

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Thursday, March 11, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Barbara Allen (E)
Senator David Haley -Arrived 9:40
Senator Edward Pugh - Arrived 9:38
Senator Greta Goodwin (E)
Senator Les Donovan (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association
Jim Kowach, Kansas Department of Transportation
Dina Fisk, Kansas Society of Land Surveyors
Woody Moses, Kansas Aggregate Producers' Association (written testimony)
Dave Holtwick, Home Builders Association (written testimony)
Barb Conant, Kansas Trial Lawyers (written testimony)
Thad Fowler, Kansas Society of Land Surveyors (written testimony)
Chris Wilson, Executive Director, Kansas Building Industry Association, Inc. (written testimony)
Professor Richard Levy, Kansas Judicial Council, Juvenile Offender/CINC Advisor Committee
Candy Shively, Social Rehabilitation Services
Denise Everhart, Commissioner, Juvenile Justice Authority (written testimony)

Others attending: See attached list.

Chairman Vratil announced that he was referring **HB 2603** to Senator Schmidt's sub-committee for a hearing and then a report back to the full Committee for consideration.

HB 2612 - Technical amendments to the Uniform Commercial Code

Chairman Vratil opened the hearing on **HB 2612**. Kathy Taylor Olsen, Kansas Bankers Association, testified in favor of **HB 2612**, which makes a technical correction to the Uniform Commercial Code Revised Article 9. She said the error is found in KSA 84-9-509(a)(1), where the word "or" was omitted in the final printing on page 1, line 19. Ms. Olsen stated that it was clear from the original draft in 2002 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that it was intended for lenders to have another option – that being a separately authenticated record. She added this amendment would allow a debtor to separately authorize the filing of the financing statement in an independent document. (Attachment 1)

There being so other conferees to testify, the Chairman closed the hearing on **HB 2612**.

Final Action on:

HB 2612 - Technical amendments to the Uniform Commercial Code

The Chair called for discussion and final action on **HB 2612** with consideration being given to place it on the Consent Calendar.

Senator O'Connor moved to recommend favorably for passage **HB 2612**, and placement on the Consent Calendar, seconded by Senator Oleen, and the motion carried.

HB 2617 - Allowing land surveyor to enter upon property for a land survey, not considered a trespass, if damages, survey or liable

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Thursday, March 11, 2004, in Room 123-S of the Capitol.

Chairman Vratil opened the hearing on **HB 2617**. Jim Kowach, Kansas Department of Transportation, testified in support of **HB 2617**. The bill would allow entry onto property after a reasonable attempt to contact the property owner was made. He stated that the bill would have a favorable impact on the survey community in Kansas. (Attachment 2)

Dina Fisk, Kansas Society of Land Surveyors, spoke in favor of **HB 2617**. She stated that all surveys must have a reference point or Point of Beginning which is often marked with a 'monument'. Evidence of monuments is required in a survey and noted to indicate which reference points were found, including those found beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent. Their application related to the survey need to be indicated. It is necessary for a licensed land surveyor or the authorized agent or employee to enter upon land adjacent to the land being surveyed to find the reference point. She concluded that this bill would provide parity with Kansas Statute provisions for government employed surveyors who are granted immunity to trespass and similar protection provided to private sector surveyors in other states. (Attachment 3)

Woody Moses, Kansas Aggregate Producers' Association, testified in support of **HB 2617**. He explained that the U.S. Army Corps of Engineers require his industry to survey the Kansas River on a biennial basis. Passage of this bill it will assist his industry in conducting the biennial survey. (Attachment 4)

Committee questions and discussion followed the oral testimony.

Written testimony in support of **HB 2617** was submitted by the following:

Dave Holtwick, Home Builders Association of Greater Kansas City (Attachment 5)

Barb Conant, Kansas Trial Lawyers Association (Attachment 6)

Thad Fowler, Kansas Society of Land Surveyors (Attachment 7)

Chris Wilson, Kansas Building Industry (Attachment 8)

The Chair closed the hearing on **HB 2617**.

