

Approved March 20, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 18, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Gaines, Langworthy, Parrish, Steineger, Winter and Yost.

Committee staff present:

Mary Hack, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Charles Henson, Kansas Bankers Association
John McCabe, Legal Counsel and Legislative Director for the National
Conference of Commissioners of Uniform State Laws
Bill Sneed, Kansas Association of Defense Counsel
Ted Fay, Department of Insurance
Walt Scott, Associated Credit Bureaus of Kansas
Ron Smith, Kansas Bar Association

House Bill 2657 - Revision of investment securities article of U.C.C.
Re Proposal No. 39.

Charles Henson, Kansas Bankers Association, appeared to express the association's views of the bill. A copy of his testimony is attached (See Attachment I). He stated the revision of Article 8 proposed by the National Conference and the conforming amendments to other articles of the Code, which are contained in this bill are, in the words of the reporter, intended to provide rules to regulate the rights, duties and obligations of the issuers of, and persons dealing with, uncertificated securities. Mr. Hansen stated he has contacted counsels for bankers associations who have had the revised Article 8, and he was advised it works very well. He said more and more companies are going to the uncertificated instrument.

John McCabe, Legal Counsel and Legislative Director for the National Conference of Commissioners of Uniform State Laws, discussed how you transfer property so there is adequate evidence of the transfer to provide security that involves that transfer. He said under this bill we are talking about stocks and bonds; it is intangible property. We used to depend upon a paper called a certificate, and you could endorse the certificate as a transfer. If there is a restriction the buyer has to take the responsibility to make the transfer so it is officially valid. In today's market place, most stockholders do not see their own certificates. In today's market, it functions as if the certificate were not there at all. The Article 8 amendments provide a method of transfer. A broker's statement is a piece of paper printed out by a computer. Considerable committee discussion was held with Mr. McCabe. A copy of a summary of Article 8 amendments to the Uniform Commercial Code is attached (See Attachment II).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 18, 1986

House Bill 2662 - Post-judgment interest rates. Re Proposal No. 47.

Bill Sneed, Kansas Association of Defense Counsel, stated the defense counsel is basically in support of the bill. They prefer to remain at the flexible rate as opposed to any additional percentages being tacked on to it. It is the position of the KADC that any judgment rendered by a court of this state should bear interest on and after the day on which the judgment is rendered at an appropriate rate consistent with current economic conditions. A copy of his testimony is attached (See Attachment III).

Ted Fay, Department of Insurance, testified the House added on three percent above treasury bill rate to make it more current at the present time. The one year treasury rate reflects what is happening in the money market. The short term rate tends to be higher than what other rates are doing. He suggested going to a more stable rate. He recommended to tie it to two percent above discount rate. Mr. Fay explained his two handouts; one is a chart from the Banking, Finance and Insurance Journal, and the balloon copy indicates his recommendation to amend the bill (See Attachments IV).

Walt Scott, Associated Credit Bureaus of Kansas, testified concerning limited action of the court and ask the committee to exclude limitation actions as it appears in Chapt. 61. Committee discussion was held with Mr. Scott.

Ron Smith, Kansas Bar Association, testified the bar support the bill and believe that this bill is desirable legislation that addresses a number of problems. A copy of his testimony is attached (See Attachment V).

The chairman announced, since time for adjournment was near, hearing on House Bill 2906 would be rescheduled.

More committee discussion was held with Mr. McCabe concerning House Bill 2657.

The meeting adjourned.

