

Approved March 3, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Clifford Campbell at
Chairperson

9:07 a.m./~~pm~~ on February 26, 1988 in room 423 S of the Capitol.

All members were present except: Representatives Apt and Solbach who were excused.

Committee staff present: Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee: Representative Bill Bryant
John Wine, Secretary of State's Office
Dr. Bob Domer, President, Kansas Veterinary
Medical Association
Dr. Roger Rankin, Veterinarian, Hiawatha, KS,
member of Kansas Veterinary Medical Association.
Wilbur Leonard, Committee of Kansas Farm Organ-
izations
Mike Beam, Executive Secretary, Cow-Calf/
Stocker Division, Kansas Livestock Divi-
sion
Jim Maag, Director of Research, Kansas Bankers
Association

The Chairman addressed the Committee regarding the expressed concerns of several members of the Committee with relation to HB 2934 which was passed out of Committee on February 27. It was the consensus of opinion that the bill in its present form would be incapable of accomplishing "something" inasmuch as the subject matter deals with Federal regulations. After some discussion, the majority of the Committee felt it could better serve its purpose if the Committee would bring the bill back to the Committee and change its form to a resolution which could then be presented through the proper channel for consideration.

Representative Sallee made the motion that the action to pass HB 2934 be rescinded and the bill be brought back to the Committee for reconsideration. Representative Roenbaugh seconded the motion. The motion was passed by the Committee.

Representative Sallee moved that in lieu of HB 2934, a resolution be drafted which would make a statement concerning this particular problem and which could be directed through the appropriate channels for addressing that problem. The motion was seconded by Representative Roenbaugh. The motion carried.

The Chairman pronounced hearings for HB 2813 to be open.

Representative Bryant was the first conferee to speak with regard to HB 2813. He explained the reason for drafting the bill and invited questions and discussion regarding it. (Attachment I)

John Wine of the Secretary of State's Office spoke briefly with regard to the bill. He stated that their office had little or no knowledge as to the content of the bill other than they had an objection to liens (as stated in the bill) being filed with the Secretary of State's Office. Liens are

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:07 a.m./~~p.m.~~ on February 26, 1988

usually filed with the Register of Deeds Office and they would question the language of the bill which designates the Secretary of State's Office as the filing place. He said they "were willing" but do not think it to be proper.

Dr. Bob Domer, President of the Kansas Veterinary Medical Association, spoke in favor of HB 2813. (Attachment II)

Dr. Roger Rankin, a veterinarian from Hiawatha, Kansas, and a member of the Kansas Veterinarian Medical Association, was the next conferee. He spoke in favor of the bill, stating that the veterinarian profession has no vehicle whereby it can legally go through channels to collect unpaid bills for veterinary service. He felt the current law to be "woefully inadequate" and would like to have some legal recourse for collection. He went on to explain that theirs is a job "to take care of animals in trouble" and that they would not stop to ascertain if an owner of animals is able to pay but take care of that animal and then worry later about the ability to pay. In order to make the charges fair, he felt a need to collect from everybody.

The next conferee was Wilbur Leonard who represented the Committee of Kansas Farm Organizations. Their organization supports the bill.
(Attachment III)

In support of HB 2813, Mike Beam, Executive Secretary, Cow-Calf/Stocker Division of the Kansas Livestock Association, presented his organization's view and suggested two amendments to further clarify the bill.
(Attachment IV)

The last conferee was Jim Maag, Director of Research, Kansas Bankers Association. In his discussion of the bill, he felt there were several technical problems that need to be cleared up. He felt in its present form the only thing it might do is create a lot of litigation down the road. (Attachment V)

There was open discussion and questions after each conferee spoke to the Committee. Thereafter the Chairman announced cessation of hearings on HB 2813.

The meeting was adjourned at 9:58 a.m. by Chairman Campbell.

The next meeting of the House Agriculture and Small Business Committee will be at 9:00 a.m. on February 29, 1988, in Room 423-S.

