

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 6, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Dean Newton - Excused  
Representative Rick Rehorn - Excused  
Representative Clark Shultz - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research  
Jill Wolters, Department of Revisor of Statutes  
Sherman Parks, Department of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Ron Hein, RJ Reynolds  
Jeff Bottenberg, Kansas Peace Officers Association  
Paul Davis, Kansas Bar Association  
Bob Wunsch, Attorney, Kingman, Kansas  
Mark Beck, Director Property Valuation Division  
Bob Krehbiel, Self  
John Badger, Chief Legal Counsel for Social and Rehabilitation Services  
Kathy Olsen, Kansas Bankers Association  
Pedro Irigonegaray, Kansas Trial Lawyers Association  
Judge Richard Ballinger, 18<sup>th</sup> District Court Judge, Sedgwick County

Ron Hein, RJ Reynolds, appeared before the committee with a bill request that would provide enabling legislation to the Non-participating Manufacturer Enforcement Act. (Attachment 1)

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

Jeff Bottenberg, Kansas Peace Officers Association, requested a bill that would increase the ability of certified, properly trained law enforcement officers to conduct investigations. (Attachment 2)

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

Paul Davis, Kansas Bar Association, requested a bill which would update the Uniform Commercial Code with the Delaware corporation code. (Attachment 3)

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

Representative Pauls requested a bill that would increase dock fees where ½ goes to CASA and the other ½ to the Family Preservation Fund. She moved to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

Representative Pauls requested another bill regarding expungement recorded on background checks for officers. She made the motion to have the request introduced as a committee bill. Representative Long seconded the motion. She directed staff to see if there was any current statute that addressed the issue and if not then draft the bill. The motion carried.

Representative Crow requested a bill requiring a certified letter be sent regarding garnishments. She moved to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 6, 2002 in Room 313-S of the Capitol.

Representative Patterson requested a bill that would expand parties of interest as described in the Code of Civil Procedure not for profit memberships in order to bring actions on behalf of themselves and members. He move to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

Chairman O'Neal received a request from a group of Trinity High School students, located in Hutchinson, who have done a study on vehicle traffic accidents involving young people, that would implement a graduated licenses program with the driving age to 14.9 years, 15.3 years, and 17 years of age a. He made the motion to have the request introduced as a committee bill. Representative Pauls seconded the motion. The motion carried.

Hearings on **HB 2697 - Conversion of Chapter 61 cases to Chapter 60 cases permissive not mandatory by the courts**, were opened.

Judge Richard Ballinger, 18<sup>th</sup> District Court Judge, Sedgwick County, requested the bill to allow judges the discretion to transfer cases to Chapter 60 procedures instead of mandatory transfers. (Attachment 4)

Hearings on **HB 2697** were closed.

Hearings on **HB 2672 - Elective share of surviving spouse; waiver of homestead rights**, were opened.

Bob Wunsch, Attorney, requested the proposed bill due to concerns over sub-section (d) which allows a spouse to be considered as having waived his/her homestead or family allowance or both if the document provides that "all rights" in the property or estate of a present or prospective spouse are being waived without providing a clear indication in the document as to what these "rights" are. The proposed bill would address this concern. (Attachment 5)

Hearings on **HB 2672** were closed.

Hearings on **HB 2698 - Real estate sales validation questionnaire does not appear to transfer title from a trust without consideration**, were opened.

Bob Wunsch, Attorney, Kingman, requested the proposed bill. He has found that a transfer from a trust is not an exemption from the Kansas Real Estate Sales Validation Questionnaire. K.S.A. 79-1437 provides a laundry list of transfers that are exempt. This would simply add "from a trust" to the laundry list. (Attachment 6)

Mark Beck, Director Property Valuation Division, appeared as a proponent of the bill and requested an amendment which would require only one sales validation questionnaire for the purpose of releasing an equitable lien. (Attachment 7)

Bob Krehbiel, Self, reported that he has had problems with transfer on death deeds, which allows transfer of real estate while alive then the title passes at the time of death. Some counties require a sales validation and others don't.

After the committee meeting, Mr. Beck provided the Chairman with a directive sent to all Registers of Deeds on June 30, 1997 stating that they do not require a Kansas Real Estate Sales Validation Questionnaire because it does not actually transfer property at the time of filing. (Attachment 8)

Hearings on **HB 2722 - Authorizing financial organizations to provide information to Secretary of SRS**, were opened.