Copy of the guest list is attached (See Attachment VI).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-18-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John M. McCabe	Chicago, IL	NCCUSL
Chas. Wenson	Topeka	Ks Bankers Assn.
Lee WRIGHT	MISSION Ks	FARMERS INS. GROUP
Richard Harmon	Topeka	Ks P/C Assoc
PATRICIA HENSHALL	TOPEKA	OJA
William SNEED	Topeka	Ks Assoc of Det. Council
Donna Smith	Topeka	Ks Bar Assoc.
John Fay	Topeka	X DD
Ron Smith	"	Ks Bar Assoc
Walt Smith	"	Assoc. C. Bar
Jan Moulton	Manhattan	X DPS
Andra Levario	Topeka	Ks Hosp. Assoc.
Harold Riehm	"	Ks. Assoc. Osteopathic Meds
Lance McRul	Topeka	SLS
Belva Ott	Wichita	Dun & Bradstreet Inc.
Robert Hurd	Topeka	S.R.S

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EIDSON, LEWIS, PORTER & HAYNES

LAWYERS

1300 MERCHANTS NATIONAL BANK BUILDING

EIGHTH AND JACKSON STREETS

TOPEKA, KANSAS 66612-1252

913-233-2332

PHILIP H. LEWIS
JAMES W. PORTER
WILLIAM G. HAYNES
CHARLES N. HENSON
AUSTIN NOTHERN
CHARLES D. MCATEE
DALE L. SOMERS
K. GARY SEBELIUS
RICHARD F. HAYSE
RONALD W. FAIRCHILD
JOHN H. WACHTER

ANNE L. BAKER
JAMES P. RANKIN
PATRICIA A. REEDER
THOMAS D. HANEY
CRAIG A. FONTAINE
JOHN D. ENSLEY
N. LARRY BORK
CATHERINE A. WALTER

OF COUNSEL:
O. B. EIDSON

March 17, 1986

Hon. Robert Frey, Chairman
Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: H.B. 2657

Dear Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to express its views regarding H.B. 2657, which would amend provisions of the Kansas Uniform Commercial Code and Corporation Code.

As Article 3 of the Uniform Commercial Code provides the legal framework for transactions in commercial paper other than securities, Article 8 of the Code provides the legal framework governing transactions in securities. Article 8 establishes and defines the legal relationships between the issuer and holder of a security; it is the negotiable instruments law governing transactions in securities. Article 9 of the Code governs the creation and perfection of security interests in securities. Under the current Article 9 a security interest in a security is normally created by physical delivery of the security, duly endorsed, to the secured party, all pursuant to an agreement between the parties. The current rules of Articles 8 and 9 have worked very well for many years, and have provided certainty and predictability to the legal relationships between persons dealing with such written instruments.

The basic problem which now exists, and which the National Conference of Commissioners of Uniform State Laws recognized and dealt with in its 1977 proposed revision of Article 8, is that the current Articles 8 and 9 of the Kansas Uniform Commercial Code are couched solely in terms of "certificated" securities, written documents or instruments, while some issuers of securities are issuing them in "uncertificated" form. An "uncertificated" security is one which is not represented by an instrument, a writing, but, like an account, exists only as a notation on the issuer's books or an electronic impulse in a computer. The essential difference between a certificated and an uncertificated security, from which the principal difficulties with present law arise, is that the certificated security is represented by a written instrument, which is treated as the

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S U M M A R Y

The Article 8 Amendments
to the Uniform Commercial Code



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ARTICLE 8 AMENDMENTS TO THE
UNIFORM COMMERCIAL CODE

Article 8 of the Uniform Commercial Code is entitled "Investment Securities." A "security" is broadly defined as an instrument which

- (i) is issued in bearer or registered form; and
- (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
- (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
- (iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

The commonest examples are stocks and bonds. They have a market and are bought and sold, as are "goods" under Article 2 of the UCC, and negotiable instruments under Article 3. The UCC sought to cover all the major kinds of markets in its conception of "commercial transactions." Thus, Article 8 provided a fundamental law for the buying and selling of securities.

Note, however, one aspect of this basic definition. It states that a security is an "instrument." It implies a piece of paper with appropriate writing to identify the obligations the security manifests. Therein lies the kernel for the present revision - paper. The new Article 8 contemplates the elimination of the paper. The term instrument will no longer imply the existence of specific pieces of paper which act as evidence of obligations between people.

