

Approved

Date

Clyde D. Graeber 3/9/87

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

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

3:30 ~~xx~~m./p.m. on March 4, 1987 in room 527-S of the Capitol.

All members were present except: Kenneth Francisco, Excused

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

Conferees appearing before the committee: Representative Jack E. Beauchamp
Carol Beard, Assistant Secretary of State

Clyde D. Graeber, Chairman, opened the meeting

Hearing on H.B. 2256. Representative Beauchamp testified for H.B. 2256; an act concerning the uniform commercial code; concerning termination of a security interest; amending K.S.A. 84-9-404 and repealing the existing section. (Attachment I)

Representative Roenbaugh questioned the difference between H.B. 2256 and H.B. 2293. It is felt the wording is better in H.B. 2256 and the amount of the penalty provision is different; H.B. 2256 has a penalty of \$1,000 and H.B. 2293 has a penalty of \$500.00.

Carol Beard, Assistant Secretary of State, ran a survey on the total number of filings and found 10% UCCIIs were continued, 25% terminated and the rest let lapse. It does get costly to leave in the files as the charge is \$1.00 per page or \$2.00 per page if telecopied. Some farm equipment is purchased through a loan from a financial institution and never gets cleared although the loan is paid off.

Jim Maag, Kansas Bankers Association, said they have grave concern about this being automatic. A payment might be made a little late and UCC is not terminated because there is no meaningful penalty. Mr. Maag said they are not opposed to the bill with suggested amendment. (Attachment II).

The hearing was closed and possible further action will be taken on Thursday, March 5.

Chairman Graeber stated that H.B. 2300 introduced by Representative Hamm on collection of debt has merit and believes the committee should look at it again.

After some discussion, Chairman Graeber suggested a uniform form may be advantageous; might want to look at other acceptable forms.

Representative Tim Shallenburger moved the language be amended.

Amendment by the Wichita District Farm Credit Council, Inc. was distributed and discussed by the committee and it was agreed that line 47 should be amended. Representative Hamm moved to accept the language of the Farm Credit Council amendment (Attachment III).

Lawrence Wilbert moved and Ivan Sand seconded that line 47 be amended to read, "occurred therein provided the debtor may only exercise such right once" and strike Section 2.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 4, 1987.

The substitute amendment was voted on; 9 in favor of the amendment and 5 opposed.
The motion carried.

Representative Roenbaugh moved and Representative Wilbert moved that H.B. 2300
be passed out of committee favorably as amended. The motion carried.

H. B. 2406. Representative Ott moved and Representative Sand seconded that
substitute H.B. 2406 be moved out of committee favorably. The motion carried.

The meeting adjourned at 4:50 P.M.

The next meeting will be March 5, 1987.

Date: March 4, 1987

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS COMMITTEE

NAME

ORGANIZATION

ADDRESS

NAME	ORGANIZATION	ADDRESS
Stan Lind	Ks. Assn. of Fin. Serv.	KCKs.
Paul Wright	KCUK	
Paul Beard	Secretary of State	Topeka
Tom Groenman	Ks Reg of Dads Assn	K.C.K.
Doris Pinner	Ks Reg of Real Ass	
Duo Grant	KCCI	TOPEKA
Chip Wheeler	McBill & Associates	Topeka
Laurie Ehotman	Ks. Bar Association	Topeka
John Spurgeon	Budget Div	"
Judy Stungis	CCC	"
Jim Mearns	KBA	"
Lynn Paul Ash	KLSI	"
Steve Hirsch	State Treasurer	Topeka

STATE OF KANSAS

JACK E. BEAUCHAMP
REPRESENTATIVE, FOURTEENTH DISTRICT
FRANKLIN COUNTY
ROUTE 3, BOX 61
OTTAWA, KANSAS 66067
(913) 242-3540
STATE CAPITOL, ROOM 174-W
(913) 296-7676



TOPEKA

HOUSE OF
REPRESENTATIVES

March 4, 1987

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
LOCAL GOVERNMENT

Mr. Chairman and Members
of the Commercial and Financial Institutions Committee:

HB 2256 would require a creditor to terminate a security interest in any goods within one month after the debtor's obligation is discharged if there's no commitment to make future loans against the collateral. This is currently the requirement for security interests in consumer goods but, with respect to other goods, the debtor must request termination of the security interest.

