

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:05 a.m. on February 22, 2000 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Jerry Donaldson, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

None

Others attending: see attached list

The minutes of the February 21<sup>st</sup> meeting were approved on a motion by Senator Bond, seconded by Senator Donovan. Carried.

**SB 423—regarding lab analysis fees**

The Chair reviewed the bill which assesses forensic lab fees against a criminal who is convicted, in part, through the use of forensic lab evidence. (attachment 1) Senator Donovan moved to pass the bill out favorably, Senator Vratil seconded. Following brief discussion both senators withdrew their motion and Senator Bond moved to pass the bill out favorably, Senator Donovan seconded. Carried.

**SB 484—concerning crime and punishment; regarding domestic battery**

The Chair reviewed the bill which amends changes made last year to the definition of domestic battery. Following discussion it was the consensus of the Committee to "let the bill rest". (attachment 2)

Judiciary Subcommittee Chairs reviewed a number of their assigned bills. The following action was taken:

Chair - Senator Pugh

**SB 480—concerning certain county attorneys; regarding the duties thereof**

**SB 584—concerning private investigators and security operations; regarding contingency fees; continuing education**

Following discussion Senator Pugh moved to report both bills unfavorably as recommended by subcommittee, Senator Bond seconded. Carried. (see 2-21 minutes attachment 2)

Chair - Senator Vratil

**SB 447—concerning civil procedure; relating to subpoenas of business records**

**SB 483—concerning civil procedure; regarding service of process**

SB 447 - Senator Vratil moved to amend the bill to not delete the notice requirement relating to notice of issuance of subpoena 10 days prior to such issuance but clarify that the notification requirement is the responsibility of the party requesting the subpoena and not the clerk of the district court and to pass the bill out favorably as recommended by subcommittee, Senator Petty seconded. Carried.

SB 483 - Following discussion Senator Vratil moved to amend the bill to increase the filing fee from \$30 to \$40, Senator Petty seconded. Carried. Senator Vratil moved to amend the bill to make the technical amendments to better clarify changes in the service of process statute and the limited liability company act related to service of process and to pass the bill out favorably as amended and recommended by subcommittee, Senator Feleciano seconded. Carried.(see 2-21 minutes attachment 1)

**SB 416—concerning the use of safety belts; penalties**

The Chair discussed the bill which provides for primary enforcement of seat belts, increases the fine for violation of the law and requires all occupants in a vehicle to wear safety belts. He discussed a proposed amendment to the bill which would require only front seat occupants to wear a safety belt and also include that law enforcement officers shall not stop drivers for violations of this act in the absence of another violation of law.(attachment 3) Following discussion Senator Bond moved to adopt the balloon amendments, Senator Goodwin seconded. Following further discussion, Senator Oleen offered a substitute motion to only amend the bill to increase the fine for a seat belt infraction from the current \$10 to \$25, Senator Donovan seconded. Carried, with Senators Bond and Pugh voting nay. Senator Donovan moved to pass the bill out favorably as amended, Senator Vratil seconded. Carried.

**SB 366—Uniform Commercial Code; regarding secured transactions**

Senator Vratil stated the bill would amend Article 9 of the Uniform Commercial Code to adopt 1998 amendments promulgated by the Uniform Law Commissioners and he reviewed subcommittee's hearing on this bill along with amendment recommendations. (attachment 4) Following discussion Senator Vratil moved to amend the bill as recommended by subcommittee and move the bill out favorably, Senator Bond seconded. Carried.

The meeting adjourned at 10:58. The next scheduled meeting is February 23, 2000.



# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 22, 2000

NAME	REPRESENTING
Marilyn Jacobsen	SRS
Tim Maddon	KDOC
Charles Simmons	KDOC
Harry Tiffany	KDOR - Vehicles
Sheila Walker	KDOR - DMV
Jane Nohr	AG
W. Valie Curby	ILMDJ
Diane Gruver	KS Coop Council
Leslie Kaufman	KS Farm Bureau
Allie Devise	KS Lumber Assoc
Jeff Bottenberg	KPOA / KSA
Stan Dawson	Dawson + Associates
Chris Confer	Sen Emerit
MIKE Taylor	City of Wichita
Jean Barber	KADC
Hakeme Cole	Sen. Spone Office
Nancy Lindberg	AG
Melissa Wanzemaun	Sec of State
FARIBA POUVANJAN	Sec. of State



1 220  
00-22-2  
Sen. Jud

**SENATE BILL No. 423**

By Committee on Judiciary

1-18

9 AN ACT concerning courts; relating to laboratory analysis fees; amend-  
10 ing K.S.A. 1999 Supp. 28-176 and repealing the existing section.

11

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

13 Section 1. K.S.A. 1999 Supp. 28-176 is hereby amended to read as  
14 follows: 28-176. (a) Any person convicted or diverted, or adjudicated or  
15 diverted under a preadjudication program, pursuant to K.S.A. 22-2906 *et*  
16 *seq.*, 38-1635 *et seq.*, or 12-4414 *et seq.*, and amendments thereto, of a  
17 misdemeanor or felony contained in chapters 21, 41 or 65 of the Kansas  
18 Statutes Annotated, or a violation of K.S.A. 8-1567 and amendments  
19 thereto, ~~involving drugs or controlled substances~~, shall pay a separate  
20 court cost of \$150 as a Kansas bureau of investigation laboratory analysis  
21 fee for each offense if forensic science or laboratory services are rendered  
22 or administered by the Kansas bureau of investigation in connection with  
23 the case.

24 (b) Such fee shall be in addition to and not in substitution for any  
25 and all fines and penalties otherwise provided for by law for such offense.

26 (c) Disbursements from the Kansas bureau of investigation laboratory  
27 analysis fee deposited into the forensic laboratory and materials fee fund  
28 of the Kansas bureau of investigation shall be made for the following:

- 29 (1) Providing criminalistic laboratory services;
- 30 (2) the purchase and maintenance of equipment for use by the lab-  
31 oratory in performing analysis;
- 32 (3) education, training and scientific development of Kansas bureau  
33 of investigation personnel; and
- 34 (4) the destruction of seized property and chemicals as prescribed in  
35 K.S.A. 22-2512 and K.S.A. 65-4135 and amendments thereto.

36 (d) Fees received into this fund shall be supplemental to regular ap-  
37 propriations to the Kansas bureau of investigation.

38 Sec. 2. K.S.A. 1999 Supp. 28-176 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its  
40 publication in the statute book.

**SENATE BILL No. 484**

By Committee on Judiciary

1-25

Proposed Amendments to Senate Bill No. 484

*Sen. Jud*  
*2-27-00*  
*att 2*

9 AN ACT concerning crimes, criminal procedure and punishment; relat-  
10 ing to domestic battery; amending K.S.A. 1999 Supp. 21-3412 and  
11 repealing the existing section.  
12

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

14 Section 1. K.S.A. 1999 Supp. 21-3412 is hereby amended to read as  
15 follows: 21-3412. (a) Battery is:

16 (1) Intentionally or recklessly causing bodily harm to another person;  
17 or

18 (2) intentionally causing physical contact with another person when  
19 done in a rude, insulting or angry manner.

20 (b) Except as provided in subsection (c), battery is a class B person  
21 misdemeanor.

22 (c) (1) Upon a first conviction of a violation of this section under  
23 circumstances which constitute a domestic battery, a person shall be guilty  
24 of a class B person misdemeanor and sentenced to not less than 48 con-  
25 secutive hours nor more than six months' imprisonment and fined not  
26 less than \$200, nor more than \$500 or in the court's discretion the court  
27 may enter an order which requires the person enroll in and successfully  
28 complete a domestic violence prevention program.

