

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on January 30, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

Bob Williams, Kansas Pharmacists Association  
Bob Alderson, Insurance Adjusters Association  
Matthew Goddard, Heartland Community Bankers

Others attending: See attached list.

**Introduction of bills**

Bob Williams, Kansas Pharmacists Association, requested introduction of a bill that would provide uniform information on prescription cards. (Attachment 1) Senator Feleciano made a motion that the Committee introduce the proposed legislation, seconded by Senator Teichman. The motion carried.

Bob Alderson, Insurance Adjusters Association, requested introduction of a bill that would license public adjusters. Senator Teichman made a motion that the Committee introduce the proposed legislation, seconded by Senator Steineger. The motion carried.

**Hearing on SB 70 - Mortgages; entry of satisfaction thereof**

Matthew Goddard, Heartland Community Bankers, testified before the Committee in support of **SB 70** which would add a lender or designated closing agent in a transaction to those parties authorized to make demand upon a mortgagee or its assignee for the entering of satisfaction of a mortgage as noted in his written testimony. (Attachment 2) During Committee discussion Mr. Goddard pointed out that passage of this legislation would be a safeguard for the designated buyer.

Written testimony in support of **SB 70** was received from Roy H. Worthington, Kansas Land Title Association, (Attachment 3); and Kathleen Olsen, Kansas Bankers Association, (Attachment 4).

**Action on SB 70**

Senator Feleciano made a motion that the effective date of the legislation be changed from publication in the statute book to publication in the Kansas register, seconded by Senator Steineger. The motion carried.

Senator Feleciano made a motion that the Committee recommend **SB 70 as amended** favorably for passage, seconded by Senator Steineger. The motion carried.

**Approval of Minutes**

Senator Steineger made a motion that the Committee minutes of January 23, 24, and 25 be approved, seconded by Senator Teichman. The motion carried.

**Adjournment**

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for January 31, 2001.





KANSAS PHARMACISTS ASSOCIATION

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Topeka KS 66604  
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Robert R. (Bob) Williams, M.S., C.A.E.  
Executive Director

TESTIMONY

Senate Financial Institutions and Insurance Committee  
Tuesday, January 30, 2001

Uniform Prescription Drug Information Cards

My name is Bob Williams. I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the committee.

The attached language is a bill proposal which would provide for uniform information on prescription cards. In today's busy pharmacies, national data indicates that a pharmacist spends up to one-third of his/her time dealing with insurance companies, HMOs and PBMs. This situation is exacerbated by the fact that information on prescription cards, which the pharmacist needs to process a claim, is often inadequate or nonexistent. This results in pharmacists having to call an 800 number to obtain needed information which delays filling the prescription and takes away from time needed to counsel the patients and provide follow up.

Similar legislation was enacted in seven states last year and is proposed in approximately nineteen states this year. All of the legislation enacted last year and proposed this year simply asks that the third party provide the information they require for the pharmacist to process the claim.

Thank you.

Senate Financial Inst. & Insurance

Date: 1-30-01

Attachment No. 1

To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard  
Heartland Community Bankers Association

Date: January 30, 2001

Re: Senate Bill 70

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance to express our support for Senate Bill 70.

Senate Bill 70 amends KSA 2000 Supp. 58-2309a to add a lender or designated closing agent in a transaction to those parties authorized to make demand upon a mortgagee or its assignee for the entering of satisfaction of a mortgage. Under current law, a lender or designated closing agent may file a mortgage release under 58-2309a, but cannot make demand for the release themselves.

Despite past legislative efforts, some out-of-state mortgage servicers continue to be slow and unresponsive in releasing mortgages even after the mortgagor has satisfied the obligation. Unfortunately, it is not uncommon for some out-of-state mortgagees to take an entire year to file the release.

#### **Current Law**

In 1995, Governor Graves signed into law House Bill 2126. That legislation first created a mechanism that allowed Kansas lenders and closing agents to effectuate the release of a mortgage when a mortgagee or its assignees failed to enter satisfaction. Prior to 1995, Kansans were forced to file a civil action in order to obtain a mortgage release when the mortgagee failed to do so.

House Bill 2126 amended KSA 58-2309a to provide that if a mortgagee or the mortgagee's assignees fail to enter, or cause, satisfaction of the mortgage to be filed within 20 days after a written demand, then the lender or designated closing agent in the real estate transaction may cause satisfaction of the mortgage to be entered. To safeguard against fraud, the lender or closing agent must have been involved in the sale, financing or refinancing of the real estate subject to the mortgage and they were also required to rely upon written payoff information provided by the mortgagee. If the mortgagee or its assignees were not actually paid in accordance with the payoff information, the party who filed the release would be liable for damages to the mortgagee or its assignees for the entire indebtedness along with interest, attorney's fees and any additional damages. The law already made mortgagees who failed to release a mortgage within 20 days after demand liable to the person for whom the

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Date: 1-30-01



demand was made for \$500 and reasonable attorney's fees.

