

HB 2632

None opposed

In favor: Jim Maag of Kansas Bankers Association
Charles Henson of KBA
Jerel Wright of Kansas Credit Union League

Attachments: 1. Statement in favor by Jim Maag
2. Statement in favor by Jerel Wright

Sub-Committee recommendation: Be passed with amendments

Subcom
#1



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 22, 1988

TO: Senate Judiciary Subcommittee #1
FROM: James S. Maag, Director of Research
Kansas Bankers Association
RE: HB 2632 - Exemptions from legal process

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before the subcommittee to discuss the provisions of HB 2632. The bill makes several significant amendments to the exemptions statutes which we believe are positive.

The KBA is very supportive of the amendments to K.S.A. 40-414 presented in Section 1 of the bill. These address a serious problem relating to the purchase of life insurance prior to a bankruptcy filing or an execution on a judgment. Judicial interpretation of the present law makes it necessary to prove fraud by clear and convincing evidence before the purchase of life insurance just prior to a bankruptcy filing can be set aside. The proposed amendment would eliminate the need to prove fraud if the insurance is purchased within one year prior to filing for bankruptcy or an execution on a judgment. We believe this is a major improvement in the statute and should be enacted. It would appear that two technical amendments to subsections (e) and (f) are necessary, however, to carry out the intent of the amendments.

In Section 2 of the bill the amount which a person can exempt as a "means of conveyance" has been limited to a vehicle not exceeding \$7,500 in value. This is a major improvement over existing law which sets no dollar limit at all on vehicles. This also brings Kansas law more in line with that of surrounding states. Again we believe a technical amendment is necessary in subsection (c) to clarify the intent of the interim committee's amendment to that subsection.

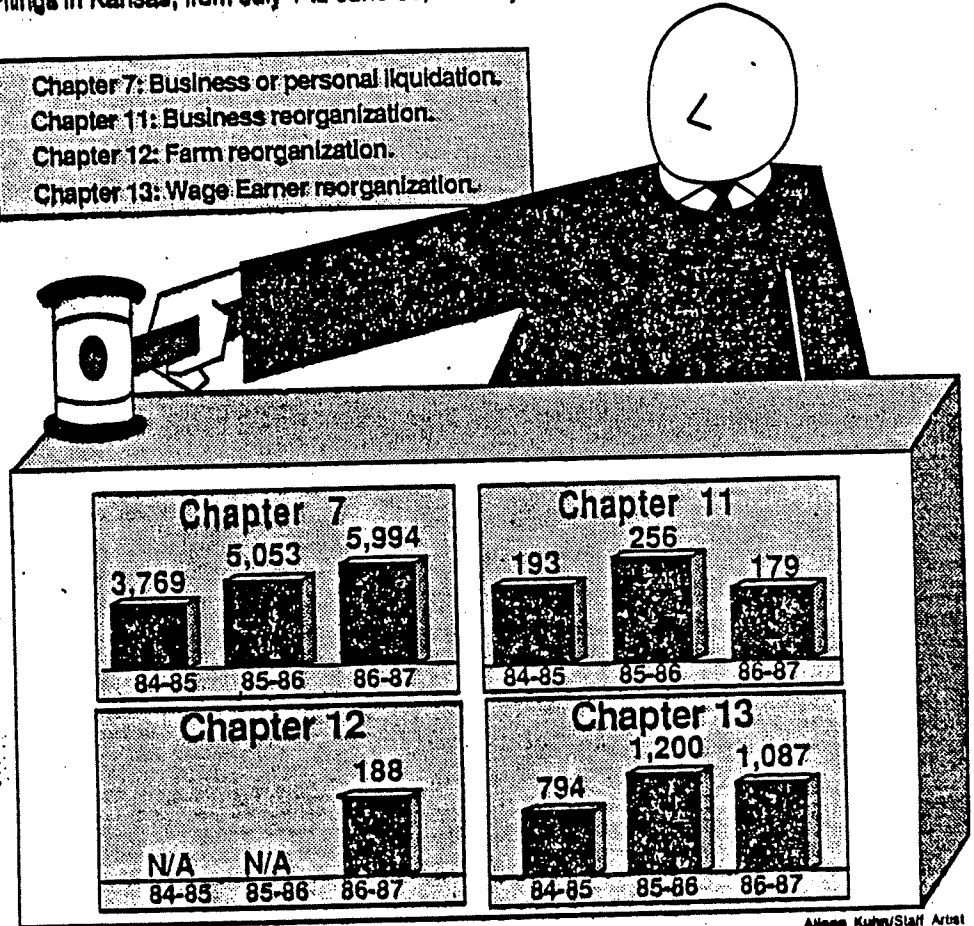
The banking industry of Kansas fully understands the need for a fair and adequate list of exemptions from legal process. Retention of the basic necessities to make a "fresh start" are essential. However, as one conferee stated during the interim hearings last summer, the Kansas exemptions laws have become so liberal over the years that it has resulted in the debtor getting a "head start" rather than a "fresh start". We believe HB 2632 takes a major step toward greater fairness and equity in the creditor/debtor relationship.

