Approved: 3-3-09
Date

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 25, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:
Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Senator Vratil, (Attachment 1)
Chad Austin, Kansas Hospital Association (Attachment 2)
Terry Humphrey, Kansas Association for Justice (Attachment 3)
Russ Hazlewood, Kansas Association for Justice (Attachment 4)
Mike Hutfles, Hutfles Government Relations, Inc. (Attachment 5)
Kathy Olsen, Kansas Bankers' Association (Attachment 6)
John Donley, Kansas Livestock Association (Attachment 7)
Michael McLin, Division of Motor Vehicles (Attachment 8)
Leslie Kaufman, Kansas Coop Council (Attachment 9)
Mary Jane Stankiewicz, Kansas Grain & Feed and Kansas Ag Retailers (Attachment 10)
Tom Bruno, Farm Credit Association (Attachment 11)
Brad Harrelson, Kansas Farm Bureau (Attachment 12)
Sue Shulte, Kansas Corn Growers (Attachment 13)

Others attending:
See attached list.

The Chair called the meeting to order and asked for approval of the Minutes of February 3, 4, 5, 9, 10, 11, 12, 17 and 18 as previously e-mailed to Committee members. Senator Kelsey moved approval. Senator Steineger seconded. Motion passed.

Hearing on

SB 167 - Hospitals; increasing the enforceable limit of a hospital lien.

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated **SB 167** would increase the enforceable limit of a hospital lien from $5,000 to $20,000. She noted that **SB 167** would have no fiscal effect on state operations; however, the bill would have the potential to increase the amount a hospital could recover in certain instances where a patient is unable to pay for services rendered.

Senator John Vratil testified in support of **SB 167**. Senator Vratil said the language in **SB 167** seeks to increase the amount a hospital can recover in certain instances where a patient is unable to pay for services provided by the hospital. The hospital is able to recover the amount before the patient recovers any of the settlement, he said. He noted that currently, a hospital can recover up to $5,000 for a patient who is involved in a non-workman's compensation accident or an injury resulting from negligence. He said **SB 167** would increase the amount to $20,000. He said the $5,000 ceiling was established in 1972. Prior to the 1972 increase, hospitals could recover $1,500, he said. (Attachment 1)

Chad Austin, Vice President Government Relations, testified in support of **SB 167.** Mr. Austin stated that currently, the fully enforceable amount of $5,000 is many times insufficient to cover the full costs of care. He said the existing Kansas statute states that charges in excess of $5,000 are subject to an "equitable distribution" as determined by the court. Kansas Hospital Association has two primary reasons for supporting **SB 167**, he said. First, most injuries that result from a tort-type of claim, such as an automobile accident, incur charges in excess of $5,000 and many health care insurers will deny payment until the claim is settled.

Second, these types of claims often take up to two or more years to come to settlement and the healthcare provider is left holding the receivable the entire time without recourse to collect the fees owed. He said leaving it up to the court to determine an equitable distribution that may take up to two years after incurring the costs of providing the care, without any assurances that the costs in excess of $5,000 will be covered, is inappropriate in today's economic environment. (Attachment 2)

Terry Humphrey, Kansas Association for Justice, testified in opposition to **SB 167.** Ms. Humphrey stated that in 1997, Kansas Association for Justice and the Kansas Hospital Association reached consensus on legislation that established the current hospital lien law. She said the carefully crafted compromise established protection for Kansans hurt through no fault of their own, in vehicle accidents or other accidents, whose hospital charges exceed their insurance coverage, judgment, or settlement. It also provides protection for hospitals, which may assert liens in an unlimited amount that are automatic and fully enforceable up to the first $5,000, and enforceable through "equitable distribution" for reasonable and necessary charges over $5,000. She noted that **SB 167** upsets this delicate compromise. In conclusion, she said until mandated minimum auto limits for both liability and uninsured motorists' and underinsured motorists' coverage is increased by the Legislature, it is imperative that the protections for Kansas patients in the hospital lien law remain unchanged. (Attachment 3)

Russell Hazlewood, Attorney, Graybill & Hazlewood, L.L.C. testified in opposition to **SB 167.**
Mr. Hazlewood said in 1997 K.S.A. 65-406 was amended to remove the statutory lien ceiling, allowing a hospital to assert a lien in any amount up to its reasonable and necessary charges. He noted that apparently mindful that an unlimited hospital lien could result in a harsh, unjust outcome for the injured victim in some cases, the legislature inserted a statutory mechanism intended to balance the competing interests of the hospital and the injured patient. (Attachment 4)

Following Q & A, the Chair closed the hearing on **SB 167.**

Hearing on

SB 275 - Implements of husbandry, exempt from certificates of title.

Due to time constraints, the chair skipped an overview of **SB 275.**

Mike Hutfles, appearing on behalf of Southwestern Association, testified in support of **SB 275.**
Mr. Hutfles said in summary, 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. He said 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. (Attachment 5)

Kathleen Olsen, Kansas Bankers Association, testified in support of **SB 275.** Ms. Olsen stated that **SB 275** 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." She said 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. She noted that vehicles that are exempt from registration are also exempt from titling, unless specifically required to be titled by another statute. She said implements of husbandry are not specifically included in the titling statutes, either as a highway or non-highway vehicle. She noted that 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. Ms. Olsen said 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. She said implements of husbandry are now and have always been exempt from registration and titling requirements. She added that 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. Ms. Olsen asked that the F I & I Committee Minutes reflect that **SB 275** merely clarifies the law. She said it is not new

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 25, 2009, in Room 136-N of the Capitol.

law. (Attachment 6)

John Donley, Assistant General Counsel, Kansas Livestock Association, testified in support of **SB 275.** Mr. Donely said **SB 275** is simply to clarify the law. He said he echos the comments made by the other conferees. He said Kansas Livestock Association is supportive of **SB 275** as a clarification of current law and encourages the Committee to support passage of the bill. (Attachment 7)

Michael McLin, Bureau Manager of Titles and Registrations submitted written testimony only in favor of **SB 275.** (Attachment 8)

Leslie Kaufman, Kansas Coop Council testified in support of **SB 275.** Ms. Kaufman stated that the Kansas Coop Council also agrees with testimony of prior conferees. (Attachment 9)

Mary Jane Stankiewicz, COO and Senior Vice President of the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association, submitted written testimony in support of **SB 275.** (Attachment 10)

Tom Bruno, Farm Credit Association, testified in support of **SB 275.** Mr. Bruno said he echoed the comments made by the other conferees and urged the Committee to act quickly to pass this bill. (Attachment 11)

Brad Harrelson, State Director, KFB Government Relations, testified in support of **SB 275.** He said Kansas producers operate in an industry with increasingly high capital investment costs. He said maintaining stability and consistency in the ability to obtain financing is critical to their success and to the future of the industry. (Attachment 12)

Jere White, Kansas Corn Growers Association and Kansas Grain Sorghum Producers Association presented written testimony only in support of **SB 275**. (Attachment13)

Senator Taddiken suggested that the Minutes reflect that **SB 275** is current law, not new law, it just clarifies the law.

