

Approved

Date

 2/24/87

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Clyde D. Graeber at  
Chairperson

3:30 ~~am~~/p.m. on February 18, 1987 in room 527-S of the Capitol.

All members were present except: Dorothy Flottman, Excused.

Committee staff present: Myrta Anderson, Research Department  
Bill Wolff, Research Department  
Bruce Kinzie, Revisor of Statutes  
June Evans, committee secretary

Conferees appearing before the committee: Representative Melvin J. Neufeld  
John Wine, Assistant Secretary of State  
Jim Maag, Kansas Bankers Association  
Charles Hinson, Legal Counsel for K.B.A.  
Representative Lee Hamm  
Joan Finney, Kansas State Treasurer  
Ross McIlvain, Attorney, Madison, KS  
Bob Robison, Volunteer Organization,  
S. E. Kansas Farm Advocate Network  
Fred Bently, Kansas Rural Center, Jackson County

Clyde Graeber, Chairman, opened the meeting.

Representative Melvin J. Neufeld, sponsor of H.B. 2293 testified on behalf of the Bill, an Act concerning the uniform commercial code; relating to UCC-1 termination statements; amending K.S.A. 84-9-404 and repealing existing section. Neufeld testified he felt this amendment would be beneficial to both the lender and the borrower.

John Wine, Assistant Secretary of State, testified on behalf of H.B. 2293 supporting two changes: 1. Ten days after proper demand therefore the affected secured party shall be liable to the debtor for \$500.00, etc. 2. Disparity in bargaining positions between a purchaser of consumer goods and a business, this law would provide for a penalty against a secured party who refuses to terminate a financing statement. (Atch I).

Jim Maag testified on behalf of H.B. 2293 stating Kansas Bankers Association felt the bill should be amended.

Charles Hinson, Legal Counsel for Kansas Bankers Association, proposed the amendment to H.B. 2293. (Atch II).

Chairman Graeber stated after discussion that the Hearing would be closed for today.

Representative Lee Hamm, one of the sponsors of H.B. 2300 testified on behalf of the Bill, an Act concerning proceedings for collection of debt; providing notice and an opportunity for a debtor to reinstate a mortgage on real property; authorizing time for a debtor to make good on a default for the purchase of personal property.

Joan Finney, Kansas State Treasurer, testified supporting the Bill. (Attachment III)

Mr. Ross McIlvain, Attorney, Madison, Kansas; Bob Robison, Volunteer Organization, S. E. Kansas Farm Advocate Network; and Fred Bently, Kansas Rural Center, Jackson County; all testified for the Bill stating that the Kansas farmers need some relief from time limits of debts. If they had a little more time they might be able to make their payments and in turn keep their property. (Atchs IV and V).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,  
room 527-S Statehouse, at 3:30 ~~xx~~ p.m. on February 18, 19 87

After discussion by the committee it was decided to not take any action until February 24.

Representative Roenbaugh moved and Representative Ott seconded that the minutes for the February 12 and 17 meetings be approved. The motion carried.

The meeting adjourned at 4:35 p.m.

The next meeting will be Thursday, February 19, 1987.

Date: February 18, 1987

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS COMMITTEE

NAME

ORGANIZATION

ADDRESS

NAME	ORGANIZATION	ADDRESS
Tarel Wright	KCUL	Topeka
Wm a Lusting	KSDCU	TOPEKA
Bob Robinson	individual	Madison
BOB ROBINSON	INDIVIDUAL	MADISON
Jim Morrison	observer	
Wilbur Leonard	Common Ks Farm Org	Topeka
Carol Beard	Sec of State	Topeka
Fred Bentley	Kansas Rural Center	Whiting
John Vine	Sec. of St.	Top.
Chp Wheeler	McCall & Assoc.	Topeka
Jully	KBA	"

