Approved February 9, 1987
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture.

The meeting was called to order by Senator Allen at
Chairperson

10:05 a.m./p.m. on February 5, 1987 in room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: Joe Lieber, Kansas Cooperative Council
Paul Fleener, Kansas Farm Bureau
Doyle Rahjes, President, Kansas Farm Bureau
Tom Tunnell, Kansas Grain and Feed Dealers Assoc.
Rich McKee, Kansas Livestock Association
Gene Brinkman, President, Kansas Livestock Assoc.
Daniel Olsen, Kansas Livestock Marketing Assos.
Wilbur Leonard, Committee of Farm Organizations

Senator Allen called the Committee to order and welcomed the young farmers of the Kansas Livestock Association that were in attendance. The Chairman stated that the Committee would hear the opponents of SB 92; he then called on Joe Lieber to testify.

Mr. Lieber gave copies of his testimony to the Committee (attachment 1). and then explained his opposition to the bill.

The Chairman thanked Mr. Lieber and called on Paul Fleener to testify.

Mr. Fleener handed copies of his testimony (attachment 2) to the Committee and then introduced the President of the Kansas Farm Bureau, Doyle Rahjes. Mr. Rahjes expressed the desire that agricultural products should be eliminated from the Uniform Commercial Code and opposition to SB 92. Mr. Fleener then stated reasons the Farm Bureau is opposed to SB 92.

The Chairman thanked Mr. Fleener and called on Tom Tunnell to testify.

Mr. Tunnell furnished copies of his testimony to the Committee (attachment 3) and stated he felt SB 92 was legislation in the wrong direction. He requested the Committee not recommend SB 92 favorably for passage.

The Chairman thanked Mr. Tunnell and called on Rich McKee to testify.

Mr. McKee introduced the President of the Kansas Livestock Association, Gene Brinkman. Mr. Brinkman reported that his organization had discussed the issues concerning SB 92 numerous times and that the organization had taken a position of opposition to SB 92. Mr. McKee gave copies of his testimony to the Committee (attachment 4) and then explained opposition to SB 92.

The Chairman thanked Mr. McKee and called on Dan Olsen to testify.

Mr. Olsen gave the Committee copies of his testimony (attachment 5) and then requested that prenotification be given a chance to work because two months is not a true test to see if prenotification is satisfactory or not. He expressed opposition for SB 92.

The Chairman thanked Mr. Olsen and called on Wilbur Leonard to testify.

MINUTES OF THE Senate COMMITTEE ON Agriculture,

room 423-S, Statehouse, at 10:05 a.m./~~p.m.~~ on February 5, 1987.

Mr. Leonard handed copies of his testimony to the Committee (attachment 6) and expressed agreement with other conferees in their statements in opposition to SB 92. He suggested that maybe the system did not need changing.

The Chairman thanked Mr. Leonard and reminded the Committee that further briefing would be heard at the next Committee meeting and that the day after that there would be Committee discussion and possible action. The Chairman then called for Committee action on Committee minutes for February 3 and 4.

Senator Norvell moved the minutes be approved. Senator Montgomery seconded the motion. Motion carried.

Senator Allen adjourned the Committee at 10:53 a.m.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE DATE: February 5, 1987

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Orlin & Dora Loucks	Protection, Ks	KOMA
Lee Liber	Topeka	KLA
Jim Lee	Ingalls	KLA
Joe Yost	Greensburg Kans	KOMA
Mark Arndt	Topeka	Kansas Farmer
Mark A. Biberstein	Emporia	Sen. Bunker
Sue Armstrong	Topeka	State Banking Dept.
John Reynolds	Topeka	Law student
Steven Arndt	Emporia	Cattle Feeder
Ken Salomon	Yates Center, Ks	Farmer
Kevin Hunt	South Haven, Ks	Farmer Cattle Feeder
Jon Hicks	La Harpe Ks.	Cattleman
Jay Regar	Onaga Ks.	Cattleman
Stuart Reed	Enid, Ks	Cattleman
Pat Herrman	Sabetha Ks.	Cattleman
Tom Tunnell	Hutchinson	KCFOA
Dan Olsen	T.C. Mo.	Ks Ms Mktg Assn
George Ackerman	Sabetha	Sabetha Livestock Auction
Ross L. Cranston	Brewster	KLA
John David James	Shields	KLA
Gary Watts	Hardtner	Cattleman
Brian Dwyer	Robinson, Ks	KLA
Mark Yackey	301 E. Armour Blvd. K.C. MO. 64111	KLS Yackey & Assn.
Ron Estes	Atchison, Ks	Livestock Auction
Howard Langvardt	Junction City Kan.	Livestock Auction

GUEST LIST

COMMITTEE: SENATE AGRICULTURE DATE: February 5, 1987

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
STEVEN R. ESTES	RR#3 ATCHISON, KS	ATCHISON COUNTY AUCTION CO. INC.
Alan Steppat	Topeka	McGill & Assoc.
MAX DEETS	BELOIT	KLA
Roger Bechtel D.V.M.	Eureka	KLA
Chris Wilson	Hutchinson	KS Grain & Feed Assn
Dan Oakley	Tribune	KLA
Jeff Nattier	Newton	KLA
Jim Metz	Digital	KLA.
[illegible]	Dodge City	KLA
Jack Roenbaugh	Lewis Ks	
[illegible]	Sabetha	KLA & Sabetha Livestock Auction
Gene Brinkman	Arkansas City	KLA
Paul Seeley Jr.	El Dorado	KLA
MIKE BEAN	TOPEKA	KLA
Joe Rickabaugh	Topeka	KLA
Brent Anderson	Topeka	Sec. of State's office
Chip Wheelen	Topeka	McGill & Assoc.
BILL R. FULLER	Manhattan	Ks. Farm Bureau
John Blythe	Manhattan	Ks Farm Bureau
DOYLE D. RAHTES	AGRA	Ks FARM BUREAU
Ronald A. Nelson	Columbus	KLA
Monte Whitmer	Zenda	KLA
Georgia Edwards	Ottawa	Franklin Co. Farm Bureau
Rich McKee	Topeka	K.L.A.
[illegible] Baker	Topeka	KBA

(over)

GUEST LIST

COMMITTEE: SENATE AGRICULTURE DATE: February 5, 1987

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Joe Liebov	Topeka	Ks Coop Council
Julie Andsager	Topeka	Ks Coop. Council
Dillon Leonard	Topeka	Comm. Ks. Farm Org.

Testimony on SB 92
Senate Agriculture Committee
February 5, 1987
Presented by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the Committee: I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council.

The Council's position is in favor of any method that protects the seller, purchaser and lender and punishes the violators.

I assume that this committee is not prepared to discuss punishment at this time, so let's turn our attention to an equitable method.

It would appear that Senate Bill 92 is not the answer.

The biggest problem is that the cost of the user fees has not been determined. I realize that the Secretary of State will testify at a later date and may have figures for us. The problem then will be how high will they be and who will pay for them.

On Page 3 of this testimony I have a list of nine states. This is not a scientific survey but was developed at a meeting I attended last week with other state cooperative councils.

I think it is important to look at the range of costs of the four states that have central notification. In Oregon, the list could cost $500 per product. North Dakota has a cost of only $8.00 a month, or $96 a year, for a list with <u>all</u> the products on it.

Most states offer a microfiche list. I have the cost of a microfiche reader at the bottom.

attachment 1
Senate agriculture
2-5-87

Regardless of the cost mentioned here, it is hard for me to understand why a co-op or any other buyer has to pay a user fee to finance a program to protect the lenders.

I empathize with some of yesterday's testimony and can see how direct notification creates problems and costs the lenders some money. I question why those problems should be passed on to the buyer. If direct notification is costing the lenders a lot of money, why wouldn't they be willing to pay all the user fees for central notification?

As I mentioned earlier, we are looking for a method that protects the sellers, buyers and lenders. If a lender charges the seller to send out the list, then this is a cost to that particular seller. It's a cost of borrowing money.

If local cooperatives and other buyers have to pay the user fees, then that cost is added to the cost of doing business and all customers pay for it, even if they didn't have to borrow money. Does that seem fair?

There were several other points made yesterday that I would like to contest, but most of them will be answered by other conferees.

In closing, again I would like to state that most of these problems are caused by 1 percent of the sellers. If the punishment was more severe we might not need any notification.

Thank you.

attachment 1

State	Type of Notification	Cost of Registration	Cost Microfiche	Cost Paper
Nebraska	Central	$30	$25 per product	$100 per product
North Dakota	Central	?	$8.00 a month for all products	
Montana	Central	?		$5 per products plus 10¢ a page over 50 pages
Oregon	Central	?	$100 per product	$500 per product
Iowa	Direct			
Oklahoma	Direct			
Michigan	Direct			
Wisconsin	Direct			
Pennsylvania	Direct			

Cost of Microfiche Reader - $161.00 - $250.00

attachment 1

Kansas Farm Bureau

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: S.B. 92 - An Act Establishing a System for Effective Financing Statements

February 5, 1987
Topeka, Kansas

Presented by:
Paul E. Fleener, Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Paul E. Fleener. I am the Director of Public Affairs for Kansas Farm Bureau. We appreciate the opportunity to make a brief statement to you today in regard to the issue before you ... S.B. 92, which would seek to establish a system for effective financing statements, sometimes known as a "central filing" or "central notice" system.

Every member of this committee has been provided an abundant supply of information on this issue. It is our intention to use the brief time allotted to us today to make a few points, to elaborate on some of those points, and at the appropriate time to respond to any questions members of the committee may have.

Over the past several years Farm Bureau members have recognized the problems created by the farm products exception of the Uniform Commercial Code (UCC). The policy position of our members over the years has been to seek repeal of that section of the UCC. We have worked diligently toward that end but the UCC in Kansas has not been amended in regard to agricultural commodities and farm products so that they may pass Clear Title. We have

attachment 2
Senate agriculture
2-5-87

continued our work, in this Legislature, and in the Congress of the United States, to bring about fairer treatment of agricultural product buyers, **many of whom are, of course, farmers and ranchers themselves.**

In 1985, the United States Congress also recognized the problems created by the "farm products exception," and incorporated language in the Food Security Act of 1985 to solve that problem.

Mr. Chairman and Members of the Committee, these few points for your consideration:

* Farmers and ranchers are **proponents** of Clear Title for agricultural commodities.

* Farmers and ranchers were **proponents** of the sections in both House and Senate versions of the 1985 Farm Bill as Congress worked on that legislation and sought to provide for Clear Title for agricultural commodities. What ultimately passed was admittedly far more complex than the straightforward language in the House Bill or, for that matter the straightforward language of the Senate Bill. What passed came out of a Conference Committee and was the product of late night bill drafting. It **does** provide Clear Title. It does reverse the farm products rule of the UCC.

