

Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ^{xx} a.m./p.m. on April 2, 19⁹¹ in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Sebelius and Hochhauser who were excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Sherman Parks, Legal Counsel, Secretary of State's Office
Professor William Lawrence, University of Kansas
Bradley Clark, Attorney, Shook, Hardy and Bacon, Kansas City & Overland Park, Ks.
Richard L. Schodorf, Chief Attorney, Consumer Fraud and Economic Crime Division,
District Attorney's Office of the 18th Judicial District
Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association

The Chairman called for action on SB 329, requiring collection of DNA exemplars from convicted felons.

Representative Rock reported from the sub-committee studying SB 329 and presented balloon amendments agreed to by the sub-committee. (See Attachment # 1). Representative Rock made a motion that the sub-committee report and balloon amendments be adopted. Representative Hamilton seconded the motion. The motion carried.

Representative Rock made a motion that SB 329 be passed as amended. Representative Scott seconded the motion.

Committee discussion followed.

The motion carried.

Written testimony re: DNA data bank resource needs in connection with SB 329 was submitted by the Kansas Bureau of Investigation. (See Attachment # 1.5)

The Chairman called for testimony from Sherman Parks, Legal Counsel, Secretary of State's Office, regarding SB 368, use of federal employee identification number or social security number of debtor in U.C.C. filings. Mr. Parks asked the committee to consider amending SB 368 into SB 361 if SB 368 does not reach the Judiciary Committee in time for action. Mr. Parks submitted written testimony in support of SB 368. (See Attachment # 2).

The Chairman called for action on SB 328, proper court security to be provided.

Representative Hamilton made a motion to remove SB 328 from the table. Representative Lawrence seconded the motion. The motion carried.

Representative Hamilton made a conceptual motion to amend SB 328 to include a new section 2, which would state "every" county, instead of "such" county and the discretion still be left up to the County Commissioners. Representative O'Neal seconded the motion. The motion carried.

Representative Hamilton made a motion that SB 328 be passed as amended. Representative Carmody seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on April 2, 1991

The Chairman called for hearings on SB 337 enacting article 2A of uniform commercial code relating to leases; SB 132, consignment sales and rights of creditors; SB 361, stylists amendments to article 4A of the uniform commercial code regarding funds transfers; SB 336, enacting the Kansas lease-purchase agreement act; SB 371 enacting a new Article 3 to the uniform commercial code regarding negotiable instruments.

Professor William Lawrence, University of Kansas, appeared in support of SB's 337, 361 and 371. (No written testimony was submitted.)

Committee questions followed.

Barclay Clark, Attorney, Shook, Hardy and Bacon, Kansas City and Overland Park, appeared in support of SB's 337, 132, 361, 336 and 371. (See Commercial Law Modernization Package Attachment # 3). Mr. Clark reviewed SB 337. Mr. Clark reviewed SB 132.

Richard L. Schodorf, City Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Office of the 18th Judicial District, Sedgwick County, Kansas, appeared in support of SB 132. (See Attachment # 4).

There were no committee questions on SB 132.

Barclay Clark reviewed SB's 336, 361 and 371.

A committee member noted that SB's 336, 337, and 371 are very comprehensive and asked if the effective date should be delayed. Mr. Clark said it would be beneficial to get SB's 336 and 337 in the statute book quickly.

Committee questions followed.

Mr. Clark said he believes the bills to be a good package of legislation with no hidden traps that brings Kanss law to a state-of-the-art situation.

There being no further conferees, the hearings on SB's 337, 132, 361, 336, and 371 were closed.

The Chairman called for hearing on SB 346, wrecker or towing services, personal property liens.

Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association, appeared in support of SB 346. (See Attachment # 5).

Mr. Whitaker introduced several towing company representatives auditing the hearing and Bill Barker, Topeka Attorney available for questions.

Committee questions followed.

There being no further conferees, the hearing on SB 346 was closed.

The Chairman called for action on HB 2102, child support through high school.

Representative Everhart made a motion that HB 2102 be passed. Representative Macy seconded the motion.

Representative Snowbarger made a substitute motion to table HB 2102. Representative Parkinson seconded the motion. The substitute motion failed.

The original motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~XX~~/p.m. on April 2, 1991

The Chairman called for action on SB 132.

Representative Garner made a motion that SB 132 be passed. Representative Everhart seconded the motion.

Committee discussion followed.

The motion carried.

The Chairman called for action on SB 361.

Representative Vancrum made a motion that SB 361 be passed. Representative Rock seconded the motion.

Committee discussion followed.

