

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on March 9, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Dale Swenson- excused

Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes

Diana Lee, Revisor of Statutes

Jerry Ann Donaldson, Kansas Legislative Research Department

Cindy O'Neal, Secretary

Conferees appearing before the committee:

Senator Dave Jackson

Frank Henderson, Executive Director, Crime Victims Compensation Board

Jeanette Stauffer, Mother of Shannon Martin

Jim Clark, Kansas Bar Association

Jim Busch, Kansas Bankers Association, Trust Division

SB 437 - raising small claims limitations to \$5,000 with an increase every three years based on the consumer price index

Chairman O'Neal provided the committee with a balloon amendment which was the agreed to amendments on **HB 2296** - dram shop (Attachment 1)

Representative Patterson made the motion to strike the provisions in SB 437 and amend in the balloon. Representative Long-Mast seconded the motion. The motion carried.

Representative Patterson made the motion to report Substitute SB 437 favorably for passage. Representative Long-Mast seconded the motion. The motion carried.

The hearing on **SB 256 - victim compensation for residents who are victims of crimes committed outside of the United States**, was opened.

Senator Dave Jackson appeared as the sponsor of the proposed bill which corrects inequities that exists in the Victim Compensation Act by allowing Kansas victims of violent crimes while outside of the United States to be included the act. (Attachment 2)

Frank Henderson, Executive Director, Crime Victims Compensation Board, supported the proposed bill and requested an amendment that would add "except that criminally injurious conduct does not include any conduct resulting in injury or death sustained as a member of the U.S. Armed Forces while serving on active duty." He proposed this amendment due to the possibility of a claim being filed in Texas from a member of the Armed Forces who got hurt in the war. The bill is not intended for those hurt in the line of duty. (Attachment 3)

The committee discussed whether or not to make the bill retroactive to pick up the Shannon Martin case since it was not an act of terrorism. Mr. Henderson was not aware of any other deaths that have occurred since May 2001 as an act of violence outside of the United State.

Jeanette Stauffer, mother of Shannon Martin, didn't ask that the bill be made retroactive but felt that had it been in place there would have been more emotional support of her family. She was grateful that they received help from the KBI in solving the murder of her daughter. She did stress that this type of legislation needs to be uniform across the U.S. (Attachment 4)

The hearing on **SB 256** was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 9, 2004 in Room 313-S of the Capitol.

The hearing on **SB 424 - transfer of property into a trust; affect of insurance coverage, homestead exemption, redemption rights and due on sale clause**, was opened.

Jim Clark, Kansas Bar Association, appeared before the committee as a proponent of the bill and was concerned that insurance companies were not accepting revocable trust. Attorneys often do these types of trust instead of wills. (Attachment 5)

Jim Busch, Kansas Bankers Association, Trust Division, had no objections to the bill as it was originally drafted but was concerned with the Senate amendments which limits its application only to conveyances of real estate by warranty deed into an inter vivos trust if the real estate is a homestead and if the settlor is the beneficiary of the trust. The amendment would put estate plans in jeopardy, along with a tremendous burden on banks and trust companies. (Attachment 6)

The hearing on **SB 424** was closed.

SB 321 - contempt powers of municipal court judges

Representative Klein was concerned with municipal court judges having contempt powers and thought that this expanded their jurisdiction too much.

Representative Jack made the motion to report SB 321 favorably for passage. Representative Patterson seconded the motion. The motion carried 6-5.

SB 354 - municipal court pre-trial authority to detain

Representative Owens made the motion to report SB 354 favorably for passage. Representative Long-Mast seconded the motion. Committee members expressed their concern with someone being held in jail over the weekend and not being able to see a judge to get bonded out. The motion failed 5-6.

The committee meeting adjourned. The next meeting was scheduled for March 10, 2004.

SUBSTITUTE FOR HOUSE BILL No. 2296

By Committee on Judiciary

AN ACT concerning civil procedure; relating to civil liability for serving alcoholic beverages.

