

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Anthony Brown at 3:30 p.m. on March 16, 2009, in Room 784 of the Docking State Office Building.

All members were present except Tom Burroughs.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes  
Sean Ostrow, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Joyce Bishop, Committee Assistant

Conferees appearing before the Committee:

Mike Hutfles, Lobbyist, Southwestern Associates  
Kathleen Olsen, Sr. Vice President, General Counsel, Kansas Banker's Association  
Leslie Kauffman, Executive Director, Kansas Cooperative Council  
Tom Bruno, Lobbyist, Farm Credit Association  
Mary Jane Stankiewicz, Vice President of Government Affairs, Kansas Agricultural Retailers  
John Donnelly, Assistant Council, Kansas Livestock Association  
Brad Harrelson, State Policy Director, Kansas Farm Bureau  
Carmen Alldritt, Executive Director, Kansas Division of Vehicles

Others attending:

See attached list.

Chairperson Brown opened the hearing on **SB 275 - Implements of husbandry, exempt from certificates of title.**

Mike Hutfles, Lobbyist, Southwestern Associates, presented testimony in favor of **SB 275** (Attachment 1).

Kathleen Olsen, Sr. Vice President & General Counsel, Kansas Banker's Association, presented testimony in favor of **SB 275** (Attachment 2).

Leslie Kauffman, Executive Director, Kansas Cooperative Council, presented testimony in favor of **SB 275** (Attachment 3).

Tom Bruno, Lobbyist, Farm Credit Association, presented testimony in favor of **SB 275** (Attachment 4).

Mary Jane Stankiewicz, Vice President of Government Affairs, Kansas Agricultural Retailers, presented written testimony in favor of **SB 275** (Attachment 5).

John Donnelly, Assistant Council, Kansas Livestock Association, presented written testimony in favor of **SB 275** (Attachment 6).

Brad Harrelson, State Policy Director, Kansas Farm Bureau, presented written testimony in favor of **SB 275** (Attachment 7).

Carmen Alldritt, Executive Director, Kansas Division of Vehicles, presented written testimony in favor of **SB 275** (Attachment 8).

Chairperson Brown closed the hearing on SB 275.

Chairperson Brown opened the floor for discussion of **SB 139 - Insurance, deposits and securities, Federal home loan bank.**

CONTINUATION SHEET

Minutes of the House Financial Institutions Committee at 3:30 p.m. on March 16, 2009, in Room 784 of the Docking State Office Building.

Melissa Calderwood, Legislative Research, gave background information on **SB 139** (Attachment 9).

Cindy Neighbor made a motion to pass **SB 139** favorably from committee. Mario Goico seconded the motion. The motion passed unanimously.

Chairperson Brown opened the floor for discussion of **SB 72 - Credit unions, member of.**

Melissa Calderwood presented background information on **SB 72** (Attachment 10).

Bruce Kinzie distributed a revised amendment to **SB 72** (Attachment 11).

Richard Proehl made a motion to approve the revised amendment to **SB 72**. Cindy Neighbor seconded the motion. The motion carried unanimously.

Dale Swenson made a motion to pass **SB 72** as amended favorably from committee. Cindy Neighbor seconded the motion. The motion passed unanimously.

The next meeting is scheduled for March 18, 2009.

The meeting was adjourned at 3:50 P. M.





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**THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS  
OF THE KANSAS LEGISLATURE  
Representative Anthony Brown, Chairman**

**March 16, 2009**

**Testimony of Mike Hutfles  
In Support of SB 275**

Mr. Chairman and the Members of the House Financial Institutions Committee,

I am Mike Hutfles representing the SouthWestern Association. The SouthWestern Association is a retail trade association headquartered in Kansas City, MO. SouthWestern Represents farm, construction/industrial and outdoor power equipment retailers in Kansas, Missouri, New Mexico, Oklahoma and Texas.

During the 2000 Kansas Legislative session, the Legislature made changes to the statutes regarding title law and non-highway vehicles. These changes were part of a Uniform Act, but had unintended consequences that came to light this past summer upon the release of a Law Review article. I have outlined the problem below.

Actually, the agricultural industry made no changes in the way they did business in 2000. Farmers bought equipment, tractors, etc. and lenders continued to lend they way they always have. The Law Review Article raised the possibility that non-highway titles could be required to obtain financing on purchases now and in the future. This article has also created confusion on purchases of tractors, equipment, etc. that required financing since these changes were made in 2000. This was never the intent of the Legislature, past, present, or the future. This certainly hasn't been the practice in Kansas nor should it.

### **Outline of the problem**

Kansas Statutes 84-9-311 provides that the filing of a financing statement is not effective to perfect a security interest in property subject to any Kansas certificate-of-title law "covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a

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security interest to be indicated on the certificate. 8-197(b)(1)(b) defines a "Non-highway vehicle" as including "any motor vehicle which cannot be registered because it is not manufactured for the purpose of using the same on the highways of this state and is not provided with the equipment required by state statute for vehicles of such type which are used on the highways of this state. Kansas Statutes 8-198 (b) provides that the purchaser of any non-highway vehicle shall obtain a non-highway certificate of title.