The motion carried.

The Chairman called for action on SB 336.

Representative Vancrum made a motion that SB 336 be amended by making the effective date February 1, 1992. Representative Carmody seconded the motion.

Representative Everhart made a substitute motion that SB 336 be tabled and put into interim study. Representative Smith seconded the motion. The substitute motion failed.

The original motion carried.

Representative Vancrum made a motion that SB 336 be passed as amended. Representative Carmody seconded the motion. The motion carried.

The Chairman called for action on SB 337.

Representative Snowbarger made a motion to amend SB 337 by making the effective date January 1, 1992. The motion died for lack of a second.

Representative Gomez made a substitute motion to amend SB 337 by making the effective date February 1, 1992. Representative Everhart seconded the motion. The motion carried.

Representative O'Neal made a motion that SB 337 be passed as amended. Representative Vancrum seconded the motion. The motion carried.

The Chairman called for action on SB 371.

Representative Snowbarger made a motion to amend SB 371 by making the effective date February 1, 1992. Representative Vancrum seconded the motion. The motion carried.

Representative Vancrum made a motion that SB 371 be passed as amended. Representative O'Neal seconded the motion.

Committee discussion followed.

The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on April 2, 1991.

The Chairman called for action on SB 346.

Representative Rock made a motion that SB 346 be passed. Representative Snowbarger seconded the motion. The motion carried.

The Chairman called for action on HB 2560, evidentiary foundation necessary for admissibility of breath tests in certain alcohol and drug related offenses.

Representative Parkinson made a motion that HB 2560 be passed. Representative Everhart seconded the motion.

Representative Macy made a substitute conceptual motion that HB 2560 be amended to apply to criminal prosecutions and not to administrative hearings. Representative Vancrum seconded the motion. The substitute motion carried.

Committee discussion followed.

Representative Garner made a motion that HB 2560 be tabled. Representative Smith seconded the motion. The motion failed.

Committee discussion followed.

Representative Rock made a conceptual motion that HB 2560 be amended by requiring the refusal to be printed in Vietnamese and Spanish as well as English. Representative Gomez seconded the motion.

Committee discussion followed.

Representative Rock withdrew the motion with the consent of his second.

Representative Parkinson made a motion that HB 2560 be passed as amended. Representative Carmody seconded the motion. The motion carried.

Written testimony was submitted in support of HB 2560 by Michael R. Santos, Assistant City Attorney, Overland Park, Kansas. (See Attachment #6.)

The Chairman called for action on SB 133, telemarketing fraud included in consumer protection act.

Representative O' Neal made a motion that SB 133 be passed. Representative Everhart seconded the motion. The motion carried.

The Chairman called for sub-committee report on HB 2398.

Representative Vancrum reported that the sub-committee would recommend a substitute for HB 2398. Mr. Vancrum distributed suggested language for such a substitute bill. (See Attachment # 7).

No committee action was taken.

A committee member recommended that HB 2398 be placed in an interim study.

Representative Gregory requested that SB 233, eliminating voluntary intoxication as a defense, be acted upon by the committee.

The Chairman suggested placing SB 233 into interim study.

The Chairman called for possible action on SB 181, procedures for correcting inaccuracies in consumer credit reports, which had been tabled.

No committee action was taken.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on April 2, 1991

The Chairman called for possible action on SB 259, public trust; property tax revenues.

No committee action was taken.

The Chairman called for sub-committee report on HB 2547, mobile home parks residential landlord and tenant act.

Representative Macy, Chairman of the sub-committee studying HB 2547, reported that the sub-committee recommends HB 2547 be placed in an interim study.

The Chairman informed the committee that he plans to include SB 233 and HB's 2288, 2289, and 2547 into interim studies.

The Chairman called for consideration of the minutes of the meetings of February 18, 19, 20 and 21, 1991.

Representative Macy noted that in the meeting minutes for February 18, 1991, on Page 4 of 4 in connection with action on HB 2152, an incorrect bill number appeared in two lines. Representative Macy made a motion to amend the minutes by inserting HB 2160 where it appeared incorrectly. Representative Everhart seconded the motion. The motion carried.

Representative Smith made a motion to approve the minutes as amended. Representative Gomez seconded the motion. The motion carried.

The meeting adjourned at 5:45 P.M. The next meeting is scheduled on April 4, 1991, 3:30 P.M. in room 313-S.

SENATE BILL No. 329

By Committee on Judiciary

2-26

Subcommittee Report
4-2-91

Members: Rock, Chairperson, Hamilton, Scott

Subcommittee met and agreed to this proposal.

