

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~am~~ p.m. on March 22, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Whitaker
Representative Justice was excused.

Committee staff present:

Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Keith Meyer, Professor, Kansas University School of Law
Jon Josserand, Office of the Secretary of State
Tom Tunnell, Executive Director, Kansas Grain and Feed Dealers Association
Dee Likes, Kansas Livestock Association
Nancy Kantola, Kansas Cooperative Council
Becky Crenshaw, Committee of Kansas Farm Organizations
Rosa Mary Moore, Register of Deeds Association
Jim Maag, Kansas Bankers Association
Senator Elwaine Pomeroy
Judge Robert Morrison, Advisory Committee on Child in Need of Care Law, Judicial Council
Judge David Mikesic, Wyandotte County Juvenile Department
Charles Hamm, Legal Counsel, Department of SRS

Substitute for SB No.7 - An act relating to security interests.

Staff reviewed provisions of the bill.

Keith Meyer, professor of commercial and agricultural law at the University of Kansas School of Law, lecturer on farm problems, and farm owner, supported the bill. He said Iowa had a law similar to this bill which is working well with few exceptions. He gave a background of problems that a central filing system would address, the key provision being the classification of collateral on farm property and filing statements on it appropriately. His reasons for the need of the bill and recommendations are in Attachment No.1. He had no suggestions for any other filing method that would be as efficient as a simple, straightforward, central filing plan which he believed would cut down on litigation. Because the farming industry has changed with more parties and money involved, Substitute SB No.7 is needed.

Jon Josserand, representing the Secretary of State Office, distributed amendments (Attachment No.2) agreed upon by that office and the industry. The fiscal impact to the Office of the Secretary of State, the administering office, is attached (Attachment No.3). The estimate is based on Iowa's central filing system.

Tom Tunnell, Kansas Grain and Feed Dealers Association, gave a statement (Attachment No.4) supporting the bill, noting the large amounts of money involved in securities and the present need to check all 105 counties for filings. In discussion, a member noted the potential problem of out-of-state grain producers, selling grain in Kansas, being identified under the filing system.

Dee Likes said the Kansas Livestock Association supports the bill as the current system is cumbersome and confusing with double payment jeopardy being a potential problem. He supported the amendments in Attachment No.2.

Nancy Kantola said all groups comprising the membership of the Kansas Cooperative Council support the bill and the suggested amendments.

Becky Crenshaw, Committee of Farm Organizations, supported the bill and the amendments. She noted there are eleven double payment lawsuits pending against grain elevators. The present system of filing with the county Register of Deeds was adequate until the grain industry started crossing county lines.

Rosa Mary Moore, representing the Registers of Deeds Association, gave a statement (Attachment No.5) opposing the bill. She noted there would be a big loss in revenue locally. Her

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 526-S, Statehouse, at 3:30 ~~a.m.~~ XXX/p.m. on March 22, 1983

group supports dual filing. She noted that the Iowa system results in delays up to 4 weeks in answering requests, and a central filing system in the Office of the Secretary of State would result in delays which could be handled locally in a matter of hours.

There was discussion regarding the Iowa system. Professor Meyer said it is not mandatory in Iowa that the filing system be administered by the Secretary of State. A private search company maintains the central filing and can answer requests by phone. A member noted that Kansas would be the only state mandating the Secretary of State maintain a telephone service as opposed to private search companies. Mr. Josserand said 95% of requests are not handled by phone but come through the mail or walk-ins.

The possibility of insurance covering security losses was mentioned. Mr. Tunnell said Ohio has an indemnity fund. A member noted this might be an alternative for Kansas.

Jim Maag's statement supporting Substitute of SB No.7 is attached (Attachment No.6). He said, although 100% of the bankers do not support the bill, 75% of them do. They also endorse the suggested amendments.

Ms. Moore said her group had not seen the suggested amendments until just prior to this meeting, but members would consider them.

SB 105 - An act relating to juveniles.

Senator Pomeroy, sponsor, said the juvenile code advisory committee of the Judicial Council had requested the bill which was an ongoing attempt to get the recently revised juvenile code adjusted to needs. He said he would request a conference committee, if the bill was amended, as a review measure.

Judge Robert Morrison, a member of the Judicial Council's committee requesting SB 105, reviewed its provisions as they affect the Child In Need Of Care Law (Juvenile Code) as outlined in Attachment No.7. He then presented suggested amendments (Attachment No.8) which he said had not been considered by the Judicial Council committee because the need for them arose the first of the year, since the committee's last meeting, when SRS said it was not responsible for payment for placement by law enforcement officers of juveniles in foster care facilities. The Chairman expressed concern that the amendments had not been worked by the Senate committee and were being presented at this late hour of the session. An attempt was made to select the most important amendments. Judge Morrison called attention to amendments to be offered pertaining to the data collection and central repository system (Attachment No.9). The Chairman said more time was needed to consider all of these amendments and those of other conferees. A subcommittee would meet with interested persons the next day for this purpose.

Judge David Mikesic said his main concern was in clarifying who picks up the tab for the 48-hour care costs of children picked up by law enforcement officers. SRS is willing to pay but has no authority to do so. He offered two amendments (Attachment No.10) which were not adopted by the Senate committee regarding interested party filings which judges in his district support. Judge Mikesic said most of Judge Morrison's amendments were cleanup.

Charles Hamm, SRS, said he would have an amendment to offer at the subcommittee meeting. He endorsed Judge Morrison's amendments.

The meeting adjourned at 6:00 p.m.

Need for central filing for perfection of
security interests in Farm Products

by

Keith G. Meyer
Professor of Law
University of Kansas

- I. I believe amending the definition of farm products in 84-9-109(3) as was proposed last year in S.B. 615 is an inappropriate way to deal with the problem.
- II. I believe the appropriate way to deal with the problems dealing with farm products is to move to central filing for farm products and make that information easily accessible. Accordingly, my suggestion to the committee would be to recommend that 84-9-401(1) and 9-407 be changed to read:
 - A. 84-9-401(1)
 1. The proper place to file in order to perfect a security interest is as follows:
 - a. when the collateral is timber to be cut or is minerals or the like (including oil and gas), or accounts subject to section 84-9-103, subsection 5, or when the financing statement is filed as a fixture filing (section 84-9-313) and the collateral is goods which are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;
 - b. when the collateral is consumer goods and when the debtor resides in this state, then in the office of the register of deeds in the county of the debtor's residence;
 - c. in all other cases, in the office of the secretary of state.
 - B. 8-9-407(3)
 3. Charging no more than a reasonable estimate of cost, in his discretion the secretary of state or a register of deeds may adopt one or more of the following methods of providing information concerning public filings in his office to persons with an interest in this information that is related exclusively to the purposes of this Article:

- a. subscription telephone service;
- b. subscription daily, weekly or monthly written summaries;
- c. granting suitable space for the preparation of written summaries and the provision of telephone service by those persons deemed by the secretary of state or a register of deeds to have a legitimate interest in regular examination of the secretary of state's or the register of deeds public files; or
- d. any other appropriate method of disseminating information.

Except with respect to wilful misconduct, the state of Kansas, the secretary of state, a county, a register of deeds and their employees and agents are immune from liability as a result of errors or omissions in information supplied pursuant to this subsection.

III. Information that should be made available.

- A. Iowa has essentially the statute proposed for 84-9-407(3).
- B. Search services have developed in Des Moines.
- C. Phone searches through these private companies have a turn around time in the same day, i.e. a request about a debtor is made in the morning and in the afternoon of the same day the person making the request has the information. In fact, I am told if one is willing to hold, the information will be obtained while the caller waits.
- D. The information made available over the phone is:
 1. Name of secured party(s), number of the financing statement, date of filing, and description of the collateral.
 2. The private search company will in writing confirm the phone information. A copy of the financing statement is sent, if wanted.
- E. The name of one of these private search firms is:

Iowa Public Record Search, Inc., Box 6129 East Des Moines Station, Des Moines, Iowa 50309, phone 515/244-2463.

IV. Typical farmer situations arising under Art. 9 of the UCC

- A. Farmer-rancher in need of operating capital seeks a loan from lender who needs security for the loan. The security will normally consist of crops or livestock. Often time problems arise when the farmer sells the crops or livestock and does not remit the proceeds from the sale to the lender.
- B. A major problem for the lender is that in reality it must expect, and want, the farmer-debtor to sell the collateral to make payments on the outstanding debt. However, it does not want to give up its claim to the collateral or the proceeds of the sale of the collateral.

V. Article 9 and the lender--K.S.A. 84-9-100-500.

- A. In general, to have an enforceable security interest against the debtor there must be attachment. For the interest to be valid against third parties there must be attachment and perfection
- B. Attachment
 - 1. Generally, there must be value given, the debtor must have rights in the collateral and a written agreement must be signed by the debtor granting the lender a security interest and describing the collateral. If growing crops or crops to be grown are involved, there must also be a description of the real estate upon which the crops are growing.
 - 2. The description of the collateral does not have to be in terms of the code such as farm products or inventory or equipment. In fact, it is much better to describe the collateral in ordinary terms.
 - 3. Typical descriptions are:
 - a. grain farmer -- all crops, including but not limited to, wheat, corn, soybeans, milo, and alfalfa, whether growing or to be grown, harvested crops or after-acquired crops where-ever stored and any warehouse receipt or scale ticket representing the stored grain. Plus real estate description.

- b. livestock operator -- All livestock now owned or hereafter acquired by Debtor, together with all increases, replacements, substitutions, and additions thereto whether acquired by purchase, trade, procreating or otherwise.

All cattle of or every type presently owned or after-acquired by any means, including but not limited to breeding stock, unborn, bulls, cattle on feed or pasture wherever located. There also may be some brand or tag or other identifying description.

C. Perfection

1. Perfection is required to protect the security interest against competing third parties such as purchasers, other creditors and the trustee in bankruptcy.
2. There are essentially two ways to perfect.
 - a. Possession of the collateral.
 - b. Filing a financing statement.
3. When a financing statement must be filed, the question is where must it be filed. This turns on what kind of collateral is involved.
4. There are essentially three possibilities when dealing with crops and livestock: farm products, inventory, and documents of title.
5. Perfection of farm products

A financing statement must be filed in the register of deeds' office in the county where the debtor resides.

If growing crops or crops to be grown are involved and the land is located in a different county than the debtor's residence, a second financing statement must be filed.

There also may be need for double filing if the debtor is incorporated and the land crops are growing on or will be grown on is located in a

county other than the corporation's place of business.

6. Perfection of inventory

The financing statement must be filed with the secretary of state.

7. Warehouse receipts

These are documents of title under Article 9. [9-105(1)(f), 1-201(15), 7-201]. The receipt can be either negotiable or nonnegotiable [7-104].

Nonnegotiable receipt

a. Perfection under 9-304(3) is accomplished in one of three ways:

(1) Issuance of the receipt of the name of the secured party. (This should be set out in the security agreement).

(2) Elevator or other bailee's receipt of notification of the secured party's interest.

(3) Filing as to the goods. (Recall that the crops stored off the farm may well be considered inventory. To be on the safe side, file as to both farm products and inventory.)

8. Negotiable warehouse receipts

a. A security interest in a negotiable document of title may be perfected either by filing or by possession. [9-302(1)(a), 9-304(1) and 9-305.] Possession is clearly the safest way.

D. Farm products Defined

1. The current definition of farm products is found in K.S.A. 84-9-109(3). It provides:

Goods are farm products if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), (and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming

operations. If goods are farm products, they are neither equipment nor inventory.

2. There are three requirements to this definition:
 - a. the goods must be crops or livestock or products of crops or livestock,
 - b. they must be in the possession of the debtor and,
 - c. the debtor must be engaged in raising, fattening, grazing or other farming operation.
3. The first requirement is easily met. The other two present some problems.
4. Possession
 - a. It is not defined in the Code
 - b. It can be an issue when there is harvested grain stored in a commercial warehouse

The debtor does not have physical possession, and there most likely will be a document of title involved representing ownership of the grain.

Is the grain still farm products? I think it is.

The farmer is still the owner of the grain, he is paying storage for space rental and he decides when to sell the grain.

There is a bailment relationship.

While the UCC does not define possession, there is evidence that the drafters of the Code intended for possession to be broadly construed. See 9-305, 9-205.

If the stored grain is not considered farm products, it will have to be considered inventory.

- c. Possession can also be an issue when debtor's cattle are not in his physical possession but are being fed out in a commercial feed lot.
 - i. The recent case of Garden City PCA v. International Cattle Systems, 32 UCC Rep. 1207 (D.C. Kan. 1981) is relevant.

PCA had a security agreement which covered all of debtors' cattle, including after-acquired cattle and crops. The cattle were not in the physical possession of the debtor-owner. There apparently never were. Rather, ICS apparently always had possession of the cattle. ICS sold the cattle to meat packers. PCA sued ICS and packers in conversion.

The court held the cattle were not farm products but were inventory. Its reasoning was that the debtor never had possession and ICA was not viewed as debtor's agent for purposes of establishing possession. In short, the court seems to read the possession requirement to be limited to physical possession.

Yet, it was clear that the debtor was the owner of the cattle, not the feedlot operator. Also, it appeared that the debtor would make the decision when to sell and he was apparently paying the feedlot operator to fatten the cattle.