WILLIAM M. BRYANT, D.V.M.
 REPRESENTATIVE SIXTY-THIRD DISTRICT
 WASHINGTON, REPUBLIC AND
 NORTHERN RILEY COUNTIES
 RURAL ROUTE 2
 WASHINGTON, KANSAS 66968



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 VICE-CHAIRMAN INSURANCE
 MEMBER AGRICULTURE AND SMALL BUSINESS
 FEDERAL AND STATE AFFAIRS

TESTIMONY FOR AGRICULTURE & SMALL BUSINESS COMMITTEE ON HB 2813

HB 2813 as presented by Representative Teagarden and myself would change the procedure whereby a veterinarian might obtain a lien on animals treated in order to obtain payment for his services.

Current law dealing with liens for veterinary services is contained in Section 1 of the bill. This lien requires that the veterinarian may hold or retain possession of the animal until services are paid for. Many things make this unworkable in the area of large animal treatment. First, if the animal is treated on the owners premises, the veterinarian never has it in his possession. Secondly, it has been shown in court that the exact animal must be in possession and not another of like kind. It is also difficult for a veterinarian to retain or possess a herd of dairy cows that need to be milked daily.

The lien created by Section 2 would not require possession. Such liens would be in force when proper filing was made with the Secretary of State within 90 days of furnishing the service. The lien created would have preference over any other liens and encumbrances upon such animal. This preference is in line with the current veterinary lien. It also conforms to our present statute dealing with liens on personal property as illustrated here.

Article 2.—LIENS ON PERSONAL PROPERTY

Cross References to Related Sections:

Fees of register of deeds, see 28-115.

Oil and gas leases and pipe lines, see 55-207 to 55-210.

Liens for labor and material, see ch. 60, art. 11.

58-201. Liens for materials and services; filing statements with register of deeds, contents. Whenever any person at, or with the owner's request or consent shall perform work, make repairs or improvements on any goods, personal property, chattels, horses, mules, wagons, buggies, automobiles, trucks, trailers, locomotives, railroad rolling stock, barges, aircraft, equipment of all kinds, including but not limited to construction equipment, vehicles of all kinds, and farm implements of whatsoever kind, a first and prior lien on said personal property is hereby created in favor of such person performing such work or making such repairs or improvements and said lien shall amount to the full amount and reasonable value of the services performed, and shall include the reasonable value of all material used in the performance of such services.

It is also seen in our neighboring state of Nebraska's veterinary lien law which states in part that "such veterinarian shall have a first, paramount, and prior lien upon such livestock." This language appears to be much stronger than Kansas' law.

My feeling is that such priority is only warranted by the fact that if an animal is not kept healthy it is of little or no value to anyone who might have a security interest in it.

New Section 3 provides for a termination statement to be provided to the debtor upon demand and a penalty for not providing one.

February 26, 1988

TESTIMONY
to
HOUSE AGRICULTURE AND SMALL BUSINESS
HB 2813

Mr. Chairman and members of the committee, I am Dr. Bob Domer, President of the Kansas Veterinary Medical Association. We appear today in support of House Bill 2813.

Currently, K.S.A. 47-836 is the only statutory authority under Kansas law for a lien for veterinarian services, which allows a veterinarian offering professional service to animals in their possession shall have a lien upon such animal for the just and reasonable charges therefore, and may hold and retain possession of such animal until such charges are paid.

The lien hereby created shall have preference over any and all other liens or encumbrances upon such animal or animals.

House Bill 2813 is a non-possessory lien that does not have preference over a possessory lien. One obvious argument on behalf of a veterinarian lien is that if services were not bestowed upon the livestock then there would be no value at all for the secured creditor of the farmer.

With that in mind, we urge your favorable consideration and respectfully request that you recommend HB 2813 for passage.

Thank you for your consideration.

Committee of . . .