John Badger, Chief Legal Counsel for SRS, explained that the proposed bill would allow SRS to request any records in the possession of a financial institution relating to deposits, withdrawals or interest accruals by an applicant for or recipient of public assistance. (Attachment 9)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 6, 2002 in Room 313-S of the Capitol.

Kathy Olsen, Kansas Bankers Association, requested an amendment that would allow financial institutions to charge a reasonable fee for producing such documents. (Attachment 10)

Pedro Irigonegaray, Kansas Trial Lawyers Association, appeared before the committee as an opponent to providing blanket immunity to financial organizations and its employees for the disclosure of information. He requested an amendment which would protect financial institutions and their employees from liability for the release of such information as long as it had been correctly released to SRS. (Attachment 11)

Hearings on HB 2722 were closed.

Representative Crow made the motion to approve the committee minutes from January 16, 22, 23 and 24. Representative Howell seconded the motion. The motion carried.

Representative Klein requested a bill that related to child support continuing till the age of 21 for special education children as long as they remain in school. He moved to have the request introduced as a committee bill. Representative Swenson seconded the motion. The motion carried.

Chairman O'Neal appointed the following committee members on sub-committee for HB 2469 - Guardian & conservators:

Representative Doug Patterson - Chairperson  
Representative Dean Newton  
Representative Tim Owens  
Representative Marti Crow  
Representative Jan Pauls

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 7, 2002.



## Non-Participating Manufacturer Enforcement Proposed Legislation

AN ACT concerning the affixing of cigarette tax stamps and meter impressions and payment of tax on roll-your-own tobacco.

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

SECTION 1. (a) No person may affix, or cause to be affixed, tax stamps or meter impressions to individual packages of cigarettes or pay the required tax on roll-your-own tobacco in accordance with K.S.A. 79-3371 unless the tobacco product manufacturer that makes or sells such cigarettes or roll-your-own tobacco has:

(1) Become a participating manufacturer as defined in K.S.A. 50-6a03(a); or

(2) Made all escrow payments required by, K.S.A. 50-6a03(b)(1).

(b) Not later than May 15, 2002, the attorney general shall develop a list, to be posted on the attorney general's website, of all tobacco product manufacturers that have become participating manufacturers as defined in K.S.A. 50-6a03(a) or made all escrow payments required by K.S.A. 50-6a03(b)(1). This list shall include the brand families identified by each such tobacco product manufacturer under subsection (c). The list shall be updated as necessary. A person may rely upon the attorney general's list in affixing or causing to be affixed stamps or meter impressions to individual packages of cigarettes or paying the tax on roll-your-own tobacco as required by K.S.A. 79-3371 of any brand family included on the list.

(c) In order to be included on the list developed by the attorney general under subsection (b), a tobacco product manufacturer shall submit to the attorney general a list of brand families whose cigarettes are to be counted in calculating the manufacturer's annual payments under the Master Settlement Agreement or its escrow payments under K.S.A. 50-6a03(b)(1), whichever is applicable. A tobacco product manufacturer may update the list to reflect changes.

(d) In addition to or in lieu of any other civil or criminal penalty provided by law, the director, upon a finding that a licensee has violated subsection (a) or any rule or regulation adopted pursuant thereto, may revoke or suspend the license of any licensee in the manner provided by K.S.A. 79-3309, and amendments thereto. The director may also impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes or roll-your-own tobacco involved or \$ 5,000 upon a finding of a violation of subsection (a) or any rule or regulation adopted pursuant thereto. Such fine shall be imposed in the manner provided by K.S.A. 79-3391, and amendments thereto.

(e) Any cigarettes or roll-your-own tobacco that are stamped or to which a meter impression is affixed or for which tax is paid as required by K.S.A. 79-3371 in violation of subsection (a) shall be deemed contraband under K.S.A. 79-3323, and amendments thereto, and shall be subject to seizure and forfeiture as provided therein and in K.S.A. 79-3324a, and amendments thereto. All such cigarettes and roll-your-own tobacco seized and forfeited shall be destroyed. Such cigarettes and roll-your-own tobacco shall be deemed contraband whether the violation of subsection (a) is knowing or otherwise.

(f)(1) The director may require wholesale dealers and distributors to submit such information as is necessary to enable the attorney general to determine whether a non-participating manufacturer has made the escrow payments required by K.S.A. 50-6a03(b)(1).

(2) The attorney general may require non-participating manufacturers to submit such information as the attorney general may determine is necessary to enable the attorney general to determine

whether a non-participating manufacturer has made the escrow payments required by K.S.A. 50-6a03(b)(1).

