

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 5, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association
Matthew Goddard, Heartland Community Bankers Association
Jerel Wright, Kansas Credit Union Association
Dr. Tony Fabelo, Corrections Public Policy Consultant, Council of State Government
Dr. Fred Osher, Director of Health Services, Council of State Government

The hearing on **HB 2283 - perfection of security interests on certificates of title**, was opened.

Kathy Olsen, Kansas Bankers Association, appeared as the sponsor of the proposed bill. The perfection of security interests is governed by Article 9 of the Uniform Commercial Code. The method for a lender to perfect its security interest in vehicles and manufactured homes is to get the lien recorded on the certificate-of-title representing the vehicle or manufactured home. The problem arose the Division of Motor Vehicles did not note the lien on three titles. The Bankruptcy Trustee challenged the lender's perfection of the security of interest because the lien was not noted on the title. Judge Nugent stated that had the language of the earlier version of Article 9 not been changed, it might have protected the lender. The proposed bill would simply re-instate the language. (Attachment 1)

Matthew Goddard, Heartland Community Bankers Association, appeared as a proponent of the bill. He stated that this change would protect the status of auto and manufactured home lenders as secured creditors without diminishing the rights of any other secured party. (Attachment 2)

Written testimony in support of the bill was provided by Kansas Manufactured Housing. (Attachment 3)

The hearing on **HB 2283** was closed.

The committee received a power point presentation from the Justice Center. (For copies of the power point, contact The Council of State Governments.)

Dr. Tony Fabelo, Corrections Public Policy Consultant, Council of State Government, relayed that Kansas' prison population is projected to increase 26 percent over the next 10 years. Which will make a bed shortfall of 1,834 beds. It was estimated to costs \$500 million to build the new beds and cover operating expenses.

Proposed options to keep from building prison beds:

- ◆ Maintain lower parole failure rates from the current 135 per month to 90
 - a. Expanding the capacity of community based treatment and sanctions
 - b. Focus increased resources toward counties with high revocation rates
- ◆ Strengthen community corrections by reducing the number of probation/community corrections violators by 20 percent
 - a. Provide incentive grant funding to community corrections to expand treatment and sanctioning capacity
 - b. Require community corrections programs and judges to develop consistent supervision and sanctioning strategies
- ◆ Reduce risk before release by creating a risk reduction program credit for guideline offenders who successfully complete treatment, educational, and vocational programs before release

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- a. Use risk/needs assessments to determine which offenders should be required to complete programs prior to release
- b. Expand substance abuse, vocational, and educational programming in prison using savings generated from the program credit

Dr. Fred Osher, Director of Health Services, Council of State Government, touched on drug addiction and mental illnesses relating to criminal activity. To ensure effective treatment each inmate needs to be screened correctly and have objectives and a comprehensive assessment as to what type of treatment they need to receive.

Oklahoma, Nevada, Texas and Connecticut have joined other states in developing cost-effective solutions to solving the prison overcrowding issue.

HB 2233 - authorizing sale of prison-made goods to state employees

Representative Watkins made the motion to report HB 2233 favorably for passage, and because of it's non controversial nature be placed on the consent calendar. Representative Owens seconded the motion. The motion carried.

HB 2232 - eliminating department of corrections reimbursement for jury fees

Representative Watkins made the motion to report HB 2232 favorably for passage, and because of it's non controversial nature be placed on the consent calendar. Representative Owens seconded the motion. The motion carried.

HB 2230 - program agreements between the secretary of corrections and inmates

Representative Watkins made the motion to report HB 2230 favorably for passage. Representative Owens seconded the motion. The motion carried.

HB 2190 - granting the secretary of corrections the discretion to dismiss conditional release violations

Representative Watkins made the motion to report HB 2190 favorably for passage. Representative Owens seconded the motion. The motion carried.

HB 2193 - person committing new felony while on pretrial release for felony in another jurisdiction to be treated the same as a person on release for a felony in Kansas

Representative Watkins made the motion to report HB 2193 favorably for passage. Representative Owens seconded the motion. The motion carried.

HB 2087 - kansas sentencing commission assumes the functions of the state statistical analysis center

Representative Watkins made the motion to adopt the proposed amendment by the Criminal Justice Coordinating Council, by striking "in a form and manner established by the commission,.". Representative Pauls seconded the motion. The motion carried.