Wine



Bill Graves  
Secretary of State

2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

## STATE OF KANSAS

TESTIMONY OF JOHN WINE, ASSISTANT SECRETARY OF STATE, TO  
THE COMMERCIAL AND FINANCIAL INSTITUTIONS COMMITTEE ON  
HOUSE BILL 2293, FEBRUARY 18, 1987

The office of the Secretary of State supports House Bill 2293 as a necessary modernization of the Uniform Commercial Code. The purpose of the UCC is to notify potential lenders about any prior liens on collateral a lender is considering using in granting a loan. By searching our files a lender should be able to discover the existence of any financing statements covering that collateral. Financing statements should be terminated by the secured party after the debt is paid and would not appear in a subsequent search. We have over 300,000 currently effective financing statements on file today.

Although it is only a notice system and the lender must check with any prior secured party to learn the true status of a loan, it is unfair to the debtor for it to even appear as though a security interest exists when, in fact, the loan has been paid off. Sometimes a potential lender will not take the time to check the information and may simply refuse the loan. Even if it does check the information, there could be a frustrating or expensive delay in obtaining loan approval.

In addition, if the applicant is required to pay for the search, it is more expensive when financing statements are reported that should have been terminated. If the search is done at a Register of Deeds office by telecopier and copies of the statements are sent, there is a charge of two dollars per page telecopied.

There is no charge for a secured party to terminate a financing statement, and it can be done simply by signing a copy of the statement that has been supplied to them just for that purpose. On the other hand there is little incentive for a secured party to terminate financing statements. The UCC recognizes this lack of incentive and the disparity in bargaining positions between a purchaser of consumer goods and a big business

ATCH I

and provides for a penalty against a secured party who refuses to terminate a financing statement.

We believe that there have been two changes since 1965 when the Kansas legislature adopted the UCC that make this bill necessary. One is that inflation has reduced the value of the 1965 \$100 penalty to approximately \$30 today. Raising the penalty to \$500 would be in accord with the intention of the 1965 legislature.

In addition, we believe that there exists today a disparity between the bargaining positions of many large corporations and small businesses that place those small businesses in positions analogous to those of consumers. It is difficult for a small family farmer to do battle with a multinational corporation over a financing statement.

It seems only fair to require any secured party who has been requested in writing to terminate a financing statement when the debt has been paid, to do so or pay a \$500 penalty. We understand that some technical amendments will be offered that will make it clear that this is the purpose of the bill. We would support such amendments and this bill.

Amend H.B. 2293 as follows:

In line 25, by striking all after (1); by striking all of line 26; in line 27, by striking "month or" and by capitalizing the word "within"; in line 34, by striking all after the period; by striking all of lines 35 through 44; in line 45, by striking all up to and including the period; in line 51, by striking the word "such"; in line 52, by striking all after the comma; in line 53, by striking all before the word "the".

Alenon

### HOUSE BILL No. 2293

By Representatives Neufeld, Apt, Barkis, Bryant, C. Campbell, Crumbaker, Flottman, Freeman, Gatlin, Guldner, Hamm, Harper, Holmes, Mead, Mollenkamp, Moomaw, Roenbaugh, Sallee and Smith

2-11

0020 AN ACT concerning the uniform commercial code; relating to  
0021 termination statements; amending K.S.A. 84-9-404 and re-  
0022 pealing the existing section.