There are a number of reasons for this anti-paper revolution. In the late 1960s, the brokers and the exchanges became overburdened with paper. The sheer load hampered the markets. Also, automation has progressed far enough to make the revolution feasible. It is easier and faster to record transfers in the computer. It is efficient and more economical. Thus, the nature of transactions in securities is fundamentally changing.

Under the revised Article 8, an immediate distinction is made between types of securities. There are "certificated" securities and "uncertificated" securities. The "certificated" security is the one we have long known, represented on and by a piece of paper, an instrument. That piece of paper has been and remains the means of transfer and the evidence of the obligation - when it exists. But it no longer always exists.

The "uncertificated" security is not evidenced by any piece of paper at all. It exists on its issuer's records. Its key characteristics are found in the definition. It "is not represented by an instrument and the transfer of which is registered upon books maintained for the purpose by or on behalf of the issuer;...." Without the instrument, the mechanics of a transfer change. Also changed are the manners in which obligations are manifested.

Where there is a certificate, it physically participates in any transfer of the obligations it contains. A security passes upon proper endorsement and physical delivery of the instrument. The instrument takes part in pledges made by owners of the security to secure their own debts. It is also the foundation of the warranties each of the parties gives in a transaction involving a security. The paper is fundamental, and, when it is eliminated, some changes commensurate with its elimination must take place.

When a transfer, or registration of a pledge, occurs in the case of an "uncertificated" security, it does so only on the books of the issuer. This means that an "instruction" must be given to the issuer by the appropriate person. The "instruction" normally will be in writing, and obligates the issuer to make the necessary entry on the books. The evidence of completion is a statement back from the issuer within two business days after the registration occurs. It goes to transferor, transferee, and any pledgee.

These two items are the only pieces of paper involved in the transfer, and are designed to be much simpler than the "certificated" security. The last of the two, the "Initial Transaction Statement," is the most important. It provides notice of terms, restrictions, and adverse claims to the addressee, and runs against the issuer if it does not. This is a similar function to the written

instrument which constitutes a "certificated" security. The rights of purchasers which depend on this information are affected almost exactly as a purchaser's rights are affected by a "certificated" security.

There are differences, however. A purchaser of an "uncertificated" security, in general, can rise no higher than his transferor in terms of his rights. He takes as if he had his transferor's knowledge, even if he doesn't. A "certificated" security does not hold a purchaser to the knowledge of his transferor, but bases his rights on his own knowledge. That is a distinct difference between the two forms of security.

Further, an Initial Transfer Statement warrants only that the acknowledged owner is so at the time of its issuance. It does not do so for any following time period. In contrast, a purchaser may normally assume that the holder of a "certificated" security is the owner and entitled to transfer it. In these respects, the Initial Transfer Statement does not offer the assurances of a "certificated" security.

It is perhaps anomalous to think of security interests in a security, which itself may represent a debt of the issuer. People who own securities, which are valuable property, may pledge them for their debts. They create a security interest in the creditor by so doing.

A "certificated" security is merely delivered to the pledgee with a proper endorsement. That creates the security interest. Where "uncertificated" securities are concerned, the security interest must be registered. The procedure for doing this is identical to the procedure for a transfer. An instruction is sent to, and a confirmatory statement returned from, the issuer of the security. Once registered, the owner continues all powers with respect to the security except the power of transfer. That belongs to the registered pledgee.

The "uncertificated" security offers a bit more protection to the pledgee than a "certificated" security does. If a pledge of a "certificated" security is not registered, additional securities and dividends will be distributed to the owner, not the pledgee. The procedure relating to "uncertificated" securities precludes the problem. It is also to be noted that perfection of the security interest is by possession of the instrument for a "certificated" security, and by the mere procedure of creating the interest for "uncertificated" securities. Perfection is the means of determining the priority between competing security interests.