Representative Watkins made the motion to report HB 2087 favorably for passage, as amended. Representative Pauls seconded the motion. The motion carried.

HB 2074 - fingerprints and photos of juveniles in custody

Representative Watkins made the motion to adopt proposed Kansas Bureau of Investigation amendments by striking on page 2, line 3 "may" and replacing with "shall" and adding a (5) that photographs may be taken of any juvenile placed in a juvenile detention facility. Photographs taken under this section shall be used solely by the juvenile detention facility for the purpose of identification, security and protections and shall not

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be disseminated to any other person or agency except after an escape and necessary to assist in apprehension. Representative Owens seconded the motion. The motion carried.

Representative Watkins made the motion to report **HB 2074** favorably for passage, as amended. Representative Owens seconded the motion. The motion carried.

HB 2059 - upon adoption, the right to inherit from birth parents cease

Representative Watkins made the motion to report **HB 2059** favorably for passage. Representative Owens seconded the motion.

The committee expressed concern that a child, who had no say in their adoption process, would not be able to adopt from a biological parent. There was also concern with the adopted parent terminating parental rights and whether or not the child could inherit from that adopted parent.

Representative Kinzer made the substitute motion to amend the bill to allow “upon adoption the rights of the adopted person and persons there at law, to inherit, from birth or prior adopted parents other than the birth or adopted parent who is the spouse of the adopted parent shall cease.” Representative Owens seconded the motion. The motion carried.

Representative Watkins made the motion to report **HB 2059** favorably for passage, as amended.. Representative Roth seconded the motion. The motion failed.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for February 6, 2007.



February 5, 2007

To: Members of the House Judiciary Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2283: Security Interest in Vehicles and Manufactured Homes

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2283**. This bill is intended to assure that a lender's security interest in vehicles and manufactured homes remains perfected when challenged in court by a third party.

As you know, the perfection of security interests is governed by Article 9 of the Uniform Commercial Code (UCC). According to Article 9, the proper method for a lender to perfect its security interest in vehicles and manufactured homes is to get the lien recorded on the certificate-of-title representing the vehicle or manufactured home.

In order to accomplish this, the lender must send certain documents along with a fee to the Department of Revenue, Division of Motor Vehicles. The Division of Motor Vehicles (the Division) is then responsible for actually noting the lender's lien on the title of the vehicle or manufactured home. If the title is a paper title, the title is then mailed to the owner of the property. If the title is electronic, it is kept on the Division's data base until the lien is released, upon which event a clear title is then mailed to the owner of the vehicle.

This bill request comes as a result of three recent bankruptcy court cases in which the lender followed the rules of perfection with regard to its security interest in vehicles and a manufactured home: that is, the lender delivered the appropriate documents to the Division, paid the required fee and assumed that its lien would be noted on the title of the property taken as collateral. Unbeknownst to the lender, the lien was not noted on the title by the Division as it should have been.

All three cases ended up in Bankruptcy Court where the Bankruptcy Trustee challenged the lender's perfection of the security interest. The basis of the challenge was that Article 9 and the lien statutes for vehicles and manufactured homes require a lender's lien to be noted on the title and since it was not, the lender's security interest was not perfected and the lender should be considered an unsecured creditor. The bankruptcy court judges agreed despite the evidence produced by the lenders of their compliance with the law.

In one of the cases (*In re: Anderson*, portions attached), Judge Nugent lent very helpful insight into his rationale for the holding. He indicated that there was language in an earlier version of Article 9 that might have protected the lender in this instance. That "old" language was found in former K.S.A. 84-9-302(3), which I have attached. This language indicates that presentation of the documents and tender of the required fee are effective to perfect a security interest in vehicles. Unfortunately, that language did not survive the revision of Article 9 which took place in the 2000 legislative session.

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This bill is our attempt to re-instate the language from "old" Article 9 that we believe would have helped to protect the lender who has done everything within its power to assure its security interest is protected in court.

On page 12, begins the amendment to K.S.A. 84-9-311, the section in Article 9 which covers the perfection of a security interest in property subject to a certificate-of-title law. We have re-instated the guts of the language found in old Article 9, which states that perfection occurs upon the mailing or delivery of the appropriate documents and the tender of the required fee to the appropriate agency.

