

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson John Barker at 3:30 pm on Tuesday, February 03, 2015, 112-N of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Legislative Research Department
Robert Allison-Gallimore, Legislative Research Department
Katherine Goyette, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Connie Bahner, Kansas Legislative Committee Assistant

Conferees appearing before the Committee:

Larry Zimmerman, Kansas Credit Attorney Association

Others in attendance:

[See Attached List](#)

Bill introductions

Chairperson Barker called for bill introductions.

Phillip Cosby of the American Family Action of Kansas introduced a bill relating to children's internet protection.

Hearing on: HB2111 — Code of civil procedure; items allowable as costs.

Chairperson Barker opened the hearing on **HB2111**.

Larry Zimmerman, of Kansas Credit Attorney Association, was recognized by Chairperson Barker as a proponent of **HB2111** ([Attachment 1](#)).

Chairperson Barker stated that there was also written proponent testimony from Joe Molina of the Kansas Bar Association ([Attachment 2](#)) and Brady Keith of Credit Management Services ([Attachment 3](#)).

Noting that there were no further conferees, Chairperson Barker closed the hearing on **HB2111**.

Possible action on bills previously heard

HB2101 - An act concerning trust instruments; relating to mediation or arbitration of disputes.

Chairperson Barker asked the committee to open their files on **HB2101** because they are going to work that bill. Chairperson Barker noted that there was a hearing on this bill yesterday.

*Representative John Carmichael moved to pass **HB2101**, seconded by Representative Leslie Osterman.*

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Representative Carmichael then moved to pass **HB2101** and to place the bill on the Consent Calendar, seconded by Representative Leslie Osterman, and the motion passed.

HB2109 - An act concerning the Kansas probate code; relating to transfer-on-death deeds; lapsing or vesting of ownership in grantee beneficiary.

Chairperson Barker asked the committee to turn to **HB2109** to work the bill.

Representative Leslie Osterman moved to pass **HB2109**, seconded by Vice-Chairperson Charles Macheers.

Representative Becky Hutchins asked if the K.S.A. number had been corrected. Katherine Goyette, Office of Revisor of Statutes, advised that an amendment would be needed.

Representative Blaine Finch advised that he had two issues with **HB2109**. First, the statute currently states that the amendments shall apply to all record owners who die on or after July 1, 2015. They do not apply if the record owner died prior to July 1, 2015. Representative Finch believes that should be changed to the date of the deed or the date the deed was recorded, not the date of death.

The second issue is that there's a two-fold scheme now in the proposed bill. The first is in Section (c) (1), which talks about what happens if the grantee/beneficiary dies prior to the death of the record owner. Section (c)(2) applies the anti-lapse statute, which is what happens when a person dies without a will. The grantee/beneficiary's share would pass to the their children, then that child's children, on down to six degrees of consanguinity. The problem is that the title companies or examiners are the ones who then have to make the determination as to who the closest relative is to the decedent. Under the probate process, the courts make those decisions based on a review of verified petitions and the evidence. This statute takes the court out of that process and puts the burden on the title companies. A huge burden will be placed on the land/title system and the title examiners if this bill is advanced as it is currently written.

Representative John Carmichael suggested tabling **HB2109** until a balloon could be prepared to address those issues.

Chairperson Barker withdrew **HB2109** from consideration, with the committee's approval. He stated that it will be worked another day.

HB2040 - An act concerning driving; relating to driving while license canceled, suspended or revoked.

Chairperson Barker directed the committee's attention to **HB2040**. Katherine Goyette, Office of Revisor of Statutes, gave an overview of the bill. Representative Becky Hutchins asked what the

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penalty currently is if a person refuses to take a blood, breath, or urine screening test.