Warranties also differ between "certificated" and "uncertificated" securities. The face of the instrument provides a basis of warranties for "certificated" securities. The presenter to an issuer for registration, the transferor to a purchaser, all warrant aspects of the transaction because of the instrument and its enforcements and signature guarantees. For "uncertificated" securities, the only warranty can be on the part of the originator of an instruction to the issuer. That person warrants that the registration is proper to the issuer, and that the transfer has no defects to a purchaser for value.

Signature guarantees, an essential part of the transfer process for widely-held securities, also cannot be the same for "certificated" and "uncertificated" securities. The guarantor of a "certificated" security warrants that the endorser is an appropriate person acting for the owner. This is evident to the guarantor from the instrument. Without the instrument, the guarantees are limited to the genuineness of the signature, and that the endorser purports to act for the owner or pledgee. There are special, broader guarantees of an "uncertificated" security which cannot be demanded by an issuer, but which can be made to further secure a transaction.

The difference between a "certificated" security and the items of paper relating to registration of an "uncertificated" security cause a difference in the treatment of a bona fide purchaser for value, also. Essentially, a bona fide purchaser for value is held for only those things on the instrument with respect to a "certificated" security. The bona fide purchaser for value of an "uncertificated" security essentially takes free of what does not appear on the initial transaction statement. Practically, this may expose him to greater liability, but also forces him to seek a clean transaction statement before accepting liability.

Third party claims also provide a difference. For "certificated" securities, notice in writing to the issuer suffices. For "uncertificated" securities, the claim must be in the legal process before the issuer has notice. Judicial liens are also treated differently. Seizure of the security works for "certificated" securities, but not at all for the "uncertificated" breed. It is necessary to serve process on the issuer.

These are some of the differences which result from the addition of the "uncertificated" security to the security markets. There has been no need to change the basic pattern of Article 8, which has served its purpose well. The amendments seek to incorporate the "uncertificated" security with the least disturbance possible.

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POST JUDGMENT INTEREST

Issue:

Whether to adopt a post judgment interest rate equivalent to the Treasury Bill Rate.

KADC Position:

The Kansas Association of Defense Counsel supports legislation that establishes an interest rate on post judgment awards which would correlate with the United States Treasury Bill Rate.

Rationale:

Previously, Kansas statutes provided a fixed rate of interest on judgments and decrees. This was unfair and impractical since judgment awards were unable to adjust for interest rate movements in the economy. Therefore, the amount represented by the judgment would not reflect the true value owed for the period during which the debt remained unpaid.

The KADC believes that a more favorable approach would be a statute that provides for a flexible post judgment interest rate that would vary according to some external standard, such as the Treasury Bill Rate. The T-Bill Rate is a variable standard which would provide a valuable means for adjusting interest rates on post judgment awards to keep pace with the changing conditions of the economy. Each month a rate equal to the coupon issue yield would be determined to be the equivalent of the average accepted auction price for the last auction held during the preceding calendar month of a fifty-two week period. The Secretary of State would then publish this rate each month. This would allow a variable interest rate to move with the economy. A rate which is too high penalizes the defendant; too low, the plaintiff.