* Farmers and ranchers are **proponents** of pre-notification, an **option** available to lenders who seek to protect their security interest in a loan collateralized by farm products.

* Farmers and ranchers want and need an abundant supply of agricultural credit to finance their operations -- credit

attachment 2

historically provided by commercial banks, the Farm Credit System and the Farmers Home Administration (FmHA).

A brief bit of background at this time: Section 9-307 of the Uniform Commercial Code (UCC) states: "A buyer in the ordinary course of business, **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" (emphasis added). Clearly, farm product purchasers are treated differently than purchasers of any other products.

As a result of this "farm products exception," agricultural product buyers - frequently farmers and ranchers themselves - can be held liable for a lien held on the products they purchase if the proceeds of the sale are not applied to the loan obligation.

We mentioned earlier that Congress recognized that some 13 states had treated farm products differently. There was not uniformity as the name of the code - **Uniform** Commercial Code would imply. So Congress decided to deal with the problem.

The Food Security Act of 1985 was signed into law late in December of 1985. The Clear Title provisions - Section 1324 - did not take effect until one year later, December 24, 1986. Section 1324 provides that farm product buyers shall take title free and clear, **provided** they have not received written notice of the security interest within one year prior to the sale of those farm products. Such a system is commonly referred to as "pre-notification." Section 1324 allows individual states to

attachment 2

adopt a "central filing" or "central notice" system in-lieu-of employing the pre-notification approach. A central filing system, such as you have before you today places a number of requirements on the Secretary of State to collect, publish and distribute lien information to all buyers who register to receive it.

As indicated, farmers and ranchers have said they prefer pre-notification, one of the options available under Section 1324, and **in fact**, the law of the land since December 24, 1986, if a state **had not** adopted a central filing system.

This whole topic was aired out fully at our most recent Annual Meeting and during the Business Sessions on December 1 & 2, 1986, our delegates addressed the matter. First, however, the Resolutions Committee of Farm Bureau heard a presentation from the Kansas Bankers Association on why a central filing or **central notice** system should be adopted. Then, in the Open Discussion of Resolutions, central filing, pre-notification, Clear Title and the Uniform Commercial Code were all aired thoroughly and at great length. Finally, in the Business Session on Tuesday, December 2, the delegates adopted the following resolution:

Clear Title for Agricultural Commodities

Availability of credit and dependable agricultural financing is vitally important to Kansas agriculture. In an effort to make agricultural financing of farm products more efficient we recommend implementation of prenotification as provided for in the Food Security Act of 1985. We believe prenotification provides the greatest protection for farmers and ranchers from double jeopardy payments in the purchase of agricultural products.

attachment 2

Mr. Chairman and Members of the Committee, our people recognize that the option is available for establishment of a central filing system. They have reviewed that. They prefer pre-notification. Pre-notification is provided for in Section 1324 of the 1985 Farm Bill.

One of the most knowledgeable people in this country on the Uniform Commercial Code, Professor Barkley Clark, Professor of Law, National Law Center, George Washington University, Washington, D.C., wrote a memorandum to the American Bankers Association on the UCC farm products rule and the impact of the Food Security Act of 1985. His paper runs 53 pages in length. In it he re-examines the UCC. Then he dwells on the new federal statute ... particularly Section 1324. In it he also suggests amendatory language to clarify some of the already admitted complex, and in some cases unclear language. I want to make one other point for this committee, make it for the record and make it abundantly clear to all who are interested.

* My organization is but one of 29 agricultural, general farm, commodity, and agri-business groups which lobbied in support of Clear Title in the federal farm program legislation. My organization stands ready at **any time** to re-examine any and all of the language of Section 1324 and to make it abundantly clear where it is unclear and to make it workable for all parties and **retain** the Congressional intent of Clear Title for agricultural commodities. We will work from this day forward to bring about clarifying, non-substantive amendments which retain the spirit and

attachment 2

intent of Congress in bringing some uniformity to this troubled area.

Now, back to Professor Barkley Clark. One quote from him at this time and then to say to you I have selected excerpts from his paper for your further consideration as you review this matter. Professor Clark said this in regard to what he calls the "Second Option" in Section 1324 ... that of pre-notification. The following is his statement ... his opinion:

"If the secured lender desires to retain its security interest in farm products in spite of their sale by the borrower to buyers in the ordinary course of business, the federal law allows it (the lender ... our emphasis added here) to use self-help in the form of `pre-notification.'

"Pre-notification shifts the burden to the secured lender to seek out the buyer and give him actual notice of the lien.

"Under ideal circumstances, pre-notification should protect both secured lender and ordinary course buyer."

Mr. Chairman and Members of the Senate Agriculture Committee, we have indicated to you we favor pre-notification. Our members have told us that. We stand by our pledge to you and to everyone in this room and to others to work at some point in the future to clarify convoluted language in Section 1324. There are some areas where we can agree readily that changes ... verbiage that is unclear ... can make this a workable piece of legislation for all parties. That is our desire. We think central filing is not a necessary step at this time in Kansas and we appreciate the opportunity to share these thoughts with you.

attachment 2

Excerpts from:

MEMORANDUM TO THE AMERICAN BANKERS ASSOCIATION ON THE UCC FARM PRODUCTS RULE, THE IMPACT OF THE FOOD SECURITY ACT OF 1985 ON THAT RULE, AND SUGGESTED AMENDMENTS TO THE FEDERAL ACT

Barkley Clark, Professor of Law
National Law Center, George Washington University
March 17, 1986

PLEASE NOTE: As indicated in our testimony Professor Clark's memorandum runs 53 pages in length. It is divided into 3 parts. "The first part discusses the operation of the UCC farm products rule, including the policy justification for the rule, the litigation which it has spawned, and non-uniform amendments in various states. The second part describes the new federal statute as a reversal of the UCC rule. It emphasizes the three basic options open to secured lenders under the federal statute: (1) the do-nothing option, (2) the pre-notification option, and (3) the central filing option. It evaluates the strengths and weaknesses of the three options. The third part identifies weaknesses in the federal statute and in a textual way suggests amendments that should make the new law function better, for the benefit of all three interest groups involved: buyers of farm products, borrowers, and secured lenders."

Our excerpts are taken from the Section of Professor Clark's memorandum - III - dealing with "the new federal statute."

"... One of the arguing points for the federal statute is the need for Congress to step in with a uniform rule when the states have failed to maintain that uniformity ...

"... Congress struck something of a compromise, reversing the basic farm products rule of the UCC but giving agricultural lenders two reasonable options to maintain the viability of their security interests.

"... The new federal law is best viewed as creating three options for the secured lender. The first option is to do nothing different ... the second option, known as 'pre-notification,' allows the lender to maintain its security interest in farm products, but only if it takes certain affirmative steps to notify potential buyers in ordinary course. The third option requires special state legislation to establish a central notice system. The three options will be discussed in that order."

Professor Clark indicates on the first option that the "primary operative provision of the federal law, is subsection (d) which says:

(d) except as provided in subsection (e) and notwithstanding any other provisions of Federal, State, or Local law, a buyer who in

attachment 2

the ordinary course of business buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest." Professor Clark says this language "shifts the risk of borrower misbehavior from the buyer to the secured lender." As regards the attitude of regulators Professor Clark says:

"... Given the fact that the lien is perfected as against most third parties such as the trustee in bankruptcy, it is questionable whether the loan should be considered 'unsecured' even if the other federal options are not followed. It is certainly not 'unsecured' under the UCC.

"... It should not necessarily follow that a do-nothing approach renders the loan unsecured, particularly if the UCC has otherwise been followed.

The Second Option: Prenotification

"If the secured lender desires to retain its security interest in farm products in spite of their sale by the borrower to buyers in the ordinary course of business, the federal law allows it to use self-help in the form of 'pre-notification.' Pre-notification shifts the burden to the secured lender to seek out the buyer and to give him actual notice of the lien.

"... Under ideal circumstances, pre-notification should protect both secured lender and ordinary course buyer. The borrower will give an accurate buyer list to the lender, who will in turn send the proper written notice to all buyers indicated on the list. The notice will include the requirement of a jointly payable check forcing the borrower to use the proceeds of sale to pay down the loan. **The beauty of the second option is that it requires no implementing state legislation. It is a matter of lender self-help** (bold facing added).

The Third Option: Central Filing System

"The third option requires special state legislation to establish a central filing system under which buyers register with the Secretary of State and the Secretary of State periodically sends them lists of borrowers and secured lenders based upon special financing statements filed by the lenders. The Secretary of State in effect acts as a clearing house between secured lender and ordinary course buyer.

"... What are the advantages and disadvantages of establishing a central filing system under the federal law? The primary advantage from the lender's point of view is that it reduces the exposure.

"... On the downside it is questionable whether any state will pass the implementing legislation, at least in a free-standing

attachment 2

form independent of the UCC filing system. The system entails establishing an entirely new filing apparatus, which is both complex and costly.

"... Congress should amend the present legislation to come out somewhere between the simple form of pre-notification found in the UCC and the great complexity of the present statute."

"... A simplification of the pre-notificatin provisions to allow more of a 'floating notice' would bring the language of the statute closer to what it was before the federal bill went into Conference Committee.

"... If a state chooses to establish a central filing system under federal law, it is critical that it be free-standing and not integrated with the state's UCC except to the limited extent of dealing with priority battles between secured lender and ordinary course buyer.

"No central filing option at all would be preferable to one that goes beyond the limited scope of the federal statute.

"... State legislation seeking to satisfy the central filing option needs to be carefully monitored, and statutes which go beyond the limited scope of the federal law should be stopped in their tracks before they do great damage to the UCC notice filing system. This point simply cannot be over-emphasized."

It should be noted that the memorandum by Professor Clark was dated March 17, 1986, a date which preceded both temporary rules and final rules of the USDA in regard to central filing.

attachment 2

The Clear Title Lien Law

...A New Era for Agriculture...

On December 24, 1986, buyers of agricultural commodities entered a new era when the clear title lien law took effect nationwide.

This new law, passed as part of the 1985 Farm Act, for the first time grants clear title to all buyers of grain, livestock, poultry and other agricultural commodities. The new law should substantially reduce the risk of significant financial losses resulting from double jeopardy.

Achieving this new law was a major victory for the American Farm Bureau Federation, the National Grain and Feed Association, their respective State Affiliates, and the 27 other diverse national agricultural organizations that banded together in a unique united front with strong grass roots support from their members. It's no wonder the new law received such strong backing from all sectors of agriculture when you consider it will provide:

- **Clear Title for Buyers and Producers:** Agricultural product buyers, be they grain elevators, feed mills, producers or livestock markets, will buy free and clear unless they receive notice about the existence of liens prior to the sale and then fail to follow through on the payment obligations spelled out in the notice. In most cases, this will involve issuing a joint check payable to the producer and the secured party (lender). Many grain dealers and producers in the past had suffered losses of thousands of dollars or more by paying twice for the same commodities, once to the seller and a second time to a lender to satisfy a lien obligation about which the buyer had no knowledge.
- **Expedited Payment for Producers:** Buyers of agricultural commodities will know at the time of sale whether a lien has been filed. No longer will they have to make time-consuming lien searches at the county courthouse on every purchase, which in the past often delayed payments to producers.