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

Section 1. (a) An aggrieved party shall have a cause of action against a licensee for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, if a jury or court finds the following: (1) That on the licensed premises of such licensee, the alcoholic liquor or cereal malt beverage was consumed by the minor or incapacitated person and sold by the licensee; (2) the consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the damages sustained by the aggrieved party; and (3) the damages were a foreseeable consequence of the negligent service of alcoholic liquor or cereal malt beverage by the licensee. In any action thereon, evidence of acts or conduct by the licensee in violation of these statutes may be admissible. Any claim under this section shall survive death for purposes of K.S.A. 60-1801, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

(b) Any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto. Blood alcohol content obtained at a different time than the point when the alcoholic liquor or cereal malt beverage was served and evidence that the incapacitated person was furnished such alcoholic liquor or cereal malt beverage without additional evidence that the licensee acted knowingly or intentionally shall not constitute *prima facie* evidence of liability under this section.

(c) In any claim under subsection (a) for breach of the duties imposed by K.S.A. 21-3610, and amendments thereto, evidence of the defenses codified in subsection (d) of K.S.A. 21-3610, and amendments thereto, as applicable, shall be admissible for the purpose of determining comparative negligence under K.S.A. 60-258a, and amendments thereto.

(d) Except as expressly provided in subsections (a) and (c), there shall be no claim under K.S.A. 60-258a, and amendments thereto, for breach of the duties imposed by K.S.A. 21-3610 or 41-715, and amendments thereto, and alleged negligence or fault for furnishing or selling alcoholic liquor or cereal malt beverages shall not be admissible in an action under K.S.A. 60-258a, and amendments thereto.

(e) As used in this section:

(1) "Aggrieved party" means a person who sustains damages as a consequence of the acts or conduct of a minor or incapacitated person, but does not include: (A) Such minor or incapacitated person; or (B) any person who aided or abetted in the furnishing or sale of the alcoholic liquor or cereal malt beverages to the minor or incapacitated person.

(2) "Licensee" means a licensee under the Kansas liquor control act, the club and drinking establishment act or the provisions of article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto.

(3) "Incapacitated person" means a person who is physically or mentally incapacitated by the consumption of alcoholic liquor or cereal malt beverage.

(4) Any other terms shall have the meanings as provided by K.S.A. 21-3610 and 41-715, and amendments thereto, as applicable.

Sec. 2. This act shall take effect and be in force from and after December 31, 2004 and its publication in the statute book.

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SPECIAL COMMITTEE ON KANSAS SECURITY

SENATE CHAMBER

Testimony on Senate Bill 256
Before the House Judiciary Committee
Michael O'Neal, Chairman

March 9, 2004

This bill serves to correct an inequity that currently exists in our victim compensation law.

Shannon Martin, a Kansas University student studying abroad, was viciously murdered but because our statutes as currently written do not contemplate such a circumstance, Shannon's family is ineligible for reparation of damages under the Crime Victims Compensation Act. Although it is too late to assist Shannon's family, this bill may help others should this disastrous occurrence ever befall another Kansas family.

The bill as drafted and passed by the Senate on a 37-3 vote adds language on page 2, lines 22 and 23, which broadens the Act to include Kansas victims of violent crime while outside the United States. There are no other changes to the current Victims Compensation Act and there is no fiscal effect on the State General Fund.

Mr. Chairman, others are here who will be able to answer any questions better than I; therefore, I will yield the floor to these experts.

Thank You,

A handwritten signature in cursive script, appearing to read "David D. Jackson".

David D. Jackson
Senator, 18th District



PHILL KLINE
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CRIME VICTIMS COMPENSATION BOARD

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GLENDAL. CAFER, CHAIR
LOUIS JOHNSON
PAULA S. SALAZAR

**Statement of Frank S. Henderson, Jr.
Executive Director, Crime Victims Compensation Board
Before House Judiciary Committee
Re: Senate Bill 256**

March 9, 2004

Chairman O'Neal and Members of the Committee:

I am Executive Director of the Crime Victims Compensation Board, a division of the Office of Attorney General Phill Kline. The Crime Victims Compensation Board was established by the 1978 Legislature, as a payer of last resort, to assist victims of violent crime with out of pocket losses.

I sincerely thank you for the opportunity to address the committee today and express my support of Senate Bill 256. This bill was requested by Attorney General Kline and Senator Jackson to expand eligibility under the Crime Victims Compensation Act, to Kansas residents who are victims of violent crime outside of the United States.

Ms. Shannon Martin, a University of Kansas student, tragically lost her life as she was studying abroad in Costa Rica. Her family incurred many expenses as a result of this criminal incident. However, under current law, eligibility outside the United States, its possessions and territories, is limited to those who are victimized through acts of terrorism. Senate Bill 256 allows Kansas residents who are victims of other violent crimes to apply for compensation to ease a portion of the financial loss they have experienced.