29 (2) If, within five years immediately preceding commission of the  
30 crime, a person is convicted of a violation of this section a second time  
31 under circumstances which constitute a domestic battery, such person  
32 shall be guilty of a class A person misdemeanor and sentenced to not less  
33 than 90 days nor more than one year's imprisonment and fined not less  
34 than \$500 nor more than \$1,000. The five days' imprisonment mandated  
35 by this subsection may be served in a work release program only after  
36 such person has served 48 consecutive hours' imprisonment, provided  
37 such work release program requires such person to return to confinement  
38 at the end of each day in the work release program. The person convicted  
39 must serve at least five consecutive days' imprisonment before the person  
40 is granted probation, suspension or reduction of sentence or parole or is  
41 otherwise released. As a condition of any grant of probation, suspension  
42 of sentence or parole or of any other release, the person shall be required  
43 to enter into and complete a treatment program for domestic violence

1 prevention.

2 (3) If, within five years immediately preceding commission of the  
3 crime, a person is convicted of a violation of this crime a third or subse-  
4 quent time under circumstances which constitute a domestic battery,  
5 such person shall be guilty of a person felony and sentenced to not less  
6 than 90 days nor more than one year's imprisonment and fined not less  
7 than \$1,000 nor more than \$2,500. The person convicted shall not be  
8 eligible for release on probation, suspension or reduction of sentence or  
9 parole until the person has served at least 90 days' imprisonment. The  
10 court may also require as a condition of parole that such person enter  
11 into and complete a treatment program for domestic violence. The 90  
12 days' imprisonment mandated by this subsection may be served in a work  
13 release program only after such person has served 48 consecutive hours'  
14 imprisonment, provided such work release program requires such person  
15 to return to confinement at the end of each day in the work release  
16 program.

17 (4) As used in this section: (A) Domestic battery means a battery  
18 ~~against a family or household member by a family or household member~~  
19 ~~upon a person with whom the defendant is or has been involved in an~~  
20 ~~intimate relationship.~~

against a family or household member by a family or household member

21 (B) ~~family or household member means persons 18 years of age or~~  
22 ~~older who are intimate relationship means a relationship between spouses,~~  
23 ~~former spouses, parents or stepparents and children or stepchildren, and~~  
24 ~~persons who are presently residing together or who have resided together~~  
25 ~~in the past, and past or present unmarried couples, or persons who have~~  
26 ~~a child in common who are both the parents of the same child regardless~~  
27 ~~of whether they have been married or who have lived together at any~~  
28 ~~time. Family or household member also includes a man and woman if~~  
29 ~~the woman is pregnant and the man is alleged to be the father, regardless~~  
30 ~~of whether they have been married or have lived together at any time;~~  
31 and

family or household member means persons 18 years of age or older who  
are spouses, former spouses, parents or stepparents and children or  
stepchildren, persons who are presently or in the past had an intimate  
relationship regardless of whether they lived together or not, and persons  
who have a child in common regardless of whether they have been married  
or who have lived together at any time. Family or household member also  
includes a man and woman if the woman is pregnant and the man is  
alleged to be the father, regardless of whether they have been married or  
have lived together at any time

32 (C) for the purpose of determining whether a conviction is a first,  
33 second, third or subsequent conviction in sentencing under this section:

34 (i) "Conviction" includes being convicted of a violation of this section  
35 or entering into a diversion or deferred judgment agreement in lieu of  
36 further criminal proceedings on a complaint alleging a violation of this  
37 section;

38 (ii) "conviction" includes being convicted of a violation of a law of  
39 another state, or an ordinance of any city, or resolution of any county,  
40 which prohibits the acts that this section prohibits or entering into a di-  
41 version or deferred judgment agreement in lieu of further criminal pro-  
42 ceedings in a case alleging a violation of such law, ordinance or resolution;

43 (iii) only convictions occurring in the immediately preceding five

1 years including prior to the effective date of this act shall be taken into  
2 account, but the court may consider other prior convictions in determin-  
3 ing the sentence to be imposed within the limits provided for a first,  
4 second, third or subsequent offender, whichever is applicable; and

5 (iv) it is irrelevant whether an offense occurred before or after con-  
6 viction for a previous offense.

7 Sec. 2. K.S.A. 1999 Supp. 21-3412 is hereby repealed.

8 Sec. 3. This act shall take effect and be in force from and after its  
9 publication in the statute book.

2-3



33  
2-22-70  
13

Sen Jud  
2-22-70  
att 3

SENATE BILL No. 416

By Committee on Judiciary

Proposed Amendments to Senate Bill No. 416

1-14

9 AN ACT regulating traffic; concerning the use of safety belts; penalties;  
10 amending K.S.A. S-2503 and S-2504 and repealing the existing  
11 sections.

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

14 Section 1. K.S.A. S-2503 is hereby amended to read as follows: S-  
15 2503. (a) Except as provided in K.S.A. S-1344 and S-1345, and amend-  
16 ments thereto, and in subsection (b), ~~each front seat occupant~~ *[all occu-*  
17 *panys]* ~~of a passenger car manufactured with safety belts in compliance~~  
18 ~~with federal motor vehicle safety standard no. 208 shall have a safety belt~~  
19 ~~properly fastened about such person's each occupant's body at all times~~  
20 ~~when the vehicle is in motion.~~

each front seat occupant

21 (b) This section does not apply to:  
22 (1) An occupant of a passenger car who possesses a written statement  
23 from a licensed physician that such person is unable for medical reasons  
24 to wear a safety belt system;  
25 (2) carriers of United States mail while actually engaged in delivery  
26 and collection of mail along their specified routes;  
27 (3) newspaper delivery persons while actually engaged in delivery of  
28 newspapers along their specified routes; or  
29 (4) an occupant of a passenger car required to be protected by a safety  
30 restraining system under the child passenger safety act.  
31 (c) The secretary of transportation shall initiate an educational pro-  
32 gram designed to encourage compliance with the safety belt usage pro-  
33 visions of this act.

34 (d) The secretary shall evaluate the effectiveness of this act and shall  
35 include a report of its findings in the annual evaluation report on its  
36 highway safety plan that it submits under 23 U.S.C. 402.

37 ~~(e) Law enforcement officers shall not stop drivers for violations of~~  
38 ~~this act in the absence of another violation of law. A citation for violation~~  
39 ~~of this act shall not be issued without citing the violation that initially~~  
40 ~~caused the officer to effect the enforcement stop.~~

(e) Law enforcement officers shall not stop drivers for violations of this act in the absence of another violation of law.

41 Sec. 2. K.S.A. S-2504 is hereby amended to read as follows: S-2504.  
42 (a) ~~From and after the effective date of this act, and prior to July 1,~~  
43 ~~1957, a law enforcement officer shall issue a warning citation to anyone~~

1 ~~violating subsection (a) of K.S.A. 8-2503, and~~  
2 ~~(2) from and after July 1, 1987,~~ Persons violating subsection (a) of  
3 K.S.A. 8-2503, *and amendments thereto*, shall be fined ~~not more than \$10~~  
4 ~~including \$25 plus court costs.~~  
5 (b) No court shall report violation of this act to the department of  
6 revenue.  
7 (c) Evidence of failure of any person to use a safety belt shall not be  
8 admissible in any action for the purpose of determining any aspect of  
9 comparative negligence or mitigation of damages.  
10 Sec. 3. K.S.A. 8-2503 and 8-2504 are hereby repealed.  
11 Sec. 4. This act shall take effect and be in force from and after its  
12 publication in the statute book.

55 22  
att 4

February 22, 2000

**Senator Vratil's Judiciary Subcommittee Meetings  
January 24, February 8, and February 21**

**(Senators Vratil, Pugh, and Goodwin)**

1. SB 366 would amend Article 9 of the Uniform Commercial Code to adopt 1998 amendments promulgated by the Uniform Law Commissioners.

