

## SENATE BILL No. 467

By Committee on Judiciary

2-6

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9 AN ACT concerning personal property taxation; relating to collection of  
10 delinquent taxes; liens to secure payment, priority and perfection; se-  
11 cured transactions, notice; amending K.S.A. 79-2020 and 79-2109 and  
12 K.S.A. 2003 Supp. 84-9-611, 84-9-615 and 84-9-621 and repealing the  
13 existing sections; also repealing K.S.A. 79-2110.  
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15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) On January 1 of each year, a tax lien shall attach  
17 to personal property to secure the payment of all personal property taxes,  
18 penalties, charges and interest ultimately imposed on all property for such  
19 year, whether or not the taxes are imposed in the year the lien attaches.  
20 Such lien shall continue until such taxes and penalty, charges and interest  
21 which may have accrued on such property, are paid in full.

22 (b) The tax lien on personal property imposed pursuant to subsection  
23 (a) is a lien in solido and attaches to all taxable personal property that the  
24 property owner owns on January 1 of the year the lien attaches and shall  
25 be in preference to all other claims against such property whether or not  
26 such claims existed before attachment of the tax lien. The tax lien shall  
27 remain on the property and any person taking possession of the property  
28 does so subject to the lien. The one owing such tax shall be liable civilly  
29 to any person taking possession of such property for any taxes owing on  
30 such property, except that if the property is sold in the ordinary course  
31 of retail trade such property shall not be liable in the hands of the pur-  
32 chasers. No personal property which has been sold or transferred in any  
33 manner after such property has been assessed shall be liable for the tax  
34 in the hands of the transferee after the expiration of five years from the  
35 time such tax became originally due and payable.

36 (c) The tax lien provided by this section is perfected immediately on  
37 attachment and requires no further action for perfection.

38 (d) Whether or not a tax lien provided by this section takes priority  
39 over a tax lien of the United States is determined by reference to federal  
40 law. In the absence of applicable federal law, a tax lien provided by this  
41 section takes priority over a tax lien of the United States.

42 Sec. 2. K.S.A. 79-2020 is hereby amended to read as follows: 79-  
43 2020. If any owner of personal property surrenders or transfers such

1 property to another after the date such property is assessed and before  
2 the tax ~~thereon on such personal property~~ is paid, whether by voluntary  
3 repossession, *abandonment* or any other voluntary act in reduction or  
4 satisfaction of indebtedness, ~~then~~ the taxes on the personal property of  
5 such taxpayer ~~shall fall due immediately, and a lien shall attach to the~~  
6 ~~property so surrendered or transferred, and shall immediately~~ become  
7 due and payable ~~immediately. Such lien shall be in preference to all other~~  
8 ~~claims against such property.~~ The county treasurer, after receiving knowl-  
9 edge of any such surrender or transfer, shall issue immediately a tax war-  
10 rant for the collection ~~thereof of such taxes~~ and the sheriff shall collect ~~it~~  
11 ~~such taxes~~ as in other cases. ~~The lien shall remain on the property and~~  
12 ~~any person taking possession of the property does so subject to the lien.~~  
13 ~~The one owing such tax shall be liable civilly to any person taking pos-~~  
14 ~~session of such property for any taxes owing thereon, but the property~~  
15 ~~shall be liable in the hands of the person taking possession thereof for~~  
16 ~~such tax. If the property is sold in the ordinary course of retail trade it~~  
17 ~~shall not be liable in the hands of the purchasers. No personal property~~  
18 ~~which has been transferred in any manner after it has been assessed shall~~  
19 ~~be liable for the tax in the hands of the transferee after the expiration of~~  
20 ~~three years from the time such tax originally became due and payable.~~

21 Sec. 3. K.S.A. 79-2109 is hereby amended to read as follows: 79-  
22 2109. If any owner of personal property after the date as of which personal  
23 property is assessed and before the tax ~~thereon on such personal property~~  
24 is paid, shall sell all of a class of the ~~same personal property~~ to any one  
25 person, ~~or shall sell all of the personal property to any one person and~~  
26 ~~not retain a sum sufficient to pay the taxes,~~ the tax for that year shall ~~be~~  
27 ~~a lien upon the property so sold, and shall~~ at once become due and pay-  
28 able, ~~and~~. The county treasurer shall at once issue a tax warrant for the  
29 collection ~~thereof, and of such tax.~~ The sheriff shall ~~forthwith~~ *at once*  
30 collect ~~it such tax~~ as in other cases. ~~The property so sold shall be liable~~  
31 ~~in the hands of the purchaser for such tax, but in the event that a pur-~~  
32 ~~chaser shall pay the tax or any part thereof or, if said property be seized~~  
33 ~~and sold for such tax the seller thereof, shall be civilly liable to the pur-~~  
34 ~~chaser for the amount of the taxes the purchaser has paid or the amount~~  
35 ~~of taxes due on the property so seized, but if the property be sold in the~~  
36 ~~ordinary course of retail trade it shall not be so liable in the hands of the~~  
37 ~~purchasers.~~

