

Approved: February 14, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice-Chairperson Tim Carmody at 3:30 p.m. on January 27, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused
Representative Phill Kline - Excused
Representative Mike O'Neal - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Laura McClure
Gerald Goodell, Kansas Judicial Council, Probate Law Advisory Committee
Kathy Olsen, Kansas Bankers Association

Representative Laura McClure requested a committee bill be introduced which would change "individual" to "persons" in the Crime Victims Restitution Laws so corporations may receive assistance in replacing or repairing damage to their property. (Attachment 1)

Representative Gregory made the motion to have the request introduced as a committee bill. Representative Crow seconded the motion. The motion carried.

Hearing on **HB 2671 - Technical changes to Chapter 59 necessitated by passage of the Kansas Estate Tax Act**, was opened.

Gerald Goodell, Kansas Judicial Council, Probate Law Advisory Committee, informed the committee that this bill was for technical changes. The first change would be to insert July 1, 1998 to clarify its applicability. The second change was to insert the phrase "estate tax or" in line 35 so Kansas has both the estate tax and the inheritance tax. The last technical change was to add the phrase "for decedents dying before July 1, 1998" so the inheritance tax applies only to decedents dying before that date. (Attachment 2)

Hearing on **HB 2671** was closed.

Hearing on **HB 2672 - Estate tax amendments**, was opened.

Gerald Goodell, Kansas Judicial Council, Probate Law Advisory Committee, he explained that the proposed bill was also clean-up amendments. It makes Kansas' Estate Tax consistent with federal law. (Attachment 3)

Hearing on **HB 2672** was closed.

Hearings on **HB 2673 - Increasing the dollar amounts in the probate code**, was opened.

Gerald Goodell, Kansas Judicial Council, Probate Law Advisory Committee, stated that the changes deal with increasing the dollar amounts in different areas in the probate code. The dollar amounts have not been changed for a period of many years. (Attachment 4)

Kathy Olsen, Kansas Bankers Association, appeared before the committee in support of the bill. She requested an amendment which would place the definition in statute of who "surviving heirs" includes and what is meant by "total assets of the estate". (Attachment 5)

CONTINUATION SHEET

Hearing on **HB 2673** was closed.

HB 2671- Technical changes to Chapter 59 necessitated by passage of the Kansas Estate Tax Act

Representative Powell made the motion to report **HB 2671** favorably for passage. Representative Lightner seconded the motion. The motion carried.

HB 2672 - Estate tax amendments

Representative Powell made the motion to report **HB 2672** favorably for passage. Representative Long seconded the motion. The motion carried.

The committee meeting adjourned. The next meeting is scheduled for January 31, 2000.

LAURA L. McCLURE
202 SOUTH 4TH
OSBORNE, KS 67473
(785) 346-2715



REPRESENTATIVE, 119TH DISTRICT
STATE CAPITOL
ROOM 278-W
TOPEKA, KS 66612-1504
(785) 296-7680
1-800-432-3924

TOPEKA

HOUSE OF
REPRESENTATIVES

January 27, 2000

House Judiciary Committee

Lincoln County Attorney Bob Crangle and the Crime Victims Restitution Fund Coordinator, Harry Cross brought this situation to my attention this fall.

In current law no claim can be paid from the local victims restitution fund to any corporation, partnership or other business entity or governmental entity.

I've enclosed a letter from Harry Cross outlining the issue.

I'm here to ask the Committee to introduce this bill as a committee bill. Bob Crangle, Harry Cross and I have worked with Jill to draft the language contained in the bill.

The Crime Victims fund in Lincoln contains no tax dollars. There is no money from the State Victims Assistance fund or the Crime Victims Compensation fund. The money comes from defendants as a condition of their diversion and related fees. The usual fee is \$50.00

Thank you for your consideration of this request.

A handwritten signature in cursive script, appearing to read "Laura L. McClure". The signature is written in black ink and is positioned below the typed text.