HJD
Attachment #1
4-2-91

9 AN ACT concerning criminal procedure; requiring collection of DNA
10 exemplars from convicted felons; authorizing the Kansas bureau
11 of investigation to act as the depository of the markers.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) Any person convicted of an unlawful sexual act as
15 defined in subsection (4) of K.S.A. 21-3501 and amendments thereto
16 or an attempt of such unlawful sexual act or convicted of a violation
17 of K.S.A. 21-3401, 21-3402, ~~21-3403, 21-3404, 21-3414 or, 21-3415,~~
18 ~~21-3602, 21-3603 or 21-3609~~ and amendments thereto, regardless of
19 the sentence imposed, shall be required to submit specimens of
20 blood and saliva to the Kansas bureau of investigation in accordance
21 with the provisions of this act, if such person is:

21-3609

22 (1) Convicted of a crime specified in subsection (a) on or after
23 the effective date of this act;

24 (2) ordered institutionalized as a result of being convicted of a
25 crime specified in subsection (a) on or after the effective date of this
26 act; or

27 (3) convicted of a crime specified in this subsection before the
28 effective date of this act and is presently confined as a result of such
29 conviction in any state correctional facility or county jail or is pres-
30 ently serving ~~a sentence of probation, conditional discharge or pe-~~
31 ~~riodic imprisonment as a result of such conviction~~

an authorized disposition under K.S.A. 21-4603, and
amendments thereto

32 (b) Any person required by paragraphs (a)(1) and (a)(2) to provide
33 specimens of blood and saliva shall be ordered by the court to have
34 specimens of blood and saliva collected within 10 days after sent-
35 encing: (1) If placed directly on probation, as a condition of probation,
36 that person must provide specimens of blood and saliva, at a col-
37 lection site designated by the Kansas bureau of investigation; or (2)
38 if sentenced to the secretary of corrections, the specimens of blood
39 and saliva will be obtained immediately upon arrival at the ~~Kansas~~
40 ~~reception and diagnostic center~~

Topeka correctional facility

41 (c) Any person required by paragraph (a)(3) to provide specimens
42 of blood and saliva shall be required to provide such samples prior
43 to final discharge, parole, or release at a collection site designated

1 by the Kansas bureau of investigation.

2 (d) The Kansas bureau of investigation shall provide all specimen
3 vials, mailing tubes, labels and instructions necessary for the col-
4 lection of blood and saliva samples. The collection of samples shall
5 be performed in a medically approved manner. Only a physician
6 authorized to practice medicine, a registered nurse or other
7 qualified person approved by the Kansas department of health
8 and environment may withdraw blood for the purposes of this
9 act. *The withdrawal of blood for purposes of this act may be per-
10 formed only by: (1) A person licensed to practice medicine and
11 surgery or a person acting under the supervision of any such licensed
12 person; (2) a registered nurse or a licensed practical nurse; or (3)
13 any qualified medical technician.* The samples shall thereafter be
14 forwarded to the Kansas bureau of investigation for analysis and
15 categorizing into genetic marker groupings.

16 (e) The genetic marker groupings shall be maintained by the
17 Kansas bureau of investigation. The Kansas bureau of investigation
18 shall establish, implement and maintain a statewide automated per-
19 sonal identification system capable of, but not limited to, classifying,
20 matching and storing analysis of DNA (deoxyribonucleic acid) and
21 other biological molecules.

22 (f) The genetic marker grouping analysis information obtained
23 pursuant to this act shall be confidential and shall be released only
24 to law enforcement officers of the United States, of other states or
25 territories, of the insular possessions of the United States, or foreign
26 countries duly authorized to receive the same, to all law enforcement
27 officers of the state of Kansas and to all prosecutor's agencies.

28 (g) The Kansas bureau of investigation shall be the state central
29 repository for all genetic marker grouping analysis information ob-
30 tained pursuant to this act. The Kansas bureau of investigation may
31 promulgate rules and regulations for the form and manner of the
32 collection of blood and saliva samples and other procedures for the
33 operation of this act. The provisions of the Kansas administrative
34 procedure act shall apply to all actions taken under the rules and
35 regulations so promulgated.

36 Sec. 2. This act shall take effect and be in force from and after
37 its publication in the Kansas register.

1-2
No person authorized by this section to
withdraw blood and collect saliva, and no person assisting in the
collection of these samples shall be liable in any civil or criminal
action when the act is performed in a reasonable manner according to
generally accepted medical practices.