HB 2742 - Child in need of care records, confidentiality

Chairman Vratil opened the hearing on **HB 2742**. Professor Richard Levy, representing Kansas Judicial Council (KJC) and Juvenile Offender/CINC Advisory Committee, testified in support of **HB 2742**. He explained that the confidentiality provisions of the Child in Need of Care Code were studied by the KJC and Juvenile Offender/CINE Advisory Committee and were guided by three basic goals: (1) Need to Know, (2) Clear Guidance, and (3) Practicality. The Committee's proposals to further these goals reflected three types of changes: (1) Organizational changes, (2) Clarification, and (3) Changes in the scope of access. The committee reworked the confidentiality provisions, and Professor Levy provided copies of the proposed changes in his written testimony. The committee basically reorganized the laws and clarified them. (Attachment 9)

Candy Shively, SRS, testified in support of **HB 2742**. The bill was a significant improvement in a difficult-to-navigate area. She explained that the House amended this bill in Section 4(e) on page 9 to require *in camera* inspection prior to ordering release of otherwise confidential information. SRS believed it was the intent of the House that Section 5(f) on page 11 contain similar language; therefore, a technical change to include this language was recommended. (Attachment 10)

Denise Everhart, Juvenile Justice Authority, submitted written testimony as a neutral conferee on **HB 2742**. (Attachment 11)

Committee questions and discussion followed regarding legislative access to all the records. It was a contentious issue during the interim committee discussions.

There being no other conferees to appear to testify, Chairman Vratil closed the hearing on **HB 2742**.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Thursday, March 11, 2004, in Room 123-S of the Capitol.

Final Action on:

HB 2347 - Kansas uniform securities act

Chairman Vratil called for discussion and final action on **HB 2347**. He explained the bill, and stated that the Committee had worked it on March 5 and 8. He said the Committee adopted the amendment proposed by the Kansas Cooperative Council, along with technical amendments. He explained that the Committee had yet to choose between the provisions recommended by the Securities Commissioner's office, which generally speaking would give the Security Commissioner more authority to enforce the law, and those that are recommended by the Kansas Bar Association which would return the bill to its uniform state as recommended by the Uniform Law Commissioners. He stated that there were compelling arguments for both proposals.

Senator Pugh made a motion to amend HB 2347 by striking provisions of Section 43(b)(3), pages 57 and 58, commencing on line 43 through line 4 on page 58. Senator Oleen seconded the motion.

Committee discussion followed with clarification on the concept of administrative law. The Chairman explained that the amendment would eliminate the authority of the Securities Commissioner to make administrative decisions and relegate the decisions to the District Court. Senator Goodwin asked Rick Fleming from the Securities Commissioner's office if by stripping out some of the enforcement capabilities of the Commissioner's office would affect the ability to protect investors. Mr. Fleming responded in the affirmative, and added that the Securities Commission currently has the ability to order people to pay restitution plus interest. Discussion continued regarding the right of appeal, and limitations when reviewed by the court.

Chairman Vratil called for a vote on Senator Pugh's motion to amend. The motion failed.

Discussion continued on **HB 2347**. Senator Allen inquired if this bill that an interim study committee dealt with last summer that included variable annuities. The Chair responded affirmatively that it was the bill that sparked the controversy over variable annuities. He explained that variable annuities were included in the definition of a security in the bill which is what the interim committee recommended.

Rick Fleming stated the amendment outlined on page 3 of his March 3, 2004 testimony was agreed to by the Securities Commission and Kansas Bar Association.. The Chairman said the amendment related to Section 39(3) on page 52, line 20, deleting the wording "under paragraph (1)" and adding wording after "(3) *the offer under paragraph (1) discloses whether*" the offeror has the present.....

Senator Goodwin made a motion to adopt the agreed to amendment as explained by the Chairman, seconded by Senator O'Connor, and the motion carried.