The Chair closed the hearing on **SB 275.**

Action on

The Chair said since there were no opponents to **SB 275** she was ready to work the bill. Senator Taddiken moved to pass **SB 275** out favorably and place it on the Consent Calendar. Senator Masterson seconded. Motion passed.

The next meeting is scheduled for February 26, 2009.

The meeting was adjourned at 10:30 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST
DATE: 2-25-09

NAME	REPRESENTING
Jacob Graybill	Self
Russel Hazlewood	self
[illegible]	KsAJ
Tracy Russell	Kansas Health Consumer Coalition
SHAWN MITCHELL	COMMUNITY BANKERS ASSOC OF KANSAS
Haley DaVee	KCUA
Bill Sneed	UKHA
CARMEN ALLDRITT	KDOR
Kathy Olsen	ICBA
Mike Huffles	Southwestern Assoc.
Dana Wareham	KBA
Bud Burke	Southwestern Assn.
Michael McIr	KDOR
Kari Presley	Kearney & Associates Inc.
Anne Spiess	American Cancer Society

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
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State of Kansas

Vice President
Kansas Senate

COMMITTEE ASSIGNMENTS
VICE CHAIR: EDUCATION
WAYS AND MEANS
MEMBER: JUDICIARY
ORGANIZATION, CALENDAR AND RULES
INTERSTATE COOPERATION
KANSAS CRIMINAL CODE RECODIFICATION COMMISSION

Testimony Presented to
Senate Committee on Financial Institutions and Insurance
By Senator John Vratil
February 25, 2009
Concerning Senate Bill 167

Good morning! Thank you for the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of Senate Bill (SB) 167. The language in SB 167 seeks to increase the amount a hospital can recover in certain instances where a patient is unable to pay for services provided by the hospital. The hospital is able to recover the amount before the patient recovers any of the settlement.

Currently, a hospital can recover up to $5,000 for a patient who is involved in a non-workman's compensation accident or an injury resulting from negligence. Senate Bill 167 would increase the amount to $20,000. The $5,000 ceiling was established in 1972. Prior to the 1972 increase, hospitals could recover $1,500.

I ask you to support SB 167. The $20,000 maximum recognizes the changes in health care costs that have occurred over the last 36 years.

John Vratil

FI & I Committee
2-25-09
Attachment 1

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KANSAS HOSPITAL ASSOCIATION

Thomas L. Bell
President

TO: Senate Financial Institutions and Insurance Committee

FROM: Chad Austin
Vice President, Government Relations

DATE: February 25, 2009

SUBJECT: Senate Bill 167

The Kansas Hospital Association appreciates the opportunity to comment on Senate Bill 167. The proposed legislation would increase the fully enforceable hospital lien amount from $5,000 to $20,000 for health care services provided to an injured claimant.

In cases where an individual is injured by another party and that individual incurs health care costs, the Kansas hospital lien statutes affords financial assurances to providers, especially when regular health insurance refuses to pay. Providers must file information with the District Court to claim those assurances. The information to be filed must include an itemized statement of all claims, the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received. The hospital must also send, by registered or certified mail, a copy of the notice to the party alleged of the injury; their legal representatives; the insurance carrier; and the patient who received the medical services. The responsibility rests with the liable party, including the insurance carrier, to ensure that payment is made to the healthcare provider for the amount entitled under Kansas statute.

Currently, the "fully enforceable" amount of $5,000 is oftentimes insufficient to cover the full costs of care. The existing Kansas statute states that charges in excess of the $5,000 are subject to an "equitable distribution" as determined by the Court. KHA has two primary reasons for supporting Senate Bill 167. First, most injuries that result from a tort-type of claim, such as an automobile accident, incur charges in excess of $5,000 and many health care insurers will deny payment until the claim is settled. Second, these type of claims often take up to two or more years to come to settlement and the healthcare provider is left holding the receivable the entire time without recourse to collect the fees owed. Leaving it up to the Court to determine an "equitable distribution" that may take up to two years after incurring the costs of providing the care without any assurances that the costs in excess of $5,000 will be covered is inappropriate in today's economic environment.

FI&I Committee
2-25-09
Attachment 2

Thank you for your consideration of our comments.

Kansas Hospital Association
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Your rights. Our mission.
KANSAS ASSOCIATION FOR JUSTICE

719 SW Van Buren St., Ste. 100, Topeka KS 66603
Phone: 785-232-7756
Fax: 785-232-7730
www.ksaj.org

To: The Honorable Ruth Teichman, Chairperson
Members of the Senate Financial Institutions & Insurance Committee

From: Terry Humphrey and Callie Hartle

Date: February 25, 2009

RE: SB 167 Hospital Liens--OPPOSE

The Kansas Association for Justice (KsAJ) appreciates the opportunity to appear before the Committee and provide testimony in opposition to SB 167. SB 167 strikes at the heart of a matter that was previously the subject of much debate in 1997. At that time, KsAJ reached consensus with the Kansas Hospital Association (KHA) on legislation that established the current hospital lien law in KSA 65-406. The carefully crafted compromise established the following:

- Protection for Kansans hurt through no fault of their own, in vehicle accidents or other accidents, whose hospital charges exceed their insurance coverage, judgment, or settlement.

- Protection for hospitals, which may assert liens in an unlimited amount that are automatic and fully enforceable up to the first $5,000, and enforceable through "equitable distribution" for reasonable and necessary charges over $5,000.

SB 167 upsets this delicate compromise. Given the joint work between KsAJ and KHA on the current law in 1997, we are disappointed that KHA has failed to demonstrate a "cooperative spirit" in 2009. In fact, KHA has never reported that the current law is deficient in any way since its passage. We are attaching KsAJ's (then KTLA) testimony, as well as KHA's testimony, on the 1997 bill to demonstrate the work that was done and the public policy recommendations that were made to the Legislature by both organizations at that time.

KsAJ believes the public policy priorities have not changed since the Legislature previously considered this issue. Under the current law, hospitals may pursue patients for payment of the total amount of the "reasonable and necessary charges" for treatment and

FI&I Committee
2-25-09
Attachment 3

care provided. In addition, the first $5,000 of reasonable and necessary charges is considered fully enforceable, which means that up to $5,000 of the lien is automatic and beyond dispute.

Note that there is no limit on the lien that the hospital may assert against the patient; instead, the $5,000 limit only applies to the amount of the lien that the hospital can automatically enforce. The $5,000 limit is a critical protection for Kansans hurt in auto accidents with costs that exceed the insurance coverage, settlement, or judgment they ultimately receive. While a hospital may still pursue such patients for payment of all reasonable and necessary charges, the current law simply places a greater burden on the hospital to establish that its secured position on the charges over $5,000 is fair.