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

(913) 232-6000



ROBERT T. STEPHAN
ATTORNEY GENERAL

RESOURCE NEEDS FOR DNA ANALYSIS DATA BANK - CONVICTED VIOLENT OFFENDERS

Projections for funding requirements for DNA Profiling for the convicted violent offender data bank is based upon: evaluating examiner productivity; estimating the time involved in collecting and preserving samples; documentation and record keeping; and the establishing a computerized network with other states.

Due to the initial sampling, it is estimated the project will require four years to complete. This also will include the additional new samples that will be submitted each year.

Projections for the operating costs during the first four years are different. The initial development phase will require collecting and preserving 1500 samples the first year verses approximately 300 samples each subsequent year. As a result of the time involved in sample collection, fewer samples will be analyzed in FY 1992. It is projected that at the start of FY 1995, the cost of supplies will be equal to the number of convicted offenders entering the Department of Correction's system.

Note: In these projections, no adjustments have been made for the increase in cost of supplies.

The initial cost of \$ 79,500 for supplies to profile 1500 samples collected during FY92 will be spread over four years. Additional costs will be required each year with the anticipated 300 new individuals entering into the correction's system. The total cost for the program for five years will be \$131,551.

HJUD
Attachment # 1.5
4-2-91

DNA Data Bank
Resource Needs
Page Two

First Year Operating Costs: \$ 28,413

Supplies for 400 samples:	\$ 21,000
Freezer:	3,000
Refrigerator:	1,200
Travel (milage):	1,105
Per Diem:	2,108

Second Year Operating Costs: \$ 43,619

Supplies for 823 samples:	\$ 43,619
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Third Year Operating Costs: \$ 43,619

Supplies for 823 samples:	\$43,619
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Fourth Year Operating Costs: \$ 15,900

Supplies for 300 samples:	\$ 15,900
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Overview of Sample Processing

FY92	1500	Samples collected in FY92
	<u>400</u>	Samples analyzed in FY92
FY93	1100	Samples at start of FY93
	<u>300</u>	Samples collected in FY93
	1400	Total samples to be analyzed
	<u>823</u>	Samples analyzed in FY93
FY94	577	Samples at start of FY94
	<u>300</u>	Samples collected in FY94
	877	Total samples to be analyzed
	<u>823</u>	Samples analyzed in FY94
FY95	54	Samples at start of FY95
	<u>300</u>	Samples collected in FY95
	354	Total samples to be analyzed

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
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STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
SENATE BILL NO. 368

April 2, 1991

SB 368 requires that a social security number or federal employer identification number be included on every Uniform Commercial Code financing statement.

A UCC financing statement is the document that a lender files with the Secretary of State's office to provide notice that a debtor has used collateral to secure a loan. The financing statement now contains the name of the debtor, the location and description of the collateral and the signature of the debtor. There may be several financing statements with the same name or similar names listed. Without a unique number listed, it is difficult to distinguish between debtors.

In June, 1990, we met with representatives of the banking community, Farmers Home Administration and private industry to discuss new ways we could serve them through UCC search procedures. All representatives agreed that we should require customer FEIN and/or SSN's on financing statements to better identify debtors, and to make requests for debtor information more accurate.

The FEIN/SSN numbers are already required on Agricultural filings under the 1983 Food Security Act that has been adopted by a number of states. Six other states require the numbers on all UCC filings. (South Dakota, North Dakota, Nevada, Montana, Colorado and Louisiana.) UCC computer programs already have space provided for the inclusion of FEIN/SSN's and there would be no fiscal impact.

We respectfully ask for your support of SB 368 and urge its passage.

Thank you.

Carol Beard
Deputy Assistant Secretary of State
Uniform Commercial Code Division

H500
Attachment # 2
4-2-91

M E M O R A N D U M

TO: HOUSE JUDICIARY COMMITTEE

FROM: BARKLEY CLARK (SHOOK, HARDY & BACON,
KANSAS CITY AND OVERLAND PARK)

DATE: APRIL 2, 1991

RE: COMMERCIAL LAW MODERNIZATION PACKAGE

The five commercial law bills that are before you today, all of which have been passed by the Senate, are in the Kansas "state-of-the-art" tradition. They all involve the Uniform Commercial Code or closely related subjects. With the exception of SB 132, they are "uniform" laws. In my opinion, they should all be enacted with as few amendments as possible. Set forth below is a summary of the five bills.