We have also inserted a reference to the certificate-of-title statutes covering vehicle and manufactured home liens, and have referenced this provision of Article 9 in those statutes to bring the subject full circle. Our amendments appear at the very bottom of Page 4, the bottom of Page 5, the middle of Page 10, and the middle of Page 11. These amendments cover the instances of a purchase money security interest as well as a later refinancing transaction.

Interestingly enough, with one exception these lien statutes already contained language to the effect that the proper completion and timely mailing of the proper documents perfected a security interest in these types of property. It is our belief that a reference to the Article 9 provision in the lien statutes will leave no doubt as to the status of a lender who has properly completed its duties under the law.

In conclusion, it is our intent in re-instating the language of "old" Article 9 and referencing that language in the lien statutes governing vehicles and manufactured homes, that with regard to the perfection of their security interests, future lenders will not be left in the lurch by the failure of the Division to properly complete its duties.

Thank you, again, for allowing me the opportunity to appear in support of this bill, and the KBA respectfully requests your favorable consideration of **HB 2283**.

property description. In re Roberts, 38 B.R. 128, 129, 132 (1984).

14. Buyer not in ordinary course of business without actual knowledge of security interest has priority over unperfected interest (84-9-103(1)(d)). Broadway National Bank v. G & L Athletic Supplies, Inc., 10 K.A.2d 43, 45, 46, 691 P.2d 400 (1984).

15. Cited; entrustment doctrine (84-2-403(2)) examined and applied. Executive Financial Services, Inc. v. Pagel, 238 K. 809, 812, 715 P.2d 381 (1986).

16. Cited; UCC rather than federal common law determines whether FmHA's interest inferior to rights of purchaser for value. United States v. Central Livestock Corp., 616 F.Supp. 629, 634 (1985).

17. Unperfected secured creditor may recover from auction company for unauthorized sale of encumbered collateral. First Nat. Bank of Amarillo v. SW Livestock, Inc., 616 F.Supp. 1515, 1517, 1521 (1985).

18. Cited; bank's prior interest in crops not diminished by lease between debtor and third party. First Nat'l Bank v. Milford, 239 K. 151, 155, 718 P.2d 1291 (1986).

19. Security interest created in inventory but not perfected is subordinated to intervening claim of bankruptcy trustee. Maxl Sales Co. v. Critiques, Inc., 796 F.2d 1293, 1299, 62 B.R. [168] [169] [174] (1986).

20. Security interest filed under debtor's trade name bearing no similarity to legal name can be set aside by bankruptcy trustee. Pearson v. Salina Coffee House, Inc., 61 B.R. 538, 541 (1986).

21. Chapter 7 trustee's rights as superior to grain company in possession with unperfected security interest examined. In re Lewis, 70 B.R. 699, 704 (1987).

22. Cited; rules relating to ownership of property under act relative to security interests stated and applied. City of Arkansas City v. Anderson, 242 K. 875, 891, 752 P.2d 673 (1988).

23. Unsecured creditor with knowledge of another's unperfected security interest not entitled to priority. Farmers State Bank v. Production Cred. Ass'n of St. Cloud, 243 K. 87, 97, 755 P.2d 518 (1988).

24. Absent authorization, borrower and seller of excavator could not modify lender's perfected security interest. U.S. v. Ables, 739 F.Supp. 1439, 1446 (1990).

25. Since holder of unsecured security interest in motor vehicle cannot recover from bona fide purchasers, holder damaged thereby. Mid American Credit Union v. Board of Sedgwick County Comm'rs, 15 K.A.2d 216, 224, 806 P.2d 479 (1991).

26. Security interest in wife's interest in equipment unperfected; financial statement not listing her name seriously misleading. In re Griffin, 141 B.R. 207, 209, 214 (1992).

27. Whether creditor could reach secured, perfected assets of debtor who allegedly fraudulently transferred assets examined. Printed Media Services v. Solna Web, Inc., 838 F.Supp. 1453, 1461 (1993).

