

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 7, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Karen DiVita- Johnson - Excused  
Representative Kathe Lloyd - Excused  
Representative Ward Loyd - Excused  
Representative Dean Newton - Excused  
Representative Rick Rehorn - Excused  
Representative Candy Ruff - Excused  
Representative Clark Shultz - Excused

Committee staff present:

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

Conferees appearing before the committee:

Judge Jeffrey Tauber, Executive Director, Center for Problem Solving Courts, Alexandria, Virginia  
Judge Janice Russell, 10<sup>th</sup> Judicial District, Johnson County  
Kathy Olsen, Kansas Bar Association  
Melissa Wangemann, Secretary of States Office

Judge Tauber provided a presentation on drug courts. He commented that the first drug courts were implemented in Miami, Florida in 1989 and Oakland, California in 1990. In 1994 there were only twelve drug courts, those of whom formed their own association called The National Association of Drug Court Professional. On August 2, 2000, a joint resolution was passed by the Conference of Chief Justices and State Court Administrators endorsing the drug court model.

Drug courts have become an important innovation in the criminal justice system by addressing the overcrowded prisons and costs of treatment. Research shows that retention and completion of treatment programs, such as drug courts, have a tremendous affect in reducing drug use and criminal behavior. Sanctions and incentives play an essential role, and are far more successful in retaining participants in treatment longer periods of time than traditional treatment. It was estimated that 60% of those who enter drug courts are still in treatment after one year. In contrast, half of those admitted to outpatient drug-free programs stayed less than three months.

He stated that Kansas has the ability to do drug courts statewide and suggested that most are community driven and are slow to start unless they are jump started.

Hearings on **HB 2673 - contributing to the misconduct of a minor**, were opened.

Judge Janice Russell, 10<sup>th</sup> Judicial District, Johnson County, explained that a problem has arisen with the interpretation of K.S.A. 21-3612 (a)(1) which may be understood as sexual activity, as long as one party is under the age of 18 a violation of this statute, K.S.A. 38-1502 and K.S.A. 38-1502 (c).

In order to clarify the statute she suggested striking in K.S.A. 38-1502 (c) "regardless of the age of the child" so that those acts that are intentionally defined as criminal by the legislature would serve as grounds for finding a child to be a child in need of care, and only charging a person with contributing to the misconduct of a child. (Attachment 1)

Hearings on **HB 2673** were closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 7, 2002 in Room 313-S of the Capitol.

Hearings on **HB 2487 - Technical amendments to the Uniform Commercial Code Article 9**, were opened.

Kathy Olsen, Kansas Bar Association, appeared before the committee in support of the bill which represents technical amendments to Article 9. The bill would provide guidance regarding the method of amending, continuing and terminating pre-effective-date financing statements. (Attachment 2) She requested and amendment that the bill be effective upon publication in the Kansas Register.

Melissa Wangemann, Secretary of States Office, appeared to request an amendment which would tie non-UCC liens that are filed to the same filing procedures used to file a UCC document. (Attachment 3)

Hearings on **HB 2487** were closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 11, 2002.

To: Members of the Senate Judiciary Committee  
From: Judge Janice D. Russell  
Johnson County Courthouse  
Olathe, Kansas  
913-715-3810

Re: House Bill 2673

### **The Problem**

In April, 2001, the Kansas Court of Appeals decided and published *State v. VanHecke and Gault*, 20 P.2d 1277, 2001 Kan.App.Lexis 266. In that case the Court of Appeals reversed the district court's decision to dismiss charges against two high school teachers who were accused of having consensual sexual relations with students that were 16 and 17 years of age, respectively. They had been charged with a violation of K.S.A. 21-3612(a)(1), contributing to a child's misconduct or deprivation.

It appears that they were charged under this statute because a) the girls involved were more than 14 years of age, so charges of statutory rape ( K.S.A. 21-3502) were not possible; b) the girls involved were more 16 years old or more, so charges of indecent liberties with a child (K.S.A. 21-3503) were not possible; and 3) the amendment to K.S.A. 21-3520 (unlawful sexual relations), which the legislature specifically amended in 2000 to include sexual relations between a high school teacher and his or her student, was not in effect at the time that these acts took place.

