

Approved: April 7, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 13, 1995 in Room 313-S-of the Capitol.

All members were present except:

Representative Danny Jones - Excused
Representative Candy Ruff - Excused
Representative Dee Yoh - Excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Jamie Corkhill, SRS
Representative Tim Carmody
Representative David Haley
Paul Shelby, Office Of Judicial Administration
Representative Greta Goodwin

Others attending: See attached list

Representative Doug Spangler appeared before the committee with a bill request that would make the use of an ignition interlock device mandatory for 330 days after a first offense. He made a motion to have this bill request introduced as a committee bill. Representative Grant seconded the motion. The motion carried.

Chairman O'Neal explained that he received a request from the State Fire Marshall that would create a new crime that would cover fire fighters injured in an arson fire, increase sentencing level for arson & ag. arson and increase the statute of limitation to five years. Representative Mays made a motion to have this bill request introduced as a committee bill. Representative Graeber seconded the motion. The motion carried.

Representative Jan Pauls appeared before the committee with a bill request which related to setting up a reward fund for individuals who call in with tips on DUI's. She made a motion to have this bill request introduced as a committee bill. Representative Goodwin seconded the motion. The motion carried.

Representative Greta Goodwin appeared before the committee with a bill request that if anyone under the age of 21 was caught with an alcohol beverage they would be prohibited from ever working in a store that sells alcohol. She made a motion to have this bill request introduced as a committee bill. Representative Ott seconded the motion. The motion carried.

Representative Doug Mays appeared before the committee with a bill request that would allow Washburn University to hire university police officers in the same manor as regent's universities. He made a motion to have this bill request introduced as a committee bill. Representative Howell seconded the motion. The motion carried.

Representative Jim Garner appeared before the committee with a bill request which would include "community corrections officers" in the definition of law enforcement officers in the criminal statute. He made a motion to have this bill request introduced as a committee bill. Representative Pauls seconded the motion. The motion carried.

Jamie Corkhill, SRS, appeared before the committee with a bill request regarding the Welfare Reform Act to make sure the requirements for Medicaid participants are the same for other SRS programs. Representative Pauls made a motion to have this bill request introduced as a committee bill. Representative Ott seconded the motion. The motion carried.

Representative Joel Rutledge appeared before the committee with a bill request dealing with victim notification on clemency proceedings. He made a motion to have this bill request introduced as a committee bill. Representative Nichols seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on February 13, 1995.

Chairman O'Neal received a request from the Attorney General's office dealing with technical amendments to the death penalty. Representative Nichols made a motion to have this bill request introduced as a committee bill. Representative Edmonds seconded the motion. The motion carried.

Hearings on HB 2263 - District court judges positions created by K.S.A. 20-355 shall not be considered civil appointments to state office pursuant to K.S.A. 46-234, were opened.

Representative Tim Carmody appeared before the committee as the sponsor of the proposed bill. He explained that the Kansas Governmental Standards & Ethics Committee has ruled that if the Legislature creates a position, then a legislator can not accept an appointment to that position for at least one year after the position was created. He told the committee that what actually happens is that the Judiciary requests judicial positions and there is a misunderstanding that the Legislature "creates" judicial positions. Money is appropriated to the Judicial Branch and they create the position. This bill would clarify the statute that a district judges position created by the supreme court would not be considered a civil appointment.

Paul Shelby, Office of Judicial Administration, appeared before the committee and stated that the Court does not have any problem with the proposed language.

Hearings on HB 2263 were closed.

Hearings on HB 2351- Nonprobate transfer of motor vehicles, were opened.

Representative Tim Carmody appeared before the committee as the sponsor of the bill. He stated that currently the surviving spouse or children of the deceased must have a signed affidavit in order to get the title transferred. This ideal has been used on bank accounts, and security transfers. This bill would simply allow the title to transfer upon the death of the spouse to the beneficiary listed. (Attachment 1)

Hearings on HB 2351 were closed.

Hearings on HB 2324 - Nonprobate transfers of real property, were opened.

Representative Tim Carmody appeared before the committee as the sponsor of the proposed bill. He told the committee that this issue has been a concern of the Silver Haired Legislature. The nonprobate transfers are seen as a easy way to expedite transfers of title upon death of the owner. Transfer on death designation is a way to avoid the problems of joint tenancy but still accomplish the same purpose. (Attachment 2)

Hearings on HB 2324 were closed.