84-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; assignment of perfected security interest; national and state central filing provisions; vehicles. (1) A financing statement must be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under K.S.A. 84-9-305 and amendments thereto;

(b) a security interest temporarily perfected in instruments, certificated securities or documents without delivery under K.S.A. 84-9-304 and amendments thereto or in proceeds for a ten-day period under K.S.A. 84-9-306 and amendments thereto;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in a consumer good with a purchase price of \$1,000 or less, other than a vehicle in which a security interest is subject to perfection under subsection (3), but filing is required to perfect a security interest in a vessel as defined in K.S.A. 82a-802, and amendments thereto, and a fixture filing is required for priority over conflicting security interests in a fixture as provided in K.S.A. 84-9-313, and amendments thereto;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (K.S.A. 84-4-208 and amendments thereto) or arising under the article on sales (see K.S.A. 84-9-113 and amendments thereto) or covered in subsection (3);

(g) an assignment for the benefits of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(h) a security interest in investment property which is perfected without filing under K.S.A. 84-9-115 or 84-9-116.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) A security interest in:

(a) Property subject to a statute of the United States which provides for national registration or filing of such security interests in such property; or

(b) property subject to a statute of this state which provides for central filing of such property; or

(c) a vehicle (except a vehicle held as inventory for sale) subject to a statute of this state which requires indication on a certificate of title or a du-

plicate thereof of such security interests in such vehicle:

Can be perfected only by presentation, for the purpose of such registration or such filing or such indication, of the documents appropriate under any such statute to the public official appropriate under any such statute and tender of the required fee to or acceptance of the documents by such public official, or by the mailing or delivery by a dealer or secured party to the appropriate state agency of a notice of security interest as prescribed by K.S.A. 8-135 and amendments thereto. Such presentation and tender or acceptance, or mailing or delivery, shall have the same effect under this article as filing under this article, and such perfection shall have the same effect under this article as perfection by filing under this article.

History: L. 1965, ch. 564, § 369; L. 1967, ch. 519, § 9; L. 1970, ch. 46, § 2; L. 1975, ch. 32, § 2; L. 1975, ch. 514, § 15; L. 1986, ch. 399, § 64; L. 1987, ch. 404, § 1; L. 1989, ch. 313, § 1; L. 1996, ch. 202, § 86; July 1.

OFFICIAL UCC COMMENT

Prior Uniform Statutory Provision:

Section 5, Uniform Conditional Sales Act; Section 8, Uniform Trust Receipts Act.

Purposes:

1. Subsection (1) states the general rule that to perfect a security interest under this Article a financing statement must be filed. Paragraphs (1)(a) through (1)(g) exempt from the filing requirement the transactions described. Subsection (3) further sets out certain transactions to which the filing provisions of this Article do not apply, but it does not defer to another state statute on the filing of inventory security interests. The cases recognized are those where suitable alternative systems for giving public notice of a security interest are available. Subsection (4) states the consequences of such other form of notice.

Section 9-303 states the time when a security interest is perfected by filing or otherwise. Part 4 of the Article deals with the mechanics of filing: place of filing, form of financing statement and so on.

2. As at common law, there is no requirement of filing when the secured party has possession of the collateral in a pledge transaction (paragraph (1)(a)), Section 9-305 should be consulted on what collateral may be pledged and on the requirements of possession.

3. Under this Article, as under the Uniform Trust Receipts Act, filing is not effective to perfect a security interest in instruments. See Section 9-304(1).

4. Where goods subject to a security interest are left in the debtor's possession, the only permanent exception from the general filing requirement is that stated in paragraph (1)(d): purchase money security interests in consumer goods. For temporary exceptions, see Sections 9-304(5)(a) and 9-306.

In many jurisdictions under prior law security interests in consumer goods under conditional sale or bailment leases were not subject to filing requirements. Paragraph (1)(d) follows the policy of those jurisdictions. The paragraph changes prior law

in jurisdictions where all conditional sales and bailment leases were subject to a filing requirement, except that filing is required for purchase money security interests in consumer fixtures to attain priority under Section 9-313 against real estate interests.

Although the security interests described in paragraph (1)(d) are perfected without filing, Section 9-307(2) provides that unless a financing statement is filed certain buyers may take free of the security interest even though perfected. See that section and the Comment thereto.

On filing for security interests in motor vehicles under certificate of title laws see subsection (3) of this section.