Senator Schmidt moved to pass HB 2347 out favorably as amended, seconded by Senator Umbarger, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is Friday, March 12, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Thurs, March 11, 2004

NAME	REPRESENTING
WADE BOWIE	SJA
John Bridger	SRS
Cordy Shively	SRS
R.S. McKenna	SRS
Norma L. Whiteman	KASB
Ch...	KDOT
Jim Haverkamp	KDOT
Bill Haverkamp	KDOT
DINA FISK	Kansas Society of Land Surveyors
John Peterson	Ks Govt Consulting
Steve Solomon	The Farm, Inc.
Jo Ann Buxton	Ks. Ins. Dept.
Woody Maus	KRPA
Wendy Harms	KMCA
Leslie Kaufman	Ks Co-op Council
Wendy...	
Natalie Haag	Security Benefit
Rick Fleming	Securities Commission
Ed Hays	It's in Law Firm



March 11, 2004

To: Senate Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2612: Amendment to UCC Revised Article 9

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to testify in favor of **HB 2612**, a bill that would make a very technical, but meaningful correction to the Uniform Commercial Code Revised Article 9.

As you will recall the Kansas Legislature passed Revised Article 9 in the 2000 legislative session. It was an expansive piece of legislation that totally revamped Article 9 of the Uniform Commercial Code. In 2002, the Legislature passed "Errata and Amendments" that were suggested by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

This proposal brings to your attention a missing word that needs to be inserted. The error is found in K.S.A. 84-9-509(a)(1), where the word "or" was omitted in the final printing.

K.S.A. 84-9-509, deals with financing statements (form UCC-1), and establishes the rules whereby debtors authorize the filing of the financing statement (since the requirement for the debtor to sign the UCC-1 has been eliminated). Reading subsection (a)(1) without the missing word, "or", a lender would have only two means by which to establish the debtor's authorization of the filing: 1) subsection (b) allows the lender to use the signed security agreement as the authenticated authorizing an accompanying UCC-1; or 2) subsection (c) states that the debtor automatically gives authorization when he or she acquires collateral that is already covered in a security agreement.

It is clear from the original draft by the NCCUSL (see attached) that they intended lenders to have another option – that being a separately authenticated record. This would allow a debtor to separately authorize the filing of the financing statement in an independent document.

In conclusion, while seemingly innocuous, the omission of the word, "or" is very misleading to practitioners and it was clearly intended by the drafters to be a part of that subsection. Thank you for your time and attention to this matter and we respectfully request the Committee to act favorably on **HB 2612**.

Senate Judiciary

3-11-04
Attachment 1

UNIFORM COMMERCIAL CODE

REVISED ARTICLE 9. SECURED TRANSACTIONS
(With Conforming Amendments to Articles 1, 2, 2A, 4, 5, 6, 7, and 8)

ERRATA AND AMENDMENTS

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By
THE AMERICAN LAW INSTITUTE
and
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

**ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES,
AND PROMISSORY NOTES INEFFECTIVE.**

* * *

(b) [When notification ineffective.] Subject to subsection (h), notification is ineffective under subsection (a):

* * *

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or general payment intangible has been assigned to that assignee;

SECTION 9-509. PERSONS ENTITLED TO FILE A RECORD.

(a) [Person entitled to file record.] A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

SECTION 9-513. TERMINATION STATEMENT.

* * *

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of any laws, rules, and regulations.

Sec. 17. K.S.A. 2001 Supp. 84-9-509 is hereby amended to read as follows: 84-9-509. (a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record pursuant to subsection (b) or (c); or



(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto, whether or not the security agreement expressly covers proceeds.

(c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security interest or agricultural lien continues under K.S.A. 2001 Supp. 84-9-315(a)(1) and amendments thereto, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under K.S.A. 2001 Supp. 84-9-315(a)(2) and amendments thereto.

1-4

1-4



KANSAS

DEPARTMENT OF TRANSPORTATION
DEB MILLER, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE**

**REGARDING HOUSE BILL 2617
RELATING TO LAND SURVEYORS**

MARCH 11, 2004

Mr. Chairman and Members of the Committee:

I am Jim Kowach, Chief of the Bureau of Design. On behalf of the Kansas Department of Transportation (KDOT) I am here to provide testimony in support of HB 2617.