The fiscal impact of this change will be minimal. Fortunately, there are not a large number of our residents who are victimized outside of the United States. Additionally, some countries have a compensation program for crime victims. However, it is extremely meaningful and beneficial to those unfortunate individuals and families.

I would also like to propose an amendment to this bill. I request that additional language be added to the proposed change, so that K.S.A. 74-7301(e)C(2) would read as such: "is an act of terrorism, as defined in U.S.C. 2331, or *a violent crime that posed a substantial threat or caused personal injury or death*, committed outside of the United States against a person whose domicile is in Kansas, ***except that criminally injurious conduct does not include any conduct resulting in injury or death sustained as a member of the U.S. Armed Forces while serving on active duty.***"

House Judiciary Committee

3-4-04

Attachment 3

During the Senate hearing, Majority Leader Oleen raised the question of exclusion for active military personnel. Our interpretation of the statute is that injuries received by active military personnel would not meet the definition of criminally injurious conduct. Presently, a young soldier injured in Iraq has filed a lawsuit against the Texas Crime Victim Compensation Office alleging to be a crime victim instead of a casualty of war. Apparently, part of his defense is that the war was declared to be over. Nevertheless, adding the language I am proposing will only strengthen the statute and the intent of the Kansas legislature for eligibility requirements.

This bill presents an excellent opportunity to enhance the eligibility provisions of the Crime Victims Compensation Board Act without having to ask for additional funding. I do ask for your support of Senate Bill 256 to enable us to assist Kansans who are victimized abroad. Thank you for your consideration.

**House Judiciary Committee
Testimony on Senate Bill 256
March 9, 2004**

*Testimony by Jeanette Stauffer, Mother of Shannon Lucile Martin
I appreciate having the opportunity to present my testimony in support of Senate Bill 256 to you, the members of the House Judiciary Committee, this afternoon.*

Introduction

At 6:30 a.m. on Mother's Day, May 13, 2001, I received the call that is a parent's worst nightmare. I was awakened by a call from an official of the U.S. Embassy in Costa Rica.

The official asked, "Are you Jeanette Stauffer?" I said, "Yes." "Are you the mother of Shannon Lucile Martin?" I said, "Yes." (My heart sank.) The official said, "I have very bad news; your daughter has been murdered."

Shannon was walking home, less than 100 feet from where she lived, when she was attacked by three assailants. She screamed and fought while the killers brutally stabbed her to death.

Shannon had been sent back to Golfito by her KU honor's professor. She needed to collect more epiphytic ferns to verify her honor's research thesis before it could be published. She was only to be in Golfito for a week and was to graduate with honors from the University of Kansas on May 20, 2001. Shannon had been a KU study abroad student in 2000.

The Consular Section of the U.S. Embassy in Costa Rica was very supportive throughout the lengthy investigation and trial. However, the policy of the state department does not allow Embassy officials to provide advice to a victim's family.

I appreciated the support our family received from Frank Henderson, Jr., Executive Director of the Crime Victims Compensation Board. He tried to get the FBI's victims assistance office in Kansas City to help our family. Mr. Henderson called the office many times before someone from the FBI office finally called, three months after the murder of our daughter, to tell me there were no funds in the Kansas City office to provide financial assistance.

I pleaded with the Director of the FBI Crime Victims Assistance in Washington, D.C. for help with the investigation and for financial assistance. One and a half years after the murder, the FBI reimbursed our family \$5,000 for the cost of returning our daughter's body to the states, but there was no direct assistance with the investigation.

I do not want other families to have to go through the mental, emotional, and physical anguish our family was dealt. There needs to be a state agency to help when a Kansas resident is victimized in another country, if for no other purpose than to be a liaison between the victim's family and the U.S. Embassy in the other country.

The U.S. Embassy in Costa Rica had information about the murder and investigation that Embassy officials could have shared with a state agency, but could not share with the victim's family. If our family would have known what the Embassy knew, we would have paid for the expenses of the KBI in the beginning, and the murder could have been solved within six months. This alone could have saved our family two years of frustration and expenses associated with the investigation and trial.

I asked the FBI for its assistance to help solve the brutal murder of my daughter.