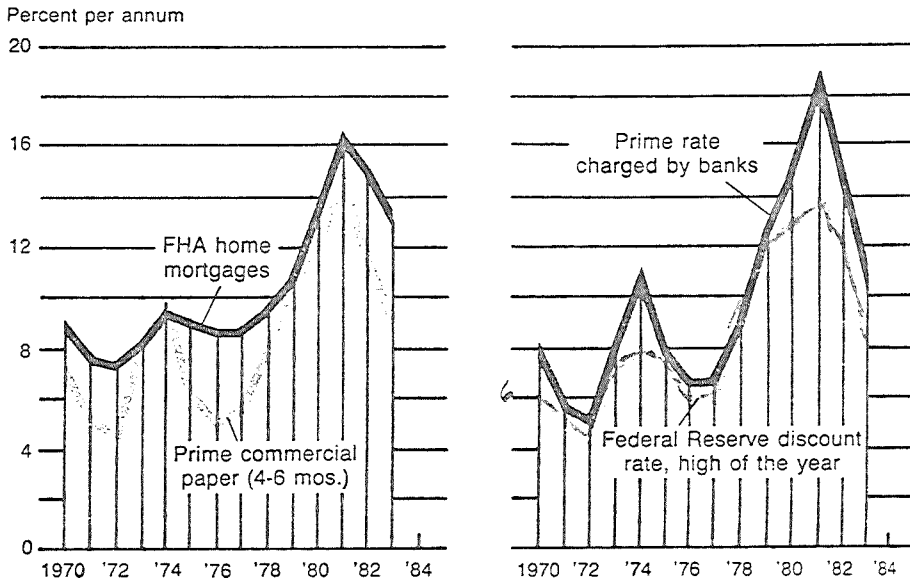
It is the position of the KADC that any judgment rendered by a court of this state should bear interest on and after the day on which the judgment is rendered at an appropriate rate consistent with current economic conditions.

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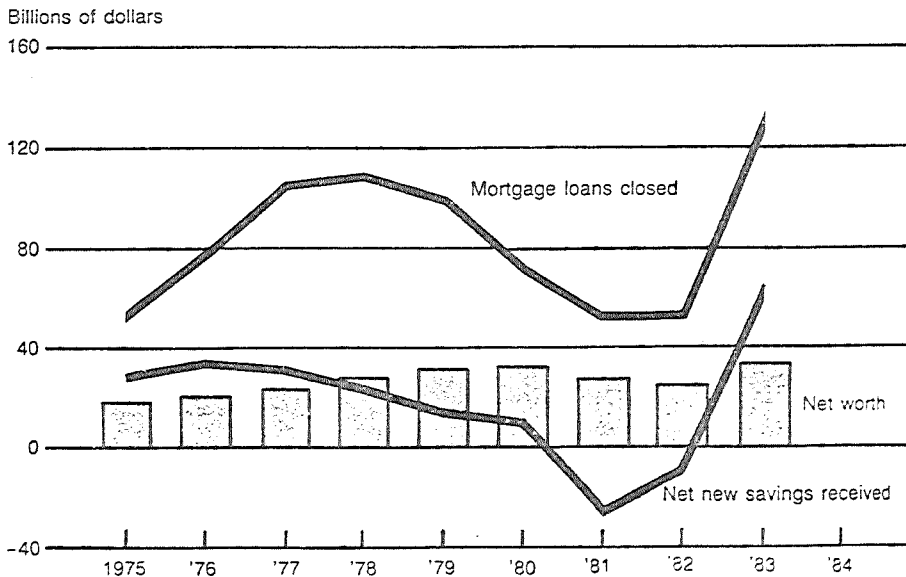
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Figure 17.1
Money Market Rates: 1970 to 1983



Source: Chart prepared by U.S. Bureau of the Census. For data, see tables 847 and 850.

Figure 17.2
Savings Institutions — Financial Items: 1975 to 1983



[Note: Represents FSLIC (Federal Savings and Loan Insurance Corporations) insured institutions]
Source: Chart prepared by U.S. Bureau of the Census. For data, see table 834.

This section presents data on the flow of funds, securities, and credit, security departments of the agencies such as the Securities and Exchange Commission and private organizations.

Flow of funds.—Tables 812) bring together data to present an economic picture of borrowing and production. Each item is a liability of the Federal Reserve System of the Federal Reserve System concepts and organizations.

Banking system.—The Federal Government banks are supervised by the Comptroller of the Currency since 1863. Summaries of the presents data on the

The Federal Reserve System consists of some of which are voluntarily joined by the Governors of the Federal Reserve Banks and other organizations.