Hearings on HB 2396 - Transfer of real property on death of owner; relating to an heir who files a notification of interest in title, were opened.

Representative David Haley appeared before the committee as the sponsor of the bill. He explained that one of the major problems in his district is abandoned houses and this bill attempts to ease legal and probate court costs affiliated with the transfer of real property in Wyandotte County only. (Attachment 3)

Hearings on HB 2396 were closed.

Hearings on HB 2219 were reopened.

Representative Greta Goodwin appeared before the committee as the sponsor of the bill. She told the committee that currently child support collection agencies and employers collect and then pay the amount due to the court. There has been many problems with these payors not turning the money over until much later or not at all. This bill would simply make it mandatory that the payment must be paid within 10 days from the deduction date and remit the payment to the Courts. If the money is not turned over to the court the agency could be fined three times the amount due plus court costs and attorney fees. (Attachments 4 & 5)

Hearings on HB 2219 were closed.

HB 2181 - Exceptions to the general rule of trustee's office not transferable

Representative Adkins made a motion to report HB 2181 favorably for passage and be placed on the Consent Calendar. Representative Haley seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on February 13, 1995.

HB 2183 - Probate code reference update; K.S.A. 59-513

Representative Garner made a motion to change the language in line 14 from "is" to "no person convicted of feloniously killing" Representative Rutledge seconded the motion. The motion carried.

Representative Yoh made a motion to report **HB 2183** favorably for passage as amended. Representative Goodwin seconded the motion. The motion carried.

HB 2184 - Classification of demands against an estate

Representative Adkins made a motion to report **HB 2184** favorably for passage. Representative Spangler seconded the motion. The motion carried.

Representative Garner appeared before the committee on behalf of Representative Sheila Hochhauser with two bill requests. The first would allow attorney fees in worthless check cases and the second dealt with assumption of risk and how it would be treated in comparative negligence cases. He made a motion to have these two bills introduced as committee bills. Representative Pauls seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting is scheduled for February 14, 1995.



TOPEKA

HOUSE OF
REPRESENTATIVESCOMMITTEE ASSIGNMENTS
VICE-CHAIR: APPROPRIATIONSTIM CARMODY
REPRESENTATIVE, SIXTEENTH DISTRICT
10710 W. 102ND STREET
OVERLAND PARK, KS 66214ROOM 175-W
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
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TESTIMONY IN SUPPORT OF
H.B. 2351
BY REP. TIM CARMODY
February 13, 1995

The purpose of H.B. 2351 is to allow owners of motor vehicles to pass title upon death directly to those beneficiaries whose names appear on the certificate of title. The purpose is to avoid probate proceedings and the currently cumbersome procedure that is used by the Department of Revenue.

Currently the surviving spouse or the surviving children of a deceased owner of a motor vehicle can obtain a new title in their respective name or names. However, it requires completion of an affidavit form (provided by the Department of Revenue) that must be signed by the surviving spouse or, in the case where there is no surviving spouse or children, the children. This procedure does avoid probate but only in those situations where there is a surviving spouse or children. It does not cover the situation where there are neither or a situation where the owner of the car may have wanted to pass title to someone outside this class of beneficiaries. In addition, the requirement can be quite cumbersome as in a case I recently handled where we had five adult children scattered all over the United States. The affidavit had to be mailed individually and sequentially to five children located respectively in California, Oregon, Tennessee and two in different cities in Kansas. In addition, there can be potential problems where a surviving spouse or even one of the surviving children is mentally incapacitated and is unable to complete an affidavit. H.B. 2351 could avoid many of these delays by simply designating on the title the beneficiary or beneficiaries who would receive title to the vehicle upon death of the owner.


This transfer on death provision is currently available under Kansas law in

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the case of bank, savings and loan and credit union deposits and last year the legislature enacted the uniform transfer on death securities act which allows transfer on death designations to be placed on registered securities.

Transfers of title on death is not a new idea. Most states have enacted laws on the subject, as Kansas has done, while some have moved even farther. In 1990 Missouri enacted a universal transfer on death act which applies to all kinds of property, real and personal. The Missouri law has been introduced in the Kansas House, I believe every year for the last four years, but has not received serious consideration. Therefore, I am proposing H.B. 2351 and its companion, H.B. 2324, to address two of the areas in our state where title transfers cause the most consternation to families, that is, motor vehicle titles and real estate.