It is often the case that auto insurance coverage is not sufficient to cover all the expenses that arise from an auto accident, including doctors' bills, property damages, and lost wages, in addition to hospital charges. Kansans that face these expenses need the protection of "equitable distribution" to assure that other creditors are paid and to make sure that they are not forced into bankruptcy by hospitals enforcing a lien against an insufficient insurance settlement.

If SB 167 becomes law, Kansas consumers would be forced to surrender in some cases the entire amount of their insurance settlement in satisfaction of their hospital bills, regardless of whether they have other debts or whether they received a settlement that covered all their costs or is insufficient. Under SB 167, injured Kansans may have very little remaining, or nothing, of their insurance settlement to pay the other costs that are forced upon them following an auto accident. Under SB 167, hospitals would not necessarily receive greater payment on their liens; instead, SB 167 gives hospitals a bigger hammer to enforce a lien and drive Kansans into bankruptcy because of medical debt. Ultimately, these Kansans may be forced onto Medicaid and other taxpayer-funded programs.

The underlying problem is not in KSA 65-406 or in the $5,000 maximum of the automatic portion of hospital liens. Instead, the real problem is that minimum mandated auto liability coverage and uninsured/underinsured motorist coverage is wholly insufficient in today's economy. Under Kansas law, which has not been changed in 36 years, the minimum auto insurance coverage limits for bodily injury or death is $25,000/$50,000 which means there is coverage of $25,000 for bodily injury to, or the death of, one person in any one collision, and a limit of $50,000 for bodily injury to, or the death of, two or more persons in any one collision. When two or more persons are injured or killed, any one victim's access to the wrongdoer's liability coverage is still subject to the policy's limit for one person.

UM coverage is an accident insurance benefit that protects a policyholder's family against bodily injury or death in a collision when the wrongdoer is uninsured or "hits and runs" and is never identified. UIM coverage is an accident insurance benefit that protects a

policyholder's family against bodily injury or death in a collision when the wrongdoer carries inadequate liability coverage for the harm caused. Again, the limits of the required UM/UIM endorsement must match the policy's limits of liability coverage in Kansas.

Now more than ever, Kansans need the protection of the $5,000 limit in the hospital lien law, particularly because of paltry minimum mandatory insurance coverage. KsAJ attorneys representing families hurt in auto accidents are well aware of the hardship that is caused to Kansas consumers, particularly because of insufficient UM/UIM coverage. When a Kansas vehicle owner reviews the summary of his or her auto insurance policy and sees that the policy includes UIM coverage with limits of, for example, $25,000/$50,000, the assumption is that the policy actually provides UIM coverage in the amount of the declared limits. Unfortunately, this assumption is wrong.

Whenever the victim's UIM limit is equal to or less than the wrongdoer's liability limit, there is simply no effective UIM coverage even if the collision caused a catastrophic injury or death. Effective UIM coverage is calculated, after a collision, by subtracting the limit of the wrongdoer's liability coverage from the victim's limit of UIM coverage. Unfortunately, this calculation commonly leaves an often unsuspecting victim with no effective UIM coverage. For example, if the wrongdoer and victim both own basic auto insurance policies containing the minimum coverage mandated by Kansas law, which is often the case, the victim has no effective UIM coverage after the required computation is completed.

Until mandated minimum auto limits for both liability and UM/UIM coverage is increased by the Legislature, it is imperative that the protections for Kansas patients in the hospital lien law remain unchanged. KsAJ supports increasing minimum auto limits. We would welcome the collaboration of the Kansas Hospital Association on such legislation to assure that Kansans injured through no fault of their own receive sufficient insurance settlements to pay all their bills, including bills from hospitals. Until minimum auto limits are increased, we must oppose the proposed change to the hospital lien law in SB 167.

We respectfully request that the Senate Financial Institutions and Insurance Committee oppose SB 167.

TESTIMONY BEFORE SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

Senate Bill No. 245
February 20, 1997
Topeka, Kansas

Chairman Praeger, distinguished members of the Committee. My name is Roberta Johnson. I am an Associate General Counsel in the legal office of Via Christi Health System, which includes Via Christi Regional Medical Center and Our Lady of Lourdes Rehabilitation Hospital, both in Wichita, Kansas, as well as the community hospital of Mt. Carmel Medical Center in Pittsburg, Kansas.

I am here today representing not only Via Christi Health System, but the Kansas Hospital Association (KHA) as well, an organization which represents 125 community hospitals located throughout the state. All these hospitals are speaking with one voice in favor of passage of Senate Bill 245, which addresses the hospital lien law.

Lien Law History

It may be helpful to give you a short legislative history of the lien law in the State of Kansas. The first lien law was enacted in 1939 and allowed a hospital a lien in an amount not to exceed $200. Twelve years later, in 1951, the legislature more than tripled the amount of the lien to $700, in recognition of rising health care costs and inflation. Six years later, in 1957, another increase was given resulting in the lien amount more than doubling to $1,500. The last modification to the lien law occurred 25 years ago, in 1972. That modification brought the lien amount to $5000. While health care costs and inflation have driven the cost of health care to unprecedented levels over the past 25 years, the lien amount has remained at the $5000 limit.

Joint Support for Senate Bill 245

Senate Bill 245 provides a long overdue modification to the hospital lien amount and the hospitals of Kansas are supportive of the language of this Bill. Unlike past years, however, it is not only the hospitals of Kansas that are supportive of the modifications proposed, but the Kansas Trial Lawyers Association (KTLA), as well, support the proposed changes. The proposed language was co-drafted and approved by both organizations and both organizations urge your support and approval of the Bill.

The revisions proposed to the current lien law by Senate Bill 245 are fair, equitable and long overdue. Moreover, they will bring Kansas in line with the lien laws of our surrounding jurisdictions.

Conclusion

The Senate Bill before you was drafted in a cooperative spirit and with the intent of creating equity and fairness between a patient injured by reason of an accident (other than

workers compensation) and the hospitals which must provide medical services. We urge your support and the passage of Senate Bill 245.

If the Committee desires any additional information, please feel free to contact me or the Kansas Hospital Association.

Roberta R. Johnson
Associate General Counsel
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(316-268-5107)

TESTIMONY BEFORE HOUSE COMMITTEE
ON HEALTH AND HUMAN SERVICES

Senate Bill No. 245
March 12, 1997
Topeka, Kansas

Chairman Mayans, distinguished members of the Committee. My name is Matthew C. Hesse. I am an attorney from Wichita, Kansas representing Via Christi Health System in Wichita, Kansas, which includes Via Christi Regional Medical Center, Our Lady of Lourdes Rehabilitation Hospital, both in Wichita, Kansas, as well as the community hospitals of Mt. Carmel Medical Center in Pittsburg, Kansas and Mercy Health Center in Manhattan, Kansas. The Via Christi organization and its affiliate hospitals are all not-for-profit corporations dedicated to serving the healthcare needs of the citizens of Kansas and the communities they serve.

