

Approved January 26, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Michael O'Neal at
Chairperson

3:30 ~~a.m.~~ p.m. on January 23, 1989 in room 313-S of the Capitol.

All members were present except:

Representatives Adam and Peterson, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

David Traster, General Counsel, State Department of Health and Environment
Representative Robert Vancrum
Judge G. Joseph Pierron, District Court Judge, Olathe
Jim Turner, Kansas League of Savings Institutions
Gerald Goodell, General Counsel, Kansas League of Savings Institutions

BILL REQUEST:

David Traster requested the Judiciary Committee introduce proposed legislation which would amend K.S.A. 1987 Supp. 65-4922 and 65-4925. The proposed bill would amend the risk management law to more specifically authorize the inspection of documents by the Department of Health and Environment and to insure the protection of the documents, see Attachment I.

Representative Solbach moved to introduce, as a Committee bill, the legislation requested by the Department of Health and Environment. The motion was seconded by Representative Jenkins. The motion passed.

Hearing on H.B. 2019 - Home Equity Protection Act

Representative Vancrum informed the Committee this bill addresses the problem of "equiteers". Equiteers is a term which describes people who purchase equity of redemptions from people who may not be fully advised of their rights to continue residing in the home during the period of the equity redemption. The bill contains a disclosure statement.

Judge G. Joseph Pierron testified this bill requires the homeowner be informed of the significance of the sale of home equity in writing in the form provided by the bill. The bill also requires the homeowner be informed that any promises concerning the transaction must be in writing and allows a right of rescission within five days after the signing of the agreement. He suggested the last sentence of paragraph (5) might be changed to read: "Anything not in the written agreement might not be enforceable". He also suggested adding the sentence "This provision is not intended to deprive the homeowner of any other right under the law.", see Attachment II.

Jim Turner informed the Committee the Kansas League of Savings Institutions supports H.B. 2019. He distributed an amendment to Section 1, lines 19-24, see Attachment III. The amendment addresses the equiteer who operates prior to a foreclosure taking place.

Gerald Goodell explained the amendment provides an exemption if the owner wants to deed the property to the holder of the first mortgage, second mortgage or third mortgage. The amendment also makes the law apply even though the foreclosure action hasn't been filed. He also said the words "after default" which were stricken from the amendment, should be left in.

Mr. Turner distributed to the Committee another proposed amendment, see Attachment IV, which would insert on page 1, line 23, after the word assignment, "made to the mortgagee or its wholly-owned subsidiary or".

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on January 23, 1989

Mr. Goodell recommended amendment IV over amendment III.

The hearing on H.B. 2019 was closed.

The Chairman announced the Committee will meet Tuesday at 3:30 p.m. to consider H.B. 2019.

The Committee meeting was adjourned at 4:15 p.m.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY

DATE: Jan. 23, 1988

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
JEFFREY SPANNICH	TOPEKA	KS LEAGUE OF SAV INST
Jim Juman	Topeka	: KLSI
Gerard L Goodell	Topeka	KLSI
Ron Smith	"	Ks Bar Assoc
Richard Morrissey	KDHE	TOPEKA
Bill Dein	KDHE	Topeka
Laura Eple	KDHE	TOPEKA
Donald Gaster	KDHE	
Joseph Ferron	Olathe	Self
Bravener Stinger	Topeka	CCC
Joel Wright	Topeka	KCUK
Greg Winkler	Topeka	KCUK
Chuck Stones	Topeka	Ks Bankers Assn
Kathy Taylor	"	"
Jim Maagy	"	"

_____ BILL NO. _____

BY _____

AN ACT concerning health care risk management, amending K.S.A. 1987 Supp. 65-4922 and 65-4925, and repealing the existing sections.

Be it enacted by the legislature of the State of Kansas:

Section 1. K.S.A. 1987 Supp. is hereby amended to read as follows: 65-4922. Medical care facilities; risk management programs required; approval of plan. (a) Each medical care facility shall establish and maintain an internal risk management program which shall consist of:

(1) A system for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) measures to minimize the occurrence of reportable incidents and the resulting injuries within the facility; and

(3) a reporting system based upon the duty of all health care providers staffing the facility and all agents and employees of the facility directly involved in the delivery of health care services to report reportable incidents to the chief of the medical staff, chief administrative officer or risk manager of the facility.

