

Approved: Jan. 19, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:05 a.m. on January 18, 2000 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Mike Taylor, City of Wichita
John Peterson, Security Benefit Life Insurance Company
Senator Bonnie Sharp
Paul Morrison, Johnson County District Attorney
Ron Gaches, Associated Credit Bureaus
Kathy Olsen, Kansas Bankers Association

Others attending: see attached list

The January 13th meeting minutes were approved on a motion by Senator Donovan and seconded by Senator Goodwin. Carried.

BILL INTRODUCTIONS:

Conferee Taylor requested introduction of a bill that would narrow the definition of domestic battery to: "those involved in intimate relationships." He explained how this would make the statute more effective and workable. (attachment 1) Following brief discussion Senator Feleciano made a motion the bill be introduced, Senator Harrington seconded. Carried.

Conferee Peterson requested enactment of Section 101 of the Uniform Non-probate transfers on Death Act. He stated that this statute "would provide that a variety of contractual arrangements, including beneficiary designations in individual retirement accounts, be regarded as non-testamentary in nature. He provided background data on non-probate transfer on death and discussed the impact of adoption of this statute. (attachment 2) Senator Vratil moved to introduce the bill, Senator Donovan seconded. Carried.

SB 383—identity theft; departure sentencing

Conferee Sharp testified as a proponent of **SB 383**. She briefly defined identity theft and provided statistical data to show it is the fastest growing crime in America. supporting her contention that the severity level for this type of crime needs to be increased from a class A misdemeanor to a felony crime. (attachment 3)

Conferee Morrison testified as a proponent of **SB 383**. He discussed economic crimes perpetrated through written or electronic means and the ineffectiveness of the criminal justice system in dealing with them no matter how devastating the loss because they are usually low grade property offenses carrying little or no jail time. He stated that identity theft needs to be a felony and the aggravating factor in the law for those crimes where devastating economic harm as been inflicted needs to be addressed. (attachment 4) Lengthy discussion followed.

Conferee Gaches testified as a proponent of **SB 383**. He presented a brief overview of his association's function and discussed it's provisions for customers who are victims of identity fraud. He stated that the current Kansas law lists identity theft as a misdemeanor so it is difficult to extradite criminals back to Kansas for prosecution and for law enforcement to allocate resources to pursue identity theft crimes. He urged passage of the bill. (attachment 5)

Conferee Olsen testified as a proponent of **SB 383**. She requested Committee consider amending the bill to include check fraud and forgery which she stated is another form of identity theft. She cited newspaper articles from the Lawrence Journal World, Aug. 5, 1999 and the Wichita Business Journal, Dec. 10, 1999, which address the issue of forgery and reveal how the current forgery law is ineffective as a deterrent since the convicted person never faces imprisonment. She asked the Committee to rectify this problem by making the penalties the same for all forms of identity theft crime. (attachment 6)

The meeting adjourned at 10:55 a.m.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Jan. 18, 2000

NAME	REPRESENTING
Gail Bright	Attorney General's Office
CHRISTI LOHMAN	UMKC Law School
Marlee Berthoff	KCCM
Kathryn Olsen	Ks Bankers Assn
Paul Morrison	Jr. Co. District Attorney
Vickilyn Hessel	Budget
KETH R LAUDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Jeff Bottenberg	Kansas Peace Officers Ass'n
DON SNOODGRASS	KANSAS FOOD DEALERS ASSN
Amy Bertrand	KS Supreme Court
Mike Taylor	City of Wichita
Dan Murphy	Trans Union
MAE STEWART	TRANS UNION LLC
Ron Gaches	Associated Credit Bureaus
John Peterson	Security Benefit Group
Chris Coffe	Intern
Jim McLean	Capital - Journal
Nora Smith	Intern - Sen. Teleciano
Laurie William	Governor's Office

SJ
1-18
att #1



CITY OF
WICHITA

TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Phone: 316-268-4351 Fax: 316-268-4519

Domestic Violence Change in Definition

The City of Wichita supports changes in domestic violence statutes in an effort to make the law more effective and workable. The City of Wichita supports narrowing the definition of domestic battery to those involved in intimate relationships.

Deleting references to "persons who are presently residing together or who have resided together in the past" will strengthen enforcement efforts. Limiting the definition to people with intimate relationships will allow law enforcement officials and court resources to concentrate on the most prevalent and troublesome cases of domestic violence.