(g) To promote compliance with K.S.A. 50-6a03(b)(1), the attorney general shall require each non-participating manufacturer (1) to make the escrow payments required by such section in quarterly installments during the year in which the sales covered by such payments are made, and (2) to appoint a registered agent for service of process in the state and identify such registered agent to the attorney general.

(h) Any non-participating manufacturer that falsely represents to any person (1) any information about a brand family pursuant to the list submitted pursuant to subsection (b); (2) that it is a participating manufacturer as defined in K.S.A. 50-6a03(a); (3) that it has made all escrow payments required by K.S.A. 50-6a03(b)(1); or (4) that it has made the installment payments or appointed the registered agent required by subsection (g), shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both, for each such false representation.

(i) The director and the attorney general may enter into a written agreement authorizing the exchange of information reasonably necessary to the enforcement and administration of this section.

SEC. 2. This act shall take effect and be in force from and after its publication in the statute book.

Proposed by Ronald R. Hein  
Legislative Counsel  
RJ Reynolds Tobacco

# Polsinelli | Shalton | Welte

A Professional Corporation

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## Memorandum

**TO:** THE HONORABLE MICHAEL O'NEAL

**FROM:** JEFFERY S. BOTTENBERG 

**RE:** AMENDMENT TO K.S.A. 22-2401A

**DATE:** FEBRUARY 6, 2002

Mr. Chairman, Members of the Committee, my name is Jeff Bottenberg and I represent the Kansas Peace Officers Association. ("KPOA"). KPOA is the largest law enforcement organization in the state. We respectfully request that legislation be introduced that would increase the ability of certified, properly trained law enforcement officers to conduct investigations and carry on their duties. The statute in question, K.S.A. 22-2401a, has been the subject of several conflicting state and federal opinions, as well as rulings by district court judges. This bill would clarify the powers of law enforcement officers concerning arrest, collection of evidence and the execution of warrants. Members of the Kansas law enforcement community will demonstrate the necessity of such legislative change at the time of the hearing.

Thus, we respectfully request that the above legislation be introduced by the House Judiciary Committee.

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House Judiciary  
Attachment 2  
2-06-02

AN ACT concerning criminal procedure, relating to the powers of law enforcement officers; amending K.S.A. 22-2401a and repealing the existing sections.

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

**Section 1.** K.S.A. 22-2401a is hereby amended to read as follows:

**22-2401a. Jurisdiction of certain law enforcement officers and of university police officers.**

(1) Law enforcement officers employed by consolidated county law enforcement agencies or departments and sheriffs and their deputies may exercise their powers as law enforcement officers:

(a) Anywhere within their county; ~~and~~

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person;

(c) *in any other place when engaged in the investigation of an offense committed and reported in the jurisdiction employing the law enforcement officer;*

(d) *in any other place when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants; and*

(e) *in any other place that a law enforcement officer witnesses a crime, including a traffic infraction.*

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers:

(a) Anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city; ~~and~~

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person;

(c) *in any other place when engaged in the investigation of an offense committed and reported in the jurisdiction employing the law enforcement officer;*

(d) *in any other place when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants; and*

(e) *in any other place that a law enforcement officer witnesses a crime, including a traffic infraction.*

(3) University police officers employed by the chief executive officer of any state educational institution or municipal university may exercise their powers as university police officers anywhere :

(a) On property owned or operated by the state educational institution or municipal university, by a board of trustees of the state educational institution, an endowment association, an athletic association, a fraternity, sorority or other student group associated with the state educational institution or municipal university;

(b) on the streets, property and highways immediately adjacent to the campus of the state educational institution or municipal university;

(c) within the city where such property as described in this subsection is located, as necessary to protect the health, safety and welfare of students and faculty of the state educational institution or municipal university, with appropriate agreement by the local law enforcement agencies. Such agreements shall include provisions defining the geographical scope of the jurisdiction conferred, circumstances requiring the extended jurisdiction, scope of law enforcement powers and duration of the agreement. Any agreement entered into pursuant to this provision shall be approved by the

governing body of the city or county, or both, having jurisdiction where such property is located, and the chief executive officer of the state educational institution or municipal university involved before such agreement may take effect; and

(d) additionally, when there is reason to believe that a violation of a state law, a county resolution, or a city ordinance has occurred on property described in subsection (3)(a) or (b), such officers with appropriate notification of, and coordination with, local law enforcement agencies or departments, may investigate and arrest persons for such a violation anywhere within the city where such property, streets and highways are located. Such officers also may exercise such powers in any other place when in fresh pursuit of a person. University police officers shall also have authority to transport persons in custody to an appropriate facility, wherever it may be located. University police officers at the university of Kansas medical center may provide emergency transportation of medical supplies and transplant organs.