**Conferees**

- a. Allie Devine, Kansas Livestock Association, opposed inclusion of statutory liens related to agriculture within the purview of Article 9 and requested the statutory agricultural liens be reaffirmed. (Attachment 1)
- b. Joe Lieber, Kansas Cooperative Council (Attachment 2), Kansas Grain and Feed Association (Attachment 3), and the Kansas Fertilizer and Chemical Association (Attachment 3), requested Appendix II of the Uniform Law Commission's report on Article 9 be amended into SB 366, *i.e.*, production money security interests.
- c. Chuck Stones, Kansas Bankers Association (Attachment 4), and Terry Arthur, Kansas Farm Bureau (Attachment 5), opposed adding Appendix II to SB 366. See also Attachment 6 for amendment recommendations of the Kansas Bankers Association and Attachment 7 for a list of agricultural lien statutes provided for the Kansas Farm Bureau.
- d. John McCabe, Uniform Law Commissioners, reviewed proposed Article 9 changes at the February 8 meeting. He suggested that if agricultural liens are excluded from Article 9 coverage, that the specific lien statutes be listed in Section 11 (9-201) of the bill. He also suggested technical amendments. (Attachment 8)
- e. Melissa Wangemann, Secretary of State's Office, suggested amendments dealing with a fee fund, immunity, and discretion to refuse to file or to rescind fraudulent liens. (Attachment 9)

**Subcommittee Recommendations**

The Subcommittee recommends SB 366 be amended and passed favorably by the full Committee. Suggested amendments include:

1. List the following agricultural lien statutes in Section 11 which will be exempt from provisions of Article 9:
  - a. KSA 2-1319;

Sen Good  
2-22-00  
att 4

- b. KSA 2-2608;
- c. KSA 2-3007;
- d. KSA 34-239;
- e. KSA 47-836;
- f. KSA 58-201, 58-207, 58-220, 58-221, 58-241, 58-242, and 58-2524 to 58-2528; and
- g. KSA 84-7-209.

- 2. Add immunity provisions for filing officers—current law contains such provisions;
- 3. Insert a fee fund into SB 366. Under current law, the UCC division within the Secretary of State's Office is entirely funded by the fee fund; and
- 4. Adopt Uniform Law Commissioners' technical amendments.





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306 testimony

January 24, 2000

Testimony of the Kansas Livestock Association

To: Subcommittee of the Senate Judiciary

Re: Revision to Article 9 and Statutory Liens

Good morning, my name is Allie Devine. I am representing the Kansas Livestock Association (KLA). KLA is a nonprofit trade association representing nearly 7,000 livestock producers. KLA represents all segments of the industry including ranchers and commercial feeding operations.

Kansas's law provides assurances of payment to artisans, mechanics, or other persons who furnish goods and services. These laws create statutory liens in the property improved. Statutory liens are not consensual and do not depend upon judicial action. Statutory liens are status liens that arise by operation of law. Statutes grant the lien holder rights in the specific property of the debtor. Meyer, "United States Agriculture Production Financing: Sources, Legal Rules, and Controversies," 45 Drake Law Review 435, 445 (1977). These are not voluntary transactions as described in the Article 9 definition of a security agreement. Because of this distinction, the current law excludes statutory liens from Article 9.

There are several statutory liens critical to the livestock industry. The most important are contained in K.S.A. 58-207, K.S.A. 58-220, and K.S.A. 58-241. Each of these will be described briefly.

K.S.A. 58-207 Livery Lien. Current law provides that the keepers of livery stables and all others engaged in feeding livestock have a lien upon the livestock for the feed and care provided. The lien appears to be only possessory. If payment is not received, the caretaker may enforce the lien by selling the livestock in a manner prescribed by the statute. Assuming that this livery lien is possessory only, surrender of the livestock lapses the lien. If the lien is possessory, then the terms of SB366 should not affect this lien. Under current law, this lien would be superior to other interests in the same property.

K.S.A. 58-220 Agister's Lien. The agister's lien was created to secure the payment of rent for the owner of a pasture who leases land exclusively for pasture. Perfection of the agister's lien maybe by possession or by filing a lien statement. The statute defines what must be included in the lien statement. The statute defines when a

lien lapses. It appears that this lien may be both possessory and non-possessory. As such, the definition of "agricultural lien" includes this lien and the provisions of revised Article 9 would apply. The law specifically states that this lien is superior to all other liens or security interests in the same property.

K.S.A. 58-241 Agricultural liens. This statute allows the supplier of goods to farmers or ranchers a type of purchase money security interest in the new crop or other farm products planted or grown with the input. The statute requires filing and notice to senior security interests. The lien attaches when the goods are delivered to the owner/user/grower. The statute also outlines priorities. This lien is subordinate to the livery lien and the agister's liens. This lien would clearly be subject to the revised Article 9 provisions contained in SB 366.

KLA opposes inclusion of statutory liens related to agriculture in the revisions of Article 9. We are requesting that no changes be made to statutory liens and their priority status. The current system has and is working for our members. For years, statutes have offered priority protection to those who provide care or pasture to livestock. Many leases and feeding arrangements are dependent upon this statutory protection. Kansas markets approximately 6 million head of cattle annually. Transactions involving cattle take place sporadically and continuously dependent upon weather or demand. To require the completion of detailed forms and filing would be cumbersome and impractical for the course of business and trade.

KLA is requesting the subcommittee delete the references to "agricultural liens" in SB 366 and reaffirm current law regarding statutory liens and their priority over other security interests. Attached is a listing of the revisions and references to agricultural liens in SB 366. Deletion of this language should return SB 366 to current law regarding statutory liens. Given the comprehensive revisions in the bill, we would also request the addition of the language now contained in K.S.A. 84-9-310, which outlines the priority of statutory liens. References may also need to be added to clearly define jurisdictional issues, to assure filing of statutory liens is not required, to assure continuation of the statutory lien in proceeds, and to define default provisions. These clarifications are necessary because SB 366 has deleted many of the sections of current law referencing statutory liens.

Thank you for your time and consideration.

## Revisions to Senate Bill 336

1. Page 2, Lines 18-31- Strike.
2. Page 3, Lines 19-20 -Place period after the word interest and strike "or agricultural lien".
3. Page 8, Line 24 - Strike "or an agricultural lien".
4. Page 10, Line 19 -Strike "(B) a person that holds an agricultural lien;".
5. Page 10, line 24 - Strike "or agricultural lien".
6. Page 16, Line 5 - Strike "(2) an agricultural lien".
7. Page 16, Line 34 - Strike "other than an agricultural lien;".
8. Page 16, Line 35 - Strike ",other than an agricultural lien;".
9. Page 25, lines 24-27 - Strike all.
10. Page 29, lines 25-29 - Strike all and renumber.
11. Page 29, Line 31 - Strike "or agricultural lien".
12. Page 30, Line 39 - Strike "and agricultural liens".
13. Page 31, Line 22 - Strike "or agricultural lien".
14. Page 35, Line 31 - Strike "or agricultural lien".
15. Page 35, Line 34 - Strike "or agricultural lien".
16. Page 35, Line 37 - Strike "or agricultural lien".
17. Page 38, Line 9-10 - Strike "or agricultural lien".
18. Page 38, Line 15 - Strike "or agricultural lien".
19. Page 38, Line 20 - Strike "or agricultural lien".
20. Page 38, Line 22 - Strike "or agricultural lien".
21. Page 38, Lines 24-25 - Strike "or agricultural lien".
22. Page 38, Line 26 - Strike "or agricultural lien".
23. Page 40, Line 23 - Strike "and agricultural liens".
24. Page 40, Line 25 - Strike "and agricultural liens".
25. Page 40, Line 28 - Strike "or agricultural lien".
26. Page 40, Line 30 - Strike "or agricultural lien".
27. Page 40, Line 31 - Strike "or agricultural lien".
28. Page 40, Line 32 - Strike "or agricultural lien".
29. Page 40, Line 33 - Strike "and agricultural liens".
30. Page 41, Lines 32-35 - Strike.
31. Page 48, Lines 24-25 - Strike "or agricultural lien".
32. Page 52, Line 6 - Strike "or agricultural lien".
33. Page 52, Line 10 - Strike "or agricultural lien".
34. Page 52, Line 15 - Strike "or agricultural lien".
35. Page 53, Line 17-18 - Strike "agricultural liens".
36. Page 60, lines 4 and 5 - Strike "or agricultural lien".
37. Page 63, Line 5 - Strike "or agricultural lien".
38. Page 64, Lines 8 and 10- - Strike "and agricultural liens".
39. Page 64, Line 20 - Strike "or agricultural lien".
40. Page 67, Line 34 - Strike "or agricultural lien".
41. Page 67, Line 34 - Strike "or agricultural lien".