826 No. 3rd Street
Lincoln, Kansas 67455-1722

September 1, 1999

Representative Laura McClure
State House
Topeka, KS 66612

Dear Representative Laura McClure,

Subject: Crime Victims Restitution Fund, K.S.A. 19-4802 (h) and 19-4804 (p), copies enclosed

I am writing to encourage you to consider proposing an amendment to the Crime Victims Restitution Law. As Coordinator for this Fund, I have observed occasions where the Lincoln County Crime Victims Restitution Committee denied applications because the law defines a "victim" as an "individual". Our Committee desires that all victims of crime receive assistance in replacing, or repairing damage to their property.

Many of our small businesses operate on small financial margins. In addition, some non-profit organizations also have limited funds to make unplanned repairs due to criminal activity. Even our local governments, such as schools and cities, undergo small occasional vandalism. Therefore, we request you consider broadening the definition for those eligible to receive compensation. We would suggest eliminating both the above sub-sections, or at least eliminate 19-4804 (p) and modify 19-4802 (h) from "individual" to "person".

Sincerely,



Harry L. Cross
Coordinator
Lincoln County Crime Victims Restitution Fund

Copies:

Laura McClure, Representative
Janice Lee, Senator

January 27, 2000

**Judicial Council Testimony
on 2000 HB 2671**

This bill was recommended by the Judicial Council's Probate Law Advisory Committee whose members are Marvin E. Thompson, Chair, Russell; Cheryl C. Boushka, Overland Park; Hon. Sam K. Bruner, Olathe; Representative Tim Carmody, Leawood; Jack R. Euler, Troy; Gerald L. Goodell, Topeka; Senator Greta Goodwin, Winfield; Mark Knackendoffel, Manhattan; Hon. Edward Larson, Topeka; Richard L.D. Morse, Manhattan; Philip D. Ridenour, Cimarron; and Willard Thompson, Wichita. The bill was approved by the Kansas Judicial Council.

The bill contains technical changes to K.S.A. Chapter 59 necessitated by the passage of the Kansas Estate Tax Act. When the Kansas Estate Tax Act passed, Kansas was left in a transitional period, which will continue for a number of years, in which estates of decedents who died on July 1, 1998 or thereafter fall under the Kansas Estate Tax Act and estates or persons dying prior to that date fall under the Kansas Inheritance Tax Act. The proposed amendments insert the July 1, 998 date throughout the Inheritance Tax Act to clarify its applicability.

Section 1 amends K.S.A. 59-808 and relates to personal representatives of nonresident decedents. The insertion of the phrase "estate tax or" in line 35 recognizes that Kansas has both an estate tax and inheritance tax and a waiver of either may not be required by transfer agents.

In Sections 2 through 9 the phrase "for decedents dying before July 1, 1998" is inserted a number of times. This change clarifies that inheritance tax applies only to decedents dying before July 1, 1998.

January 27, 2000

**Judicial Council Testimony
on 2000 HB 2672**

This bill was recommended by the Judicial Council's Estate Tax Advisory Committee whose members are Representative Tim Carmody, Chair, Leawood; Hon. Sam K. Bruner, Olathe; C.W. Cade, Topeka; Martin Dickinson, Jr., Lawrence; Joseph W. Jeter, Hays; John R. Luttjohann, Topeka; Joseph Murtha, Wichita; Austin Nothern, Topeka; Hayden St. John, Topeka; Susan Teson, Kansas City, Missouri; William P. Trenkle, Jr., Dodge City; and Jim Weisgerber, Topeka. The bill was approved by the Kansas Judicial Council.

Several amendments are proposed to the Kansas Estate Tax Act. They include the striking of confusing language, clarification of how certain concepts are stated and other technical changes.

Comment to Section 1

The amendment to subsection (a), relating to transferee liability, makes it clear that a surviving spouse will not be personally liable for the unpaid tax to the extent that a marital deduction was allowed for such property on the federal estate tax return.

The Committee recommends that subsections (b) and (c) of K.S.A. 79-15,107 be deleted.