Representative Jim Ward stated that this bill is talking about driving while suspended and the reasons for an enhanced sentence on a third conviction. It does not deal with DUI's. For example, a person could have his license suspended for failure to pay a ticket. The next time could be for refusing to take a breath test, and the third time for not having insurance. Under the current law, that person would be sentenced to 90 days in jail. They don't want to do that anymore, or at least have it so that they can't look back more than five years. They want to take out the administrative part of refusing to take a screening test as one of the reasons for getting a third strike.

Chairperson Barker further clarified that when there's a refusal to take an alcohol screening test, administratively their driver's license will be suspended for a period of time and then be restricted. They want to take that portion out. In addition, municipalities don't like third-time driving while suspended convictions because they have to pay for the 90-day jail sentence. Many cities refer these cases over to district court because the district court does not have to pay the sheriff for incarceration.

Representative Mark Kahrs stated that the reason a person typically refuses to take an alcohol test is because they are probably intoxicated and are driving drunk. He, therefore, opposes this bill. It weakens enforcement against DUI drivers and puts the citizens at risk of drunk drivers. It may be an added burden to municipalities, but it's a greater burden to our citizens if we allow drunk drivers to continue to drive drunk.

Representative John Rubin also opposes the bill. A lot of work has been done to remove the situation where it is beneficial for a person to refuse to take an alcohol test. This bill would backtrack on what the legislature has been trying to get away from over the last several years. If a drunk driver knows that he will face a lighter penalty if he refuses to take the test, he will always refuse the test.

Representative John Carmichael checked with the Wichita city law department to find out why the provision relating to refusals was in there. He was told a similar bill was in the legislature last year and somehow this provision to strike refusals as one of the grounds got added to it. The City of Wichita thought they were just repeating what the Legislature wanted last year. He believes it is a matter of miscommunication.

Representative John Carmichael moved to amend **HB2040** by restoring lines 16-18 on the second page, relating to refusal to submit to a blood, breath or urine test, so that the law remains the way it is currently. The motion was seconded by Representative Jim Ward.

Representative Mark Kahrs stated that he still opposes **HB2040** as it relates to the new language in the bill that requires a decay after five years of drunk driving. Anyone who has dealt with alcohol and alcoholics knows that that is an issue people struggle with for life.

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Representative Jim Ward stated that the language that would be stricken caused confusion. The amendment makes it a straight up or down question on whether there should be a decay for driving while suspended. DUI's already have a decay under the law.

Chairperson Barker clarified that there is a decaying procedure for drunk driving under K.S.A. 8-1567. This creates the policy for driving while suspended.

Additional discussion was held between Representative Kyle Hoffman and Representative Jim Ward.

Representative John Carmichael closed on the amendment to **HB2040**. Chairperson Barker called for a vote. The amendment on **HB2040** passed.

Chairperson Barker called for further discussion on the bill. Representative John Rubin remains opposed to **HB2040**. He believes some of these driving while suspended convictions are as a result of drunk driving or refusing to take the DUI test, and he feels they should be counted.

Chairperson Barker called for further discussion. Seeing none, he asked Representative Carmichael to close. It was brought to the attention of Chairperson Barker that there was no motion to pass the original **HB2040**. Chairperson Barker called for a motion on **HB2040**.

Representative John Carmichael moved to pass **HB2040**, as amended, absent any objection to any procedural requirements by the committee; seconded by Representative Jim Ward.

There was further discussion by Representative Randy Powell, Chairperson John Barker, and Representatives Jim Ward, and Mark Kahrs.

Representative John Carmichael closed on **HB2040**. Chairperson Barker called for a vote. He was in doubt and called for a show of hands. **HB2040**, as amended, passed with 15 ayes and five nays.

The following representatives asked that their nay votes be recorded: Representatives John Rubin; Mark Kahrs; Becky Hutchins, and Randy Powell.

Representative Janice Pauls wanted to point out that the look-back period on DUI's is not five years. It actually goes back to July of 2001.

Chairperson Barker adjourned the meeting at 4:15 p.m. The next scheduled meeting will be February 4, 2015.