42. Page 67 Lines 36-37 - Strike "or agricultural lien".
43. Page 80, Lines 39 and 42 - Strike "or agricultural lien".
44. Page 81, Line 2 - Strike "or agricultural lien".
45. Page 83, Lines 4-7 - Strike.
46. Page 84, Lines 11-12 - Strike "or agricultural lien".
47. Page 84, Line 24 - Strike "or agricultural lien".
48. Page 90, Lines 1-2 - Strike "or agricultural lien".
49. Page 91, Line 9-10 - Strike "or agricultural lien".
50. Page 93, Line 10 - Strike "or agricultural lien".
51. Page 96, Line 22 - Strike "or agricultural lien".



Testimony of SB 366  
Subcommittee of Senate Judiciary Committee  
January 24, 2000  
Prepared by Joe Lieber, Kansas Cooperative Council

Mr. Chairman and members of the subcommittee. I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperative businesses. Approximately 130 of these businesses are local farm/supply cooperatives.

The Council is requesting that Appendix II of the National Conference of Commissioners on Uniform State Law report be amended into SB 366. As you recall, Appendix II was discussed during the Judiciary Interim Committee last fall. It has to do with what is commonly known as "input liens."

Rest assured, our members do not want to be in the lending business, but the problems are:

1. Many farm producers are not able to get funds to plant new crops from their lenders.
  - a. This may be because the lenders are no longer owned locally and do not understand agriculture.
  - b. Even though the lenders may be owned locally, they still might not understand the cost of inputs.
2. Sometimes the lenders already have the debtors' acquisitions as collateral and if the debtors do not prevail, the producers may have to declare bankruptcy.
3. The producers may go to the vendors and ask for inputs on credit. The vendors may not want to do this because if they have to file a lien it will be secondary to the lenders.
4. If the producers don't obtain input they don't have a harvest, so they cannot pay anyone, including the lenders.

As I stated earlier, our members do not want to be in the lending business, but sometimes we "stick our necks out" to help the producer. Amending Appendix II to SB 366 would help.

You may hear testimony from the lenders stating that if Appendix II is passed, it would dry up agriculture credit. It is my understanding that the following states already give priority to input liens: Arkansas, Georgia, Indiana, Iowa, North Carolina and Washington. To my knowledge, none of these states have problems with agriculture credit.

I might add here that the Kansas Livestock Association (KLA) was concerned that Appendix II may jeopardize their current statutory liens. Our attorney felt that this was not the case, but if KLA wants the language more clarified, we would be happy to include it in our amendment. It's my understanding that KLA is still contemplating their language.

Members of the subcommittee, the last four white pages is the language that we would like added to SB 366. You will notice that I have added notes in parenthesis that help you find the changes in SB 366, plus some notes to help in the explanation.

Thank you for the opportunity to testify. I ask for your consideration for adding Appendix II to SB 366.

I will be happy to entertain any questions, but remember, I'm neither an attorney nor a lender.

## SECURITY INTEREST IN CROPS

- **Comments**

The following selected model provisions were proposed by the National Conference of Commissioners on Uniform State Laws, compiled by Douglas A. Baird, Theodore Eisenberg, and Thomas H. Jackson, Commercial and Debtor-Creditor Law 1999 Edition, Appendix II, 1181.

The purpose of these provisions is to allow a farmer "obligor" or "debtor", to grant a "production money security interest" to the supplier of agricultural inputs, which production money security interest in "production money crops" will have priority over a conflicting security interest in the same crops.

- [New Section 2; MODEL SECTION 9-102(a) (65) (66) and (67)] DEFINITION OF "PRODUCTION - MONEY CROPS", "PRODUCTION-MONEY OBLIGATION", and "PRODUCTION OF CROPS". *(Page 9 of SB 366.)*

(65) "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting, and gathering crops, and protecting them from damage or disease.

- [New Section 3A; MODEL SECTION 9-103a]. *(Page 12 & 13 of SB 366.)* "PRODUCTION-MONEY CROPS"; "PRODUCTION-MONEY OBLIGATION"; PRODUCTION-MONEY SECURITY INTEREST; BURDEN OF ESTABLISHING. *(Loan is for the input only. If farmer owes other money the lien does not apply to that money. If farmer has lien on wheat crop then lien does not apply to corn crop.)*

A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

- (1) in accordance with any reasonable method of application to which the parties agree;
- (2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the

time of payment; or  
(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(A) if more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) A production-money security interest does not lose its status as such, even if:

(1) the production-money crops also secure an obligation that is not a production-money obligation;

(2) collateral that is not production-money crops also secures the production-money obligation; or

(3) the production-money obligation has been renewed, refinanced, or restructured.

(d) A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

- **Official Comment**

1. Source. New.

2. Production-Money Priority; "Production-Money Security Interest." This section is patterned closely on Section 9-103, which defines "purchase-money security interest." Subsection (b) makes clear that a security interest can obtain production-money status only to the extent that it secures value that actually can be traced to the direct production of crops. To the extent that a security interest secures indirect costs of production, such as general living expenses, the security interest is not entitled to production-money treatment. (*Money must be used for production crops only. Anything else is not covered.*)

- [New Section 44; MODEL SECTION 9-324(a)]. (*Page 42 in SB 366.*) PRIORITY OF PRODUCTION-MONEY SECURITY INTERESTS AND AGRICULTURAL LIENS. (*If more than one inputer has a lien on crops then it depends which one if filed first.*)

(a) Except as otherwise provided in subsections (c), (d), and (e), if the requirements of subsection (b) are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in Section 9-327, (Page 45 in SB 366) also has priority in their identifiable proceeds.



(b) A production-money security interest has priority under subsection (a) if:

- (1) the production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;
- (1) the production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than 10 or more than 30 days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and *(Must tell the bank first. If lender says no, the farmer's only recourse is to inputer. Since input liens are not first, inputers will not give inputs so the farmer must declare bankruptcy.)*
- (1) the notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Except as otherwise provided in subsection (d) or (e), if more than one security interest qualifies for priority in the same collateral under subsection (a), the security interests rank according to priority in time of filing under Section 9-322(a).

