

Approved: LREW 9/5
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on March 20, 1992 in room 514-S of the Capitol.

All members were present except:
Senator Oleen who was excused.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Matt Lynch, Judicial Council
Gerald Goodell, Counsel for Kansas-Nebraska League of Savings Institutions
Representative Bob Vancrum

Chairman Winter brought the meeting to order by bringing the Committee's attention to SB 773. He noted for the Committee's information that SB 773 had been referred separately to the Senate's Committees on Judiciary and Agriculture.

SB 773 - Kansas equine professional liability exemption act.

Matt Lynch, Judicial Council, reviewed SB 773. He expressed their concerns about serious constitutional questions raised on limiting the capability of the right to civil actions. He stated the legislature has given exemptions to athletes and charitable organizations, but they feel those exemptions will also be considered suspect constitutionally. Mr. Lynch reviewed the exemptions of hospitals and medical facilities that raised the 1954 court action that struck down the legislative action.

Senator Gaines moved to report SB 773 without recommendation so the Senate Agriculture Committee could hold hearings on the bill. Senator Rock seconded the motion.

Senator Morris made a substitute motion to report SB 773 adversely. Senator Parrish seconded the motion. The motion carried.

Chairman Winter called on Senator Rock for the purpose of presenting the reports from the Subcommittee on Civil Procedure. (ATTACHMENT 1)

HB 2831 - service agents for corporations for service of process.

Senator Bond moved to adopt the Subcommittee report to recommend HB 2831 favorable and to be placed on the Consent Calendar. Senator Parrish seconded the motion. The motion carried.

HB 2870 - personal service for execution orders.

Senator Rock reported the Subcommittee recommends adopting amendments suggested by the Collection Attorneys Association, and to amend to permit private process service to include execution on judges. The Subcommittee further recommends passage of HB 2870 as amended. Committee discussion followed regarding instances when personal service could not be completed. The question was raised whether in those instances process should be allowed by publication. Further discussion and action on the bill was continued to a date to be determined.

HB 2829 - lien filings; indexed by the clerk.

Senator Bond moved to adopt the Subcommittee report to recommend HB 2829 favorable and to be placed on the Consent Calendar. Senator Parrish seconded the motion. The motion carried.

HB 2828 - relating to the supreme court nominating commission and the district court nominating commissions.

Senator Rock moved to adopt the subcommittee report to amend HB 2828 and to recommend favorable for passage as amended. Senator Gaines seconded the motion. The motion carried. Senator Feleciano requested that his "NO" vote be recorded.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on March 20, 1992.

HB 2940 - criminal and civil penalties for equity skimming.

Senator Rock reported the Subcommittee recommended HB 2940 be discussed by the full Committee.

Gerald Goodell, Counsel for Kansas-Nebraska League of Savings Institutions, presented a request for amendments to HB 2940 to the Committee. He stated the amendments address unjust enrichment actions. He added that civil cause of actions are included, but not limited to rents collected. He concluded by stating he believes HB 2940 would stop equiteer practices in Kansas. (ATTACHMENT 2)

Chairman Winter noted that HB 2940 is directed at the commercial practice of selling redemption rights to one who intentionally abuses those rights. He brought to the Committee's attention amendments suggested by the Judicial Council. (ATTACHMENT 3)

Representative Bob Vancrum, co-sponsor of HB 2940, rose to support the amendments offered by Mr. Goodell as not intending to provide unjust enrichment. He respectfully rejected the Judicial Council amendments as not prohibiting the practice as the sponsors intended. He concluded by stating that the bill was modeled after the federal act on FHA and VHA properties. He does not feel it is an unreasonable requirement for purchasers of redemption rights to continue to make mortgage payments.

Senator Bond moved to amend HB 2940 with the suggestions offered by Mr. Goodell. Senator Gaines seconded the motion. The motion to amend carried.

Senator Feleciano moved to recommend HB 2940 favorable as amended. Senator Bond seconded the motion. The motion carried.

HB 2098 - shortening redemption period under certain situations.

Matt Lynch, Kansas Judicial Council, explained HB 2098. He added that, in his opinion, the bill conflicts with the provisions of HB 2940 as recommended by the Committee.

Senator Rock moved to recommend HB 2098 favorable for passage. Senator Gaines seconded the motion. The motion carried.

The meeting was adjourned at 11:05 a.m.

