

Approved April 1, 1986

Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at
Chairperson

3:30 ~~xxx~~ p.m. on February 18, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Duncan and Luzzati were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes Office

Jan Sims, Committee Secretary
Conferees appearing before the committee:

Matt Lynch, Judicial Council
Ron Smith, Kansas Bar Association

Sub. HB 2522 - An act concerning civil procedure; providing certain exemptions from process.

Rep. Snowbarger explained that this bill amends portions of the Kansas statutes dealing with bankruptcy exemptions. In 1980 the Legislature took away the right of debtors in bankruptcy actions to claim federal exemptions and now allows only state exemptions. These include such things as social security benefits, unemployment compensation, veteran's benefits, etc. which will be paid on an ongoing basis in the future. Rep. Snowbarger said those benefits are provided for in various other statutes but this bill will bring them together into one statute. Rep. Snowbarger stated this bill should be retroactive to the same date as enactment of 60-2312 when the federal exemptions were taken away (April 26, 1980). Rep. Snowbarger moved to amend Substitute HB 2522 retroactive to the date of enactment of 60-2312. Seconded by Rep. Teagarden. Motion carried on a voice vote. Representative Snowbarger moved to report Sub. HB 2522 as amended favorably. Seconded by Rep. Waggon. Motion carried on a voice vote.

HB 2770- An act concerning civil procedure; relating to the physician-patient privilege.

Matt Lynch of the Judicial Council appeared before the committee in support of HB 2770. Mr. Lynch said this bill places a duty on a hospital not to disclose the physician-patient privilege relative to information contained in its records in any civil action or in the prosecution of a misdemeanor without the consent of the patient. He said that since the introduction of this bill a supreme court case has been handed down, Wesley Medical Center v. Clark, which upheld the theory behind this bill. Line 79 should be changed substituting "disability" for "incapacity". Rep. Adam moved to report HB 2770 as amended favorably. Seconded by Rep. Teagarden. Motion carried on a voice vote.

HB 2531 - An act concerning civil procedure; relating to proceedings in aid of execution.

Ron Smith of the KBA passed out the position of the Bar Association in opposition to this bill. (Attachment 1) He stated that a large portion of legal malpractice cases involve wrongful garnishment and it is the KBA's position that passage of this bill could potentially get some attorneys in trouble. The KBA also has a concern that this could affect legal malpractice rates. Rep. O'Neal stated that the bill was introduced at the request of the Reno County Bar and in some areas of the state the current process presents a problem. It is not meant to change the requirements for conducting an aid hearing but merely makes another method available. He pointed out that the provisions of the bill make it subject to approval of the court. Rep. Whiteman said she sees no correlation between an aid hearing and a wrongful garnishment and could not see how even if authority in an aid hearing was abused it could be termed wrongful garnishment as it pertains to malpractice. Mary Torrence said the bill needs some technical amendments. Rep. Solbach moved to report HB 2531 as amended favorably. Seconded by Rep. Whiteman. Motion carried 8 votes to 4.

The Chairman adjourned the meeting at 4:35 P.M.



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HB 2531

House Judiciary Committee

February 18, 1986

Mr. Chairman. Members of the House Judiciary Committee. I am Ron Smith, Legislative Counsel for the Kansas Bar Association.

KBA considered this issue this summer when formulating legislative positions at our midyear convention. While on the surface there appears to be no problem in allowing debtors examinations to be held outside the courthouse, we are concerned that a significant portion of legal malpractice claims against Kansas attorneys already come from "wrongful garnishment" claims. That statistic might increase with this bill.

This summer KBA adopted a policy against such legislation. In part the rationale approved by our Executive Council reads:

"The proposal to permit lawyers to conduct debtors exams in locations other than a courthouse without judicial control of the proceedings has more potential for creating problems than eliminating them. Direct court involvement in such proceedings is desirable."

I'll try to answer any questions.

Attachment 1
House Judiciary
February 18, 1986