~~(4) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson or Sedgwick county may exercise their powers as law enforcement officers in any area within the respective county when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants.~~

~~(5) In addition to the areas where university police officers may exercise their powers pursuant to subsection (3), university police officers may exercise the powers of law enforcement officers in any area outside their normal jurisdiction when a request for assistance has been made by law enforcement officers from the area for which assistance is requested.~~

~~(6) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson county may exercise their powers as law enforcement officers in any adjoining city within Johnson county when any crime, including a traffic infraction, has been or is being committed by a person in view of the law enforcement officer. A law enforcement officer shall be considered to be exercising such officer's powers pursuant to subsection (2), when such officer is responding to the scene of a crime, even if such officer exits the city limits of the city employing the officer and further reenters the city limits of the city employing the officer to respond to such scene.~~

(7) As used in this section:

(a) "Law enforcement officer" has the meaning ascribed thereto in K.S.A. 22-2202 and amendments thereto.

(b) "University police officers" means university police officers employed by the chief executive officer of: (1) any state educational institution under the control and supervision of the state board of regents; or (2) a municipal university.

(c) "Fresh pursuit" means pursuit, without unnecessary delay, of a person who has committed a crime, or who is reasonably suspected of having committed a crime.

**Section 2.** K.S.A. 22-2401a is hereby repealed.

**Section 3.** This act shall take effect and be in force from and after its publication in the statute book.





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**BILL INTRODUCTION**

February 6, 2002

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE  
HOUSE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL

RE: CORPORATION CODE REVISIONS

Chairman O'Neal and Members of the House Judiciary Committee:

Since early summer of 2001, the Kansas Bar Association has undertaken a comprehensive review of the Kansas Corporation Code in conjunction with the Kansas Secretary of State's office. Bob Alderson of Topeka has chaired the committee that has conducted this review. Other members of the committee include Mark Stafford of Topeka, Bill Fleming of Lawrence, Clayton Skaags of Lawrence, Bill Wood of Wichita, Dixie Madden of Wichita, Barton Cohen of Overland Park, Rich Hayse of Topeka, Melissa Wangemann of Topeka, Chuck Henson of Topeka, Webb Hecker of Lawrence and Bill Quick of Kansas City.

The goal of the project has been to bring the Kansas corporation code up-to-date with the Delaware corporation code. Kansas has traditionally tried to keep its corporation code in line with Delaware. The committee has put in countless hours studying the Delaware code and trying to draft provisions that will make for a more user-friendly Kansas corporation code.

On behalf of the Kansas Bar Association, I respectfully ask for the introduction of the proposed bill. I would be happy to stand for any questions. Thank you!

Chairman O'Neal and members of the Judiciary Committee:

I appreciate the opportunity to appear before you today as a resource for the proposed change in K.S.A. 61-2910. I am the current presiding judge in the Civil Department for the 18<sup>th</sup> Judicial District, located in Wichita, Kansas.

In 2001, there were over 400 Chapter 60 cases filed and over 26,000 Chapter 61 cases filed in our jurisdiction alone. Each year this figure continues to increase. The proposed change simply allows the judges the discretion to transfer the case to Chapter 60 procedures instead of mandatory transfers.

In the last year, the provisions of 61-2910 have been used in an increasing amount. Yesterday, I had two cases up for trial and each had an attorney requesting the transfer. What this effectively does is delay the proceedings. This legislature created the 61 cases as an economical and expedited way our community can have small cases brought to judgment. With the mandatory provisions in the current law, the cases are delayed and the goal of the Chapter 61 cases is frustrated. There are also conflicts in the current laws. The defendant currently sets the forcible detainer actions for trial within eight days of the first appearance. . If a defendant appears and requests a transfer to chapter 60, this conflicts with the eight-day requirement contained in 61-3807.

The old statute, K.S.A. 61-1729 gave the courts the discretion when it said, "...may upon motion of a party and order of the court for good cause shown." This language allows those judges to continue on with the transfer where justice requires and deny those cases where there is no real need for the added expense and time.