5. A financing statement must be filed to perfect a security interest in accounts except for the transactions described in paragraphs (1)(e) and (g). It should be noted that this Article applies to sales of accounts and chattel paper as well as to transfers thereof for security (Section 9-102(1)(b)); the filing requirement of this section applies both to sales and to transfers thereof for security. In this respect this Article follows many of the pre-Code statutes regulating assignments of accounts receivable.

Over forty jurisdictions had enacted accounts receivable statutes. About half of these statutes required filing to protect or perfect assignments; of the remainder, one was a so-called "book-marking" statute and the others validated assignments without filing. This Article adopts the filing requirement, on the theory that there is no valid reason why public notice is less appropriate for assignments of accounts than for any other type of nonpossessory interest. Section 9-305, furthermore, excludes accounts from the types of collateral which may be the subject of a possessory security interest: filing is thus the only means of perfection contemplated by this Article. See Section 9-306 on accounts as proceeds.

The purpose of the subsection (1)(e) exemption is to save from ex post facto invalidation casual or isolated assignments: some accounts receivable statutes were so broadly drafted that all assignments, whatever their character or purpose, fell within their filing provisions. Under such statutes many assignments which no one would think of filing might have been subject to invalidation. The paragraph (1)(e) exemption goes to that type of assignment. Any person who regularly takes assignments of any debtor's accounts should file. In this connection Section 9-104(f) which excludes certain transfers of accounts from the Article should be consulted.

Assignments of interests in trusts and estates are not required to be filed because they are often not thought of as collateral comparable to the types dealt with by this Article. Assignments for the benefit of creditors are not required to be filed because they are not financing transactions and the debtor will not ordinarily be engaging in further credit transactions.

6. With respect to the paragraph (1)(f) exemptions, see the sections cited therein and Comments thereto.

7. The following example will explain the operation of subsection (2): Buyer buys goods from seller who retains a security interest in them which he perfects. Seller assigns the perfected security interest to X. The security interest, in X's hands and without further steps on his part, continues perfected against Buyer's transferees and creditors. If, however, the assignment from Seller to X was itself intended for security (or was a sale of accounts or chattel paper), X must take whatever steps may be required for perfection in order to be protected against Seller's transferees and creditors.

8. Subsection (3) exempts from the filing provisions of this Article transactions as to which an adequate system of filing,

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SO ORDERED.

SIGNED this 02 day of October, 2006.

ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

BRANDI D. ANDERSON,

Debtor.

**Case No. 04-14105
Chapter 7**

J. MICHAEL MORRIS, Trustee

Plaintiff,

Adv. No. 04-5341

v.

**INTRUST BANK, N.A.,
BRANDI D. ANDERSON and
JOHN C. ANDERSON,**

Defendants.

MEMORANDUM OPINION

debtor's case was filed, the trustee contends Intrust's security interests in the vehicles were unperfected and therefore can be avoided and preserved for the benefit of the estate citing KAN. STAT. ANN. § 84-9-311(b), § 8-135(c)(6), and the holding in *Mid American Credit Union v. Board of County Commissioners of Sedgwick County*.¹¹ Intrust responds that Kansas law resolves perfection issues not only by examining whether the lienholder has its lien listed on the title, but also by reviewing the process undertaken by the lienholder to get its lien noted on the certificate of title. Intrust contends that it "did everything that it was required to do to perfect its lien, and was in fact perfected as of the time it sent in the required documentation and filing fee" and "remained perfected for the interim period until the lien was noted on the electronic certificate of title."¹²

As the trustee points out, under former § 84-9-302(3)(c), there was a plausible argument to be made that compliance with the filing requirements of KAN. STAT. ANN. § 8-135(c)(6) would amount to perfection even if KDR omitted notation of the lender's lien on the title certificate. That statute provided that such a security interest "can be perfected only by presentation . . . of the documents appropriate under [the title statute] . . . and tender of the required fee . . ."¹³ The statute went on to establish that "such presentation and tender . . . shall have the same effect under this article as filing under this article, and such perfection shall have the same effect under this article as perfection by filing under this article." Thus, under the former law, one could argue as Intrust does that mere presentation of the documents and payment of the fee sufficed to perfect a vehicle lien. With the enactment of revised Article 9, and particularly the revisions contained in § 84-9-311,

¹¹ 15 Kan. App.2d 216, 806 P.2d 479, *rev. denied* 248 Kan. 996 (1991).