Having determined that the cattle in the feedlot were inventory, the court concluded that the Packer which bought the cattle from ICS bought them in the ordinary course of business and took free of any perfected security interest in the cattle. The court relied upon 9-307(1) which provides that the buyer takes free of any security interest created by his seller. While not expressly stating it, the court must have concluded that ICS was acting as an agent of the debtor here when it sold the cattle to packer inasmuch as 9-307(1) only applies to security interests created by the seller. If ICS is considered the seller, 9-307(1) would not apply. Assuming that the court is correct about the cattle being inventory and PCA was not properly perfected and ICS is considered the seller what result? See 9-201, 301, 1-109 and 2-403(2).

The Kansas legislature responded to this case by adding the underlined words to the definition of farm products :

or if they are livestock being held in a feed lot, as defined in K.S.A. 47-1501, and any amendments thereto.

Governor Carlin vetoed the bill.

- ii. S.B. 615 covers this situation as far as the definition of debtor's cattle in another's feedlot but what about cattle on someone else's grass. Also, how will the buyer from the feedlot know whose cattle he is buying and whether they are subject to a financing statement?
5. The third requirement of the definition is that debtor must be engaged in raising, fattening, grazing or other farming operation.
- a. A cattle feeding operation whose primary purpose is to feed out cattle will satisfy this requirement. A cattle dealer will be considered to have cattle classified as inventory not farm products. See Security National Bank v. Belleville Livestock Commission et. al, 619 F.2d 840, 850 (10th Cir. 1979).
 - b. Other farming operations is also not defined.
 - i. Some courts have construed this narrowly and some broadly. For example, a U.S. Bankruptcy court in Colorado construed the clause broadly in Smith Enterprises v. United Bank of Denver, 28 U.C.C. Rep. 534 (Bankr. Ct. Colo. 1980).

The debtor in this case was in the egg production business. The chickens were housed in so-called production units which were large, circular structures containing four concentric circles of caged hens, 10 tiers high. In addition to chickens there were always eggs in the debtor's possession. The Bank had taken a security interest in all inventory and equipment of the debtor. The security agreement did not refer to farm products and the Bankruptcy court held that this prevented the bank from having a security interest in the eggs or the chickens. The court reasoned that the hens were livestock and that the eggs were products of livestock. The Bank's unsuccessful argument was that the eggs had lost their characteristic as farm products because here the sole business of the debtor was the production of eggs, and there were no residents living on the property where the egg production units were. In short, the Bank was saying this was not a farming operation and falls outside of the definition of farm products.

- ii. For another bankruptcy case having language suggesting that the Smith Enterprises" construction of farm products may be wrong, see In re Blease, 24 UCC Rep. 450 (DCDNJ Bankr. J. 1978). There the judge suggested that farming operations is a phrase to be narrowly construed and does not include farm related, farm support or farm-like activities. Farm operations in the definition of farm products are to be defined in terms of a conventional farm operation.
- iii. The prudent lender would treat the eggs and hens as both inventory and farm products for perfection purposes and describe the collateral in the security agreement as all hens and eggs.

E. Priority Problems

1. 9-307(1) provides in part: "A buyer in ordinary course of business . . . other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. For purposes of this section only, "farm products" does not include milk, cream and eggs."
2. It means that to be safe the buyer of farm products has to check all of the appropriate records and determine if the collateral is covered and whether the debtor is in default. This is an almost impossible burden to place on buyers of livestock and crops, particularly the very large buyers. While it may be that because of cost and inconvenience of checking the records, the buyers of crops from farmers will choose to rely upon the debtor's past performance and the fact he has possession of the crop rather than check the records, it is clear under 9-307(1) the sale will not cut off the perfected security interest.
3. 84-9-306(2) must be considered and it states:

Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also

continues in any indentifiable proceeds including collections received by the debtor.

4. There has been an extreme amount of litigation concerning whether the lender has given up its security interest. The courts are split on what constitutes waiver.
5. The leading Kansas case is North Central Production Ass'n v. Washington Sales Co., 557 P.2d 35 (Kan. 1978). There a farmer granted a security interest to PCA in his cows, crops and milk. A proper financing statement was filed in the appropriate place and PCA had a perfected security interest in the collateral. The security agreement had the following provision:

The Debtor . . . will not . . . dispose of [the property described] without the written consent of the Secured Party; however, permission is granted for the Debtor to sell the property described herein for the fair market value thereof, providing that payment for the same is made jointly to the Debtor and the Secured Party" (emphasis supplied)

The farmer sold wheat twice to the local elevator receiving from the elevator checks made payable only to him. He deposited one of the checks in his own account and wrote the PCA a personal check for amount of the sale. The other check he endorsed over to the PCA.

Farmer also sold a total of 35 head of cattle at separate times over a year period which he did not report to the PCA and did not remit the proceeds. The cattle were sold through the Washington Sales Company and it was clear that neither it nor the buyers of the cattle had actual knowledge of PCA's security interest. They were however on constructive notice of PCA's security interest because of PCA's filed financing statement.

Farmer also sold milk without the consent of PCA but the PCA was not claiming an interest in the proceeds from the sale of the milk.

PCA did not warn or remind farmer that taking payment in his name only was a violation of the express terms of the security agreement.

The Kansas Supreme Court made several conclusions about these facts that are relevant to grain elevators.

- 1) The court held that the inclusion in the security agreement of a clause authorizing the farmer to sell the collateral with prior written consent or permitting sale if the payment for the collateral was made jointly to farmer and PCA did not waive the PCA's security interest and was not a consent to the sale in violation of the express terms of the agreement.
- 2) The PCA's conduct here did not amount to implied consent to the sale of the livestock.
- 3) PCA's past conduct did not amount to a course of dealing which showed it impliedly waived its security interest.
- 4) The doctrine of implied waiver should not be utilized in favor of one [buyer] who has constructive notice of a lien and did not check the public records which are in part maintained for a buyer's protection.
- 5) The security agreement and the prior sales did not amount to an express waiver.

The Court did hold against the PCA because of testimony of the President of the PCA which showed the farmer had been told he could sell the cattle provided he remitted the proceeds or had the check made jointly. The fact that he could sell the cattle providing he would remit the proceeds was considered an express consent to the sale and cut off the security interest.

Also, worthy of particular note is First National Bank and Trust Oklahoma v. Iowa Beef Processors, Inc., 626 F.2d 764 (10th Cir. 1980). The UCC puts a greater burden on the buyer of farm products to check for liens on the collateral because a good faith purchase of those products does not automatically cut off a creditor's security interest therein. However, although defendant beef processor did not check whether a security interest was involved, and if so, what the terms of the agreement were when it purchased from the debtors feedlot cattle in which plaintiff bank had perfected security interest, defendant's failure was irrelevant because the bank had given the debtors actual authority to sell and it was not necessary that authority be communicated to the purchaser.

Plaintiff bank's (secured party) consent to the sale by the debtor provided the seller (debtor)

remitted the proceeds of the sale to the bank by its own check, was not a true conditional sale authorization. Such a condition in essence makes the buyer an insurer of acts beyond its control, making performance of the debtor's duty to remit proceeds to the bank a condition of releasing from liability a third party acting in good faith. The buyer could not ascertain in advance whether the condition would be met, as it could if a condition precedent were involved; nor did the buyer have any control over the performance of the condition so long as it paid the debtor. Consequently, debtor's failure to remit to secured party the proceeds of its sale of collateral, as required by secured party's conditional consent to sale, would not prevent that consent from cutting off the security interest under § 9-306(2). Id. For a case holding that 9-306(2) is not affected by the last sentence of the 1972 UCC 9-402(7) which provides: a filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer. See Matter of Matto's, Inc., 8 B.R. 485 (West 1981).

6. Central filing, with a potential buyer having quick access to the filed financing statements, should take care most of the problems relating to purchases of farm products subject to a prior perfected security interest.
 - a. If the buyer chooses not to check the files he should lose if there was a filed financing statement covering the livestock or grain of the seller.
 - b. Buyer could easily determine if there is a security interest.
 - c. The buyer can make the checks jointly payable to debtor and creditor and then will not have to worry about paying twice.
 - d. Central filing may not solve the Garden City PCA v. International Cattle Sales problem if the buyer of the cattle does not know who owns the cattle.
 - e. This is a simple way to avoid most problems connected with farm products sales and perfection problems.

Substitute for SENATE BILL No. 7

By Committee on Judiciary

Re Proposal No. 12

2-22

0017 AN ACT concerning the uniform commercial code; relating to
0018 filing of certain statements; concerning dissemination of cer-
0019 tain information relating to security interests; amending K.S.A.
0020 84-9-401 and repealing the existing section

,84-9-407

sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 84-9-401 is hereby amended to read as fol-
0023 lows: 84-9-401. (1) The proper place to file in order to perfect a
0024 security interest is as follows:

0025 (a) when the collateral is equipment used in farming opera-
0026 tions; or farm products; or accounts or general intangibles arising
0027 from or relating to the sale of farm products by a farmer; or
0028 consumer goods, then in the office of the register of deeds in the
0029 county of the debtor's residence or if the debtor is not a resident
0030 of this state then in the office of the register of deeds in the county
0031 where the goods are kept; and in addition when the collateral is
0032 crops growing or to be grown in the office of the register of deeds
0033 in the county where the land is located;

0034 (b) when the collateral is timber to be cut or is minerals or the
0035 like (including oil and gas) or accounts subject to subsection (5)
0036 of section K.S.A. 84-9-103 and amendments thereto, or when the
0037 financing statement is filed as a fixture filing (section K.S.A.
0038 84-9-313 and amendments thereto) and the collateral is goods
0039 which are or are to become fixtures, then in the office where a
0040 mortgage on the real estate would be filed or recorded;

0041 (c) in all other cases, in the office of the secretary of state.

0042 (2) A filing which is made in good faith in an improper place
0043 or not in all of the places required by this section is nevertheless
0044 effective with regard to any collateral as to which the filing

0045 complied with the requirements of this article and is also effec-
0046 tive with regard to collateral covered by the financing statement
0047 against any person who has knowledge of the contents of such
0048 financing statement.

0049 (3) A filing which is made in the proper place in this state
0050 continues effective even though the debtor's residence or place of
0051 business or the location of the collateral or its use, whichever
0052 controlled the original filing, is thereafter changed.

0053 (4) The rules stated in ~~section~~ *K.S.A. 84-9-103 and amend-*
0054 *ments thereto* determine whether filing is necessary in this state.

0055 (5) Notwithstanding the preceding subsections, and subject to
0056 subsection (3) of ~~section~~ *K.S.A. 84-9-302 and amendments*
0057 *thereto*, the proper place to file in order to perfect a security
0058 interest in collateral, including fixtures, of a transmitting utility is
0059 the office of the secretary of state. This filing constitutes a fixture
0060 filing (~~section~~ *K.S.A. 84-9-313 and amendments thereto*) as to the
0061 collateral described therein which is or is to become fixtures.

0062 (6) For the purposes of this section, the residence of an
0063 organization is its place of business if it has one or its chief
0064 executive office if it has more than one place of business.

0065 New Sec. 2. (1) If collateral described in a financing state-
0066 ment is equipment used in farming operations, farm products or
0067 accounts or general intangibles arising from or relating to the sale
0068 of farm products by a farmer and the statement was filed in the
0069 office of the register of deeds before ~~July 1, 1982~~, and was
0070 effective on that date:

January 1, 1984

0071 (a) The financing statement shall continue to be effective
0072 until its effectiveness lapses or is terminated. Until the effective-
0073 ness of a financing statement is continued by a filing under
0074 subsection (1)(b), any amendment to the financing statement and
0075 any termination statement, statement of assignment or statement
0076 of release shall be filed in the office of the register of deeds where
0077 the original financing statement was filed.

0078 (b) Before ~~July 1, 1988~~, the effectiveness of the financing
0079 statement can be continued only by the filing with the secretary
0080 of state, within six months before the effectiveness of the state-
0081 ment lapses, of a financing statement which complies with K.S.A.

January 1, 1989

0082 84-9-402 and amendments thereto, except that the financing
0083 statement may be signed by either the secured party of record or
0084 the debtor, and which is accompanied by: (i) A carbon, photocopy
0085 or other suitable reproduction of the most recent effective prior
0086 financing statement, and any amendments and statements which
0087 relate to the secured party's rights thereunder, on file with the
0088 register of deeds and evidence of their proper filing; and (ii) a
0089 statement that the prior financing statement is still effective.

0090 If there are financing statements on file in two or more counties
0091 with respect to the same secured transaction, the multiple filings
0092 may be consolidated into a single filing in the office of the
0093 secretary of state at any time within six months before the effec-
0094 tiveness of any one of the financing statements will lapse. In that
0095 case, the financing statement shall be accompanied by a repro-
0096 duction of the most recent effective prior financing statement
0097 filed in each county, any amendments and statements filed in
0098 each county and relating too the secured party's rights under the
0099 financing agreement, evidence of their proper filing and a state-
0100 ment that the financing statement is still effective. When a fi-
0101 nancing statement consolidating filings in two or more counties
0102 is filed with the secretary of state, the period of time within which
0103 any future filings relating to the secured transaction must be
0104 made shall be determined by the date that the financing statement
0105 is properly filed with the secretary of state.