These two statutes create the following confusion:

- (1) the purchaser of a vehicle, that is not designed primarily for highway use, that DOES NOT have all of the equipment required by state for occasional highway use, must obtain a non-highway vehicle certificate of title and any creditor using that equipment as collateral must have their lien noted on that title to have a priority interest in that off-road vehicle; and
- (2) the purchaser of a vehicle, that is not designed primarily for highway use, that DOES have all of the equipment required by state for occasional highway use, is not required to obtain a non-highway vehicle certificate of title and any creditor using that equipment as collateral must file a UCC-1 Financing Statement to have a priority interest in that off-road vehicle.

## Impact on Kansans

If SB 275 is not enacted, an undue burden will be placed on Kansas sellers and purchasers of agricultural equipment, construction equipment, forestry equipment, and lawn care and grounds equipment to determine if a non-highway certificate of title is required. It also creates confusion for lenders to determine if they should protect their investment in that equipment purchase by having their interest noted on a non-highway certificate of title or on a UCC-1 Financing Statement.

We urge your support and quick action on SB 275.

Sincerely,

Mike Hutfles



March 16, 2009

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: SB 275: Perfecting a Security Interest in Implements of Husbandry**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 275**, which clarifies that the only method to perfect a security interest in implements of husbandry is by filing a financing statement with the Secretary of State.

This bill was introduced in response to an article that was published in the Kansas University Law Review, which presented a theory that tractors and other implements of husbandry should be considered "non-highway vehicles." As such, the article theorized that such implements should be required to have a non-highway title, and like other titled vehicles, perfection of a security interest should be accomplished by noting the lien on the title.

The fact is that implements of husbandry are defined in K.S.A. 8-126(cc), and are exempt from registration by K.S.A. 8-128. K.S.A. 8-135 only provides for the titling of vehicles which must be registered. Vehicles that are exempt from registration are also exempt from titling, unless specifically required to be titled by another statute. Implements of husbandry are not specifically included in the titling statutes – either as a highway or non-highway vehicle.

The status of these vehicles has not changed since these statutes were enacted. Over time, other types of vehicles have evolved and been added to the titling requirements. Examples are all-terrain vehicles and micro utility trucks which are exempt from registration requirements, but are specifically included in the definition of non-highway vehicle. Never in the history of these statutes has it ever even been suggested that implements of husbandry were to be titled vehicles. Historically, the method of perfection has been for the lender to file a financing statement, UCC-1, naming the tractor or other implement as collateral for a loan. This financing statement is then filed with the Secretary of State's Office.

What did change in 2000, was that Kansas was one of the first states to enact a revised Article 9, within the Uniform Commercial Code. Article 9 of the UCC contains the body of law which determines how a lender can perfect its security interest in personal property. The revisions which were enacted in 2000 were extensive, and were the product of a group known as the National Conference of Commissioners on Uniform State Laws (NCCUSL).

One of the statutes that changed was K.S.A. 84-9-311, which states that if there is another statute which provides a method, other than filing a financing statement, for perfecting a security interest, then that statute prevails. The original draft of this section included a listing of things which might be covered under a certificate-of-title law. This list was originally placed in brackets so as to allow states to modify the list. For reasons unknown, the list was included in whole in the 2000 bill, and did not draw anyone's attention until very recently.

The list includes "farm tractors", which under K.S.A. 8-126(cc) are specifically included in the definition of implements of husbandry. We believe the inclusion of "farm tractors" in K.S.A. 84-9-311(a)(2), was completely inadvertent, and was not intended to suggest that farm tractors, unlike all other types of implements of husbandry, were to now be titled vehicles.

The bill provides clarification to the law in two areas: 1) specifically states that implements of husbandry are **not** non-highway vehicles; and 2) strikes the reference to "farm tractors" from K.S.A. 84-9-311.

The intent of this legislation is to put to rest, any notion that the body of law regarding tractors or other implements of husbandry has changed since the enactment of the titling statutes. Implements of husbandry are now and have always been exempt from registration and titling requirements. The fact that the Department of Revenue, Division of Vehicles does not even have a method for the titling of implements of husbandry, is further proof that such has been and currently is the status of the law.

In conclusion, the KBA respectfully requests that the Committee act favorably on **SB 275**. Thank you.

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**8-126****Chapter 8.--AUTOMOBILES AND OTHER VEHICLES  
Article 1.--GENERAL PROVISIONS**

**8-126. Definitions.** The following words and phrases when used in this act shall have the meanings respectively ascribed to them herein:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "Motor vehicle" means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

(c) "Truck" means a motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers.

(d) "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term "tractor" as herein defined.

(e) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle or load so drawn.

(f) "Farm tractor" means every motor vehicle designed and used as a farm implement power unit operated with or without other attached farm implements in any manner consistent with the structural design of such power unit.