Considering the liability a lender or closing agent faces if a mortgage release is wrongly filed, such an action is considered an absolute last resort. Kansas savings associations have found the demand letter to be an effective tool in generating responses from otherwise unresponsive mortgagees. In the almost six years since House Bill 2126 became law, HCBA is aware of only two instances where it became necessary for a mortgage release to be filed under the provisions of KSA 58-2309a.

### **Senate Bill 70**

As the law is currently written, a mortgagor, a mortgagor's heirs or assigns or anyone acting for those parties may make the written demand upon a mortgagee or its assigns for the entering of the mortgage satisfaction. While a lender can send the demand letter to the mortgagee, it must be done on behalf of the mortgagor. Unfortunately, in transactions involving the sale of real estate, the mortgagor may no longer be involved in the process. This gives the lender or closing agent questionable legal standing when sending the demand letter on what is essentially their own behalf or the behalf of the new buyer.

For example, in a sale of real estate, the buyer's lending institution mails a check directly to the mortgagee in the amount of the loan payoff. If necessary, a second check is provided to the mortgagor for any profit in excess of the payoff amount. The seller/mortgagor then moves on while the buyer waits for the release to be filed. It is the buyer and their lending institution that are left to deal with obtaining a clean title to the property, not the original mortgagor. In addition, the mortgagee is only liable for reasonable attorney's fees and \$500 to the person for whom the demand is made. That means that while the lender or closing agent is able to make the demand on behalf of the mortgagor, neither is able to collect the \$500 or reasonable attorney's fees for preparing and prosecuting the action.

Senate Bill 70 addresses this problem by simply adding "a lender or designated closing agent acting as a closing agent in the sale, financing or refinancing of the real estate subject to such mortgage" to KSA 58-2309a (c) and making the appropriate organizational changes in the statute. This language would authorize the lender or closing agent to make a written demand to the original loan's mortgagee for satisfaction of the mortgage. It also eliminates any ambiguity in the law that results from a lack of involvement by the mortgagor.

We do not anticipate an increase in demand letters with approval of Senate Bill 70. The same liability concerns that exist with current law will help make sure that the filing of mortgage releases under KSA 58-2309a remains a course of last resort. However, the bill will clarify existing law so that lenders and closing agents have clear legal standing in dealing with mortgagees who fail to release mortgages in a timely manner. It is Kansas consumers who are disadvantaged by delayed mortgage releases and therefore it is Kansas consumers who stand to benefit most from Senate Bill 70.

The Heartland Community Bankers Association respectfully requests that the Senate Financial Institutions and Insurance Committee recommend SB 70 favorable for passage.

Thank you.

KANSAS LAND TITLE ASSOCIATION  
8621 E. 21<sup>ST</sup> NORTH  
SUITE 150  
WICHITA, KS 67206

Date: January 30, 2001

To: Senate Committee on Financial Institutions and Insurance

From: Kansas Land Title Association

Re: Senate Bill 70

The Kansas Land Title Association supports the changes proposed by Senate Bill 70.

It is often very difficult to obtain the release of a mortgage that has been paid in full due to the numerous times the mortgage has been assigned. The proposed change will permit a lender or designated closing agent acting as a closing agent in the sale, financing or refinancing of real estate to make demand for the satisfaction of a mortgage which has been paid in full. The proposed change merely clarifies and supplements existing law.

Thank you for your support of Senate Bill 70.

Sincerely,

Kansas Land Title Association



Roy H. Worthington  
Chairman, Legislative Committee

Senate Financial Inst. & Insurance  
Date: 1-30-01  
Attachment No. 3



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

January 30, 2001

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: **SB 70: Release of Mortgage**

Madam Chair and Members of the Committee:

Thank you for the opportunity to submit written testimony in favor of **SB 70**. As you know, this bill amends KSA 58-2309a so that a lender or designated closing agent acting as a closing agent in the sale, financing or refinancing of real estate may make demand for release of a mortgage which has been paid in full.

This is an important amendment as it will help move real estate transactions along, despite some out-of-state mortgage servicers' lack of interest in releasing mortgages that have been satisfied.

Thank you for your time and we respectfully ask that you act favorably on **SB 70**.