SUBCOMMITTEE ON CIVIL PROCEDURES

HB 2831 - service agents for corporations for service of process.

Recommendation: Recommended to full committee to be placed on consent calendar.

HB 2870 - personal service for execution orders.

Recommendation: Moved out of committee favorably.

HB 2829 - lien filings; indexed by the clerk.

Recommendation: Recommended to full committee to be placed on consent calendar.

HB 2769 - telefacsimile communications.

Recommendation: Hold - Ways & Means is looking at docket fees.

HB 2828 - relating to the supreme court nominating commission and the district court nominating commissions.

Recommendation: Leave bill in tact except: strike language page 2 - lines 17 through 20 - amended.

Needs additional flexibility - less expensive notification.

Farley is checking on sending to Law Firms.

Staff says it can be amended.

Senate Judiciary Committee
March 20, 1992
Attachment 1 1/2

HB 2838 - UCC, consumer leases, delinquency charges.

Recommendation: HB 2838 & HB 2746 - requested that these bills be referred to Commercial and Financial Institutions Committee.

HB 2940 - criminal and civil penalties for equity skimming.

Recommendation: Hold for full committee.

HB 2098 - shortening redemption period under certain situations.

Recommendation: Hold for full committee.

HB 2855 - contempt in child support enforcement proceedings, court may restrict driving privileges.

Recommendation: Reported adversely.

HOUSE BILL No. 2940

By Representatives Bishop and Vancrum

2-11

Submitted by Gerald Goodell, Counsel
for Kansas-Nebraska League of Savings
Institutions.

11 AN ACT concerning equity skimming; establishing civil and criminal
12 penalties.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. (a) It shall be unlawful for any person who, with intent
16 to defraud, willfully engages in a pattern or practice of:

17 (1) Purchasing one family to four family dwellings, including con-
18 dominiums and cooperatives or acquiring any right, title or interest
19 therein, including but not limited to an equity of redemption in-
20 terest, which are subject to a loan in default at time of purchase or
21 in default within one year subsequent to the purchase and the loan
22 is secured by a mortgage, or deed of trust:

23 (2) failing to make payments under the mortgage or deed of
24 trust as the payments become due, regardless of whether the
25 purchaser is obligated on the loan pay over all rent proceeds
26 from the dwelling as received to the mortgage holder or judgment
27 creditor if a judgment of foreclosure has been entered; and

28 (3) applying or authorizing the application of rents from such
29 dwellings for such person's own use.

30 (b) Violation of subsection (a) is a class A misdemeanor.

31 (c) Each purchase of a dwelling pursuant to subsection (a) shall
32 be deemed a separate offense.

33 (d) ~~In addition to other penalties that may be imposed by~~
34 ~~the court, any person violating subsection (a) shall pay a civil~~
35 ~~penalty of not more than \$50,000 per violation.~~

36 Sec. 2. (a) A mortgage holder or judgment creditor may bring
37 an action against any person who violates section 1 and if such
38 holder or creditor prevails in the action shall recover actual dam-
39 ages to the extent of the amount of the rent collected on the en-
40 cumbered property.

41 (b) A tenant of residential real property may bring an action
against a person who has violated section 1 with respect to such
property for the recovery of actual damages, including any security

Delete language

Delete lines 23 - 27 and add:

"(2) failing to deliver all rent proceeds received from rental of the property to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption, not to exceed the monthly payment of principal and interest required by the note and mortgage.

Delete lines 36 - 43.

Senate Judiciary Committee

March 30, 1992

Attachment 2

1/2

Delete language in lines 1 - 13 and add:

1 deposit and moving expense if the property is sold at a foreclosure
2 sale and the tenant was required to move.

3 (c) The rights and remedies provided in this section are in ad-
4 dition to any other rights and remedies provided by law.

5 Sec. 3. Within 20 days after the date of purchase, a purchaser
6 of a dwelling, as described in section 1, which is subject to a loan
7 in default at the time of purchase and the loan is secured by a
8 mortgage or deed of trust, shall give written notice of the purchase
9 to the:

10 (1) Mortgage holder or judgment creditor who held such mort-
11 gage; and

12 (2) if being rented, at the time of rental, the person renting
13 any such dwelling.

14 Sec. 24. This act shall take effect and be in force from and after
15 its publication in the statute book.

renumber remaining
section accordingly

"Section 2(a) Nothing set forth herein shall prohibit the right of a defendant owner to sell and transfer the rights of the defendant owner to an assignee or transferee pursuant to K.S.A. 60-2414, as amended.