0106 If the effectiveness of a financing statement is continued by a
0107 filing pursuant to this subsection, the priority of the security
0108 interest of the secured party shall not be affected by the change in
0109 the place of filing.

0110 When the effectiveness of a financing statement is continued
0111 pursuant to this subsection, any subsequent amendment of the
0112 financing statement and any termination statement, statement of
0113 assignment or statement of release shall be filed with the secre-
0114 tary of state.

0115 (2) the provisions of this section shall expire on ~~July 1, 1988.~~

0116 New Sec. 3. (1) The secretary of state shall provide, ~~by tele-~~
0117 ~~phone and by subscription telephone service,~~ information con-
0118 cerning filings under article 9 of chapter 84 of the Kansas Statutes

January 1, 1989

0119 Annotated to persons with an interest in the information that is
0120 related exclusively to the purposes of that article.

0121 (2) The secretary of state may adopt one or more of the
0122 following methods of providing information concerning filings
0123 under article 9 of chapter 84 of the Kansas Statutes Annotated to
0124 persons with an interest in the information that is related exclu-
0125 sively to the purposes of that article:

0126 ~~(a) Provision of on-line access in register of deeds' offices to~~
0127 ~~filings in the secretary of state's data base;~~

(a) Telecopier access by interested parties to filings in the
office of the secretary of state;

0128 (b) subscription periodic written summaries;

or

0129 ~~(c) provision of suitable space for preparation of written~~
0130 ~~summaries and telephone service for persons determined by the~~
0131 ~~filing officer to have a legitimate interest in regular examination~~
0132 ~~of the filings; or~~

(c)

0133 ~~(d) any other appropriate method of disseminating the infor-~~
0134 ~~mation.~~

0135 (3) A register of deeds may adopt one or more of the following
0136 methods of providing information concerning filings under ar-
0137 ticle 9 of chapter 84 of the Kansas Statutes Annotated to persons
0138 with an interest in the information that is related exclusively to
0139 the purposes of that article:

0140 ~~(a) Subscription telephone service;~~

(a) Telecopier access by register of deeds' offices to filings in the
office of the secretary of state;

0141 (b) subscription periodic written summaries;

or

0142 ~~(c) provision of suitable space for preparation of written~~
0143 ~~summaries and telephone service for persons determined by the~~
0144 ~~filing officer to have a legitimate interest in regular examination~~
0145 ~~of the filings; or~~

(c)

0146 ~~(d) any other appropriate method of disseminating the infor-~~
0147 ~~mation.~~

0148 ~~(4) A filing officer may charge reasonable fees for providing~~
0149 ~~information pursuant to this section, in the amounts necessary to~~
0150 ~~recover the costs related to providing the information.~~

(4) If a search request is made and information provided by telecopier
access, a fee in addition to the fee specified in K.S.A. 84-9-407, and amendments
thereto, shall be collected from the requesting party. For the statement of
filings an additional fee of \$5 shall be collected and for copies of the financing
statements or related statements an additional fee of \$2 per page shall be
collected. If the request is made by a register of deeds then of the amounts
collected under this subsection, \$2 shall be credited to the county and the
remainder shall be transferred on a periodic basis to the secretary of state
who shall credit the amount to the uniform commercial code fee fund.

0151 (5) Except with respect to willful misconduct, the state,
0152 counties and filing officers, and their employees and agents, are
0153 immune from liability for damages resulting from errors or
0154 omissions in information supplied pursuant to this section.

0155 ~~Sec. 4. K.S.A. 84-9-401 is hereby repealed.~~

0156 ~~Sec. 5. This act shall take effect and be in force from and after~~
0157 ~~its publication in the statute book.~~

Section 4. K.S.A. 84-9-407 is hereby amended to read as follows:

(1) If the person filing any financing statement, continuation statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon written request of any person and tender of the proper fee, the filing officer shall issue such officer's ~~certificate~~ showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any ~~statement of assignment thereof~~ and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. If the filing officer is the secretary of state, the fee for such a ~~certificate~~ shall be ~~three dollars (\$3)~~ plus twenty-five cents (25¢) for each financing statement and for each ~~statement of assignment~~ reported therein. If the filing officer is other than the secretary of state, the fee for such a ~~certificate~~ shall be three dollars (\$3) plus twenty-five cents (25¢) for each financing statement and for each ~~statement of assignment~~ reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or ~~statement of assignment~~ after payment of a fee of one dollar (\$1) per page, except that if the filing officer is the secretary of state, the fee shall be in an amount fixed by the secretary of state and approved by the director of accounts and reports under K.S.A. 1980 Supp. 45-204.

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New Sec. 5. (1) On or before January 1, 1986, the secretary of state shall provide information concerning filings under article 9 of chapter 84 of the Kansas Statutes Annotated upon request by telephone to persons who have received prior approval of the secretary of state.

(2) Information provided under this section shall not include the descriptive text of the collateral.

(3) The secretary of state may charge a reasonable fee in addition to the fee specified in K.S.A. 84-9-407, and amendments thereto, from the requesting party. The fee collected shall be credited to the uniform commercial code fee fund.

(4) Except with respect to willful misconduct, the state, its employees, and agents are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this section.

New Sec. 6. There is hereby created the uniform commercial code fee fund. The secretary of state shall remit all fees received under article 9 of chapter 84 of the Kansas Statutes Annotated, as amended to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent of each such deposit shall be credited to the uniform commercial code fee fund. All expenditures from the uniform commercial code fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or a person or persons designated by him.

Section 7. K.S.A. 84-9-401 and 84-9-407 are hereby repealed.

Section 8. This act shall take effect and be in force from and after January 1, 1984, and its publication in the statute book.

JACK H. BRIER
SECRETARY OF STATE



ATTACHMENT # 3

OFFICE OF SECRETARY OF STATE

CAPITOL—2ND FLOOR

PHONE (913) 296-2236

TOPEKA, KANSAS 66612

March 22, 1983

Honorable Robert Frey, Chairman
House Judiciary Committee
Room 112-S, State Capitol
Topeka, Kansas 66612

Dear Representative Frey:

This office has been asked by a number of proponents of Senate Bill No. 7 to respond to the fiscal effects of a number of proposed amendments to the current version of the bill. The current version of the bill would require an additional appropriation to this agency of general fund money of approximately \$488,000. Even with that level of additional resources, it is virtually certain that the system desired by the proponents could not be operational July 1, 1983.

The proposed amendments to the current Substitute for Senate Bill No. 7 would

1. Delay the implementation date for centralized filing to January 1, 1984.
2. Allow for a two year development period to allow for creation of a computer system necessary to provide "telephone" information.
3. Provide that the funding of the mechanism be changed from the general fund to a fee fund in order to adjust to possibly wide variations in the filing activity.
4. Protect the contribution that the uniform commercial code filing division makes to the state general fund in FY 1984 and subsequent years.

As previous letters to the legislature and past testimony has indicated, the impact of central filing is still very uncertain. While the current U.C.C. division operates in an environment where filing activity and inquiry activity are fairly static, the experience of states that have central filing have demonstrated that farm product filings are extremely volatile and unpredictable. The best guess of the impact upon farm product filings is obtained from the experience of the State of Iowa and the memorandum attached which was prepared by the Legislative Research Department. Based on these experiences, the attached chart demonstrates the reasonable estimate of the possible range for the activity levels of the department.

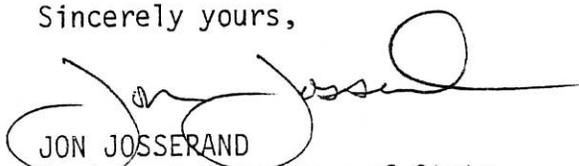
Page Two
Honorable Robert Frey
March 22, 1983

Not only do the filing levels present astronomical levels of growth, their timing will be highly seasonal, complicating the problem of estimating the exact level of activity of the system 24 months in advance. Under a fee fund approach, and with the January 1, 1986 target for telephone searches, the agency will be able to obtain experience in filing levels before several decisions are required to be made which relate to the creation of a computer system to provide "telephone" information in an efficient manner.

Without the flexibility afforded by a fee fund, we estimate that supplemental appropriations of general fund money of approximately \$225,000 in FY 84 and \$260,000 in FY 85 will be necessary to implement the provisions of Senate Bill No. 7.

Passage of Substitute for Senate Bill 7 will require two distinct changes in the current computer system utilized by the agency. First, programs utilized will have to be modified to accommodate the new "transition-continuation" statements. This modification must be designed, tested and implemented prior to January 1, 1984. Next, a rather extensive redesign of the system must be performed to allow for an upgrade to a System/38 which will be necessary to handle the function of "telephone" information searches. Preliminary planning should occur in FY 84. Most of the conversion would be performed on a contract basis in FY 85. The new system will be acquired no later than the beginning of FY 86, but preferably in FY 85. Parallel operation is expected to last from three to five months. The proposed amendments direct that telephone information be available on January 1, 1986 or sooner if possible.

Sincerely yours,



JON JOSSELAND
Assistant Secretary of State

JJ:JG

Enc.

UNIFORM COMMERCIAL CODE
 Projected Activity Estimates
 Based on Proposed Amendments to Substitute for SB7

	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>FY86</u>
Financing Statements:				
Current	31,000	32,000 - 32,000	35,000 - 35,000	37,000 - 37,000
Ag. Products	-	20,250 - 40,500	45,000 - 90,000	45,000 - 90,000
Total	<u>31,000</u>	<u>52,250 - 72,250</u>	<u>80,000 - 125,000</u>	<u>82,000 - 127,000</u>
Amendments, Continuations, etc:				
Current	20,300	20,300 - 20,300	21,500 - 21,500	23,000 - 23,000
Ag. Products	-	11,000 - 22,000	27,500 - 55,000	27,500 - 55,000
Total	<u>20,300</u>	<u>31,300 - 47,300</u>	<u>49,000 - 76,500</u>	<u>50,500 - 73,000</u>
Information Requests				
Current	12,000	13,500 - 13,500	15,000 - 15,000	16,500 - 16,500
Ag. Products	-	10,000 - 20,000	22,500 - 45,000	35,000 - 70,000
Total	<u>12,000</u>	<u>23,500 - 33,500</u>	<u>37,500 - 60,000</u>	<u>51,500 - 86,500</u>
Revenues:				
FY 84 ½ yr. gen. fund		\$105,000 - \$105,000		
20% general fund		\$ 43,230 - \$ 67,980	\$110,900 - \$205,900	\$131,000 - \$206,500
80% Fee Fund		\$172,920 - \$271,920	\$443,600 - \$823,600	\$524,000 - \$826,000

REVISED
MEMORANDUM

December 21, 1982

TO: Special Committee on Judiciary
FROM: Kansas Legislative Research Department
RE: Proposal No. 12 -- Security Interest Survey

As a part of its study of Proposal No. 12, the Special Committee on Judiciary directed staff to conduct a survey of the 105 county register of deeds to gather information regarding Uniform Commercial Code Article 9 security interests. Questionnaires were mailed to the 105 register of deeds on October 5, 1982, with a requested return date of November 3, 1982. A second mailing subsequently was made to the 20 counties which did not respond to the first mailing.

A total of 97 counties returned completed questionnaires. A tabulation based on the completed questionnaires follows below. The nine questions which appeared on the questionnaires are listed. After each question the number of counties which responded is noted and a total figure is given where appropriate.

Attached to this memorandum is a listing of the 105 counties and the responses of 97 counties to each of the nine questions asked.

1. What was the total number of Article 9, Uniform Commercial Code financing statements (Form UCC-1) filed in your office in 1981?

147,953 financing statements were reported by the 94 counties which responded.

2. What was the estimated percent of these financing statements listed above that applied to farm products? (Farm products include crops, livestock stock, and farming equipment. Contract rights are not included unless they arise from the sale of farm products, livestock, or farming equipment.)

An average of 57 percent of the financing statements applied to farm products based on 92 counties' responses.

3. What was the total number of information searches conducted by your office in 1981? (Each debtor's name searched is a search whether the request was made in writing or by phone.)

33,757 searches were reported by 94 counties. Some counties indicated the figure reported included only written search requests.

4. What was the total number of documents filed in 1981? (Documents include financing statements, Form UCC-1, and statements of continuation, release, and assignment, Form UCC-2.)

236,449 document filings were reported by 96 counties.

5. What was the total amount of revenue collected for all activities associated with Article 9, Uniform Commercial Code filings and searches in 1981?

\$499,438.45 in revenue was reported by 88 counties.

6. What was the estimated total expenses of your office related to Article 9, Uniform Commercial Code filings and activities?

The responses to this question varied to such a degree that no meaningful total can be arrived at.

7. Do you provide telephone searches, i.e., allow persons to call in, request a name search, and hold until the information is provided?

90 counties said yes; 6 counties said no. Some of the yes responses were qualified. See the attached listing.

8. If you provide telephone searches do you charge for this service?

16 counties said yes. 76 counties said no. Some of the yes responses were qualified.

9. Do you allow persons to call in a search request but your office responds to this request only in writing?

10 counties said yes. 67 counties said no.