On the day my daughter was murdered, the Costa Rican Minister of Public Security had invited the FBI to directly assist with the investigation. In 2000 when two American young ladies were murdered in Limón, Costa Rica, the FBI traveled to the crime scene after being invited to assist with the investigation. (I learned that a father of one of the victim's was best friends with a FBI agent.)

I pleaded for over two years with the FBI to assist with the investigation. The answer was always the same. FBI SAC to Latin American, Jr. Ortiz, stated that he was satisfied with the investigation as he had stated to the Embassy on the day of the brutal stabbing death.

Immediately after my daughter was murder, Director Larry Welch offered the services of the KBI, and KBI SAC Larry Thomas stepped forward to offer his assistance as an investigator. Since FBI Agent Ortiz stated that he was satisfied with the progress of the investigation, I believed it was not necessary for Agent Thomas to assist with the investigation.

I wanted to believe that the FBI was privy to evidence that would help to solve the crime, but that the evidence could not be made public. The FBI continued to tell me for over two and a half years that the investigation was thoroughly and professionally handled.

With all of the conflicting information I was receiving, I continued to question the FBI. One and a half years after the murder, my worst fears were confirmed. I had been mislead and misinformed not only by the prosecutor on the case, but also by the FBI.

After the release of the two male suspects in November 2002, I called Senator Brownback's office. I was told by two of his aides in a conference call that the FBI had been unable to provide any assistance because the murder investigation had been botched from the start by the Costa Rican authorities. The aides stated that Brownback's office had learned directly from FBI authorities that the crime scene was ". . . pretty much botched from the get-go."

I had also asked the University of Kansas for its assistance. C.R. Vice President Lineth Saborío stated that it would be up to the local people to help solve the murder. I had pleaded with the University of Kansas to tell the community that if the murder of its student, Shannon Martin, was not solved, the university would not continue its KU Study Abroad program in Golfito. I was told and that it was not economically feasible to put pressure on the community. The official stated that if the university closed its program for even a semester, it would economically ruin its program.

Our family had absolutely no advocacy stateside to help with the investigation until I became a legal party to the murder investigation and had a legal right to invite the KBI to assist with the investigation.

Investigation: I was on my own to sort out conflicting and incomplete information about the investigation that was taking place in another country with a different language, culture, and legal system. Not only was I dealing with the gut-wrenching pain of losing a daughter, I had to rely on people in Costa Rica to keep me informed.

Our family was overwhelmed by all of the red tape, and the expenses incurred during the two and a half years that we fought for justice to prevail. It will take a long time to pay off our \$101,028 debt that is directly related to the investigation and trial. After the Appellate Court upholds the lower Court's decision, we will also pay out a reward to informants who were crucial to the arrest and conviction of the accused.

I made ten trips to Costa Rica. I met with the prosecutor and investigators on the first three trips. It became apparent that the prosecutor had lied about the investigation. I learned the prosecutor had told a law student interning at the courthouse in Golfito that I was an American; he did not have to tell me my rights, and he was not going to waste his time.

In March 2003, I traveled to Costa Rica to make a plea for a taxi driver to come forward. He was a crucial witness to the murder. The taxi driver came forward two days after my televised plea. I continued to receive conflicting information about witnesses, evidence, laboratory testing, and the investigation.

While at my hotel in Costa Rica, I stayed up most of the night sorting through information and documents. The next morning, I saw an ambulance drive up. I had the ambulance attendant check my blood pressure; it was 181 over 110. I was finally having a panic attack. I knew I had been lied to about the investigation, and the murder of my daughter was not being properly investigated.

In April I traveled to Costa Rica for the preliminary hearing. I learned at the hearing that the defense attorney and the prosecutor were going to let the defendants walk. The defense attorney was going to have it client change her testimony, and there would be no evidence against the two males. The prosecutor refused to ask the court to extend the female's prison time. It was believed she would flee the country.

An individual at the courthouse in Golfito knew I had been lied to by the prosecutor on the case. He e-mailed to let me know that I could become a querellante, a legal party to the process. In May I returned to Costa Rica to give power of attorney to a Costa Rican attorney to file a motion that would allow me to become a legal party to the process.

It was beyond the time limit for me to become a party to the process, but the Court allowed a probable cause hearing. In June, I returned to Costa Rica to testify. I proved to the Court that the prosecutor had lied. The Court ruled in my favor and against the prosecutor.