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

0024 Section 1. K.S.A. 84-9-404 is hereby amended to read as  
0025 follows: 84-9-404. (1) ~~If a financing statement covering consumer~~  
0026 ~~goods is filed on or after January 1, 1976, then within one (1)~~  
0027 ~~month or~~ Within ten (10) 10 days following written demand by  
0028 the debtor after there is no outstanding secured obligation and  
0029 no commitment to make advances, incur obligations or otherwise  
0030 give value, the secured party ~~must~~ shall file with each filing  
0031 officer with whom the financing statement was filed, a termina-  
0032 tion statement to the effect that the secured party no longer  
0033 claims a security interest under the financing statement, which  
0034 shall be identified by file number. ~~If such termination statement~~  
0035 ~~required to be filed under this section has not been filed prior to~~  
0036 ~~the effective date of this act, the secured party shall file such~~  
0037 ~~statement within 10 days subsequent to the effective date of this~~  
0038 ~~act. In other cases whenever there is no outstanding secured~~  
0039 ~~obligation and no commitment to make advances, incur obliga-~~  
0040 ~~tions or otherwise give value, the secured party must on written~~  
0041 ~~demand by the debtor send the debtor, for each filing officer~~  
0042 ~~with whom the financing statement was filed, a termination~~  
0043 ~~statement to the effect that the secured party no longer claims a~~  
0044 ~~security interest under the financing statement, which shall be~~  
0045 ~~identified by the filing officer's file number.~~ A termination  
0046 statement signed by a person other than the secured party of

ATTACHED

0047 record must be accompanied by a separate written statement of  
0048 assignment signed by the secured party of record complying  
0049 with subsection (2) of ~~section~~ K.S.A. 84-9-405 *and amendments*  
0050 *thereto*, including payment of the required fee. If the affected  
0051 secured party fails to file ~~such~~ a termination statement as re-  
0052 quired by this subsection, ~~or to send such a termination state-~~  
0053 ~~ment within ten (10) 10 days after proper demand therefor~~ the  
0054 affected secured party shall be liable to the debtor for ~~one~~  
0055 ~~hundred dollars (\$100)~~ \$500, and in addition for any loss caused  
0056 to the debtor by such failure.

0057 (2) On presentation of such a termination statement, the  
0058 filing officer must note it in the index. If the filing officer has  
0059 received the termination statement in duplicate, the filing officer  
0060 shall return one ~~(1)~~ copy of the termination statement to the  
0061 secured party stamped to show the time of receipt thereof. If the  
0062 filing officer has a microfilm or other photographic record of the  
0063 financing statement, and of any related continuation statement,  
0064 statement of assignment and statement of release, the filing  
0065 officer may remove the originals from the files at any time after  
0066 receipt of the termination statement, or if the filing officer has no  
0067 such record, the filing officer may remove them from the files at  
0068 any time after one ~~(1)~~ year after receipt of the termination  
0069 statement.

0070 (3) Termination statements may be destroyed after such  
0071 statements have been on file for five ~~(5)~~ years.

0072 Sec. 2. K.S.A. 84-9-404 is hereby repealed.

0073 Sec. 3. This act shall take effect and be in force from and  
0074 after its publication in the statute book.



STATEMENT BEFORE:  
COMMERCIAL AND FINANCIAL INSTITUTIONS  
JOAN FINNEY KANSAS HOUSE OF REPRESENTATIVES  
KANSAS STATE TREASURER WEDNESDAY, FEBRUARY 18, 1987

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MR. CHAIRMAN,

THE STATES DO NOT HAVE THE CAPITAL AND OTHER RESOURCES NECESSARY TO SOLVE OUR AGRICULTURAL PROBLEMS. BUT WE CAN IMPLEMENT CERTAIN MEASURES TO PREVENT FARM FORECLOSURES AND THE RAPID EROSION OF OUR AGRICULTURAL ECONOMIC LOSSES.

OVER THE PAST 20 MONTHS, MORE THAN 1,000 FARMERS HAVE CALLED THE TREASURY OFFICE. SOME OF THEM COULD HAVE BEEN HELPED BY STATUTORY PROVISIONS SIMILAR TO THOSE CONTAINED IN HB 2300.

AS TREASURER, I WANT TO MENTION A FEW NUMBERS. THE NUMBER 18 IS THE NUMBER OF SUICIDES THAT HAVE OCCURRED IN CHEYENNE COUNTY, DUE TO FARM FORECLOSURES. THE NUMBER 7 IS THE NUMBER OF FORECLOSURES THAT CAUSES 1 BUSINESS TO FAIL AND 3 KANSAS PEOPLE TO LOSE THEIR JOBS.