Richard T. Ballinger  
Division 13  
Presiding Judge, Civil Department  
18<sup>th</sup>

February 6, 2002

## HOUSE BILL NO. 2672

Mr. Chairman, it is my sincere pleasure to appear before you and your Committee. It is hard to believe that 13 legislative sessions have come and gone since I had the privilege and honor of sitting where you are today, with you so ably at my right hand.

Distinguished Committee Members, I am Bob Wunsch and live in Kingman, which is 40 miles West of Wichita. I have been engaged in the general practice of law for the past 44 years. I am here to talk with you about House Bill No. 2672 which offers an amendment to K.S.A. 59-6a213(d).

This statute is a part of the Uniform Elective Share of the Surviving Spouse Act passed in 1994, K.S.A. 59-6a201 et. seq. K.S.A. 59-6a213(a) provides that the rights of a surviving spouse to either the homestead or the family allowance, or both of them, may be waived, wholly or partially, before or after marriage, by written contract, agreement, consent to any instrument, or waiver signed by the surviving spouse. K.S.A. 59-6a213(d) provides that unless the written contract, agreement, consent to any instrument, or waiver signed by surviving spouse provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of homestead and family allowance by each spouse in the property of the other.

I am concerned over the fact that sub-section (d) allows a spouse to be considered as having waived his/her homestead or family allowance or both if the document merely provides that "all rights" in the property or estate of a present or prospective spouse are being waived without providing a clear indication in the document as to what these "rights" are and of what they consist.

#### HOMESTEAD RIGHT

K.S.A. 59-401 provides that a surviving spouse has a right of continued occupancy in the residence in which he/she and his/her spouse were living at the time of the death of spouse, regardless of present and future ownership of the residence. This is a lifetime right of occupancy available to the surviving spouse so long as he/she continues to reside in said residence. This right is protected from creditors of the deceased, except for obligations entered into for the purchase of and improvements to said residence or from payment of any lien given thereon by consent of both husband and wife.

#### SPOUSAL ALLOWANCE

K.S.A. 59-403 provides a surviving spouse with a spousal allowance consisting of certain personal property of the deceased spouse and a reasonable allowance of not more than \$35,000 in money or other real or personal property as determined and ordered by the court. Again the property received as a spousal allowance is not liable for the payment of the decedent's debts or other demands against the decedent's estate, except for liens against said property that existed at the time of the decedent's death.



## HOMESTEAD ALLOWANCE

K.S.A. 59-6a215 provides that in lieu of the homestead, a surviving spouse may elect to receive a homestead allowance of \$35,000, which allowance is exempt from and has priority over all demands against the estate.

To me it is clear that the legislature in exempting the homestead right, the homestead allowance and spousal allowance from most creditors considers the same as significantly important to a surviving spouse. I have always felt that these rights and allowances should be held sacrosanct.

The Supreme Court in the case of In re: Estate of Place, 166 Kan. 528 (1949), held that: "In order that an antenuptial contract be construed as a waiver by a widow of her right to a statutory allowance from her deceased husband's estate, such waiver must clearly appear from the contract or be clearly deducible therefrom."

In the case of In re: Estate of Wheat, 24 Kan. App.2d. 934 (1998), the Court of Appeals in discussing the spousal allowance found that the legislature intended that no surviving spouse or child of a decedent should be left destitute. The Court stated at page 936 that "a surviving spouse's allowance is generally favored under the law."

All of the foregoing leads me to believe that K.S.A. 59-6a213(d) ought to provide that before a surviving spouse can be said to have waived his/her homestead right, homestead allowance or family allowance, any document signed by the surviving spouse should clearly demonstrate that the homestead right, homestead allowance or family allowance were understandably and knowledgeably waived.

The amending language may not be the best language possible to accomplish my concern, but it should make my point that before one loses his/her homestead right,

homestead allowance or spousal allowance, it must appear from the language of the document to be signed that the signer was informed and knowledgeable about such rights and allowance that he/she is about to waive his/her right thereto.

Again, Mr. Chairman, it is my pleasure to appear before you and your Committee.

Thank you for your consideration to my concern.

February 6, 2002

## HOUSE BILL NO. 2698

Honorable Chairman and Members of the House Judiciary Committee:

I am Bob Wunsch and live in Kingman, which is 40 miles West of Wichita. I have been engaged in the general practice of law for the past 44 years. I am here to testify in support of House Bill No. 2698 which offers an amendment to K.S.A. 79-1437(e).