SENATE BILL 132

This bill amends Article 2 of the Uniform Commercial Code, particularly K.S.A. 84-2-326, by exempting from the filing requirements of the UCC consignors who have used the consigned goods for personal, family or household purposes. Without this amendment, a family that consigns some of its personal property to a dealer for resale would be required to file a UCC financing statement in order to protect itself from creditors (including the trustee in bankruptcy) of the consignee. The filing requirement was intended to cover commercial consignment arrangements, not these family-type transactions. It has become a trap for the unwary, as evidenced by the recent bankruptcy of a piano exchange in Wichita. The bill responds to the Wichita situation, and it also reflects a general feeling that the scope of the UCC consignment provisions is too broad. This is good corrective legislation, and is a reform that is likely to be made a part of the ultimate redrafting of Article 2 of the UCC. It is not a uniform bill.

SENATE BILL 336

Senate Bill 336, titled the Kansas Consumer Lease-Purchase Agreement Act, is designed to regulate the lease-purchase, or "rent-to-own", industry in this state. This consumer transaction is presently not regulated under either Federal or Kansas consumer

*HJUD
Attachment # 3
4-2-91*

protection laws, and therefore SB 336 would fill an important void in the current law.

The Rent-to-Own Transaction: By way of background, the rent-to-own industry rents durable household consumer goods, such as electronic items (televisions, stereos, VCRs), appliances (washers/dryers, microwave ovens, refrigerators), and furniture (bedroom, living room, dining room furniture), on a week-to-week or month-to-month basis. No down payment or other up front charge is required, and the customer may renew the agreement for an additional week or month at the end of each rental period. Upon the completion of an agreed-to number of weekly or monthly rental periods, the customer will own the property being rented.

The critical point of distinction between this transaction and the typical consumer credit sale or installment sale is that the rent-to-own customer is never obligated to continue renting or to purchase the property. The credit customer makes a commitment at the beginning of the transaction to pay for the property. By contrast, the rent-to-own customer is able to stop the transaction at any time without further obligation. Equally importantly, the customer may start the agreement again at a later time and not lose any ground under the original agreement.

The rent-to-own customer also enjoys a full service package in addition to use and enjoyment of the property. If the property cannot be repaired in the home, loaner property is provided to use until the original unit is repaired. Finally, because the agreement is a rental transaction, no favorable credit history is required.

Senate Bill 336 represents comprehensive consumer protection legislation governing the rent-to-own industry in Kansas. The bill is modeled after the Virginia rent-to-own law, which is included in the 1991 Council of State Governments Suggested State Legislation Handbook. The bill is nearly identical to legislation in place in 24 states, including Missouri, Colorado, Oklahoma, Nebraska, Texas, Illinois, Ohio and New York. This legislation has proven to be very effective in these other states in regulating the rent-to-own industry.

Specifically, SB 336 would:

- define the rent-to-own transaction;
- require extensive contract disclosures to fully inform the potential customer of all aspects of the transaction;

- provide protection for late-paying customers in the form of extended reinstatement and other rights;
- require full disclosure of key financial terms in advertising;
- prohibit practices deemed to be detrimental to the customers' interests; and
- provide customers with full remedies in the event of violations of this Act.

The bill enjoys the support of the industry, and has been fully reviewed and found acceptable by the Attorney General's office.

SENATE BILL 361

This bill does nothing more than make technical changes in Article 4A of the UCC, governing wire transfers. When Article 4A was enacted by the legislature in 1990, the final "uniform" draft had not quite been completed by the Conference of Commissioners on Uniform State Laws and the American Law Institute. This bill will amend the "interim" Kansas version, to bring it into conformity with the new "final" version which is being enacted by states all around the country.

SENATE BILL 371

This bill makes comprehensive amendments to Articles 3 and 4 of the UCC, in line with recommendations made by the NCCUSL and the ALI. It is being introduced all around the country and has no apparent opposition. It has already been enacted in Wyoming and Nebraska, and is likely to be enacted in a fairly large number of states this year. Articles 3 and 4 were drafted back in the late 1940's and have not been amended in any comprehensive way since that time, although individual states (including Kansas) have tinkered with various sections at one time or another.

This is a rather technical area of the law, but one that has produced a large amount of litigation. One of the purposes of the bill is to clarify points of ambiguity that have arisen in the cases. Another purpose is to make the UCC dovetail better with the 1987 Federal Expedited Funds Availability Act and implementing Regulation CC. In addition, revised Articles 3 and 4 are intended to serve as a companion to new Article 4A. Of great importance is the goal of the revision to create a solid legal framework for bank deposits and collections that is fully in tune with new technological developments and modern banking and business practice.