(g) "Road tractor" means every motor vehicle designed and used for drawing other vehicles, and not so constructed as to carry any load thereon independently, or any part of the weight of a vehicle or load so drawn.

(h) "Trailer" means every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(i) "Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

(j) "Pole trailer" means any two-wheel vehicle used as a trailer with bolsters that support the load, and do not have a rack or body extending to the tractor drawing the load.

(k) "Specially constructed vehicle" means any vehicle which shall not have been originally constructed under a distinctive name, make, model or type, or which, if originally otherwise constructed shall have been materially altered by the removal of essential parts, or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles.

(l) "Foreign vehicle" means every motor vehicle, trailer or semitrailer which shall be brought into this state otherwise than in ordinary course of business by or through a manufacturer or dealer and which has not been registered in this state.

(m) "Person" means every natural person, firm, partnership, association or corporation.

(n) "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or in the event a vehicle is subject to a lease of 30 days or more with an immediate right of possession vested in the lessee; or in the event a party having a security interest in a vehicle is entitled to possession, then such conditional vendee or lessee or secured party shall be deemed the owner for the purpose of this act.

(o) "Nonresident" means every person who is not a resident of this state.

(p) "Manufacturer" means every person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

(q) "New vehicle dealer" means every person actively engaged in the business of buying, selling or exchanging new motor vehicles, travel trailers, trailers or vehicles and who holds a dealer's contract therefor from a manufacturer or distributor and who has an established place of business in this state.

(r) "Used vehicle dealer" means every person actively engaged in the business of buying, selling or exchanging used vehicles, and having an established place of business in this state and who does not hold a dealer's contract for the sale of new motor vehicles, travel trailers, trailers or vehicles.

(s) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel. The term "highway" shall not be deemed to include a roadway or driveway upon grounds owned by private owners,



colleges, universities or other institutions.

(t) "Department" or "motor vehicle department" or "vehicle department" means the division of vehicles of the department of revenue, acting directly or through its duly authorized officers and agents. When acting on behalf of the department of revenue pursuant to this act, a county treasurer shall be deemed to be an agent of the state of Kansas.

(u) "Commission" or "state highway commission" means the director of vehicles of the department of revenue.

(v) "Division" means the division of vehicles of the department of revenue.

(w) "Travel trailer" means every vehicle without motive power designed to be towed by a motor vehicle constructed primarily for recreational purposes.

(x) "Passenger vehicle" means every motor vehicle, as herein defined, which is designed primarily to carry 10 or fewer passengers, and which is not used as a truck.

(y) "Self-propelled farm implement" means every farm implement designed for specific use applications with its motive power unit permanently incorporated in its structural design.

(z) "Farm trailer" means every trailer as defined in subsection (h) of this section and every semitrailer as defined in subsection (i) of this section, designed and used primarily as a farm vehicle.

(aa) "Motorized bicycle" means every device having two tandem wheels or three wheels, which may be propelled by either human power or helper motor, or by both, and which has:

- (1) A motor which produces not more than 3.5 brake horsepower;
- (2) a cylinder capacity of not more than 130 cubic centimeters;
- (3) an automatic transmission; and
- (4) the capability of a maximum design speed of no more than 30 miles per hour.

(bb) "All-terrain vehicle" means any motorized nonhighway vehicle 48 inches or less in width, having a dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires, having a seat designed to be straddled by the operator. As used in this subsection, low-pressure tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 12 inches or less, and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer.

(cc) "Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations, including feedlots, and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to:

- (1) A farm tractor;
- (2) a self-propelled farm implement;
- (3) a fertilizer spreader, nurse tank or truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership;
- (4) a truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung;
- (5) a mixer-feed truck owned and used by a feedlot, as defined in K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing food to livestock in such feedlot.

(dd) "Motorized wheelchair" means any self-propelled vehicle designed specifically for use by a physically disabled person that is incapable of a speed in excess of 15 miles per hour.

(ee) "Oil well servicing, oil well clean-out or oil well drilling machinery or equipment" means a vehicle constructed as a machine used exclusively for servicing, cleaning-out or drilling an oil well and consisting in general of a mast, an engine for power, a draw works and a chassis permanently constructed or assembled for one or more of those purposes. The passenger capacity of the cab of a vehicle shall not be considered in determining whether such vehicle is an oil well servicing, oil well clean-out or oil well drilling machinery or equipment.

(ff) "Electric personal assistive mobility device" means a self-balancing two nontandem wheeled device, designed to transport only one person, with an electric propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

(gg) "Electronic certificate of title" means any electronic record of ownership, including any lien or liens that may be recorded, retained by the division in accordance with K.S.A. 2007 Supp. 8-135d, and amendments thereto.

(hh) "Work-site utility vehicle" means any motor vehicle which is not less than 48 inches in width, has an overall length, including the bumper, of not more than 135 inches, has an unladen weight, including fuel and fluids, of more than 800 pounds and is equipped with four or more low pressure tires, a steering wheel and bench or bucket-type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials.

