

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 11:30 a.m. on February 16, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused  
Representative Doug Mays - Excused  
Representative Gary Merritt - Excused  
Representative Bob Miller - Excused  
Representative Belva Ott - Excused  
Representative Vince Snowbarger - Excused

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

**HB 2743** - amendments to the elective share of surviving spouse statutes

Representative Goodwin made a motion to report **HB 2743** favorably for passage. Representative Pauls seconded the motion.

Representative Adkins made a substitute motion to amend in Professor Kuether's balloon amendment, (Attachment 1) Representative Goodwin seconded the motion.

With permission of the second, Representative Adkins amended his motion to include in line 8 of the balloon amendment changing the second "of" to an "or" and striking line 26 and inserting "such notice shall be mailed to the surviving spouse." The motion carried.

Representative Goodwin made a motion to report **HB 2743** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

**HB 2031** - proceeds of civil forfeiture action

No interest was shown in working the bill.

**HB 2410** - nonpayment of child support; contempt of court; interest on arrearages; suspension of driving privileges

Representative Adkins made a motion to report **HB 2410** favorably for passage. Representative Standifer seconded the motion.

Representative Adkins made a substitute motion to delete Sections 1 & 2, make the contempt procedure an indirect procedure, include a 7% interest charge to arrearages and change "shall suspend" to "may restrict". Representative Yoh seconded the motion. The motion carried.

Representative Garner made a motion to amend the bill with the following language "may restrict driving privileges to, from and in the course of employment." He was concerned that the wording "may restrict" would allow a judge to restrict a persons driving privileges totally or not at all. Representative Goodwin seconded the motion. The motion carried.

Representative Adkins was concerned that this amendment would not allow the non-custodial parent to pick up children for visitation. It would only allow driving to, from and in the course of employment He made a substitute motion that would to change the language to "may restrict driving privileges, which may include, to, from and in the course of employment." Representative Haley seconded the motion. The motion carried.

Representative Adkins made a motion to report **HB 2410** favorably for passage as amended. Representative Yoh seconded the motion.

The Chairman requested that staff prepare a committee report. Final committee action would be taken after the report was received.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S Statehouse, at 11:30 a.m. on February 16, 1996.

**HB 2775** - repeal of statute requiring department of corrections to furnish religious materials to inmates

Representative Adkins made a motion to report **HB 2775** favorably for passage. Representative Grant seconded the motion.

Representative Pauls made a substitute motion to amend that the "department of corrections will provide donated bible and religious materials to inmates." Representative Garner seconded the motion. The motion carried.

Representative Pauls made a motion to report **HB 2775** favorably for passage as amended. Representative Haley seconded the motion.

Representative Spangler made a substitute motion to suspend expenses for the House & Senate chaplin. The Chairman ruled that this amendment was not germane.

The motion to report **HB 2775** favorably as amended carried.

The committee meeting adjourned at 1:30 p.m. Judiciary Sub-Committee's will be meeting February 19, 20 & 21, 1996. The next meeting scheduled for the whole committee is February 22, 1996.

HOUSE BILL No. 2743

Amendment suggestions by Professor  
Kuether.

By Committee on Judiciary

1-25

9 AN ACT concerning the elective share of the surviving spouse; amending  
10 K.S.A. 59-505, 59-6a201, 59-6a204, 59-6a205, 59-6a207, 59-6a215 and  
11 59-2233 and repealing the existing sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 59-505 is hereby amended to read as follows: 59-  
15 505. ~~Also Except as provided further,~~ the surviving spouse shall be enti-  
16 tled to receive one-half of all real estate of which the decedent at any  
17 time during the marriage was seized or possessed and to the disposition  
18 whereof the survivor shall not have consented in writing, or by a will, or  
19 by an election as provided by law to take under a will, except such real  
20 estate as has been sold on execution or judicial sale, or taken by other  
21 legal proceeding: ~~Provided, That~~ The surviving spouse shall not be en-  
22 titled to any interest under the provisions of this section in any real estate  
23 of which such decedent in ~~his or her~~ *such decedent's* lifetime made a  
24 conveyance, when such spouse at the time of the conveyance was not a  
25 resident of this state and never had been during the existence of the  
26 marriage relation. *The spouse's entitlement under this section shall be*  
27 *included as part of the surviving spouse's property under K.S.A. 59-6a207,*  
28 *and amendments thereto.*

29 Sec. 2. K.S.A. 59-6a201 is hereby amended to read as follows: 59-  
30 6a201. As used in this section:

31 (a) "Decedent's nonprobate transfers to others" means the dece-  
32 dent's nonprobate transfers to persons, other than the decedent's spouse,  
33 surviving spouse, the decedent, or the decedent's creditors, estate, or  
34 estate creditors, that are included in the augmented estate under K.S.A.  
35 59-6a205, *and amendments thereto.*

36 (b) "Fractional interest in property held in joint tenancy with the right  
37 of survivorship," whether the fractional interest is unilaterally severable  
38 or not, means the fraction, the numerator of which is one and the de-  
39 nominator of which, if the decedent was a joint tenant, is one plus the  
40 number of joint tenants who survive the decedent and which, if the de-  
41 cedent was not a joint tenant, is the number of joint tenants, *unless there*  
42 *is proof of some other proportional ownership, legal or equitable.*

43 (c) "Marriage," as it relates to a transfer by the decedent during mar-

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Attachment 1

1 transferred property to the extent that the aggregate transfers to any one  
2 donee in either of the two years exceeded \$10,000.