The net effect of the case is that it makes any sexual activity, including just kissing, a violation of K.S.A. 21-3612(a)(1), so long as one of the parties is less than 18 years old. Sex between a 20 year old boy and his 17 year old girlfriend would subject him to prosecution under the statute. Sex between two 17 year olds would potentially subject both of them to prosecution. Even two 17 year olds who kiss each other would be subject to prosecution under the sweeping interpretation of the statute.

Since the case was not appealed to the Supreme Court and is a published case, it stands as binding precedent. It will assuredly lead to selective prosecution, as there is no way that the court system or the district attorneys' offices can prosecute all the teenagers who are kissing each other.

### **The Statutory Problem**

The root of the statutory problem that has brought about this interpretation lies in an

intertwining chain of definitions:

- K.S.A. 21-3612(a)(1) includes this definition of contributing to the misconduct of a child: “(1) Causing or encouraging a child under the age of 18 years of age to become or remain a child in need of care as defined by the Kansas code for care of children;”
- K.S.A. 38-1502 includes in its definitions of a child in need of care a child who has been “sexually abused.”
- K.S.A. 38-1502(c) defines sexual abuse as “any act committed with a child which is described in Article 35, Chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603 and amendments thereto, regardless of the age of the child.” (Emphasis added.)

### **Suggested Solution**

If the legislature strikes the language underlined in the preceding paragraph, then only those acts that are intentionally defined as criminal by the legislature would serve as grounds for finding a child to be a child in need of care, and consequently only those acts intentionally defined as criminal by the legislature would serve as grounds for charging a person with contributing to the misconduct of a child.

Source: [All Sources](#) > / . . . / > **KS Supreme Court and Court of Appeals Cases** ⓘ  
Terms: **name(state and vanhecke)** ([Edit Search](#))

*20 P.3d 1277, \*; 2001 Kan. App. LEXIS 266, \*\**

**STATE OF KANSAS**, Appellant, v. **WILLIAM VANHECKE** and THOMAS GAULT, Appellees.

No. 84,508

COURT OF APPEALS OF KANSAS

20 P.3d 1277; 2001 Kan. App. LEXIS 266

April 6, 2001, Opinion Filed

**PRIOR HISTORY:** [\*\*1] Appeal from Johnson District Court; PETER V. RUDDICK, judge.

**DISPOSITION:** Reversed and remanded with directions.

### CASE SUMMARY

**PROCEDURAL POSTURE:** The State appealed from a decision of the Johnson District Court (Kansas), dismissing misdemeanor charges of contributing to the misconduct of a child against appellees, two high school teachers. The State argued that [Kan. Stat. Ann. § 21-3612](#) (2000 Supp.) applied to children under 18 and incorporated the child in need of care (CINC) code.

**OVERVIEW:** Appellees, high school teachers, became sexually involved with female students. They were each charged with contributing to the misconduct of a child under [Kan. Stat. Ann. § 21-3612](#) (2000 Supp.). Appellees argued that the statute did not apply to persons engaged in sexual relations with minors who were older than 16. In dismissing the charges against them, the trial court concluded that the statute was ambiguous and did not apply to appellees' sexual activities with the 17-year-old students. The State appealed, arguing that the statute applied to children under the age of 18 and incorporated the CINC code which defined sexual abuse as any act contrary to [Kan. Stat. Ann. § 21-3501](#) et seq., regardless of the child's age. The appellate court found no ambiguity in the statute. The statute criminalized conduct which caused a person under age 18 to fall within the CINC code, which defined a child in need of care to include any child under age 18 who had been subjected to sexual intercourse; thus, it applied to appellees' conduct.