Additionally, I am appearing on behalf of the Kansas Hospital Association (KHA), an organization which represents 125 community hospitals and a total of 148 members. All these hospitals are speaking with one voice in favor of passage of Senate Bill 245.

Lien Law History

It may be helpful to give you a short legislative history of the lien law in the State of Kansas. The first lien law was enacted in 1939 and allowed a hospital a lien in an amount not to exceed $200. Twelve years later, in 1951, the legislature more than tripled the amount of the lien to $700, in recognition of rising healthcare costs and inflation. Six years later, in 1957, another increase was given resulting in the lien amount more than doubling to $1,500. The last modification to the lien law occurred 25 years ago, in 1972. That modification brought the lien amount to $5,000. While healthcare costs and inflation have driven the cost of healthcare to unprecedented levels over the past 25 years, the lien amount has remained at the $5,000 limit.

Lien Laws of Other Jurisdictions

Senate Bill 245 provides that the lien amount shall be "to the amount of the reasonable and necessary charges" of such hospital for the treatment, care and maintenance of the patient. Senate Bill 245 will bring our state in line with surrounding jurisdictions which also permit hospital liens to the extent of the reasonable and necessary or customary charges. Examples include:

Oklahoma - Hospitals have "a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patients, or by his heirs, personal representatives or next of kin in the care of death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient up to the date of payment of such damages." O.S. 42§43.

Colorado - Hospitals have a lien "for all reasonable and necessary charges for hospital care upon the net amount payable to such injured person." C.R.S. 38-27-101.

Nebraska -Article 4, Section 52-401 provides that when any person employs a physician, nurse or hospital to perform professional services of any nature in connection with the treatment of an injury and thereafter claims damages from the party causing the injury, such physician, nurse or hospital shall have a lien upon any sum awarded the injured person in judgment or obtained by way of settlement or compromise for the usual and customary charges of such physician, nurse or hospital applicable at the time the services are performed.

New Mexico - Hospitals can assert a lien to the extent of "the reasonable, usual and necessary hospital charges for treatment, care and maintenance of the injured party in the hospital and to the date of payment." N.M.S. 48-8-1.

Arizona - Hospitals are entitled to a lien "for the customary charges for hospital care and treatment of an injured person." Hospital Lien, §33-931.

Delaware - Charitable hospitals have a lien "for the amount of reasonable charges of such hospital for all medical treatment, care and nursing and maintenance of such injured person while in such hospital to the extent of the full and true consideration paid or given to, or on behalf of, such injured person or his legal representative." 25 § 4301, Hospital Liens

New York - Hospitals shall have a lien "for the amount of the reasonable charges in such hospital, for the treatment, care and maintenance of such injured person . . ." Article 8 §189.

Joint Support for Senate Bill 245

Senate Bill 245 provides a long overdue modification to the hospital lien amount. Unlike past years, the Kansas Trial Lawyers Association (KTLA), are joining the hospitals in support of the proposed changes. The proposed language was drafted and approved by both organizations (KTLA and KHA hospitals) and both organizations urge your support and approval of the Bill.

Conclusion

Senate Bill 245 was drafted in a cooperative spirit and with the intent of creating equity and fairness between a patient injured by reason of an accident (other than workers compensation) and the hospitals which provide medical services. We urge your support and the passage of Senate Bill 245.

If the Committee desires any additional information, please feel free to contact me or the Kansas Hospital Association.

Matthew C. Hesse
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KANSAS TRIAL LAWYERS ASSOCIATION
Lawyers Representing Consumers

February 20, 1997

TO: Senate Public Health and Welfare Committee
Sandy Praeger, Chair

FROM: Terry Humphrey
Executive Director

SUBJECT: SB 245 - Concerning the Hospital Lien Bill

Since 1939 Kansas has had a hospital lien law which is codified at K.S.A. 65-406 et seq. This statute creates a lien against an injured victim's recovery of monetary damages for unpaid hospital charges incurred by the victim as a result of the wrongdoer's fault.

As originally enacted in 1939, the statutory lien was limited to reasonable and necessary hospital charges of not more than $200.00 for emergency services. In 1951 the statute was broadened to include all reasonable and necessary hospital charges not to exceed $700.00. The lien ceiling was raised to $1,500.00 in 1957 and $5,000.00 in 1972.

The Kansas Hospital Association (KHA) has voiced concern that the $5,000.00 lien cap has caused a hospital shortfall in certain instances where the victim's recovery was arguably sufficient to pay all of the victim's actual damages including hospital charges. This concern prompted introduction of Senate Bill 577 in the 1996 legislature which, as originally introduced, contained an unlimited hospital lien. SB 577 did not pass in the House and was never enacted. The KHA has renewed its effort to increase the $5,000.00 lien cap in the 1997 legislature.

Terry Humphrey, Executive Director
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E-Mail: triallaw @ ink.org

The Kansas Trial Lawyers Association (KTLA) has expressed concern that an unlimited hospital lien could result in a harsh, unjust outcome for the injured victim in many cases. Multiple damages and losses are often sustained by the victim or the victim's surviving family including past and future hospital and medical expenses; lost wages; impairment of the victim's capacity to work and earn a living in the future; permanent disability or disfigurement; funeral expenses; loss of the victim's performance and contribution of household services to the family; property damages; pain and suffering; and other items.

Sometimes the victim's actual damages, including hospital charges, are greater than the victim's recovery, for example, the wrongdoer may have insufficient liability insurance coverage to fairly compensate the victim for the harm inflicted. In such a situation an unlimited hospital lien could exhaust the victim's recovery to the exclusion of compensation for the victim's other damages and losses.

Mindful of the other association's concern in this area, the KHA and KTLA have mutually developed compromise language for SB 245 which accomplishes the following:

1. Hospitals will be allowed to assert a lien unlimited in amount.

2. Liens of $5,000.00 or less and the first $5,000.00 of liens greater than $5,000.00 shall be fully enforceable as they are under present law.

3. Lien sums above $5,000.00 shall only be enforceable to the extent their

enforcement constitutes an equitable distribution of the recovery under the circumstances. If a hospital and an injured victim cannot agree on what constitutes an equitable distribution under the circumstances, the matter is submitted to a court for determination. This procedure allows the court to fashion an equitable distribution of the recovery based upon all prevailing factors including the amount of the hospital lien, the nature and extent of the victim's actual damages and the amount of the recovery.

KHA and KTLA jointly endorse the compromise language.

