

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 14, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused  
Representative Candy Ruff - Excused  
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

John McCabe, Uniform Law Commissioner  
Joe Lieber, Kansas Cooperative Council  
Allie Devine, Kansas Livestock Association  
Kathy Olsen, Kansas Bankers Association  
Leslie Kaufman, Kansas Farm Bureau  
Chuck Stones, Kansas Bankers Association  
Rick Ferris, Ferris Brothers, Inc., Custom Harvesting,  
Melissa Wangemann, Legal Counsel, Secretary of State's Office  
Gail Bright, Assistant Attorney General, Consumer Protection Division

Hearings on **SB 366 - New Article 9 Uniform Consumer Code**, was opened.

John McCabe, Uniform Law Commissioner, informed the committee that the changes are intended to address the fact that paper-based commercial transactions are giving way to electronic transactions; filing systems need to be revised to handle the increase volumes, new kinds of property and transactions need to be recognized in law. (Attachments 1 - 4)

He explained that Article 9 provides the rules governing any transaction that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property to satisfy that debt. The creditor's interest is called a "security interest".

There are two key concepts: attachment and perfection. The terms describe the two key events in the creation of a security interest. Attachment usually occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it takes place. Perfection takes place when the creditor establishes his or her priority in relation to other creditor of the debtor in the same collateral. The creditor with priority may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Generally, the first to file has the first priority.

The following is a summary of relevant changes:

- , The Scope Issue - The revision expands the scope which is what kinds of property in which a security interest can be taken by a creditor under Article 9. Also, certain kinds of transactions will now come under Article 9, such as: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens are included for determination of perfection and priority.
- , Perfection - Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. The revisions make it clearer that filing a financing statement will perfect a security interest, even if there is another method of perfection. Control is the method of perfection for a letter of credit rights and deposit accounts. A creditor would now have control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method of filing a financing statement to perfect a security interest is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic

perfection for a purchase money security interest would be increased from 10 days to twenty days.

- , Choice of Law - In interstate secured transactions it is necessary to determine which state's laws apply to perfection, the effect of perfection and priority of security interests. Revisions would choose the state that is the location of the debtor. If the debtor is an entity created by registration in a state, the location of the debtor in which the entity is created by registration. If an entity is a corporation the location of the debtor is the state in which the corporate charter is filed or registered.
- , Filing System - Article 9 includes a centralized filing system. One place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. The office that files financing statements has no responsibility for the accuracy of information on the statements and would be fully absolved from any liability for the contents of any statements received and filed.
- , Consumer Transactions - Would make a clear distinction between transactions in which the debtor is a consumer. The revisions would change the way a consumer transaction is handled: a consumer cannot waive redemption rights in a financing agreement; a consumer is a buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him and the method for calculating the deficiency; and a secured creditor may not accept collateral as partial satisfaction of a consumer obligation.
- , Default & Enforcement - Provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy a debt, when the debtor is in default. New rules would require a secured party to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights. A secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale.

Joe Lieber, Kansas Cooperative Council, appeared before the committee to request that the proposed bill be amended to include Appendix II of the National Conference of Commissioners on Uniform Law, also known as "input liens." Many farm producers are not able to get funds to plant new crops from their lenders because lenders no longer understand agriculture, even though they might be locally owned. Many producers may go to the vendors and ask for inputs on credit, but vendors do not want to do it because if a lien is filed they would be secondary to the lender. ([Attachment 5](#))

Allie Devine, Kansas Livestock Association, appeared before the committee in support of the bill with the exception to the bill including statutory liens being subject to Article 9. She requested an amendment which would clarify the difference between a statutory lien and an agricultural lien. ([Attachment 6](#))

Kathy Olsen, Kansas Bankers Association, appeared before the committee as a proponent of the bill. She suggested ten amendments, of which several would reinstate current law, several were technical, and others would attempt to assure that the rules would apply to all transactions. ([Attachment 7](#))

Chuck Stones, Kansas Bankers Association, appeared in opposition to adding Appendix II to the proposed bill. He stated that, if adopted, it would have an adverse impact on the availability of credit to farmers. It would also change the role of the operating lender, who has traditionally worked closely with the farming community to develop financial plans that provide credit for the entire farm operation. ([Attachment 8](#))

Leslie Kaufman, Kansas Farm Bureau, also appeared in opposition to the suggestion of amending in Appendix II. She believes that the adoption of Appendix II would put statutory agriculture liens under the control of Article 9 and could alter the prioritization of ag liens. She suggested that the committee consider adoption of the amendments presented by the Kansas Livestock Association. ([Attachment 9](#))

Rick Ferris, Ferris Brothers, Inc., Custom Harvesting, stated that Harvest liens should remain in priority status to all other lien or security interests. ([Attachment 10](#))

Melissa Wangemann, Legal Counsel, Secretary of State's Office, requested an amendment which would grant the Secretary of State's Office the discretion to refuse bogus liens. A second amendment would require the court's conclusion of law to include a directive to the filing officer to terminate the lien if the court determines the lien to be invalid. ([Attachment 11](#))

Phill Harness, Director of Workers Compensation, did not appear before the committee but requested his testimony be included in the minutes. ([Attachment 12](#))

## CONTINUATION SHEET

Hearings on SB 366 were closed.

Hearings on **SB 559 - Uniform Electronic Transactions Act**, was opened.

John McCabe, Uniform Law Commissioner, explained that the Uniform Electronic Transactions Act (UETA) applies only to transactions in which both parties have agreed to conduct their business by electronic means. It also allows parties to opt out. He provided a brief summary which highlighted some important aspects of the bill. (Attachments 13 - 15)

Gail Bright, Assistant Attorney General, Consumer Protection Division, appeared in opposition of the bill. She stated that The Attorney General was not aware that the Uniform Law Commissioners's were planning on adopting the suggested legislation, nor was she asked to comment on the bill. She believes that the bill should only apply to online transactions. (Attachment 16)

Hearings on **SB 559** were closed.

The committee meeting adjourned at 6:00 p.m. The next meeting was scheduled for March 15, 2000.