When I returned to the states, I was not doing well. I checked with my physician, and I had Epstein Bar mono. I had spent over two years fighting for justice to prevail after the death of my daughter, and there still was not enough evidence to arrest two of the suspects. I was literally worn out mentally, emotionally, and physically.

Since I was now an actual party to the process, I had a legal right to invite the FBI to assist with the investigation. The FBI still refused to help. Why was the FBI important to the investigation? The people in the community told me they were afraid of the local law enforcement and investigators because of corruption. The people said they were willing to talk with FBI agents. FBI agents assigned to Latin America knew the area, the Costa Rican laws, and spoke Spanish.

I could not depend on the FBI, but I was certain that I would be able to depend on the KBI. KBI Director Larry Welch and KBI SAC Larry Thomas again stepped forward to help our family. Agent Thomas and interpreter/investigative assistant, Jesse Ybarra, traveled to Golfito, Costa Rica, on two different trips to investigate the murder and made another trip to attend the trial. Our family paid all of the expenses of the KBI and Jesse Ybarra.

The Kansas investigation team discovered evidence: a taxi cab, a knife, and pants with human blood that never had been tested. Hair samples had not been taken from all suspects to be compared to the hair samples found in Shannon's hand. They discovered the crime scene had not been properly examined, and the evidence had been handled without gloves.

KBI SAC Thomas and Ybarra talked with over 30 people who should have been interviewed in the beginning. They interviewed more people and collected more evidence than had been gathered by the prosecutor and Costa Rican investigators during the previous two years. The FBI refused to send the FBI case file on Shannon Martin to the KBI or to my Costa Rican attorney. The FBI had interrogated two American students, and the FBI lab had tested the hair samples found in Shannon's hand. There was a total lack of cooperation by the FBI.

In September, I returned to Costa Rica for the second preliminary hearing. I was now an official party to the process. The interviews gathered by KBI Agent Thomas and Ybarra were entered into evidence.

I discovered that I also could not count on the Costa Rican attorney that I had hired. The attorney had been recommended by an American who worked at the courthouse in Golfito. Without KBI SAC Larry Thomas and Jesse Ybarra, the main killers of my daughter, Caballo and Kattía, would have walked. It was Thomas and Ybarra who gathered the testimony from witnesses and evidence that sealed the fate of Caballo and Kattía.

In October I returned to Costa Rica for what was to be a five-day trial. Due to the actions of a corrupt defense attorney, the trial was rescheduled. My husband, Agent Thomas, and Ybarra had to return to the states and, then, once again return to Costa Rica for the trial. The trial expanded over a six-week period, but the trial was in session for only six days during the six weeks. The actions of the defense attorney cost our family an extra \$16,000 because of the length of the trial.

There were many other frustrations and setbacks for our family during the two and a half year investigation and trial. However, I believe the information I have shared demonstrates how important the passage of S.B. 256 is to all Kansas residents. I hope you will support the amendment to the Crime Victims Compensation Board Act to include a citizen of Kansas who is victimized outside of the United States.

Thank you for allowing me the opportunity to speak before your committee. If there is any other information I can provide, you may e-mail me at jaycstauffer@cox.net or call me at 785-246-1527 or 785-845-4696.

Respectfully submitted,



Jeanette C. Stauffer
Mother of Shannon Lucile Martin



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Testimony in Support of
Senate Bill No. 424

Presented to the House Judiciary Committee on March 9, 2004
By James W. Clark, Legislative Counsel, Kansas Bar Association

The Kansas Bar Association requested **Senate Bill 424** on behalf of the KBA Real Estate, Probate and Trust Section. Members of this section, as well as others involved in estate planning, have increasingly relied on the creation of revocable trusts as a significant part of an estate plan, often in lieu of a will.

The advantages of placing property, such as a primary residence or farmstead, in a trust is that the property then transfers according to the terms of the trust, rather than through a probate proceeding. The delay, expense (including attorney fees of 2% to 6% of the value of the estate), duplicitous proceedings if there is property located in more than one state, and loss of privacy involved in probate are thus avoided.

Besides avoiding probate proceedings, revocable trusts are easily established, and generally require only the preparation of the trust document and transfer of the property to the trust. This ease of use, however, is being threatened.