Since introduction of this bill, I have been advised by the Department of Revenue that there is a practical problem with implementation of this bill. The problem concerns the computer generation of motor vehicle titles. Specifically, there are not enough fields to allow addition of beneficiary designations in the current programming. However, the Department of Vehicles will be upgrading their computers within the next few years and should be able to take this into account. This was one reason why the motor vehicle portion of the Missouri non-probate transfer act did not come into effect immediately in 1990. They have since revised their computer programming and can now generate certificates of titles with beneficiary designations. To address this issue I request a committee amendment to put the effective date of this act off till January 1, 1997 which will coincide with initial issue and reissue of certificates of titles for calendar year 1997.



Rep. Tim Carmody



TOPEKA

HOUSE OF
REPRESENTATIVESCOMMITTEE ASSIGNMENTS
VICE-CHAIR: APPROPRIATIONS

TIM CARMODY
REPRESENTATIVE, SIXTEENTH DISTRICT
10710 W. 102ND STREET
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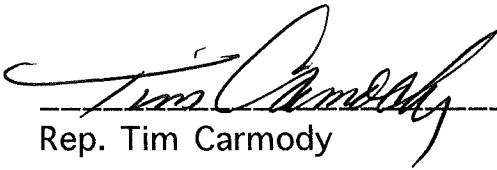
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TESTIMONY IN SUPPORT OF
H.B. 2324
BY REP. TIM CARMODY
February 13, 1995

Most of what I have to say about H.B. 2351, the nonprobate transfer bill on motor vehicle titles, would also apply to H.B. 2324, which deals with nonprobate transfers of titles on real estate.

The 1994 session of the Silver Haired Legislature, like several sessions of the Silver Haired Legislature before, passed bill #1001 which is an act creating the "Nonprobate Transfers Law of Kansas." This has always been a high priority of the Silver Haired Legislature for a good reason. Many people fear sometimes, perhaps unreasonably, the probate process and its attendant expense and delay. Nonprobate transfers are seen as a way to expedite transfers of title upon death of the owner without the attendant problems that joint tenancy with right of survivorship. In case you are not familiar, to place children on titles to real estate as a joint tenant makes that child a co-owner. Ownership carries with it the potential for abuse as well as any unanticipated consequences. In my own practice, I have seen a situation where a mother placed her four adult daughters on her home as joint tenants with right of survivorship and the Internal Revenue Service immediately placed a tax lien on "Mom's house" because one of the daughters (who is now a co-owner), owed a substantial amount of money in unpaid taxes. People also don't realize that if you place children on titles to real estate as joint owners, in the event that a child who predeceases the parents, that child may end up with no property at all because their prior death extinguishes their rights as a surviving joint tenant. Transfer on death designation is a way to avoid the problems of joint tenancy but still accomplish the same purpose.

I would point out one area in H.B. 2324 that may need cleanup is in Section 14 dealing with the rights of divorced spouses. Last year the Legislature passed the spousal elective share law which grants spouses certain rights in the augmented estate of their deceased spouse. I would like to work with this committee or a sub-committee on making sure that the rights of the surviving spouse, as set forth in the law we passed last year, are adequately addressed in H.B. 2324.



Rep. Tim Carmody

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THE CAPITOL

HOUSE OF
REPRESENTATIVES

DAVID B. HALEY
DISTRICT 34

TESTIMONY BEFORE THE
JUDICIARY COMMITTEE
REGARDING
HOUSE BILL 2396
ON
FEBRUARY 13, 1995

THANK YOU CHAIRMAN O'NEAL; DISTINGUISHED COLLEAGUES OF THIS
HONORABLE COMMITTEE!

MY TESTIMONY REGARDING HB 2396 WILL BE BRIEF AFTER WHICH I AM
PLEASED TO STAND FOR CLARIFICATION. ONE MAJOR PROBLEM IN THE INNER
CITY OF KANSAS CITY, KANSAS, AND PROBABLY MANY OF YOUR OWN
DISTRICTS, IS ABANDONED HOUSES. THIS BILL ATTEMPTS TO EASE THE

LEGAL AND PROBATE COURT COSTS AFFILIATED WITH THE TRANSFER OF REAL PROPERTY FROM, IN MOST CASES, ONE GENERATION TO ANOTHER, WHERE SAID TRANSFER WOULD PROCEED UNCONTESTED.

