

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:41 a.m. on March 19, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)
Senator Pugh (excused)

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Don Moler, League of Kansas Municipalities
Randy Allen, Kansas Association of Counties
Tom R. Tunnell, Kansas Grain and Feed Association
Chuck Stones, Kansas Bankers Association

Others attending: see attached list

The minutes of the March 18th, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

HB 2709—uniform commercial code: regarding secured transactions

Conferee Moler testified in support of **HB 2709**, a bill which would make technical adjustments to the Kansas Uniform Commercial Code and delete the definition of “public finance transactions” from the Code. He discussed how the Code, as currently written, would place a financial burden on cities and counties by requiring them to provide additional financial statements on all outstanding bond issues. On inquiry by Committee regarding his position on the “controversial” New Sections 4 and 5 of the bill, he stated that he took no position one way or the other.(attachment 1)

Conferee Allen testified in support of **HB 2709** and described how the language in the Code that specifically deals with governmental bond financing, creates a problem for cities and counties. He reiterated the previous conferee’s statement regarding New Section 4 and 5.(attachment 2)

Conferee Tunnell testified as neutral on **HB 2709** but expressed concerns with New Section 4 of the bill beginning on page 15 line 35 which deals with the issue of insufficient fund (ISF) grain checks. He pointed out that existing law already addresses ISF check potential and requested Committee determine whether or not Section 4 is necessary.(attachment 3)

Conferee Stones testified as neutral on **HB 2709**. He described the history and purpose of New Section 4 of the bill, discussed concerns the KBA had with it, and requested Committee consider whether or not it was necessary.(attachment 4)

Written testimony expressing concern with **HB 2709** amendments was submitted by Community Bankers Association of Kansas.(attachment 5)

Final action:

Sub HB 2673—CINC; changing definition of sexual abuse

Following a review of **Sub HB 2673** by the Chair, Senator Adkins moved to pass the bill out favorably, Senator Goodwin seconded. Carried.

HB 2697—allowing judges discretion to transfer a chapter 61 case to a chapter 60 case

Following a review of **HB 2697** by the Chair, Senator Oleen moved to amend the bill to make it effective on publication in the Kansas register, Senator Goodwin seconded. Carried. Following brief discussion, Senator Donovan moved to pass the bill out favorably as amended, Senator Goodwin seconded. Carried.

The meeting adjourned at 10:02 a.m. The next scheduled meeting is March 20, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-19-02

NAME	REPRESENTING
Randall Allen	Ks. Assoc. of Counties
Don Moler	LKM
Chuck Stokes	KBA
Tom Tunnell	Ks. Anim. & Feed Assn.
Doug Wareham	Ks. Agribusiness Retailers Assn.
Connie Burns	Whitney B. Damron, PA
Joe Lieber	Ks Co-op Council
Matt Bertholf	Ks. Co-op Council
Jean Barber	KADC
Mike Reed	Ko Law Consulting
Doug Smith	Pinegar, Smith & Associates
Bill Henry	Ks Credit Union Assn.
Rosilyn James-Martin	SRS-Children & Family Policy
KETH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Jon Jasso	



League of Kansas Municipalities

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Fax: (785) 354-4186

To: Senate Judiciary Committee
From: Don Moler, Executive Director
Date: March 19, 2002
Re: Support for HB 2709

First I would like to thank the Committee for allowing the League to testify today in support of HB 2709. This issue was brought to the League's attention by bond council who deal professionally with cities and counties in the issuance of bonds. They identified that significant costs would be imposed upon cities and counties, and ultimately the tax payers, should this technical amendment to Article 9 of the Kansas Uniform Commercial Code not be enacted. As a result, the League is here today to support this effort as a matter of good government and reducing unnecessary costs to the taxpayers.

As we understand current law and the revised Article 9, it would subject local governments to its provisions whenever a local governmental entity had issued bonds secured by personal property. This inclusion would result in additional costs to local governments by requiring additional financial statements and the utilization of trustees on municipal revenue issues. As a result of the retroactive nature of the current law, by July 1, 2002, financing statements would have to be filed on all outstanding bond issues. This would be both an administrative nightmare and an expensive undertaking for local governments and their taxpayers. We feel that this is an unnecessary burden to be placed on local governments and local taxpayers and as a result provide our full support to HB 2709. I will be happy to answer any questions the Committee may have.

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KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning House Bill No. 2709
re. the Uniform Commercial Code
Senate Judiciary Committee

Presented by Randy Allen, Executive Director
Kansas Association of Counties
March 19, 2002

Senator Vratil and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to express our support for House Bill No. 2709.

It is our understanding that SB 366, adopted by the Legislature in 2000, has an unfortunate negative financial impact on local governments, without any offsetting public policy reason to justify additional costs. Holders of municipal revenue bonds are able to access information about the local government issuing debt and the obligations of a city or county through means short of requiring local governments to maintain a list of the names and addresses of all bond-owners in a financing statement. Requiring UCC financial statements to be filed by a local government each time revenue bonds are issued, and requiring continual re-filing of such statements every five years over the life of the bonds, represents an administrative nightmare and unnecessary cost which is ultimately borne by citizens in the form of higher public project costs.