Under the current definition, two former college roommates who get into a disagreement, would have to be arrested, booked in jail, and charged with domestic violence. Under the City of Wichita's proposal, regular assault and battery laws would be used in this situation. Domestic violence laws would only be used in true domestic violence situations, such as spouses or parents of the same child.

Attached is revised language drafted by the City of Wichita's Law Department, in conjunction with the Wichita Domestic Violence Coalition, a group of nearly three dozens organizations which work with domestic violence victims. The wording is borrowed from the Colorado state law, a copy of which is attached.

Ju Jud
1-18-00
att 1

November 8, 1999

To: John Peterson

From: Roger K. Viola, General Counsel
Security Benefit Life Insurance Company

Subj: Proposed Legislation

Proposal: Security Benefit Life Insurance Company proposes that the Kansas Legislature enact Section 101 of the Uniform Nonprobate Transfers on Death Act. This statute would provide that a variety of contractual arrangements, including beneficiary designations in individual retirement accounts, be regarded as nontestamentary in nature.

Background: Nonprobate transfers on death may be subject to legal challenge as invalid testamentary transfers. By designating the enumerated nonprobate transfer provisions as nontestamentary, this statute would ensure that instruments containing such provisions do not need to be executed in compliance with the formalities required for wills.

Eleven states, including the neighboring states of Colorado and Nebraska, have already adopted Section 101 of the Uniform Nonprobate Transfers on Death Act (or identical provisions found at Section 6-101 of the Uniform Probate Code). Four other states have adopted the pre-1989 version of the Act. Five states, including Missouri, have adopted other legislation specifically designating certain nonprobate transfers as nontestamentary.

The Kansas Legislature adopted Section 301 of the Uniform Nonprobate Transfers on Death Act, the Uniform Transfer on Death Security Registration Act, in 1994.

Impact: Adoption of this statute would (i) assure that the legitimate expectations of contract holders would be satisfied and their beneficiary designations upheld as valid; and (ii) save life insurance companies and other financial situations from possible litigation regarding the lawful payee of contract proceeds on the death of the contract holder.

SS
1-18
att 2

Sn Jurd
1-18-00
Att. 2

_____ **BILL NO.** _____

AN ACT relating to nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this State.

5J ud
1-18
att 3

BONNIE SHARP
REPRESENTATIVE, THIRTY-FIRST DISTRICT
WYANDOTTE COUNTY
4218 DIXIE COURT
KANSAS CITY, KANSAS 66106
(913) 831-2339



COMMITTEE ASSIGNMENTS
MEMBER: ECONOMIC DEVELOPMENT
FINANCIAL INSTITUTIONS
TAXATION
KANSAS 2000
RANKING DEMOCRAT

TOPEKA

HOUSE OF
REPRESENTATIVES

STATE CAPITOL—RM. 273-W
TOPEKA, KANSAS 66612-1504
(785) 296-7656

**Testimony on Identity Theft
January 18, 2000**

Thank you Mr. Chairman.

I appreciate the opportunity to testify before your committee this morning on the topic of identity theft. As many of you know, identity theft happens when someone pretends to be you. They use your personal information when applying for loans, credit cards, or leases. The thief takes advantage of your good credit record, leaving behind bad credit in your name. A victim's attempts to correct these problems can literally be exhausting!

By one industry estimate, more than 1,000 people a day in the United States fall victim to crimes of stolen identity. In 1997 the U.S. Secret Service made 9,455 arrests involving identity fraud. According to the Privacy Rights Clearinghouse there are over 400,000 thefts of identity each year with annual losses of more than \$2 Billion. Identity theft is expanding at a rate of 50% per year, and it is the fastest growing crime in America.

During the 1998 session HB 2739 was introduced, and with the help of my legislative colleagues it became law on July 1, 1998. Although the bill establishes the crime of identity theft, many law enforcement officers and victims continued to call me with their concerns. They were grateful for the law, but disappointed that the severity level is a class A person misdemeanor, and not a felony crime. The Johnson and Wyandotte County District Attorneys also recommend the increased severity level.

I am not an expert on the sentencing guidelines, but strongly support this change. I feel the change will better reflect the intent of the legislation: it was to establish identity theft as a crime, and enable law enforcement to pursue the violator. After talking to many experts, I think this change will improve the ability to find and extradite the criminal.

Thank you for your consideration on this proposed change. I will stand for questions.

Sn Jud
1-18-00
att 3

Sen Jud
1-18
att # 4

Testimony to the Senate Judiciary Committee

In Favor of Senate Bill 383

January 18, 2000

Paul Morrison

I come to you today as a strong advocate for Senate Bill 383. I also appreciate the time and interest that the Special Committee on the Judiciary spent last fall in looking at the issues of economic crime and identity theft.

