering farm products as collateral, the debtor shall provide the secured party with a written list of potential buyers of the farm products.~~

~~(d) The buyer shall make any check issued in payment payable jointly to the debtor and those secured parties from whom the buyer has received written notice as provided in subsection (a).~~

~~(3)(2) A buyer other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.~~

~~(4) The secretary of state shall prescribe a form for providing written notice pursuant to (a) of subsection (2).~~

Sec. 3. K.S.A. 84-9-307 is hereby repealed.

Sec. 4. On and after January 1, 1991, K.S.A. 84-9-307, as amended by section 1 of this act, shall be and is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after January 1, 1986 and its publication in the statute book.

SENATE AGRICULTURE COMMITTEE
SUBCOMMITTEE REPORT ON S.B. 289

Mr. Chairman, your Subcommittee on S.B. 289 makes the following report for consideration by the entire Committee. The Subcommittee recommends that S.B. 289 be amended so that a buyer of farm products takes free of any security interest if the buyer has been listed by the seller as a potential buyer and prior to making payment has received written notice of the security interest. The proposed amendment would outline the information to be included on the written notice, as provided by the Secretary of State. The written notice is effective for 12 months.

The Subcommittee also recommends that within 15 days after there is no outstanding secured obligation, the secured party is required to inform a buyer to whom written notice has been sent that satisfaction of the obligation has been met.

Further, the Subcommittee recommends that the debtor be required to provide the secured party with a written list of potential buyers when farm products are involved as part of the security interest.

Two additional recommendations of the Subcommittee include:

1. that the entity holding the security interest in farm products be required to give notice of the security interest to the list of potential buyers provided by the debtor; and
2. that buyers of farm products must conduct lien checks as they probably do now when the person selling farm products is not listed on any of the written notices received by the buyer.

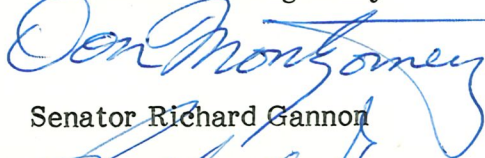
Finally, the Subcommittee recommends that this legislation take effect from and after January 1, 1986. It also would have an expiration date of January 1, 1991.

Respectfully submitted,



Senator Neil Arasmith, Chairman

Senator Don Montgomery



Senator Richard Gannon