We would request that the technical amendments mentioned above be added to the bill and that the subcommittee then recommend HB 2632 favorably for passage.

Kansas Bankruptcy Filings

Filings in Kansas, from July 1 to June 30, for the years indicated

Chapter 7: Business or personal liquidation.
 Chapter 11: Business reorganization.
 Chapter 12: Farm reorganization.
 Chapter 13: Wage Earner reorganization.



Alison Kuhn/Staff Artist

Bankruptcy laws in Kansas allow generous exemptions

By Forrest S. Gossett
 Staff Writer

Bankruptcy is never easy, but if an individual wage earner is forced to file, Kansas is about the best state around, according to bankruptcy experts.

When filing for bankruptcy, people are allowed to exempt certain personal property, retirement plans, a house and cars from the bankruptcy.

In other words, even though you are filing for bankruptcy, for the most part, you get to keep that property.

There are exemptions under the U.S. Bankruptcy Code, but people filing for bankruptcy are also allowed to claim exemptions under individual state codes. And in the world of state exemptions, Kansas ranks among the best for debtors.

"The law in Kansas is written to

"The law in Kansas is written to favor debtors, and creditors have the burden to prove why a debt should be discharged — or dismissed."
 — Gerald Domitrovic

favor debtors, and creditors have the burden to prove why a debt should be discharged — or dismissed," said Wichita lawyer Gerald Domitrovic. "It is possible for a person to abuse the system with the Kansas exemptions, though it doesn't happen that often."

People filing for bankruptcy in Kansas can claim exemptions on their homes, with no equity limit; "reasonable" household goods and wearing apparel; automobile, no limit on value; \$5,000 worth of trade tools; and pension benefits, which includes Individual Retirement

Accounts and 401k plans.

Compare that with neighboring Missouri. Under that state's exemptions, only \$8,000 of a homeowner's equity is exempt, meaning that in many cases, the person filing the bankruptcy petition could face losing the home; one motor vehicle with a value not exceeding \$500; \$1,000 worth of household goods; and limited trade tools.

"You compare that and you can see that Kansas exemptions are better," said Ed Nazar, a Wichita lawyer.

THE GAZETTE

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An Abuse of Kindness

EMPORTIA has had its share of bankruptcies in the past couple of years. Several people who were riding high in 1984 are broke now.

Most of these bankrupt Emporians are victims of circumstance. They were caught holding the bag when the bottom dropped out of the local real-estate market.

Others are simply deadbeats. These are the people who abused the system — like the guy who bought a \$35,000 car one week and took bankruptcy the next. He gets to keep the car; the agency that sold it to him must take a loss.

These deadbeats were the subject of an inquiry in Topeka last week.

A committee of the Legislature was told that the state's bankruptcy laws are being abused. A Washburn University Law School professor told legislators that people are taking advantage of the exemptions provided in the bankruptcy law.

The law allows a debtor to keep 160 acres of farmland or one acre of urban property; one car; a life insurance policy; furniture; \$500 worth of jewelry, and \$5,000 worth of tools if they are needed to carry on a trade.

Thus it is possible for a Kansas deadbeat to live in a mansion, drive a limousine, flash a big diamond ring and still be bankrupt. Meanwhile, the people who trusted him are left with unpaid bills.

