

Approved

4-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ^{XX} a.m./p.m. on February 19, 1991 in room 514-S of the Capitol.

All members were present except:

Representatives Douville, Sebelius and Gregory who were excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Randy Hearrell, Research Director, Judicial Council
Judge Ed Larson, Judicial Council Probate Law Advisory Committee
Ron Smith, Legislative Counsel, Kansas Bar Association

The Chairman called for hearing of HB 2149, nonprobate transfers law of Kansas.

Representative Tom Love, sponsor of HB 2149, appeared to give background of the bill. Mr. Love said the idea for the bill originated in Missouri. (See Attachment # 1).

Randy Hearrell, Research Director, Judicial Council, introduced Judge Ed Larson, who served on the Judicial Council Probate Law Advisory Committee for many years. Mr. Hearrell said the issue addressed by HB 2149 has been introduced previously; that it is an excellent idea; that it is in the stream of what is happening regarding transfers of property; that the bill was originated by Leo Eicopp, General Attorney of St. Louis, Missouri, for Southwestern Bell; that HB 2149 is a direct pattern of the non-probate transfers law enacted in Missouri; that Missouri is the Uniform Probate Code state which presents a problem; that some of the provisions of the bill may fit Missouri but not Kansas; that the bill is good, and a good idea, but doesn't have all the problems out of it; that it has a potential for danger; that spouses are treated differently; that banks are treated differently; that the law works well with what are becoming assets of our society; that the bill is particularly geared into securing retirement accounts for certain employees; that the bill is revenue-neutral; that the State of Kansas will need to look in the future (regarding revenue); that wealth is becoming much more of intangible property; that the issues in HB 2149 should be continued in a study; that the bill has real possibilities; that it would be a mistake to pass the bill at this time, as no one knows exactly what the effect of the bill would be.

Representative Love distributed copies of the article entitled, "New Law Allows Some to Avoid Probate Court". (See Attachment # 2).

Judge Larson said he would make comments on the law from Missouri available to the committee.

A committee member asked if anyone had done a study to see if it would save money. Judge Larson said the law has been used in Missouri for about three years; that it doesn't appear to be a pro or anti-lawyer bill; that there is a provision regarding deeds (transfer on death) that is made proper by this law.

A committee member asked if spouses are required to join in the deeds and what happens if the spouse doesn't join in.

Judge Larson said if a spouse had not joined in a deed, that spouse could not object because it would be a consensual situation; that the transfers of personal items gets very involved.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary

room 514-S, Statehouse, at 3:30 ~~am~~/p.m. on February 19, 1991.

A committee member noted that Kansas recently passed a bill that expanded allows us to go after real estate set aside dollars to children and asked if this would effectively bypass that.

A committee member asked if this issue could be sent to a judicial council sub-committee for review. Judge Larson said currently no meetings are being conducted due to lack of funds; that the issue had received some consideration earlier in his sub-committee; that he would recommend the bill be referred for study.

A committee member asked how much time would be required by a sub-committee to study the bill. Judge Larson said a couple of years would probably be required.

A committee member asked if other forms of the proposed legislation had been studied; e.g. Colorado's version. Judge Larson said other states' plans had not been reviewed.

Representative Love commented that the bill is important to the average Kansan; that he recommends the committee look at a time when there would be a report from a sub-committee and not allow the bill to be in limbo.

Ron Smith, Legislative Counsel, Kansas Bar Association, appeared and suggested HB 2149 be referred for interim study. (See Attachment # 3).

A committee member asked if a member of the sub-committee would be ready to speak to an interim committee during summer, 1991.

Judge Larson commented that if the Legislature stresses need, a Judicial Council subcommittee might be able to have a proposal ready by the 1992 Legislative Session, if their next meeting on the issue is in July, 1991.

A committee member asked if this subject could be referred to interim study. Another committee member said the issue should remain with the Judicial Council to benefit from the Council's expertise.

Representative Smith made a motion to table HB 2149 and defer to the activities of the Judicial Council. Representative Carmody seconded the motion. The motion carried.