**History:** L. 1929, ch. 81, § 1; L. 1937, ch. 72, § 1; L. 1955, ch. 294, § 1; L. 1956, ch. 48, § 1; L. 1957, ch. 57, § 1; L. 1968, ch. 411, § 1; L. 1972, ch. 342, § 29; L. 1973, ch. 25, § 1; L. 1975, ch. 426, § 27; L. 1977, ch. 28, § 1; L. 1978, ch. 29, § 1; L. 1982, ch. 36, § 2; L. 1984, ch. 26, § 1; L. 1984, ch. 27, § 1; L. 1984, ch. 28, § 1; L. 1985, ch. 42, § 1; L. 1988, ch. 40, § 1; L. 1991, ch. 33, § 13; L. 1992, ch. 166, § 1; L. 1994, ch. 235, § 1; L. 1996, ch.




requirement, the same result normally will follow in the case of an assignment of a security interest perfected by a method other than by filing. For example, as long as possession of collateral is maintained by an assignee or by the assignor or another person on behalf of the assignee, no further perfection steps need be taken on account of the assignment to continue perfection as against creditors and transferees of the original debtor. Of course, additional action may be required for perfection of the assignee's interest as against creditors and transferees of the *assignor*.

Similarly, subsection (c) applies to the assignment of a security interest perfected by compliance with a statute, regulation, or treaty under Section 9-311(b), such as a certificate-of-title statute. Unless the statute expressly provides to the contrary, the security interest will remain perfected against creditors of and transferees from the original debtor, even if the assignee takes no action to cause the certificate of title to reflect the assignment or to cause its name to appear on the certificate of title. See PEB Commentary No. 12, which discusses this issue under former Section 9-302(3). Compliance with the statute is "equivalent to filing" under Section 9-311(b).

### **SECTION 9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES.**

(a) **[Security interest subject to other law.]** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a);

(2)  [list any certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.



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The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

House Financial Institutions Committee

March 16, 2009

Topeka, Kansas

**SB 275 - Clarifying and continuing long-standing law on tractor security interests.**

Thank you, Chairman Brown and members of the House Financial Institutions Committee for the opportunity to comment in support of SB 275, which clarifies and continues long-standing practices regarding security interests in tractors. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director.

The Kansas Cooperative Council represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Approximately half our members are farmer co-ops. Cooperatives are member-owned, member-governed businesses. For our ag co-op members, their ownership rest in the hands of their farmer/rancher members. Within our financial membership segment, we have six Farm Credit organizations and numerous credit unions. Many of these are engaged in farm lending. Obviously, the bill before you today has various ties to the cooperative family.

Other conferees have provided some background on the history of how tractor liens have been handled in Kansas and how we have come to have the bill before you now. As noted by other conferees, this bill is not new law or a new expansion of Kansas law. It simply validates, in a clear fashion, the continuing and long-standing manner for perfecting security interests in tractors and similar implements.

We concur with the analysis provide by Kathy Taylor Olsen with the Kansas Bankers Association, particularly in regard to how bracketed language in the National Conference of Commissioners on Uniform State Laws (NCCUSL) model law was mistakenly included in a Kansas UCC re-write bill. We do believe this to be an unintentional error. During the committee discussions on adopting the UCC re-write, it was clear to us that legislators intended to preserve our state's treatment of agricultural liens. We believe the legislature fully intended to retain the then current practices for dealing with security interests in a variety of agricultural situations. The mere fact that the practical application for perfecting security interests in tractors is the same today as before the UCC change is, to us, further validation that legislators did not intend to alter the mode for perfecting.

Thank you, again, for the opportunity to comment today in support of SB 275. We respectfully request the committee advancing this measure favorably. If you have any questions regarding our testimony, please feel free to contact me (cell: 785-220-4068). Thank you.

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# Bruno & Associates

March 16, 2009

Mr. Chairman and members of the committee:

My name is Tom Bruno. I am testifying today on behalf of the Production Credit Associations, commonly referred to as PCAs and Federal Land Credit Associations, which are referred to as FLCAs, in the state of Kansas. PCAs and FLCAs are part of the Farm Credit System and are chartered to make loans to farmers and ranchers throughout the state. We support the enactment of Senate Bill 275 for the following reasons.

PCAs and FLCAs routinely make loans secured by farm tractors and other types of farm equipment. There are three steps they need to follow to properly secure farm equipment loans.

First, they have to actually loan the money to the borrower.

Second, the borrower signs a security agreement which grants a security interest or lien in favor of the lender against the tractor.

Third, the lender has to perfect, or put the world on notice, that it has a lien against the tractor. Since the Uniform Commercial Code was adopted by the state of Kansas effective January 1, 1963, the lenders I represent have perfected liens against farm tractors and other nontitled farm implements by filing a Uniform Commercial Code financing statement in the proper filing office. Years ago, the proper filing office was with the local register of deeds, however, for the past 30 years or so, the proper filing office has been the Kansas Secretary of State.