UCC ARTICLE 9 SURVEY
(PROPOSAL NO. 12)

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charge for Phone Searches?	Call In Search- Written Resp.
Allen	985	29%	115 written <u>200 phone</u> 315 total	1,515	\$3,530.75	\$1,800.00	Yes	No	No
Anderson	648	66 2/3%	Many	3 times more	Don't know.	--	No. Will charge if do so.	Yes	No
Atchison	1,257	33%	200	2,262	\$4,074.25	\$800.00	Yes	Yes if out-of-town or a copy is re- quested.	
Barber	512	50%	50 written <u>1,000 phone</u> 1,050 total	653	--		Yes	No	No
Barton	2,681	33%	174	4,432	\$8,946.75	--	Yes	No	No
Bourbon	1,130	50%	89 written	1,558	\$3,905.50	\$2,800.00	Yes	No	No
Brown	781	71%	239	1,051	\$2,956.50	\$350.00	Yes	No	No
Butler	3,125	25%	212	7,089	\$10,303.75	\$6,473.50	Yes	No	No
Chase	236	50%	35	385	\$912.00	Can't deter- mine.	Yes	No	No

<u>County</u>	<u>Total 1981 UCC Filings</u>	<u>Est. % Farm Prod.</u>	<u>Total Searches in 1981</u>	<u>Total Doc. Filed 1981</u>	<u>Total Rev. Art. 9, 1981</u>	<u>Est. Art. 9 Total Exp.</u>	<u>Are Phone Searches Permitted?</u>	<u>Charge for Phone Searches?</u>	<u>Call In Search- Written Resp.</u>
Chautaugua									
Cherokee	1,970	--	101 written	2,043	\$6,432 .00	--	Yes	No	No
Cheyenne									
Clark									
Clay	529	35%	90	920	\$1,898.50	--	Yes but prefer not to.	No	This has not been practice.
Cloud	834	35%	93 written	1,300	\$3,449.25	\$100 for postage.	Yes	No	No
Coffey	564	33 1/3%	68	934	\$2,235.00	\$3,500 .00	Yes	No	No
Comanche	263	80%	140	518	\$315.00	\$100 .00	Yes	No	No
Cowley	467	75%	500	5,122	\$286.75	\$600.00	Yes	No	No

<u>County</u>	<u>Total 1981 UCC Filings</u>	<u>Est. % Farm Prod.</u>	<u>Total Searches in 1981</u>	<u>Total Doc. Filed 1981</u>	<u>Total Rev. Art. 9, 1981</u>	<u>Est. Art. 9 Total Exp.</u>	<u>Are Phone Searches Permitted?</u>	<u>Charge for Phone Searches?</u>	<u>Call In Search- Written Resp.</u>
Crawford	3,281	20%	451	5,656	\$10,565.00	\$7,500.00	Yes	Yes, if the infor- mation is found.	No
Decatur	496	90%	70 written 300 phone 370	761	\$1,999.50	\$25.00	Yes	No	--
Dickinson	1,254	75%	65 written	1,748	\$4,642.75	--	Yes	No	No
Doniphan	780	75%	75	1,450	Several thou- sand dollars	--	Yes	No	Yes
Douglas	3,167	16%	385	5,201	\$10,648.00	--	Yes	No	No
Edwards									
Elk	259	80%	34	466	\$1,156.50	--	Yes	No	No
Ellis	2,308	18%	307	10,703	\$7,939.75	\$876.00	Yes	Yes; also send written copy.	No
Ellsworth	501	65%	100	520	\$1,503.00	\$300 for ma- terials.	Yes	No	No

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Finney	2,737	22%	2,376	4,081	\$10,419.00	\$8,400.00	Yes	No. If an out-of-county person calls, will give them the information by phone and send a written copy and charge them for it.	--
Ford	2,517	75%	159 written	4,081	\$ 8,963.25	--	No	No	No
Franklin	1,920	33 1/3%	84 written 160 phone <u>244 total</u>	2,630	\$6,450.55	\$3,500.00	Yes, but at our convenience.	No	No
Geary	3,715	3%	34	5,683	\$17,276.00	\$8,505.00	For elevators and grain feed dealers only.	No	No
Gove	488	90%	430	772	\$1,978.25	\$200.00; does not include salary.	Yes	No	No
Graham									
Grant	786	85%	254	1,034	\$3,927.50	\$200.00	Yes; usually.	Yes; usually.	No
Gray	1,053	90%	500	150; does not include terminations.	\$3,159.00	\$270.00	Yes	For grain crops, no. For others, yes.	If they ask.
Greeley	350	80%	143 written 50 phone <u>193 total</u>	556	\$1,820.00	\$75.00	After September, no.	No	No

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Greenwood	805	54%	70	1,345	\$2,971.25	\$2,332.00	No	--	No
Hamilton	359	80%	110	1,838	\$1,647.65	None. Just regular of- fice expense.	Yes, if urgent.	Yes	Yes
Harper	750	60%	60 written 75 phone 135 total	1,082	\$2,301.00	--	Yes	No	No
Harvey	2,570	75%	1,900	3,601	\$9,000.00	\$8,000.00	Yes	No	No
Haskell	--	--	--	--	--	--	Yes	Yes	Yes
Hodgeman	430	75%	60	540	\$1,500.00	No way to figure.	Yes, in most cases.	No	No
Jackson	741	90%	49 written	1,333	\$2,938.25	--	Yes, unless list too long.	No	Yes
Jefferson	1,219	50%	85	2,045	\$3,898.25	Supplies = \$615.00	Yes	No	No
Jewell	--	80%	60	934	--	--	Yes	No	No

<u>County</u>	<u>Total 1981 UCC Filings</u>	<u>Est. % Farm Prod.</u>	<u>Total Searches in 1981</u>	<u>Total Doc. Filed 1981</u>	<u>Total Rev. Art. 9, 1981</u>	<u>Est. Art. 9 Total Exp.</u>	<u>Are Phone Searches Permitted?</u>	<u>Charges for Phone Searches?</u>	<u>Call In Search- Written Resp.</u>
Johnson	8,681	5%	1,022	12,956	\$32,047.00	\$18,912.00 Sal. 500.00 Env. <u>2,160.00 Pstg.</u> \$21,572.00 Total	No	No	No
Kearny	560	85%	340	676	\$3,301.20	\$135.00	Yes, unless list is too long.	No	No
Kingman	701	95%	250	1,163	\$2,198.00	--	Yes	No	--
Kiowa	589	33 1/3%	296	976	\$2,244.50	\$6,000.00	Yes; elevators and grain companies.	Usually and will send copy.	Not usually.
Labette	2,210	22%	122	3,127	\$7,550.00	\$4,450.00	Occasionally.	Yes, with writ- ten report.	--
Lane	365	90%	240	500	\$1,700.00	--	Yes, if not busy.	No	No
Leavenworth	2,700	--	49 written	3,580	--	--	Yes	No	--
Lincoln	323	50%	40	433	\$1,460.00	\$1,565.50	Yes	No	No
Linn	780	80%	200	1,327	\$2,644.50	\$2,500.00	Yes	No	No

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Logan	404	90%	120	738	\$1,480.75	\$600.00	Yes	No	Yes; if they want.
Lyon	379	6½%	69 written <u>500 phone</u> 569 total	2,379	\$1,269.75	½-time clerk @ \$4.20 per hr.	Yes	No	Yes, if they re- quest.
Marion	1,238	70%	34 written; many more by phone.	1,751	\$3,813.00	--	Yes	No	Usually require written request.
Marshall	664	70%	45 written <u>300 phone</u> 345 total	1,614	\$3,859.00	\$1,642.06	Yes	No	No
McPherson	--	--	122 written <u>960 phone</u> 1,082 total	3,393	\$7,036.00	--	Yes	No	No
Meade	542	70%	282 written <u>50 phone</u> 332 total	920	\$3,053.25	--	Yes	No	No
Miami	1,195	70%	112	1,736	\$4,170.50	\$400.00	Yes, occasionally.	No	No
Mitchell									
Montgomery	4,200	12%	300	7,097	\$13,500.00	\$8,544.00	Yes	No	Yes

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Morris	570	65%	49 written 20 phone <u>69 total</u>	689	\$2,038.30	\$1,225.00	Yes	No	--
Morton	387	58%	150 written 100 phone <u>250 total</u>	593	\$1,768.50	--	Yes	No	No
Nemaha	675	84%	113 written	1,197	\$2,901.75	\$1,550.00	Yes, if grain ele- vators or govern- ment.	No	Yes
Neosho	1,562	28%	201	2,592	\$6,545.25	\$2,665.00	Yes	Yes	No
Ness	310	95%	131	684	\$750.00	--	Yes, beginning in 1982.	No	--
Norton	421	90%	90	593	--	\$50.00	Yes	No	No
Osage	949	50%	60	1,823	\$4,110.75	\$6,910.00	Yes	No	No
Osborne	467	65%	70 written 250 phone <u>320 total</u>	962	\$2,155.00	--	Yes	No	Rarely happens.
Ottawa	683	66%	38 written 300 phone <u>338 total</u>	945	\$2,100.00	\$190.00	Yes	No	--

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches In 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Pawnee	793	15%	187 written <u>100 phone</u> 287 total	1,342	\$3,612.75	--	Yes	No	--
Phillips	545	60%	44 written <u>170 phone</u> 214 total	849	\$2,122.25	--	Yes	No	--
Pottawatomie	832	30%	35	857	\$2,721.00	\$7,930.00	Yes	No	--
Prairie									
Rawlins	327	90%	200	771	\$1,841.50	--	Yes	No	No
Reno	5,356	25%	201 written <u>5,200 phone</u> 5,401 total	8,757	\$18,325.75	\$9,500.00	Yes	No	No
Republic									
Rice	936	--	79	1,480	--	--	Yes	No	No
Riley	2,013	15%	82	3,693	\$6,039.00	\$7,582.00	Yes	Yes	No

County	Total 1981 UCG Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Rooks	579	50%	16 written	1,154	\$2,389.75	--	--	--	--
Rush	358	68%	65	638	\$1,275.00	--	Yes	No	No
Russell	492	60%	122 written	864	\$2,148.25	--	Yes	No	No
Saline	3,070	30%	163 written 1,900 phone <u>2,063 total</u>	4,383	\$13,371.00	\$6,200.00	Yes	No	No
Scott	594	70%	170	1,050	\$2,500.00	--	Yes	No, unless many calls from same company.	No
Sedgwick	23,604	35%	No actual count. Do not keep track of phone searches.	23,840	\$72,432.75	--	Yes	No	Yes
Seward	2,001	20%	285	2,836	\$7,390.50	--	Yes	If long distance, no; if local, yes.	--
Shawnee	10,106	10%	127; avg. 10 walk-ins per day.	17,059	\$30,165.00	\$9,580.00	No	--	No
Sheridan	441	90%	53 written 80 phone <u>133 total</u>	534	\$1,831.50	10%	Yes	No	No
Sherman	862	55%	97 written 500 phone <u>597 total</u>	1,229	\$3,606.00	\$4,740.00	Yes	No	No

County	Total 1981 UCC Filings	Est. % Farm Prod.	Total Searches in 1981	Total Doc. Filed 1981	Total Rev. Art. 9, 1981	Est. Art. 9 Total Exp.	Are Phone Searches Permitted?	Charges for Phone Searches?	Call In Search- Written Resp.
Smith	617	80%	93 written 750 phone 843 total	899	\$2,305.00	--	Yes	No	No
Stafford	642	68%	97 written	926	\$2,396.50	\$650.00	Yes	No	--
Stanton	550	80%	143	1,080	\$2,463.50	\$150.00	Yes	No	Yes
Stevens	536	75%	175	693	\$2,350.00		Yes	No	No
Sumner	2,533	50%	196	3,968	--	\$8,565.00	Yes, for local firms.	No	No
Thomas	1,031	80%	1,900	1,672	\$4,946.00	\$500.00	Yes	No	No
Trego	370	85%	70 written	666	\$1,689.00	\$800.00	Yes	No	--
Wabaunsee	538	75%	60	725	\$1,870.00	\$220.00	No, except for grain companies.	NO	No
Wallace	390	90%	150 written 50 phone 200 total	992	\$2,128.75	\$50.00	Yes	No	No
Washington	626	72%	200	792	\$3,076.00	Very little.	Yes	No	--

<u>County</u>	<u>Total 1981 UCC Filings</u>	<u>Est. % Farm Prod.</u>	<u>Total Searches in 1981</u>	<u>Total Doc. Filed 1981</u>	<u>Total Rev. Art. 9, 1981</u>	<u>Est. Art. 9 Total Exp.</u>	<u>Are Phone Searches Permitted?</u>	<u>Charges for Phone Searches?</u>	<u>Call In Search- Written Resp.</u>
Wichita	399	79%	427	738	\$2,709.75	\$75.00 postage	Yes	Only if persons want copies and/or certification.	--
Wilson	709	65%	148	1,171	\$3,371.50	\$2,500.00	Yes	Yes	No
Woodson	397	75%	125	603	\$1,708.00	\$2,000.00	Yes	No	No
Wyandotte	5,683	.015%	520	5,808	\$18,465.00	\$15,000.00	Yes	Yes	--

TESTIMONY

of

KANSAS GRAIN AND FEED DEALERS ASSOCIATION

on

SENATE BILL 7

Submitted by:

Tom R. Tunnell
March 22, 1983

I am Tom R. Tunnell, Executive Vice President of Kansas Grain and Feed Dealers Association, Hutchinson, Kansas. Our association is a voluntary organization that has as members approximately 95% of all grain and feed firms doing business in Kansas. Our membership includes both private and cooperative owned country and terminal grain operations with a total licensed storage capacity of approximately 750,000,000 bushels.