**OUTCOME:** The judgment was reversed and the case was remanded.

**CORE TERMS:** contributing, misconduct, older, unambiguous, sexual activity, school year, misdemeanor, teacher, rules of statutory construction, legislative intent, specific statute, plain language, statutory rape, sexual abuse, indecent, touching, incest, sexual intercourse, date of birth, high school, cross-country, encouraging, deprivation, criminalize, occurrences, prosecuted, consenting, ambiguous, ambiguity, sophomore

### CORE CONCEPTS - ♦ [Hide Concepts](#)

 [Family Law : Family Protection & Welfare : Children](#)

 See [Kan. Stat. Ann. § 21-3612](#) (2000 Supp.).

 [Criminal Law & Procedure : Criminal Offenses : Sex Crimes : Sexual Assault](#)

See Kan. Stat. Ann. § 21-3612(a)(1) (2000 Supp.).

Criminal Law & Procedure : Criminal Offenses : Sex Crimes : Sexual Assault

"Sexual abuse" is defined in the child in need of care code as any act committed with a child which is described in Kan. Stat. Ann. art. 35, ch. 21 and those acts described in Kan. Stat. Ann. §§ 21-3602 or 21-3603, and amendments thereto, regardless of the age of the child. Kan. Stat. Ann. § 38-1502(c).

Governments : Legislation : Construction & Interpretation

Civil Procedure : Appeals : Standards of Review : General Rules

Interpretation of a statute is a question of law over which an appellate court's review is unlimited.

Criminal Law & Procedure : Criminal Offenses : Sex Crimes

Kan. Stat. Ann. § 21-3612(a)(1) (2000 Supp.) criminalizes conduct which causes a person under the age of 18 to fall within the definition of a child in need of care (CINC); a crime occurs under this statute even if the child has not been subject to a CINC proceeding or adjudged a juvenile offender. Kan. Stat. Ann. § 21-3612(b) (2000 Supp.). The CINC code defines a child in need of care to include any child under age 18 who has been subjected to sexual intercourse or unlawful sexual touching described in Kan. Stat. Ann. § 21-3501 et seq., or the incest statutes ( Kan. Stat. Ann. §§ 21-3602 and 21-3603), regardless of the child's age.

Governments : Legislation : Construction & Interpretation

Under standard rules of statutory construction, the court cannot add to that which is not readily found in an unambiguous statute, nor read out what, as a matter of ordinary language, is in it.

Governments : Legislation : Construction & Interpretation

Appellate courts are required to strictly construe criminal statutes in favor of the accused. This rule, however, is subject to the rule that judicial interpretation must be reasonable and sensible to effect the legislative design and intent. The strict construction rule cannot be used to rewrite the plain language of criminal statutes.

Governments : Legislation : Construction & Interpretation

As a general rule, specific statutes control over more general ones absent legislative intent otherwise.

Governments : Legislation : Construction & Interpretation

When a statute is unambiguous, appellate courts will not speculate as to the legislature's intent but will give full effect to the intent as expressed by the words found in the statute.

Governments : Legislation : Construction & Interpretation

Kansas appellate courts consistently refuse to delve into legislative intent behind unambiguous statutes. Standard rules of statutory construction teach that the legislature is presumed to have acted with full knowledge of the subject matter of the statute and related laws.

◆ Show Headnotes

**COUNSEL:** Steven J. Obermeier, assistant district attorney, Paul J. Morrison, district attorney, and Carla J. Stovall, attorney general, for appellant.

Bobby L. Thomas, Jr., and Carl E. Cornwell, of Cornwell & Erickson, of Overland Park, for appellees.

**JUDGES:** Before GERNON, P.J., KNUDSON and BEIER, JJ.

**OPINIONBY:** GERNON

**OPINION: [\*1278]**

GERNON, J.: The State of Kansas appeals from the dismissal of misdemeanor charges of contributing to the misconduct of a child against the defendants, William VanHecke and Thomas Gault, both of whom were high school teachers.