HB 2300 WOULD PREVENT CERTAIN FORECLOSURES AS IT WOULD ALLOW A BRIEF PERIOD OF TIME FOR THE FARMER TO CURE THE DEFAULT. EACH INSTANCE, OF WHICH I AM AWARE, INVOLVED A PERIOD OF ONE WEEK TO 10 DAYS. THE DELAY GENERALLY WAS DUE TO FAILURE TO RECEIVE A GOVERNMENT PAYMENT IN TIME AND A FEW OF THE CASES INVOLVED FARMERS WHO HAD OBTAINED THE PAYMENT MONEYS FROM RELATIVES.

I RECALL OF NO INSTANCE INVOLVING A KANSAS BANK. EVERY CASE WHICH WAS BROUGHT TO MY ATTENTION CONCERNED THE FEDERAL LAND BANK.

Atch III

ENACTMENT OF THIS BILL WOULD NOT RESTRICT CREDIT AND SHOULD RESULT IN SAVINGS OF LEGAL EXPENSES RELATING TO BANKRUPTCY.

I REFER YOU TO SECTION 16a-5-111 AND ESPECIALLY THE PARAGRAPH, "KANSAS COMMENTS 1973" OF THE UNIFORM CONSUMER CREDIT CODE. I RESPECTFULLY REQUEST THAT YOU CONSIDER INTRODUCING A COMMITTEE BILL CONTAINING SIMILAR LANGUAGE WHICH WOULD RELATE SPECIFICALLY TO FARM FORECLOSURES.

ment must be made to cure the default. A notice in substantially the following form complies with this section:

\_\_\_\_\_  
(Name, address, and telephone number of creditor)

\_\_\_\_\_  
(Account number, if any)

\_\_\_\_\_  
(Brief description of credit transaction)

\_\_\_\_\_  
(Date) is the LAST DAY FOR PAYMENT

\_\_\_\_\_  
(Amount) is the AMOUNT NOW DUE

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

**History:** L. 1973, ch. 85, § 86; L. 1974, ch. 91, § 2; March 1.

#### KANSAS COMMENT, 1973

This section, giving the consumer an opportunity to cure a default, is new to Kansas law. It works this way: If a consumer misses an installment payment due on April 10, the creditor must wait until April 20, at which point he may send to the consumer a written notice indicating the default and the amount due. The "last day for payment" would be shown as May 10, the end of the cure period as provided in 16a-5-111. A notice in substantially the same form as provided in this section will suffice. The philosophy of this section, and the next, is to give the consumer a fair opportunity to bring his payments current before acceleration, repossession, or suit. This notice form applies only in the case of a missed installment; there is no such requirement when the default involves a "substantial" impairment of the prospect for payment or realization on the collateral. (See 16a-5-101). On the other hand, it should be obvious that the missing of an installment by itself is insufficient to constitute a "significant impairment."

#### Law Review and Bar Journal References:

- Deficiency judgments, 22 K.L.R. 297, 309 (1974).
- "The New UCC Article 9 Amendments," Barkley Clark, 44 J.B.A.K. 131, 179 (1975).
- "Summary Repossession, Replevin, and Foreclosure of Security Interests," Thomas V. Murray, 46 J.B.A.K. 93, 95 (1977).
- "Commercial Transactions Under the New Bankruptcy Act," Paul B. Rasor, 48 J.B.A.K. 199, 215 (1979).
- "The U.C.C. and Real Estate Financing: A Square Peg in a Round Hole," Thomas L. Griswold, 28 K.L.R. 601, 612 (1980).

#### CASE ANNOTATIONS

1. Reaffirmation of debt after petition filed but prior to discharge in bankruptcy revived debt; consideration. Super Chief Credit Union v. McCoy, 3 K.A.2d 25, 28, 595 P.2d 346.