As most of you are aware, the Kansas grain industry is a vital link in the marketing chain necessary to move Kansas produced farm commodities from the field to end user - both domestic and foreign. Services performed by Kansas grain elevator operators includes the receiving, conditioning, storing and merchandising of Kansas grown grain. However, it has become increasingly difficult for Kansas grain firms to continue to serve Kansas farmers in this capacity. The delays, difficulties and confusion caused by the elevator manager not being able to determine whether grain being purchased from the farmer is mortgaged or not is a serious problem.

As legislators, you may ask yourself, why has this problem suddenly become so acute that an immediate change in the filing procedures for farm products liens, as called for in Senate Bill 7, is required?

The answer to this question can be found in two areas;

1. The current severe farm economy depression has placed many Kansas farmers in a desperate situation causing the potential for intentional grain conversion to be much greater today than at any point in recent history.

2. The distance grain is transported today from where produced to first purchaser is much greater than in the past. This situation is caused by increasing numbers of large multi county farming operations and by rapidly fluctuating rail freight rates, making it advantageous

at times to truck grain greater distances to achieve higher prices. (This condition can be contributed to the passage of the Staggers Rail Deregulation Act of 1980 making it possible for large grain firms to negotiate special "volume contract rail rates" with the railroads, thus creating favorable grain prices for farmers hundreds of miles distant, provided the grain is transported to the grain firm's unit train loading point.)

Under current county filing requirements for farm products liens, a buyer, purchasing grain produced hundreds of miles from where it is being offered for sale, is at an extreme disadvantage and in most cases is unable to determine if the grain being purchased is mortgaged or not. In fact, he may not even be able to ascertain what county register of deeds office should be searched to determine if a lien is in existence.

A system of filing farm products liens centrally at the office of Secretary of State, as called for in Senate Bill 7, would eliminate this uncertainty and greatly facilitate a smoother transaction between grain buyers and the Kansas farmer.

The problem I have cited is not unique to Kansas. In fact, at this time, nine other agricultural states have already amended their Uniform Commercial Code in some manner in an attempt to alleviate this situation. Also, similar legislation is under consideration in twelve additional states.

In our opinion, Senate Bill 7 is the most direct, cost effective solution for Kansas and is supported by the Kansas Livestock Association, Kansas Committee of Farm Organizations, Kansas Bankers Association and the Kansas Co-op Council.

Currently the House Agriculture and Livestock Committee is considering six different bills (SB 1 thru 6) that would tighten the grain warehouse licensing provisions of the Kansas Warehouse Act and greatly strengthen the criminal penalties for violation of the Act. These bills represent an effort by the Kansas Legislature to prevent the occurrence of future grain elevator insolvencies. In our opinion, Senate Bill 7, too, can be categorized with this legislation, as its provisions could also conceivably prevent a future elevator failure.

I appreciate the opportunity to be here today to testify on this important issue and would be happy to respond to questions.

Testimony 3/22/83

ATTACHMENT # 5

House Judiciary Committee

Chairman Frey and Honorable Members of this Committee:

I am Rosa Mary Moore, Register of Deeds from Reno County and a member of the State Legislative Committee of the Kansas Register of Deeds. Assn.

Our position on Senate Bill 7 is much more concern than opposition.

The need for central information on farm products is felt by all those testifying for SB 7.

Registrars over the state are concerned over the cost and accessibility of our local firms and farmers who are getting ----- in most cases ---- free, immediate information on secured filings ---- opposing a time and cost as proposed. On the revised survey done by the Legislative Research Committee, 57% of filing in county offices is related to farm filings --- this includes crops, livestock and farming equipment. This will be a terrific loss of revenue for our rural counties.

Last year Senate Bill 614 addressed this issue, making dual filings the answer to this problem. The bill was endorsed by the Kansas Grain Dealers Assn., Committee on Kansas Farm organizations, Kansas Coop Council and several grain companies.

Dual filings would be an additional cost for the debtor or lender who pays the filing fee but we feel that what has been suggested for search fees at the Secretary of State level would warrant lenders wanting dual filing. At the state level they have stated that they would need fees from \$5 to \$15 for searching files. With dual filing the lender or debtor would still have the convenience and option to check locally, information would be transmitted faster and the true lien status of the debtor would be reflected. Most credit inquires about local farmers and consumers come from local sources.

Data provided by the National Grain and Feed Assn. Nov. 2, 1982 shows Legislative changes to U.C.C. on Farm Product Collateral Loans in various states. We have provided you with a copy of this data to show that the majority of states opted for the dual filing. To address the problems, California chose to delete the exception given to farm products, Kentucky was amended to place the burden on the banks and secured parties to notify purchasers of farm products --- and those states who enacted Central filing showed the turn around time for obtaining information from Secretary of States office varied from 1 to 3 weeks.

We are concerned with new Sec. 3 lines 135 thru 150 whereas it is left to the discretion of the Secretary of State and 105 Register of Deeds insofar as the manner of which they may wish to make information available,

if at all, and to what fee they may wish to charge. We're sure that this will create a lot of problems from County to County.

Senate Bill 7 without mandatory telephone searches by the Secretary of State does not answer the need of the associations requesting central filings. The Secretary of States office testified in the Senate Judiciary Committee there could be at least a 4 hour turn-around on information on telecopiers placed in the Register of Deeds Offices. I don't believe this will help an elevator whc has a farmer on the scales or in the office waiting for payment for grain. That firm needs complete instant information - this being available only after 6 years if this legislation is enacted.

The Secretary of State has opposed the instant telephone mandatory of this bill -- estimating cost of \$488,407 to comply, plus the difficulty in furnishing rooms for parties wishing to search the records.

I'd like to quote the Secretary of State from his letter to the Chairman of the Senate Judiciary Committee ----

"This office accomodated approximately 12,000 requests for information last fiscal year. The Iowa Secretary of State under a centralized filing system was confronted with over 85,000 requests, requiring over 30 personnel to work in shifts covering 24 hours a day, seven days a week. Despite sophisticated planning and a high level resources, the Iowa Secretary of State was as far as four weeks behind in processing information requests in December. In January the office was as far as one week behind."

If this much delay and work load is expected, wouldn't it be better to have dual filing -- so those needing only local information could also be served? -----and in most cases Free for the asking?

Our concern also is in the time involved in perfecting the lien by the secured party -- In view of the "Pony Express" system we have today. It could be up to 3 to 5 days to get a lien filed at the Secretary of State office ---a matter of minutes to an hour at the local level.

Thank you very much for your time and consideration for our concerns.

We have Registrars from Leavenworth, Douglas, Saline, Wyandotte, and Marshall Counties who will help answer any of your questions.

Appendix

States - Legislative Changes and Proposed Changes to UCC on Farm Product Collateral Loans

States That Have Passed Legislation

California

In January, 1976 California's UCC was amended so as to provide equal treatment to all purchasers buying goods "in the ordinary course of business." The UCC was amended to delete the exception given to farm products. Although some grain buyers believe the change in the law permits purchase of mortgaged grain clear of any perfected security interests, some believe that until the law is tested in the courts, county records should continue to be searched for any outstanding liens.

Indiana

An amendment passed by the Indiana legislature in 1982 will establish a central filing system for crop liens beginning in January 1984. The law requires dual filing in both the country of residence and the secretary of state's office. In addition the lender must supply written notification of such liens to all licensed grain dealers and warehousemen in the county of residence within 10 days after the security interest attaches. Penalty for failure to notify grain handlers is set at a fine of \$100 to \$500. To finance the central filing in the secretary of state's office a filing fee of \$5.00 is assessed to the lender. The secretary of state is required to maintain a listing of all existing liens and make the listing available to the public for a reasonable fee.

Iowa

*1 week behind
in giving information*

In 1975 Iowa passed legislation requiring central filing of liens on grain. A private group was hired to handle requests for file searches. The program is now computerized and being turned over to the secretary of state's UCC division. There is interest in pursuing amendments to the UCC to require lenders to notify grain buyers on existing liens, similar to the Kentucky law.

Kentucky

In March, 1982 Kentucky's UCC was amended so as to place the burden on banks and other secured lenders to notify purchasers of farm products (both grain and livestock). If the lender fails to give proper notice, the purchaser's liability is voided. The law states, "If any grain or soybean crop subject to the lien of a security interest is sold to any... (state or federally licensed warehouse)..., such entity shall take title to such crop free and clear of such lien...., unless written notice by certified mail, return receipt requested or by registered mail, of such lien, the name and address of the debtor and proper description of the property subject to the lien is given to the entity purchasing said crop prior to payment of the proceeds of purchase..."

Mississippi

In the last legislative session a bill was passed requiring a dual filing system for crop and livestock liens at the county and state level. The Secretary of State's office will be in charge of collecting and disseminating lien information, and plans to honor telephone requests. In passing the legislation, a strong push by livestock interests to remove the exception for farm products was resisted by legislators who did not want the UCC in Mississippi to be different from other states.

Nebraska

The Nebraska Uniform Commercial Code was amended in 1977 to provide for dual filing of crop liens: 1) With the county clerk in the county where the crops are grown and 2) with the state in the Office of the Public Service Commission (which is also charged with regulating state licensed warehouses). The law requires the duplicate filing to perfect the security interest of the lien holder.

The UCC was amended again to change the place of state filing to the secretary of state's office. The law requires the secretary of state's office to respond to both written and telephone requests for lien information filed on a computer. There are no fees charged to lending institutions for filing or to users of the service for access to the information (supported totally by state appropriations). The law states "the employees or agents (of the office of secretary of state) are exempted from all personal liability as a result of any error or omission in providing information as required by this section (of the law), except in cases of willful misconduct or negligence."

Oregon

Oregon has a central filing system in place. Thus far, the system seems to have served its function with no problems reported by grain buyers. Turn-around time on obtaining lien information is about one week.

South Dakota

In 1979, South Dakota's Uniform Commercial Code was amended to require secured lenders to file with both the registrar of deeds in the county of the producer's residence and with the secretary of state. The law requires the secretary of state's office to respond to telephone requests for lien information stating whether a financing statement has been filed, and if so, provide the caller with the name and address of the secured creditor. No written confirmation is required. To avoid error, filings are made on the basis of social security numbers of producers. The law relieves the secretary of state's office from liability by stating "the secretary of state is not responsible for accuracy or completeness of the information..."

Washington

Washington has a state law establishing a central filing system for liens. However, it is anticipated there will be a two-year delay in making the program operative. Even when operative, the central filing will have significant drawbacks. It is estimated that turn-around time on lien information requests will be about three weeks. A legislative committee of the Pacific Northwest Grain and Feed Association is meeting in September to consider a legislative proposal similar to the Kentucky law requiring lenders to notify grain buyers about existing liens.

States With Legislative Changes Being Considered

Colorado

The Colorado Grain and Feed Association has a committee assigned to research the issue of mortgaged grain and investigate alternative legislative options, but no legislative action has yet been taken.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 21, 1983

ATTACHMENT # 6

TO: House Committee on Judiciary

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before the Committee on Sub. for SB 7 concerning the filing of Uniform Commercial Code financing statements involving farm products with the office of Secretary of State. The members of the Kansas Bankers Association wish to express their appreciation for the fine work done by the Special Committee on Judiciary during the summer on this very important issue.

The KBA supports the amendments to the UCC that are contained in Sub. for SB 7 and requests that SB 7 be passed by the 1983 session of the Kansas legislature. We agree with the other proponents that this legislation would be a major step toward alleviating confusion over the proper filing location for financing statements involving "farm products" as defined under the Code. It will also enhance the ability of the purchasers of farm products to quickly check as to whether there are any existing liens. In his testimony to the Special Committee in September, KU law professor, Keith Meyer, pointed out several reasons why a central filing of UCC statements involving farm products is an improvement in the Code. He noted that "central filing, with a potential buyer having quick access to the file financing statements, should take care of most of the problems relating to purchases of farm products subject to a prior perfected security interest."

Kansas bankers are well aware that this is a complex issue and that such a change in the filing procedure cannot be accomplished quickly or without additional cost. We also strongly believe that in order for any type of a central filing process to work in the best interests of the creditors and debtors of Kansas that there must be rapid access to the information contained in the financing statements. If such access is not available, it would then raise serious questions as to whether central filing would be a major improvement over the existing filing process. We, therefore, stand ready to work with the Secretary of State and the Registers of Deeds throughout Kansas to implement a reporting system which will be in the best interests of the Kansas citizenry.

Thank you once again for the opportunity to appear on SB 7 and we strongly urge favorable consideration on this bill by the House Committee on Judiciary.

James S. Maag
Director of Research

SENATE BILL 105
(As amended by SCW)
EXPLANATION OF JUDICIAL COUNCIL RECOMMENDATIONS
(By Judge R. L. Morrison-March 22, 1983)

ATTACHMENT # 7

- Sec. 1 Allows sentence of a traffic violator under 18 to be served in a juvenile detention facility where available.
- Sec. 2 Allows sentence of not more than 10 days for a fish or game violator under 18 and for it to be served in a juvenile facility.
- Sec. 3 Cleanup of statutes other than the 2 new codes.
- Sec. 4 Recommended by Advisory Commission on Juvenile Offender Programs.
- Sec. 5 Senate amendment.
- Sec. 6-10 Cleanup of statutes other than the 2 new codes.