The Federal Deposit Insurance Corporation insures up to \$100,000 of deposits in nonmember banks. The FDIC is established monthly in the

Savings and loan companies, finance companies, personal loan companies, associations are part of savings and loan companies, investments can Council of Economic Advisors currently in the Federal

Federally chartered institutions, establish supervisory authority on all Federal Credit Union Administrators of all Federal Union Share Insurance credit unions is a program.

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[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1986

HOUSE BILL No. 2662

By Special Committee on Medical Malpractice

Re Proposal No. 47

12-17

0021 AN ACT concerning interest on judgments; amending K.S.A.
0022 1985 Supp. 16-204 and repealing the existing section.

0023 *Be it enacted by the Legislature of the State of Kansas:*

0024 Section 1. K.S.A. 1985 Supp. 16-204 is hereby amended to
0025 read as follows: 16-204. Except as otherwise provided in accord-
0026 ance with law, and including any judgment rendered on or after
0027 July 1, 1973, against the state or any agency or political subdivi-
0028 sion of the state:

0029 (a) Any judgment rendered by a court of this state before July
0030 1, 1980, shall bear interest as follows:

0031 (1) On and after the day on which the judgment is rendered
0032 and before July 1, 1980, at the rate of 8% *per annum*;

0033 (2) on and after July 1, 1980, and before July 1, 1982, at the
0034 rate of 12% *per annum*; and

0035 (3) on and after July 1, 1982, and before July 1, 1986, at the
0036 rate of 15% *per annum*; and

0037 (4) on and after July 1, 1986, at a rate equal to the coupon
0038 *issue yield equivalent (as determined by the Secretary of the*
0039 *United States Treasury) of the average accepted auction price*
0040 *for the last auction of fifty-two week United States Treasury*
0041 *bills settled immediately prior to July 1, 1986* the rate provided
0042 by subsection (c).

0043 (b) Any judgment rendered by a court of this state on or after
0044 July 1, 1980, and before July 1, 1982, shall bear interest as
0045 follows:

0046 (1) On and after the day on which the judgment is rendered

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0047 and before July 1, 1982, at the rate of 12% per annum; and
 0048 (2) on and after July 1, 1982, and before July 1, 1986, at the
 0049 rate of 15% per annum; and

0050 (3) on and after July 1, 1986, at a rate equal to the coupon
 0051 issue yield equivalent (as determined by the Secretary of the
 0052 United States Treasury) of the average accepted auction price
 0053 for the last auction of fifty-two week United States Treasury
 0054 bills settled immediately prior to July 1, 1986 the rate provided
 0055 by subsection (e).

0056 (c) Any judgment rendered by a court of this state on or after
 July 1, 1982, and before July 1, 1986, shall bear interest as
 0058 follows:

0059 (1) On and after the day on which the judgment is rendered
 0060 and before July 1, 1986, at the rate of 15% per annum; and

0061 (2) on and after July 1, 1986, at a rate equal to the coupon
 0062 issue yield equivalent (as determined by the Secretary of the
 0063 United States Treasury) of the average accepted auction price
 0064 for the last auction of fifty-two week United States Treasury
 0065 bills settled immediately prior to July 1, 1986 the rate provided
 0066 by subsection (e).

0067 (d) Any judgment rendered by a court of this state on or after
 0068 July 1, 1986, shall bear interest on and after the day on which
 0069 the judgment is rendered at a rate equal to the rate provided by
 0070 subsection (e).

0071 (e) On and after the effective date of this act, the rate of
 0072 interest on judgments rendered by courts of this state shall be at
 0073 a rate per annum: (1) Which shall change effective July 1 of each
 0074 year for both judgments previously rendered and judgments
 0075 rendered during the twelve-month period beginning such July 1;
 0076 and (2) which is equal to an amount[, rounded to the nearest 1/2%,
 0077 that is] ^{TWO} three percentage points above ~~the coupon issue yield~~
 0078 ~~equivalent (as determined by the Secretary of the United States~~
 0079 ~~Treasury) of the average accepted auction price for the last~~
 0080 ~~auction of fifty-two week United States Treasury bills settled~~
 0081 ~~immediately prior to the date of judgment. The judicial admini-~~
 0082 ~~strator shall distribute notice of the rate and any changes to the~~
 0083 ~~administrative judge of each judicial district such July 1. The~~

the discount rate which shall be an amount equal to
 the charge on loans to depository institutions
 by the New York Federal Reserve Bank as reported
 in the money rates column of the Wall Street Journal.