In contrast, if a PCA wanted to take a lien against a borrower's pickup truck, in order to perfect their lien, or put the world on notice, they would have their lien noted on the truck's certificate of title issued by the Department of Revenue.

Why is perfection so important? Because when you properly perfect a lien, the lender's lien takes priority over any lien claimed against the particular piece of collateral by another lender whose lien is perfected after yours. A perfected lien will also protect the lender from claims made by bankruptcy trustees who can sell collateral that does not have a properly perfected lien against it for the benefit of all of a debtor-borrower's creditors; and not the lender who made the loan.

For the past 45 years, to my knowledge, all lenders in Kansas, not just PCAs and FLCAs, have perfected their liens against farm tractors by filing UCC financing statements. In addition, it is our understanding that the Kansas Department of Revenue has taken the position that it will not issue certificates of title for farm tractors, and therefore, will not note lenders' liens on such nonexistent titles. The Kansas Department of Revenue has taken this position after analyzing several Kansas statutes dealing with definitions of "Non-Highway Vehicles", "Implements of Husbandry" and "Farm Tractor" among others.

For 45 years all segments of the agricultural industry assumed farm tractors did not need titles. Since



1963, hundreds of thousands of tractors have been bought in this state from dealers, auctioneers, and private sales without any certificates of titles passing between the buyers and sellers. Without exception, lenders have perfected tractor loans by filing UCC financing statements.

Given this longstanding practice, you may be asking yourselves, why are we here? The answer is simple. This winter, a law review article was published in the University of Kansas Law Review, written by a professor who teaches commercial law, which includes studying the Uniform Commercial Code, and one of his students. This law review article, using a convoluted analysis of several Kansas statutory provisions, reaches the conclusion that farm tractors require certificates of title, and, therefore, lenders seeking to perfect their liens against farm tractors, must have their liens noted on farm tractor certificates of title, as opposed to filing UCC financing statements.

This article has alarmed lenders throughout the state, not just the PCAs and FLCA's that I represent. While we and other banking organizations believe the logic of the law review article is flawed, there is a risk that a bankruptcy judge or any one of our state judges could adopt the theory of the law review article—which would then put thousands of current loans secured by farm tractors in jeopardy.

In order to avoid this “worst case scenario” we support this bill which is intended to clarify the long standing practice of not issuing farm tractor titles, and, by extension, not requiring liens to be noted on tractor titles. We are not asking the legislature to change existing law, only to clarify it. No person will be harmed by this bill, because no farm tractor titles have ever been issued in this state. This is clearly remedial legislation. This bill will not impair any property rights of any person in Kansas who currently owns a tractor, or a lender who has perfected a lien against that tractor by filing a UCC financing statement.

In conclusion, I urge the passage of this bill which will eliminate any technical arguments, however weak they may be, which would alter the status quo of long standing procedures of the Kansas Department of Revenue and lending practices and commercial realities in the great state of Kansas.



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*Kansas Grain & Feed Association*  
Kansas Agribusiness Retailers Association

**House Financial Institution and Insurance Committee**  
**March 16, 2009**  
**SB 275 – Perfecting a Security Interest in Implements of Husbandry**

Good afternoon Chairman Brown and Members of the House Financial Institutions and Insurance Committee. I am Mary Jane Stankiewicz, the COO and Senior Vice President of the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association and we submit this testimony in support of Senate Bill 275. The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes approximately 900 Kansas business locations and represents 98% of the commercially licensed grain storage in the state. KARA is also a voluntary state association with approximately 705 members representing the fertilizer, pesticide, seed, propane and other products associated with the production of crops in Kansas.

This bill simply clarifies that tractors and other implements of husbandry are exempt from registration and titling requirements and that the only method to perfect a security interest is by filing a financing statement with the Secretary of State. These issues have been addressed in current statutes that exempt them from registration (K.S.A. 8-126(cc)) and from the titling requirements (K.S.A. 8-135). Furthermore, the lending institutions and even the Kansas Department of Revenue have never required or issued titles on these vehicles.

The intent of the legislature has been that tractors and implements of husbandry are exempt from titling and registration requirements. KARA and KGFA supports this legislation, which clarifies what is already the law.

KGFA and KARA urge the Committee to support SB 275.

HOUSE FINANCIAL INSTITUTIONS  
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*Since 1894*

## TESTIMONY

To: House Financial Institutions Committee  
Representative Anthony Brown, Chair

From: John Donley, Assistant General Counsel

Date: March 16, 2009

Re: SB 275 – Implements of husbandry, exempt from certificates of title

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

Good afternoon Chairman Brown and members of the Committee. My name is John Donley, and I am Assistant General Counsel for KLA. I appreciate the opportunity to submit written testimony in support of SB 275.

This legislation has become necessary due to some confusion created by a law review article. It is KLA's belief that the law review article is incorrect in its interpretation of the current law; however, we also feel it is imperative to correct any perceived ambiguities in the current law. Thus, this bill has been introduced and is supported by a broad coalition of agriculture and financial institution interests.