#### 16a-5-111. (UCCC) Cure of default.

(1) This section applies to consumer credit transactions.

(2) Except as provided in subsection (3), after a default consisting only of the con-

sumer's failure to make a required payment in a consumer credit transaction payable in installments, a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral because of that default until twenty (20) days after a notice of the consumer's right to cure (section 16a-5-110) is given. Until twenty (20) days after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his rights under the agreement as though the defaults had not occurred.

(3) With respect to defaults on the same obligation after a creditor has once given a notice of consumer's right to cure (section 16a-5-110), this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or the collateral.

**History:** L. 1973, ch. 85, § 87; L. 1974, ch. 91, § 3; March 1.

#### KANSAS COMMENT, 1973

The creditor must wait 20 days after sending the notice provided for in 16a-5-110; no acceleration of the unpaid balance or repossession of the collateral may take place until the 20-day grace period expires. If before that time the consumer pays the missing installment, plus unpaid delinquency or deferral charge, he has "cured" his default and is restored to his prior status. However, if he then misses another installment the next month, subsection (3) makes it clear that the creditor can accelerate and repossess as under the UCC. There was no comparable provision under prior Kansas law.

#### Law Review and Bar Journal References:

- Deficiency judgments, 22 K.L.R. 297, 309 (1974).
- "The New UCC Article 9 Amendments," Barkley Clark, 44 J.B.A.K. 131, 179 (1975).
- "Summary Repossession, Replevin, and Foreclosure of Security Interests," Thomas V. Murray, 46 J.B.A.K. 93, 95 (1977).
- "Commercial Transactions Under the New Bankruptcy Act," Paul B. Rasor, 48 J.B.A.K. 199, 215 (1979).

#### CASE ANNOTATIONS

1. Reaffirmation of debt after petition filed but prior to discharge in bankruptcy revived debt; consideration. Super Chief Credit Union v. McCoy, 3 K.A.2d 25, 28, 595 P.2d 346.

**16a-5-112. (UCCC) Creditor's right to take possession after default.** Upon default by a consumer, unless the consumer voluntarily surrenders possession of the collateral to the creditor, the creditor may take possession of the collateral without judicial

process without the use of his 1974.

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McILVAIN LAW OFFICE

February 17, 1987

State Representative Clyde Graeber  
Chairman, House Commercial &  
Financial Institutions Committee

Dear Sir:

I am an attorney in a small farm town, and thus a lot of my clients are farmers. I know the kind of problems they face, and that's why I'm testifying. (I will be speaking briefly at the committee hearings in support of HB 2300 (right to cure default) but this letter can serve as a brief summary of my testimony in case any members can't make it to the hearings or want to refresh their memories later.)

I doubt if I need to tell you that the situation of many farmers is desperate (and through no fault of their own) or how strongly the economy of a lot of little towns like mine depend on the ailing farm economy. This bill won't magically cure the whole problem. But it will be a great help to some farmers. For some farmers it can mean the difference between hanging on and being forced off the land.

It is also a fair and reasonable bill. It gives the borrower in a real estate mortgage the right to cure the default by catching up when he's missed a payment, instead of having to come up with the entire balance owed. Coming up with the whole balance is usually impossible, and the only alternative for the farmer (or other borrower) is losing the land.

It's important to note that the right to cure default not only gives the farmer a second chance, but it also, by definition, puts the lender back in the same position he was before default. Thus, this law would respect the creditor's rights as well as the borrowers.

It's also significant that Kansans already have the right to cure default in credit transactions covered the the Kansas Uniform Consumer Credit Code. (K.S.A. 16a-1-101 et seq., specifically 16a-5-110 & 111.) But the Kansas UCCC doesn't apply to most real estate mortgages.