EXAMPLE: A SCENARIO, IF YOU WILL: MS. SMITH, A WIDOW, DIES IN TESTATE LEAVING HER RESIDENCE OF FORTY YEARS AND MODEST FURNISHINGS. THE VALUE OF THE HOUSE IS \$20,000, ACCORDING TO THE COUNTY APPRAISERS OFFICE. MS. SMITH HAS ONE SON, WHO LIVES SOMEWHERE IN BOSTON AND HAD NOT BEEN IN TOUCH WITH HER OR ANY MEMBER OF THE FAMILY SINCE RUNNING OFF WITH SOME MEMBERS OF A MOTORCYCLE GANG IN THE 60'S, AND A DAUGHTER WHO HAD LIVED WITH MS. SMITH AND CARED FOR HER UNTIL HER DEATH. OF MODEST INCOME, THE DAUGHTER DOES NOT INVEST IN THE MAINTENANCE, TAXES, ETC. ASSOCIATED WITH HER DECEASED MOTHER'S HOUSE AND MOVES OUT SHORTLY BEFORE THE CITY CODE INSPECTORS CITE THE STRUCTURE AND/OR THE COUNTY LEVIES TO SELL THE STRUCTURE FOR BACK TAXES. THE DAUGHTER ABANDONS THE HOUSE AND MOVES INTO A SMALL APARTMENT. THE STRUCTURE SITS VACANT, UNTENDED, AND...WELL YOU KNOW THE REST.

THE PARTIAL BRANCHCHILD OF FORMER STATE REPRESENTATIVE AND LIFETIME 34TH DISTRICT RESIDENT, NORMAN JUSTICE, THIS BILL, SUBJECT TO YOUR APPROVAL WILL ALLOW THE DAUGHTER IN THIS EXAMPLE TO FILE A NOTICE OF INTENT TO QUIET TITLE IN HER FAVOR WITHOUT THE

UNNECESSARY EXPENSE OF HIRING AN ATTORNEY AND GOING THROUGH THE EXPENSES OF PROBATE. AFTER THE STATUTORY PERIOD, IT'S HERS. IF HER BROTHER SHOWS UP, SHE (DAUGHTER) MUST PRODUCE AN ACCOUNTING (I.E. MAINTENANCE, PAYMENT OF TAXES, ETC.) SINCE THE TIME OF THEIR MOTHERS DEATH AND EXPECT REASONABLE PRO-RATA RESTITUTION. IF HE OBJECTS, THIS BILL WOULD NOT APPLY AND THE EXISTING STATUTES ON PROBATE WOULD ENSUE.

THANK YOU, I STAND FOR QUESTIONS.

GRETA H. GOODWIN
REPRESENTATIVE SEVENTY-EIGHTH DISTRICT
COWLEY & BUTLER COUNTIES

STATE CAPITOL
TOPEKA, KANSAS 66612-1504
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TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY ON HB 2219
HOUSE JUDICIARY COMMITTEE
FEBRUARY 6, 1995

Mr. Chairman and Members of the Committee:

I want to thank you for holding a hearing on HB 2219 and allowing me the opportunity to present testimony on this bill.

This past year I have had come to my attention two cases which I feel should be remedied through statutory law. Under the present law child support enforcement can be effected by voluntary or involuntary income withholding order. Under this law an employer withholds the child support obligation from his employee's paycheck and has 10 days from the deduction date to remit the payment to the Court in payment of the child support obligation. Both cases referenced have involved small business owners who followed the procedure of the law in withholding the monies from their employee's paycheck but these employers failed to remit the monies to the Clerk of the District Court as prescribed by law. In both instances the spouse, both of whom happened to be women in dire need of the support to provide for her children, had to employ lawyers and file contempt of court proceedings against the employer to force the employer to remit the support payments to the court. This piece of legislation would allow the court to enter a judgment of three times the amount of income owed which had been withheld from the employee's income but was not submitted to the court in the prescribed time, plus judgment for reasonable attorney fees should it become necessary for the obligee to file a motion to have such income paid over.