The Chairman and Ranking Minority Leader agreed to work with Representative Love in seeking a supplemental note for funding of the Judicial Council sub-committee work on HB 2149.

The chairman asked for a report from the sub-committee studying HB 2051 and HB 2052, alternative Dispute Resolution Bills.

Representative Hochhauser, sub-committee chairperson said that because of the problem of instituting the non-uniform docket fee across the state (inherent in HB 2052) the sub-committee had decided to make no recommendation for passage of HB 2052, but would concentrate on HB 2051 and on the theory of assessing ADR fee as costs; that the sub-committee had decided there is a need to amend the court cost statute because the problem is that court costs are generally assessed to the prevailing party and in ADR there is no prevailing party; that the sub-committee will propose amending HB 2051 to include an amendment to the court cost statute specifically addressed to the allocation of costs in alternative dispute resolution cases.

Ron Smith, Legislative Counsel, Kansas Bar Association, said he may want to request an interim study on HB 2052).

Representative Hochhauser asked if Mr. Smith is concerned about the docket fees, or the court costs. Mr. Smith noted the backwards deduction. Representative Hochhauser said the sub-committee would have no problem with an interim study, but the fiscal note would be quite hefty.

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Representative Hochhauser made a motion that the sub-committee report be adopted, amending HB 2051 in the cost sections of the statute; and that HB 2052 be tabled. Representative Garner seconded the motion.

A committee member asked for more specific language on the amendment. Representative Hochhauser referred to Page 2, Line 21 of HB 2051, and said, the language beginning with "The Court..." through Line 26, should be added to K.S.A. 60-2002.

Motion carried

Representative Hochhauser made a motion that HB 2051 be passed as amended and that HB 2052 be tabled. Representative Parkinson seconded the motion.

Committee discussion followed. A committee member expressed concern over the vagueness of the conceptual language being amended into the bill.

The Chairman said he would make Revisor's Staff "Report of Standing Committee" available for committee review before submitting it.

The motion carried.

The Chairman called for action on HB 2138, deleting motorized bicycles from the definition of motor vehicles in the automobile injury reparations act.

Representative Everhart made a motion that HB 2138 be passed. Representative Smith seconded the motion.

A committee member noted that the case involved is still pending, and committees have been reluctant in the past to change the law in the middle of a pending case, even if it doesn't end up affecting this individual; that criticism may be received for trying to win a case for someone.

A committee member pointed out that this bill would be prospective only and wouldn't affect a pending case.

Representative Snowbarger made a substitute motion to table HB 2138. Representative O'Neal seconded the motion. The motion failed.

The Chairman called for a vote on the original motion. The motion carried with Representative O'Neal, Representative Hamilton, Representative Snowbarger, and Representative Scott being recorded as voting "No".

The Chairman called for action on HB 2100, proceedings to terminate parental rights in adoption.

Research Staff briefly reviewed background and intent of HB 2100. In-depth committee discussion followed and various suggestions for changes in language were made and noted by Revisor's Staff.

Representative Heinemann made a conceptual motion that language of HB 2100 be amended (the language to include that the court may take into account that the father, after knowing of the child's birth, knowingly failed to provide support to the child.) Representative O'Neal seconded the motion.

Representative Snowbarger made a substitute motion that HB 2100 be passed.

A committee member pointed out that the motion to amend should be acted upon before final committee action on the bill.

Representative Snowbarger withdrew his motion.

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Additional committee discussion followed, and additional suggestions for changes in language were made and noted by Revisor's Staff.

The motion to amend HB 2100 as conceptually stated carried.

Representative Snowbarger made a motion that HB 2100 be passed as amended. Representative Carmody seconded the motion. The motion carried.

The meeting adjourned at 5:08 P.M. The next meeting of the committee is scheduled for February 20, 3:30 P.M. in Room 313-S.

NON PROBATE TRANSFERS LAW

This law applies to real estate, stocks, individual retirement accounts and similar savings plans, and general personal property, excluding insurance policies.

It answers a problem: People want to avoid the time and expense of probate.