K.S.A. 79-15,107 (b) and (c) are intended to set forth a process for the enforcement of collection of the Kansas Estate tax by issuance of tax warrants. The Committee is of the opinion there are numerous problems with the subsections. In the collective experience of the Committee, no one knew of, or had heard of, and instance when the procedure has been used. It is the consensus of the Committee that if it were used it would cause confusion and uncertainty.

The section states that the Director of Taxation can issue a warrant to the sheriff of the county directing the sheriff to levy and sell real and personal property of the "Estate" found within that county. The warrant apparently would list "the name of the Estate" and when the sheriff files this with the Clerk of the District Court, the amount of the warrant becomes a lien upon the property of the "Estate" in the same manner as a judgment. The Committee is concerned that the statute does not state how the property that is to be subject to the lien is to be identified.

In addition the Committee noted that the term "Estate" is defined in K.S.A. 15,101 as meaning: "the real, personal, and mixed property... of the testator be transferred to legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors..." The Committee questions what the term "vendees" means in this context, since the lien has previously been removed. This could be interpreted to imply that a new lien springs up against the property that has been sold. The Committee is of the opinion that this new lien was not intended.

In subsection (c), the statute states that the "Estate" shall have the right to redeem the real estate. While the language in this section may have made sense when most assets were transferred at death

by means of a probate proceeding, the Committee is of the opinion that it does not work well with non-probate transfers.

It is the opinion of the Estate Tax Advisory Committee that the law will be improved if subsections (b) and (c) are stricken. It is the opinion of a committee member from the Department of Revenue that they could proceed under the statement of liability in subsection (a) if the need arose.

Comment to Section 2

The generation skipping transfer tax ("GSTT") imposed at the federal level allows a credit for a state GSTT equal to five percent of the federal tax. The credit is allowed only for the tax on a taxable termination or distribution that occurs at the same time and as a result of the death of an individual. If the transfer or distribution is made at the time of death of the person who originated the transfer, then the decedent's estate would be liable for the tax. However, if the event triggering the tax is the death of a person who did not originate the transfer, as when a trust is established by a parent for a child and grandchild and the child dies, then liability for the tax is imposed upon the Trustee rather than the original decedent's estate. By this amendment, Kansas will parallel federal laws by placing liability for payment of the Kansas tax upon the same persons or entities that are responsible for paying the federal GSTT.

Comment to Section 3

This statutory section was enacted in 1999 and was intended to replicate certain provisions of the Internal Revenue Code which provide for a right of recovery of taxes against certain assets. This section currently states that the tax recoverable is a portion of the tax under Chapter 11 of the Internal Revenue Code. Because this is intended to be a right of recovery for the Kansas tax, it cannot be determined by the amount of the federal estate tax. If read literally, this section gives the possibility of recovering an amount substantially greater than the appropriate portion of the Kansas Estate Tax.

This proposed amendment permits the personal representative of a surviving spouse's estate to recover tax owed by that estate because qualified terminable interest property was included in the estate of the surviving spouse, and accurately states the drafting committee's intent.

Comment to Section 4

This section was enacted in 1999 and was intended to replicate certain provisions of the Internal Revenue Code which provide for a right of recovery of taxes against certain assets.

The section states that the tax recoverable is portion of the tax under Chapter 11 of the Internal Revenue Code. This is supposed to be a right of recovery for the Kansas tax, and cannot be determined by the amount of the federal estate tax. If read literally, this section gives the possibility of recovering an amount substantially greater than the appropriate portion of the Kansas Estate Tax.

The proposed amendment gives the personal representative the right of reimbursement for taxes attributable to the inclusion of IRC 2036 property (transfers with a retained life estate) in the decedent's taxable estate.