I talked with two District Court Judges and in both instances found that the spouse's only legal remedy was through contempt proceedings. Some could argue that the employer was guilty of theft as he was keeping money which did not belong to him nor did he have any legal interest in the funds. The Judges indicated our laws only provide for contempt charges to be brought. In order to close the loophole which both employers found, a severe penalty must be assessed to be a deterrent that when child support money is withheld through the voluntary or involuntary income withholding process it must be remitted to the court in the prescribed 10 day time limit. No employer should be able to keep the money which is not his to use for his benefit in meeting the financial obligations of his business.

In both instances, after the filing of litigation, issuing service of process, and setting the matter for hearing, the children of these fathers were being penalized further by an additional time lapse in receiving their support money, and in addition, attorney fees and court costs were incurred to collect the money from the employer, which fees and costs are unrecoverable. In both cases, the employers came up with the delinquent monies the night before the court hearing date but the issue is that the employer had use of the money for several months without his being penalized and the mothers still had attorney fees and court costs to pay.

I feel this piece of legislation is needed to give notice to employers that they must follow Kansas law. Child support enforcement is a big problem in our state in trying to collect from the parents but employers should not be able to add to this problem by using this interest free money until court proceedings are brought.

Thank you for your time and consideration. I would urge the passage of HB 2219. I would be happy to answer any questions.

COMMITTEE ASSISTANT
MEMBER
AGRICULTURE
JUDICIARY
PUBLIC HEALTH AND WELFARE

LAW OFFICES
HERLOCKER, ROBERTS & ST. PETER, P.A.

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CHARLES W. ROBERTS
1867-1941
LLOYD ROBERTS
1900-1968
HARRY O. JANICKE
1902-1978
JOHN A. HERLOCKER
1911-1984

February 1, 1995

FAXED 913-296-0251
and by Regular Mail

Representative Greta Goodwin
Kansas State Capital
Office 281/West
Topeka, KS 66612

Dear Representative Goodwin:

Thank you so much for faxing to me House Bill No. 2219 containing the proposed amendment and change of language contained in Section (i) of said bill. After having an opportunity to review this bill, I strenuously urge that you and other legislators support this bill.

As you are probably aware, I recently had the opportunity to represent a client who was receiving child support pursuant to an income withholding order. The payor of income failed to follow the legal instructions served upon them with respect to the manner that this income should be withheld. Further, it was later determined that the payor of income was withholding the payment from the obligor's paycheck, but failing to pay the sums over to the Clerk of the District Court in a timely fashion. On some occasions, the payor would withhold the funds up to two or three months, but failed to pay said sums to the Clerk. The payor, upon receiving legal notices and other pressure, would then pay in the amount owed, which was the established arrearage.

In this particular instance, it was later determined that the payor of income was in severe financial trouble, owing substantial sums to the Internal Revenue Service and, in essence, was using the withheld money from the obligor's paycheck to finance their further financial difficulties.

Unfortunately for my client, she was left in the position of having to hire our firm to seek judgment against the payor for the entire arrearage; this occurred at least three times. Each time, of course, the payor would pay into the Court the sums that should have been paid in to begin with, which constituted the arrearage.

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However, my client was left in the position of spending sums for attorney's fees, which she could not recover, and find a way to support three teenage daughters, sometimes for a period of a few months, without any financial assistance.

This bill serves to grant a person in her position an important lever against the payor. I believe this payor would have been a lot less likely to continually repeat this conduct had they been subject to a treble damages provision and an award of attorney's fees. Although the current law could provide a penalty to the extent that you could seek judgment for the total arrearage owed, in many cases like this one, there was no other arrearage except for that which was created by the payor's failure to comply with the law. As such, no penalty enured to the payor.

As a last suggestion and as a concern from a practitioner's standpoint, I would like to see language within this bill that reflects that the treble damages and attorney's fees are penalties imposed for an intentional violation of the law. This, I believe, would help protect this judgment in the event the payor filed a petition under the United States Bankruptcy Code. We would certainly want language that would make it impossible for the payor to discharge any such judgment rendered in a bankruptcy process.

Thank you and the other members of the legislature who may be privy to this letter for your consideration of this letter and for your anticipated support of such an amendment. If you have any questions or comments, do not hesitate to contact me.

Very truly yours,

HERLOCKER, ROBERTS & ST. PETER, P.A.



Nicholas M. St. Peter

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