DAILY ROLL CALL

BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date JANUARY 8, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH			✓
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH			✓
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on January 8, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Pavlovich and Smith who were excused.

HOUSE BILL NO. 22 - Clarify Notice Requirements on Disposition of Collateral After Default sponsored by Rep. Hal Harper. Rep. Harper explained that HB 22 amends the uniform commercial code in two sections by clarifying a secured lenders letter to the last known address given by a debtor is sufficient notice to let that person know of intent to sell or dispose or retain or otherwise dispose of collateral after default. The law now requires that notice be given, but the question is what is the extent of the notice, therefore, it needs clarifying. When does a bank know when they have complied with that provision that notice be given, so in order to clarify this these two changes would say that the last known address either on the agreement that is signed by the two is where the letter would be sent, or if that debtor or another secured party in that agreement has given notice that their address has been changed, then that would be the last known address, and that would be sufficient.

PROPONENTS

Bob Pyfer, Vice President of Governmental Relations for the Montana Credit Unions' League stated the league represents 109 of the 111 credit unions in Montana. He stated that this bill would clarify the rights and duties of lenders and borrowers according to fundamental fairness, for example a defaulting borrower must give notice of change of address and the lender must note and use this address in future communications (Exhibit 1).

Karl Englund, Montana Trial Lawyers Association stated that uniform commercial code is very difficult statute to work with, and clarifying what is meant by notice within the statute is needed. He is concerned about one problem and that is when the creditor has actual knowledge of the location of the debtor but the debtor has not provided the information in writing. To clarify this, he suggested adding a third subsection to the bill saying that the creditor has to mail it to the debtor's most current address

of which the creditor has actual knowledge. His point was that when the creditor knows where the person lives, be it in writing or not, then they should send the notice of the sale to the debtor at that address.

OPPONENTS

There were no opponents on this bill.

There being no further discussion by proponents or opponents, Chairman Kitselman asked for questions by the committee.

QUESTIONS

Rep. Brandewie stated that there should be an attempt to notify them more than once by mail, occasionally mail gets lost, two notices might help to overcome any problems with the mail. Mr. Englund responded that a conscientious creditor would sent a notice certified, so that they have a record that the debtor had received it or that it was undeliverable.

Rep. Bachini asked for clarification on what Mr. Englund had proposed to change. Mr. Pyfer responded that would be a step backwards. The whole idea was to put some certainty into the situation. He felt to introduce a knowledge concept would totally reverse the purpose of this bill, they would see more litigation rather than trying to avoid them, and he would resist any kind of amendment to that effect.

CLOSING

Rep. Harper stated that on the concept of registered mail; he wonders how that would work, because the requirement would be satisfied if the letter is mailed to the last known address. He said the lender would know if the debtor had received the letter or not, and if he didn't that would place an obligation on the lender to take further steps, he questioned how much that would clear up. He thinks that the bill as written, would clarify the problem they are concerned about.

EXECUTIVE ACTION - January 8, 1987 - 8:25 a.m.

ACTION ON HOUSE BILL NO. 22

Rep. Brandewie moved that HB 22 DO PASS AS AMENDED.

Rep. Brandewie moved to amend the bill to require certified mail notification.

With Rep. Cohen voting no, and Rep. Pavlovich being absent, the motion CARRIED.

The motion by Rep. Brandewie that HB 22 DO PASS AS AMENDED was voted on. The motion CARRIED unanimously.

ADJOURNMENT

The meeting adjourned at 8:40 a.m.

Les Kitselman

Rep. Les. Kitselman
Chairman

STANDING COMMITTEE REPORT

January 8 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL 22

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. LES KITSELMAN Chairman

CLARIFY NOTICE REQUIREMENTS ON DISPOSITION OF COLLATERAL AFTER DEFAULT

AMENDMENT AS FOLLOWS:

1) Page 3, line 18
Following: "sent"
Insert: "by certified mail"

2) Page 6, line 3
Following: "sent"
Insert: "by certified mail"

FIRST reading copy (WHITE color)

EXHIBIT # 1
DATE 1/8/87
HB 22

HOUSE BILL 22

Testimony of Robert C. Pyfer
Vice President, Governmental Relations
Montana Credit Unions League

Before the House Business and Labor Committee

January 8, 1987

Mr. Chairman and members of the Committee, for the record I am Bob Pyfer, Vice President, Governmental Relations for the Montana Credit Unions League. The League is a trade association representing 109 of Montana's 111 credit unions.