To: The Honorable Ruth Teichman, Chairperson
Members of the Senate Financial Institutions &
Insurance Committee

From: N. Russell Hazlewood

Date: February 24, 2009

RE: SB 167 Hospital Liens--OPPOSE

Thank you for the opportunity to testify today. My name is Russ Hazlewood. I am a lawyer with the firm of Graybill & Hazlewood, L.L.C., in Wichita, Kansas. I graduated from the University of Kansas Law School in 1997. Since 2000, much of my practice has focused on advocating for and protecting the rights of Kansas consumers, including consumers of hospital services. In that regard, I am very familiar with billing and collection practices of Kansas hospitals. I am also familiar with the the Kansas hospital lien statutes, their history, and their practical effect on accident victims and their families.

The Kansas statutory hospital lien set forth in K.S.A. § 65-406, *et seq.* was first enacted in 1939. L. 1939, ch. 235 § 1. The statutes generally create a lien in favor of any hospital furnishing "emergency medical or other service to any patient injured by reason of an accident not covered by the workers compensation act." K.S.A. § 65-406(a). (A lien is not a debt but a legal claim against an asset which is used to secure the debt, *e.g.*, a mortgage on one's home to secure a promissory note). The hospital lien attaches to"that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by such patient's heirs, personal representatives or next ofkin in the case of such patient's death, whether by judgment or by settlement or compromise." *Id.*

Prior to 1997, the amount of the statutory lien was limited to $5,000. This ceiling did not limit the patient's indebtedness to the hospital - it merely limited the amount of that indebtedness secured by the patient's tort recovery. The purpose of the lien ceiling was to protect the patient from a situation where he or she would receive little or nothing from the limited funds available in a tort recovery.

In 1997, K.S.A. § 65-406 was again amended to remove the statutory lien ceiling, allowing a hospital to assert a lien in any amount up to its "reasonable and necessary charges." L. 1997, ch. 21 § 1; K.S.A. § 65-406(b). Apparently mindful that an unlimited hospital lien could result in a harsh, unjust outcome for the injured victim in some cases, the legislature inserted a novel statutory mechanism intended to balance the competing interests of the hospital and the injured patient. K.S.A. § 65-406(c). Rather than capping the amount of the hospital's lien as before, the 1997 statute allows a Court to protect the patient from a harsh, unjust outcome by limiting the *enforceability* of an otherwise valid lien in certain instances:

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In the event the claimed lien is for the sum of $5000 or less it shall be fully enforceable as contemplated by subsection (a) of this section.

In the event the claimed lien is for a sum in excess of $5,000 the first $5,000 of the claimed lien shall be fully enforceable as contemplated by subsection (a) of this section, and that part of the claimed lien in excess of $5,000 *shall only be enforceable to the extent that its enforcement constitutes an equitable distribution of any settlement or judgment under the circumstances.*

In the event the patient or such patient's heirs or personal representatives and the hospital or hospitals cannot stipulate to an equitable distribution of a proposed or actual settlement or a judgment, the matter shall be submitted to the court in which the claim is pending, or if no action is pending then to any court having jurisdiction and venue of the injury or death claim, for determination of an equitable distribution of the proposed or actual settlement or judgment under the circumstances.

K.S.A. § 65-406(c) (hard returns and emphasis added).

To paraphrase the subsection, if a hospital perfects a lien for its reasonable and necessary charges in an amount in excess of $5,000, a patient who does not dispute the amount of the debt but contends that it would be unfair under the circumstances to enforce the lien in its entirety may invoke the protections of K.S.A. § 65-406(c), and a court will then determine whether fairness requires that enforceability of the lien be limited to some amount which is less than the hospital's charges. (Again, that determination limits the extent to which the patient's debt is secured by the lien - it does not establish or diminish the amount of the patient's indebtedness to the hospital).

Despite the fact that they were granted an unlimited lien in 1997, the hospitals now ask this body to substantially limit the courts' discretion to assure that the limited funds of a liability settlement are distributed equitably between an accident victim and a hospital. SB 167 affects only that portion of the statute directed toward protection of the consumer. Under the current law, enforcement of hospital liens is limited only by principles of fairness determined in light of the specific facts and circumstances of each individual recovery. Consequently, this bill will only impact those accident victims whose need for the liability recovery is so great, or whose circumstances so pitiful, or whose recovery so inadequate, that a Court would find it inequitable to distribute less than $20,000 of the limited funds to a hospital.

In considering this bill, the Committee should not overlook the vast disparity between a hospital's unnegotiated sticker charges imposed against accident victims and the market value of the goods and services, as determined by the amounts it agrees to accept in arms-length negotiations with sophisticated payers. We all know from media reports and anecdotal evidence that hospital charges have increased at double-digit annual rates for more than a decade. What is more interesting, however, is that the third-party reimbursement rates – which economists consider a better indication of market value – have grown at a much slower rate. Thus, each year, the disparity between the hospital's "charges" and the true value of its goods and services becomes more exaggerated. Recognizing the absurdity of the situation, the Bureau of Labor Statics of the U.S. Department of Labor has determined that hospital "sticker" charges are not a reliable indicator of true price levels and has stopped using those charges to compute the Consumer Price Index.

I am aware of one case where a Wichita hospital's sticker charges for services it provided to a child injured in an automobile accident were $186,476.48, while the price it negotiated, in advance, with a health insurer for the same goods and services were only $12,442.59. In other words, the so-called "discount" was approximately 94%. In this instance, had the patient been uninsured (or out of network), the hospital would have asserted a lien against the child's tort recovery for $186,476.48.

Nor should the Committee ignore that the vast majority of the money which may be subject to a Kansas hospital lien comes from automobile liability insurance proceeds. While hospital's "sticker" charges have soared, the minimum liability insurance required of a Kansas driver has remained stagnant for 36 years. The mandatory minimum liability insurance for bodily injury - carried by many, many drivers in this State – is only $25,000 per person, $50,000 per accident. Ask yourself: What was the legislature trying to accomplish when it mandated insurance at this level? How much health care would $25,000 have purchased for an accident victim in 1973? How much will it purchase today? (Not one day in an ICU at sticker charges).

$25,000 is all that is available to many Kansas accident victims. The hospitals want to make sure that they can seize *at least* $20,000 of that amount before the patient gets anything. They ask this body to give them 4/5 of the liability insurance moneys available to many accident victims – regardless of the whether a court would conclude that result to be inequitable under the circumstances. I suggest that if hospitals truly want to ensure payment, they should support an increase in the minimum automobile liability limits commensurate with inflation since those limits were established in 1973.