Bank check volume has increased from 6.7 billion in 1950 to about 50 billion at the present time. The amendments to Articles 3 and 4 seek to promote the efficiency of the check collection process by making the UCC more compatible with automated banking (including MICR encoding on checks), thereby increasing the speed and lowering the cost of check collection. The bill is also intended to remove any statutory barriers to truncation programs, i.e. presentment of checks to payor banks by electronic transmission of information captured from the MICR line on the checks.

The bill revises almost every section of Articles 3 and 4 of the UCC and constitutes a valuable fine-tuning of the law in this area. It is important that uniformity be maintained, particularly in the emerging era of interstate banking and, therefore, tinkering with the uniform amendments should be avoided if at all possible.

Here are some of the most important changes brought about by the bill:

- *Clearer definition of various negotiable instruments such as cashier's checks, teller's checks, traveler's check, and money orders. Lack of clarity here has generated unnecessary litigation.

- *Clarification that variable rate notes are negotiable.

- *Clarification of "full payment" check situations.

- *Resolution of various principal/agent problems, including personal liability of agents on sloppily drawn checks, and establishment of clearer guidelines on when a bank has notice of breach of a depositor's fiduciary duty.

- *Objectifying the definition of "good faith" to include observance of reasonable commercial standards of fair dealing; this new objective definition tracks the approach taken for wire transfers under Article 4A.

- *Establishment of a clear three-year statute of limitations for actions involving breach of warranty, conversion, or to enforce other obligations arising under Articles 3 and 4 of the UCC.

- *Clarification of the rules governing allocation of losses arising out of forged indorsements, a subject of intense litigation in Kansas and elsewhere. For example, a depository bank sued in conversion will no longer have the defense of handling the check according to reasonable commercial standards.

*Exchange of "all or nothing" rules for a comparative fault regime in cases involving forged drawer's signatures, forged indorsements or material alterations. The hope is that this approach will encourage settlements between customer and bank on the theory that both share some of the blame in allowing the bad guy to perpetrate his fraud.

*Giving banks some protection in failing to detect forged signatures if banks in the trade area use the same detection systems, in exchange for giving the customer some additional leeway in reporting of forgeries of his signature.

*Imposition of new "encoding warranties" to cover underencoded and overencoded checks, a rising area of litigation.

*Protection of banks from payment of postdated checks unless the bank receives notice, which is consistent with a special Kansas amendment to K.S.A. 84-4-401.

*Explicit authorization of check truncation.

*Clarification of when a check is "paid" to determine the bank's right to return it or the right of a competing garnishment notice.

*New rules on supplying a depositor's indorsement.

*New protection for customers where there are overdrafts in a joint account.

*New rules on when a payor bank can recover mistaken payments.

*Clarification on the right to stop payment on bank items such as cashier's checks and money orders.

*Clarification of a customer's right to go after its bank for wrongful dishonor of checks.

In all, SB 371 modernizes the law of bank deposits and collections. It clarifies a number of points to cut down litigation, and it makes Articles 3 and 4 of the UCC dovetail much better with Article 4A and federal law governing funds availability.

SENATE BILL 337

The final piece of this legislative package is SB 337, which enacts new Article 2A of the Uniform Commercial Code in

Memorandum to House Judiciary Committee
April 2, 1991
Page 6

Kansas. Given the overwhelming importance of personal property leasing as an alternative to more traditional methods of finance, coupled with the absence of a coherent body of law to govern these transactions, this legislation is overdue. SB 337 incorporates various changes to the original version of Article 2A made in California, New York and Massachusetts. It is fortunate that the Kansas version will incorporate these state-of-the-art changes.

SB 337 establishes a needed legal framework for leasing transactions, including the following:

- *Clarification of the distinction between "true" leases and disguised financings, a subject of much litigation in Kansas.

- *Establishment of a set of remedies for lessor and lessee, including appropriate measures of damages on default.

- *Creation of express and implied warranties for leased goods, with no warranties given by the financier in "finance leases."

- *Special protections for lessees under "consumer leases."

- *Clarification of the rights of third parties.

- *Sale and leaseback provisions.

- *Other rules based on the Article 2 sales model, including unconscionability, statute of frauds, parol evidence rule, firm offers, course of performance or practical construction, risk of loss, free alienability of a party's interest under a lease, subleases, and the rights of creditors.

BC:lfw

10377822

TO: Chairperson and Senators of the Kansas House Committee on Judiciary

BY: Richard L. Schodorf, Chief Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Office of the Eighteenth Judicial District, Sedgwick County, Kansas

RE: Senate Bill No. 132 - An Act concerning the uniform commercial code; relating to consignment sales and rights of creditors; amending K.S.A. 84-2-326 and repealing the existing section.