It has long been the lending practice in Kansas that a certificate of title was not required in order to perfect a lien in a farm tractor. This practice has always been supported by an interpretation of current law that such a certificate of title was not necessary when placing a lien on a farm tractor. This bill simply clarifies the perceived ambiguity that may exist in the existing statute.

Once again, KLA is fully supportive of SB 275 as a clarification of current law, and we encourage you to support the passage of SB 275.

Thank you and I will be happy to answer any questions.

HOUSE FINANCIAL INSTITUTIONS  
DATE: 3-16-2009  
ATTACHMENT: 6



KANSAS FARM BUREAU  
The Voice of Agriculture

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785-587-6000 • Fax 785-587-6914 • www.kfb.org  
800 SW Jackson St., Suite 1300, Topeka, Kansas 66612-1219 • 785-234-4535 • Fax 785-234-0278

***Kansas Farm Bureau***  
***PUBLIC POLICY STATEMENT***

**House Committee on Financial Institutions**

**RE: SB 275 - an act relating to implements of husbandry  
clarifying existing law and practice**

**March 16, 2009  
Topeka, Kansas**

**Submitted by:  
Brad Harrelson  
State Director – KFB Government Relations**

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Chairman Brown and members of the House Committee on Financial Institutions, thank you for the opportunity to share the member adopted policy of our organization. I am Brad Harrelson, State Director – Government Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Our members and their lenders have long believed that security interests in farm tractors could be perfected under Kansas statutes allowing protection for lenders and maintaining the ability of Kansas farmers and ranchers to obtain financing for their ongoing needs and occasionally for the expansion of their operations.

Recently some attempted to construe the Kansas statutes in a manner that, if believed, yields uncertainty and places financing for many of our members in jeopardy.

Kansas producers operate in an industry with increasingly high capital investment costs. Maintaining stability and consistency in the ability to obtain financing is critical to their success and to the future of the industry.

It is for these reasons that we offer our strong support for SB 275 which sets the record straight regarding the status of the secured interests in farm tractors.

Thank you.

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*

HOUSE FINANCIAL INSTITUTIONS  
DATE: 3-16-2009  
ATTACHMENT: 7

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**To:** Representative Anthony Brown, Chairman, and members of the House Financial Institutions Committee

**From:** Carmen Alldritt, Director of Vehicles, Kansas Department of Revenue

**Date:** March 17, 2009

**Subject:** Senate Bill 275

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The Division of Vehicles supports the passage of Senate Bill 275. There is a positive legal impact to the Division of Vehicles if this Bill is approved into law, for it validates the Division's current and historical practice of not issuing certificates of title on Farm Tractors and Self-Propelled Farm Implements.

The State of Kansas only issues titles on vehicle types that are: 1) required to be registered by Chapter 8 of the Kansas statutes; 2) maintain mileage recording; 3) are intended for normal road and highway use; and 3) have a recognized vehicle identification number. If a vehicle type lacks any of the above criteria, the Division does not issue title, unless there is a specific statutory requirement to do so. Farm Tractors and Self-Propelled Farm Implements do not satisfy the above criteria. In addition, there are no specific statutory requirements mandating that titles on said vehicles.

The State has adopted a vehicle title system that works in concert with the State's vehicle registration system and vehicle identification verification process. Pursuant to K.S.A. 8-128, farm tractors and/or self-propelled farm implement are specifically exempted from State vehicle registration requirements. Farm Tractors and Self-Propelled farm implements do not have State recognized vehicle identification numbers. A State recognized vehicle identification number is a prerequisite to the issuance of a Kansas title. In addition, a vehicle type must have a uniform mechanism for measuring mileage, specifically an odometer, in order for the Division to issue title. The use of odometers in Farm Tractors and Self-Propelled Farm Implements is not uniform, with many of the farm products using an "Hour Meter" measuring system instead. This lack of uniformity in the use of mileage recording excludes Farm Tractors and many other types of Implements of Husbandry from the State certificate of title process.

The Division has not issued, presently or historically, non-highway certificates of title for Farm Tractors and Self-Propelled Farm Implements. The Division does not interpret an Implement of Husbandry, specifically Farm Tractors and Self-Propelled Farm Implements, to be "nonhighway vehicles," for the registration exception is specific to K.S.A. 8-128, and not based on a finding that the farm products are not made for use on the State's highways. Furthermore, the Farm Tractors and Self-Propelled Farm Implements will normally have the equipment required for a vehicle *of such type* to be used on the State's highways.

Since the Division has never issued certificates of title for Farm Tractors and/or Self-Propelled Farm Implements, there are no related title lien interests to be affected by passage of this Bill.



