

MINUTES OF THE HOUSE COMMITTEE ON Commercial & Financial Institutions

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

3:30 ~~xxx~~/p.m. on March 2, 1989 in room 527-S of the Capitol.

All members were present except: Representative Norman Justice, Excused.

Committee staff present: Bill Wolff, Research Department
Myrta Anderson, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Jim Maag, Kansas Bankers Association
Ron Smith, Kansas Bar Association

Representative Green moved and Representative Eckert seconded the minutes of the February 21 meeting be approved. The motion carried.

The Chairman opened the hearing on H.B. 2522.

Jim Maag, Kansas Bankers Association, testified on H.B. 2522, a bill which would amend K.S.A. 58-2309a to resolve a problem which currently exists relating to equity lines of credit. (See Attachment No. 1).

This statute now requires that a bank or other creditor must immediately release a mortgage when the balance of the underlying note reaches a zero balance. Such an action would evidently apply to both closed-end mortgages and open-end mortgages (equity lines of credit). For closed-end mortgage this is not a problem, but for an open-end mortgage the law apparently requires the creditor to release the mortgage each time the borrower reaches a zero credit balance and to file a new mortgage at the time of the next advance. While there is no stated penalty if the creditor fails to release the mortgage, the debtor could argue that the mortgage (left on file during a zero balance period) is invalid as to any future advances the creditor might make.

The law as it now stands is beneficial to neither the borrower nor the creditor since the creditor stands to lose this security if he fails to release and refile a mortgage and the debtor will have to repay mortgage registration fees if the creditor does release the mortgage and then refiles. Therefore, we are asking the Committee to recommend favorably the proposed amendment to K.S.A. 58-2309a which is contained in H.B. 2522.

This is not a major problem but it is a trap that can get people in trouble down the road.

The Chairman asked the Committee what their wishes were on H.B. 2522.

Representative Francisco moved and Representative Eckert seconded that H.B. 2522 be moved out favorably. The motion carried.

The Chairman stated that a hearing was not scheduled on H.B. 2509 but that Ron Smith, Kansas Bar Association, had requested a hearing be held as this bill, the KBA feels is needed. Ron Smith, K.B.A., testified that in 1966 legislation changed the method of protecting the consumer and two years ago there was a change to make the UCC uniform but did not change at that time the Uniform Code for 1966. H.B. 2509 does this.

Section 1, K.S.A. 1988 Supp 84-9-302 is amended as follows:

(d) a purchase money security interest in a consumer goods with a purchase price of \$1,000 or less, other than a vehicle in which a security interest is subject to perfection under subsection (3), but filing is required to perfect a security interest in a vessel as defined in K.S.A. 82a-802, and amendments thereto, and a fixture filing is required for priority over

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions,
room 527-S, Statehouse, at 3:30 ~~am~~/p.m. on March 2, 1989.

conflicting security interests in a fixture as provided in K.S.A. 84-9-313,
and amendments thereto;

(e) an assignment of accounts which does not alone or in conjunction
with other assignments to the same assignee transfer a significant part of
the outstanding accounts of the assignor;

(e) becomes (g) and (f) is the new (d).

In Section 2 (2) is reinserted from the original bill, i.e., In the case
of consumer goods, a buyer takes free of a security interest even though perfect
if such buyer buys without knowledge of the security interest, for value and
for such buyer's own personal, family or household purposes unless prior to
the purchase the secured party has filed a financing statement covering such
goods. (See Attachment No. 2 - Supplemental Note to H.B. 2509).

Jim Maag testified that this change just brings the code back into conformity.
There needs to be uniformity with all of the other states.

After discussion the Chairman asked the Committee what their wishes were on
H.B. 2509.

Representative Teagarden moved and J. C. Long seconded that H.B. 2509 be
moved out of committee favorably. The motion carried.

The Chairman stated there would not be any committee meetings next week and
the meeting was adjourned at 4:00 P.M.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 2, 1989

TO: House Committee on Commercial and Financial Institutions
FROM: James S. Maag, Kansas Bankers Association
RE: HB 2522 - Mortgages on real estate

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in support of HB 2522. This bill would amend K.S.A. 58-2309a to resolve a problem which currently exists relating to equity lines of credit.

This statute now requires that a bank or other creditor must immediately release a mortgage when the balance of the underlying note reaches a zero balance. Such an action would evidently apply to both closed-end mortgages and open-end mortgages (equity lines of credit). For a closed-end mortgage this is not a problem, but for an open-end mortgage the law apparently requires the creditor to release the mortgage each time the borrower reaches a zero credit balance and to file a new mortgage at the time of the next advance. While there is no stated penalty if the creditor fails to release the mortgage, the debtor could argue that the mortgage (left on file during a zero balance period) is invalid as to any future advances the creditor might make.

The law as it now stands is beneficial to neither the borrower nor the creditor since the creditor stands to lose his security if he fails to release and refile a mortgage and the debtor will have to repay mortgage registration fees if the creditor does release the mortgage and then refiles. Therefore, we are asking the Committee to recommend favorably the proposed amendment to K.S.A. 58-2309a which is contained in HB 2522.

We appreciate your consideration of this important issue.

3/2
Atch #1

SESSION OF 1989

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2509

As Recommended by House Committee on
Commercial and Financial Institutions

Brief*

H.B. 2509 would amend two sections of the Uniform Commercial Code relating to secured transactions. Subsection (d) of Section 1 would relocate in the UCC existing law exempting certain consumer credit transactions under \$1,000 from the mandatory security interest filing. Further, and related to the consumer goods exemption, the bill would add new language in Section 2 inserting a holder in due course provision from the model uniform act not previously adopted in Kansas, for a consumer buying from the original consumer, goods exempt from the filing.

Finally, in Section 1, Subsection (e), the bill would include in the Kansas UCC another provision contained in the model uniform act relating to assignments of accounts that are isolated transactions and making such transactions exempt from the secured transaction filing requirement.

Background

H.B. 2509 was introduced to reconcile the provisions of the Kansas Commercial Code with provisions of the model uniform act in the two areas raised in the bill.

* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.