The exemptions were put into the Kansas bankruptcy law as an act of kindness. Every family is entitled to shelter, clothing and basic transportation.

"Nobody wants to drive a debtor into the dust," said Rep. Ed Bideau at the hearing last week, "but the committee is examining possible modifications to prevent a debtor from driving an \$80,000 Mercedes-Benz."

Similar things have happened — right here in Emporia.

The Legislature should set reasonable limits on



**Kansas
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TESTIMONY ON H.B. 2632
AN ACT concerning civil procedure; relating
to exemptions from legal process

Presented to the
SENATE COMMITTEE ON JUDICIARY

March 22, 1988
by the
KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Jerel Wright, Governmental Affairs Director, for the Kansas Credit Union League (KCUL). KCUL represents 98% of the state-chartered and federally-chartered credit unions located in Kansas.

KCUL POSITION

Credit unions are on record in support of legislation designed to clarify Kansas exemption laws and legislation designed to set dollar value limitations on Kansas exemptions from legal process (1981, 1982 and 1987 KCUL Governmental Forum).

AMENDMENTS SUPPORTED

KCUL supports the amendment dealing with the purchase of life insurance found on page 2 of the bill. The changes clarify the intent of the legislature and may help avoid further judicial interpretation of the statute.

Credit unions also support the amendment limiting the dollar value of the means of conveyance exemption found in section (c), on page 3 of the bill. The amendment serves to show Kansas debtors that even though a person is entitled to a fresh start, Kansas will no longer give every debtor a head start over those who choose to repay their debts under the original contract.

ASSOCIATION OF
KANSAS CREDIT UNIONS
AFFILIATED WITH CUNA, INC.
AND THE
WORLD COUNCIL OF CREDIT UNIONS

Attach 2



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Testimony on H.B. 2632 continued
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AMENDMENTS OPPOSED

KCUL opposes the amendment to the personalty exemption and the tools of trade exemption found in sections (b) and (e), on page 3 of the bill. During House Judiciary Committee discussions, it was suggested that these exemptions should be adjusted to account for inflation since the provisions were originally adopted in Kansas. We suggest that this argument has no merit since the states surrounding Kansas as well as the Federal Code have exemption limits far below what Kansas originally adopted for personalty and tool of trade. To increase the dollar value limitations of these exemptions would only exaggerate our extremely liberal exemption laws.

An analysis of selected exemption provisions under Kansas, surrounding states and federal laws is attached for your review.

Thank you for the opportunity to appear before the Committee. I will respond to questions at your direction.

ANALYSIS OF SELECTED EXEMPTION PROVISIONS UNDER KANSAS,
SURROUNDING STATES, AND FEDERAL LAWS.
PREPARED FOR THE SPECIAL COMMITTEE ON
JUDICIARY HEARING SEPTEMBER 25, 1987,
BY THE KANSAS CREDIT UNION LEAGUE FROM
COLLIERS ON BANKRUPTCY, FIFTEENTH EDITION