(d) To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under Section 9-322(a). *(Page 40 in SB 366.)*

(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority. *(Harvest liens would still have priority. Wheat isn't worth anything until it comes out of the field.)*

- **Official Comment**

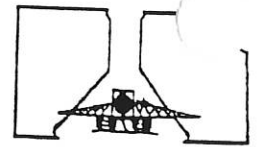
1. **Source.** New; replaces former Section 9-312(2). *(Page 32 in SB 366.)*

2. **Priority of Production-Money Security Interests and Conflicting Security Interests.** This section replaces the limited priority in crops afforded by former Section 9-312(2). That priority generally was been thought to be of little value for its intended beneficiaries. This section attempts to balance the interests of the production-money secured party with those of a secured party who has previously filed a financing statement covering the crops that are to be produced. For example, to qualify for

priority under this section, the production-money secured party must notify the earlier-filed secured party prior to extending the production-money credit. The notification affords the earlier secured party the opportunity to prevent subordination by extending the credit itself. Subsection (d) makes this explicit. If the holder of a security interest in production-money crops which conflicts with a production-money security interest gives new value for the production of the crops, the security interests rank according to priority in time of filing under Section 9-322(a).

**3. Multiple Production-money Security Interests.** In the case of multiple production-money security interests that qualify for priority under subsection (a), the first to file has priority. See subsection (c). Note that only a security interest perfected by filing is entitled to production-money priority. See subsection (b)(1). Consequently, subsection (c) does not adopt the first-to-file-or-perfect formulation.

**4. Holder of Agricultural Lien and Production-money Security Interest.** Subsection (e) deals with a creditor who holds both an agricultural lien and an Article 9 production-money security interest in the same collateral. In these cases, the priority rules applicable to agricultural liens govern. The creditor can avoid this result by waiving its agricultural lien.



STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION

AND THE  
KANSAS FERTILIZER AND CHEMICAL  
ASSOCIATION

BEFORE THE  
SENATE JUDICIARY SUBCOMMITTEE  
ON SENATE BILL 366

SENATOR JOHN VRATIL, CHAIR

JANUARY 24, 2000

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTREGAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

Senator Vratil and members of the Senate Judiciary Committee, Sub Committee on Senate Bill 366, my name is Tom Tunnell and I am here today on behalf of the Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association. Both organizations are made up of Kansas agri businesses that serve Kansas farmers and ranchers by providing grain storage and handling services and crop input items such as fertilizer and ag chemicals.

Our members' interest in Senate Bill 366 comes as a result of their ever - increasing involvement in providing agricultural credit to their farmer customers. Today you will hear conferees state they would prefer maintaining the status quo by not changing any provisions of the UCC's Article 9, which pertain to agriculture credit. We respect their position on this because clearly their situation under current law is primary.

At a seminar I attended last summer on the proposed changes to the UCC, the seminar leader, a St. Louis attorney named David Landersard, said 40.5% of today's ag credit is provided by commercial lenders and 23.5% is provided by farm cooperatives and agri businesses (both my members) with the balance provided by Farm Credit Services, Credit Unions and Insurance Companies.

Because my members do supply such a large percentage of ag credit, my purpose today is to support the language offered by the Kansas Cooperative Council which would incorporate "Appendix II" to Kansas law and establish the "Production Money Security Interest".

As I am not an attorney, I will not attempt to fully explain in the time I am allotted today how "Appendix II" would work but let me instead offer the following bullet points as a summary:

- The Production Money Security Interest ("PrMSI") would allow farmers to obtain financing by granting a first lien on crop to the creditor that provides the money to put in that crop.
- Currently, unless the creditor that already has a lien on a farmer's crop voluntarily subordinates its position, no one can get ahead of that creditor's lien.
- (PrMSI) only goes into operation after the old creditor has notice and an opportunity to provide financing for the new crop. If they go forward with that financing, their lien will remain first; if they do not go forward, their lien will be behind that of the creditor that provided the financing that made the crops possible.
- This only seems fair because there would have been no crop without the financing from the creditor that provided the financing and received the PrMSI. Our proposed changes actually makes farm lending more

consistent with the rest of the law in the UCC. Most other types of lending already have the concept that the party that provides the money to buy something should get a first lien on that something. Outside of agriculture it is called a Purchase Money Security Interest and has been part of the law at least since the beginning of the Uniform Commercial Code article on secured lending which was written in the 1950's and 60's.

- Several states including Washington, Georgia and North Carolina already have this rule and in every one of those states it is working well.
- Banks oppose the "Appendix II" provision and the members of the UCC Drafting Committee were concerned that if it were a part of the official amendments the banks might fight the amendments using as their primary argument that it would dry up agricultural credit since lenders will refuse to lend if their liens can be primed. However experience in each of the states that has a similar law shows that this actually promotes more farm lending rather than less.
- Our amendment limits the total amount of money that can qualify for PrMSI status to that necessary and directly used in the production of the current crop. Payment of living expenses and other indirect costs associated with the production of crops do not fall within the definition of a production money security interest.
- The PrMSI holder must give notice of its PrMSI to such competing interest holders (typically banks) between ten and thirty days before the date of the first advance of the loan or credit extension for which the PrMSI is



being claimed. This deals with the "credit squeeze" problem by giving the floating lienor the opportunity to provide the credit on comparable terms. If the first lien holder does not provide the necessary credit then the PrMSI holder gets priority over all prior perfected and unperfected security interests and lien holder in the crops.

Besides our position on the "Appendix II" issue, we also support proposed changes which would no longer require the debtor to sign financing statements.

Thank you for considering our comments on this complicated issue.

# Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

785-232-3444 Fax - 785-232-3484 kbacs@ink.org

---

1-24-00

TO: Senate Judiciary Sub-Committee  
FROM: Chuck Stones, Senior Vice President

RE: Appendix 2 to U.C.C. revised Article 9

Mr. Chairman and Members of the Sub-Committee:

Thank you for the opportunity to appear before you today to urge you to not adopt Appendix 2 to revised Article 9 of the UCC. My name is Chuck Stones, the Senior Vice President of the Kansas Bankers Association.

This is not a new topic. Over the years this Legislature has addressed the issue of giving a subsequent provider of services or supplies priority over the secured, primary provider of credit. The Legislature has handled this issue very carefully over the years because of the potential impact it can have on the availability of credit. The adoption of Appendix 2 and the granting of a super lien law giving priority to input suppliers would have a significantly negative impact on many ag banks' ability to provide credit. Any bank that would continue to lend "business as usual" after the implementation of a super lien law would certainly be taking on more risk and would raise a variety of concerns among regulators. Most banks would simply stop making loans if they would be subject to being superceded by an input provider's lien.

Since the ag crisis of the 1980's, ag lending has become much more dependent on cash flow for repayment of loans as opposed to the value of an asset held as collateral. For crop production, a lender often provides substantial credit long before the collateral has value. Many lenders make commitments as long as a year in advance of harvest and three to four months before planting. The ability to rely on the first to file rule in the UCC is essential and a critical incentive without which lenders would be reluctant to make these types of loans.

We believe the adoption of Appendix 2 would not be in the best interests of the farm borrower for many reasons. First, it would undermine the position of the conventional ag lender who has properly filed a financing statement under the traditional rules of the UCC which grant priority to the "first to file". Under current law everybody goes into the transaction with their eyes wide open, i.e., with a full understanding of what their position will be in the chain of priorities. Under the proposed changes, the traditional lender will never know if their position will be maintained or be undermined.

The traditional lender typically provides far more than just inputs for crops. In many cases, the line of credit is used for living expenses and other necessary items such as cars, college expenses, groceries, taxes and insurance. It would be these types of expenses that would become under- or unsecured and probably would be harder to obtain under Appendix 2 if the banker could no longer rely on the proceeds of the crop for repayment of that portion of the line of credit.

Second, basic business practices would change if Appendix 2 were adopted - which no one would like. Historically, farm borrowers have been allowed great flexibility in how they spend the funds advanced from their operating lines of credit. Trust is the operative word in the relationship. Typically, under current law, when an input supplier notifies a bank that they have sold an item to a producer, the banker simply deposits the money in the producer's checking account. At this point, the producer is in control of how the proceeds are disbursed. Appendix 2 would require a cumbersome system of joint-payee checks in order to avoid a situation where the bank disburses funds to pay off the input provider, but the funds were used for another purpose, and yet the input provider still gets a super priority lien.

