

Approved February 17, 1987  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at  
Chairperson

3:30 ~~xxx~~/p.m. on February 2, 1987 in room 313-S of the Capitol.

All members were present except:

Representatives Peterson and Vancrum, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Jane Holt, Secretary

Conferees appearing before the committee:

Dan Rice, Legal Counsel, Secretary of State's office  
Ron Smith, Kansas Bar Association  
Randy Hearrell, Research Director, Kansas Judicial Center  
Judge Sam Bruner, Overland Park  
Arno Windscheffel, Disciplinary Administrator, retired.

Hearing on H.B. 2082 - Permitting unsworn declarations under penalty of perjury in certain instances.

Dan Rice testified the Secretary of State's office regulates the conduct of over 40,000 notaries in the state of Kansas. H.B. 2082 will permit an unsworn declaration to serve in place of a traditional oath sworn to before a notary public in virtually all situations. He stated the Secretary of State's office opposes this bill, (see Attachment I).

Ron Smith testified in support of H.B. 2082. He stated perjury is a statutory crime and there is no longer a need for having all public documents notarized before a false statement can be prosecuted as perjury. The bill does have exceptions to the use of unsworn declarations, such as formal probate and will administration documents, (see Attachment II).

The hearing was closed on H.B. 2082.

Hearing on H.B. 2083, - Amending the Probate Code

Randy Hearrell testified the Judicial Council has been studying probate reform the past two years and this bill is the result of the study.

Judge Sam Bruner testified he is a member of the probate law committee. They have been working on probate reform since 1982. He stated the bill is primarily a clean-up bill. He reviewed the bill for the Committee.

There being no other conferees, the hearing on H.B. 2083 was closed.

Hearing on H.B. 2085 - Repealing K.S.A. 7-119 and 7-120 relating to certain conduct of attorneys.

Randy Hearrell testified the Judicial Council recommended this bill. He distributed copies of K.S.A. 7-119 and K.S.A. 7-120, (see Attachment III).

Arno Windscheffel reviewed the history of the statutes and recommended they be repealed.

There being no other conferees, the hearing on H.B. 2085 was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 2, 19 87

The Chairman appointed the following subcommittees:

- H.B. 2006 - Rep. Bideau, Chairman  
Rep. Walker  
Rep. Wagnon
- H.B. 2007 - Rep. Fuller, Chairman  
Rep. Jenkins  
Rep. Whiteman
- H.B. 2010 - Rep. Douville, Chairman  
Rep. Duncan  
Reo. Sebelius
- H.B. 2021 - Rep. O'Neal, Chairman  
H.B. 2024 - Rep. Snowbarger  
Rep. Roy

The meeting was adjourned by the Chairman.

The next meeting will be Tuesday, February 3, 1987 at 3:30 p.m.  
in room 526-S.

GUEST REGISTER

DATE Feb. 2, 1987

HOUSE JUDICIARY

NAME

ORGANIZATION

ADDRESS

DAN RICE

Secretary of State

Ted Fair

KID

Topeka

Z.P. Anderson

KSCPA

Topeka

But Culbertson

KTAH

Topeka

Randy Neavrold

Judicial Council

Topeka

~~Frank Hoffel~~

" "

Topeka

Sam Bruner

Probate Adv. Com. to Jud. Co.

O. P.

Bill Graves  
Secretary of State



2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

## STATE OF KANSAS

Testimony before the House Judiciary Committee on HB 2082  
February 2, 1987

Mr. Chairman, members of the committee my name is Dan Rice I am Legal Counsel for the Secretary of State. I appreciate the opportunity to appear before this committee for the first time and I look forward to working with you in the future.

The Secretary of State regulates the conduct of the over 40,000 notaries in the state of Kansas and, therefore, I am here today to testify briefly on HB 2082.

HB 2082 will permit an unsworn declaration to serve in place of a traditional oath sworn to before a notary public in virtually all situations.