Kansas Farm Organizations

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

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2813

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

AND SMALL BUSINESS

February 26, 1988

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, representing the Committee of Kansas Farm Organizations. We appreciate this opportunity to appear before you to add our support for the passage of House Bill No. 2813.

The provisions of this bill, which would give veterinarians a non-possessory lien fills the gap in the present statutes. There appears to be a need in those cases where payment is not made and the animals which have been treated were either not in the actual possession of the veterinarian who performed the service or were released from his possession prior to payment.

It is the treatment these people perform and the medical supplies they furnish that keep the owners of livestock in business and preserve the security interest of the lending community. Without adequate care the value of livestock to both owners and security holders could be diminished, or lost altogether.

Having provided the professional services and having supplied the drugs and medicines it seems only logical and reasonable that the veterinarians have the necessary means to obtain the payment to which they are entitled.

Thank you for your consideration and we urge you to recommend the bill favorably for passage.



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

February 25, 1988

TO: House Agriculture and Small Business Committee
Representative Cliff Campbell, Chairman

FROM: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

RE: House Bill 2813, Liens for Veterinary Services

Mr. Chairman and committee members, I'm Mike Beam with the Kansas Livestock Association. Thank you for allowing us to comment on HB 2813. Our friends in the veterinary profession provide an invaluable service to the livestock industry. We believe they should have the statutory authority to file a lien if they have a client who fails to pay his/her bill. However, the impact of HB 2813, as written, is unclear. I respectfully ask that the committee amend the bill to address two of our concerns.

First, let me say that many of our members are involved in the business of custom grazing and feeding of livestock. We feel the lien laws prescribed in K.S.A. 58-207 and K.S.A. 58-220 are imperative for these operators, and we want to assure they are not impaired.

To date, we have yet to find the answer to the following question. Does the language on lines 52 through 54 give a veterinary service lien priority to the possessory lien created in 58-207 and the agister's lien in 58-220? To resolve this question, we would suggest two alternative amendments.

One option is to completely strike the sentence in lines 52 through 54 that reads "The lien hereby created shall have preference over any other

ATTACHMENT IV

liens and encumbrances upon such animal regardless of where such veterinary service has been rendered."

A second alternative is to amend the bill and clarify that HB 2813 won't affect the two previously mentioned possessory liens. I've attached a proposed amendment to address this concern.

This amendment also requires lien holders to give prior notice to purchasers before they could initiate foreclosure. This provides protection to buyers of animals, yet allows veterinarians to foreclose against the debtor if it's necessary for the collection of debts.

In summary, we believe it's appropriate for veterinarians to have the option of filing a lien. We only want the bill to clearly state it doesn't impair possessory liens. Thanks in advance for considering our views. I'd be happy to respond to any questions.

MB:kd

0046 veterinarian who wishes to use the provisions of this section
 0047 shall file with the office of the secretary of state within 90 days
 0048 from the furnishing of the services, a statement verified by
 0049 affidavit containing a correct description of the animal to be
 0050 charged with the lien. The fee for filing, amending or releasing
 0051 such lien shall be the same as set forth in K.S.A. 84-9-403 and
 0052 amendments thereto. The lien hereby created shall have prefer-

Except for possessory liens pursuant to
 K.S.A. 58-207 and 58-220, the

0053 ence over any other liens and encumbrances upon such animal
 0054 regardless of where such veterinary service has been rendered.
 0055 New Sec. 3. When a lien provided by this section is satisfied,
 0056 the holder of the lien shall on written demand by the debtor send
 0057 the debtor a termination statement to the effect that the holder of
 0058 the lien no longer claims a security interest under the lien, which
 0059 shall be identified by a file number. A termination statement
 0060 signed by a person other than the lienholder of record shall be
 0061 accompanied by a separate written statement of assignment
 0062 signed by the lienholder of record complying with subsection (2)
 0063 of K.S.A. 84-9-405 and amendments thereto, including payment
 0064 of the required fee. If the affected lienholder fails to send such a
 0065 termination statement within 10 days after proper demand, the
 0066 lienholder shall be liable to the debtor for \$100 and any losses
 0067 caused to the debtor by such failure.

but may not be foreclosed against a
 subsequent purchaser of the animal
 treated unless paid purchaser has
 received actual prior notice of the
 existence of such lien.