Currently: Some property owners have listed heirs as "joint tenants," or co-owners, to avoid probate court. But the original owner, an elderly parent for example, sacrifices their right to control that property in order to assure the transfer to heirs after death. In other words, they cannot sell their house unless the child agrees.

The new Law - is designed to give an individual the right to transfer property at death while maintaining control during his life.

Designed to compliment a formal will. Lawyers in Missouri recommend that people who want to transfer real estate under the new law have a simple beneficiary deed drawn up by an attorney. People who want "Transfer on Death" designations for savings accounts or stocks should ask those institutions for proper forms.

Presented by Rep. Love.

HJUD
Attachment 1
2/19/91

New law allows son to avoid probate court

By Pamela Hsu
staff writer

Though most may not know it, Missourians have a new way to arrange for transfer of property after their death without going through probate court.

Lawyers in the Kansas City area say few people have inquired about Missouri's Nonprobate Transfers Law since it took effect three months ago, even though the change touches a common financial concern.

"It's very much in the public interest and allows those with modest resources to set up effective estate plans. It's for the little guy," said Probate Judge John Borron of the Jackson County Circuit Court.

The law applies to real estate, stocks, individual retirement accounts and similar savings plans, and general personal property, excluding insurance policies.

"I think it's a step forward in allowing people to deal with their property at death," said Democratic Sen. Harold Caskey of Butler, who introduced the legislation. "It answers a problem we've found: People want to avoid probate at all costs. And some of those costs are becoming quite high."

In the past, some property owners have listed heirs as "joint tenants," or co-owners, to avoid probate court. But lawyers say the original owner, an elderly parent for example, sacrifices some of his rights in a joint tenancy in order to assure the transfer to heirs after his death.

"The parents surrender part of their property, thereby creating an ownership interest," Caskey said. Any further transactions need the consent of the joint owners, he said.

The new law was designed to give an individual the right to transfer property at death while maintaining control during his

life.

Kathleen Forsyth, an attorney at the Shughart Thomson & Kilroy firm, said the law is preferable to joint tenancies, but she also had some concerns.

"It gives individuals the opportunity to plan for the disposition of some assets without the formalities of a will or the expense of legal representation, but that may not be in their best interest," Forsyth said.

Forsyth explained that property could go to the wrong person if details designed to handle unusual circumstances are left out. The law was designed to complement a formal will, not replace one, she said.

Lawyers recommend that people who want to transfer real estate under the new law have a simple beneficiary deed drawn up by an attorney. People who want "Transfer on Death" designations for savings accounts or stocks should ask the financial institutions or corporations involved for the proper forms.

It may take some time for those institutions to become familiar with the law, said Robert Kirkland, a lawyer specializing in estate planning and probate at Shook Hardy & Bacon.

"But after a certain incubation period, it will be an effective set of provisions," Kirkland said.

Borron said the new law is a positive step in a movement to revise probate laws. "Transfer On Death" provisions were previously available for motor vehicle registration and some financial accounts.

Missouri's Nonprobate Transfers Law is the first in the nation to extend the "Transfer on Death" designation to securities and may become a nationwide model, said John Langbein, the Illinois representative on the National Conference of Commissioners on Uniform State Laws.

HJUD
Attachment 2
2/19/91



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POSITION STATEMENT

TO: House Judiciary Committee
FROM: Ron Smith, KBA Legislative Counsel
SUBJ: HB 2149; nonprobate transfers act
DATE: February 19, 1991

Mr. Chairman, and members of the House Judiciary committee. KBA represents 5,300 attorneys and judges. Our role in the legislature spans a century of service to the state.

The probate law -- how you marshal the assets and pay the bills of a deceased person -- is entirely a creature of statute. You may set up at your pleasure, so long as other constitutional requirements are met. This legislation may well be good for the state. Our problem is that it makes major amendments to the probate law of the state. The Judicial Council has looked at the bill and found problems. Any change of this magnitude needs more than an hour and a half devoted to its merits or demerits. We therefore suggest at the minimum that HB 2149 be referred for interim study.

Thank you.

*HJUD
Attachment 3
2/19/91*

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