Amendments to Kansas code for care of children

- Sec. 11 (a)(7) Clarifies a definition of child in need of care.
(a)(6) Senate amendment.
- Sec. 12 Requires notice to all interested parties and coordination between courts before transfer of venue.
- Sec. 13 & 14 Senate amendment (requested by SRS).
- Sec. 15 Clarifies that county is not responsible for expense of foster care for one in custody of SRS and replaces "parent".
(Similar amendment to juv. off. code in Sec. 32 at p.33)
- Sec. 16 (a)(4) Clarifies authority of an agent of custodian to consent to medical treatment.
(b)(2) Authorizes court to direct county or district attorney to commence mental illness determination regarding the child.
(Amendment to juv. off. code in Sec. 31 at p.37)
(a)(1) Senate amendment regarding sex abuse exam.
- Sec. 17 Modifies restriction against placing child in need of care in a juvenile detention facility.
(Also see Sec. 22 at p.26)
- Sec. 18, 19 & 20 These 3 sections deal with (1) reporting, (2) investigation and (3) action to be taken regarding child abuse or neglect. KSA 38-1523 (sec.19) was the provision that created the most questions regarding responsibility for investigation. KSA 38-1523(g) was further amended to include a recommendation from the Court-Education-SRS Liaison Committee.

- Sec. 21 Clarifies that one participating in investigation of reported child abuse is immune from liability.
- Sec. 22 Grants limited authority to place a runaway in a detention facility without waiting for an order of protective custody (KSA 33-1542) or order of temporary custody (KSA 33-1543).
- Sec. 23 Senate amendment. (Similar amendment in Sec. 36.)
- Sec. 24 (d) Clarification of wording.
- Sec. 25 Senate amendment.
- Sec. 26 (a) Clarification of wording.
- Sec. 27 Corrects an oversight of failing to make the secretary of SRS the guardian & conservator of a child placed in SRS custody after parental rights terminated.

Amendments to Kansas juvenile offenders code

- Sec. 28 Senate amendment.
- Sec. 29 (c) Clarify that records of juvenile offenders over 16 are subject to disclosure restriction applicable to adults.
(a)(5) a Senate amendment.
- Sec. 30 (c)(2) Allow court to require payment of assessed costs, fees or restitution before granting expungement.
(g) from Adv. Comm. on Juv. Off. Programs.
- Sec. 31&32 Similar to Sec. 15 & 16.
- Sec. 33 & 34 Senate amendment establishing a central repository of "juvenile justice history record information".
- Sec. 35 & 36 Senate amendments.
- Sec. 37 Allows use of certified psychologist to determine competency. (Similar to 1932 amendment to KSA 22-3302.)
- Sec. 38 Two of the state youth centers have directors instead of superintendents.
- Sec. 39 Clarifies that jeopardy may attach and preclude further proceeding in a juvenile offender case.
- Sec. 40-45 Cleanup amendments.

0537 agency having custody of where and with whom the child will
0538 live.

0539 (o) "Secretary" means the secretary of social and rehabilita-
0540 tion services.

0541 Sec. 11 12. K.S.A. 1982 Supp. 38-1504 is hereby amended to
0542 read as follows: 38-1504. (a) Venue of any case involving a child
0543 in need of care shall be in the county of the child's residence or
0544 in the county where the child may be found.

0545 (b) Upon application of the petitioner, or any person autho-
0546 rized to appeal any final order in any proceedings pursuant to
0547 this code *and after notice to all other interested parties*, the
0548 court in which original proceedings are pending alleging that a
0549 child is a child in need of care may order the proceedings
0550 transferred to the court of the county where the child is physi-
0551 cally present, where the parent or parents reside or where other
0552 proceedings are pending in this state concerning custody of the
0553 same child or children. *The judge of the court in which the case*
0554 *is pending shall consult with the judge of the court to which the*
0555 *case is to be transferred prior to transfer of the case. If the*
0556 *judges do not agree that the case should be transferred or if a*
0557 *hearing is requested, a hearing shall be held on the desirability*
0558 *of the transfer, with notice to interested parties, SRS the state*
0559 *department of social and rehabilitation services and the pro-*
0560 *posed receiving court. If the judge of the transferring court*
0561 *orders the case to be transferred, the order of transfer shall*
0562 *include findings as why the case is being transferred.* The court
0563 to which the case is transferred shall accept the case. Any judge
0564 transferring any case to another court shall transmit a complete
0565 record thereof and, upon receipt of the record, the receiving
0566 court shall assume jurisdiction as if the proceedings were origi-
0567 nally filed in that court. The transferring judge, if an adjudicatory
0568 hearing has been held, shall also transmit recommendations as to
0569 disposition. In case the child is not present in the county to
0570 which the case is transferred and that county is not the residence,
0571 of the child's parent or parents, the court shall return the case to
0572 the court where it originated.

0573 Sec. 13. K.S.A. 1982 Supp. 38-1507 is hereby amended to

(w/ to)
[stating
and the names and addresses of all interested parties
upon whom the receiving court should serve
notice of ~~any~~ further proceedings.
all

0574 read as follows: 38-1507. (a) All records and reports concerning
0575 child abuse or neglect received by the department of social and
0576 rehabilitation services or a law enforcement agency, in accord-
0577 ance with K.S.A. 1982 Supp. 38-1522, and amendments thereto
0578 are confidential and shall not be disclosed except under the
0579 following conditions:

0580 ~~(a)~~ (1) Upon the order of any court after a determination by
0581 the court issuing the order that the records and reports are
0582 necessary for the conduct of proceedings before it and are
0583 otherwise admissible in evidence, except that access shall be
0584 limited to in camera inspection unless the court determines that
0585 public disclosure of the information contained in the records
0586 and reports is necessary for the resolution of an issue then
0587 pending before it.

0588 ~~(b)~~ (2) The secretary or the law enforcement agency where
0589 the report is filed may authorize access to the records and
0590 reports to:

0591 ~~(1)~~ (A) A person licensed to practice the healing arts who has
0592 before that person a child whom the person reasonably suspects
0593 may be abused or neglected;

0594 ~~(2)~~ (B) an agency having the legal responsibility or authori-
0595 zation to care for, treat or supervise a child who is the subject of
0596 a report or record;

0597 ~~(3)~~ (C) a parent or other person responsible for the welfare
0598 of a child named in a report or record, with protection for the
0599 identity of reporters and other appropriate persons;

0600 ~~(4)~~ (D) a police or other law enforcement agency investigat-
0601 ing a report of known or suspected child abuse or neglect; or

0602 ~~(5)~~ (E) an agency of another state charged with the respon-
0603 sibility of preventing or treating physical, mental or emotional
0604 abuse or neglect or sexual abuse of children within that state, if
0605 the state of the agency requesting the information has standards
0606 of confidentiality as strict or stricter than the requirements of
0607 this code.

0608 (b) It is unlawful for any individual, association, partner-
0609 ship, corporation or other entity to willfully or knowingly per-
0610 mit or encourage the unauthorized dissemination of the con-

0611 tents of records or reports concerning child abuse or neglect
 0612 received by the department of social and rehabilitation services
 0613 or a law enforcement agency in accordance with K.S.A. 1982
 0614 Supp. 38-1522 and amendments thereto except as provided by
 0615 this code.

Violation of this section is a class B misdemeanor.

0616 Sec. 14. K.S.A. 1982 Supp. 38-1508 is hereby amended to
 0617 read as follows: 38-1508. All records and reports concerning
 0618 child abuse or neglect received by law enforcement agencies
 0619 shall be kept separate from all other records and shall not be
 0620 disclosed to anyone except:

Note: With the addition of a penalty provision to
 KSA 38-1507 (Sec. 13), KSA 38-1508 and
 38-1509 (see below) could both be repealed.

0621 (a) The judge and members of the court staff designated by
 0622 the judge of the court having the child before it in any proceed-
 0623 ings;

0624 (b) the guardian *ad litem* and the parties to the proceedings
 0625 and their attorneys as provided by K.S.A. 1982 Supp. 38-
 0626 1507(b)(3);

0627 (c) the department of social and rehabilitation services;

0628 (d) the officers of public institutions or agencies to whom
 0629 custody of the child has been granted;

0630 (e) law enforcement officers or county or district attorneys or
 0631 their staff when necessary for the discharge of their official
 0632 duties; and

0633 (f) any other person when authorized by a court order, sub-
 0634 ject to any conditions imposed by the order as provided by K.S.A.
 0635 1982 Supp. 38-1507 and amendments thereto.

0636 Sec. 15. K.S.A. 1982 Supp. 38-1512 is hereby amended to
 0637 read as follows: 38-1512. (a) *How paid.* (1) If a child alleged or
 0638 adjudged to be a child in need of care is not eligible for assist-
 0639 ance under K.S.A. 39-709 and amendments thereto, expenses for
 0640 the care and custody of the child shall be paid out of the general
 0641 fund of the county in which the proceedings are brought. For the
 0642 purpose of this section, a child who is a nonresident of the state
 0643 of Kansas or whose residence is unknown shall have residence in
 0644 the county where the proceedings are instituted.

0645 (2) When custody of a child is awarded to the secretary, the
 0646 expenses of the care and custody of the child may be paid by the
 0647 secretary out of the state social welfare fund, subject to payment

a law enforcement officer has taken a child into
 custody as authorized by KSA 38-1527 (b) and de-
 livered the child to a person or facility desig-
 nated by the secretary or

38-1509. Violations of confidentiality.

No person, association, firm, corporation or
 agency shall willfully or knowingly permit
 the unauthorized dissemination of the con-
 tents of the records and reports in K.S.A.
 1982 Supp. 38-1507 and 38-1508. Violation
 of this section is a class B misdemeanor.

History: L. 1982, ch. 182, § 9; Jan. 1,
 1983.

0120 department of social and rehabilitation services that a child
0121 appears to be a child in need of care, the department shall make a
0122 preliminary inquiry to determine whether the interests of the
0123 child require further action be taken. Whenever practicable, the
0124 inquiry shall include a preliminary investigation of the circum-
0125 stances which were the subject of the information, including the
0126 home and environmental situation and the previous history of
0127 the child. If reasonable grounds to believe abuse or neglect exist,
0128 immediate steps shall be taken to protect the health and welfare
0129 of the abused or neglected child as well as that of any other child
0130 under the same care who may be in danger of abuse or neglect.
0131 After the inquiry, if the department determines it is not possible
0132 to provide otherwise those services necessary to protect the
0133 interests of the child, the department shall recommend to the
0134 county or district attorney that a petition be filed.

0135 Sec. ~~18~~ 21. K.S.A. 1982 Supp. 38-1526 is hereby amended to
0136 read as follows: 38-1526. Anyone participating without malice in
0137 the making of an oral or written report to a law enforcement
0138 agency or the department of social and rehabilitation services
0139 relating to injury inflicted upon a child under 18 years of age as a
0140 result of physical, mental or emotional abuse or neglect or sexual
0141 abuse or in any follow-up activity to *or investigation of* the report
0142 shall have immunity from any liability, civil or criminal, that
0143 might otherwise be incurred or imposed. Any such participant
0144 shall have the same immunity with respect to participation in
0145 any judicial proceedings resulting from the report.

0146 Sec. ~~19~~ 22. K.S.A. 1982 Supp. 38-1528 is hereby amended to
0147 read as follows: 38-1528. (a) When any law enforcement officer
0148 takes into custody a child under the age of 18 years, without a
0149 court order, the child shall forthwith be delivered ~~to the state~~
0150 ~~department of social and rehabilitation services~~ *or to a court*
0151 designated shelter facility, court services officer or other person.
0152 *If the officer has reason to believe that the child will not remain*
0153 *in a shelter facility, the child may be delivered to and detained*
0154 *in a juvenile detention facility, designated by the court, for not*
0155 *more than 24 hours, excluding Saturdays, Sundays and legal*
0156 *holidays.* It shall be the duty of the law enforcement officer to

a facility or person designated by the
secretary.

0252 with a copy of the order. The conditions may include appropriate
0253 dispositional alternatives authorized by K.S.A. 1982 Supp. 38-
0254 1563 *and amendments thereto.*

0255 (b) An order for informal supervision may remain in force for
0256 a period of up to six months and may be extended, upon hearing,
0257 for additional six-month periods up to two years.

0258 (c) The court after notice and hearing may revoke or modify
0259 the order with respect to a party upon a showing that the party,
0260 being subject to the order for informal supervision, has substan-
0261 tially failed to comply with the terms of the order, or that
0262 modification would be in the best interests of the child. Upon
0263 revocation, proceedings shall resume pursuant to this code.

0264 (d) Parties to the order for informal supervision who suc-
0265 cessfully complete the terms and period of supervision shall not
0266 again be proceeded against in any court based *solely* upon *the*
0267 *allegations* in the original petition and the proceedings shall be
0268 dismissed.