Basic Provisions of the Clear Title Lien Law

But how will the new law be implemented? And what are the differing responsibilities of lenders, buyers, sellers/borrowers and states?

The new law overrides existing federal, state and local law to mandate that clear title be granted to all buyers of agricultural commodities. It does so by deleting the so-called "farm products exception" (Section 9-307) from the Uniform Commercial Code, which since its adoption in 1962 had exposed agricultural buyers to the risk of double jeopardy.

Under the new law, buyers of grain, livestock, poultry and other agricultural commodities will purchase free and clear **unless they are notified in writing that a lien exists within 12 months prior to the purchase of commodities.** It is the option of the lender or secured party to decide on which liens to notify buyers.

The new law applies **only** to liens created by action of the seller as a result of loans on agricultural production. It does **not** affect lien priority or statutory liens (such as state-created seed, thresherman's and landlord liens), which will continue to be governed by applicable state law. It is advisable that buyers check with their own legal counsel to determine the effect of the law on their respective businesses.

Two Forms of Notification: Under the new federal law, lien notification can take two forms — direct and central.

- Under **direct notification,** the buyer is notified about the existence of a lien **directly in writing** by either the lender, creditor or seller. To avoid potential problems, buyers who received lien notices directly from lenders up to one year prior to the effective date of the new law (i.e., since December 24, 1985) should consider complying with the notices or seek clarification from the lender.
- Under **central notification,** lenders and creditors use centralized systems through the secretary of state's office in given states to compile and disseminate written lien information to buyers. Importantly, central notification systems must be certified as being in compliance with the federal law by the U.S. Department of Agriculture before they qualify under the law as lien notification delivery systems. A state can adopt a central notification system at any time; there is **no deadline** imposed by the federal law. Thus far, central notification systems have been certified and approved by USDA for 10 states: Arkansas, Idaho, Louisiana, Maine, Mississippi, Montana, Nebraska, North Dakota, Oregon and Utah.

States adopting the central notification approach are **required** to organize the lien information in a very specific manner and disseminate that information **in writing** to buyers who register with the secretary of state to receive it. Some states' central notification systems are offering buyers the **option** of receiving written catalogs **or** microfiche. States using central notification systems also are **required** to provide lien information **orally within 24 hours to any unregistered** buyer, commission merchant or selling agent **upon request,** followed by written confirmation. While this telephone call-in service **must** be provided to **unregistered buyers,** such a service **will not suffice** as a way to notify **registered buyers** in such states. **Registered buyers** are **not obligated** to call in for updated lien information under the federal law.

In states **that do not** adopt central notification systems, direct notification automatically operates effective December 24, 1986 as the mechanism lenders and other secured parties can use to notify buyers about the existence of liens. In states that **do adopt** central notification systems, lenders still have the option to notify buyers directly. This is a possibility if lenders or buyers perceive that the information provided through a state's central notice system is inadequate, inaccurate, untimely or too costly.

Information Required in Lien Notices: Under both **direct** and **central** notice, lenders who decide to notify buyers about the existence of a lien on a given loan are **required** to list:

- The name, address and social security numbers of the individual debtors subject to liens. In the case of borrowers doing business other than as individuals, the IRS taxpayer identification number of the debtors is to be provided.
- The name and address of the secured party (lender).
- A reasonable description of the farm products on which a lien is filed, including the crop year, county or parish **in which the products were produced** and the quantity of farm products subject to the security interest.

There is one important difference between notification systems as to the information provided. Under **direct notice,** the lender is required to specify the payment obligations imposed on the buyer as condition for waiver or release of the security interest, such as writing a jointly payable check. However, under **central notice,** lenders are not required to specify the payment provisions. It is hoped that most will. But for those who don't there may be some delay caused by buyers having to contact the lender to obtain the payment information and receive written confirmation for legal protection.

One other caution to buyers: It would be prudent to seek clarification from lenders even if the notices received do not **exactly** meet the requirements of the new law. In fact, concerning central notices the law provides that such notices are to be considered as complying with the act even though they contain "minor errors that are not seriously misleading."

Attachment 2
Senate Agriculture 2-5-87
10

Responsibilities of Producers, Buyers and Lenders

The clear title lien law places varying degrees of responsibility upon producers (sellers/borrowers), buyers and lenders.

Producers' Responsibilities: For producers, the most noticeable responsibility occurs under **direct notification.** Under the law, lenders and creditors, as one of the conditions of the loan security agreement, may require that producers provide a list of potential buyers to whom they intend to sell. If the security agreement contains such a requirement and the farmer decides to sell to a buyer **not** on the original list, the producer is required to do one of two things:

- Notify the lender about the identity of the **actual buyer** at least **seven days before** the sale of commodities on which a lien has been filed; **or**
- Account to the lender for the proceeds of the sale not later than **10 days after** the sale.

Failure to meet one of these requirements will subject the seller to a fine of $5,000 or 15 percent of the value or benefit received for the farm product described in the security agreement, whichever is greater. States have the option, if they wish, to make these penalties more severe. Some already have.

In addition, under **direct notice**, the producer (seller) also has the **option, but is not required**, to notify the buyer about the existence of a lien.

Under **central notification**, the producer is **not** required to supply information beyond that demanded by the lender as part of the security agreement. However, producers may find that they pay indirectly, through loan fees, to finance state central notification systems because most require that lenders pay a filing fee and buyers pay a subscription fee to receive the lien notices.

Buyers' Responsibilities: Agricultural buyers — if they receive notice of the existence of liens, either directly from the lender or through a state central notification system and wish to protect themselves from double jeopardy losses — are required to perform the payment obligations specified in the notice. Failure to do so makes buyers liable in the event borrowers fail to repay the loan.

To be protected from double jeopardy losses, buyers have **additional** responsibilities in states utilizing USDA-approved **central notification systems.** They are to:

- Register with the secretary of state's office to receive lien information for a specific commodity and/or geographic region in which they do business within or between states; **or**
- Obtain lien information orally by telephone from the secretary of state's office, followed by written confirmation.

In central notification states, if the buyer fulfills these obligations or if the lender fails to file an effective financing statement with the secretary of state, the buyer purchases free and clear. States are assessing varying levels of fees on buyers and lenders to obtain central notice-generated lien information. These are important differences from **direct notification,** where the buyer is not assessed a fee and is passive unless he receives actual written notice from a lender or seller.

Lenders' Responsibilities: Lenders wishing to maintain their right to pursue buyers of mortgaged farm products are responsible for **either:**

- Disseminating the lien information in writing directly to buyers within 12 months prior to the sale of the farm products in **direct notification states; and/or**
- Filing an effective financing statement that contains the pertinent lien information in **central notification states.**

Lenders also are responsible under **both** direct and central notice to update lien information. The law requires that lenders notify buyers or the state central notice system within three months of any material changes in the status of a lien.

Other Important Aspects of Clear Title

There are several other aspects of the clear title law important to producers and buyers:

- **Treatment of farm input suppliers:** Feed manufacturers, seed and fertilizer dealers and other farm input suppliers also are subject to the new law. Farm input suppliers who file liens may choose to submit and/or disseminate lien information to potential buyers in the same way as bankers or other creditors.
- **Lien Notification by Federal Agencies:** Production Credit Associations, the Commodity Credit Corporation and the Farmers Home Administration, three of the nation's biggest lenders, say the decision of whether to issue lien notices under the law is being delegated to their local offices.
- **Effect on the Status of Farm Loans:** A Nov. 14 letter from the U.S. comptroller of the currency indicated that the new law would **not** affect the secured status of a loan if a bank files a security interest as specified by state law, registers the lien under a state central notice system or takes reasonable efforts to notify buyers directly about the status of liens.

A Partnership to Implement the New Law

Producers, agricultural buyers and lenders each play a crucial role in making the new law work as efficiently as possible. For their part, grain and feed dealers pledge to do all they can to process quickly and accurately the lien information they receive. That will speed payments to producers while still honoring the security interests of lenders.

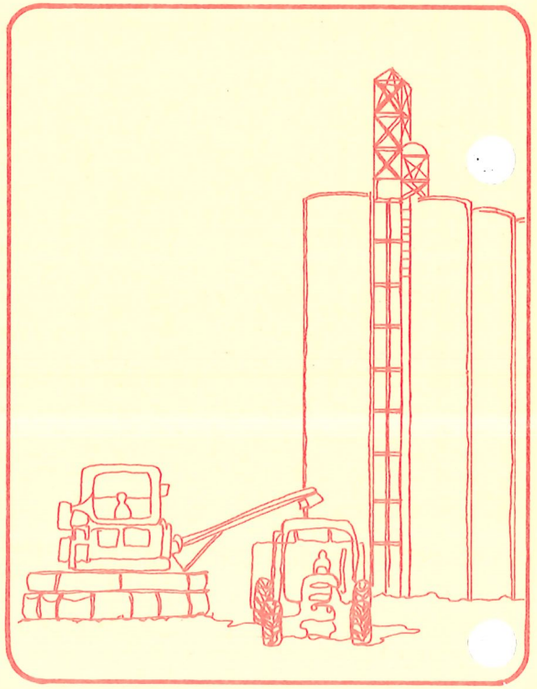
The clear title law. It's an historic new era that can benefit all sectors of agriculture.

American Farm Bureau Federation
600 Maryland Ave., S.W., Suite 800
Washington, D.C., 20024

National Grain and Feed Association
725 15th St., N.W., Washington, D.C., 20005

The Clear Title Law

...A New Era for Agriculture...



American Farm Bureau Federation

National Grain and Feed Association

(January 15, 1987)

KANSAS GRAIN & FEED DEALERS Association

1722 NORTH PLUM, BOX 949 A/C 316 662-7911 HUTCHINSON, KANSAS 67504-0949

TESTIMONY OF THE
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
TO THE SENATE AGRICULTURE COMMITTEE
JIM ALLEN, CHAIRMAN
REGARDING SB 92
FEBRUARY 5, 1987

Mr. Chairman and members of the Committee, I am Tom R. Tunnell, Executive Vice President of the Kansas Grain and Feed Dealers Association (KGFDA). Our Association represents the 1100 grain buying stations throughout the state; our members constitute the state's grain merchandising, storage, processing and handling industry.

