

Approved April 11, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:30 a.m./~~p.m.~~ on April 8, 1986 in room 519-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Langworthy, Parrish and Winter.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Hack, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Vincent Snowbarger
Ron Smith, Kansas Bar Association
Richard Mellinger, Kansas Bar Association

House Bill 2203 - Penalties for controlled substances to minors.

The chairman explained the provision in this bill has been amended into Senate Bill 278. No hearing was held on the bill.

House Bill 2522 - Exemption in bankruptcy actions.

Representative Vincent Snowbarger explained this bill will go into the section dealing with the choice of bankruptcy exemptions under federal bankruptcy laws. Kansas law says you have to take Kansas state exemptions, and this causes a problem in one particular area and that is rights to receive payment after a bankruptcy. The problem is with the right to receive alimony in the future. In this bill it is indicating that the debtor must take Kansas exemptions the right to receive. The primary problem was to get back to the alimony. The chairman inquired, the state can extend exemptions beyond what the federal law provides for, and we are conforming to what the federal is providing the rights to receive? Representative Snowbarger replied, this is to take care of the alimony issue. During committee discussion, a committee member felt the bill should be changed to make it clear that past due child support is exempt. Representative Snowbarger said this is for bankruptcy purposes only.

Ron Smith, Kansas Bar Association, was recognized to introduce Richard Mellinger, attorney.

Mr. Mellinger testified the new section of the bill is the cause of the problem. He recommended the existing statute, KSA 60-2308, be amended by adding language at the end of the existing statute. A copy of a letter indicating the proposed amendment is attached (See Attachment I). Mr. Mellinger said the problem with Kansas law is we follow majority common law. Practically one-half of his business is representing creditors, and he said he doesn't believe this does not have an impact on potential creditors. During committee discussion, the chairman asked him to explain qualified domestic relations order. Mr. Mellinger responded, it merely conforms with existing law of the 400 sections of the Internal Revenue Code. A committee member recommended adding the language this section shall not be construed as spouse not to receive those funds.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 519-S, Statehouse, at 10:30 a.m./~~pm~~ on April 8, 1986

House Bill 2522 continued

The chairman announced the members present at this committee meeting constitutes a subcommittee to vote to recommend the amendment and passage of the bill. The full committee will meet later today to vote on the recommendations of the subcommittee.

Senator Winter moved to recommend to the full committee to amend the bill as requested by the bar association and rework the last sentence of the proposed amendment to indicate the spouse will receive those funds. Senator Langworthy seconded the motion, and the motion carried. Senator Winter moved to recommend to committee to report the bill favorably as amended. Senator Langworthy seconded the motion, and the motion carried.

The meeting adjourned.

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April 1, 1986

Ronald D. Smith, Esq.
K.B.A. Legislative Counsel
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RE: Proposed Amendment to Allow Unlimited Exemption for
Qualified Retirement Plan Assets

Dear Mr. Smith:

I have received the letter that you sent to me, and I appreciate it very much. I have enclosed for your reference a copy of my prior letter of March 19. After further research and review, I have proposed the following change to the language I proposed in my letter of March 19. I propose that the existing statute, K.S.A. 60-2308, be amended by adding the following language at the end of the existing statute:

"Provided however, that notwithstanding the foregoing, any money or other assets payable to a participant or beneficiary from a retirement plan which is qualified under Internal Revenue Code Sections 401(a), 403(a), 403(b), 408 or 409, as amended, shall be exempt from creditors and shall further be conclusively presumed to be a spendthrift trust under these statutes and common law of the State of Kansas. Records of the debtor concerning such plan or arrangement shall be exempt from the subpoena process. However, this section shall not apply to (1) a "qualified domestic relations order" as defined in the Internal Revenue Code of 1954, as amended."

I think that this proposed legislation is extremely important to exempt retirement plan assets from all creditors (except ex-spouses and children entitled to support under a qualified domestic relations order), not just the trustee in bankruptcy. I agree with the recent letter sent to you by Dick Mellinger that it would be improper to only exempt certain retirement plans from

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this bill, so I have included tax sheltered annuities, IRA's, employee stock ownership plans and other "qualified" retirement plans in my proposal.

I would appreciate very much your conveying the importance of this proposed law to the legislators. The public policy reasons in favor of this type of exemption are as follows: (1) Employees could be left without retirement benefits; (2) The seizure of a bankrupt employee's pension benefits could disqualify a pension plan under federal tax laws and penalize both the bankrupt employee's employer and fellow employees; (3) Employers and pension plan trustees could be forced to take legal action to prevent seizure of pension plan assets by bankruptcy trustees so that there is no violation of ERISA and the plan's terms; (4) The seizure of plan assets could seriously undermine the financial stability of the pension plans; and (5) In the event that an employee's money could be reached by creditors, not only could the plan be disqualified, as mentioned above, but the employee could be taxed despite the fact that the employee does not receive the money.

Very truly yours,



Alson R. Martin
President, Alson R. Martin, P.A.
for
SHOOK, HARDY & BACON

ARM:bn

cc: S. Richard Mellinger
The Honorable Robert Frey

Attach. I