0269 *Sec. 25. K.S.A. 1982 Supp. 38-1566 is hereby amended to*
0270 *read as follows: 38-1566. Except as provided in K.S.A. 1982*
0271 *Supp. 38-1567, if a child has been in the same foster home or*
0272 *shelter facility for six months or longer, or has been placed by*
0273 *the secretary in the home of a parent or relative, the secretary*
0274 *shall give written notice of any plan to move the child to a*
0275 *different placement. The notice shall be given to (a) the court*
0276 *having jurisdiction over the child; (b) each parent whose address*
0277 *is available; (c) the foster parent or custodian from whose home*
0278 *or shelter facility it is proposed to remove the child; (d) the child,*
0279 *if 12 or more years of age; and (e) the child's guardian ad litem.*
0280 *The notice shall state the home or shelter facility to which the*
0281 *secretary plans to transfer the child and the reason for the*
0282 *proposed action. The notice shall be delivered or mailed 30 days*
0283 *in advance of the planned transfer, except that the secretary*
0284 *shall not be required to wait 30 days to transfer the child if all*
0285 *persons enumerated in clauses (b) through (e) consent* to the *in writing*
0286 *transfer. Within 10 days after receipt of the notice any person*
0287 *receiving notice as provided above may request, either orally or*
0288 *in writing, that the court conduct a hearing to determine*

0400 not a hearing should be held on the subject. If the court deter-
0401 mines that inadequate progress is being made toward finding an
0402 adoptive placement or establishing an acceptable long-term fos-
0403 ter care plan, the court may rescind its prior orders and make
0404 other orders regarding custody and adoption that are appropriate
0405 under the circumstances. Reports of a proposed adoptive place-
0406 ment need not contain the identity of the proposed adoptive
0407 parents.

0408 ~~(d)~~ (e) *Discharge upon adoption.* When the adoption of a
0409 child has been accomplished, the court shall enter an order
0410 discharging the child from the court's jurisdiction in the pending
0411 proceedings.

0412 *Sec. 28. K.S.A. 1982 Supp. 38-1602 is hereby amended to*
0413 *read as follows: 38-1602. (a) "Juvenile" means a person 10 or*
0414 *more years of age but less than 18 years of age.*

0415 (b) *"Juvenile offender" means a person who does an act*
0416 *while a juvenile which if done by an adult would constitute the*
0417 *commission of a felony or misdemeanor as defined by K.S.A.*
0418 *21-3105 and amendments thereto, but does not include:*

0419 (1) *A person 14 or more years of age who commits a traffic*
0420 *offense in violation of chapter 8 of the Kansas Statutes Anno-*
0421 *tated or any city ordinance or county resolution which relates to*
0422 *the regulation of traffic on the roads, highways or streets or the*
0423 *operation of self-propelled or nonself-propelled vehicles of any*
0424 *kind;*

0425 (2) *a person 16 years of age or over who commits an offense*
0426 *defined in chapter 32 of the Kansas Statutes Annotated; or*

0427 (3) *a person 16 years of age or over who is charged with a* [or with more than one offense of which one is
0428 *felony* after having been adjudicated in two separate prior a felony
0429 *juvenile proceedings as having committed an act which would*
0430 *constitute a felony if committed by an adult and the adjudica-*
0431 *tions occurred prior to the date of the commission of the new act*
0432 *charged;*

0433 (4) *a person who has been prosecuted as an adult by reason*
0434 *of subsection (b)(3) and whose prosecution results in conviction*
0435 *of a crime, if the order of the convicting court provides that the*
0436 *person will be prosecuted as an adult for all future acts of the*

0437 person which are or would be cognizable under this code; or
0438 (5) a person whose prosecution as an adult is authorized
0439 pursuant to K.S.A. 1982 Supp. 38-1636 and amendments thereto.

0440 (c) "Parent," when used in relation to a juvenile or a juvenile
0441 offender, includes a guardian, conservator and every person who
0442 is by law liable to maintain, care for or support the juvenile.

0443 (d) "Law enforcement officer" means any person who by
0444 virtue of that person's office or public employment is vested by
0445 law with a duty to maintain public order or to make arrests for
0446 crimes, whether that duty extends to all crimes or is limited to
0447 specific crimes.

0448 (e) "Youth residential facility" means any home, foster home
0449 or structure which provides ~~24~~ twenty-four-hour-a-day care for
0450 juveniles and which is licensed pursuant to article 5 of chapter
0451 65 of the Kansas Statutes Annotated.

0452 (f) "Juvenile detention facility" means any secure public or
0453 private facility which is used for the lawful custody of accused
0454 or adjudicated juvenile offenders and which, if in a city or
0455 county jail, must be in quarters separate from adult prisoners.

0456 (g) "State youth center" means a facility operated by the
0457 secretary for juvenile offenders.

0458 (h) "Warrant" means a written order by a judge of the court
0459 directed to any law enforcement officer commanding the officer
0460 to take into custody the juvenile named or described therein.

0461 (i) "Secretary" means the secretary of social and rehabilita-
0462 tion services.

0463 Sec. ~~23~~ 29. K.S.A. 1982 Supp. 38-1608 is hereby amended to
0464 read as follows: 38-1608. (a) All records of law enforcement
0465 officers and agencies and municipal courts concerning a public
0466 offense committed or alleged to have been committed by a
0467 juvenile under 16 years of age shall be kept separate from
0468 criminal and other records and shall not be disclosed to anyone
0469 except:

0470 (1) The judge and members of the court staff designated by
0471 the judge of a court having the juvenile before it in any pro-
0472 ceedings;

0473 (2) parties to the proceedings and their attorneys;

(6) a person who has been convicted of aggravated juvenile delinquency in violation of KSA 21-3611

1011 after the entry of the order appealed from.

1012 Sec. 34 40. K.S.A. 41-2721 is hereby amended to read as
1013 follows: 41-2721. (a) No person under 18 years of age shall:

1014 (1) Claim to be 18 or more years of age for the purpose of
1015 obtaining or attempting to obtain any cereal malt beverage from
1016 any person;

1017 (2) purchase or attempt to purchase any cereal malt beverage
1018 from any person; or

1019 (3) possess or consume any cereal malt beverage.

1020 (b) Any person who violates this section, upon adjudication
1021 thereof, shall be deemed a ~~wayward child under the Kansas~~
1022 ~~juvenile code child in need of care under the Kansas code for~~ juvenile offender
1023 ~~care of children.~~ juvenile offenders

1024 (c) This section shall not apply to the possession and con-
1025 sumption of cereal malt beverage by a person under 18 years of
1026 age when such possession and consumption is permitted, and
1027 such beverage is furnished, by the person's parent or legal
1028 guardian.

1029 (d) This section shall be part of and supplemental to article
1030 27 of chapter 41 of the Kansas Statutes Annotated.

1031 Sec. 35 41. K.S.A. 1982 Supp. 45-201 is hereby amended to
1032 read as follows: 45-201. (a) All official public records of the state,
1033 counties, municipalities, townships, school districts, commis-
1034 sions, agencies and legislative bodies, which records by law are
1035 required to be kept and maintained, shall at all times be open for
1036 a personal inspection by any citizen, and those in charge of such
1037 records shall not refuse this privilege to any citizen.

1038 (b) The provisions of this section shall not apply to:

1039 (1) Personally identifiable records, files and data which are
1040 described in K.S.A. 72-6214 *and amendments thereto* and the
1041 accessibility and availability of which is limited by the terms of
1042 that section;

1043 (2) records of the district court concerning proceedings pur-
1044 suant to the Kansas juvenile code or Kansas code for care of
1045 children;

1046 (3) adoption records;

1047 (4) records of births of illegitimate children; and

1122 *a boarding home for children or a family day care home in order*
1123 *to determine whether or not the home meets the requirements of*
1124 *K.S.A. 65-516 and 65-519, and amendments thereto.*

1125 Sec. ~~39~~ 45. K.S.A. 1982 Supp. 75-52,104 is hereby amended
1126 to read as follows: 75-52,104. (a) Each county receiving grants
1127 under this act shall be charged a sum determined by the secre-
1128 tary of corrections which shall be equal to the total of the per
1129 diem costs to the state general fund of confinement and rehabil-
1130 itation of those persons who are committed to the secretary of
1131 corrections on and after the first day of the calendar quarter for
1132 which the county first receives grant payments under K.S.A.
1133 ~~1982 Supp.~~ 75-52,105 and amendments thereto, except that no
1134 charge shall be made for those persons: (A) Convicted of a class
1135 A, B or C felony; (B) convicted of a class D or E felony who had
1136 more than one prior felony conviction; (C) convicted of aggra-
1137 vated assault under K.S.A. 21-3410 and amendments thereto; (D)
1138 convicted of a sex offense under article 35 of chapter 21 of the
1139 Kansas Statutes Annotated and amendments and supplements
1140 thereto; or (E) sentenced under K.S.A. 21-4618 *and amendments*
1141 *thereto.*

1142 (b) In addition to amounts charged under subsection (a) to
1143 each county receiving grants under the community corrections
1144 act, on and after the first day of the calendar quarter for which the
1145 county first receives grant payments under K.S.A. ~~1982 Supp.~~
1146 75-52,105 and amendments thereto, a charge shall be assessed
1147 against the county in the amount of \$3,000 for the first calendar
1148 year the county receives the grants and \$6,000 during the second
1149 calendar year and each calendar year thereafter that the county
1150 receives the grants for each juvenile committed ~~to or placed in a~~ by a court
1151 state youth center, as defined by K.S.A. 1982 Supp. 38-1602 *and*
1152 *amendments thereto*, except that no charge shall be assessed
1153 when the commitment ~~or placement in~~ any such facility involves to
1154 a juvenile adjudged *to be* a delinquent *or a juvenile offender* as a
1155 result of conduct which if committed by an adult would consti-
1156 tute a class A, B or C felony, an aggravated assault under K.S.A.
1157 21-3410 and amendments thereto or a sex offense under article
1158 35 of chapter 21 of the Kansas Statutes Annotated and amend-

38-1527. Child under 18, when law enforcement officers or court services officers may take into custody. (a) A law enforcement officer or court services officer may take a child under 18 years of age into custody when:

(1) The law enforcement officer or court services officer has a court order commanding that the child be taken into custody as a child in need of care; or

(2) the law enforcement officer or court services officer has probable cause to believe that a court order commanding that the child be taken into custody as a child in need of care has been issued in this state or in another jurisdiction.

(b) A law enforcement officer may take a child under 18 years of age into custody when the officer has probable cause to believe that the child is a child in need of care and that there are reasonable grounds to believe that the circumstances or condition of the child is such that continuing in the place or residence in which the child has been found or in the care and custody of the person who has care or custody of the child would present an imminent danger to the child.

History: L. 1982, ch. 182, § 24; Jan. 1, 1983.

0196 cause, within the judge's jurisdiction, in other district courts.
 0197 Any departmental justice may request the assistance of any
 0198 district judge, associate district judge or district magistrate judge
 0199 from another department.

0200 (c) The departmental justices shall supervise all administra-
 0201 tive matters relating to the district courts within their depart-
 0202 ments and require reports periodically, covering such matters
 0203 and in such form as the supreme court may determine, on any
 0204 such matter which will aid in promoting the efficiency or the
 0205 speedy determination of causes now pending. Departmental
 0206 justices shall have the power to examine the dockets, records and
 0207 proceedings of any courts under their supervision. All judges and
 0208 clerks of the several courts of the state shall promptly make such
 0209 reports and furnish the information requested by any depart-
 0210 mental justice or the judicial administrator, in the manner and
 0211 form prescribed by the supreme court.

0212 In order to properly advise the three branches of government
 0213 on the operation of the juvenile justice system, each district court
 0214 shall furnish the judicial administrator such information regard-
 0215 ing juveniles coming to the attention of the court pursuant to the
 0216 Kansas code for care of children or the Kansas juvenile offenders
 0217 code as is determined necessary by the secretary of social and
 0218 rehabilitation services and the director of the statistical analysis
 0219 center of the Kansas bureau of investigation, on forms approved
 0220 by the judicial administrator.

0221 The departmental justice shall assign to each administrative
 0222 judge in the justice's department such duties as are necessary to
 0223 carry out the intent of just, speedy and inexpensive litigation for
 0224 the litigants of the state.

0225 *Sec. 5. K.S.A. 1982 Supp. 22-4701 is hereby amended to read*
 0226 *as follows: 22-4701. As used in this act, unless the context clearly*
 0227 *requires otherwise:*

0228 (a) "Central repository" means the criminal justice infor-
 0229 mation system central repository created by this act and the
 0230 ~~Kansas juvenile justice information system created pursuant to~~
 0231 *section 38-1618 and amendments thereto.*

0232 (b) "Criminal history record information" means data ini-

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0233 tiated or collected by a criminal justice agency on a person
 0234 pertaining to a reportable event. The term does not include:
 0235 (1) Data contained in intelligence or investigatory files or
 0236 police work-product records used solely for police investigation
 0237 purposes;

0238 (2) data pertaining to a proceeding pursuant to the Kansas
 0239 juvenile code, Kansas code for care of children or Kansas juve-
 0240 nile offenders code, but it does include juvenile justice history
 0241 ~~record~~ information other than data pertaining to a person fol- offender
 0242 lowing waiver of jurisdiction pursuant to the Kansas juvenile
 0243 code or an authorization for prosecution as an adult pursuant to
 0244 the Kansas juvenile offenders code;

0245 (3) wanted posters, police blotter entries, court records of
 0246 public judicial proceedings or published court opinions;

0247 (4) data pertaining to violations of the traffic laws of the
 0248 state or any other traffic law or ordinance, other than vehicular
 0249 homicide; or

0250 (5) presentence investigation and other reports prepared for
 0251 use by a court in the exercise of criminal jurisdiction or by the
 0252 governor in the exercise of the power of pardon, reprieve or
 0253 commutation.