- In a Wyoming case, a title insurance company refused to defend the title of a ranch placed into a revocable trust by an elderly rancher. Unfortunately, the title dispute, and the company's decision, occurred after the rancher/settlor had died, and the ranch property suffered a significant loss.
- In Florida, a bankruptcy court has refused to recognize that state's homestead exemption on residential property placed in a revocable trust.
- In Kansas, we understand that at least one major insurer is questioning the status of property transferred to a trust, and if the policy is issued on trust property it will not cover the grantor individually.

KBA submitted a balloon to the Senate Judiciary Committee which greatly reduced the scope of the bill. The proposal was to accommodate the title insurance industry, by adopting suggested language submitted by Leola Foster of Columbia National Title Insurance Company. The proposal also accommodates other types of insurance carriers as it strikes all language relating to insurance other than title insurance. Finally, language regarding the homestead was borrowed from federal law that prohibits exercise of a due on sale clause where the residence is transferred into an inter vivos trust. The Senate Judiciary

Committee adopted the revisor's version of KBA's balloon, and the amended bill passed the Senate 40 - 0.

Because of the increased likelihood of litigation and uncertain results regarding title insurance coverage and the homestead exemption on property placed in trust, an estate planner can no longer assure the client that the use of a revocable trust will avoid the expense and delay of probate. Under this current climate of uncertainty, an estate planner can only advise the client that in addition to death and taxes, there is also the certainty of probate. The passage of **SB 424** will greatly reduce the uncertainty of the use of trusts to avoid probate. We urge your favorable recommendation of this bill.

Before the House Judiciary Committee
March 9, 2004

Re: SB 424 as Amended by Senate Committee

Testimony of James L. Bush
Legislative Chair
Kansas Bankers Association, Trust Division

Introduction

I oversee the Trust Department for the Citizens State Bank and Trust Co. of Hiawatha, Kansas. I appear before you today in my capacity as a trust officer and attorney with 29 years of experience in estate planning and the drafting of wills and trusts and trust administration. I also appear as Legislative Chair of the Trust Division of the Kansas Bankers Association. On behalf of the Kansas Bankers Association, we have grave concerns regarding the consequences of the passage of SB 424 and the incredible financial burden that will result from the passage of this bill, as amended.

Current Law:

Inter vivos (living) revocable trusts are becoming one of the preferred estate planning tools utilized by Kansas residents to address their estate planning needs. To be effective as a comprehensive estate-planning tool, it is usually essential that virtually all of the Settlor's property, real and personal, be conveyed to the Trustee. The Trustee holds title to the property, which is managed and ultimately distributed as provided by the trust agreement. Otherwise, assets not held in trust may be subject to probate and certainly will not be governed by the trust instrument.

The current legal presumption in Kansas is that property owners who have the status of their real estate title protected through title insurance may continue to rely on the protection afforded by that policy if they subsequently convey that real estate into a trust for which they are the beneficiary. There are no Kansas decisions ruling to the contrary. However, because of recent court decisions **in other jurisdictions**, there is some concern that Kansas title insurance companies may take the position that Trustees do not stand in the same shoes as the original insured that acquired title to the real estate and is conveying title, without consideration, into a trust for which the original insured is the primary beneficiary.

SB 424

As originally drafted, **SB 424 was a simple bill maintaining the status quo** and making it clear that the transfer of real estate or personal property into a trust, for which the Settlor / Transferor is the primary beneficiary, does not affect the coverage of any title, liability or comprehensive insurance policy, nor shall such conveyance effect any

homestead exemption nor cause a “due on sale” clause in any mortgage or security interest to become effective.

Senate Committee Amendments

Among the amendments made by the Senate Judiciary Committee to SB 424 is to limit its application only to conveyances of real estate by “warranty deed” into an inter vivos trust if (1) the real estate is the homestead and (2) the settlor is the beneficiary of the trust and in fact an “occupant of such real property.”