Under the Agricultural Production Input Lien Law (KSA 58-242), suppliers can avail themselves of the statutory protections by contacting the party that has a previously perfected security interest. Under this law, the prior perfected party has 5 days in which to commit to the payment of the ag inputs which are being provided, either in whole or in part. Or, within 5 days, the previously perfected security interest holder may send a written refusal to furnish such a letter of commitment. In the case of the latter, the supplier of ag inputs may extend credit at their own risk, knowing that the lender has not guaranteed payment nor subordinated its interest to the supplier. Quite the opposite of what would occur should Appendix 2 be adopted, the first to file rule is still in effect and the supplier of ag inputs will be able to make this decision with all the cards on the table, knowing their position before they advance the credit. This provision was enacted, in part, to encourage communication among all parties involved in the production of agriculture. All parties involved must know where they stand so they can make informed, sound decisions regarding the further extension of credit to the farm borrower.

Proponents of Appendix 2 have attempted to compare the production money security interest created by Appendix 2 to purchase money security interests relating to inventory and equipment. Such attempts simply do not hold water. There are significant differences between these two types of security interests. It is logical to grant a purchase money security interest to a lender who has financed the purchase with inventory or equipment since these goods may be physically recovered in the event of a bankruptcy or other default. However, this reasoning does not follow through to justify granting a super priority security interest in any crops to a supplier of seed, fertilizer or chemicals - which cannot be physically recovered.

In conclusion, it is our belief that the adoption of Appendix 2 would have a significantly adverse impact on the availability of credit to farmers, particularly those who may become greater financial risks due to downturns in the ag economy. It will greatly change the role of the operating lender that has traditionally worked closely with its farm customers to develop a comprehensive financial plan that provides credit for the entire farm operation - which frequently includes personal living expenses, in addition to ag production inputs.

Input suppliers have the opportunity under current law to compete with banks for these full-service loans. However, most input suppliers don't want to comply with the requirements of the UCC. They view financing as a sales tool. They do not see the big picture - that financing as an integral part of the farmer's operation. The input suppliers are not willing to provide a total loan package, nor are they willing to do the due diligence necessary to be a true lender to agriculture. The adoption of Appendix 2 will only serve to increase loan risk and reduce the quality of agricultural loan portfolios with the bottom line effect being that conventional ag lenders will be forced to reduce the amount of credit they will extend to ag producers. The first to file rule is essential for the orderly conduct of business transactions. It should not be changed.

We urge you NOT to adopt Appendix 2.



# PUBLIC POLICY STATEMENT

## SENATE SUBCOMMITTEE ON THE JUDICIARY

RE: SB 388 – Amending Article 9 of the Uniform Commercial Code

January 24, 2000  
Topeka, Kansas

Presented by  
Terry Arthur, General Counsel

Kansas Farm Bureau

Chairman Vratil and members of the subcommittee, thank you for the opportunity to appear before you today and share our concerns with SB 366. I am Terry Arthur, General Counsel for Kansas Farm Bureau. KFB is the state's largest general farm organization, representing approximately 8 out of every 10 farmers and ranchers across the state.

The availability of credit for agricultural producers is of great significance to our members. This past November, the voting delegates at our 81<sup>st</sup> Annual Meeting reaffirmed and expanded their policy on agricultural credit. Specific points apply to today's discussion of SB 366:

- Farmers and ranchers need a variety of credit facilities to finance operating and ownership expenses.

- Any changes to lending producers, statutes, rules or regulations should not disadvantage agricultural producers.
- Specific agricultural liens exist under current law. We oppose any measure that would eliminate or pre-empt this prioritization of lien holders.

Based on these policy considerations, we cannot support SB 366 in its current form. Nor could we support any effort to see Appendix II to the 1998 model amendments to Article 9 included within SB 366.

We do appreciate the 1999 Special Committee on Judiciary recognizing the importance of statutory agricultural liens through this recommendation that provision of SB 366, which may affect these liens, not be enacted during the 2000 session. We strongly urge this subcommittee to carry through with that recommendation and remove from SB 366 statutory agricultural liens and any other provisions which may eliminate or pre-empt prioritization of agricultural lien holders.

This proposed law needs additional study for the following reasons:

1. Will its enactment help agricultural producers or be detrimental to obtaining agricultural credit?
2. The adoption of statutory agricultural liens will be confusing to agricultural producers. Each producer obtaining bank credit and input credit, under this bill, would need their own attorney to understand the complexities of this system and who has priority on their crops and livestock.
3. Will the loss of the current priorities in agriculture, such as agister's liens, liens for feed and care of livestock and custom cutter liens cause those persons

or companies providing those services to lose money, thereby denying their availability to the agricultural producer?

4. A study should be conducted of banks making agricultural loans to determine if there is a problem and how this law would affect their lending practices. There is a greater chance of harm to agricultural lending under this bill than help for the agricultural producers.

Again, we appreciate the opportunity to appear before you on behalf of the farmer and rancher members of Kansas Farm Bureau. Thank you for your examination of SB 366's impact on agricultural credit.



2-21-2000  
Attachment #6

**Kansas Bankers Association  
Non-Uniform Amendments to Revised UCC Article 9**

These amendments fill in blanks left by the uniform law commissioners for individual states to address. There are also some nonuniform provisions that are in the current version of UCC Article 9 that are particular to Kansas.

- p. 13
1. Revised UCC section 9-102(47), contains the definitions of "instrument". Kansas added a nonuniform phrase, "a writing that would otherwise qualify as a certificate of deposit (defined in subsection (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the writing contains a limitation on transfer". This language was added to ensure that a security interest in a certificated non-negotiable CD may be perfected by simply taking possession of the CD.
  2. Revised UCC section 9-103(e), (f) and (g), contain the phrase, "In a transaction other than a consumer goods transaction". In deleting that language from each subsection, we are intending those sections to apply to all transactions, including those involving consumer goods. If there are to be separate rules for consumer good transactions, those would be found in the Kansas Uniform Consumer Credit Code. For the same reason, Subsection (h) of this section is deleted in whole.
  3. Revised UCC section 9-201(b), was a blank left by the uniform law commissioners. We filled it with the old language of section 9-201: "Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, consumer loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto."
  4. Revised UCC section 9-311, is comparable to the current version of 9-302. The filing of a financing statement is not necessary or effective to perfect a security interest in property subject to state statutes identified in this subdivision. We have deleted the phrase in subsection (a)(2), "and any non-Uniform Commercial Code central filing law of this state", because we do not have such a thing.
  5. Revised UCC section 9-312, contains a very minor amendment. In subsection (b)(2), "and" is deleted as it is not needed there.
  6. There are two places where we need to insert the words, "of this state": Revised UCC section 9-334(j) and 9-408(e).
  7. Revised UCC section 9-503, is amended to add a new subsection containing nonuniform language contained in old 9-402(7), that was crafted for Kansas. New subsection (5) should read, "if the debtors are married debtors jointly engaged in business and it is unclear whether a partnership exists, the financing statement may be filed in the names of the individual debtors." This language was designed to guide lenders filing on a farming operation when the parties were unclear whether they unknowingly formed a partnership under the Kansas Uniform Partnership Act.