**Judicial Council Testimony
on 2000 HB 2673**

The bill was recommended by the Judicial Council's Probate Law Advisory Committee whose members are Marvin E. Thompson, Chair, Russell; Cheryl C. Boushka, Overland Park; Hon. Sam K. Bruner, Olathe; Representative Tim Carmody, Leawood; Jack R. Euler, Troy; Gerald L. Goodell, Topeka; Senator Greta Goodwin, Winfield; Mark Knackendoffel, Manhattan; Hon. Edward Larson, Topeka; Richard L.D. Morse, Manhattan; Philip D. Ridenour, Cimarron; and Willard Thompson, Wichita. The bill was approved by the Kansas Judicial Council.

In its work with the Probate Code, the Judicial Council Probate law Advisory Committee noticed that many of the dollar amounts contained in the code have not been changed for many years. The Committee used the consumer price index to review all dollar amounts contained in the Probate Code and recommends the following amendments.

Section 1. The allowance to spouse and minor children was raised to \$25,000 effective July 1, 1989. The Committee is of the opinion that this amount is related to the cost of living index and should be reviewed periodically. The CPI has increased 31.3% from July 1, 1989 to July 1, 1999. The Committee proposes the allowance be increased to \$35,000.

Section 2. The Committee recommends the \$25,000 amount contained in this section be increased to \$35,000. The \$25,000 amount is the amount of the homestead allowance under K.S.A. 59-403 which is raised to \$35,000 by section 1 of this act.

Section 3. This statute has not been raised in dollar amount since its passage in 1967. The Committee notes that this statute, which allows certain categories of payors to pay monies to certain relatives only releases the payor from liability and does not say that the recipient of the payment necessarily keep the money. The Committee also noted that these affidavits are in wide use. The CPI has increased 389% from July 1967 to July 1999, and the Committee proposes this amount be increased to \$5,000.

Section 4. In addition to recommending that subsection (b) be amended by raising the \$10,000 amount to \$20,000 to respond to the 97.5% increase in the CPI from July 1980 to July 1999, the Committee recommends that subsection (a) be stricken.

The reason that the Committee recommends that subsection (a) be repealed is because it is narrower in scope than subsection (b). Subsection (a) is limited to use by banks, trust companies, savings and loan associations and credit unions located in this state. Subsection (b) may be used by "any corporation or person". Under Subsection (a) if the estate is \$10,000 or less, monies on deposit of up to \$1,000 may be distributed. Under subsection (b) the full \$10,000 can be distributed.

In addition, practitioners report there have been problems when attempting to persuade financial institutions to make a distribution under subsection (b), because they believe that they may only distribute under subsection (a). The Committee recommends subsection (a) be repealed because it overlaps the more broadly crafted subsection (b).

Section 5. The \$500 amount in this section was established when the statute passed in 1939. From July of 1939 to July of 1999, the CPI has increased 1,083%. The Committee recommends the statute be amended to \$5,000.

Section 6. Subsection (c) which contains the proposed amendment was new in 1987. From July of 1987 to July of 1999, the CPI increased 43.5%. The Committee recommends an increase above the CPI because it believes the increased amount is "consumer friendly" and benefits both the estate and the creditor.

Section 7. The amount in the refusal to grant letters of administration statutes has historically been tied to the homestead allowance, which is increased to \$35,000 by section 1 of this act.

Section 8. This amount has not been changed since 1939. The CPI has increased 1083% between July 1939 and July 1999, and the Committee recommends the increase to \$500.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 27, 2000

TO: House Judiciary Committee

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: HB 2673

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in general support of **HB 2673**, and also to ask the committee for a conceptual amendment.

The amendment would be to KSA 59-1507b, regarding estates of less than \$10,000 (increased to \$20,000 in this bill). Questions about this statute come into our office quite frequently. Bank tellers are often faced with questions from a surviving spouse or another heir regarding the accounts left behind by a decedent.

This statute is available when the "total assets of the estate of the decedent do not exceed \$10,000". The problem is that the statute does not define "total assets of the estate". Does that mean just "probate assets" or does it include non-probate assets such as life insurance policies?

Having a definition in the statute would be greatly helpful to the surviving heirs who are trying to determine whether or not they fall under these provisions.

Thank you for your consideration of this matter and I would offer my help in resolving this issue.