In the profession of surveying, there is a necessity to examine and measure evidence beyond the immediate location of the survey site. The Public Land Survey System, which was originally surveyed during the days of the early settlers in Kansas, established monuments at approximately ½ mile intervals throughout the State. Subsequent surveys and development since that time have referenced these positions and monuments. The ability to have access to the evidence is vitally important in the process of performing accurate surveys.

At present, it is the policy of KDOT to contact land owners and tenants prior to entry upon private property. Absentee owners may be notified by letter if necessary; however, there can be unforeseen instances in which the contact cannot be made. This bill would allow entry onto property after a reasonable attempt to contact the property owner has been made.

KDOT supports HB 2617. It would also have a favorable impact on all the survey community in Kansas.

Senate Judiciary

3-11-04
Attachment 2

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DINA FISK

Government Affairs & Public Policy

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Overland Park, KS 66209
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KANSAS SOCIETY OF LAND SURVEYORS (KSLs)

HB 2617

ALLOWING LAND SURVEYORS TO ENTER UPON PROPERTY FOR A LAND SURVEY, NOT CONSIDERED A TRESPASS

To: Senate Judiciary Committee
Date: March 11, 2004

Thank you Chairman Vratil and Members of the Judiciary Committee for the opportunity to testify in support of HB2617.

Professional Land Surveyors render a highly technical service that in the general interest of the public must be in compliance with the Board of Technical Professions 'rules and regulations' and the 'laws' as set forth in the Kansas Statutes. (See attachment - Page 2) The establishment and preservation of accurate land boundaries are necessary to minimize the occurrence of land boundary disputes and discrepancies.

All surveys must have a reference point or Point of Beginning which are often marked with a 'monument'. Evidence of monuments are required to be shown in a survey and noted to indicate which were found, *including those found beyond the surveyed premises* on which establishment of the corners of the surveyed premises are dependent, and their application related to the survey need to be indicated.

Without the ability to locate the marker, section corners or some other relative indicator of the boundary, it is difficult to determine the Point of Beginning to render an accurate survey. Since markers or other indicators are not always located on the property to be surveyed, or located on public property such as a right of way or an easement, it is necessary for a licensed land surveyor or his authorized agent or employee to enter upon the adjacent land to find the reference point.

However, in trying to locate the evidence of where a boundary should be, a surveyor is placed at risk for prosecution of trespass. Civil or criminal trespass could subject a surveyor to unduly monetary damages, restitution, fines, or even jail.

Almost all states, including Kansas, allow surveyors to enter private property without fear of legal reprisal *if* the surveyor is an employee of the government or a government agency. (See attachment - Page 2) Unfortunately, these laws do not help or protect surveyors performing private surveys. To aid surveyors performing private surveys, several states have enacted laws allowing surveyors the right to enter land to perform private surveying services or on behalf of the government or a government agency. (See attachment - Page 3)

HB 2617 would allow land surveyors and their agents, to enter land of a party other than the client for the purpose of rendering a survey. The bill would create an exemption to the charge of criminal trespass for surveyors, providing the surveyor has made a reasonable attempt to notify a landowner to be on the land. Upon notice, a landowner will have the right to modify the time or other provisions, as long as the modification does not unreasonable restrict completion of the survey. The surveyor would be required to have proper identification and would be liable for any damages to property related to performing a survey. The landowner or occupant would not be liable for any accident or injury to the surveyor or his agents, provided it isn't an intentional act to harm the surveyor.

HB 2617 would provide parity with Kansas Statute provisions for government employed surveyors who are granted immunity to trespass and the protection that surveyors of the private sector benefit from in other states.

The Kansas Society of Land Surveyors requests your favorable consideration of HB2617.

.....