As buyers of agricultural products, we have been subject to the farm products exception to the Uniform Commercial Code. That is, we are subject to so-called "double jeopardy", having to pay twice for the same product, once to the seller and once to the seller's lender if the seller fails to pay his debt. There are several cases which can be cited where a member of KGFDA has purchased farm products in good faith, only to later have to pay again for those products. Because of the risk involved and the difficulty, time and expense of searching lien filings, a coalition of 28 of the major national farm, commodity and agribusiness organizations asked Congress to grant clear title to purchasers of farm products. The compromise response to this request which Congress passed, grants clear title to buyers only unless they are notified in writing about the existence of liens. Buyers are still legally obligated to assist lenders in policing their loans and helping them preserve their security interest in collateral.

attachment 3
Senate agriculture
2-5-87

Direct notice is an advantage to both buyers and lenders, because it helps buyers to do the best job possible in protecting the lender's position. With direct notice, we can be much more certain about the existence of a lien on a particular individual's grain and know in advance exactly what the lender wants the buyer to do (i.e. issue a joint check, make direct payment to the bank, or make direct payment to the farmer).

In the past week, our Association staff has talked with many of our members throughout the state -- from Western to Eastern Kansas, from very small country elevator to large grain company. (Attached is a list of firms represented on our Board of Directors and Legislative Committee to give you an idea of the diversity. We have talked with all these firms plus many other members.)

Although direct notice has been in effect just over a month, not one firm complained about how it is working for them. "No problem" was the phrase we most often heard when we asked them how it was going. The amount of notices received has in no case been unmanageable. Some are putting theirs on computer, some in an indexed book, some in a manila folder. Already, they are realizing the benefits of increased direct communication with local lenders. Most firms are receiving notices listing multiple names of borrowers or multiple crops. Some firms report that a few lenders have made a seemingly purposeful attempt to inundate them with paper by sending a separate notice on each producer for each crop all in separate envelopes. Thus, they may get three notices on a single producer. But even in those cases, the data is manageable. And already, firms report that the number of borrowers their local lenders are notifying on is dropping off. Our members who also have banking interests favor direct notice. One member who owns banks and also sits on the Federal Reserve Board feels that direct notice presents no problem for them.

According to the Federal Reserve System, clear title legislation providing for direct notice passed in several states in the early 1980s had no effect on interest rates. Nor has direct notice had any effect on the availability of credit to farmers in those states. A bank's decision to grant credit should and must be made upon the borrower's ability to repay a loan--not on an unwitting third

party's legal vulnerability.

As an example of the experience of a lender in Illinois with direct notice (pre-notification), a letter from the president of a small town bank, primarily lending to producers, is attached. He says, "...this has created no problem for this bank. The new system is actually a benefit to us as an ag lender. We know in advance that our name will be on the proceeds check for farm products marketed. It eliminates our dependence upon the purchaser's knowledge of pre-existing liens and checking county filings for the existence of liens. The benefits of pre-notification far outweigh the problems of giving advance notice to the potential purchasers of farm products. I objected strenuously to the adoption of the pre-notification legislation and the additional burden which I felt the notification would place on lenders, as well as the additional risk, which I perceived to be involved because of the proposed changes. I was wrong. By pre-notification, we are virtually assured that our interests will be protected."

Our Association opposes central notice for many reasons. One referred to by this Illinois banker is the difficulty of searching lists of filings. Central notice would be no better than the system we have now which prompted us to seek a change at the federal level. It is difficult if not impossible to be sure that the person you are buying from is not on a central notice list, because of the many different business relationships and farm, partnership or corporate names any one individual may do business under. This problem is compounded by a central notice system, which would require buyers to check through three quarterly listings at any given time for every purchase. Under central notice, a buyer would register for his geographic area, and would additionally have to telephone the Secretary of State's office regarding any seller from out of the area. Telephone identification of a specific individual is, of course, even more difficult than searching the printouts. And unfortunately, the Secretary of State's office hours are more restrictive than buyers and sellers hours for transacting business.

Central notice would provide buyers with financial information

attachment 3
Senate agriculture
2-5-87

on hundreds or thousands of producers with whom they do not do business. There is no need for buyers to have that information, and anyone may register as a buyer. So that information is available to virtually any person.

Since buyers would be notified on everyone under central notice, buyers will be forced to issue joint checks to all buyers on the list unless they first call the lender and get written permission not to do so. This is an unnecessary hassle for all involved.

The experience of other state grain and feed associations where central notice is in effect is not good. North Dakota sent us the attached copy of a filing list, which illustrates the difficulty of reading and searching the printouts. Nebraska Grain and Feed Association, which opposed central notice and encouraged the Governor to veto the original bill (which he did), reports that their system is totally unmanageable for buyers, because central notice does not eliminate direct notice. So, when a state goes to central notice, they have two systems, as required by the federal law. Nebraska bankers are still sending direct notices to be sure the buyers have the information in an accessible form. So buyers have to search the huge lists they are getting from the state plus the direct notices from the lenders.

According to the administrator of the Packers and Stockyards Administration of USDA, who is responsible for certifying state central notice systems, "The jury is still out on whether central notice systems will survive." Many feel that they may "fall of their own weight", because they are so cumbersome that buyers in some central notice states simply are not registering or using the systems. Packers and Stockyards estimates that it will be over a year before we know if the central notice systems will succeed.

In summary, KGFDA strongly opposes SB 92 and the establishment of a central notice system. We firmly believe that direct notice is working and will continue to work to the advantage of the buyer, the lender and the good-faith seller. There is no fail-safe protection under either direct or central notice from the farmer who

intentionally sets out to break the law. There are several informal situations (out of state sales, the travelling buyer situation, sale under another name, etc.) where a central notice system could be easily circumvented if a producer wanted to do so.

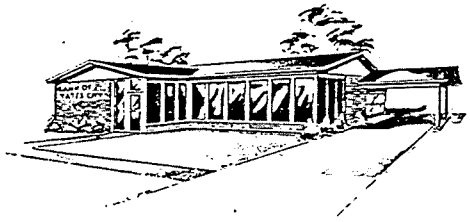
Direct notice is the best way for us to help the lender protect his security interest, serve our customers, and mitigate our risk as buyers.

attachment 3
Senate agriculture
2-5-87

GRAIN FIRMS REPRESENTED ON KGFDA'S BOARD OF DIRECTORS AND LEGISLATIVE COMMITTEE ARE:

Ranch Aid, Eureka
Cooper Grain, Colby
Gilbert Grain, Clay Center
Blair Milling and Elevator, Atchison
Brady Grain, Edmond
Sullivan, Inc., Ulysses
Farmers Exchange, Prescott
Evans Grain, Salina
Garvey Grain, Wichita
Wallace County Co-op, Sharon Springs
Cairo Co-op, Cunningham
Cherryvale Grain, Cherryvale
Farmers Co-op, Dighton
Hy-line Seven Co-op, Kansas City
Wright-Lorenz, Salina
Collingwood Grain, Hutchinson
White Cloud Grain, White Cloud
Smoot Grain, Salina
Bunge, Kansas City
Cargill, Topeka
West Plains Grain, Marienthal
St. Mary's Co-op, St. Mary's
Farmers Co-op, Haviland
Lincoln Grain, Atchison
Western Grain, Wichita
Ulysses Co-op, Ulysses
Farmers Co-op, Haven
Seneca Elevator, Seneca

attachment 3
Senate agriculture
2-5-87



BANK OF YATES CITY

YATES CITY, ILLINOIS 61572

GEORGE J. BRECKENRIDGE, Cashier

February 4, 1986

Chris Mosher Wilson
Director of Governmental Relations
Kansas Grain and Feed Dealers Assn.
1722 N. Plum, Box 945
Hutchinson, Kansas 67504

Dear Chris:

Thank you for your letter concerning the pre-notification requirement now in effect for Illinois lenders to potential buyers of farm products previously given as collateral.

To respond briefly to the four questions you have posed, I feel that:

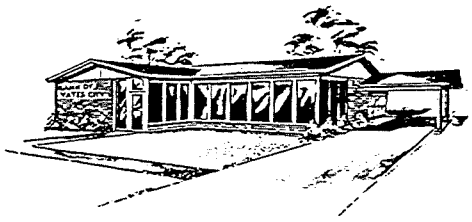
1. Pre-notification requirements may have reduced the availability of credit to a few of the marginal borrowers. Under the new system, it is possible for borrowers to do their marketing outside of their marketing area, which would defeat the pre-notification efforts of most lenders. This fact may make some lenders more cautious, particularly the larger lenders who might not be as well acquainted with their borrowers. I hasten to say, however, that this has created no problem for this bank.

2. The new system is actually a benefit to us as an ag lender. We know in advance that our name will be on the proceeds check for farm products marketed. It eliminates our dependence upon the purchaser's knowledge of pre-existing liens and checking county filings for the existence of this type of liens.

We consider livestock and crops as an excellent type of liquid collateral for our farm production loans. I am sure that you are aware of the fact that this is about the only liquid collateral that most farmers have for their borrowing requirements.

3. The benefits of pre-notification far outweigh the problems of giving advance notice to the potential purchasers of farm products.

attachment 3
Senate agriculture
2-5-87



GEORGE J. BRECKENRIDGE, President

BANK OF YATES CITY

YATES CITY, ILLINOIS 61572

February 4, 1986

4. Keep the legislation simple and to the point on notification requirements so they do not become burdensome for either the lender or the potential purchaser of farm products.

I would like to make the following personal observation concerning this legislation. I objected strenuously to the adoption of the pre-notification legislation and tampering with the U.C.C. and the additional burden which I felt the notification would place on lenders, as well as the additional risk, which I perceived to be involved because of the proposed changes. I was wrong. By pre-notification to the purchasers, we are virtually assured that our interests will be protected. We are eliminating prior dependence on the buyer's vigilance (checking county filings, etc.) to protect our interests.

It was good to hear from you, Chris, and I hope that this information will be of some help to you.

