

Approved March 18, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on March 17, 1988 in room 529-S of the Capitol.

All members were present except:

Sen. Reilly - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Rep. Jack Beauchamp
Carol Beard, Secretary of State's Office
Jim Maag, Kansas Bankers Association
Stan Lind, Kansas Association of Financial Services

The minutes of March 16 were approved.

The hearing began on HB 2256, termination of security interest required, which had been held from the 1987 session. The author, Rep. Jack Beauchamp, testified in support of it. (See Attachment I.)

The Chairman asked if Rep. Beauchamp thought the ten day provision is adequate when you consider that weekends are being included. Rep. Beauchamp answered that he would not quibble if more days were added. His main purpose is to get action, and he can understand that more days may be needed. As to the penalty provision, the Chairman asked if raising it from \$100 to \$1000 was not a little steep. Rep. Beauchamp said he is not set on this amount and again stated that his main purpose is to get attention and action.

Carol Beard of the Secretary of State's office testified in support of the goals of HB 2256, but she stated that they do not have a position on the details of the bill. She gave statistics on filings as follows: 75,000 on file of which 7% is continued, 5% terminated, leaving 68% lapses. She concluded that the office supports the extending of this protection to debtors and noted that there is no fee to terminate.

Jim Maag, Kansas Bankers Association, testified in opposition to the bill. (See Attachment II.) The Chairman asked Mr. Maag's opinion of applying the penalty of 5% on consumer loans to this bill. Mr. Maag said that on large commercial loans, this could amount to a lot of money. Sen. Gordon asked who enforces this, and Mr. Maag answered that he assumes it would require legal action. Sen. Werts said it would be in the small claims court. Sen. Werts then asked if the process of designing a uniform release form would include legislative approval of the form. Mr. Maag felt the Secretary of State would be given the authority to promulgate the form and that perhaps a simple amendment to the bill would allow this.

Stan Lind, Kansas Association of Financial Services, followed with testimony in opposition to HB 2256. He said he is testifying also from the standpoint of the consumer. He said the present statute treats the consumer differently than the business borrower. There is an automatic 30 days release which he feels is reasonable, especially when there is a 10 day rule for a borrower who of a creditor wants something quickly. This bill takes away from the consumer by making the only way for release to be by the consumer's request. This would change the conformity of the UCCC with other states. There should be a change in the UCCC only when there is a clear need for it. As to business transactions, Mr. Lind explained that he worked on the UCCC when it was drafted. He said the drafters of the UCCC intentionally made this the way it is. Business

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 17, 1988

transaction is centered around the filing of a financial statement, and the first to file rule is so important that the drafters wanted to leave these records. Also tied into this is the requirements of perfection which are designed to facilitate business transactions. A debtor cannot be harmed by this. The code places the burden on a subsequent creditor to make a record check because of the first to file rule. The debtor's credit is not impaired because the burden is on the creditor to check. This bill takes away from the consumer. Mr. Lind also objects to the "demand on a specified form" because if it is not on proper form, it can be considered invalid. It also means that creditors outside the State of Kansas will have access to this form which no other state has. Finally, as to the penalty, he feels it is the "sledge hammer" approach to kill a fly. He concluded by saying that the bill is destroying the concept of uniformity.

The Chairman asked Mr. Lind's opinion of the existing law being changed to provide for an exception for agricultural loans. Mr. Lind answered that this still would be a disservice to the borrower. The Chairman then noted that the existing law does not apply to anything but consumer goods and asked his opinion of having that provision apply to other loans except future advances. Mr. Lind said this would be a terrible blow to the uniform code concept because it would be a different rule from other states. Sen. Werts asked if there is an ongoing discussion of the UCCC. Mr. Lind said there is a national committee and reiterated that the intention of the original drafters of the UCCC was to leave these on record. He feels the existing law is working and working fine. Sen. Strick asked if in brief Mr. Lind feels there is no need for this bill, and Mr. Lind answered, "Yes".