Problems created by Senate Amendments to SB 424

1. In many, if not most instances in rural Kansas, the **Settlors of trusts have significant real estate holdings in addition to their homesteads.** The Settlor may reside in town (the homestead) and own hundreds of acres of farmland, rental properties or other real estate holdings. What is the logic in treating the title insurance policy on the home differently from the policies on other real estate? In fact, the Settlor may not “occupy” any of the property he or she may convey into a trust. The settlor may be a resident of a retirement community, nursing home or even a non-resident. There is no logical reason to limit the application of SB 424 only to property occupied by the Settlor.
2. **SB 424, as amended, causes more harm than it does good.** Keeping in mind that there is currently no Kansas decision stating that the title insurance protection afforded the property owner does not follow the property into a trust created by the property owner for the benefit of such property owner, SB 424 would be a huge step backward for Kansas property owners. The passage of SB 424 *as amended* would now require trustees to purchase a new title insurance policy on any property not qualifying as a homestead or not occupied by the Settlor. This would be a huge financial burden on Kansas property owners and a giant step backwards. **Retaining the current status quo would be preferable to passing the amended version of SB 424.**
3. **The passage of SB 424, as amended, would require corporate trustees (banks and trust companies) to require individuals to pay for new title insurance policies** prior to accepting title to any real estate to be held in trust for the benefit of the original property owner, unless the property owner resides on the real estate. Furthermore, corporate trustees would then have the additional burden of having to confirm that the Settlor continues to reside on the property and then to purchase additional coverage if the Settlor moves off of the property. This would constitute a huge administrative and financial burden on corporate trustees and a great cost to Kansas property owners.

4. Passage of Senate Bill 424, as amended, will result in attorneys having to advise their clients that conveying real estate into a trust for which they are beneficiary may necessitate their having to get a new title insurance policy on their property. **This will make inter vivos trusts a less attractive alternative for estate planning and avoiding the expense and inconvenience of probate.**

5. **SB 424 as originally drafted applied not only to title insurance, but to “liability, comprehensive or other insurance”.** The restricted application of SB 424, *as amended*, only to “title insurance” is unfortunate in that it has always been the presumption that the trustee steps into the shoes of the property owner and should be afforded the same protection as the original property owner where the property owner is the settlor and a beneficiary, including the right to rely on liability coverage or any other type of insurance protecting the interest of the original property owner.

Recommended Action

SB 424 should either be passed as originally drafted or with the further amendments as suggested on the attached draft prepared by Rich Hayse, an attorney with the Morris Laing firm in Topeka, who has years of experience drafting trusts and representing banks serving as trustees. The language suggested by Mr. Hayse is reasonable, logical and, to a large extent, restores the original intent of SB 424, which is to maintain the status quo. Otherwise, SB 424 *as amended* should not be passed out of committee. The passage of SB 424, *as originally amended by the Senate Judiciary Committee*, will wreck havoc on Kansas property owners who have spent hundreds and thousands of dollars to finalize estate plans, that this act would jeopardize, not to mention the tremendous administrative and financial burdens on Kansas banks and trust companies.

James L. Bush
Trust Officer / Attorney
Citizens State Bank & Trust Co.
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As Amended by Senate Committee

Session of 2004

SENATE BILL No. 424

By Committee on Judiciary

2-2

10 AN ACT concerning trusts; relating to the transfer of property into a
11 trust.

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

14 Section 1. (a) ~~The transfer of real or personal property to a trust shall~~
15 ~~not affect the coverage of any title, liability, comprehensive or other in-~~
16 ~~urance, and the trustee shall also be deemed to be so insured. Transfer~~
17 ~~to a trust shall not affect any homestead exemption or redemption rights~~
18 ~~and shall not cause a due on sale or similar clause to be effective under~~
19 ~~a mortgage or security interest, if the transferor is the primary income~~
20 ~~beneficiary of the trust at the time of the transfer.~~

21 *The transfer by warranty deed of real property into an inter vivos*
22 *trust shall not affect the coverage of any title insurance if (1) Such*
23 ~~real property qualifies as a homestead, and~~
24 ~~(2) the settlor of such trust is and remains a beneficiary and~~
25 ~~occupant of such real property.~~

of such trust during the
settlor's lifetime.

26 (b) Upon the transfer taking effect: (1) *The trustee shall be*
27 *deemed to be insured; and*

28 (2) *the insurance coverage for such trust shall be subject to the*
29 *defenses which the insurance company has under the policy against*
30 *the original named insured.*

31 (c) ~~If the transferor is a beneficiary of such trust at the time of~~ settlor
32 ~~the transfer, the transfer of such property into such trust shall not:~~

33 (1) *Affect any homestead exemption or redemption rights; or*

34 (2) *cause a due on sale or similar clause to be effective under a*
35 *mortgage or security interest.*

36 (b) (d) *This section shall be a part of and supplemental to the Kansas*
37 *uniform trust code.*

38 Sec. 2. *This act shall take effect and be in force from and after its*
39 *publication in the statute book.*

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