Sincerely,

President

GJB:ak

[redacted]	45-606-7731 536-26-5698 50 -5573 50 3533 50 0525	[redacted] STATE ND ZIP 58789 SECURED PARTY: COMMODITY CREDIT CORP MCHENRY CO ASC BOX 298 DESCRIPTION OF CROP: 1985 WHEAT - 1400 BU 38-049-825 LOCATION: COUNTY MCHENRY, TOWNSHIP 159, RANGE 79, SECTIONS 11	COUNTY MCHENRY TOWNER ND 58788	C0084781 01/24/86 4:00 PM
[redacted] FHA	501-90-5897	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORP NELSON CO ASC COM DESCRIPTION OF CROP: 1985 WHEAT 1344 BUSHELS 38 063 669 LOCATION: COUNTY NELSON, TOWNSHIP 154, RANGE 60, SECTIONS 32	COUNTY NELSON LAKOTA ND 58344	C0059756 12/04/85 4:00 PM

K 07

10/7/86 — NORTH DAKOTA SECRETARY OF STATE — CENTRAL FILING — CROP NOTICE REPORT — SC1-060-AA — PAGE 4022

DEBTOR-NAME	SSN / FED ID	MAILING ADDRESS		FILE NUMBER / DATE / TIME
[redacted]	J 501-90-5897 L 501-88-5790	[redacted] BROCKET STATE ND ZIP 58321 SECURED PARTY: FARMERS HOME ADM BOX 520 DESCRIPTION OF CROP: ALL CROPS (CASH OR FEED) GROWING OR TO BE GROWN AND/OR STORED INCLUDING ALL PRODUCTS AND (PROCEEDS THEREOF) LOCATION: COUNTY RAMSEY, TOWNSHIP 154, RANGE 61, SECTIONS 5 RAMSEY 154 62 1 RAMSEY 156 61 32,31 RAMSEY 157 61 NELSON 154 60 32	COUNTY RAMSEY DEVILS LAKE ND 58301	C0070652 12/12/85 4:00 PM
[redacted]	502-62-5210	[redacted] HARWOOD STATE ND ZIP 58042 SECURED PARTY: COMMODITY CREDIT CORPORATION RAMSEY CO ASCS BOX 884 DESCRIPTION OF CROP: 1982 WHEAT 1032 BU 38-071-432 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 60, SECTIONS 9	COUNTY RAMSEY DEVILS LAKE ND 58301	C0080619 01/07/86 4:00 PM
[redacted]	502-24-8002	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORP RAMSEY CO ASCS BOX 884 DESCRIPTION OF CROP: 1986 BARLEY 4400.00 BUSKELS 38 071 8 63 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 61, SECTIONS 22	COUNTY RAMSEY DEVILS LAKE ND 58301	C0103653 09/05/86 4:00 PM
[redacted]	501-86-7382	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORP. RAMSEY CO. ASCS BOX 884 DESCRIPTION OF CROP: 1985 WHEAT 2421.00 BUSHELS 38-071-645 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 61, SECTIONS 34	COUNTY RAMSEY CO. ASCS DEVILS LAKE ND 58301	C0005723 11/18/85 3:24 PM
[redacted]	501-86-7382	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORP. RAMSEY CO. ASCS BOX 884 DESCRIPTION OF CROP: 1985 WHEAT 2850.00 BUSHELS 38-071-808 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 61, SECTIONS 34	COUNTY RAMSEY CO. ASCS DEVILS LAKE ND 58301	C0005724 11/18/85 3:25 PM
[redacted]	502-38-6342	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORP. RAMSEY CO. ASCS BOX 884 DESCRIPTION OF CROP: 1985 WHEAT 7240.00 BUSHELS 38-071-692 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 61, SECTIONS 16, 3	COUNTY RAMSEY CO. ASCS DEVILS LAKE ND 58301	C0005725 11/18/85 3:26 PM

L 07

10/17/86 — NORTH DAKOTA SECRETARY OF STATE — CENTRAL FILING — CROP NOTICE REPORT — SC1-060-AA — PAGE 4023

DEBTOR-NAME	SSN / FED ID	MAILING ADDRESS		FILE NUMBER / DATE / TIME
[redacted]	502-38-6342	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORP RAMSEY CO ASCS BOX 884 DESCRIPTION OF CROP: 1985 BARLEY - 8500 BU 38-071-48 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 61, SECTIONS 33	COUNTY RAMSEY DEVILS LAKE ND 58301	C0073956 12/16/85 4:00 PM
[redacted]	502-38-6342	[redacted] STATE ND ZIP 58321 SECURED PARTY: COMMODITY CREDIT CORPORATION RAMSEY COUNTY ASCS BOX 884 DESCRIPTION OF CROP: 1982 WHEAT - 11673 BUSHELS 38-071-470 LOCATION: COUNTY RAMSEY, TOWNSHIP 155, RANGE 61, SECTIONS 33	COUNTY RAMSEY DEVILS LAKE ND 58301	C0025728 11/25/85 4:00 PM
[redacted]				C0025727

Senate agriculture 2-5-87 attachment 3

Kansas Livestock Association

2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT

OF THE

KANSAS LIVESTOCK ASSOCIATION

TO THE

SENATE AGRICULTURE COMMITTEE

SENATOR JIM ALLEN, CHAIRMAN

SENATOR DON MONTGOMERY, VICE CHAIRMAN

WITH RESPECT TO SB 92

CENTRAL NOTIFICATION SYSTEM

PRESENTED BY

RICH MCKEE

EXECUTIVE SECRETARY, FEEDLOT DIVISION

FEBRUARY 5, 1987

Mr. Chairman, members of the committee, my name is Rich McKee. I come before you representing over 9,000 individuals who belong to the Kansas Livestock Association. These KLA members are involved in the production of cattle, swine and sheep. Their homes are in virtually every county of the state. Trust, honesty and hard work ethics are their trademark. Today we come before your Agriculture Committee to ask for your help ... we strongly urge you to oppose SB 92. To briefly describe how we reached this policy decision, I will ask Gene Brinkman, President of the Kansas Livestock Association to address the committee.

attachment 4
Senate agriculture
2-5-87

For the past several years KLA, and virtually every other farm group, sought a change in the "farm product" exception found in the Uniform Commercial Code. Under the previous law, a buyer of ag products (feeder pigs, grain, replacement heifers, hay, feeder cattle, etc.) could be legally forced to pay twice for the same product. This occurred when the seller would convert the proceeds and the lender would seek a second payment from the third party purchaser. Because virtually every farm and ranch member of KLA is a buyer and seller of ag products, this "double jeopardy" problem cast a dark shadow over the entire industry. Both sides of this debate agree such an incident of double payment seldom occurred. Why? Because the vast majority of agriculture debtors are honest, trustworthy individuals. However, when a producer was forced to pay twice for the same product, once to the seller and again to the lender, the results were devastating. With a very clear policy position, a coalition of farm groups asked Congress to relieve buyers of ag products of this burden. After nine hearings in three years, Congress agreed it was not fair for someone to pay twice for the same product and the farm product exception was removed.

Over the past few years the KLA membership regularly reviewed its position on this issue. Each time, this was done from two different perspectives. First, strictly as a debtor. Of much interest was the anticipated effect clear title may have on credit availability and interest rates. We researched a number of other states which had been operating with ag products passing clear title for a number of years. **Not once was there any evidence clear title decreased credit availability or caused interest rates to increase.** In fact, during the first quarter following implementation of clear title in Illinois in 1983, **interest rates actually decreased!** Will clear title in itself provide Kansas producers with lower

attachment 4

interest rates? We think not, but the point is there are many more important factors to determine interest rates than clear title. Today ag producers are enjoying some of the lowest interest rates in years.

Another reason, as debtors, our membership took a position supporting the direct notice system is confidentiality of financial information. **Under the proposed state operated central notification system, lien information would essentially become public knowledge on a statewide basis.** Under the current and preferred direct notice system, financial information is much more confidential than the proposed bill would provide. In addition, under SB 92 the lien information ("effective financing statement") which must be discovered by the buyer, is valid for a period of five years. **This means under SB 92, years after a production loan is retired, an effective financing statement could remain filed against an individual producer.** If a lender chooses to notify local potential buyers under the current direct notice system, the notice is valid for only one year.

The KLA membership also considered which system would provide the most protection for buyers from the threat of double payment. Without question, the direct notice system, already in place, is preferred. In order for a buyer of ag products to protect himself under SB 92, he/she must first register with the Secretary of State. As you know, most ag related people find it very distasteful to register with any government agency. The only alternative is to call the Secretary of State's office during regular business hours. As you all know, cattle, grain, etc. don't just trade hands during regular business hours and you do not have the exact, precise name ... or if the state employee fails to accurately spell the request, the buyer is again at risk. Written confirmation from the Secretary of State's office may be mailed up to two **business** days following the oral request.

attachment 4

This could cause delays in producers receiving the proceeds. Imagine making a telephone request on Friday ("during regular business hours") ... the Secretary of State sends written confirmation the following Tuesday. The buyer receives it in one or two days ... and all of a sudden your looking at a week's time before the producer gets his money.

Another reason a central notice system is more cumbersome for buyers is they will be forced to comply with two separate systems. In those few states where a central notice system has been installed, buyers continue to receive and must honor direct notices. This is in addition to searching massive lien lists published by the respective Secretarys of State.

The direct notice system is really nothing new. "Unofficially" it has been in effect for the last several years. Rather than rely on a state system, lenders have been contacting the potential buyers concerning a few of their troubled customers. Buyers welcomed this direct communication.

Under either system, a crook will be a crook. It has been said many times before ... it's impossible to legislate honesty. With that in mind, our members who are both debtors and buyers, strongly prefer the direct notice system. Under this system our members will work with lenders to see that they receive the proceeds 99% of the time. All we ask is that the lenders be responsible for and assume the other 1%. We feel that is reasonable. All we ask is that when our members buy an ag product, pay good money for it ... they should own it.

attachment 4

White States - Operate by Direct Notice.

Black States - Operate under a Central Notification System.

5

attachment 4

STATE OF KANSAS

Eugene T. Barrett, Jr.
Bank Commissioner

Michael D. Heitman
Deputy Commissioner

OFFICE OF

BANKING DEPARTMENT
TOPEKA

October 2, 1986

Mr. James S. Maag
Kansas Banker's Association
707 MNB Building
Topeka, Kansas 66603

Re: Clear Title Legislation

Dear Jim:

On September 12, 1986 you sent to my attention information outlining the Oklahoma State Banking Department's position pertaining to the referenced matter. Additionally, you asked for a position statement from this department.

Jim, I realize your members are concerned about the additional risks this legislation may embody including regulatory interpretation and resulting examination implications. In this regard, I will try to clearly convey our perception of the risk consideration and the resultant implication upon our examination findings.

I discussed this matter with my staff to determine how loans secured by agricultural products were analyzed prior to the referenced legislation and what impact "clear title" may have on our previous position.

For an example, let's assume the loan properly lists a security interest in agricultural products and the lender has properly recorded a UCC-1 filing. Our examiner would ascertain the present fair market value of the product as a part of the consideration in determining the credit risk portrayed. This assumes that no unusual circumstances exist such as a lapsed UCC-1 filing, a deficient security agreement, debtor known to be out-of-trust, etc. Such adverse circumstances may or may not result in a loss of the security value of the agricultural products purported to be pledged as collateral; it will depend upon the examiner's assessment of the facts and the resulting likelihood that there is any real value associated with the bank's collateral position.