Senate Judiciary
3-11-04
Attachment 3

KANSAS STATUTES FOR LAND SURVEYORS

Chapter 58. -- PERSONAL AND REAL PROPERTY
PART 6. -- MISCELLANEOUS PROVISIONS
Article 20. -- LAND SURVEYS

- 58-2001.** *Monumentation of corners in boundaries of subdivisions before recording plat; type.
- 58-2002.** Same; subdivision control; *monumentation.
- 58-2003.** Recording measurements from visible objects to location of point; description; alternative.
- 58-2004.** Information required with plats. The following information shall be submitted with all plats for subdivisions of land: (a) Exterior boundary plat showing: (1) Locations of the *monuments, (2) bearings and distances between the *monuments, (3) closure calculation (b) All horizontal lot calculations and street calculations.
- 58-2011.** Report of survey, filing; filing of reports relating to altered or destroyed markers;

STATUTE PROVISIONS FOR GOVERNMENT AGENCY SURVEYORS

Chapter 68.--ROADS AND BRIDGES
PART I.--ROADS
Article 4.--STATE HIGHWAYS

68-404. Secretary of Transportation.

(g) "Entry upon any property, pursuant to this subsection, **shall not be considered to be a legal trespass** and no damages shall be recoverable on that account alone. In case of any actual or demonstrable damages to the premises, the secretary shall pay the owner of the premises the amount of the damages."

Chapter 68.--ROADS AND BRIDGES
PART III.--MISCELLANEOUS
Article 20.--TOLL ROADS OR TURNPIKES

68-2097. Kansas Turnpike Authority

"In addition to the foregoing powers the authority and its authorized agents and employees may enter upon any lands, waters and premises in the state for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this act, and **such entry shall not be deemed a trespass**, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities."

Surveyor Right of Entry Laws by State

Alabama	AL ST § 11-7-11
Alaska.....	AS § 34.65.010 & 34.65.020
Arizona	A.R.S. § 33-104
Arkansas	A.C.A. §§ 17-48-303 & 17-48-204
California	West's Ann.Cal.Civ.Code §§ 8774 & 846.5
Colorado	C.R.S.A. § 18-4-515
Connecticut	C.G.S.A. § 52-557
Florida	F.S.A. § 472.029
Illinois	ILCS 225 § 330/45
Kentucky.....	KRS § 322.470
Louisiana.....	LSA-R.S. 14 § 63
Maine.....	32 MRSA §13913
Massachusetts	M.G.L.A. 266 § 120C
Michigan	M.C.L.A. §§ 54.122-54.124
Minnesota.....	M.S.A. § 505.31
Mississippi.....	Miss. Code Ann. § 73-13-103
Missouri	V.A.M.S. § 327.371
Montana	MCA 70-16-111
Nevada	N.R.S. § 625.335
New Jersey.....	N.J.S.A. §§ 45:8-44.1 & 45:8-44.2
New Mexico.....	NMSA § 61-23-30
Oklahoma	21 Okl.St.Ann. § 1835
Oregon	O.R.S. § 672.047
Tennessee.....	T. C. A. § 62-18-124
Texas.....	Vernon's Ann.Texas Civ.St. Art. § 5282c
Vermont.....	27 V.S.A. § 4
West Virginia	W. Va. Code, § 29-2-9
Wisconsin	W.S.A. § 59.73

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

By the
Kansas Aggregate Producers' Association

Before the
Senate Judiciary Committee

Regarding HB 2617

March 11, 2004

Mr. Chairman, members of the committee my name Woody Moses, Managing Director of the Kansas Aggregate Producers' Association and the Kansas Ready Mixed Concrete Association. The Kansas Aggregate Producers' Association (KAPA) and The Kansas Ready Mixed Concrete Association (KRMCA) is a statewide trade association comprised of over 250 members, and one of the few industries to be represented in every county of this state.

The Kansas River Sand Producers, a KAPA subcommittee, appear before you today in support of HB 2617. Our particular industry is required by the United States Army Corps of Engineers to survey the Kansas River on a biennial basis in order to assure that the Corps regulatory plan adopted in 1990 is effective. Since this time we have now conducted seven different surveys and in each and every case we have experienced difficulty in gaining access to land in order to establish the appropriate cross-sections and survey lines. Despite the fact that there is an implied public easement in order to gain access to a river owned by the state of Kansas.