38 Sec. 4. K.S.A. 2003 Supp. 84-9-611 is hereby amended to read as  
39 follows: 84-9-611. (a) **Notification date.** In this section, notification date  
40 means the earlier of the date on which:

- 41 (1) A secured party sends to the debtor and any secondary obligor an  
42 authenticated notification of disposition; or
- 43 (2) the debtor and any secondary obligor waive the right to

1 notification.

2 (b) **Notification of disposition required.** Except as otherwise provided in subsection (d), a secured party that disposes of collateral under  
3 K.S.A. ~~2003~~ 2004 Supp. 84-9-610 and amendments thereto shall send to  
4 the persons specified in subsection (c) a reasonable authenticated notification of disposition.  
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7 (c) **Persons to be notified.** To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

8 (1) The debtor;

9 (2) any secondary obligor; ~~and~~

10 (3) *the county treasurer of any county in which the collateral disposed of is located, or to the knowledge of the secured party after reasonable investigation was located within the current or previous three calendar years; and*  
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15 (4) if the collateral is other than consumer goods:

16 (A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

17 (B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

18 (i) Identified the collateral;

19 (ii) was indexed under the debtor's name as of that date; and

20 (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

21 (C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in K.S.A. ~~2003~~ 2004 Supp. 84-9-311(a) and amendments thereto.  
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26 (d) **Subsection (b) inapplicable: perishable collateral; recognized market.** Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.  
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30 (e) **Compliance with subsection ~~(c)(3)(B)~~ (c)(4)(B).** A secured party complies with the requirement for notification prescribed by subsection ~~(c)(3)(B)~~ (c)(4)(B) if:  
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34 (1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection ~~(c)(3)(B)~~ (c)(4)(B);  
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41 and

42 (2) before the notification date, the secured party:

43 (A) Did not receive a response to the request for information; or

1 (B) received a response to the request for information and sent an  
2 authenticated notification of disposition to each secured party or other  
3 lienholder named in that response whose financing statement covered  
4 the collateral.

5 Sec. 5. K.S.A. 2003 Supp. 84-9-615 is hereby amended to read as  
6 follows: 84-9-615. (a) **Application of proceeds.** A secured party shall  
7 apply or pay over for application the cash proceeds of disposition under  
8 K.S.A. 2003 Supp. 84-9-610, and amendments thereto, in the following  
9 order to:

10 (1) The reasonable expenses of retaking, holding, preparing for dis-  
11 position, processing, and disposing, and, to the extent provided for by  
12 agreement and not prohibited by law, reasonable attorney fees and legal  
13 expenses incurred by the secured party;

14 (2) *the county treasurer of any county in which the collateral disposed*  
15 *of is located, or was located in any prior taxable year in satisfaction of all*  
16 *outstanding personal property tax liens imposed pursuant to section 1,*  
17 *and amendments thereto. In the event the proceeds are payable to two or*  
18 *more counties and are insufficient to satisfy all tax liens, the proceeds shall*  
19 *be prorated among the counties based upon the relative amount of the tax*  
20 *liens held by each county;*

21 (3) the satisfaction of obligations secured by the security interest or  
22 agricultural lien under which the disposition is made;

23 ~~(3)~~ (4) the satisfaction of obligations secured by any subordinate se-  
24 curity interest in or other subordinate lien on the collateral if:

25 (A) The secured party receives from the holder of the subordinate  
26 security interest or other lien an authenticated demand for proceeds be-  
27 fore distribution of the proceeds is completed; and

28 (B) in a case in which a consignor has an interest in the collateral,  
29 the subordinate security interest or other lien is senior to the interest of  
30 the consignor; and

31 ~~(4)~~ (5) a secured party that is a consignor of the collateral if the se-  
32 cured party receives from the consignor an authenticated demand for  
33 proceeds before distribution of the proceeds is completed.

34 (b) **Proof of subordinate interest.** If requested by a secured party,  
35 a holder of a subordinate security interest or other lien shall furnish rea-  
36 sonable proof of the interest or lien within a reasonable time. Unless the  
37 holder does so, the secured party need not comply with the holder's  
38 demand under subsection ~~(a)(3)~~ (a)(4).