¹² Dkt. 30 at 7.

¹³ *See* KAN. STAT. ANN. § 84-9-302(3)(c) (1996).

this argument is untenable. As noted above, § 84-9-311(b) plainly requires “compliance” with the vehicle titling statute, not “presentation and tender” as provided in former § 84-9-302.

As it relates to this case, KAN. STAT. ANN. § 8-135(c)(6) provides that when a person acquires a security agreement on a vehicle after issuance of the first certificate of title on the vehicle (in plain language, a refinance), the acquirer “shall” require the previous certificate of title holder to surrender the certificate. Then the new secured party is to submit the certificate of title, along with an application for secured title and a fee, to KDR. When KDR receives this submission, it “shall issue a new certificate of title showing the liens or encumbrances so created. . . .” As KAN. STAT. ANN. § 8-135d requires, when a title reflects a lien, KDR is to retain the title electronically. All of this presumably promotes the trustworthiness of vehicle titles in commerce and furthers the purpose of providing notice of a creditor’s claim against the vehicle, thereby avoiding the attachment and enforcement of secret liens. This serves the bedrock policy of our secured transactions law.

Mid American Credit Union, while decided under former Article 9, still remains a source of valuable guidance on the construction of this statute. In that case, Mid American sued the Sedgwick County Board of County Commissioners, the Sedgwick County Treasurer, and KDR for negligence in failing to note its name as lienholder on a vehicle title. Mid American loaned its customer (Christopher Woods) the money to buy a 1980 Corvette and received a purchase money security interest. Because this was a purchase-money transaction governed by KAN. STAT. ANN. § 8-135(c)(5), Mid American then forwarded a notice of security interest (NOSI) to KDR. After 30 days passed without Woods applying for a title, Mid American repossessed the vehicle and obtained a repossession title. Thereafter, Mid American negotiated a second sale to Woods, assigning the title to him, with Mid American noted on the reverse as a lienholder. Woods in turn applied for a title

at the courthouse. When the application was processed by the treasurer's office, the clerk failed to note Mid America's lien and a "clear" title was issued. When Woods defaulted and disappeared, Mid American sought to recover the vehicle, only to find that its lien had never been listed on the new certificate of title.

In determining that Mid American's interests had been damaged, the Kansas Court of Appeals focused on its prior holding in *Beneficial Finance Co. v. Schroeder*,¹⁴ where the court stated that an interest in a vehicle may be perfected by noting its existence on the certificate of title or, in the case of a purchase-money lien, by mailing a notice of security interest.¹⁵ Stating that holding otherwise would diminish the reliability of certificates of title, the *Mid American* court held that "[t]he lien must be noted on the certificate of title to be perfected."¹⁶ This Court must agree.

While KAN. STAT. ANN. § 8-135(c)(5) provides that presentation of a NOSI shall perfect a purchase-money security interest in the vehicle on the date of such mailing or delivery,¹⁷ nothing in KAN. STAT. ANN. § 8-135(c)(6) provides that the "presentation" of the application for the title alone constitutes perfection of the lien securing a vehicle refinance.¹⁸ The plain language of the statute provides for the security interest to be indicated on the certificate as a condition of

¹⁴ 12 Kan. App.2d 150, 737 P.2d 52, *rev. denied* 241 Kan. 838 (1987). This case also deals with a purchase-money security interest as opposed to a refinance.

¹⁵ *Id.* at 151.

¹⁶ 15 Kan. App.2d at 223.

¹⁷ See *Beneficial Finance Co.*, 12 Kan. App. 2d at 151 ("Mailing or delivering notice of the security interest perfects the secured party's interest during the period from attachment to notation on the certificate of title.").