The bill also increases from \$100 to \$1,000 the penalty for failure to terminate when required. The \$100 amount has been in the law since 1965.

Representative Jack Beauchamp

Attach I

Maag

HOUSE BILL No. 2256

By Representative Beauchamp

2-10

0017 AN ACT concerning the uniform commercial code; concerning
0018 termination of a security interest; amending K.S.A. 84-9-404
0019 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 84-9-404 is hereby amended to read as
0022 follows: 84-9-404. (1) ~~If a financing statement covering consumer~~
0023 ~~goods is filed on or after January 1, 1976, then within one (1)~~
0024 ~~month or within ten (10) days following written demand by the~~
0025 ~~debtor Within one month after the effective date of this act or~~
0026 ~~within one month~~ after there is no outstanding secured obliga-
0027 tion and no commitment to make advances, incur obligations or
0028 otherwise give value, *whichever is later*, the secured party must
0029 file with each filing officer with whom the financing statement
0030 was filed, a termination statement to the effect that the secured
0031 party no longer claims a security interest under the financing
0032 statement, which shall be identified by *the filing officer's file*
0033 ~~number. In other cases whenever there is no outstanding se-~~
0034 ~~cured obligation and no commitment to make advances, incur~~
0035 ~~obligations or otherwise give value, the secured party must on~~
0036 ~~written demand by the debtor send the debtor, for each filing~~
0037 ~~officer with whom the financing statement was filed, a termina-~~
0038 ~~tion statement to the effect that the secured party no longer~~
0039 ~~claims a security interest under the financing statement, which~~
0040 ~~shall be identified by the filing officer's file number. A termina-~~
0041 ~~tion statement signed by a person other than the secured party of~~
0042 ~~record must be accompanied by a separate written statement of~~
0043 ~~assignment signed by the secured party of record complying~~
0044 ~~with subsection (2) of section K.S.A. 84-9-405 and amendments~~
0045 ~~thereto, including payment of the required fee. If the affected~~

following re-
ceipt of written
demand by the
debtor

0046 secured party fails to file such a termination statement as re-
0047 quired by this subsection; ~~or to send such a termination state-~~
0048 ~~ment within ten (10) days after proper demand therefor~~ the
0049 affected secured party shall be liable to the debtor for ~~one~~
0050 ~~hundred dollars (\$100)~~ \$1,000, and in addition for any loss
0051 caused to the debtor by such failure.

0052 (2) On presentation of such a termination statement, the
0053 filing officer must note it in the index. If the filing officer has
0054 received the termination statement in duplicate, the filing officer
0055 shall return one (1) copy of the termination statement to the
0056 secured party stamped to show the time of receipt thereof. If the
0057 filing officer has a microfilm or other photographic record of the
0058 financing statement, and of any related continuation statement,
0059 statement of assignment and statement of release, the filing
0060 officer may remove the originals from the files at any time after
0061 receipt of the termination statement, or if the filing officer has no
0062 such record, the filing officer may remove them from the files at
0063 any time after one (1) year after receipt of the termination
0064 statement.

0065 (3) Termination statements may be destroyed after such
0066 statements have been on file for five (5) years.

0067 Sec. 2. K.S.A. 84-9-404 is hereby repealed.

0068 Sec. 3. This act shall take effect and be in force from and
0069 after its publication in the statute book.

Atch III

Wichita District
Farm Credit Council, Inc.

245 North Waco
P.O. Box 2940
Wichita, Kansas 67201-2940

316/266-5540

805 Chisholm Trail
P.O. Box 909
Enid, Oklahoma 73701

4695 Franklin Street
P.O. Box 16046
Denver, Colorado 80216

3109 Carlisle, N.E.
P.O. Box 37440
Albuquerque, New Mexico 87176-7440

February 22, 1987

Representative Clyde Graeber
175-W State Capitol
Topeka, Kansas 66612

Dear Mr. Chairman:

We note that the House Commercial and Financial Institutions Committee is scheduled to act on H.B. 2300, which affects debt collections, on Tuesday, February 24. We would like to share our comments on this bill with you, since the Farm Credit System is the largest single lender to agriculture nationally, and an important source of credit to Kansas farmers, ranchers and cooperatives.