The effect of a hospital lien, under current law and under the proposed bill is best demonstrated by a plausible hypothetical example:

Suppose a self-employed hairstylist without health insurance is hit by a minor driver who carries the minimum $25,000 liability insurance required in this State. The hairstylist is transported to the emergency room of a Kansas hospital, and admitted as an inpatient. She spends a day in ICU, a day in a regular hospital room and is discharged with orthopedic injuries. Her hospital bill is $45,000. (A network insurer would pay $10,000 or less for the same bill). She also has bills from her orthopaedic surgeon, an anesthesiologist, and a radiologist; and she will require additional doctor visits, drugs, and physical therapy. She will be of work for 12 weeks.

The hospital files a claim for the hairstylists' no fault automobile insurance benefits (her "PIP benefits") and collects $4,500. It then files a $35,500 lien against the hairstylist's recovery from the minor's insurer. The minor's insurer is willing to pay $25,000 to settle the matter, but it will not pay the money to the hairstylist because of the hospital's lien. The hairstylist hires a lawyer and files an action in the district court, asking that she be given access to some of the $25,000 for equitable reasons.

Under the current law, the first $5,000 of the hospital's lien is automatically enforceable. The hairstylist could convince a judge she should be able to keep, say, $15,000 of the limited funds available to her to pay her rent, her living expenses, pharmacy, physical therapy and doctor bills, etc. while she is healing from the accident and cannot work. The hospital would get a total of $10,000 from the tortfeasor's insurer, in addition to the $4,500 dollars it collected in PIP benefits. The hairstylist would be obligated to pay the balance of the hospital's bill, but not from the liability insurance proceeds. She could make payment arrangements with the hospital, heal, and then go back to work. (Note that the hospital collected 150% of what it

would have collected from an insurer from its lien; and more than 400% of that amount over time from the patient).

Under SB 167, the hospital would take at least $20,000 from the minor's insurer. The hairstylist would receive $5,000 or less. That money would quickly dissipate with the onslaught of doctor bills, physical therapy and pharmacy bills incident to the injuries, in addition to the hairstylist's ordinary living expenses. The hospital would likely sue the hairstylist to collect the balance of its bill. Because she could not work, the hairstylist would be unable to pay her mortgage payment, and a foreclosure would ensue. The hairstylist would ultimately be forced to take bankruptcy. Her doctors (who do not enjoy a lien) and other unsecured creditors would go unpaid. (Note that the hospital would collect 250% of what it would have collected from a network insurer).

It should also be noted that Kansas hospitals have, on occasion, abused their lien rights in an attempt to circumvent the lower rates they negotiated with the patient's health insurance network. In those instances, the lien right encouraged the hospital to delay presentation of the patient's bill to insurors or other third-party payors willing to pay market value. One large Kansas hospital actually refused to submit claims to the patient's insurer and instead sought to collect its "sticker" charges from the limited funds available to the accident victim. That was the subject of my *Parker* and *Nungesser* cases in Wichita. (See newspaper articles attached). Note that this is an issue for insured and uninsured patients alike, because trauma victims often find themselves out-of-network, even in the same city. (Parker was a pharmaceutical sales representative, and Nungesser's wife was a federal postal worker – both of these accident victims had excellent group health insurance). Another large Kansas hospital successfully sued its accident victim patient and used the hospital lien law as a vehicle to deprive the patient of a jury trial over the reasonableness of its charges or the amount of the patient's indebtedness.

Finally, the current financial crisis has demonstrated that when individuals are forced into bankruptcy, a domino effect ensues. What begins with a few home foreclosures can result in Citibank shares selling below $2.00. Hospitals are the only health care providers that enjoy a statutory lien. In my example, the surgeon, the radiologist, the anesthesiologist, the physical therapists, etc., are but unsecured creditors. Yet, their services are essential to the accident victim's care. By increasing a hospital's lien rights, we decrease the moneys available to pay other providers. It is imprudent and unfair to favor the hospitals with additional lien rights at the expense of the accident victim, her doctors and other health care providers and, ultimately, all of her other unsecured creditors. I urge you to vote against the passage of SB167.

Respectfully submitted,

GRAYBILL & HAZLEWOOD L.L.C.

N. Russell Hazlewood

Wesley target of second lawsuit questioning its business practices

BY LAURIE MAZZULLO

Another patient has sued Wesley Medical Center claiming the hospital tried to avoid accepting a discounted payment from an insurance company.

It is the second lawsuit filed in the past year questioning the hospital's business practices and the effect on patients.

In July 2002, Wichitan Jimmy L. Nungesser was involved in a motorcycle accident that involved a third party. After treating Nungesser, the lawsuit claims, Wesley officials refused to file with Nungesser's insurance company. Instead, the lawsuit alleges, Wesley tried to file with the third party's insurance company and sent bills to Nungesser. When those bills went unpaid, the hospital filed a lien against Nungesser.

Documents for the lawsuit, which was filed in January, say Wesley was trying "to avoid the significant discount" that comes from filing with the patient's insurance company. The lawsuit alleges that the hospital would be paid more by filing with a third party and billing the patient.

Wesley CEO David Nevill and the plaintiff for this case declined to comment on the story.

Not 'in this case'

This is the second case in which plaintiffs claim Wesley tried to avoid the discounted rate from an insurance company. Wichitan John K. Parker IV, who was beaten and shot during a 1999 robbery, claimed that Wesley refused to submit his hospital bill to his insurance company and refused to give him a copy of the bill so he could submit the claim. In Parker's lawsuit against Wesley, he claimed that Wesley didn't file the insurance so it could avoid the discounted rate from the insurance company. Instead, Wesley sent bills to Parker.

Jimmy L. Nungesser v. Wesley Medical Center
Plaintiff's attorneys: Jacob Graybill, John Terry Moore, Coy Martin, N. Russell Hazlewood.

Last year a Sedgwick County District Court jury found that Wesley violated the Kansas Consumer Protection Act in Parker's case. The judge ordered the hospital to change its admittance forms to include notification that it reserves the right to not submit claims to insurance companies. He also decided that if the hospital does not submit a claim, it must within 30 days provide the information so the patient can make the claim.

Nungesser was a patient at Wesley before the Parker case went to court.

In the latest case, it was Nungesser's wife who dealt with the hospital because Nungesser was still being treated for his injuries. According to court documents, once Nungesser's wife realized that Wesley hadn't filed with the insurance company, she inquired with hospital officials and was told that Wesley didn't plan to file "in this case."

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The next month, a letter was sent to Nungesser's wife from Wesley's attorney Curtis Loub that stated that in the past week Wesley had filed with Coventry, Nungesser's insurance company. Loub went on to say that Coventry would only pay after money was collected from the third party's insurance company.

Later that month, the hospital lien against Nungesser was increased by $4,000 to almost $50,000. Finally, about a week later, Coventry paid Wesley what the claim stated the hospital was owed. But, the hospital lien was not released.

And, Nungesser and his attorneys claim that because Wesley filed a hospital lien against Nungesser, it prevented him from being able to settle with the third party's insurance company.