At the annual conference of the Association last November, the membership voted unanimously to support legislation which repeals language in the 2000 amendments to the UCC law relating specifically to governmental bond financing. As such, we urge your support of HB 2709 and request that you recommend the bill favorably for passage. Thank you for this opportunity to comment on this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
BEFORE THE
SENATE JUDICIARY COMMITTEE
SENATOR JOHN VRATIL, CHAIR
REGARDING
HOUSE BILL 2709
MARCH 19, 2002

KGFA, promoting a viable business climate through
sound public policy for more than a century.



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3-19-02
Att 3*

Chairman Vratil and members of the Senate Judiciary Committee, my name is Tom Tunnell and I am President and CEO for the Kansas Grain and Feed Association (KGFA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. Our membership includes nearly 1,100 Kansas business locations and represents 98% of the commercially licensed grain storage in the state.

Thank you for the opportunity to appear before you today and offer testimony regarding HB 2709. My comments will be confined to new Section 4 of the bill beginning on page 15 line 35. This new section was added to the bill as a House floor amendment and was intended to address a situation that arose relating to the recent bankruptcy and subsequent dislvement of the Farmers Coop Association in Lawrence.

In simple terms, what new Section 4 does is grant a first priority lien against grain contained in a public warehouse, including grain owned by the public warehouseman in favor of outstanding receipt holder who "has sold their grain and has not picked up the check or the check has been received but returned for insufficient funds." Also, please note that a public warehouse is defined in this section as including state and federally licensed warehouses.

My purpose of appearing today is to apprise the committee of existing state law found in KSA 34-2, 112 which already addresses the insufficient fund check potential.

KSA 34-2,112. Voidable sale grain to warehouseman; insufficient fund check. (a) Whenever any amount of grain is received in any public warehouse from a producer and is sold by the producer to the public warehouseman with payment by check, if the check fails, because of insufficient funds, to clear the bank or other financial institution on which it is drawn within 10 days after the date the check is issued, excluding Saturdays, Sundays and holidays, the sale of such amount of grain may be voided by the producer by notifying the public warehouseman in writing that the sale is void. In any such case, the public warehouseman shall include such amount of grain in the public warehouse's daily position record and other records as an open storage obligation upon receiving such written notice voiding the sale.

Because new Section 4 is written to include both state and federally licensed public warehousemen perhaps KSA 34-2,112 should be amended likewise.

In closing, when KSA 34-2,112 was passed in 1987 it was intended to solve the insufficient fund grain check issue. I will yield to the wisdom of the Senate Judiciary Committee as to whether the addition of new Section 4 of HB 2709 is necessary.

Thank you for my time today on your agenda.



The Kansas Bankers Association

TO: Senate Judiciary Committee
FROM: Chuck Stones, Senior Vice President

RE: HB 2709

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear before you today regarding New Section 4 of HB 2709. New Section 4 was added as a floor amendment and was originally introduced last year as HB 2088. It was introduced in response to a bankruptcy filing by a grain elevator and the authors were concerned that some of the farmers who had 1) delivered grain and had not been paid or whose checks did not clear would get caught and not be paid; and 2) that those customers who had pre-paid for supplies and not taken delivery on their goods would get caught and not receive the goods for which they had paid. The bill did not receive a hearing last year because the Chairman believed it to be prudent to let the court sift through the situation and see what happened. It is my understanding that all those people who had claims for grain stored or pre-paid goods have been satisfied. It would appear that this portion is unnecessary.

Our concern with New Section 4 is mostly philosophical in that the traditional rules of the UCC which grant priority to the "first to file". This has been the established business rule for a very long time and people rely on it. Any change in this rule tends to confuse matters and makes transactions harder to determine the end results. The first to file rule needs to be protected unless absolutely necessary and new statutory liens should be added very carefully and not without extreme consideration.

There also would seem to be statutes that address these types of situations without the use of a new, unnecessary statutory lien.

We respectfully request that you consider whether or not New Section 4 is necessary enough to establish new rules.

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att 4*



Directed By The Members We Serve

March 15, 2002

The Honorable John Vratil
State Senate
Room 120-S
State Capitol
Topeka, Kansas 66612

RE: HB 2709

Dear Senator Vratil,

I write to urge that you vote, and urge others on your committee to act, to remove the amendments added to this bill in the House, before acting on the public finance issues raised in the original bill.

We do not oppose these amendments, as much as we have concerns about the unintended consequences of establishing this kind of lien. Community bankers are very concerned about the harm caused to farmers in the Lawrence grain storage situation – many of our customers are farmers in the same situation. Beyond that, certain facts need to be kept in mind:

- I understand all the farmers who had grain in the Lawrence misfortune have been paid in full
- I also understand they obtained a court ruling that makes clear that current law treats the delivery receipt they got for their grain the same as a lien
- I understand current law provides very good protections for grain farmers, such as the right to remove their grain up to ten days after delivery to an elevator

Under these circumstances, the amendments to HB 2709 do not appear to be necessary. While some will agree but insist they “don’t harm,” they do have an unintended downside. Many community bankers perceive attempts to create a “super lien” that supplants an earlier secured interest they obtained in loaning money to a farmer, in a negative way. These changes may have a chilling effect on the willingness of community bankers’ to loan money to farmers. Unfortunately, that effect will have the most impact on farmers with marginal credit status, who probably need the loan the most.

Best wishes,

A handwritten signature in black ink that reads "Bob Kennedy". The signature is written in a cursive, flowing style.

Bob Kennedy
Executive Director

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att 5*