An oath as defined in the Uniform Law on Notarial Acts, which Kansas has adopted, requires the Notary to positively identify an affidavit's signer. The rationale for requiring a third party to administer the oath and witness the signature is two fold.

First, the requirement of an oath before a third party subjects the signer to the psychological pressure of signing before a public official. A face to face oath in such a situation is more likely to impress a person with the seriousness of the instrument being signed and serves as a reminder that a false statement subjects them to a criminal penalty of perjury. Second, the requirement of an oath before a third party makes the preparation of blank documents for latter use much more difficult.

In an attempt to determine if other states had considered similar changes to their notary laws, I recently contacted American Society of Notaries and the National Notary Association. The state of Mass. has had a similar statute since the 1940's, however neither organization knew of a state in which the changes proposed by HB 2082 have recently been adopted and each indicated to me that several states had rejected similar bills. In addition, each organization was strongly opposed to this type of legislation.

The Secretary of State's office therefore is in opposition to HB 2082 and I would welcome any questions from the committee.

Attachment I  
House Judiciary 2/2/87



February 2, 1987  
HB 2082

**KANSAS BAR  
ASSOCIATION**

1200 Harrison  
P.O. Box 1037  
Topeka, Kansas 66601  
(913) 234-5696

Mr. Chairman. Members of the House Judiciary Committee. I am  
Ron Smith, KBA Legislative Counsel.

KBA supports HB 2082.

This bill allows the use of unsworn declarations instead of the  
necessity of sworn, notarized signatures on a variety of documents.

The office of notary public goes back to ancient Roman law. Pun-  
ishment for false swearing to notary signatures were adopted in English  
law so that the Church Courts could punish offenders.

In this country, and in Kansas, perjury is a statutory crime and  
there is no longer a need for having all public documents notarized  
before a false statement can be prosecuted as perjury.

The more modern method is by unsworn declaration. An example of  
an unsworn declaration is when you sign your income tax statements.  
You are declaring under penalty of prosecution for perjury that what  
you sign is truthful. A person merely signs and dates a document with

the statement that it is true under penalty of perjury. The unsworn declaration procedure has been successfully used in all branches of the federal government since 1976. Under Kansas law, however, when verification of a document is necessary, a person is still required to sign and swear to the document in the presence of a notary. Failure to follow all formal requirements of notarization can have disastrous and entirely unnecessary results.

The bill does have exceptions to the use of unsworn declarations, primarily the more formal probate and will administration documents.

KBA and the Wichita Bar association recommend approval of this bill.

**7-119. Refusal to account for money; penalty.** An attorney who receives the money or property of his or her client in the course of professional business, and refuses to pay or deliver it immediately after demand, is guilty of a misdemeanor.

**History:** G.S. 1868, ch. 11, § 17; Oct. 31; R.S. 1923, § 7-119.

**21-3701. Theft.** Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(a) Obtaining or exerting unauthorized control over property; or

(b) Obtaining by deception control over property; or

(c) Obtaining by threat control over property; or

(d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of \$150 or more is a class E felony. Theft of property of the value of less than \$150 is a class A misdemeanor, except that theft of property of the value of less than \$150 is a class E felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of theft two or more times.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

**History:** L. 1969, ch. 180, § 21-3701; L. 1972, ch. 116, § 1; L. 1978, ch. 120, § 29; L. 1984, ch. 119, § 2; May 17.

**7-120. Effect of claim of lien.** Where the attorney claims to be entitled to a lien upon the money or property, he or she is not liable to the penalties of K.S.A. 7-119, until the person demanding the money proffers sufficient security for payment of the amount of the attorney's claim when it is legally ascertained.

**History:** G.S. 1868, ch. 11, § 18; Oct. 31; R.S. 1923, § 7-120.

**21-3705. Unlawful deprivation of property.** Unlawful deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of his property.

Unlawful deprivation of property is a class A misdemeanor.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

**History:** L. 1969, ch. 180, § 21-3705; L. 1972, ch. 116, § 2; July 1.