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February 25, 2009

To: Financial Institution and Insurance Committee

From: Michael J. McLin – Bureau Manager of Titles & Registrations

Subject: SB 275 – Amendments to K.S.A. 8 – 197, and  
K.S.A. 84 – 9 – 311 and repealing the existing Sections

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The Kansas Department of Revenue is providing written testimony today in support of the proposed Amendments to K.S.A. 8 – 197 and 84 – 9 – 311. This Bill will clarify that Implements of Husbandry as defined in K.S.A. 8 – 126 shall not be included as a non-highway vehicle, therefore not requiring them to be titled as a Non-Highway Vehicle. An implement of Husbandry is defined as follows:

K.S.A. 8 – 126

(cc) "Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations, including feedlots, and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to:

- (1) A farm tractor;
- (2) a self-propelled farm implement;
- (3) a fertilizer spreader, nurse tank or truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership;
- (4) a truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung;
- (5) a mixer-feed truck owned and used by a feedlot, as defined in K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing food to livestock in such feedlot.



*Kathleen Sebelius, Governor  
Joan Wagnon, Secretary*

www.ksrevenue.org

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This bill also amends K.S.A. 84 – 9 – 311 amending farm tractors out of the requirement to receive a certificate of title. This would come into conformity with current Titling process by the Bureau. Currently, farm tractors do not have a Vehicle Identification Number (VIN) or any traceable Identification number other than the Serial Number of the farm tractor.

We support the suggested Amendments to K.S.A 8 – 197 and 84 – 9 – 311. If you have any questions, you may reach me at Michael\_mclin@kdor.state.ks.us or at (785) 296 – 2571.

Sincerely,

Michael J. McLin

Bureau Manager  
Titles and Registrations/  
Dealer Licensing

DIVISION OF VEHICLES  
DEALER LICENSING BUREAU  
DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66612-1588  
Voice 785-296-3621 Fax 785-296-3852 <http://www.ksrevenue.org/>



February 9, 2009

The Honorable Ruth Teichman, Chairperson  
Senate Committee on Financial Institutions and Insurance  
Statehouse, Room 241-E  
Topeka, Kansas 66612

Dear Senator Teichman:


SUBJECT: Fiscal Note for SB 139 by Senate Committee on Financial Institutions and Insurance

In accordance with KSA 75-3715a, the following fiscal note concerning SB 139 is respectfully submitted to your committee.

SB 139 would include a Federal Home Loan Bank as defined as a financial institution in the insurance code. This would allow Federal Home Loan Banks to hold cash, securities, real estate deeds, mortgages and other assets with the Insurance Commissioner. All such deposits would be held in trust for use and benefit of such company and such company's policyholders and creditors. Federal Home Loan Banks would be required to meet all regulatory requirements. SB 139 would allow Federal Home Loan Banks to obtain a "nominee name" for an insurance company in which the company's securities may be registered or may arrange for securities to be held in a clearing corporation.

The Kansas Insurance Department indicates the bill could be implemented within the agency's existing staff and resources.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: John Campbell, Insurance Dept.  
Linda Bundy, Banking

SESSION OF 2009

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 139**

As Recommended by Senate Committee on  
Financial Institutions and Insurance

**Brief\***

SB 139 would amend a statute in the Insurance Code governing the deposits of cash, securities, real estate deeds, and other assets with the Insurance Commissioner that are to be deposited with any Kansas financial institution acceptable to the Commissioner. The bill would amend the definition of financial institution to include a federal home loan bank. The bill would make changes to a capital requirement for establishing the standards for and assessing the solvency of an institution to include a regulator under the federal Home Loan Bank Act.

The bill also would amend the laws governing property and casualty companies and life insurance companies to add federal home loan banks to those financial institutions which may be designated for as the trust for securities arrangement and allow federal home loan banks to obtain a "nominee name" for an insurance company in which the securities of the company may be registered. Federal home loan banks also would be permitted to arrange for securities to be held in a clearing corporation.

**Background**

The bill was introduced at the request of the Security Benefit Group whose representative indicated that the bill would clarify that the Federal Home Loan Bank (FHLBank) is authorized to custody the assets of an insurance company and

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

that there would be no change in the protections currently in place regarding custodial relationships and regulatory authority of the Kansas Insurance Department. A representative of the Federal Home Loan Bank of Topeka testified in support of the bill, noting that the National Association of Insurance Commissioners (NAIC) has adopted amendments to expressly include FHLBanks as authorized custodians of insurance company assets under the NAIC Model Act on Custodial Agreements and Use of Clearing Corporations and the NAIC Model Regulation on Custodial Agreements and Use of Clearing Corporations. A representative of American Investors Life Insurance Company also testified in support of the bill. There were no opponents to the bill present at the time of the Committee hearing.

The federal home loan banks are a government-sponsored enterprise created by Congress in 1932. There are twelve regional member-owned FHLBanks that are comprised of commercial banks, thrifts, credit unions, and insurance companies.

The fiscal note prepared by the Division of the Budget states that the Kansas Insurance Department indicates the bill could be implemented within its existing staff and resources.