(b) Not less than 60 days before the time for renewal of its license in 1987, each medical care facility shall submit to the department its plan for establishing and implementing an internal risk management program. Such plan may rely upon policies and procedures adopted by the medical care facility and its departments and committees. Failure to submit such a plan shall result in denial of the renewal of the facility's license.

(c) The department shall make or cause to be made such inspections and investigations as it deems necessary to reasonably assure that each medical care facility is implementing the internal risk management program required by this section. In making such inspections and investigations, the department may review and copy the reports and records of all executive committees designated

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Attachment I*

to investigate reportable incidents under this act as well as all other records specified in K.S.A. 65-4925(e).

~~(c)~~ (d) Upon review of a plan submitted pursuant to subsection (b), the department shall determine whether the plan meets criteria of this section. If the plan does not meet such criteria, the department shall disapprove the plan and return it to the facility, along with the reasons for disapproval. Within 60 days, the facility shall submit to the department a revised plan which meets the requirements of this section and any rules and regulations adopted hereunder. No medical care facility shall be granted renewal of its license in 1988 unless its plan has been approved by the department.

~~(d)~~ (e) A medical care facility shall not be liable for compliance with or failure to comply with the provisions of this section or any rules and regulations adopted hereunder, except as provided in K.S.A. 65-430 and amendments thereto.

~~(e)~~ (f) The secretary shall adopt such rules and regulations as necessary to administer and enforce the provisions of this section.

(g) Any reports and records reviewed or obtained by the department shall be confidential and privileged and not subject to discovery, subpoena, or legal compulsion for their release to any person or entity, nor shall they be admissible in any civil or administrative action other than a disciplinary proceeding by the department.

Sec. 2. K.S.A. 1987 Supp. 65-4925 is hereby amended to read as follows: 65-4925. Reports, records and proceedings confidential and privileged. (a) The reports and records made pursuant to K.S.A. 1988 Supp. 65-4923 or K.S.A. 1987 Supp. 65-4924, and amendments thereto, shall be confidential and privileged, including:

(1) Reports and records of executive or review committees of medical care facilities or of a professional society or organization;

(2) reports and records of the chief of the medical staff, chief administrative officer, or risk manager of a medical care facility;

(3) reports and records of any state licensing agency or impaired provider committee of a professional society or organization; and

(4) reports made pursuant to this act to or by a medical care facility risk manager, any committee, the board of directors, administrative officer, or any consultant.

Such reports and records shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency.

(b) No person in attendance at any meeting of an executive or review committee of a medical care facility or of a professional society or organization while such committee is engaged in the duties imposed by K.S.A. 1987 Supp. 65-4923 shall be compelled to testify in any civil, criminal, or administrative action, other than a disciplinary proceeding by the appropriate licensing agency, as to any committee discussions or proceedings.

(c) No person in attendance at any meeting of an impaired provider committee shall be required to testify, nor shall the testimony of such person be admitted into evidence, in any civil, criminal, or administrative action, other than a disciplinary proceeding by the appropriate state licensing agency, as to any committee discussions or proceedings.

(d) Any person or committee performing any duties pursuant to this act shall be designated a peer review committee or officer pursuant to K.S.A. 65-4915 and amendments thereto.

(e) Nothing in this section shall limit the authority of state licensing agencies to review and copy when necessary the reports and records of executive review committees designated to investigate reportable incidents under this act, and all such reports and records shall be confidential and privileged and not subject to discovery, subpoena, or legal compulsion for their release to any person or entity nor shall they be admissible in any civil or administrative action other than a disciplinary proceeding by the appropriate state licensing agency. In the event that a disciplinary action by a state licensing agency is initiated, reports and records obtained by the agency will not be subject to discovery subpoena, or legal compulsion for their release to any person or entity except as they may be needed by the agency or affected licensee of the agency. For purposes of this act, reports and records subject to the privilege shall

include, but not be limited to, the minutes of all executive or other committees and individuals designated to investigate reportable incidents and otherwise improve the standards and quality of care in the facility, organization, or profession; investigative reports prepared for or reviewed by such committees; facility incident reports; patient records; and any and all other reports and records prepared or reviewed for purposes of improving the quality of patient care or investigating reportable incidents pursuant to this act.