As we are all aware, technology and the use of computers is changing the way business is done in this country. It is literally changing the economic infrastructure of our nation. With these changes comes more reliance by all of us on the electronic transmission of records, data and everything else that we rely on in our daily lives. Unfortunately, this provides fertile ground for a whole new type of criminal. This "new" criminal is oftentimes extraordinarily adept at the use of computers and oftentimes has considerable knowledge of how banking and economic systems work. These criminals can wreak incredible damage on both individuals and businesses. It is unfortunate that in years past the criminal justice system has been at a major disadvantage in dealing with them. I've often lamented the fact that someone who steals a few dollars by the threat or use of force does significant time in the State penitentiary (as he or she should), while someone who is smart enough to steal with a pen or computer keyboard will be lucky to be arrested at all. When they are arrested, the crime is usually a low grade property offense that carries little or no jail time. What's even more disturbing are situations where someone is able to destroy an individual or put a business under through an economic type crime.

These reasons make it even more compelling that this committee pass this bill out favorably.

Sen Jud
1-18-00
att 4

First, identity theft absolutely needs to be a felony. Secondly, the aggravating factor in K.S.A. 21-4716 is important to address those situations where devastating economic harm has been inflicted because of the crime before the court. Obviously, it would only apply to a handful of economic crimes. However, it would be handful that we seek to punish severely. It would also apply to the full penumbra of economic crimes: identity theft, theft, forgery, computer crime, and the other ways that one might use to steal or defraud.

Currently, these crimes comprise a relatively small percentage of criminal caseloads. Thus, the impact on the Department of Corrections would be minimal. In Johnson County, large scale theft cases (over \$25,000.00 loss) filed in 1999 numbered 40. This number, however, more than doubled in the last three years. The number of identity theft cases we filed numbered five. Unfortunately, these types of crimes are the wave of the future. We need to be prepared.

Paul J. Morrison



**Testimony before Senate Judiciary Committee
Submitted by Ron Gaches, J.D.
On behalf of Associated Credit Bureaus, Inc.
Regarding Senate Bill 383 – Penalty for Identity Theft
Tuesday, January 18, 2000**

Thank you Chairman Emert for the opportunity to appear today in support of passage of Senate Bill 383.

Associated Credit Bureaus, Inc. is the international trade association representing more than 640 credit reporting agencies in the United States, Canada and 19 other countries. The credit reporting industry annually invests hundreds of thousands of man-hours and millions of dollars to assist consumers who are the victims of identity fraud. Each of the three major credit reporting systems in the United States operates a credit fraud victim assistance center devoted to helping consumers who suspect they might be the victim of identity theft. Thousands of identity theft victims are assisted by the centers each year.

The Association supports the vigorous enforcement of identity theft statutes. Unfortunately, current Kansas' law lists identity theft as a misdemeanor, making it difficult to extradite criminals back to Kansas for prosecution and making it difficult for local prosecutors and law enforcement to allocate resources to pursue these crimes. Accordingly, the Associated Credit Bureaus strongly endorses Senate Bill 383 and urges passage by the Senate Judiciary Committee.



55
1-18
a

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 18, 2000

TO: Senate Judiciary Committee

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

RE: **SB 383: Identity Theft**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 383**, and to ask you to consider amending the bill to include another form of identity theft – check fraud and forgery.

As you know, check forgery is defined in K.S.A. 21-3710, as the crime of making, altering or endorsing a written instrument so that it appears to have been made, altered or endorsed by another person, either real or fictitious. We believe that the enforcement of this statute is an important tool in prosecuting the crime of identity theft.

Unfortunately, law enforcement is experiencing a high level of frustration in pursuing these cases in that, under current sentencing guidelines, a person convicted of this crime will never, ever face the possibility of imprisonment. This was brought to our attention by officials at the Topeka Police Department and you can see by the attached newspaper articles, that it is a problem throughout the state.

Without the fear of possible imprisonment, people who commit forgery, do it again and again. The losses not only affect the banking industry, but also greatly affect Kansas merchants and retailers. Our fear is that Kansas will become known as a state where forgeries are welcome, thereby encouraging folks to come here to either steal or falsify an identity for economic gain.

We are asking the committee to treat this form of identity theft seriously and to make the penalties the same for all forms of the crime. Thank you for your time and attention to this matter.

SnJ
1-18-00
att. 6