It was some time ago in conversation with you, Mr. Chairman, that I commented about an experience I had in transferring real estate from a trust to the entitled beneficiaries where there was no consideration. I found out that a transfer from a trust is not an exemption from the Kansas Real Estate Sales Validation Questionnaire, when transferring "to a trust" is exempt. K.S.A. 79-1437 provides a "laundry list" of transfers that are exempt from the requirement of completing the said Questionnaire. An exemption of a transfer "to a trust" was amended into the statute in Senate Bill 598 of the 1992 Session. Why the amendment did not include an exemption "from a trust", I do not know. It seems to me the exemption should work both ways, *i.e.* "to" or "from" a trust when there is no consideration.

I certainly stand amenable to any knowledgeable explanation of why House Bill 2698 should not be passed and become law, but without such a revealing explanation I would urge the Committee to recommend for passage HB 2698. If House Bill 2698 reaches the floor of the House perhaps it could be put on the consent calendar to enable its sponsor from having to prepare for a General Order presentation, debate and vote.

I would urge favorable action on the part of the Committee concerning House Bill 2698.

Thank you.

House Judiciary  
Attachment 6  
2-06-02

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Department of Revenue  
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Division of Property Valuation

MEMORANDUM

**TO:** Honorable Michael O'Neal  
Chairman House Judiciary Committee

**FROM:** Mark S. Beck, Director of Property Valuation

**DATE:** February 6, 2002

**SUBJECT:** HB 2698 – Amend Sales Validation Questionnaire Statute

Thank you for the opportunity to speak to House Bill 2698.

This bill would amend K.S.A. 79-1437e. This statute sets forth the exceptions to the general rule that a sales validation questionnaire is required in order to file a document with the register of deeds office that transfers an interest in real estate.

The purpose of K.S.A. 79-1437e and this bill is to avoid requiring the public to file unnecessary paperwork. The purpose of the sales validation questionnaire is to collect information about sales that may potentially reflect the fair market value of property, in order to promote accurate valuations for property tax purposes. K.S.A. 79-1437e and this bill recognize that certain transactions simply have no potential to provide useful market information, and eliminate the need for a sales validation questionnaire under those circumstances.

Currently, a sales validation questionnaire is not required when property is transferred to a trust without consideration (K.S.A. 79-1437e (7)). This bill would adopt a similar provision for transfers made from a trust without consideration, which makes perfect sense.

I would support one other exception as well. Currently, a sales validation questionnaire is required two times when an affidavit of equitable interest associated with a contract for sale is filed on a property; once when the affidavit is initially filed, and yet again when the title to the property is actually transferred at a later date. (K.S.A. 79-1437c).

The agreed-upon purchase price in a contract for sale may reflect a property's fair market value; therefore, it makes sense to collect the first sales validation questionnaire. However, the second sales validation questionnaire is duplicative and unnecessary. Therefore, we could recommend the following amendment be included in HB 2698:

K.S.A. 79-1437e:

“ . . . (new exception number) made for the purpose of releasing an equitable lien on a previously recorded affidavit of equitable interest, and without additional consideration; . . . ”



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Division of Property Valuation

MEMORANDUM

TO: County Registers of Deeds

FROM: Mark S. Beck, Director 

DATE: June 30, 1997

SUBJECT: Transfer on Death Deeds

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On July 1, 1997 property owners can begin recording Transfer of Death (TOD) deeds. This instrument will not require a Kansas Real Estate Sales Validation Questionnaire (form PV-RE-21), because it does not actually transfer property at the time of filing. The intent of K.S.A. 79-1437(c) is to provide sale related information to the Division of Property Valuation and the County Appraiser. However, there are several unique differences to the TOD instrument that would make the completion of a questionnaire futile. Therefore, these deeds will not require a sales validation questionnaire and no exemption number need be placed on instrument.

**Kansas Department of Social and Rehabilitation Services**  
**Janet Schalansky, Secretary**

House Judiciary Committee 313-S  
February 6, 2002 3:30 p.m.

**House Bill 2722**

Mr. Chairman and members of the Committee, thank you for the opportunity to appear on HB 2722. I am John Badger, Chief Legal Counsel for SRS. This legislation is part of a package of bills developed by the Department to help improve the effectiveness of the Estate Recovery Program.