Senate Bill 132 addresses a problem that currently exists under Kansas law involving the rights of an individual to property that has been taken by that individual to a dealer to be sold on consignment. In 1990, citizens of Kansas lost thousands of dollars worth of property merely due to the fact that they had taken this property to a business to sell on their behalf. Under Kansas Law 84-2-326, once the consumer has taken property and left it on consignment with an establishment that sells that type of product in their ordinary course of business, the product becomes immediately attachable by the creditors of that business.

This scenario usually takes place when the business at which the goods are consigned enters into financial problems and all the products in the store are picked up and sold by a creditor who possesses an inventory security agreement pursuant to Article 9 of the Uniform Commercial Code. During 1990, many people lost pianos and organs worth thousands of dollars when Kansas Piano Exchange went bankrupt and the business' creditors picked up and sold all of the consigned pianos and organs. The same problem has occurred with other consumer items such as boats.

Senate Bill 132 would amend our Uniform Commercial Code to provide for an exception in a situation where the individual "delivers goods which the person making delivery used or bought for use for personal, family, or household purposes." The bill also provides that "any payment received by the deliverer or consignee from a buyer of these goods, less any amount which the deliverer expressly agreed could be deducted from the payment for commissions, fees or expenses, is the property

HJUD
Attachment # 4
4-2-91

of the deliverer and shall not be subject to the claims of the deliverer's or consignee's creditors."

Senate Bill 132 would simply provide consumers with basic protection from the consignee's creditors. They could then consign their property to be sold, without the risk of losing everything in the event the consignee ran into financial trouble. The Consumer Fraud and Economic Crime Division of the District Attorney's Office requests this committee vote in favor of Senate Bill 132.

STATEMENT

By The

TOWING AND RECOVERY DIVISION

KANSAS MOTOR CARRIERS ASSOCIATION

In support of Senate Bill No. 346
which amends the Towing and Recovery
Possessory Lien Law.

Presented to the House Judiciary Committee,
Rep. John Solbach, Chairman; Statehouse,
Topeka, Tuesday, April 2, 1991.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Tom Whitaker, Governmental Relations Director of the Kansas Motor Carriers Association. I appear here today representing the Towing and Recovery Division of our Association for which Mr. Chris Bowyer of Flint Hills Towing, Inc. of Emporia is Chairman. Mr. Ron Blackley, Overland Tow Service in Overland Park; Mr. Gary Brown of Brown's Super Service in Topeka; Mr. Jerry Taylor of Hillcrest Wrecker and Garage in Lawrence; Mrs. Karen Moody of Moody's Salvage and Auto Sales in Holton; and Bill Barker, a Topeka attorney; also are here this afternoon.

We are here to support Senate Bill No. 346 which amends the Towing and Recovery Lien Law adopted by the 1987 Session of the Kansas Legislature.

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Tow truck operators have experienced two major problems with the current provisions of the law.

1. Tow services performed on low value (less than \$500) vehicles remain unpaid. Current law requires the tow truck operator to store such low value vehicles for a minimum of 60 days before a public sale can be held, thus adding additional costs to an uncollectible account.
2. Personal property (if any) remaining with towed vehicles currently must be released to the vehicle owner upon request regardless of whether the towing charges have been paid.

Senate Bill No. 346 offers two amendments. The first amendment provides that a vehicle with a total value of less than \$500 may be sold at any time, after giving the notices required by this act, unless a court order has been issued to hold such vehicle for the purposes of a criminal investigation or for use as evidence at a trial.

The second amendment would allow the tow operator to withhold any personal property, except personal medical supplies, remaining in the vehicle until the reasonable or agreed charges for transportation, recovery, or storage of a vehicle have been paid or satisfactory arrangements for payment have been made.

The low value vehicles (less than \$500) have created a major financial burden for the towing and recovery operators. Most vehicle owners who have required towing and recovery services claim their vehicle, pay the recovery and storage cost (if any) and go on their way.

The low value vehicle owner too often simply "dumps" the vehicle on the tow truck operator and leaves the tow operator with an uncollectible account. The possessory lien then becomes necessary and a sale at public auction eventually must be conducted for these vehicles with little value. For instance, Don's Car Care of Hutchinson, Kansas, reported that he has sold 37 vehicles under the towing and recovery lien law. Of the 37 vehicles sold, 36 had a value of less than \$500. The average price paid per vehicle was \$75.00. Similar experiences can be found in communities large and small as reported by tow truck operators.