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It's ironic that Kansans should have this sensible and important procedural legal protection for something a lot less important, like a dishwasher or piece of furniture bought on installments, and not when their homestead is being foreclosed on! Any real estate transaction, homestead or not, is at least as important to the borrower, and should be given at least as much legal protection, as a consumer credit sale of furniture or appliances.

Kansas can also look to other farm states with similar right to cure laws. Nebraska, Iowa and Minnesota have right to cure statutes, and North Dakota has had one since the Depression. Kansas needs one also.

Sincerely;



Ross R. McIlvain  
Box 703  
Madison, Kansas 66860  
(316) 437-2600

cc: Committee members

Bentley

**THE KANSAS RURAL CENTER, INC.**

304 Pratt Street

WHITING, KANSAS 66552

Phone: (913) 873-3431

Testimony on H 2300

The Kansas Rural Center is a private, non-profit organization which has provided research and public education on agricultural and rural issues for the past seven years. We have also provided credit counseling, information, and referrals to about 1500 farmers within the last three years. Our experience with credit counseling has shown that some debtors would indeed benefit from the opportunity provided in H 2300 to cure a default on their payments. It would constructively work to close a small crack some debtors have fallen through.

We already have a legal precedent in current Kansas law. The attached copy of K.S.A. 16a-5-111 provides a consumer the opportunity to cure a default on a consumer credit transaction. This same courtesy should be applied to a home or land owner. Several other states, including Nebraska, Iowa, North Dakota, and Minnesota, have passed laws similar to H 2300.

H 2300 would not hurt the security interests of creditors nor would it deny them any foreclosure rights. It may, in fact, work in the best interests of both the creditor and the debtor by providing a short, second chance to keep the debtor on good financial footing. Otherwise a business, farm or home might needlessly be lost due to a short term problem.

H 2300 is both a courtesy and an opportunity deserved by real estate owners. We urge you to support it!

Thank you.

ATC#V

**16a-5-109. (UCCC) Default.** An agreement of the parties to a consumer credit transaction with respect to default on the part of the consumer is enforceable only to the extent that

(1) the consumer fails to make a payment as required by agreement; or

(2) the prospect of payment, performance, or realization of collateral is significantly impaired; the burden of establishing the prospect of significant impairment is on the creditor.

History: L. 1973, ch. 85, § 85; Jan. 1, 1974.

**16a-5-110. (UCCC) Notice of consumer's right to cure.** (1) After a consumer has been in default for ten (10) days for failure to make a required payment in a consumer credit transaction payable in installments, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he delivers the notice to the consumer or delivers or mails the notice to the address of the consumer's residence (subsection (6) of section 16a-1-201).

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief description of the credit transaction, the consumer's right to cure the default, and the amount of payment and date by which pay-

ment must be made to cure the default. A notice in substantially the following form complies with this section:

\_\_\_\_\_  
(Name, address, and telephone number of creditor)

\_\_\_\_\_  
(Account number, if any)

\_\_\_\_\_  
(Brief description of credit transaction)

\_\_\_\_\_ is the LAST DAY FOR PAYMENT  
(Date)

\_\_\_\_\_ is the AMOUNT NOW DUE  
(Amount)

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

History: L. 1973, ch. 85, § 86; L. 1974, ch. 91, § 2; March 1.

**16a-5-111. (UCCC) Cure of default.** (1) This section applies to consumer credit transactions.

(2) Except as provided in subsection (3), after a default consisting only of the con-

sumer's failure to make a required payment in a consumer credit transaction payable in installments, a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral because of that default until twenty (20) days after a notice of the consumer's right to cure (section 16a-5-110) is given. Until twenty (20) days after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his rights under the agreement as though the defaults had not occurred.

(3) With respect to defaults on the same obligation after a creditor has once given a notice of consumer's right to cure (section 16a-5-110), this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or the collateral.

History: L. 1973, ch. 85, § 87; L. 1974, ch. 91, § 3; March 1.