The Estate Recovery Program was initially authorized by the Legislature in 1992 and has since become a federally mandated process. The program allows the agency to recover Medicaid expenses properly paid on behalf of a Medicaid recipient from his or her estate if the recipient was either 55 years of age or older or in a long term care arrangement. Most recoveries are from probate actions and family agreements but no recovery action is taken if there is a surviving spouse or a minor or disabled child. Estate Recoveries in FY 2001 exceeded \$3.7 million in Kansas and over \$20 million since the program's inception. In contrast, during FY 2001, the Department had over \$100 million in medical expenditures for the elderly alone, excluding long term care expenses.

Over the past years, the Department has noted an issue which could increase both the effectiveness of the program and the amount of recoveries. In light of current budget realities, we felt it particularly critical to pursue and clarify the issue of access to financial information by the Department. As noted earlier, this is one of three bills we are pursuing this year which, as a total, are expected to increase collections by an additional \$125,000 in the first year, with recoveries in out years estimated to be \$200,000-\$300,000.

House Bill 2722 would allow the Secretary of Social and Rehabilitation Services or designee to request in writing any records in the possession of a financial institution relating to deposits, withdrawals or interest accruals by an applicant for or recipient of public assistance. A person who applies for and/or receives assistance is deemed to have consented to the release. Further, the release of such information by the financial institution pursuant to such a request renders the financial institution immune from suit by any account holder for such disclosure.

This bill would help resolve several issues regarding information needed to successfully recover expenses. Financial information available at the time of recovery is usually based on information from eligibility records that may be as much as 12 months old and no longer current or which may even be inaccurate. In addition, during recovery activities the agency may also discover the possibility of a previously unknown account and have incomplete information regarding the account. To obtain information in these situations we are dependent upon the cooperation of the financial institutions that may be involved. In a number of instances over the past few years, these financial institutions have refused access to the information. Some financial institutions



February 6, 2002

To: Members of the House Judiciary Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2722: Information Requests by SRS**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee today to testify on **HB 2722** dealing with information requests submitted to financial institutions. Similar provisions were in effect until 1987 when they were inadvertently allowed to sunset.

As was true of the former K.S.A. 39-780, the provisions of Section 2, subsection (d) provide a great deal of comfort for those employees of financial institutions who comply with the request for information from the SRS. Without this provision, there is less of an incentive for an institution to comply with the request.

We do have a request for an amendment to this bill. Subsection (b) of Section 2 deals with requests of information from other state agencies. The last sentence of subsection (b) of Section 2 provides that a reasonable fee may be charged by the financial organization to the party requesting the information from another state. We would ask that this same provision for a reasonable fee be included in subsection (a) of Section 2 so that a financial organization complying with a Kansas SRS information request may be compensated for so doing. We would suggest the following sentence be added to subsection (a) of Section 2:

"A reasonable fee may be charged the secretary of social and rehabilitation services so long as the fee does not exceed the actual cost of providing the information requested."

Again, we appreciate the opportunity to appear before you today and ask that you favorably consider our request for an amendment and with that included, act favorably on **HB 2722**.

House Judiciary  
Attachment 10  
2-06-02



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Judiciary Committee

FROM: Pedro Irigonegaray  
Kansas Trial Lawyers Association

RE: 2002 HB 2722

DATE: Feb. 6, 2002

TO: Members of the House Judiciary Committee

Chairman O'Neal and members of the House Judiciary Committee. I am Pedro Irigonegaray and I appear today on behalf of the Kansas Trial Lawyers Association. I serve as KTLA's president and am a practicing attorney in Topeka.

KTLA opposes Sec. 2(d) of this bill because it would shield a financial organization and its employees for wrongly or inappropriately disclosing information to the Kansas Department of Social and Rehabilitation Services. Completely relieving the financial institution from liability to the account holder for a wrongful disclosure, regardless of the circumstances and intent of those who released the information, is poor public policy. In addition to the overly broad and unwarranted immunity provision, the bill does not require that a proper written authorization be provided to the financial institution prior to release of the information to SRS. We believe that the failure to require a written authorization is a fatal flaw in the bill.

By granting groups or individuals carte blanche immunity, regardless of the facts and circumstances of the disclosure, SB 2722 encourages careless behavior and needlessly sacrifices account holder privacy. A complete shield against liability to financial institutions, such as that proposed in SB 2722, insulates those institutions and their employees who wrongfully or maliciously release sensitive financial information of the account holder. Simply because a person has applied for, or is receiving public assistance, does not mean that they should be afforded no privacy protection of their financial information. Nor should it mean that they are denied a means of redress if their financial information is wrongfully disclosed by the financial institution. By removing the blanket immunity provision, the bill will promote responsibility on the part of the financial institution and its employees and provide for improved privacy or financial information.