As a result, Nungesser is suing Wesley on seven separate counts, including abuse of process; tortious interference with economic expectancy; two violations of the Kansas Consumer Protection Act; breach of fiduciary duty; civil conspiracy to cause the breach of fiduciary duty; and fraud by silence.

Conserving expenses

When Nungesser was injured, he was originally taken to Via Christi Regional Medical Center and then transferred to Wesley when he was in a more stable condition. According to court documents, Via Christi quickly filed with Coventry for its services to Nungesser.

Roberta Johnson, associate general counsel for Via Christi, says if a patient has health insurance, the hospital first looks to his or her carrier for payment. Any unpaid fees are worked out with the patient, she says.

"I can think of no instance where Via Christi would refuse a patient's request that we file insurance on his or her behalf," Johnson says.

New lawsuit

In other legal matters involving Wesley, Parker recently filed a new lawsuit against the hospital for damages incurred when Wesley filed a counterclaim during the case last year.

While the case was going on, the judge issued a restraining order against Wesley forcing the hospital to submit Parker's insurance claim. A few days later Wesley's attorney faxed a letter to plaintiff's attorneys saying it would comply with the restraining order if the plaintiff would agree to dismiss his claims against the hospital.

When Wesley was threatened to be held in contempt of court for trying to disobey the court order, the hospital agreed to comply fully with the restraining order. But two days later, Wesley filed counterclaims against Parker for abuse of process, wrongful procurement of a restraining order and violation of the Kansas Consumer Protection Act.

Eight months later, after Parker requested that Wesley drop its counterclaims, it did so and agreed not to file again. But the damage was already done, the lawsuit claims.

He is now suing for mental and monetary damages incurred during that time.

Parker was not available for comment. Nevill declined to comment about the details of the case, saying what he thinks about it doesn't matter.

"It's legal and it's technical. We don't want to make any statements that can be construed as prejudicial one way or the other," Nevill says. "We're going to rely on our legal counsel to determine whether Wesley acted within our legal rights."

Bill Hoyt, public information officer with the Kansas Attorney General's Office, says the claims that Parker violated the Kansas Consumer Protection Act don't hold up. The act can only apply to suppliers, he says.

"It is very difficult to envision a scenario in which a consumer, who was not selling anything, could violate the KCPA," Hoyt says. "The basic point of the act is to protect consumers from deceptive and unconscionable products and practices."

REACH LAINIE MAZZULLO at 266-6191 or on the Web at lmazzullo@bizjournals.com.

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Senate Financial Institutions & Insurance Committee

Wednesday, February 25th

Chairman Teichman and Committee members, thank you for this opportunity to testify in support of SB 275. I am Mike Hutfles and I appear before you today on behalf of the Southwestern Association. Southwestern Association is a member driven organization that includes farm implement & equipment dealers, outdoor power equipment dealers, industrial equipment dealers and a vast array of other member groups from across the state. Today I'm here on behalf of our dealers that sell equipment that often requires financing to purchase.

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, more important, there is now confusion on how all current financing of tractors, equipment, etc. purchased since 2000 are impacted. 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 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:

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(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.

KBA
Kansas Bankers Association

February 25, 2009

To: Senate Committee on Financial Institutions and Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

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

Madam Chair 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).

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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.

Kansas Legislature

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,

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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.

6-4

Kansas Legislature

8-128

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

8-128. Registration of vehicles, exceptions. (a) The following need not be registered under this act, any:

(1) Implement of husbandry;
(2) all-terrain vehicle;
(3) work-site utility vehicle;
(4) road roller or road machinery temporarily operated or moved upon the highways;
(5) municipally owned fire truck;
(6) privately owned fire truck subject to a mutual aid agreement with a municipality;
(7) school bus owned and operated by a school district or a nonpublic school which has the name of the municipality, school district or nonpublic school plainly painted thereon;

(8) farm trailer used in carrying not more than 6,000 pounds owned by a person engaged in farming, which trailer is used exclusively by the owner to transport agricultural products produced by such owner or commodities purchased by the owner for use on the farm owned or rented by the owner of such trailer and the weight of any such farm trailer, plus the cargo weight of 6,000 pounds or less, shall not be considered in determining the gross weight for which the truck or truck tractor propelling the same shall be registered; or

(9) farm trailer used and designed for transporting hay or forage from a field to a storage area or from a storage area to a feedlot, which is only incidentally moved or operated upon the highways, except that this paragraph shall not apply to a farm semitrailer.

(b) Self-propelled cranes where the crane operator on a job site operates the controls of such crane from a permanent housing or module on the crane and the crane is not used for the transportation of property, except the property that is required for the operation of the crane itself and earth moving equipment which are equipped with pneumatic tires may be moved on the highways of this state from one job location to another, or to or from places of storage, delivery or repair, without complying with the provisions of the law relating to registration and display of license plates but shall comply with all the other requirements of the law relating to motor vehicles.

(c) Oil well servicing, oil well clean-out or oil well drilling machinery or equipment need not be registered under this act but shall comply with all the other requirements of the law relating to motor vehicles.

(d) A truck permanently mounted with a hydraulic concrete pump and placing boom may be moved on the highways of this state from one job location to another, or to or from places of storage delivery or repair, without being registered under this act, but shall comply with all the other requirements of the law relating to motor vehicles. The provisions of this subsection shall not apply to ready-mix concrete trucks.

History: L. 1929, ch. 81, § 6; L. 1933, ch. 72, § 1; L.1957, ch. 58, § 1; L. 1961, ch. 46, § 1; L. 1967, ch. 57, § 5; L. 1972, ch. 19, § 1; L. 1976, ch. 40, § 3; L. 1977, ch. 29, § 1; L. 1980, ch. 30, § 1; L. 1981, ch. 34, § 1; L. 1984, ch. 27, § 2; L. 1988, ch. 40, § 2; L. 1994, ch. 235, § 2; L. 1995, ch. 61, § 1; L. 1996, ch. 220, § 4; L. 1997, ch. 119, § 2; L. 2001, ch. 41, § 1; L. 2001, ch. 211, § 1; L. 2006, ch. 136, § 1; L. 2007, ch. 140, § 5; July 1.