In the spirit of cooperation, we do not object to H.B. 2300. We would like, however, to suggest some possible amendments, which are attached. The first amendment, in line 26, would simply clarify that the bill is referring to a "court" action, which provides a specific point of reference for measuring the 30 to 90 day period.

The second amendment deals with the 30 day period to perform the necessary conditions for reinstatement. We can appreciate why the Legislature would seek this requirement, but we would hope that it would not be used repeatedly as a stalling tactic. Our suggestion would be to simply state that the debtor could use this provision only once during any 12 month period.

In section 2, we would seek additional clarification of this provision. It may be that the debtor already has legal provisions to prevent a creditor from assuming possession, so section 2 would not be needed.

In general, we note that the House Committee on Agriculture and Small Business and the House Commercial and Financial Institutions Committee are considering several measures affecting debt and property of farmers and others. We believe these additional laws are not needed for farm borrowers in light of the new Chapter 12 of the federal bankruptcy code and the Farm Credit System's debt restructuring policies, and we hope the Legislature would refrain from going beyond H.B. 2300.

While H.B. 2300 will cause some additional paperwork, it is not excessively costly to our other farmer and rancher members. We appreciate the reasonable approach taken in this bill and look forward to working with the Committee members in the future.

Sincerely,



Ronald J. Wilson
Executive Director

Representing Cooperative Agricultural Lenders in Kansas, Oklahoma, Colorado and New Mexico

Atch III

HOUSE BILL No. 2300

By Representatives Hamm, Adam, Barkis, Bowden, Cribbs, Dillon, Francisco, Grotewiel, Hensley, Justice, Lacey, Laird, Larkin, Leach, Mainey, Rezac, Roper, Russell, Sawyer, Sugh-rue, Sutter, Teagarden, Turnquist, Wells and Wisdom

2-11

0020 AN ACT concerning proceedings for collection of debt; provid-
0021 ing for notice and an opportunity for a debtor to reinstate
0022 mortgage on real property; authorizing time for a debtor to
0023 make good on a default for the purchase of personal property.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. (a) At least 30 days and not more than 90 days
0026 before the commencement of any ~~action or proceeding for the~~ court
0027 foreclosure of a mortgage on real estate, a written notice shall be court
0028 served on the title owner of record of the real estate described in
0029 the mortgage as shown by the records of the office of the register
0030 of deeds of the county in which such real estate is located.

0031 (b) The notice before foreclosure shall contain:

0032 (1) A description of the real estate;

0033 (2) the date and amount of the mortgage;

0034 (3) the amount due for principal, interest and taxes paid by
0035 the owner of the mortgage, stated separately; and

0036 (4) a statement that if the amount due is not paid within 30:
0037 days from the date of the mailing or service of the notice pro-
0038 ceedings will be commenced to foreclose the mortgage.

0039 (c) Proof of service of notice before foreclosure may be made:
0040 as provided by current state law for proof of service of process.

0041 (d) If the title owner of record or the administrator or execu-
0042 tor of the title owner's estate, within 30 days from the service of
0043 notice before foreclosure, shall perform the conditions or comply
0044 with the provisions upon which default in the mortgage shall
0045 have occurred, such mortgage shall be reinstated and shall re-

0046 main in full force and effect the same as though no default had
0047 occurred therein, providing that the debtor may only exercise
0048 such right once within a 12-month period.
0049 Sec. 2. In an action to foreclose or otherwise enforce a se-
0050 curity interest in personal property, the court in its discretion
0051 upon the application of the debtor, may make an interlocutory
0052 order fixing a reasonable time within which the debtor shall
0053 make good the default under the security agreement and shall
0054 pay all costs of suit to date. If the debtor shows to the court, on or
0055 before the date fixed by the interlocutory order, that the debtor
0056 has made such payment, or if the debtor tenders payment in
0057 court, then such action shall be dismissed; otherwise, a final
0058 order for judgment for plaintiff may be made as though such
0059 interlocutory order had not been made. The court shall have the
0060 power to impound the personal property in controversy during
0061 the pendency of the interlocutory order at the expense of the
0062 debtor.
0063 Sec. 3. This act shall take effect and be in force from and
after its publication in the Kansas register.