**[\*1279]** VanHecke was a teacher at Bishop Miege High School and had been the coach for the girls' and boys' cross-country team for a number of years. Gault was a forensics and drama teacher at Blue Valley High School during the 1998-99 school year. VanHecke was in his late 40s and had been married for 30 years at the time of the charges. Gault was 27 during the 1998-99 school **[\*\*3]** year.

VanHecke became romantically involved with K.K. when she was a sophomore and a member of the girls' cross-country team. K.K.'s date of birth is August 5, 1979. VanHecke made advances to K.K. and began to hug and kiss her. The activity increased during the rest of K.K.'s high school years. During the spring of 1998, when K.K. was a senior, she and VanHecke engaged in consensual sexual intercourse and oral sex, which continued during the summer after her graduation.

Gault became involved with J.T., a sophomore at Blue Valley during the 1998-99 school year. J.T.'s date of birth is December 29, 1982. J.T. would sneak out of her house, and Gault would pick her up. J.T. would often spend the night with Gault, where the two would engage in sexual activity. J.T. would then sneak back early in the morning.

K.K. eventually reported the activities with VanHecke after she left for college. J.T.'s relationship with Gault was reported to police by a school counselor.

VanHecke and Gault were each charged with contributing to the misconduct of a child, K.S.A. 2000 Supp. 21-3612.

 K.S.A. 2000 Supp. 21-3612 states, in relevant part:

"(a) **[\*\*4]** Contributing to a child's misconduct or deprivation is:

(1) Causing or encouraging a child under 18 years of age to become or remain a child in need of care **as defined by the Kansas code for care of children**;

(2) causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810 and amendments thereto;

.....

"Contributing to a child's misconduct or deprivation as described in subsection (a)(1), (2), (3) or (6) is a class A nonperson misdemeanor." (Emphasis added.)

 K.S.A. 2000 Supp. 21-3612(a)(1) refers to the child in need of care (CINC) code as an element of the offense. The CINC code provides, in relevant part:

"(a) 'Child in need of care' means a person **less than 18 years of age** who:

....

"(3) has been physically, mentally or emotionally abused or neglected or sexually abused." (Emphasis added.) K.S.A. 38-1502.

✚ "Sexual abuse" is defined in the CINC code as "any act committed with a child which **[\*\*5]** is described in article 35, chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603, and amendments thereto, **regardless of the age of the child**." (Emphasis added.) K.S.A. 38-1502(c).

In dismissing the charges against VanHecke and Gault, the trial court concluded the statute under which they were charged, K.S.A. 2000 Supp. 21-3612, did not apply to their sexual activities with the 17-year-old students. Accordingly, resolution of this appeal turns upon interpretation of the relevant statutes.

The standard of review is clear. ✚ Interpretation of a statute is a question of law over which an appellate court's review is unlimited. **State v. Lewis**, 263 Kan. 843, 847, 953 P.2d 1016 (1998).

The trial court dismissed the charges against the defendants, concluding (1) the legislature did not address the conduct involved in this case in the sex crime statutes; (2) the CINC code was not intended to change the criminal code on sex offenses; (3) the statutes were ambiguous and had to be strictly construed in favor of the defendants; and (4) the State's **[\*\*6]** interpretation would "criminalize behavior that our court and associates accept as pretty common occurrences between consenting older teenagers."

**[\*1280]** The last rationale is troublesome. It seems to suggest that such sexual activity should not be recognized or prosecuted, regardless of the statutory language, if a "court and associates accept (the behavior) as pretty common occurrences between consenting older teenagers." That is not the law.

VanHecke and Gault argued that the statute did not apply to persons engaged in sexual relations with minors who were older than 16 years of age.

The State argued K.S.A. 2000 Supp. 21-3612 applied to children under the age of 18 and incorporated the CINC code. The CINC code, in turn, defined sexual abuse as any act contrary to **K.S.A. 21-3501 et seq.**, regardless of the child's age, K.S.A. 38-1502(c). Therefore, the State argued that contributing to the misconduct of a minor included any sexual conduct with a person under age 18 and was simply the least serious criminal offense involving sexual activity with minors.