6-5

Kansas Legislature

8-135

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

8-135. Transfer of ownership of vehicles; registration; fees and penalties; certificate of title, form, fee; assignment and reassignment; liens, statement of, release of, liability for failure to comply, notice of security interest, execution; purchase and sale of vehicle, requirements; written consent by lienholder; transfer-on-death; reaffirmation of sale; assignment of title form; electronic certificate of title; reassignment forms; export title. (a) Upon the transfer of ownership of any vehicle registered under this act, the registration of the vehicle and the right to use any license plate thereon shall expire and thereafter there shall be no transfer of any registration, and the license plate shall be removed by the owner thereof. Except as provided in K.S.A. 8-172, and amendments thereto, and 8-1,147, and amendments thereto, it shall be unlawful for any person, other than the person to whom the license plate was originally issued, to have possession thereof. When the ownership of a registered vehicle is transferred, the original owner of the license plate may register another vehicle under the same number, upon application and payment of a fee of $1.50, if such other vehicle does not require a higher license fee. If a higher license fee is required, then the transfer may be made upon the payment of the transfer fee of $1.50 and the difference between the fee originally paid and that due for the new vehicle.

(b) Subject to the provisions of subsection (a) of K.S.A. 8-198, and amendments thereto, upon the transfer or sale of any vehicle by any person or dealer, or upon any transfer in accordance with K.S.A. 59-3511, and amendments thereto, the new owner thereof, within 30 days, inclusive of weekends and holidays, from date of such transfer shall make application to the division for registration or reregistration of the vehicle, but no person shall operate the vehicle on any highway in this state during the thirty-day period without having applied for and obtained temporary registration from the county treasurer or from a dealer. After the expiration of the thirty-day period, it shall be unlawful for the owner or any other person to operate such vehicle upon the highways of this state unless the vehicle has been registered as provided in this act. For failure to make application for registration as provided in this section, a penalty of $2 shall be added to other fees. When a person has a current motorcycle or passenger vehicle registration and license plate, including any registration decal affixed thereto, for a vehicle and has sold or otherwise disposed of the vehicle and has acquired another motorcycle or passenger vehicle and intends to transfer the registration and the license plate to the motorcycle or passenger vehicle acquired, but has not yet had the registration transferred in the office of the county treasurer, such person may operate the motorcycle or passenger vehicle acquired for a period of not to exceed 30 days by displaying the license plate on the rear of the vehicle acquired. If the acquired vehicle is a new vehicle such person also must carry the assigned certificate of title or manufacturer's statement of origin when operating the acquired vehicle, except that a dealer may operate such vehicle by displaying such dealer's dealer license plate.

(c) Certificate of title: No vehicle required to be registered shall be registered or any license plate or registration decal issued therefor, unless the applicant for registration shall present satisfactory evidence of ownership and apply for an original certificate of title for such vehicle. The following paragraphs of this subsection shall apply to the issuance of a certificate of title for a nonhighway vehicle, salvage vehicle or rebuilt salvage vehicle, as defined in K.S.A. 8-197, and amendments thereto, except to the extent such paragraphs are made inapplicable by or are inconsistent with K.S.A. 8-198, and amendments thereto, and to any electronic certificate of title, except to the extent such paragraphs are made inapplicable by or are inconsistent with K.S.A. 2007 Supp. 8-135d, and amendments thereto, or with rules and regulations adopted pursuant to K.S.A. 2007 Supp. 8-135d, and amendments thereto.

The provisions of paragraphs (1) through (14) shall apply to any certificate of title issued prior to January 1, 2003, which indicates that there is a lien or encumbrance on such vehicle.

(1) An application for certificate of title shall be made by the owner or the owner's agent upon a form furnished by the division and shall state all liens or encumbrances thereon, and such other information as the division may require. Notwithstanding any other provision of this section, no certificate of title shall be issued for a vehicle having any unreleased lien or encumbrance thereon, unless the transfer of such vehicle has been consented to in writing by the holder of the lien or encumbrance. Such consent shall be in a form approved by the division. In the case of members of the armed forces of the United States while the United States is engaged at war with any foreign nation and for a period

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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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KANSAS LIVESTOCK ASSOCIATION

Since 1894

TESTIMONY

To: Senate Committee on Financial Institutions and Insurance
Senator Ruth Teichman, Chair

From: John Donley, Assistant General Counsel

Date: February 25, 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 morning Chairperson Teichman and members of the Committee. My name is John Donley, and I am Assistant General Counsel for KLA. I appreciate the opportunity to testify this morning in support of SB 275.

As previous conferees have mentioned, 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 at the appropriate time.

FI&I Committee
2-25-09
Attachment 7

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KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

February 25, 2009

To: Financial Institution and Insurance Committee
300 SW 10th Ave, State Capital, Room 136N
Topeka, Kansas 66612

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

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.

FI & I Committee
2-25-09
Attachment 8

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/

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

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
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Kansas Cooperative Council

Kansas Cooperative Council
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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.

Senate Financial Institutions & Insurance Committee

February 25, 2009
Topeka, Kansas

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

Thank you, Chairman Teichman and members of the Senate Financial Institutions & Insurance 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 as members. 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.

FI+I Committee
2-25-09
Attachment 9

Kansas Grain & Feed Association
Kansas Agribusiness Retailers Association

816 SW Tyler, Suite 100
Topeka, Kansas 66612

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Senate Financial Institution and Insurance Committee
February 25, 2009
SB 275 – Perfecting a Security Interest in Implements of Husbandry

Good morning, Madam Chair and Members of the Senate 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.

FI&I Committee
2-25-09
Attachment 10

Bruno & Associates

Good morning. My name is Tom Bruno. I am testifying this morning 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 tranctor. 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 if 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.

FI&I Committee
2-25-09
Attachment 11

Bruno & Associates 800 SW Jackson Ste. 914 Topeka, KS 66612 (785) 354-8172 kslobby@cox.net

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.

KANSAS FARM BUREAU
The Voice of Agriculture

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Kansas Farm Bureau
POLICY STATEMENT

Senate Committee on Financial Institutions and Insurance

SB 275

An Act relating to implements of husbandry
Clarifying existing law and practice

February 25, 2009
Submitted by:
Brad Harrelson
State Director – KFB Government Relations

Chairperson Tiechman and members of the Senate Committee on Financial Institutions and Insurance, 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.

FI&I Committee
2-25-09
Attachment 12

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.

Kansas Corn Growers Association
Kansas Grain Sorghum Producers Association

TO: Senate Financial Institutions & Insurance Committee

FROM: Jere White, KCGA and KGSPA Executive Director

SUBJECT: Written Testimony regarding SB275

DATE: February 24, 2009

The Kansas Corn Growers Association and Kansas Grain Sorghum Producers Association wish to submit this written testimony in support of Senate Bill 275.

Kansas titling and registration requirements for equipment like farm tractors have been brought into question recently. While we have no question that Kansas law exempts farm tractors and tools of husbandry from registration and title requirements, we feel it is necessary to ensure this law is clarified to avoid future confusion.

This bill simply clarifies and strengthens the language of the current law to make sure there is no doubt about the title and registration exemptions for farm equipment in this legislation.

We appreciate the time the committee has given to this issue. Because this bill simply strengthens the intent of the current law, we respectfully request that you accept SB275.

FI&I Committee
2-25-09
Attachment 13