Jim Maag stood to state that changing the uniformity of the UCCC will have only adverse results. Jerel Wright of the Kansas Credit Union League stood to state that the credit unions are using this, and it is working the way it is. They don't wish to pass it on to the debtor. This concluded the hearing.

Sen. Strick made a motion to report HB 2256 adversely. There was no second.

The Chairman announced that there will be a meeting tomorrow to hear two bills, but he will be unable to chair the meeting so Sen. Harder will be doing so. The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE NAME ADDRESS REPRESENTING

3/17/88	Danton Rice		SOS
	Carol Beard		SOS
	Roy Jack Bunchings		Leg 14 th Dist
	John Wine		SOS
	J. M. Cornish	Topeka	Ks Assn P/C Co.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
INSURANCE
LOCAL GOVERNMENT

March 17, 1988

MR. CHAIRMAN, MEMBERS OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS
AND INSURANCE

HB 2256 was drafted for the purpose of encouraging the removal of recorded UCC filings from the Secretary of State's office upon final satisfaction of the secured indebtedness. The past history of agricultural loan lien filings in the Secretary of State's office has on occasion had an effect of hindering the individuals ability to secure a new loan. Most every creditor requires a lien search as part of the qualifying documents to acquire a loan. On occasion the deadwood of past liens cast a shadow on the individual's ability to acquire an operating or other loans.

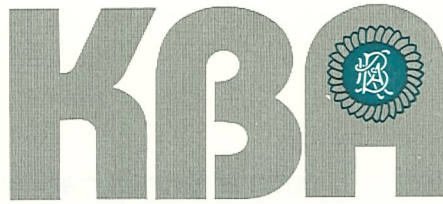
In addition, there is a charge for every UCC entry in a lien record. Originally the language was a little stronger directive to the creditor to be sure and ask the debtor if he/she wanted the UCC recording removed.

If possible, I would still prefer to see some burden put on the creditor to be sure the debtor is confronted about removal of the final satisfaction of the secured obligation.

Respectfully submitted,

Representative Jack Beauchamp

Attachment I



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 17, 1988

TO: Senate Committee on Financial Institutions and Insurance
FROM: James S. Maag, Director of Research
Kansas Bankers Association
RE: HB 2256 - Termination of security interests

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee and discuss the provisions of HB 2256. We believe the bill has several problems which should be addressed if it is to receive further legislative consideration.

The bill attempts to unify the procedure for the filing of termination statements (UCC-2) on existing financing statements (UCC-1). Under present provisions of the law, creditors are required, within one month or within ten days upon request by the debtor, to file termination notices directly with the appropriate "filing officer" if the financing statement covers consumer goods. If the financing statement covers any other type of collateral the creditor, upon request of the debtor, must send to the debtor the termination statements and it is the debtor's responsibility to then file such statements with the appropriate "filing officer".

HB 2256 would change this procedure and require that the creditor must file all termination statements with the appropriate filing officer within 10 days of a written request by the debtor. The bill further requires that the debtor's notice must be "on a form to be furnished by the secured party". This appears to be an unnecessary procedural problem. The present law simply requires a "written demand" by the debtor and there is no indication this informal method of notification to the creditor has not been working. Why require the creditor to develop an additional form which will only add to administrative costs and which would obviously be

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non-uniform across the state? If such a form is deemed necessary, it would seem more logical to have it developed by the Secretary of State so it would be uniform throughout the state.

We also believe the new civil penalty imposed for failure to file the termination statements in a timely or appropriate manner is very excessive. We know of no other state that imposes such a severe penalty for violations of this section of the Uniform Commercial Code. The present \$100 penalty is certainly sufficient to motivate a creditor to make the appropriate filings. In addition, K.S.A. 84-9-404 allows the debtor to bring a legal action "for any loss caused . . . by such failure" [to file statements in an appropriate manner].

The banking industry has serious doubts as to the need for this legislation. We are not aware of any serious or continuing problems that have arisen when the present law has been enforced. We sincerely request that the committee not change the time-tested procedures of the UCC unless there is clear and convincing evidence that a problem exists.