The trial court found the statutes involved to be **[\*\*7]** ambiguous and therefore construed them in favor of the defendants. We find no ambiguity and reverse.

A plain reading of the relevant provisions **in pari materia** show no ambiguity. ✚ K.S.A. 2000 Supp. 21-3612(a)(1) criminalizes conduct which causes a person under the age of 18 to fall within the CINC definition of a child in need of care; a crime occurs under this statute even if the child has not been subject to a CINC proceeding or adjudged a juvenile offender. K.S.A. 2000 Supp. 21-3612(b). The CINC code defines a child in need of care to include any child under age 18 who has been subjected to sexual intercourse or unlawful sexual touching described in K.S.A. 21-3501 et seq., or the incest statutes ( K.S.A. 21-3602 and 21-3603), regardless of the child's age.

Neither the trial court nor the parties provide any alternative interpretation of the plain language of K.S.A. 2000 Supp. 21-3612(a)(1) and K.S.A. 38-1502. Instead, the defendants and the trial court choose to ignore the plain terms of the latter provision, asserting **[\*\*8]** the "regardless of the age of the child" language in 38-1502(c) should not be incorporated into 21-3612(a)(1). However, <sup>§</sup>under standard rules of statutory construction, the court cannot add to that which is not readily found in an unambiguous statute, nor read out what, as a matter of ordinary language, is in it. **Endorf v. Bohlender**, 26 Kan. App. 2d 855, 861, 995 P.2d 896 (2000).

<sup>§</sup>Appellate courts are required to strictly construe criminal statutes in favor of the accused. This rule, however, is subject to the rule that judicial interpretation must be reasonable and sensible to effect the legislative design and intent. **State v. Hall**, 270 Kan. 194, Syl. P 3, 14 P.3d 404 (2000); **State v. Chaney**, 269 Kan. 10, 25, 5 P.3d 492 (2000). The strict construction rule cannot be used to rewrite the plain language of criminal statutes. See **State v. Bolin**, 266 Kan. 18, 24, 968 P.2d 1104 (1998); **State v. Vega-Fuentes**, 264 Kan. 10, 14, 955 P.2d 1235 (1998).

VanHecke and Gault correctly note that <sup>§</sup>as a general rule, specific statutes control over more general ones absent legislative intent otherwise. **[\*\*9]** **State v. Creamer**, 26 Kan. App. 2d 914, 919-20, 996 P.2d 339 (2000). They contend that because the statutory rape and indecent liberties statutes would not apply in this case, they cannot be prosecuted for a lesser or different criminal sanction for conduct involving victims who are older than 16 and younger than 18. VanHecke and Gault's argument is nonsensical. Under their theory, the legislature could never create different levels of crimes for the similar conduct because the most severe statutes would always control and make less serious conduct noncriminal.

The specific versus general statute principle could be applied to 21-3612 only in one context. The State could not convict a defendant of contributing to the misconduct of a minor--criminalizing sexual abuse of minors regardless of their age--if the defendant's acts would fall within the more specific statutes of statutory rape or indecent liberties prohibiting sexual intercourse or touching with persons under the age of 16. See **Carmichael v. State**, 255 Kan. 10, 19, 872 P.2d 240 (1994) (defendant convicted of rape should have been charged with the more specific statute of aggravated incest). **[\*\*10]** See also **State v. Wilcox**, 245 Kan. 76, 79, 775 P.2d 177 (1989) **[\*1281]** (persons accused of welfare fraud must be charged under K.S.A. 39-720 and not under K.S.A. 21-3711). Article 35 crimes would not apply in this case. Thus, there is no more specific statute to override 21-3612 here.

VanHecke and Gault further contend that the legislative intent was not to extend the "regardless of their age" provision into the criminal arena. We reject this argument. <sup>§</sup>When a statute is unambiguous, appellate courts will not speculate as to the legislature's intent but will give full effect to the intent as expressed by the words found in the statute. **State v. Thrash**, 267 Kan. 715, 716-17, 987 P.2d 345 (1999).