0084 secretary of state shall publish notice of the interest rate pro-
0085 vided by this section not later than the second issue of the
0086 Kansas register published in July of each year.

0087 Sec. 2. K.S.A. 1985 Supp. 16-204 is hereby repealed.

0088 Sec. 3. This act shall take effect and be in force from and
0089 after its publication in the statute book.

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**KANSAS BAR
ASSOCIATION**

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601
(913) 234-5696

HB 2662

Senate Judiciary Committee

March 18, 1986

Mr. Chairman. Members of the Senate Judiciary Committee. I am Ron Smith, Legislative Counsel for the Kansas Bar Association.

KBA requested introduction of a nearly identical bill last year, HB 2459. Basically, we support and believe that HB 2662 is desirable legislation that addresses a number of problems. It is fair and necessary because it would conform interest on judgments closer to current interest rates.

Post Judgment interest rates are not meant to be penalties. To the extent that average interest rates are lower than the current 15% rate, a judgment debtor is penalized if that judgment debtor is wanting to make a legitimate appeal, or is unable for whatever reason to pay the judgment immediately. There are other penalties for frivolous appeals currently in our statutes, and other theories of penalties for promoting prompt payment of judgments. Using post-judgment interest rates for that purpose is unnecessary. That was not the purpose the legislature intended when interest rates were raised to the 15% level some years back.

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The intent of this bill is to have the Secretary of State determine a post-judgment interest rate that will fluctuate with the money markets. This bill recognizes that we have a volatile system where interest rates can and will fluctuate, and that post-judgment interest should adjust accordingly.

Some may argue the fluctuating rate ought not be the one-year T-bill, and prefer an average prime rate. This is impractical, we think. Bank prime rates are more of an indication of local competitive banking forces than the cost of money.

The Kansas Bankers Association indicates to me that one-year T-Bill auctions occur every fourth Thursday. This means there are 13 such auctions each year. So the judgments rendered in a given year could have one of 13 potential interest rates. Each would be reported by the Secretary of State in the state register.

With regard to Chapter 61 cases, there are many attorneys with significant numbers of collections cases where the judgment will be less than \$5,000. The expense of refiguring ongoing post-judgment interest on hundreds of small collection cases in order to conform to changes in the one-year T-Bill rate is perhaps inappropriate. I understand recommended changes might be made concerning these types of cases, and we'd like to reserve an opinion on the merit of the change until we see them.

KBA will support necessary amendments to carry into effect this intent.

Thank you.

are also common causes of friction. As a result of these shortcomings there may be no way to establish clearly who took what action when.

An obstreperous or uncooperative minority shareholder sometimes a cause of dissension. Time and again, we learned about stockholders, lawyers and other

holder who "throws his weight around" and makes life difficult for management. An unreasonable and obstreperous holder may voice frequent objections and criticisms of management, harass employees, demand information on corporate affairs at unreasonable times, bring numerous shareholder derivative actions, and in general give company management a "rough time." Some corporate officers say they would spend more time and money in keeping minority shareholders pacified than in operating the business.

A minority shareholder may try to force a buy-out of the interest at an exorbitant price or may attempt to exact some other concession as a condition to corporate peace.

Usually a minority shareholder will block action taken by the corporation or disrupt its business.

shareholders and corporate management are usually to eliminate an unruly, uncooperative shareholder from the enterprise.

entry of a minority shareholder into a company