¹⁸ See *Davis v. Credit Union of America (In re Lindahl)*, Adv. No. 05-5084, Memorandum Opinion at 10 (Bankr. D. Kan. Mar. 29, 2006) (Nugent, C.J.) (The rules pertaining to the filing of a NOSI apply to the sale and delivery of vehicles, not refinanced vehicles.).

perfection.¹⁹

Also persuasive here is the fact that, when revised Article 9 was adopted in Kansas in 2000,
no corresponding change was made to KAN. STAT. ANN. § 8-135(c)(6), which remains essentially
identical to its form and substance in 1991, the year of the *Mid American Credit Union* decision.
Official Comment 5 to revised § 84-9-311 is telling, noting that “interplay of this section with
certain certificate-of-title statutes may create confusion and uncertainty. . . . Accordingly, the
Legislative Note to this section instructs the Legislature to amend the applicable certificate of title
statutes to provide the perfection occurs upon receipt . . . of a properly tendered application for a
certificate of title on which the security interest is to be indicated.”²⁰ For whatever reason, the
Kansas legislature has, so far, declined to follow this “instruction” of the drafters. It is not for this
Court to legislate that change, however wise or advisable it may be.²¹

Two previously-decided bankruptcy court cases on secured titles in Kansas bear some mention in the context of this case. First, in *In re Luke*,²² this Court rejected the “we did all we could” argument raised by Intrust here. Unfortunately, Intrust’s papers contain an out-of-context quotation from that opinion, suggesting that this Court has previously held that “submission of the registration, the application, and the fee, had it been accomplished by June 20, 2003, would have

¹⁹ KAN. STAT. ANN. § 84-9-311(a)(2).

²⁰ KAN. STAT. ANN. § 84-9-311, Off. Comment 5 (2005 Supp.).

²¹ Some legislative attention to this section may be warranted to clarify, once and for all, the means and method of perfecting refinance security interests under KAN. STAT. ANN. § 8-135(c)(6).

²² *Morris v. Wells Fargo Financial Acceptance Kansas, Inc. (In re Luke)*, 2004 Bankr. Lexis 1832 (Bankr. D. Kan. Nov. 18, 2004) (Nugent, C.J.).



Matthew S. Goddard, Vice President

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To: House Judiciary Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 5, 2007

Re: House Bill 2283

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Judiciary to express our support for House Bill 2283.

House Bill 2283 addresses a problem that has surfaced in several bankruptcy cases. The lender in each case fulfilled its responsibility to send specific documents and the appropriate fee to the Division of Motor Vehicles in the Department of Revenue so that its lien would be recorded on a vehicle title. Unfortunately, the Division of Motor Vehicles subsequently failed to record the lien on the title. When the bankruptcy filings went to court, the lenders were found to be unsecured creditors because their security interest was never recorded on the title and thus was never perfected. In addition to vehicles, this scenario applies equally to manufactured homes.

The bill before the Committee today would add language into the Uniform Commercial Code that was originally stricken when Revised Article 9 was adopted in 2000. House Bill 2283 perfects a security interest upon the mailing or delivering of the notice of a security interest, along with payment of the required fee, to the appropriate state agency. This change would protect the status of auto and manufactured home lenders as secured creditors without diminishing the rights of any other secured parties.

The Heartland Community Bankers Association respectfully requests that the House Judiciary Committee recommend House Bill 2283 favorable for passage.

Thank you.

House Judiciary
Date 2-5-07
Attachment # 2



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**TESTIMONY
BEFORE THE
HOUSE
JUDICIARY COMMITTEE**

TO: Representative Michael O'Neal, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: February 5, 2007

RE: HB 2283 – Security Interest in Vehicles and Manufactured Homes

Chairman O'Neal and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA). KMHA is a statewide trade association, which represents all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners and operators, finance and insurance companies, service and suppliers and transport companies) and I appreciate the opportunity to submit written testimony in support of HB 2283.

I was contacted in early January by the Kansas Bankers Association regarding a recent bankruptcy court case involving a manufactured home. The case concerned a lender, which followed the rules of perfection with regard to its security interest in the home, however, the Division did not note the lien on the title. The case ended up in Bankruptcy Court where the Bankruptcy Trustee challenged the lender's perfection of the security interest in the home since the lender's lien was not on the title. The bankruptcy court judge agreed with the Trustee that the lender was not perfected.

HB 2283 attempts to correct the situation where the lender follows the rules of perfection but the lien is not properly noted on the title by the Division. KMHA supports HB 2283 and respectfully asks for the Committee's favorable recommendation.

Thank you.

House Judiciary
Date 2-5-07
Attachment # 3