<sup>§</sup>Kansas appellate courts have consistently refused to delve into legislative intent behind unambiguous statutes. See **In re Marriage of Killman**, 264 Kan. 33, 42-43, 955 P.2d 1228 (1998); **State v. Taylor**, 27 Kan. App. 2d 62, 67, 998 P.2d 123, **rev. denied** 940, 2000 Kan. LEXIS 451 (2000); **In re A.C.W.**, 26 Kan. App. 2d 468, 472, 988 P.2d 742 (1999). Standard **[\*\*11]** rules of statutory construction teach us that the legislature is presumed to have acted with full knowledge of the subject matter of the statute and related laws. **Szoboszlay v. Glessner**, 233 Kan. 475, 478, 664 P.2d 1327 (1983). Thus, this court may presume the legislature was aware of the incorporation of the CINC statute into 21-3612 when it enacted House Bill 2709 in 1984, adding the language "regardless of the age of the child" to 38-1502(c). L. 1984, Ch. 153, § 1. Had the legislature intended to limit the "regardless of the age" language to the CINC statutes, it could have amended 21-3612 to include age limits such as those found in the sex crimes statutes.

The legislature did nothing to indicate that House Bill 2709 limited the language therein to CINC statutes.

This matter is reversed with directions that the cases be remanded and that the charges be reinstated consistent with this opinion.

Source: [All Sources](#) > / . . . / > **KS Supreme Court and Court of Appeals Cases** 

Terms: **name(state and vanhecke)** ([Edit Search](#))

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Date/Time: Friday, October 26, 2001 - 11:07 AM EDT

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February 7, 2002

To: Members of the House Judiciary Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2487: UCC Revised Article 9**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2487** which represents amendments to the recently revised Article 9 that were suggested by the Uniform Commissioners.

We are generally supportive of the amendments and are particularly interested in seeing that the amendments to Section 20 on Pages 30-31 are passed. Very briefly, these provisions give very helpful guidance regarding the method of amending, continuing and terminating pre-effective-date financing statements. Pre-effective-date financing statements are those financing statements that were on file before July 1, 2001. While Revised Article 9 provides guidance on maintaining the effectiveness of these filings through the transition to the new rules found in Revised Article 9, there were some significant details missing. There were no rules telling lenders where they could file amendments or termination statements with regard to these pre-existing filings. The amendments found in Section 20 fill in the gaps and will help lenders make the transition within Revised Article 9 smoothly.

Due to the fact that these amendments are critical during this transition period, we would request that the Committee consider amending **HB 2487** to provide that it become effective upon publication in the *Kansas Register*.

Thank you and we respectfully request that you act favorably on the passage of **HB 2487**.

House Judiciary  
Attachment 2  
2-07-02

RON THORNBURGH  
Secretary of State



First Floor, Memorial Hall  
120 SW 10th Ave.  
Topeka, KS 66612-1594  
(785) 296-4564

TESTIMONY OF THE SECRETARY OF STATE  
TO HOUSE JUDICIARY COMMITTEE  
ON HB 2487

FEBRUARY 7, 2002

Mr. Chairman and Members of the Committee:

The Kansas Secretary of State supports the passage of HB 2487, which contains the technical amendments proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to revised article nine of the uniform commercial code.

The Secretary of State respectfully requests additional amendments to HB 2487, which would tie non-UCC liens that are filed in our office to the filing procedures used to file UCC documents. These amendments would go one step further in creating a uniform filing system for all liens that are recorded in our office. Our amendments address mortgages filed by pipelines companies and public utilities pursuant to K.S.A. 17-630; agricultural input liens filed pursuant to K.S.A. 58-244; mortgages filed by railroad companies or public utilities pursuant to K.S.A. 66-1217; and federal tax liens filed pursuant to K.S.A. 79-2616.