-more-

attachment 4

Prior to clear title legislation, I find that our examiners gave no value to agricultural products known to have been sold out-of-trust unless the lender could document a viable and collectible claim against the purchaser of the products. As far as I can determine, this generally resulted in a loss of the collateral value once associated with the products because the bank could not identify the purchaser. In 1985 one of our bank failures was due in part to a borrower being out-of-trust on $500,000 in livestock and the bank recovered nothing. This is certainly not to say a recovery is not possible, it just seems difficult and has resulted in a loss of the collateral value even prior to clear title legislation.

As I understand the referenced legislation, it simply restricts the secured lender's potential claim against a purchaser of agricultural products if the borrower misapplies the proceeds. All other aspects of the lender's security interest remain the same. In other words, the lender could still enforce a security interest in the products provided they remain the property of the debtor. Hence, it is only when the debtor is out-of-trust that the exposure is present. As I indicated, we already find this exposure to be significant under present circumstances.

In this regard, I must conclude that a loan referencing a security interest in agricultural products will <u>not</u> automatically be considered as unsecured following the implementation of clear title legislation. Such treatment would be arbitrary and requires the assumption that the debtor <u>will</u> sell out-of-trust; a conclusion I would find indefensible.

The obvious conclusion is that the <u>likelihood</u> of a debtor selling out-of-trust must be a part of the credit decision making process regardless of clear title legislation. That is why our examiners will not automatically exclude such collateral from present loan classification decisions; the risk of dissipation is already a very real threat.

I find that several bankers have already questioned my staff regarding a possible forthcoming regulatory requirement pertaining to mandatory notification to potential buyers. Again, our response has been that it remains a credit risk decision. A regulatory requirement that the debtor <u>must</u> supply a list of potential buyers and that the lender <u>must</u> notify these potential buyers in all cases does not appear practical nor warranted. This would mean that whether the debtor is a major producer of agricultural products or simply buying livestock for a 4-H project, notifications would be required. It is obvious that management's discretion should be permitted.

-more-

I would, however, expect the lender to ascertain the risk of dissipation and take all appropriate steps to minimize this risk when the debtor's financial condition is suspect and dissipation would result in significant loss exposure to the bank. Our examiners will assess the safety and soundness aspects of the lender's policy and procedures pertaining to this matter and will certainly be critical of lax lending practices which expose the bank to significant unnecessary risk.

If you have any questions or comments, please let me know. Also, please share this with Harold as he expressed an interest in this subject as well.

Sincerely,

Eugene T. Barrett, Jr.
State Bank Commissioner

ETBjr:mdh:jas

cc: Field Office Supervisors
FDIC
File: (R) C

attachment 4

Kansas Livestock Association

2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

February 14, 1986

Mr. Clare Berryhill, Director
California Department of Food & Agriculture
1220 North Street
Sacramento, California 95814

Dear Mr. Berryhill:

Since the passage of the 1985 Farm Bill some questions have been raised concerning Section 1324. That section repealed the "farm product exception" from the Uniform Commercial Code, ending the double jeopardy situation that cast a dark shadow over all purchasers of ag products. It is my understanding that the National Association of State Departments of Agriculture supported "clear title" legislation. Because your state has had clear title legislation for over a decade I felt you may be able to help us answer some questions concerning its effect on agriculture producers, and specifically cattle operations.

1) We are concerned that the availability of credit for ag production loans, especially cattle loans, will decline or in some cases even disappear. Has this been the case in California?

2) Some believe that interest rates charged to cattlemen for production loans will increase dramatically due to the "clear title" legislation. Was there any indication that occurred in California?

3) After clear title legislation passed in your state (I believe it was in 1976), were livestock debtors forced to have more collateral in order to obtain credit?

4) Finally, with the clear title legislation we are worried that federal banking regulators will classify livestock loans as "non-performing" or "unsecured" loans. Obviously, this would force financial institutions out of livestock production loans. Since clear title was enacted in California is there any indication this has occurred?

attachment 4

Thanks so much for your help with these questions. We anxiously await your reply.

Sincerely,

Rich McKee
Executive Secretary
Feedlot Division

RM:cv

STATE OF CALIFORNIA — GEORGE DEUKMEJIAN, *Governor*

DEPARTMENT OF FOOD AND AGRICULTURE

1220 N Street
Sacramento, CA 95814

MAR 10 1986

March 6, 1986

Mr. Rich McKee
Executive Secretary
Feedlot Division
Kansas Livestock Association
2044 Fillmore
Topeka, Kansas 66604

Dear Mr. McKee:

Reference is made to your recent letter regarding the impact of "clear title" legislation in California. The following are the answers to the four questions in the order presented in your letter:

1. No. There are many more important issues that have affected credit availability.

2. No. Securing loans and interest rates on them are highly individualized. Other factors that are traditionally involved in securing a loan have continued to be the ones considered. There is to our knowledge no evidence of pressure exerted by "clear title" legislation.

3. No.

4. It did not occur.

The above answers are supported by information obtained from livestock representatives and organizations. There is no evidence that "clear title " legislation has had any appreciable effect.

Sincerely,

for Clare Berryhill
Director
(916) 445-7126

attachment 4

Kansas Livestock Association

2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

February 14, 1986

Fran Simpson
California Cattle Feeders Association
931 21st Street
Bakersfield, California 93301

Dear Fran:

Since the passage of the 1985 Farm Bill some questions have been raised concerning Section 1324. That section repealed the "farm product exception" from the Uniform Commercial Code, ending the double jeopardy situation that cast a dark shadow over all purchasers of ag products. Because your state has had clear title legislation for over a decade I felt you may be able to help us answer some questions concerning its effect on agriculture producers, and specifically cattle operations.

1) We are concerned that the availability of credit for ag production loans, especially cattle loans, will decline or in some cases even disappear. Has this been the case in California?

2) Some believe that interest rates charged to cattlemen for production loans will increase dramatically due to the "clear title" legislation. Was there any indication that occurred in California?

3) After clear title legislation passed in your state (I believe it was in 1976), were livestock debtors forced to have more collateral in order to obtain credit?

4) Finally, with the clear title legislation we are worried that federal banking regulators will classify livestock loans as "non-performing" or "unsecured" loans. Obviously, this would force financial institutions out of livestock production loans. Since clear title was enacted in California is there any indication this has occurred?

attachment 4

Thanks so much for your help with these questions. We anxiously await your reply.

Sincerely,

Rich McKee

Rich McKee
Executive Secretary
Feedlot Division

RM:cv

CALIFORNIA CATTLE FEEDERS ASSOCIATION

MAR 7 1986

931 – 21ST STREET
TELEPHONE: (805) 327-3022

BAKERSFIELD, CALIFORNIA 93301
F. M. "FRAN" SIMPSON, JR., MANAGER-SECRETARY

March 4, 1986

Kansas Livestock Association
2044 Fillmore
Topeka, Kansas 66604
Attn: Rich McKee

Dear Rich:

Related to your letter of February 14, 1986, I list our feelings about the Uniform Commercial Code and the double jeopardy problem on paying twice for Ag products.

1. NO. There are many other more important issues that for the past several years relate to the availability of credit for cattle loans. At any rate, it is not true in California.

2. NO indication. When we past our legislation in the 70's, there was no evidence of lending institutions pressuring more heavily on customers due to the change in this law.

3. NO.

4. It did not occur to my knowledge in California in the 70's.

Let's face it, Rich, making a profit in the livestock business has been a basic problem for some years without consideration of clear title. I see no evidence that clear title has hindered lines of credit at all.

Sincerely,

FRAN

Fran M. Simpson, Jr.
Manager/Secretary

cc: L. Willey
J. Harris
G. Van Schaack

FMS/sv

attachment 4

FEB 10 1986

CALIFORNIA CATTLEMEN'S ASSOCIATION

TELEPHONE 444-0845 (AREA CODE 916)
1221 H STREET
SACRAMENTO, CALIFORNIA
ZIP CODE 95814

February 4, 1986

Mr. Rich McKee, Executive Secretary
Feedlot Division
Kansas Livestock Association
2044 Fillmore
Topeka, KS 66604

Dear Rich:

The concerns you indicated are being raised over clear title are, quite frankly, surprising to me. It sounds as if those voicing the concerns are trying to obstruct a reasonable discussion of clear title.

California passed clear title legislation over a decade ago. Its effect has been for lenders and borrowers to conduct themselves on a more business like basis. Lenders now assure that borrowers understand terms and conditions of loans, and borrowers recognize their responsibility under the loan agreement.

Production loans continue to be secured, as always, by liens on commodities, perfected with the proper state or local agency. In cases where lenders have cause for concern, they may give notice of the lien to prospective buyers. Generally, they require, as part of the loan agreement, that the borrower notify the lender of impending sales. Lenders then notify buyers regarding payment requirements.

Agricultural loan volume has increased at least as rapidly—and in most cases, more rapidly—than in the rest of the U.S. Interest rates have been competitive with rates anywhere in the United States. And California agriculture cannot be considered different than for Kansas or the rest of the country, since California produces nearly every commodity that is produced elsewhere in the U.S.

It is distressing to hear the claims being made there, Rich. The claims are unfounded based both on my experience as a lender here in California and upon my conversation with people in Illinois. If the opponents spent their time working with borrowers to put the borrower-lender relationship on a more business like basis, rather than crying wolf, you would be a lot better off.

attachment 4

Incidentally, I do not understand the claim on collateral requirements. My observation here in California, with our lender in Montana, and in Illinois is that any lender worth his salt has all the collateral tied up anyway. The good lenders are focusing on structuring their loans to aid in meeting cash flow and repayment obligations.

Please feel free to contact me if you have any questions. We are most satisfied with the clear title law in California.

Sincerely,

John W. Ross

John W. Ross, Executive Vice President
California Cattlemen's Association

se

Financial Letter
FEDERAL RESERVE BANK OF KANSAS CITY

Survey of Agricultural Credit Conditions

Agricultural credit conditions in the Tenth Federal Reserve District remained under stress but continued to stabilize during the third quarter of 1986, according to the 160 agricultural bankers responding to the Federal Reserve Bank of Kansas City's quarterly survey. Land values declined modestly during the third quarter, and farm loan interest rates fell for the eighth consecutive quarter. Slack farm loan demand and plentiful loan funds pushed loan-deposit ratios to another historic low. Farm liquidations continued at a rate bankers considered well above normal.

Land values continue slow decline

Average farmland prices continued to edge downward in the third quarter, following the trend of moderate decline that began in the first half of 1986. At 2 percent, the average decline in the value of all categories of farmland was the same as in the second quarter of 1986 and much less than the 6 to 7 percent quarterly declines posted in 1985. Overall, land values averaged 14 percent lower than a year earlier and 52 percent lower than the market highs reached in mid-1981 (Table 1).