Nonuniform Amendments to RA9

4-24

8. Revised UCC section 9-612, is amended so that there is one rule for determining whether a notification is sent within a reasonable period of time. Subsection (a) is deleted and the following phrase in subsection (b) is deleted, "In a transaction other than a consumer transaction". This would mean that a notification of disposition sent after the debtor defaulted and at least 10 days before the disposition takes place is sent within a reasonable time. This would be fair to both parties and would eliminate litigation on this subject.
9. Revised UCC section 9-625(e) and (f), contain the statutory damages assessed for noncompliance with certain provisions of the law (\$500). Currently, UCC 9-404 provides that the debtor may recover "\$100 or reasonable attorney's fees and court costs". We would suggest to the committee that the current language is fairer to the party who is wronged, in that attorney fees and court costs will generally be awarded to the party who prevails, and are almost always much greater than \$500.
10. Revised UCC section 9-626, contains the rules if there is a deficiency or a surplus after foreclosure. Our amendments delete, "other than a consumer transaction" from subsection (a) and delete subsection (b) altogether, so that the same rule applies to all transactions, including consumer transactions. These rules are very fair and if another rule is to be applied to consumer transactions, it should be placed in the Kansas Uniform Consumer Credit Code.

*Policy  
decis*



Attached #7

## Kansas Farm Bureau

2627 KFB Plaza, P.O. Box 3500, Manhattan, Kansas 66505-8508 / (785) 587-6000

February 11, 2000

Sen. John Vratil, Chair  
Judiciary Subcommittee on SB 366  
Statehouse, Room 128-S  
Topeka, Kansas 66612

Dear Senator Vratil,

At the close of the last subcommittee meeting on SB 366, you requested the agriculture associations whose members would be impacted by the proposed changes in UCC Article 9 to list the statutory agriculture liens important to their membership.

We have reviewed the Kansas statutory agriculture liens and identified the following:

- KSA 58-203 – Harvesters (custom cutters) lien.
- KSA 58-207 – Livery (feed yard) lien.
- KSA 58-220 and 58-221 – Agisters lien.
- KSA 58-241 and 58-242 – Limited agriculture production in-put lien.

Since we are a general farm organization, and our members participate in all segments of the agriculture industry, *virtually all statutory agriculture liens impact our membership.*

Yesterday, the Senate Agriculture Committee heard testimony on SB 565 which enacts what is referred to by some as a "Contract Producer's Bill of Rights". Farm Bureau was one of several opponents. One of the sections in the bill would institute a producer's super-priority lien. Although KFB opposed the provision, if the legislation was enacted as introduced, it would impact other statutory ag liens and, in return, probably be impacted by SB 366 and the proposed Appendix II if they were to pass.

Kansas Farm Bureau certainly appreciates the attention you, your subcommittee and the rest of the Judiciary Committee are giving to agriculture statutory lien as you discuss SB 366. These provisions are critical to our membership and they



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must be preserved. If we can provide any additional information or comments that would be helpful to you and the committee, please contact us. We may be reached at the following:

**Topeka Legislative Office: 234-4535**  
**Lobbyist Message Center – Capitol: 234-5500**

We look forward to working with you on this and other important issues during the 2000 Legislative Session.

Sincerely,



**Leslie J. Kaufman, Assistant Director**  
**Public Policy Division**  
**Kansas Farm Bureau**

cc Anapolsky To: Timothy Emert

Date: 7/2/99 Time: 7:52:38 PM

Page 8

# National Conference of Commissioners on Uniform State Laws

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## MEMORANDUM

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**DATE:**

**TO:**

**FROM:** Ellyce C. Anapolsky

**SUBJECT:** Technical Amendments to:  
 UCC Section 9-504  
 UCC Section 9-317  
 UCC Section 9-323  
 UCC Section 9-102  
 UCC Section 9-210  
 UCC Section 9-406  
 UCC Section 9-407  
 UCC Section 9-408  
 UCC Section 9-409

The Executive Committee recently approved amendments to the Revised UCC Article 9 Sections 9-504, 9-317, 9-323, 9-102, 9-210, 9-406, 9-407, 9-408 and 9-409.

In accordance with Section 4.3 of the ULC Constitution, any action by the Executive Committee approving amendments to uniform Acts must be reported to the Conference membership at least 20 days before the next Annual Meeting. The amendments are thereby adopted by the Conference unless they are disapproved or modified by the Conference at that Annual Meeting on a special order requested by a Commissioner, not later than the third day of the meeting, in a written statement specifying by section the amendment objected to. Only the disputed section will receive consideration at the Annual Meeting.

The amendments are attached for your review.

ECA:mwe

Enclosures

cc: Fred Miller



**MEMORANDUM TO:** Executive Committee of the National Conference of Commissioners on Uniform State Laws

**FROM:** Steven L. Harris and Charles W. Mooney, Jr.

**DATE:** June 9, 1999

**RE:** Proposed Revisions of Official Text of Uniform Commercial Code Article 9

**CC:** Standby Committee for Revised UCC Article 9

---

This memorandum contains four proposals for changes to the Official Text of Revised Article 9. The Standby Committee for UCC Article 9 recommends the first three proposals, which for the most part correct inadvertent errors in the Official Text. The last proposal, Proposal 4, addresses certain needless inconsistencies. The Standby Committee contemplates that the proposed revisions will be accompanied by appropriate changes to the Official Comments.

#### PROPOSAL 1—INDICATION OF COLLATERAL IN FINANCING STATEMENT

**Proposal:** The Standby Committee proposes the following change to § 9-504:

**SECTION 9-504. INDICATION OF COLLATERAL.** A financing statement sufficiently indicates the collateral that it covers only if the financing statement provides:

- (1) a description of the collateral pursuant to Section 9-108; or
- (2) an indication that the financing statement covers all assets or all personal

property.

**Explanation:** Revised Article 9 has changed the requirements for indicating collateral in a financing statement. This change was inadvertent. There is lots of learning under former Article 9 to the effect that particular words that are insufficient as a "description" for purposes of a security agreement because they do not "reasonably identify" the collateral (e.g., "machinery") may nevertheless suffice as an "indication" of collateral and satisfy the notice function of a financing statement. Under revised §§ 9-108 and 9-504, the only difference between the description requirement for a security agreement and the indication requirement for a financing statement is that an "all assets" indication is good for the latter but not the former. This means that an indication (other than an "all assets" indication) of collateral in a financing statement would be insufficient unless it would suffice as a description in a security agreement.

The revised Official Comment would make clear that (i) § 9-504 is a safe harbor, (ii) indications that are neither descriptions nor "all assets" indications are sufficient if they satisfy the

statutory purpose of a financing statement, and (iii) § 9-504 is not intended to render ineffective an indication that would have been effective under former Article 9.

**PROPOSAL 2--PRIORITY OF FUTURE ADVANCES VS. LIEN CREDITOR**

**Proposal:** The Standby Committee proposes the following changes to §§ 9-317 and 9-323:

**SECTION 9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF UNPERFECTED SECURITY INTEREST OR AGRICULTURAL LIEN.**

(a) ~~Conflicting security interests and rights of lien creditors.] A ~~an~~ unperfected security interest or agricultural lien is subordinate to the rights of:~~

- (1) a person entitled to priority under Section 9-322; and
- (2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

\* \* \*

**SECTION 9-323. FUTURE ADVANCES.**

\* \* \*

(b) [Lien creditor.] Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor ~~while the security interest is perfected only~~ to the extent that it the security interest secures advances an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

- (1) without knowledge of the lien; or
- (2) pursuant to a commitment entered into without knowledge of the lien.

\* \* \*

**Explanation:** Sections 9-317(a)(1) and 9-323(b) need adjustment to deal properly with the following scenario. Assume SP files a financing statement on 4/1 but does not give value until 4/15. Lien creditor (LC) levies on 4/7. SP (with knowledge of the lien and no commitment to make advances) makes an additional advance on 6/15.