The filings pursuant to K.S.A. 17-630, 58-244 and 66-1217 would be required to include the national UCC form with the filing. Because all liens—whether they are UCC or nonUCC—are recorded in one filing system within our office, this requirement is needed to create a standard format for the name, address, and other information that our filing system can recognize. Proper recognition of the party names and addresses will

House Judiciary  
Attachment 3  
2-07-02

ensure that our office files and indexes the document correctly, which will assist the public in searching and retrieving this information.

The current practice of our office is to file and index these non-UCC liens in our UCC filing system. Two of the statutes I mentioned currently contain a directive that the documents be filed in the UCC system; our amendment also codifies the requirement in K.S.A. 17-630 and K.S.A. 66-1217. Again, the purpose of the amendment is to create a uniform filing system and to facilitate access to these records.

Our amendment also includes a provision tying the filing fees and search fees for these filings to the fees charged for UCC documents, creating a uniform fee schedule within our office.

Lastly, our amendment cleans up references to old article nine contained in these lien statutes.

I appreciate your support of our proposed amendments and would be happy to answer questions.

Melissa Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

**K.S.A. 17-630. Mortgages and deeds of trust for securing bonds of interstate gas pipelines and certain public utilities or indebtedness incurred under rural electrification act; execution and filing; notice.** Every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state, made to secure the payment of bonds issued or to be issued thereafter by any corporation which is an interstate gas pipeline company, or by any public utility as defined in K.S.A. 66-104 and amendments thereto except nothing herein shall apply to or affect railroad corporations, and every mortgage or deed of trust, or satisfaction thereof, covering any real or personal property situated in this state made to secure any indebtedness incurred under the rural electrification act of 1936, as amended (U.S. code, title 7, chapter 31), shall be executed and duly acknowledged and certified, as other instruments affecting real estate. Such mortgage or deed of trust, or satisfaction thereof shall be filed in the office of the secretary of state accompanied by the form prescribed by K.S.A. 84-9-521(a), which must indicate in box 10 of the form that the instrument is filed in accordance with this section. The secretary shall certify that the instrument has been filed in the secretary's office by endorsing upon the original signed instrument the word "filed" and the date and hour of its filing. This endorsement is the "filing date" of the instrument and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary of state shall thereupon file and index the endorsed instrument in accordance with part 5 of article 9 of the uniform commercial code. The instrument shall be effective upon the record until terminated and the secretary of state shall remove the record one year after termination. The filing of such instrument in the office of the secretary of state shall be notice to all persons of the contents thereof and to all subsequent purchasers and encumbrancers of the rights and interests of the parties thereto as to property described in the filed instrument and property acquired subsequent to the execution thereof if the instrument so provides. Notwithstanding any provision of law to the contrary, no other filing of any such instrument shall be necessary. Any such mortgage or deed of trust filed in the office of the register of deeds of any county in this state may be refiled in the office of the secretary of state in the manner provided in this section. Such refiled shall thereafter as to any property not previously released from such mortgage or deed of trust be of the same effect as if the instrument had been originally filed in the office of the secretary of state. The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code.

**K.S.A. 58-244. Same; when perfected; priority of lien not perfected; duties of filing offices; fees.** (a) To be perfected, the lien must have attached and the supplier entitled to the lien must have filed a lien-notification statement in the form provided for in K.S.A. 58-242, accompanied by the form prescribed by K.S.A. 84-9-521(a), which must indicate in box 10 of the form that the lien is filed in accordance with this section, with the appropriate filing office under K.S.A. 84-9-401 ~~84-9-501~~ and amendments thereto within 20 days after the last date that agricultural production input was furnished. A lien-notification statement filed pursuant to this section shall include the date which notice was mailed to the lender and a statement signed by the supplier indicating that the lender did not respond to the lien-notification.

(b) Subject to the provisions of subsection (d) of K.S.A. 58-242, a lien that is not perfected shall be entitled to the same priority as an unperfected security interest as determined by K.S.A. 84-9-312 article 9, subpart 3 of the uniform commercial code and amendments thereto.

