

Approved March 25, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~p.m.~~ on March 24, 19⁸⁷ in room 514-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

John Kuether, Kansas Judicial Council
Randy Hearrell, Kansas Judicial Council
Arno Windscheffel, Kansas Judicial Council
L. M. Cornish, Kansas Association Property and Casualty Companies and
Kansas Life Insurance Companies
Craig Anderson, Security Benefit Group, Inc.
Barbara Rankin, Security Benefit Group, Inc.

House Bill 2083 - Probate code amendments

John Kuether, Kansas Judicial Council appeared in support of the bill. He stated this bill was requested by the judicial council. The bill as amended changes the probate code to require that when the parties enter their appearance in writing it must be duly acknowledged. He explained the bill section by section. During committee discussion the chairman noted the deletion of Section 2 that the judicial council subcommittee on probate law recommended to change the rule from court sending notice to the petitioner sending notice. Professor Kuether said there is a move to remove the administrative burdens out of the court. A committee member commented it would be better if the court give that notice because ninety to ninety-five percent of the time the surviving spouse is the petitioner, and the court is going to have to notify the petitioner. Staff explained, in the House, they felt a person would pay more attention to notice on court letterhead.

House Bill 2084 - Distribution of Judicial Council bulletins.

The chairman explained this bill is being implemented to set up a fee fund from the sale of publications and reports in the judicial council to recover publication costs.

Randy Hearrell, Kansas Judicial Council, stated he is not sure all judicial council members agree on this. He said it is a continuing controversy, and he would be glad to answer questions about it. He explained the new publication will be printed loose-leaf and supplements can be added to it. The judicial council is a legislatively created agency. During committee discussion, a committee member suggested separating the judicial council budget from the judicial budget and put it in the legislative budget. Mr. Hearrell said he feels that would be all right. The chairman explained this is not an appropriations bill; the bill provides from establishment of a fee fund. Mr. Hearrell replied House Bill 2084 could fail, and we could

CONTINUATION SHEET

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room 514-S, Statehouse, at 10:00 a.m. ~~xxx~~ on March 24, 1987.

House Bill 2084 continued

still have a fee fund for publishing bulletins. He said the council is able to work under either system.

House Bill 2085 - Attorney's refusal to account for client's money.

Arno Windscheffel, Kansas Judicial Council, stated he is a retired disciplinarian administrator. This bill started about three years ago. He said when he started practicing law, this was under a 1923 revised statute, and we got along very well. This is when an attorney does not turn over funds that belong to a client. At the present time, it is covered under Code of Disciplinary Conduct. He said he is concerned because it gives a lawyer an advantage we don't want him to have. He can plead guilty to misdemeanor and avoid being prosecuted for a felony, and this did happen in one case. Mr. Windscheffel stated he feels K.S.A. 119 and K.S.A. 120 should be repealed. A copy of the statutes is attached (See Attachment I).

House Bill 2122 - Probate; insurance company payments to survivors without letters testamentary.

L. M. Cornish, Kansas Association Property and Casualty Companies and Kansas Life Insurance Companies, explained this bill covers not only life insurance companies but other institutions. The purpose of the bill is not have the party incur the costs of opening up an estate. This would be a convenience to life insurance companies, and it would be helpful to beneficiaries receiving that small amount. An affidavit is filed that is similar to one used in the bankers area for a number of years.

Craig Anderson, Security Benefit Group, Inc., testified he would like to join with other members of the insurance industry in support of the bill as amended. He pointed out in subsection (b) there could be an overlap there, and perhaps that is why the House amended the dollar amount down from tenthousand to five thousand dollars. Kansas would fall into the category of states that limits to five thousand dollars. He said he gets calls from attorneys all over the country inquiring what can we do to expedite this for our client. If the person does not reside in a state that allows this procedure then you are not in a position to transfer this property. They have never had anyone come back and say why did you pay that money to our cousin.

During committee discussion, the chairman explained the bill as originally drafted gave authority to insurance companies to do what bankers could do now. At first there was not any limit and now as amended it reads much different. Is it all right to go back to the original language? Mr. Henderson replied security benefit was responsible for getting these amendments added on this bill because of the mutual funds side. Mutual funds are separate from the life insurance side.

Barbara Rankin, Security Benefit Group, Inc., stated her area deals with mutual funds which are separate and distinct from life insurance company. They are a member of their group of companies, and it is a separate corporation with their own shareholders. They are not regulated by insurance laws. They need some type of special estate procedure so stock can be transferred.

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House Bill 2083 - Probate code amendments.

Senator Talkington moved to report the bill favorably. Senator Gaines seconded the motion, and the motion carried.

House Bill 2084 - Distribution of Judicial Council bulletins.

The chairman stated he would hold the bill to wait further action of Senate Ways and Means Committee.

House Bill 2085 - Attorney's refusal to account for client's money.

Senator Feleciano moved to report the bill favorably and placed on consent calendar. Senator Gaines seconded the motion, and the motion carried.

House Bill 2122 - Probate; insurance company payments to survivors without letters testamentary.

Senator Feleciano moved to report the bill favorably. Senator Gaines seconded the motion. Following committee discussion, Senator Talkington made a substitute motion to amend the bill in subsection (b) on line 78 to change the dollar smount to \$10,000 and leave other language. Senator Burke seconded the motion, and the motion carried.

Senator Talkington moved to report the bill favorably as amended. Senator Hoferer seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the guest list is attached (See Attachment II).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-24-87

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
J. Craig Anderson	700 Harrison, Topeka, KS	Security Benefit Group, Inc.
Barbara W. Rankin	"	"
Rebe Swatts	"	"
Mark Biberstein	Emporia	Sen. Burke
Gail Kaminietz	Lawrence	KS NOW
Frank Windschuff	Topeka	Judicial Council
W. C. Dylm. Neakrell	"	"
John F. Kuebler	Topeka	"
WM. C. DANIELS	TOPEKA	LEGISLATIVE INTERN SEN PARRISH
L. McConnell	"	W. B. S. P/C Coe
Bob Smith	"	KBA
Darlene Stearns	Topeka	PCAA NJ
Glen Crumell	Topeka	alliance of American growers
Linda R. Johnson	Overland Park	League of Women Voters of Kansas
Ann Heberger	Overland Park	LWVK

Att. II
Sen. J. H.
3-24-87

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.

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.

21-3701. 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.

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.

Attach I
Sen. Jud.
3-24-87