It is obvious that holding the institution and its employees accountable for wrongful disclosures is much better public policy than encouraging negligent conduct. However,

*Terry Humphrey, Executive Director*



we are not unmindful of the fact that the financial institution is being asked by the state to provide the financial information of the account holder. We have amended the bill to provide for protection of the institution when the information is properly released. However, we believe that an additional safeguard, a signed authorization, should be incorporated into this bill to address the issue of what is required to obtain a release of otherwise confidential financial information of an account holder. A requirement that a signed authorization must accompany the written request of the Secretary will protect both the financial institution and the account holder from inadvertent disclosure. The authorization would also allow the Secretary to obtain the information provided for in the bill, without undue burden.

We recognize that Kansas law included similar language as that contained in Section 2(d) prior to 1987. However, in today's electronic and computerized environment, where sensitive financial information can be widely disseminated at the push of a button, combining immunity without the safeguard of an authorization can have far-reaching and extremely damaging results. Those impacted by this bill, elderly persons receiving Medicare or struggling families needing public assistance from the State would find it impossible to fight the incorrect or inappropriate release of their financial information.

We respectfully submit to the committee the attached amendment which states:

(d) A financial organization and its employees shall not be civilly liable for damages to any account holder by reason of disclosure of information by the financial organization that has been released by the financial institution in good faith reliance on a written request from the Secretary pursuant to the provisions of this act. The written request of the Secretary shall include a written authorization for release of the financial information signed by the applicant or recipient or public assistance.

This amendment protects financial institutions and their employees from liability for the release of financial information that has been correctly and appropriately released to SRS pursuant to a proper authorization, while at the same time protecting account holders from the wrongful disclosure of that information.

Thank you for the opportunity to express our opposition to Sec. 2(d). We urge you to oppose this section of HB 2722 and adopt our attached amendment.

2  
3 **HOUSE BILL No. 2722**

4  
5 By Committee on Financial Institutions

6  
7 1-28

8  
9 AN ACT concerning the secretary of social and rehabilitation services;  
10 authorizing financial organizations to provide information relating to  
11 applicants for or recipients of public assistance to certain persons.  
12

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

14 Section 1. When used in this act:

15 (a) "Secretary" means the secretary of social and rehabilitation  
16 services.

17 (b) "Financial organization" means any bank, trust company, savings  
18 bank, land bank, safe deposit company, savings and loan association, credit  
19 union, investment company, any type of insurance company or other en-  
20 tity paying interest income.

21 Sec. 2. (a) The secretary of social and rehabilitation services may re-  
22 quest, in writing, that a financial organization inform the secretary of any  
23 records which the financial organization may have which relate to deposit,  
24 withdrawal and interest transactions of the financial organization with the  
25 applicant for or recipient of public assistance under article 7 of chapter  
26 39 of the Kansas Statutes Annotated, and amendments thereto, who is  
27 named in the request or on a computer tape accompanying such request.  
28 Upon receipt of the request, the financial organization may provide to  
29 the secretary a copy of all such records for the five-year period or a lesser  
30 time period as requested by the secretary which immediately precedes  
31 the day of the receipt of the request.

32 (b) The financial organization may provide, upon written request, to  
33 an officer of an agency administering any public assistance program in  
34 any other state the same information the financial organization is per-  
35 mitted to provide under subsection (a) if a similar financial organization  
36 in such other state is required by statute in effect in the other state to  
37 provide such information to the secretary of social and rehabilitation serv-  
38 ices. A reasonable fee may be charged the requesting state so long as the  
39 fee does not exceed the actual cost of providing the information  
40 requested.

41 (c) By applying for or receiving assistance an applicant or recipient  
42 shall be deemed to have authorized the secretary to obtain the records  
43 set forth in subsection (a).

1 (d) ~~A financial organization and its employees shall be immune from~~  
 2 ~~civil liability to any account holder by reason of disclosure of information~~  
 3 ~~by the financial organization under the provisions of this act.~~

4 Sec. 3. This act shall take effect and be in force from and after its  
 5 publication in the statute book.  
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(d) A financial organization and its employees shall not be  
 civilly liable for damages to any account holder by reason of  
 disclosure of information by the financial organization that has  
 been released by the financial institution in good faith reliance  
 on a written request from the Secretary pursuant to the  
 provisions of this act. The written request of the Secretary  
 shall include a written authorization for release of the financial  
 information signed by the applicant or recipient or public  
 assistance.