(c) The filing officer shall file, index, amend, maintain, remove and destroy the lien-notification statement in the same manner as a financing statement filed under part 4 5 of article 9 of the uniform commercial code. ~~The secretary of state~~ filing officer shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 4 5 of article 9 of the uniform commercial code.

**66-1217. Recordation of real and personal property mortgages or security interests in fixtures made by railroad and utility companies; filing with secretary of state, when; liens.** Any mortgage of real property or of both real property and personal property, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad company as defined in K.S.A. 66-180 or a public utility as defined in K.S.A. 66-104, shall be recorded in the office of the register of deeds of the county or counties in which the real property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording and, if the instrument so provides, shall be a lien on any real property and fixtures thereafter acquired subject to the mortgage or security agreement from the time of acquisition. If said mortgage or security agreement includes personal property, a copy of said mortgage or security agreement certified as true by the debtor or creditor, or an officer of either, shall also be filed with the secretary of state in accordance with part 5 of article 9 of the uniform commercial code and accompanied by the form prescribed by K.S.A. 84-9-521(a), which must indicate in box 10 of the form that the lien is filed in accordance with this section. ~~and~~ When so filed the mortgage or security agreement shall be a lien on said property described in said mortgage or security agreement from the time of said filing, and if the instrument so provides, shall be a lien on any property thereafter acquired subject to the mortgage or security agreement from the time of acquisition, and the lien thereon shall be enforceable in accordance with the laws of this state governing mortgages of real estate. No other recording or filing of any such instrument shall be necessary, notwithstanding the provisions of any other statute. The instrument shall be effective upon the record until terminated and the filing officer shall remove the record one year after termination.

**K.S.A. 66-1219. Same; file maintained by secretary of state; fee.** The secretary of state shall maintain a file for mortgages, security agreements, and releases thereof of railroads and public utilities filed pursuant to this act, ~~and he shall receive for such filing a fee of five dollars (\$5).~~ The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code.

**K.S.A. 79-2616. Same; duties of filing officers; methods of filing; certificate of notices on file; copies of documents on file, fees.** (a) If a notice of federal lien, a refiling of a notice of federal lien or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) The secretary of state, the secretary shall cause the notice to be marked, held and indexed in accordance with ~~the provisions of subsection (4) of K.S.A. 84-9-403~~ part 5 of article 9 of the uniform commercial code and amendments thereto, as if the notice were a financing statement within the meaning of the uniform commercial code, except the notice shall remain filed for 10 years from the date of filing, if the date of filing was on or after November 5, 1990, and liens filed prior to November 5, 1990, shall remain on file for a period of four years from the close of the preceding required refiling period; or

(2) any other officer described in K.S.A. 79-2614, and amendments thereto, the officer shall endorse thereon the officer's identification and the date and time of receipt and file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice; the date and time of receipt, the title and address of the official or entity certifying the lien and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the secretary of state for filing, the secretary shall:

(1) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code; and

(2) cause a certificate of discharge or subordination to be marked, held and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in K.S.A. 79-2614, and amendments thereto, such officer shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index.

(d) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed pursuant to this act or pursuant to the uniform federal tax lien registration act, K.S.A. 79-2608 *et seq.*, and amendments thereto, as it existed prior to the effective date of this act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. ~~The fee for a certificate is \$5. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of \$ .25 per page, unless the filing officer is the secretary of state, in which case, the fee shall be an~~

amount fixed by the secretary of state and approved by the director of accounts and reports pursuant to K.S.A. 45-204, and amendments thereto.

**K.S.A. 79-2617. Same; filing fees.** ~~The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:~~

- ~~— (1) For a lien on real estate, \$5;~~
- ~~— (2) for a lien on tangible and intangible personal property, \$5;~~
- ~~— (3) for a certificate of discharge or subordination, \$5; and~~
- ~~— (4) for all other notices, except for a certificate of release or nonattachment, \$2.~~

The filing officer shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 5 of article 9 of the uniform commercial code.