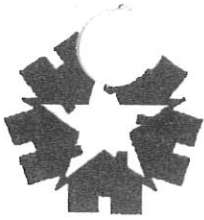
The adoption of HB 2617 will assist us in conducting this biennial survey in a more efficient manner, and is beneficial for the following reasons:

- Reduce the cost of delivering sand to the public.
- Assure the public that the resources provided by the Kansas River are properly surveyed and regulated.
- Uphold private property rights by promoting true and accurate surveys.

We encourage your support of HB 2617. I will be happy to answer any questions at this time.

Senate Judiciary

3-11-04
Attachment 4



**HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY**



600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

March 11th, 2004

Senator John Vratil, Chair
Senate Judiciary Committee
State Capitol
Topeka, KS 66612

Dear Chairman Vratil and Committee Members:

I am writing to express support on behalf of the Home Builders Association of Greater Kansas City for HB 2617. It is essential that land surveyors be able to go where they need to go in order to complete the survey and often that means going on to adjacent properties. The surveyors I spoke with said they always try to get permission from adjacent property owners before proceeding but it is not always possible and often causes long delays in the process.

HB 2617 offers a common sense solution to a problem encountered in our industry and I applaud the Kansas Society of Land Surveyors for their work in remedying this situation. I encourage you to support HB 2617.

Sincerely,

A handwritten signature in cursive script that reads "Dave".

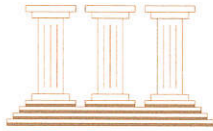
Dave Holtwick

Staff Vice President-Kansas Government Affairs

Do Business With A Member

Senate Judiciary

3-11-04
Attachment 5



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Judiciary Committee

FROM: Barb Conant
Director of Public Affairs
Kansas Trial Lawyers Association

RE: 2004 HB 2617/Allowing land surveyors on land

DATE: March 10, 2004

Chairman Vratil and members of the Senate Judiciary Committee, the KTLA appreciates the opportunity to submit written testimony on HB 2617.

We were pleased to be asked by the Kansas Society of Land Surveyors to review the proposed language for this bill. Our members have reviewed the bill and we have no concerns with HB 2617.

As advocates for the safety and protection of consumers and families, we commend KSLS members for their concern for the safety of Kansans.

KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. Again, we appreciate the opportunity to submit our comments to the committee.

Senate Judiciary

3-11-04

Attachment 6

Terry Humphrey, Executive Director

**Kansas Senators
Judiciary Committee
House Bill No. 2617**

Proponent Testimony
by
Thad T Fowler, PLS
(on behalf of the Kansas Society of Land Surveyors)

Mr. Chairman and Members of the Judiciary Committee:

My name is Thad Fowler. I am, and have been for the past thirty years, a land surveyor. I had hoped to be before you today to provide testimony on behalf of the Kansas Society of Land Surveyors as a proponent of House Bill No. 2617.

My testimony is brief for the proposed legislation before this committee is simple; it is straightforward; and it is just. Beyond the legislation's stated purpose of allowing a land surveyor conditional access onto the lands, waters and premises of a party who has not requested the survey, this legislation will provide the means for Kansas citizens and business entities to receive a complete and comprehensive survey of their properties.

The profession of land surveying is a union of the science of measurement with the art of law. The land surveyor's role in determining land boundaries is objective and impartial. Certain "Minimum Standards for Boundary Surveys" have been adopted by the Kansas State Board of Technical Professions as administrative regulations and have the force and effect of law. These minimum standards make it incumbent upon the land surveyor to perform a thorough search for necessary controlling monuments and physical evidence of possession and to then procure essential measurements in order to adequately analyze and evaluate the physical positions of these monuments and other physical evidence.

To meet these requirements of law and to provide the property owner, and by extension, the adjoining to the property owner, with a complete, comprehensive, and defensible

Senate Judiciary
3-11-04
Attachment 7

survey; there exists a legal and ethical onus upon the surveyor to enter upon the lands of others who have not engaged the services of the land surveyor.