Table 1
FARM REAL ESTATE VALUES
September 30, 1986
(Average value per acre by reporting banks)

	Non-irrigated	Irrigated	Ranch-land
Kansas	$405	$620	$177
Missouri	573	811	309
Nebraska	429	782	134
Oklahoma	381	522	219
Mountain States*	228	844	129
Tenth District	$411	$724	$182
Percent Change From:			
Last Quarter	−2.9	−2.1	−1.2
Year Ago	−14.6	−12.7	−15.3
Market High	−51.3	−49.7	−55.0

*Colorado, New Mexico, and Wyoming combined.

Declines of 3 percent in the value of nonirrigated cropland, 2 percent in the value of irrigated cropland, and slightly more than 1 percent in the value of ranchland match the rates of decline in the second quarter. The largest decline was an 8 percent drop in the value of Oklahoma ranchland. The sharpness of the drop in Oklahoma ranchland values likely reflects continued stressful conditions in the oil and gas industry. After stabilizing over the previous two quarters, average ranchland values in the Mountain States (Colorado, New Mexico, and Wyoming) rebounded strongly in the third quarter, due probably to stronger cattle prices.

Interest rates move lower

Interest rates on farm loans fell again in the third quarter, continuing a seven-quarter trend. Averaged across all types of farm loans, interest rates fell 46 basis points during the quarter, to a level 139 basis points less than a year before. Even with the decline, however, farm loan rates were still significantly higher than other market rates. The relatively wide spread between farm loan rates and other market rates may reflect an effort by lenders to maintain profits in the face of increased loan losses and a lag in the adjustment of the cost of funds at rural banks to the decline in other market interest rates.

Farm loan rates at the end of the quarter averaged 11.9 percent on feeder cattle and operating loans, 12.0 percent on intermediate-term loans, and 11.6 percent on farm real estate loans. As in the second quarter, rates were lowest in Missouri and highest in the Mountain States.

Loan-deposit ratios remain low

Bankers reported continued sluggish demand for farm loans and ample loan fund availability. Only 14 percent of the bankers reported an increase in loan demand (Table 2). The percentage was only slightly higher than the record low percentage reported the previous quarter. Half of the respondents indicated that loanable funds were more available than in the previous quarter, and only 3 percent reported funds were less available. Fewer than 3 percent of the responding bankers denied loans in the third quarter because of a shortage of funds.

Research Division, Federal Reserve Bank of Kansas City
Kansas City, Missouri 64198 (ISSN 0739-5299)

Vol. 12, No. 11
November 1986

attachment 4

Table 2
YEAR-TO-YEAR CHANGES IN
NONREAL ESTATE FARM LOANS
September 30, 1986
(Percentage of banks reporting)

	Greater	Same	Lower
Demand for Farm Loans	13.84	47.17	38.99
Availability of Funds	50.94	45.91	3.14
Rate of Loan Repayments	11.32	61.64	27.04
Renewals or Extensions	25.16	64.15	10.69
Amount of Collateral Required	66.04	33.33	0.63
Referrals to Correspondent Banks	4.11	71.92	23.97
Referrals to Nonbank Credit Agencies	29.14	53.64	17.22

Bankers remain cautious about lending more to the troubled farm economy, despite the ample supply of loanable funds. Slightly more than one-third of the respondents sought new farm loan accounts in the third quarter, but fully two-thirds of the bankers reported increased collateral requirements for nonreal estate farm loans.

In this environment of weak loan demand, ample fund availability, and cautious lending, the average loan-deposit ratio at reporting banks edged still lower in the third quarter, to 52.2 percent, the lowest figure recorded since the survey began in 1976 (Table 3). Only one in nine bankers reported a loan-deposit ratio greater than 70 percent. Nearly three-fourths of the bankers reported their loan-deposit ratios were lower than they would have liked.

Loan repayments rise

Requests for loan extensions or renewals declined considerably in the third quarter. Only one-fourth of the bankers reported more requests for extensions or renewals than a year earlier (Table 2). After falling for seven consecutive quarters, this proportion was the smallest since 1979 and about one-half the proportion observed a year before.

The rate of farm loan repayment also improved. Eleven percent of the bankers reported a higher rate of loan repayment in the third quarter, twice the percentage reporting improvements in repayments the previous quarter. The percentage of bankers reporting a lower rate of loan repayment dropped to 27 percent, the smallest percentage since 1979.

The percentage of bankers referring customers to nonbank credit agencies declined sharply for the second consecutive quarter. At 62.9 percent, the percentage making referrals to nonbanks was the lowest since mid-1978, approximately two years before the current financial crisis in the farm economy developed. The low level of referrals suggests that lenders are becoming more confident in the ability of their customers to repay loans and that many lenders have already addressed many of their problem loans.

Farm financial stress persists

The rate of farm business liquidation continues high, reflecting continued financial problems in the district's farm economy. Bankers estimated that 4.4 percent of the farm businesses in their areas liquidated for financial reasons over the previous two quarters, a rate they considered four times normal. This liquidation rate is nearly the same as bankers reported six months earlier.

Bankers also estimated the rate of farm liquidations due to financial stress over the past year at 7 percent, a rate they considered 3.5 times normal. This liquidation rate was up from the 6.5 percent rate reported six months earlier.

The rate of partial liquidations also remains high. The bankers estimated that 4.6 percent of the farms in their areas had sold part of their capital assets during the previous six months. That rate compares favorably with the 5.4 percent rate bankers reported six months earlier. But the rate was still nearly four times the rate bankers considered normal. Bankers also estimated that the rate of partial liquidations over the past year was 7.4 percent, a rate they considered about five times normal.

Conclusions

The third-quarter survey results indicate that the difficult process of adjusting asset values and reducing debt levels is continuing across the district's farm economy. Nevertheless, the modest rate of decline in district land values, the continued decline in farm loan interest rates, and the improvement in the rate of farm loan repayment suggest that the rapid pace of financial adjustment seen in recent years is abating. More stable agricultural credit conditions probably lie ahead. □

Alan Barkema
Economist

attachment 4

Table 3
SELECTED MEASURES OF CREDIT CONDITIONS AT TENTH DISTRICT AGRICULTURAL BANKS

	Loan Demand (index)†	Fund Availability (index)†	Loan Repayment Rates (index)†	Loan Renewals or Extensions (index)†	Average Rate on Operating Loans (percent)	Average Loan-Deposit Ratio* (percent)	Banks with Loan-Deposit Ratio Above Desired Level* (percent of banks)
1983							
Jan.-Mar.	85	133	62	144	13.98	59.3	31
Apr.-June	92	129	71	137	13.88	61.0	38
July-Sept.	88	126	69	138	14.04	60.8	38
Oct.-Dec.	100	126	59	140	13.99	60.7	44
1984							
Jan.-Mar.	107	116	53	145	14.19	59.9	38
Apr.-June	108	116	51	150	14.58	60.9	38
July-Sept.	100	106	49	147	14.69	61.6	42
Oct.-Dec.	93	125	49	154	14.06	59.3	39
1985							
Jan.-Mar.	102	123	51	150	13.81	58.2	32
Apr.-June	98	125	47	148	13.37	58.4	34
July-Sept.	86	123	55	143	13.22	58.4	34
Oct.-Dec.	84	132	81	129	13.12	54.6	27
1986							
Jan.-Mar.	77	144	73	127	12.73	53.5	24
Apr.-June	71	147	76	120	12.30	52.5	18
July-Sept.	75	148	84	114	11.94	52.2	18

*At end of period.

†Bankers responded to each item by indicating whether conditions during the current quarter were higher, lower, or the same as in the year-earlier period. The index numbers are computed by subtracting the percent of bankers that responded "lower" from the percent that responded "higher" and adding 100.

SOURCE: Federal Reserve Bank of Kansas City.

BANKING AND MONETARY AGGREGATES
(Seasonally adjusted annual growth rates)

	1984*	1985*	1986 Q2*	1986 Q3*	1986 Aug.	1986 Sept.	1986 Oct.
Banking Aggregates							
Total reserves	7.7	15.3	17.8	22.9	19.7	11.5	13.6
Nonborrowed reserves†	7.8	15.4	18.1	22.0	18.8	10.8	15.9
Monetary base	7.3	8.8	8.8	9.9	12.0	5.4	10.9
Bank loans and investments	11.2	9.9	4.1	10.3	13.8	11.5	2.3
Monetary Aggregates‡							
M1	5.4	11.9	15.8	17.3	20.6	9.6	14.0
M2	8.0	8.7	10.4	11.1	10.9	7.3	10.6
M3	10.5	7.7	9.0	10.1	8.9	8.7	6.6

*Based on quarterly average data.
†Nonborrowed reserves include extended credit borrowing.
‡M1 is currency plus demand deposits, other checkable deposits, and travelers checks. M2 is M1 plus overnight and retail RP's, noninstitutional money market mutual funds, and savings and small time deposits. M3 is M2 plus large time deposits, institutional money market mutual funds, and term RP's.

attachment 4

TENTH DISTRICT DEPOSITORY INSTITUTION STATISTICS

(In millions of dollars, not seasonally adjusted)

	Level	Change For Month		Percent Change Year Ended	
	Oct. 1986	Oct. 1986	Oct. 1985	Oct. 1986	Oct. 1985
All Depository Institutions*					
Total deposits	148,600	286	279	3.2	8.1
Total checkable	32,754	−48	−339	5.6	6.2
Demand	19,215	−118	−292	0.1	1.2
Other checkable	13,539	70	−47	14.5	15.6
Small time and savings	92,011	402	426	4.4	9.7
Large time	23,835	−68	192	−3.9	5.2
Large District Commercial Banks†					
Total loans, gross	17,025	−39	211	−2.3	3.7
Real estate	4,516	61	124	8.6	13.0
Commercial and industrial	5,530	−35	−28	−12.9	−2.8
Consumer	3,650	−4	74	10.8	7.1
All other	3,329	−61	41	−8.5	3.4
Total investments	6,228	7	−18	14.9	6.9
U.S. Treasury securities	3,920	74	6	20.0	16.6
All other securities	2,308	−67	−24	7.2	−5.0
Total deposits	23,915	−22	367	1.6	8.1
Total checkable	8,867	−87	−122	4.5	7.1
Demand	7,091	−100	−176	1.4	4.3
Other checkable	1,776	13	54	18.7	22.4
Small time and savings	9,330	83	271	8.5	20.3
Large time	5,718	−18	218	−11.3	−3.4
Federal funds purchased, net	1,343	−21	−180	−23.9	−30.4

*Data include deposits at commercial banks, savings and loan associations, credit unions, and industrial banks with reservable liabilities above $2.8 million.
†Eight commercial banks with domestic assets of $1.4 billion or more on December 31, 1982, plus a sample of 27 selected banks with domestic assets of less than $1.4 billion on December 31, 1982.