(b) A defendant owner, the tenant of a person subject to civil action as set forth herein or the holder of the mortgage before a sheriff's sale and holder of the certificate of purchase during the period of redemption, shall each have the right to maintain a civil action under the Code of Civil Procedure against any person, corporation, limited liability company, general partnership, limited partnership or joint-venture, referred to hereinafter as a person who engaged in the purchase of one, two, three or four family dwellings, including condominiums and cooperatives, or the acquisitions of any right, title or interest therein, including any equity or redemption interests, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase if: (A) The loan is secured by a mortgage; (B) the person fails to notify the mortgage holder or holder of the certificate of purchase of the interest acquired, in writing, within 20 days after purchase; and (C) the person fails to apply the rent proceeds from such dwellings to the mortgage as the payments come due, regardless of whether the purchaser is obligated on the loan.

(c) The civil action may allow recovery of all actual damages, court costs and attorney fees in addition to recovery of all rents received by the person."

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1992

HOUSE BILL No. 2940

By Representatives Bishop and Vançrum

2-11

11 AN ACT concerning equity skimming; establishing civil and criminal
12 penalties.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. (a) It shall be unlawful for any person who, with intent
16 to defraud, willfully engages in a pattern or practice of:

the seller

17 (1) Purchasing one family to four family dwellings, including con-
18 dominiums and cooperatives or acquiring any right, title or interest
19 therein, including but not limited to an equity of redemption in-
20 terest, which are subject to a loan in default at time of purchase or
21 in default within one year subsequent to the purchase and the loan
22 is secured by a mortgage or deed of trust;

23 (2) failing to make payments under the mortgage or deed of
24 trust as the payments become due, regardless of whether the
25 purchaser is obligated on the loan pay over all rent proceeds
26 from the dwelling as received to the mortgage holder or judgment
27 creditor if a judgment of foreclosure has been entered and

fullfill representations made by such purchaser (A)
regarding the application of rent proceeds from the
dwelling or (B) to make payments on a lien or judgment
on the dwelling

28 (3) applying or authorizing the application of rents from such
29 dwellings for such person's own use.

30 (b) Violation of subsection (a) is a class A misdemeanor.

31 (c) Each purchase of a dwelling pursuant to subsection (a) shall
32 be deemed a separate offense.

33 (d) ~~In addition to other penalties that may be imposed by~~
34 ~~the court, any person violating subsection (a) shall pay a civil~~
35 ~~penalty of not more than \$50,000 per violation.~~

36 Sec. 2. (a) A mortgage holder or judgment creditor may bring
37 an action against any person who violates section 1 and if such
38 holder or creditor prevails in the action shall recover actual dam-
39 ages to the extent of the amount of the rent collected on the en-
40 cumbered property.

the amount to be paid to the holder or creditor in
accordance with representations made by the purchaser
to the seller

41 (b) A tenant of residential real property may bring an action
42 against a person who has violated section 1 with respect to such
43 property for the recovery of actual damages, including any security

Senate Judiciary Committee

March 30, 1992

Attachment 3

1/2

1 deposit and moving expense if the property is sold at a foreclosure
2 sale and the tenant was required to move.]

3 (c) The rights and remedies provided in this section are in ad-
4 dition to any other rights and remedies provided by law.

5 Sec. 3. Within 20 days after the date of purchase, a purchaser
6 of a dwelling, as described in section 1, which is subject to a loan
7 in default at the time of purchase and the loan is secured by a
8 mortgage or deed of trust, shall give written notice of the purchase
9 to the:

10 (1) Mortgage holder or judgment creditor who held such mort-
11 gage; and

12 (2) if being rented, at the time of rental, the person renting
13 any such dwelling.

14 Sec. 2 4. This act shall take effect and be in force from and after
15 its publication in the statute book.

A purchaser of any interest in property as described
in subsection (a)(1) of section one shall inform any
tenant who takes possession of the property from such
purchaser of any sale of the property at a foreclosure
sale and shall inform the tenant of the period of time
following such foreclosure sale during which the purchaser
has the right to rent the property to the tenant. If
the purchaser fails to make the disclosures required
by this subsection, the tenant of such property may
bring an action against the purchaser for the recovery
of actual damages, including any security deposit and
moving expense.