The proposed legislation before you is, in most respects, a reflection of similar legislation passed by the State of Maine in 2003. The State of Kansas currently has conditional right of entry statutes for such entities as the Secretary of Transportation (K.S.A. 68-404); the Kansas Turnpike Authority (K.S.A. 68-2097); and for County Surveyors and their deputies (K.S.A. 19-1413). Considering the impartial and objective status of the land surveyor, this proposed legislation is a logical, just, and due extension of these status quo statutes.

Mr. Max Baker, a peer in my profession and a long-time friend was arrested in 2002 for criminal trespass during the conduct of a boundary survey. These charges against Mr. Baker were subsequently dismissed but the incident most certainly underscores the need for the passage of this Right of Entry legislation.

I thank you all for your time today and for your thoughtful consideration in this matter.

Sincerely,

Thad T Fowler
Professional Land Surveyor
PO Box 3
Lyndon, KS 66451

7-2



**STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE SENATE JUDICIARY COMMITTEE**

SENATOR JOHN VRATIL, CHAIR

REGARDING H.B. 2617

MARCH 11, 2004

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association. Our nearly 2500 members are involved in the state's residential building industry.

KBIA appreciates the opportunity to offer support for HB 2617. This bill retains liability for land surveyors for any damage done to private property. It gives surveyors the right, however, to enter private property for the purpose of conducting the survey without being subject to criminal trespass. This same privilege currently applies to public surveyors and is needed for private surveyors. For the building industry, the surveys are necessary, and we recognize the difficulty or impossibility of surveyors to be able to locate owners of private property which they must access in order to conduct the survey.

We ask that you recommend HB 2617 favorable for passage.

Senate Judiciary

3-11-04
Attachment 8

March 11, 2004

**JUDICIAL COUNCIL TESTIMONY
ON 2004 HB 2742 RELATING TO CONFIDENTIALLY PROVISIONS
OF THE KANSAS CODE FOR CARE OF CHILDREN**

GENERAL COMMENTS

The Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee considered the confidentiality provisions of the Child in Need of Care Code to be among its most important and difficult provisions, and devoted a number of sessions to reworking these provisions. These general comments provide an overview of the committee's objectives in reworking the confidentiality provisions and a summary of the basic changes proposed by the committee. More specific changes will be discussed in the comments accompanying each section. The committee's consideration of the confidentiality provisions was guided by three basic goals:

- **Need to Know:** The committee sought to protect the privacy rights and interests of children, their families, and others who may be involved in the process, while ensuring that information is available to those who need it in order to make sound decisions concerning children who may be in need of care, provide necessary services to children and their families, or protect the health and safety of children and others.
- **Clear Guidance:** The committee sought to make the provisions as explicit and accessible as possible to provide clear guidance to those in control of or seeking confidential information.
- **Practicality:** The committee also sought to ensure that confidentiality provisions would be workable in practice, would not impose unreasonable burdens on those in control of or seeking information, and would comply with the requirements of federal law.

To further these goals, the committee proposals concerning confidentiality reflect three types of changes:

1. **Organizational changes.** The proposals consolidate related provisions into separate sections in order to make all the confidentiality provisions more "user friendly" and to avoid duplication and overlap. As part of this reorganization, the committee proposes two new sections, K.S.A. 38-1505b and K.S.A. 38-1505c. K.S.A. 38-1505b would contain general provisions that apply to all confidential records. K.S.A. 38-1505c would contain provisions concerning free exchange of information. Proposed K.S.A. 38-1506, K.S.A. 38-1507, and K.S.A. 38-1508, which correspond to existing sections of the code, would each address access to one kind of confidential record.

2. **Clarification.** The committee proposals amend existing language and add new language or provisions that specify the circumstances and scope of access for different types of persons seeking access and to make the responsibilities and standards accompanying disclosure more explicit.
3. **Changes in the scope of access.** The committee reconsidered who would have a “need to know” confidential information and under what circumstances. Although the proposals would generally maintain the current law concerning who has access to different types of confidential records, the committee does propose expanded access to some records for some persons and entities and more limited access for others.