Tow operators have estimated that the cost of a sale at public auction, including notification requirements, run from \$50 to \$75 per vehicle depending on the cost of publication in different areas of the state.

A towing and recovery possessory lien is established only when the tow operator is in lawful possession of a vehicle. The tow operator must be properly registered with the Kansas Corporation Commission, including the filing of liability and cargo insurance, and the towing service must be requested by the owner of the vehicle or a law enforcement officer.

The notification requirements in the Act do not change. Current law requires tow operators to meet the following notification requirements:

- If the owner of the vehicle is known, the tow operator must notify the owner of the vehicle within 15 days that the vehicle is being held subject to satisfaction of the lien.
- Within 60 days of taking possession of such vehicle, the tow operators must request verification from the Division of Vehicles of the last registered owner of the vehicle and any lienholders. For a vehicle with a value of \$500 or more, the request for VIN verification must be made between the 45th and the 60th day.

- 10 days after receipt of the information from the Division of Vehicles, the tow operator must notify, by certified mail, that the vehicle will be sold to satisfy the lien if payment is not received within 15 days.
- Notice of the public auction must be published once a week for three consecutive weeks in the local newspaper.

If a tow operator fails to meet all the requirements of the towing and recovery lien law, the possessory lien is void.

Tow truck operators, under the proposed amendments in Senate Bill No. 346, could offer the low value vehicles at public auction within a minimum of 21 days.

The amendment which would permit the tow truck operator to withhold personal property left with the vehicle simply is a requirement which would help the tow operator collect his unpaid towing charges. We believe the tow operator is entitled to this option.

We will appreciate your consideration of these amendments to make a good law work even better. We ask your favorable consideration of Senate Bill No. 346 and will respond to any questions you may have.

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April 2, 1991

TO: Chairman John Solbach and Members of the House Judiciary Committee

FROM: Myron E. Scafe, Chief of Police, Overland Park, Kansas
Michael R. Santos, Assistant City Attorney, Overland Park, Kansas

RE: HB 2560 concerning the evidentiary foundation to admit the result of breath tests in DUI cases

The following material is submitted to clarify certain issues raised by Ron Smith of the KBA concerning HB 2560.

1. It is not practical to file all DUI cases in the District Courts. The County and District Attorneys are already inundated with heavy caseloads as are the District Courts themselves.
2. While the Municipal Court Procedure Act does provide for a trial de novo appeal to the District Court, that right of appeal is available only to the defendant. Once the defendant has been found not guilty in the municipal court, double jeopardy attaches and the defendant cannot be tried on those charges a second time. If the defendant is found guilty, the defendant has a second opportunity to raise creative intoxilyzer defenses and typically does. (See K.S.A. 12-4601).
3. HB 2560 clearly articulates the evidentiary foundation for the intoxilyzer as set forth in the existing Kansas case law. While the cases are limited, the appellate decisions that have addressed the issue have adopted the foundational requirements of HB 2560. (See Section IV. of written testimony and State v. McNaught, 238 Kan.567 (1986), City of Shawnee v. Gruss, 2 Kan App 2d 131, (1978), and State v. Lieurance, 14 Kan App 2d 87 (1989).
4. HB 2560 does not violate the separation of powers doctrine. It is a well settled rule that the legislature of a state has the power to prescribe new, and alter existing, rules of evidence, or to prescribe methods of proof, provided they do not violate constitutional requirements. In re Estate of Ward, 176 Kan. 201 Syl. (1954), 29 Am. Jur. 2d Evidence Section 9 (1964).
5. The requirements of HB 2560 do not conflict with the provisions of K.S.A. 8-1104 concerning the right to an independent test. If the officer refused the defendant the right to an independent test the previously admitted test results would not be considered by the fact finder. This is the procedure presently followed by the courts. The provisions of HB 2560 could easily be amended to reflect its subordination to K.S.A. 8-1104.

We respectfully ask that you support HB 2560.

Sincerely,

Michael R. Santos
Assistant City Attorney

#JUD
Attachment # 6

4-2-91

Substitute for House Bill No. 2398

Section 1. Any assignment or deed which transfers or purports to transfer any equitable or legal right of the assignor, including but not limited to a right of redemption, shall be assigned or deeded by a written instrument which is dated, signed by the owner or mortgagor and notarized. This instrument must be recorded with the register of deeds in the county where the property is located within five days of execution. If such instrument is not recorded within such period, the assignor has the right to cancel the assignment or deed and recover all rents or other revenues received by the assignee from the property.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

HJUD
Attachment #7
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