We appear in support of HB 22. The Uniform Commercial Code provides that a lender who has repossessed collateral after default must give notice to the defaulting debtor of the time and place that has been set for sale of the collateral to satisfy the loan. This is because the debtor has the right to redeem the property by paying off the loan any time before the sale takes place. This bill would merely make it clear that a secured lender's letter to the last known address given by the debtor is sufficient notice of intent to sell, retain, or otherwise dispose of collateral after default. Basic fairness dictates that a defaulting borrower should have the burden of notifying his lender of any change of address. In a repossession situation, the fact of the repossession itself gives the defaulting borrower vivid notice that the collateral is highly likely to be sold. He knows that it will probably be sold in the near future to satisfy the loan. It only makes sense that if he wants the written notice of time and place of sale sent to him at a new address, he should have to notify the lender of the new address. In fact, this is the policy of the Uniform Commercial Code (UCC) as interpreted in Dulan v. Montana National Bank of Roundup, 661 P2d 28 (1983). Then you may ask, why is HB 22 needed? The bill would codify Dulan and make

sure that this fairness principle would be followed in all cases covered by Sections 30-9-504 and 30-9-505 of the UCC.

The Dulan case involved a complicated factual situation as well as certain other issues. A few cases from other states tend to indicate that a lender must take additional steps to track down a defaulting borrower if a letter giving notice of time and place of sale of collateral is returned unclaimed. See Mallicoat v. VF&L Corp., 415 SW 2d 347 (Tenn. 1966) and Day v. Schnectady Discount Corp., 611 P2d 568 (Ariz. 1980). The burden of proof is on the creditor to show that notice is reasonable. Farmers' State Bank v. Mobile Homes Unlimited, 181 Mont 342 593 P2d 734 (1979). The UCC (Section 30-9-507) imposes substantial penalties on a creditor for violating the notice provisions. For these reasons, in order to avoid being "stung on a technicality," a prudent lender may go to considerable time and expense to locate the delinquent borrower who has "skipped town"--an expense which ultimately must be passed on to the good credit union member or other good client or consumer customer. Clearly, when a notice letter is returned unclaimed, the lender knows that it was not actually received, but the lender should not have to play detective to track down a debtor who knows that the collateral has been repossessed and is likely to be sold.

Recently, a Great Falls credit union was subjected to the time and expense of litigation in a case where a husband and wife signed jointly on a loan. They then defaulted on the loan. The credit union subsequently repossessed the collateral. Soon thereafter the couple separated and the wife moved out. The credit union sent notice of sale to the couple's address as given on the loan documents. The wife had not given the credit union a change of address. The wife claimed that the notice to her was defective, attempting

to deny the credit union recovery with penalties to the credit union. The credit union won the case, but incurred considerable time and expense. The case did not go to the Supreme Court so no definitive ruling is likely to be forthcoming from the court. Therefore, HB 22 is needed to get a clear statement on the books in order to avoid litigation and unnecessary time and expense in attempting to locate defaulting borrowers who have changed their addresses.

There may be some concern that perhaps a lender who has been in recent contact with the debtor or who may have clues to his whereabouts should be required to take steps beyond mailed notice to the last address given by the debtor. This gets into questions of what and how much the lender "knew." This is very difficult to determine in any given case. Conflicting testimony would be likely. Also, in a financial institution with several or many employees, any of whom may receive information orally, how do you determine when the financial institution "knew" something about a debtor's whereabouts. If knowledge language were written into the bill it would surely cause more litigation. That would reverse the purpose of the bill which is to avoid litigation. The bill requires written notice of a change of address because this is the only way that litigation and needless expense can be avoided.

If a debtor whose collateral has been repossessed and who changes his address contacts the lender and asks for the time and place of sale, the UCC's good faith requirement in Section 30-1-203 would clearly mandate that the lender tell the debtor the time and place. If a lender were to maliciously attempt to stand on the technicality of written notice and knowingly send notice to the wrong address, the good faith provision could again be

invoked in favor of the debtor. To attempt to specifically provide for every possible contingency would clutter up the code--that's why the good faith obligation is there.

In closing, this bill would merely clarify the rights and duties of lenders and borrowers according to fundamental fairness--i.e., a defaulting borrower must give notice of change of address and the lender must note and use this address in future communications.

Thank you for your time and consideration. We urge a "do pass" recommendation for House Bill 22.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. HB 22 DATE JANUARY 8, 1987

SPONSOR Rep. Hal Harper

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bob Ruter	Mont. Credit Union League	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.