	KANSAS	MISSOURI	OKLAHOMA	COLORADO	NEBRASKA	FEDERAL
Home -	Up to 160A with no equity limit. K.S.A. 60-2301 Article 15 §9 Kansas Constitution	\$8000 limit in home equity for an individual or couple. Mo. Ann. Stat. §513.430(6) & §513.475 (Vernon Supp. 1987)	\$5000 limit on equity in home with Acreage limits. Okla. Const. art. XII, § 1; Okla. Stat. Ann. tit. 31, SS1 & 2 (West Supp. 1986-87; and S5 (West 1976)	\$20,000 limit on equity in home Colo. Rev. Stat. § 13-54-102(1) (o) (II) & (o) (II) (Supp. 1986); §§ 38-41-201 & 201.5 (1982); S38-41-204, -205, -207, -209, -210 & -211 (1982)	\$1000 limit on equity in home. -Neb. Rev. Stat. §40-101 (Supp. 1986); §§40-102, 40-103, 40-111, 40-112, 40-113, 40-115 & 40-116 (1984)	\$7500 Limit on equity in home 11 USC 522d(1)
Means of Conveyance-	1 conveyance per person no limit on equity. K.S.A. 60-2304(3)	\$500 limit on equity on a motor vehicle MO. Ann. Stat. §513.430(5) (Vernon Supp. 1987)	\$1500 limit on equity on a motor vehicle Okla. Stat. Ann. tit. 31, § 1(A) (12) (West Supp. 1986-87)	\$1000 limit on equity in one or more motor vehicles. Colo. Rev. Stat. § 13-54-102(1) (j) (Supp. 1986)	No specific exemption	\$1200 limit on equity in one motor vehicle 11 USC 522(d) (2)
HHG's -	All exempt - No limits Guns are not exempt. K.S.A.60-2304	\$1000 limit on HHG's \$400 on Misc. other PP \$850 household & \$250 per unmarried individual w/additional exceptions. Mo. Stat. Ann. § 513.430(1), (3), (9) & 513.440 (Vernon Supp. 1987)	All HHG's no limit includes limited live-stock & 1 gun & 1 yrs. supply of provisions Okla. Stat. Ann. tit. 31 § 1 (West Supp. (1985-86)	\$750 in clothing \$500 in jewelry \$750 in books & picture \$1500 HHG's. Colo. Rev. Stat. § 13-54-102(Supp. 1981) § 13-54-103 (1973)	\$2500 Misc. PP \$1500 clothing & HHG's 6 months of provisions Neb. Rev. Stat. §§ 25-1552 & 25-1556 (1985)	\$200 limit per item; w/limit of \$4000 aggregate value & any excess of \$7500 home exemptions. 11 USC 522(d) (3); 11 USC 522d(5)

	KANSAS	MISSOURI	OKLAHOMA	COLORADO	NEBRASKA	FEDERAL
Jewelry -	\$500.00 limit on jewelry. K.S.A. 60-2304(2)	\$500 limit on jewelry. Mo. Stat. Ann. § 513.430(1), (3), (9) & 513.440 (Vernon Supp 1987)	Only as personal property - HHG	\$500 limit on jewelry Colo. Rev. Stat. § 13-54-102 (Supp. 1981) § 13-54-103 (1973)	Only as personal property - HHG	\$500 limit 11 USC 522(d) (4)
Tools of Trade -	\$5,000.00 limit K.S.A. 60-2304(5)	\$1000 limit on trade implements. Mo. Ann. Stat. § 513.430(4) (Vernon Supp. 1987)	\$5000 limit on lien avoidance. Okla. Stat. Ann. tit. 31 §§ 1(A) (6) and (1) (C) (West Supp. 1985-86)	\$300 food & fuel; \$3000 livestock; \$2000 tools of trade; for farm debtors. \$1500 limit in trade or \$1500 in library. Colo. Rev. Stat. §§ 13-54-102(1) (i) (k)	\$1500 limit on tools of trade. Neb. Rev. Stat. §§ 25-1552 & 25-1556 (1985)	\$750 limit on tools of trade 11USC522(d) (6)
Life Insurance-	Life ins. purchased more than a year bkruptcy; no limit on cash or loan value. K.S.A. 40-414 Kan. Stat. Ann. § 40-414 (1986)	Life ins. purchased 6 months prior to bkruptcy; limit of \$5000 on cash or loan value. Mo. Ann. Stat. §§ 377.090 and 377.330 (Vernon 1968); §§ 513.430(7) and (8) (Vernon Supp. 1987)	Life ins. exempt No limit on cash or loan value. Okla. Stat. Ann. tit. 36, §§ 2510, 3631 and 3632 (West 1976)	Life ins. exempt only limits - \$200/month disability \$5000 from proceeds no limit on cash or loan value. Colo. Rev. Stat. §§ 10-7-205, 10-8-114 (1974); § 13-54-102 (1) (1) (Supp. 1986)	Life ins. limit cash or loan value of \$5000; \$200 per month on disability insurance. Neb. Rev. Stat. §§ 44-371 & 44-754 (1984)	Life ins. other than credit life; Limit of \$4000 cash or loan value & any unused portion of \$7500 home- stead exemptn. 11USC522(d) (7) & (E)
Various Other Exemptions-	Various	Various	Various	Various	Various	Various