3 Sec. 5. K.S.A. 59-6a207 is hereby amended to read as follows: 59-  
4 6a207. (a) Except to the extent included in the augmented estate under  
5 K.S.A. 59-6a204 or K.S.A. 59-6a206, *and amendments thereto*, the value  
6 of the augmented estate includes the value of:

7 (1) Property that was owned by the decedent's surviving spouse at  
8 the decedent's death, including:

9 (A) The surviving spouse's fractional interest in property held in joint  
10 tenancy with the right of survivorship;

11 (B) the surviving spouse's ownership interest in property or accounts  
12 held in coownership registration with the right of survivorship; and

13 (C) property that passed to the surviving spouse by reason of the  
14 decedent's death, but not including ~~the~~ the spouse's right to homestead *or*  
15 *homestead allowance*, family allowance, or payments under the federal  
16 social security system; and

17 (2) property that would have been included in the surviving spouse's  
18 nonprobate transfers to others, other than the spouse's fractional and  
19 ownership interests include under subparagraphs (a)(1)(A) and (B), had  
20 the spouse been the decedent.

21 (b) Property included under this section is valued at the decedent's  
22 death, taking the fact that the decedent predeceased the spouse into  
23 account, but, for purposes of subparagraphs (a)(1)(A) and (B), the values  
24 of the spouse's fractional and ownership interests are determined im-  
25 mediately before the decedent's death if the decedent was then a joint  
26 tenant or coowner of the property or accounts. For purposes of subpar-  
27 agraph (a)(2), proceeds of insurance that would have been included in  
28 the spouse's nonprobate transfers to others under subsection (a)(4) of  
29 K.S.A. 59-6a205, *and amendments thereto*, are not valued as if such  
30 spouse were deceased.

31 (c) The value of property included under this section is reduced by  
32 enforceable demands against the surviving spouse.

33 Sec. 6. K.S.A. 59-6a215 is hereby amended to read as follows: 59-  
34 6a215. ~~Where there is no homestead or the homestead is valued at less~~  
35 ~~than \$25,000~~ A decedent's surviving spouse is entitled to *the homestead*,  
36 *or in lieu thereof the surviving spouse may elect to receive* a homestead  
37 allowance ~~not to exceed~~ of \$25,000. ~~If there is no surviving spouse, each~~  
38 ~~minor child and each dependent child of the decedent is entitled to a~~  
39 ~~homestead allowance amounting to \$25,000 divided by the number of~~  
40 ~~minor and dependent children of the decedent.~~ The *homestead or home-*  
41 *stead allowance* is exempt from and has priority over all demands against  
42 the estate. The *homestead or homestead allowance* is in addition to any  
43 share passing to the surviving spouse ~~or minor or dependent child by the~~

1-2

13  
1

1 will of the decedent, unless otherwise provided, by intestate succession;  
2 or by way of elective share.

3 Sec. 7. K.S.A. 59-2233 is hereby amended to read as follows: 59-  
4 2233. Except where the court has previously determined the validity and  
5 binding consent to a will, when a will is admitted to probate Upon the  
6 appointment and qualification of any administrator or executor, ~~the filing~~  
7 of a petition to determine descent ~~of~~ the filing of a petition for an order  
8 refusing to grant letters of administration of the filing ~~of~~ an affidavit pur-  
9 suant to K.S.A. 59-618a, and amendments thereto, the court shall forth-  
10 with transmit to the surviving spouse a certified copy thereof cause a copy  
11 of the will, if any, together with a notice statement to the surviving spouse  
12 stating: "Under K.S.A. 59-6a201 through 59-6a217, and amendments  
13 thereto, you may have valuable rights to take a share of conveyances a  
14 right to take a share of property owned by the decedent at death, in whole  
15 or in part, and of transfers of property made by the decedent prior to  
16 death." If such spouse has consented to the will, as provided by law, such  
17 consent shall control; otherwise such spouse shall be deemed to have  
18 elected to take under the testator's will unless such spouse shall have filed  
19 in the district court, within six months after the notice of the right to the  
20 elective share, an instrument in writing to take by the laws of intestate  
21 succession. If such spouse files an election before the inventory and val-  
22 uation of the estate is filed, the election shall be set aside upon petition  
23 of the spouse made within 30 days after the filing of the inventory and  
24 valuation. For good cause shown, the court may permit an election within  
25 such further time as the court may determine, if a petition therefor is  
26 made within such period of six months, to be mailed to the surviving  
27 spouse. Such notice shall be mailed within 10 days of the qualification of  
28 the administrator or executor, ~~the filing of a petition to determine descent,~~  
29 the filing of a petition for an order refusing to grant letters of adminis-  
30 tration or the filing of an affidavit pursuant to K.S.A. 59-618a, and amend-  
31 ments thereto. Proof shall be by affidavit filed with the court.

or

32 Sec. 8. K.S.A. 59-505, 59-6a201, 59-6a204, 59-6a205, 59-6a207, 59-  
33 6a215 and 59-2233 are hereby repealed.

34 Sec. 9. This act shall take effect and be in force from and after its  
35 publication in the statute book.