January 26, 2009

The Honorable Ruth Teichman, Chairperson  
Senate Committee on Financial Institutions and Insurance  
Statehouse, Room 241-E  
Topeka, Kansas 66612

Dear Senator Teichman:

SUBJECT: Fiscal Note for SB 72 by Senate Committee on Financial Institutions and Insurance

In accordance with KSA 75-3715a, the following fiscal note concerning SB 72 is respectfully submitted to your committee.

SB 72 would allow a person who is a member of a credit union to remain a member until the person chooses to withdraw his or her membership or is expelled from being a member of the credit union. The bill also expands the list of who can be a member of a credit union to include a current member's "immediate family" or "household," as defined in the bill. The bill would also enable a credit union branch to establish a replacement branch if the branch is unable to continue operations as a result of a condition outside of its control. The bill defines the conditions in which a replacement branch can be established.

According to the Department of Credit Unions, this bill would have no fiscal effect on its operating expenditures.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: John P. Smith, Credit Unions

SESSION OF 2009

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 72**

As Amended by Senate Committee on  
Financial Institutions and Insurance

**Brief\***

SB 72, as amended, would amend provisions pertaining to the field of membership in Kansas-chartered credit unions to specify that a person who is a member of a credit union would remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. The bill also would expand upon the list of who may be a member of a credit union to include:

- Spouses of persons who died while such person was within the field of membership of the credit union;
- Employees of the credit union;
- Persons who retired from any qualified employment group within the field of membership;
- Persons from a volunteer group recognized by the management of the association(s) or employee group(s) within the field of membership;
- Members of the credit union member's immediate family or household;
- Organizations whose membership consists of persons within the field of membership; and
- Corporate or other legal entities within the field of membership identified in the charter, articles of incorporation, or the bylaws of the credit union.

The bill would define the term "immediate family or household" to mean spouse, parent, stepparent, grandparent, child, stepchild, sibling, grandchild or former spouse and persons living in the same residence maintaining a single

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>



economic unit with persons within the credit union's field of membership. The bill also would allow credit unions whose bylaws adopted a definition of "immediate family" prior to June 30, 2008, to use that previously adopted definition. A credit union would be permitted to adopt a more restrictive definition of "immediate family or household."

The bill also would create an allowance for a credit union to establish a replacement branch (for branches grandfathered under the 2008 law) if the branch is unable to continue operations as a result of a condition outside of its control. The conditions specified in the bill would include natural disaster, eminent domain proceedings, loss of lease, loss of sponsor space or any other condition outside of the control of the credit union.

## **Background**

The bill was introduced at the request of the Kansas Credit Union Association whose representative indicated that the compromise language adopted during the 2008 Session did not fully capture the intent of the agreed-upon compromise between the banking and credit union industries and two components, membership eligibility and the replacement of grandfathered branches, required clarification. The Credit Union Administrator testified in support of the bill at the Committee hearing and requested an amendment. The Kansas Cooperative Council submitted written testimony in support of the bill. The Kansas Bankers Association testified as a neutral party, indicating the association was in agreement with the language contained in the proposed legislation.

The Senate Committee on Financial Institutions and Insurance recommended amendments to clarify the membership eligibility provisions for volunteers and corporate entities and to establish a singular definition for "immediate family and household." The amendments were requested by the Kansas Credit Union Association and Senator Brownlee.

The fiscal note prepared by the Division of the Budget on the original bill states that according to the Kansas Department of Credit Unions, the bill would have no fiscal effect on its operating expenditures.

SENATE BILL No. 72

By Committee on Financial Institutions and Insurance

1-22

AN ACT concerning credit unions; pertaining to membership of a credit union; amending K.S.A. 2008 Supp. 17-2205 and repealing the existing section.

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

Section 1. K.S.A. 2008 Supp. 17-2205 is hereby amended to read as follows: 17-2205. (a) (1) The membership shall consist of the organizers and such persons, societies, associations, copartnerships and corporations as have been duly elected to membership and have subscribed to one or more shares and have paid for the same, and have complied with such other requirements as the articles of incorporation may contain.

(2) Once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union.

(3) Members of a credit union also may include the following:

(A) The spouse of any person who died while such person was within the field of membership of the credit union;

(B) any employee of the credit union;

(C) any person who retired from any qualified employment group within the field of membership;

(D) any ~~volunteer of an organization or employee group~~ person of a volunteer group recognized by the management of the association or employee group within the field of membership;

(E) any member of such person's immediate family or household;

(F) any organization whose membership consists of persons within the field of membership; and

(G) any corporate or other legal entity within the field of membership as identified in the charter, articles of incorporation or bylaws of the credit union.

(4) For the purposes of subparagraph (E) of paragraph (3):

(A) Except as provided in subparagraph (B), the term "immediate family or household" shall mean spouse, parent, stepparent, grandparent, child, stepchild, sibling, grandchild or former spouse and persons living in the same residence maintaining a single economic unit with

PASSED

On page 1, line 32, after "membership" and before the ";" add

and such person

(i) who has completed a training program offered by the volunteer group to further its goals, or (ii) who serves on the board of the volunteer group, or (iii) who serves as an officer of the volunteer group.