Sec. 3. K.S.A. 1987 Supp. 65-4922 and 65-4925 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

Testimony of Judge G. Joseph Pierron concerning HB 2019
delivered January 23, 1989

HB 2019 attempts to provide some protection for homeowners from abuses that sometime occur from what is commonly referred to as "equity skimming."

Kansas provides homeowners with numerous rights during mortgage foreclosure procedures. One of the most important of these rights is the redemption period homeowners have after a foreclosure is entered which allows them to remain in the residence and perhaps catch the payments up. Depending on how much of the mortgage has been paid, the redemption period can be as long as twelve months.

Homeowners may sell their rights of redemption. They are sometimes purchased by persons who specialize in such transactions who are commonly referred to as "equity skimmers" or "equiteers." The purchaser of the redemption rights usually rent the residence out during the redemption period or sometimes redeems the property.

There is nothing wrong with converting the redemption rights into cash. Unfortunately, the situation can lead to the homeowner being defrauded of rights. Too often the homeowner, who is facing the loss of the home and is probably in bad financial shape, can be cheated.

Unscrupulous equity skimmers - not all of them to be sure - may tell the homeowners that they will try to help get the payments caught up or wish to redeem the property themselves. Instead, the skimmers will rent the property out during the period of redemption, pocket the rents and let the residence go back to the mortgage holder. The skimmers, who are mainly interested in squeezing quick money out of the house, will not be careful to whom they rent it. The homeowner may then find he has a worthless promise from the skimmer, the redemption period gone and the house trashed by transient renters. To add insult to injury, due to the waste of the redemption period and the damage to the house, the homeowner may also have a deficiency judgment against him.

HB 2019 is not a panacea, but it does introduce a "truth in labeling" philosophy to purchases of homeowners' equity. The bill requires the homeowner be informed of the significance of the sale of home equity in writing in the form provided by the bill. It also requires the homeowner be informed that any promises concerning the transaction must be in writing and allows a right of rescission within five days after the signing of the agreement.

While not foolproof and certainly not a substitute for common sense, the act will probably help protect persons under stress from being deprived of what the legislature of this state has sought to safeguard - the equity in their homes.

Paragraph (5) may need some re-working. It was our intent to get all terms of any equity sale agreement in writing so they could not be avoided. We don't intend to foreclose the right to enforce oral agreements. The last sentence of paragraph (5) might be changed to read: "Anything not in the written agreement might not be enforceable."

Additionally, I would suggest that we add the sentence: "This provision is not intended to deprive the homeowner of any other right under the law."

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Attachment II

SUGGESTED AMENDMENT TO HOUSE BILL ²⁰¹⁹~~2910~~
by
KANSAS LEAGUE OF SAVINGS INSTITUTIONS

1. Amend Section 1, lines 19-24 to read as follows:

Section 1. Any assignment or transfer of the rights of the defendant owner in relation to real property, ~~which~~ ~~is~~ ~~or~~ ~~may~~ ~~become~~ ~~subject~~ ~~of~~ ~~a~~ ~~pending~~ ~~action~~ to foreclose one or more mortgages and which is the domicile of the owner is subject to the following requirements unless such transfer or assignment is made to the mortgagee, or its wholly owned subsidiary, or to a party who then immediately resides in and uses the property as the party's domicile.

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Attachment III

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PROPOSED AMENDMENT TO H.B. 2019

On page 1, line 23, after the words "assignment is" by inserting:

"made to the mortgagee or its' wholly-owned subsidiary
~~named plaintiff in the pending action or~~"

This amendatory language would allow for the lender or its'
subsidiary servicer to accept a deed in lieu of foreclosure.

James R. Turner
Kansas League of
Savings Institutions

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Attachment IV