39 (c) **Application of noncash proceeds.** A secured party need not  
40 apply or pay over for application noncash proceeds of disposition under  
41 K.S.A. ~~2003~~ 2004 Supp. 84-9-610, and amendments thereto, unless the  
42 failure to do so would be commercially unreasonable. A secured party  
43 that applies or pays over for application noncash proceeds shall do so in

1 a commercially reasonable manner.

2 (d) **Surplus or deficiency if obligation secured.** If the security  
3 interest under which a disposition is made secures payment or perform-  
4 ance of an obligation, after making the payments and applications re-  
5 quired by subsection (a) and permitted by subsection (c):

6 (1) Unless subsection ~~(a)(4)~~ (a)(5) requires the secured party to apply  
7 or pay over cash proceeds to a consignor, the secured party shall account  
8 to and pay a debtor for any surplus; and

9 (2) the obligor is liable for any deficiency.

10 (e) **No surplus or deficiency in sales of certain rights to pay-**  
11 **ment.** If the underlying transaction is a sale of accounts, chattel paper,  
12 payment intangibles, or promissory notes:

13 (1) The debtor is not entitled to any surplus; and

14 (2) the obligor is not liable for any deficiency.

15 (f) **Calculation of surplus or deficiency in disposition to person**  
16 **related to secured party.** The surplus or deficiency following a dispo-  
17 sition is calculated based on the amount of proceeds that would have  
18 been realized in a disposition complying with this part to a transferee  
19 other than the secured party, a person related to the secured party, or a  
20 secondary obligor if:

21 (1) The transferee in the disposition is the secured party, a person  
22 related to the secured party, or a secondary obligor; and

23 (2) the amount of proceeds of the disposition is significantly below  
24 the range of proceeds that a complying disposition to a person other than  
25 the secured party, a person related to the secured party, or a secondary  
26 obligor would have brought.

27 (g) **Cash proceeds received by junior secured party.** A secured  
28 party that receives cash proceeds of a disposition in good faith and without  
29 knowledge that the receipt violates the rights of the holder of a security  
30 interest or other lien that is not subordinate to the security interest or  
31 agricultural lien under which the disposition is made:

32 (1) Takes the cash proceeds free of the security interest or other lien;

33 (2) is not obligated to apply the proceeds of the disposition to the  
34 satisfaction of obligations secured by the security interest or other lien;  
35 and

36 (3) is not obligated to account to or pay the holder of the security  
37 interest or other lien for any surplus.

38 Sec. 6. K.S.A. 2003 Supp. 84-9-621 is hereby amended to read as  
39 follows: 84-9-621. (a) **Persons to which proposal to be sent.** A secured  
40 party that desires to accept collateral in full or partial satisfaction of the  
41 obligation it secures shall send the secured party's proposal to:

42 (1) Any person from which the secured party has received, before  
43 the debtor consented to the acceptance, an authenticated notification of

- 1 a claim of an interest in the collateral;
- 2 (2) *the county treasurer of any county in which the collateral is lo-*  
3 *cated or to the knowledge of the secured party after reasonable investi-*  
4 *gation was located within the current or previous three calendar years;*  
5 *and*
- 6 (3) any other secured party or lienholder that, 10 days before the  
7 debtor consented to the acceptance, held a security interest in or other  
8 lien on the collateral perfected by the filing of a financing statement that:
- 9 (A) Identified the collateral;
- 10 (B) was indexed under the debtor's name as of that date; and
- 11 (C) was filed in the office or offices in which to file a financing state-  
12 ment against the debtor covering the collateral as of that date; and
- 13 ~~(3)~~ (4) any other secured party that, 10 days before the debtor con-  
14 sented to the acceptance, held a security interest in the collateral per-  
15 fected by compliance with a statute, regulation, or treaty described in  
16 K.S.A. ~~2003~~ 2004 Supp. 84-9-311(a) and amendments thereto.
- 17 (b) **Proposal to be sent to secondary obligor in partial satisfac-**  
18 **tion.** A secured party that desires to accept collateral in partial satisfaction  
19 of the obligation it secures shall send its proposal to any secondary obligor  
20 in addition to the persons described in subsection (a).
- 21 Sec. 7. K.S.A. 79-2020, 79-2109 and 79-2110 and K.S.A. 2003 Supp.  
22 84-9-611, 84-9-615 and 84-9-621 are hereby repealed.
- 23 Sec. 8. This act shall take effect and be in force from and after its  
24 publication in the statute book.