0068 New Sec. 4. On presentation to the filing officer of such a
 0069 termination statement, the filing officer shall note the termina-
 0070 tion statement in the index. If the filing officer has received the
 0071 termination statement in duplicate, the filing officer shall return
 0072 one copy of the termination statement to the lienholder stamped
 0073 to show the time of the receipt.

0074 Sec. 5. K.S.A. 47-836 is hereby repealed.

0075 Sec. 6. This act shall take effect and be in force from and
 0076 after its publication in the statute book.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 26, 1988

TO: House Committee on Agriculture and Small Business
FROM: James S. Maag, Director of Research
Kansas Bankers Association
RE: HB 2813 - Creation of a nonpossessory lien for veterinary services

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee to discuss the provisions of HB 2813 which would create a new, nonpossessory lien for services rendered by a veterinarian. This priority lien right would be in addition to the lien rights granted to veterinarians under the provisions of K.S.A. 47-836.

The banking industry has some policy and technical concerns about this measure which would expand the statutory authority for preferential lien rights. These are rights which have been granted very carefully by the Legislature over many years because of the potential impact which they can have on the availability of credit. The policy decision which the Legislature must always address in these situations is whether the lien rights extended to a certain group can have an adverse impact on the debtor/creditor relationship. HB 2813 certainly raises this policy question.

In addition, the bill has a number of technical problems which the committee will need to address if the process is to function properly. For instance, Section 2 of the bill gives a veterinarian "who wishes to" the opportunity to file a statement with the Secretary of State which would ultimately give the veterinarian a preferential lien over all other liens on the animal or animals treated. However, the section is rather vague as to exactly how this will be accomplished. It states that the statement must be filed within 90 days of when the services were rendered. What happens

(OVER, PLEASE)

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

ATTACHMENT V

if the animals are sold within that 90-day period prior to the filing of a statement? It should be noted that the 90-day provision is a far longer time period for filing a statement than is granted in any other nonpossessory lien statutes.

The section also requires that the statement must contain "a correct description of the animal to be charged with the lien." This information will obviously be of little value unless the statement also contains information as to the owner of the animal and the location of the animal. In addition, the statement is to be filed with the Secretary of State which sets it apart from filings on all other nonpossessory liens which are filed with the Registers of Deeds. Will the Secretary of State be required to create a new filing system in addition to the current system of UCC-1 filings in order to catalog these statements and will the Secretary also be required to furnish information on these statements to anyone who may inquire as to a UCC-1 filing on these same animals? There is also no provision for a uniform statement which would be used for such filings.

It should be noted that New Section 3 requires termination statements to be filed and this is contrary to all other nonpossessory lien statutes. It also does not require that the termination statement be filed with the Secretary of State even though New Section 4 refers to termination statements being presented to a "filing officer". Is the termination notice to be sent the same as the termination notice for a UCC-1 financing statement?

New Section 4 also does not state any time constraints as to when the termination statement must be filed with the "filing officer". Must it be in the same time period as the termination statement sent to the debtor? There is also the problem in this section of one set of requirements for termination statements filed in duplicate vs. those which are not. There is also a reference in that section to an "index", but there is no definition as to what this means.

HB 2813 creates policy and technical questions which obviously need to be addressed. It would be our recommendation that this issue plus all possessory and nonpossessory lien statutes be reviewed in detail by a legislative interim committee so as to update and bring greater uniformity to these various statutory provisions. We appreciate the opportunity to express our viewpoint on this important legislative matter.