In the Tenth District

Total deposits at depository institutions in the Tenth District increased $286 million in October, compared with an increase of $279 million a year earlier. Demand deposits and large time deposits decreased during October, while other checkable deposits and small time and savings deposits increased.

For the year ended in October, total deposits grew 3.2 percent, compared with an increase of 8.1 percent for the previous year. All categories of deposits except large time deposits increased for the year ended in October.

Total loans at large commercial banks in the district decreased $39 million in October, compared with an increase of $211 million a year before. Real estate loans increased in October, while consumer, commercial and industrial, and all other loans decreased. For the year ended in October, total loans fell 2.3 percent, compared with a 3.7 percent increase the previous year. Real estate and consumer loans increased over the year ended in October, while commercial and industrial and all other loans decreased.

Total investments at large commercial banks in the district increased $7 million in October 1986, compared with an $18 million decrease in October 1985. For the year ended in October, investments increased 14.9 percent, compared with a 6.9 percent increase the previous year.

For large commercial banks in the district, total deposits decreased $22 million in October, compared with an increase of $367 million the previous year. Other checkable deposits and small time and savings deposits increased during October, while demand deposits and large time deposits decreased. For the year ended in October, total deposits increased 1.6 percent, after an increase of 8.1 percent the previous year. Large time deposits decreased for the year ended in October while all other categories of deposits increased. □

attachment 4

KANSAS
LIVESTOCK MARKETING ASSOCIATION
301 EAST ARMOUR BOULEVARD • KANSAS CITY, MISSOURI 64111 • (816) 531-2235

STATEMENT

OF THE

KANSAS LIVESTOCK MARKETS ASSOCIATION

TO THE

SENATE AGRICULTURE COMMITTEE

SENATOR JIM ALLEN, CHAIRMAN

SENATOR DON MONTGOMERY, VICE CHAIRMAN

WITH RESPECT TO SB 92

CENTRAL NOTIFICATION SYSTEM

PRESENTED BY

DAN OLSEN

LEGAL COUNSEL

FEBRUARY 5, 1987

Mr. Chairman, members of the committee, my name is Dan Olsen. I am here today to speak on behalf of the Kansas Livestock Markets Association in opposition to SB 92.

The **issue** is: What is the most effecient and effective way to notify buyers of farm products that the seller of those farm products has pledged such farm products as collateral for a loan?

attachment 5
Senate agriculture
2-5-87

Section 1324 of the Food Security Act entitled Protection For Purchasers Of Farm Products provides us two options. 1) Direct notification from lender to buyer or 2) The creation of a central filing (notification) system. The central notification system requires that notices to buyers be first sent through a central processing office (Secretary of State's office) and then be sent to the buyer who has registered with the Secretary of State and paid a fee to receive all or a portion of the notices on file.

Please, for a moment, reflect upon why we are considering this notification issue. Let me draw your attention to the first paragraph of the federal law, section 1324, entitled Protection For Purchasers Of Farm Products.

> "Congress finds that certain state laws permit a secured lender to enforce leins against a purchaser of farm products even if the purchaser does not know that the sale of the products violates the lenders security interest in the products, lacks any practical method of discovering the existence of the security interest, and has no reasonable means to insure that the seller uses the sale proceeds to repay the lender; ..."

Part (a) of section 1324 goes on to state that these laws subject purchasers of farm products to double payment, that double payment inhibits free competition and creates a burden on interstate commerce.

In the case of the Kansas Livestock Markets, this risk of double payment is indeed a **real risk**. We would much prefer absolute clear title. However, under the federal law we realize we must assist the banking industry in policing its agricultural loans.

With that background we again turn to the question of which approach is best for the state of Kansas. Direct notice, which we have today? Or a new

attachment 5
Senate agriculture

2-5-87

law setting up a new central notification system?

We believe very strongly that direct notification is working very well and will work better as each month passes. The fundamental difference in these two systems from the Livestock Markets standpoint is that with direct notice, the market should only receive notices of security interests on those farm products where the lender with the security interest in those farm products believes there is more than a normal amount of risk associated with the loan.

On the other hand, with a central notification system, assuming the banks will file an effective financing statement for each farm product they take as collateral, as they indicate they will, the buyer of those farm products will receive from the Secretary of State, a list of borrowers which will include all borrowers using farm products as collateral for their loans regardless of the condition of the loan. We believe this could mean the difference between searching through the names of 50,000 borrowers in place of searching through a list of 1,000 borrowers, in many cases. The thrust of a central notification system is to shift all of the burden back to the buyer to police agricultural loans.

We are convinced, based on our experience and the experience of our counterparts in other states, that direct notification from lender to buyer is the most effective and efficient means of notification for the following reasons:

1) The notice is inexpensive and immediate. (i.e. it goes directly to the targeted buyer.)
2) Direct notice will substantially reduce the number of notices received by buyers of farm products and thereby reduce the risk associated with searching through sheer volumes of names.

attachment 5
Senate agriculture
2-5-87

3) Direct notice places more responsibility with the lender and borrower to police their loans and collateral in place of shifting this responsibility to innocent third party purchasers who have little or no access to information regarding the status of the lender/borrower relationship.

4) Direct notice is working very efficiently in many other states in the U.S. and presently it is impossible to determine whether central notification, in those states which have adopted central notification systems, is going to work efficiently and effectively.

5) What is clear from those states which have adopted central notification systems is that many lenders continue to give direct notification without regard to the central notification system. This result has placed an extreme burden on buyers of farm products in that they are required to maintain and search two sets of lien lists. We believe the same result will be obtained if Kansas adopts a central notification system in that many banks will continue to use direct notification.

We have used direct notification under the new federal law for only a short time and find it is working well. Before we scrap a system that is working well for a ststem that has no track record, let us be patient and observe the operation of those central filing systems that have been installed and then make an informed decision which is the most effective and efficient means of notification. Thank you.

attachment 5
Senate agriculture
2-5-87

Committee of . . .

Kansas Farm Organizations

Wilbur G. Leonard
Legislative Agent
109 West 9th Street
Suite 304
Topeka, Kansas 66612
(913) 234-9016

TESTIMONY IN OPPOSITION TO SB 82
Senate Agriculture Committee
February 5, 1987

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing for the Committee of Kansas Farm Organizations. We appreciate the opportunity to appear before you this morning to make known the views of these organizations with respect to Senate Bill 92.

The section of the Uniform Credit Code which was struck down by Section 1324 of the Food Security Act of 1985 has long been a thorn in the side of the agriculture community. It is no accident that the repeal of that onerous provision was included in the farm bill. Now we have the spectacle of an effort being made to turn the clock back and establish a central filing system in Kansas.

We endorse fully the reasoning of our member conferees who have addressed you today in opposition to Senate Bill 92. In addition, we would like to direct comments to certain specific aspects of this issue.

In the testimony before this committee we have not heard one cogent reason advanced as to why a third party purchaser should be put in the position of guaranteeing the repayment of a borrower's debt. An agricultural loan is a business transaction between two parties, both of whom expect to benefit from it. The person who ultimately acquires the agricultural commodity has had no voice in negotiating the loan. We have the unusual situation of a stranger being thrust into this picture because he is willing to buy the end product. Aren't we really making it more difficult to merchandise

attachment 6
Senate agriculture 2-5-87

what we raise? If this were a manufactured product, such as an appliance, automobile, clothing or other item, the consumer would not be exposed to that risk.

The whole peanut of this issue is to put another layer of insulation on this loan structure in an effort to insure payment. We're not here to advocate that people who borrow should not repay. The whole concept of requiring that the buyer beware could more properly be focused to require that the lender beware.

It appears we are all in agreement that there are only a few bad apples in the barrel that are about to contaminate the whole lot, That the target borrowers are either crooks or honorable citizens with exemplary credit history, who, because of unforeseen circumstances, don't make good on their obligations highlights the problem. The person who consistently makes solid business judgments is very rare, but is that sufficient reason to compel innocent third parties to pay twice for their agricultural products?

There has been some testimony before this committee characterizing the typical farm borrower as a buffoon who doesn't know what he is going to plant, where he is going to grow it, when he is going to harvest it or how he is going to sell it. Who really needs a loan customer with those attributes? We suggest that to make a loan under such circumstances may be a reflection on the judgment of the lender.

With regard to penal sanctions which may be brought against borrowers, we agree that a fine isn't much of an incentive. If the debtor doesn't pay his lender he probably can't pay his fine. While we're not representing it as a cure-all we feel the criminal statutes should not be overlooked. K.S.A. 21-3734 makes it a class E felony

attachment 6
Senate agriculture
2-5-87

to fail to account to the secured party for the proceeds of the sale of pledged property.

And finally, we've heard about the matter of confidentiality and the invasion of privacy in direct notice versus central filing. Surely there is less notoriety attached to a half dozen communications personally directed to prospective buyers than there is to a statewide filing which will be made available to those same potential purchasers and to the whole world. Further, the purpose behind either plan is to acquaint third party purchasers with the existence of outstanding security interests and the right to privacy ceases to be a relevant factor. For all practical purposes, it is waived when the debtor executes the security agreement.

We're into a direct notice system. Let's give it a chance to work. We might just find that it isn't broke and doesn't need fixing.

I appreciate the patience and consideration of the committee members and I'll be available for your questions on Tuesday.

# # # #

attachment 6
Senate agriculture
2-5-87

Members of the Committee of Kansas Farm Organizations:

ASSOCIATED MILK PRODUCERS

KANSAS AGRI-WOMEN

KANSAS ASSOCIATION OF SOIL CONSERVATION DISTRICTS

KANSAS ASSOCIATION OF WHEAT GROWERS

KANSAS COOPERATIVE COUNCIL

KANSAS CORN GROWERS ASSOCIATION

KANSAS ELECTRIC COOPERATIVES

KANSAS ETHANOL ASSOCIATION

KANSAS FARM BUREAU

KANSAS FERTILIZER & CHEMICAL INSTITUTE, INC.

KANSAS GRAIN & FEED DEALERS ASSOCIATION

KANSAS LIVESTOCK ASSOCIATION

KANSAS LIVESTOCK MARKETING ASSOCIATION

KANSAS MEAT PROCESSORS ASSOCIATION

KANSAS PORK PRODUCERS COUNCIL

KANSAS RURAL WATER DISTRICT ASSOCIATION

KANSAS SEED DEALERS ASSOCIATION

KANSAS SHEEP ASSOCIATION

KANSAS SOYBEAN ASSOCIATION

KANSAS STATE GRANGE

MID-AMERICA DAIRYMEN

KANSAS VETERINARY MEDICAL ASSOCIATION

KANSAS WATER WELL ASSOCIATION

attachment 6
Senate agriculture
2-5-87