0254 (c) "Criminal justice agency" means any government agency
 0255 or subdivision of any such agency which is authorized by law to
 0256 exercise the power of arrest, detention, prosecution, adjudica-
 0257 tion, correctional supervision, rehabilitation or release of per-
 0258 sons suspected, charged or convicted of a crime and which
 0259 allocates a substantial portion of its annual budget to any of
 0260 these functions. The term includes, but is not limited to, the
 0261 following agencies, when exercising jurisdiction over criminal
 0262 matters or criminal history record information:

0263 (1) State, county, municipal and railroad police depart-
 0264 ments, sheriffs' offices and countywide law enforcement agen-
 0265 cies, correctional facilities, jails and detention centers;

0266 (2) the offices of the attorney general, county or district
 0267 attorneys and any other office in which are located persons
 0268 authorized by law to prosecute persons accused of criminal
 0269 offenses;

0270 (3) the district courts, the court of appeals, the supreme court,
0271 the municipal courts and the offices of the clerks of these courts.

0272 (d) "Criminal justice information system" means the equip-
0273 ment (including computer hardware and software), facilities,
0274 procedures, agreements and personnel used in the collection,
0275 processing, preservation and dissemination of criminal history
0276 record information.

0277 (e) "Director" means the director of the Kansas bureau of
0278 investigation.

0279 (f) "Disseminate" means to transmit criminal history record
0280 information in any oral or written form. The term does not
0281 include:

0282 (1) The transmittal of such information within a criminal
0283 justice agency;

0284 (2) the reporting of such information as required by this act;
0285 or

0286 (3) the transmittal of such information between criminal
0287 justice agencies in order to permit the initiation of subsequent
0288 criminal justice proceedings against a person relating to the
0289 same offense.

0290 (g) "~~Juvenile justice history~~ information" has the meaning
0291 provided by section 38-1617 and amendments thereto.

0292 (h) "Reportable event" means an event specified or pro-
0293 vided for in K.S.A. 22-4705 and amendments thereto.

0294 (g) "Director" means the director of the Kansas bureau of
0295 investigation.

0296 Sec. 5 6. K.S.A. 1982 Supp. 28-170 is hereby amended to
0297 read as follows: 28-170. (a) The docket fee prescribed by K.S.A.
0298 60-2001 and amendments thereto shall be the only costs assessed
0299 for services of the clerk of the district court and the sheriff in any
0300 case filed under chapter 60 of the Kansas Statutes Annotated. For
0301 services in other matters in which no other fee is prescribed by
0302 statute, the following fees shall be charged and collected by the
0303 clerk. Only one fee shall be charged for each bond, lien or
0304 judgment:

- 0305 1. For filing, entering and releasing a bond, mechanic's lien,
- 0306 personal property tax judgment or any judgment on which
- 0307 execution process cannot be issued

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0474 (3) the department of social and rehabilitation services or the
 0475 officers of public institutions or agencies to whom the juvenile is
 0476 committed;

0477 (4) law enforcement officers or county or district attorneys or
 0478 their staff when necessary for the discharge of their official
 0479 duties;

0480 (5) *the central repository, as defined by K.S.A. 22-4701 and*
 0481 *amendments thereto, for use only as a part of the ~~Kansas~~*
 0482 *juvenile justice information system established under section* offender
 0483 ~~38-1617~~ 38-1618; and

0484 (5) (6) any other person when authorized by a court order,
 0485 subject to any conditions imposed by the order.

0486 (b) The provisions of this section shall not apply to records
 0487 concerning:

0488 (1) A violation, by a person 14 or more years of age, of any
 0489 provision of chapter 8 of the Kansas Statutes Annotated or of any
 0490 city ordinance or county resolution which relates to the regula-
 0491 tion of traffic on the roads, highways or streets or the operation of
 0492 self-propelled or nonself-propelled vehicles of any kind;

0493 (2) a violation, by a person 16 or more years of age, of any
 0494 provision of chapter 32 of the Kansas Statutes Annotated; or

0495 (3) an offense for which the juvenile is prosecuted as an
 0496 adult.

0497 (c) *All records of law enforcement officers and agencies and*
 0498 *municipal courts concerning a public offense committed or*
 0499 *alleged to have been committed by a juvenile 16 or 17 years of*
 0500 *age shall be treated in the same manner as the records of adults.*

0501 Sec. 24 30. K.S.A. 1982 Supp. 38-1610 is hereby amended to
 0502 read as follows: 38-1610. (a) Any records or files specified in this
 0503 code concerning a juvenile offender may be expunged upon
 0504 application to a judge of the court of the county in which the
 0505 records or files are maintained. The application for expungement
 0506 may be made by the person who is the juvenile offender or, if the
 0507 person is a juvenile, by the person's parent or next friend.

0508 (b) When a petition for expungement is filed, the court shall
 0509 set a date for a hearing on the petition and shall give notice
 0510 thereof to the county or district attorney. The petition shall state:

0696 preservation of that information.

0697 (b) Information maintained in the Kansas juvenile justice
0698 information system is confidential and shall not be publicly
0699 disclosed in a manner which enables identification of any indi-
0700 vidual who is a subject of the information, except that the
0701 information shall be open to inspection by attorneys for the
0702 parties to a proceeding under this code or upon order of a judge
0703 of the district court or an appellate court.

0704 New Section 20. Nothing in K.S.A. 22-4701 and 22-4704
0705 through 22-4711, and amendments thereto, shall be construed to
0706 prohibit the central repository, as defined by K.S.A. 22-4701 and
0707 amendments thereto, from maintaining a Kansas juvenile justice
0708 information system as provided by and for the purpose set forth
0709 in section 38-1617.

0710 New Sec. 33. 38-1617. As used in section 38-1618 and
0711 amendments thereto, unless the context otherwise requires:

0712 (a) "Central repository" has the meaning provided by K.S.A.
0713 22-4701 and amendments thereto.

0714 (b) "Director" means the director of the Kansas bureau of
0715 investigation.

0716 (c) "Juvenile justice history record information" means data offender
0717 relating to juveniles alleged or adjudicated to be juvenile of-
0718 fenders, offenses committed or alleged to have been committed
0719 by juveniles and proceedings pursuant to the Kansas juvenile in
0720 code, ~~Kansas code for care of children~~ or Kansas juvenile of-
0721 fenders code.

0722 (d) "Juvenile justice agency" means any county or district
0723 attorney, law enforcement agency of this state or of any political
0724 subdivision of this state, court of this state or of a municipality
0725 of this state, administrative agency of this state or any political
0726 subdivision of this state, ~~youth residential facility~~ or juvenile state youth center
0727 detention facility.

0728 (e) "Reportable event" means:

0729 (1) Issuance of a court order to take a juvenile into custody warrant

0730 ~~[pursuant to this code];~~

0731 (2) taking a child into custody pursuant to this code; juvenile

0732 (3) ~~release of a child who has been taken into custody pursu~~

0733 ~~ant to this code, without the filing of a complaint,~~
 0734 (4) dismissal of a complaint filed pursuant to this code;
 0735 (5) an adjudication in a proceeding pursuant to this code;
 0736 (6) a disposition in a proceeding pursuant to this code;
 0737 (7) commitment to or placement in a youth residential facil-
 0738 ity, juvenile detention facility or state youth center pursuant to
 0739 this code;
 0740 (8) release or discharge from commitment or jurisdiction of
 0741 the court pursuant to this code;
 0742 (9) escape from commitment or placement pursuant to this
 0743 code;
 0744 (10) entry of a judgment of an appellate court that reverses
 0745 adjudication or disposition pursuant to this code;
 0746 (11) an order authorizing prosecution as an adult; or
 0747 (12) any other event arising out of or occurring during the
 0748 course of proceedings pursuant to this code and declared to be
 0749 reportable by rules and regulations of the director.
 0750 New Sec. 34. 38-1618. (a) In order to properly advise the
 0751 three branches of government on the operation of the juvenile
 0752 justice system, there is hereby established within and as a part of
 0753 the central repository, as defined by K.S.A. 22-4701 and amend-
 0754 ments thereto, a ~~Kansas~~ juvenile justice information system. The
 0755 system shall serve as a repository of juvenile justice history
 0756 ~~record~~ information which is collected by juvenile justice agen-
 0757 cies and reported to the system.
 0758 (b) Except as otherwise provided by this subsection, every
 0759 juvenile justice agency shall report juvenile justice history ~~rec-~~
 0760 ~~ord~~ information, whether collected manually or by means of an
 0761 automated system, to the central repository, in accordance with
 0762 rules and regulations adopted pursuant to this section. A juve-
 0763 nile justice agency shall report to the central repository those
 0764 reportable events involving a violation of a county resolution or
 0765 city ordinance only when required by rules and regulations
 0766 adopted by the director.
 0767 (c) Reporting methods may include:
 0768 (1) Submission of juvenile justice history ~~record~~ information
 0769 by a juvenile justice agency directly to the central repository;

placing a juvenile in[^] diversion or any other
 informal supervision program as an avoidance of
 an adjudication;
 (4) filing of complaint pursuant to this code
 [renumber subsections (4) through (12)]

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0770 (2) if the information can readily be collected and reported
0771 through the court system, submission to the central repository by
0772 the administrative office of the courts; or

0773 (3) if the information can readily be collected and reported
0774 through juvenile justice agencies that are part of a geographic-
0775 ally based information system, submission to the central reposi-
0776 tory by the agencies.

0777 (d) The director may determine, by rule and regulation, the
0778 reportable events to be reported by each juvenile justice agency,
0779 in order to avoid duplication in reporting.

0780 (e) Juvenile justice history record information maintained in offender

0781 the ~~Kansas~~ juvenile justice information system is confidential offender

0782 and shall not be disseminated or publicly disclosed in a manner

0783 which enables identification of any individual who is a subject

0784 of the information, except that the information shall be open to county or district attorneys,

0785 inspection by attorneys for the parties to a proceeding under this

0786 code or upon order of a judge of the district court or an

0787 appellate court.

0788 (f) The director shall adopt any rules and regulations neces-

0789 sary to implement, administer and enforce the provisions of this

0790 section.

0791 (g) Section 38-1617 and this section shall be part of and

0792 supplemental to the Kansas juvenile offenders code.

0793 Sec. 38 35. K.S.A. 1982 Supp. 38-1624 is hereby amended to

0794 read as follows: 38-1624. (a) By a law enforcement officer. A law

0795 enforcement officer may take an alleged juvenile offender into

0796 custody when:

0797 (1) Any offense has been or is being committed by the juve-

0798 nile in the officer's view;

0799 (2) the officer has a warrant commanding that the juvenile be

0800 taken into custody;

0801 (3) the officer has probable cause to believe that a warrant or

0802 order commanding that the juvenile be taken into custody has

0803 been issued in this state or in another jurisdiction for an act

0804 committed therein; or

0805 (4) the officer has probable cause to believe that the juvenile

0806 is committing or has committed an act which, if committed by an

33-1611. Authority to fingerprint or photograph. (a) No fingerprints or photographs shall be taken of any juvenile who is taken into custody for any purpose except that: (1) Fingerprints and photographs of the juvenile may be taken if authorized by a judge of the district court having jurisdiction; or (2) fingerprints and photographs of the juvenile may be taken if the juvenile is taken into custody for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto.

(b) The fingerprints and photographs shall be kept separate from those of persons of the age of majority.

(c) The fingerprints and photographs of any juvenile shall not be sent to a state or federal depository by a law enforcement agency of this state unless: (1) The juvenile has been convicted of a felony; (2) the juvenile has unlawfully terminated the juvenile's commitment to a state youth center; or (3) the juvenile is a runaway and a fingerprint check or photograph is needed for identification purposes to return the juvenile to the juvenile's parents or other lawful custodian.

(d) Fingerprints of juveniles may be furnished to another law enforcement agency if the other agency has a legitimate need for the fingerprints.

History: L. 1982, ch. 182, § 69; Jan. 1, 1983.

DISTRICT COURT OF KANSAS

ATTACHMENT # 10

CHAMBERS OF
DAVID P. MIKESIC
ASSOCIATE JUDGE



COURT HOUSE
KANSAS CITY, KANSAS
66101

WYANDOTTE COUNTY

March 21, 1983

From: Judge David Mikesic
Juvenile Department
Wyandotte County District Court

TO: House Judiciary Committee

In Re: Recommended Amendment to Child in Need of Care Code

KSA 38-1541 (1982 Supp.)- Determination of interested party. At the end of paragraph- add: All motions to determine interested parties must be filed no later than 30 days prior to any hearing on a motion to sever parental rights.

NEED FOR CHANGE: 1) to require all potential interested parties to make their interest known prior to severance hearing; 2) to avoid parties from coming in after severance of parents' rights and delaying adoption of child.