The intended result is that the additional advance is subordinate to the rights of the lien creditor. However, § 9-323(b) by its terms does not apply. LC is not a "person that becomes a lien



creditor while the security interest is perfected." The security interest was not perfected until 4/15, when SP gave value and its security interest attached. LC became a lien creditor on 4-7—after the financing statement was filed but before the security interest was perfected.

Section 9-317(a)(2) doesn't quite work on these facts either. It refers to the rights of a person holding an unperfected security interest. In the example, SP never held an unperfected security interest. The security interest became perfected simultaneously with attachment.

In addition to conforming to the revised text, the revised Official Comments would make clear that § 9-323(b) does not elevate the priority of a security interest that would be subordinate to a lien creditor under § 9-317.

### PROPOSAL 3—DEFINITION OF "CHATTEL PAPER"

**Proposal:** The Standby Committee proposes the following changes to § 9-102:

#### SECTION 9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

(a) [Article 9 definitions.] In this article:

\* \* \*

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, or a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel. If a transaction is evidenced both by records that include a security agreement or lease and by an instrument or series of instruments, the group of records taken together constitutes chattel paper.

\* \* \*

**Explanation:** The definition of "chattel paper" would be revised to accommodate the practice of "leasing" goods and accompanying software. This practice is analogous to purchase-money financing of goods and software, in which the security interest is eligible for special purchase-money priority. The draft approved at the 1998 NCCUSL annual meeting was intended to reach this result; however, the statutory formulation contained an error and was deleted.

In addition, the revised definition would not limit "chattel paper" to records evidencing transactions in which the secured financier or lessor takes a security interest in a license of software used in the goods or itself is the licensor of the software. Nor would it limit "chattel paper" to transactions in which the monetary obligation evidenced by the records is secured by the goods or software or is under a lease of the goods or license of the software. Instead, the revised definition also would include transactions in which the debtor's or lessee's monetary obligation includes amounts advanced by the secured party or lessor that enable the debtor or lessee to acquire a license of the software used in the goods. It would not be necessary that the monetary obligation actually be owed under a license from the secured party or lessor or that the secured party or lessor actually be a party to the license transaction itself.

Thus, with respect to financing the receivable at the next tier, the revised definition would treat in the same manner (i) security-interest-cum-license paper, (ii) lease-cum-license paper, and (iii) security interest or lease paper in which the monetary obligation includes repayment of advances used by the debtor to acquire the software.

#### PROPOSAL 4-MISCELLANEOUS

**Issue:** The following changes will eliminate needless inconsistencies in the Official Text:

#### **SECTION 9-210. REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT.**

\* \* \*

(d) [Request regarding list of collateral; no interest claimed.] A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

- (1) disclaiming any interest in the collateral; and
- (2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's security interest in the collateral.

#### **SECTION 9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE.**

\* \* \*

(d) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (c) and Sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

\* \* \*

(f) [Legal restrictions on assignment generally ineffective.] Except as otherwise provided in Sections 2A-303 and 9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

\* \* \*

**SECTION 9-407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST.**

(a) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

\* \* \*

**SECTION 9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.**

(a) [Term restricting assignment generally ineffective.] Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise; and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

\* \* \*

(c) [Legal restrictions on assignment generally ineffective.] A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

\*\*\*

**SECTION 9-409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT RIGHTS INEFFECTIVE.**

(a) [Term or law restricting assignment generally ineffective.] A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

\*\*\*

S. L. H.

C.W.M.

Ron Thornburgh  
Secretary of State



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STATE OF KANSAS  
MEMO

TO: SENATOR JOHN VRATIL

FROM: MELISSA WANGEMANN, LEGAL COUNSEL  
KATHY SACHS, DEPUTY OF U.C.C. DIVISION

RE: REVISED ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE  
SB 366

DATE: 3 FEBRUARY 2000

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The Secretary of State will propose the following amendments to SB 366. The first two amendments are in current law and we are asking that they be restored to the revised act. The third amendment is a new provision, modeled after Montana law.

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**Administration** (785) 296-4564  
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**Corporations** (785) 296-4564  
FAX (785) 296-4570

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**Elections** (785) 296-4561  
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FAX (785) 296-3659

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## AMENDMENTS FOR SB 366

**Immunity for filing officers.** Except with respect to willful misconduct, the state, counties and filing officers are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this act. **Source: K.S.A. 84-9-407, 84-9-411, 84-9-412.**

**Uniform commercial code fee fund.** (a) There is hereby created in the state treasury the uniform commercial code fee fund.

(b) The secretary of state shall remit to the state treasurer at least monthly all fees received by the secretary of state for providing information concerning filings under article 9 of chapter 84 of the Kansas Statutes Annotated. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount in the state treasury and credit 20% of the amount to the state general fund and the balance to the uniform commercial code fee fund.

(c) All expenditures from the uniform commercial code fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or a person or persons designated by the secretary of state. **Source: K.S.A. 84-9-413.**

If information regarding filings in the office of the secretary of state is provided by a register of deeds, the fee to be collected from the customer shall be an amount fixed by rules and regulations adopted by the secretary of state. The rules and regulations adopted by the secretary of state shall specify the amount the register of deeds shall remit to the county treasurer for deposit into the county general fund. The register of deeds shall remit at least monthly the remainder of all such fees collected to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and shall credit 20% of the amount to the state general fund and the remainder to the uniform commercial code fee fund. **Source: K.S.A. 84-9-411.**

**Removal of improper or fraudulent documents.** If a filing officer receives a complaint or has reason to believe that a document submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party. **Source: Montana law, M.C.A. 30-9-432.**



### **1. U.C.C. Fee Fund.**

The U.C.C. division is entirely funded by a fee fund. Under SB 366, the funding of the division would be provided by general fund money. We believe the current system is a better allocation of taxpayers' money because it requires those who use the U.C.C. division to pay for its services. The fee fund is also essential to our office during times of high volume when we need the flexibility to hire temporary employees or offer over-time pay.

Revised Article Nine establishes performance standards for our office, requiring us to complete searches and filings within two business days. These standards can only be met with a fee fund, which provides funding for improved technology (i.e., imaging system) and hiring extra help when heavy volumes of filings occur.

### **2. Immunity Clause.**

Kansas law grants immunity to the filing officers administering the uniform commercial code; the Secretary of State and the Registers of Deeds. This provision was first included in the uniform commercial code when K.S.A. 84-9-411 and 84-9-412 were added in 1983. These two statutes required the Secretary of State and allowed the Registers of Deeds to provide information on filings to the general public. 84-9-411 originally related to information provided by telecopier, subscription periodic written summaries, and any other appropriate method. K.S.A. 84-9-412 required the Secretary of State to provide information by telephone. In 1985 an immunity clause was also added to K.S.A. 84-9-407 relating to searches. Testimony from 1985 indicates that the 1985 amendment was a clean-up provision intended to make 84-9-407 consistent with the rest of the code.

### **3. Discretion to refuse or rescind fraudulent filings.**

The state of Montana adopted Revised Article Nine in 1999 and its act includes a non-uniform provision allowing the filing officer to remove or refuse fraudulent liens. The state of Montana first enacted this provision in 1993 and has found it helpful in controlling bogus liens. We have drafted a provision similar to the Montana law.

Current Kansas law requires a debtor's signature, which seems to limit the number of nonconsensual liens we receive. Revised Article Nine eliminates the requirement for signatures, and therefore could result in an increase in fraudulent, nonconsensual filings. The revised act also clarifies the filing officer's role as ministerial by setting forth limited situations when the filing officer can refuse a filing (Section 87). Although the revised act offers several remedies for unauthorized filings, none is preventive. The Secretary of State believes it would be in the best interest of the public if our office were granted the discretion to refuse bogus liens. Our conversations with the Kansas Bureau of Investigation and Highway Patrol indicate that they support this amendment.