NEW SECTION 1. (Proposed to be K.S.A. 38-1505b)

Proposed K.S.A. 38-1505b contains generally applicable provisions governing confidential child in need of care records and reports, including the requirements of confidentiality for specified types of records, penalties for wrongful disclosure, immunities, and a provision concerning permitting nondisclosure to prevent harm. Proposed K.S.A. 38-1505b was created as a part of the committee’s effort to consolidate related provisions. Most of the provisions in section 38-1505b carry forward or restate existing law, with some rewording to accommodate the reorganization of the confidentiality provisions and to increase clarity. Proposed section 38-1505b also would make some additions to or changes in existing law:

Proposed subsection (a) contains the basic requirement of confidentiality for court records, agency records, and law enforcement records, each of which is defined in a separate paragraph. These definitions carry forward existing law except that proposed paragraph (a)(2) would define agency records so as to exclude records held by law enforcement agencies. This change eliminates an overlap under existing law, which includes law enforcement records in the definition of agency records under K.S.A. 38-1507, but also addresses them separately under K.S.A. 38-1508. Under the committee’s proposals, access to law enforcement records would be addressed only by K.S.A. 38-1508. The committee proposal also adds language in subsection (a) prohibiting those who properly receive confidential information from disclosing confidential information in violation of the confidentiality provisions. This new language makes explicit what is only implicit in the current statute and ensures compliance with federal requirements.

Proposed subsection (b) addresses penalties for willful or knowing violation of the confidentiality provisions and would increase penalties in two ways. First, the offense level would be increased from a class B to a class A misdemeanor. Second, the court in a child in need of care proceeding is authorized to impose a civil penalty of up to \$1000. These penalties were considered to be more proportional to the seriousness of wrongful disclosure that is willful or knowing and to be a more effective deterrent.

Proposed subsection (c) addresses immunities for the disclosure of confidential information. The provision would incorporate current K.S.A. 38-1507b, which exempts disclosure of records by SRS personnel from administrative oversight by the state's social worker licensing agency in the performance of their official duties. That provision would therefore be eliminated under the committee's proposals.

Proposed subsection (d) would add a provision permitting the nondisclosure of otherwise accessible information if disclosure would lead to harm to a child or other person. This new language is intended to prevent the abuse of any right of access to information and provide a safety valve to prevent harm.

NEW SECTION 2. (Proposed to be K.S.A. 38-1505c)

The committee proposes the creation of a new section, K.S.A. 38-1505c, which would address the free exchange of information between agencies responsible for investigating reports of abuse and neglect and providing services for children who may be in need of care and their families. Proposed K.S.A. 38-1505c would carry forward current K.S.A. 38-1507(c), with a few changes. The committee considered a separate provision to be desirable because this form of interagency cooperation is distinct from the question of "access" to specific records. Free exchange of information incorporates an affirmative obligation to share that includes broad and unrestricted access to sensitive information, an expectation that information would be forwarded on an agency's own initiative, and the movement of information in both directions. In contrast, the access provisions contemplate a request for records, may incorporate substantive standards or restrictions, and operate only in one direction.

The provision incorporates two changes that reflect the committee's concern for the distinctive character of free exchange of information. First, proposed K.S.A. 38-1505c incorporates general language relating to the purposes of free exchange and interagency cooperation: to facilitate investigation and ensure the provision of needed services. This language is intended to provide guidance to agencies and focus the exchange of information on investigating reports of abuse or neglect and assisting children who may be in need of care and their families. Second, the committee proposes the removal of the guardian ad litem (current K.S.A. 38-1507(c)(9)) from the list of those involved in free sharing of information. The committee was primarily concerned that the relationship between the child and the guardian ad litem counseled against their participation in a free exchange of information that worked both ways; i.e., that might require them to share information. The committee recognized that the guardian ad litem requires access to information, and provided for this access in proposed K.S.A. 38-1507(c)(1) and (c)(13).

SECTION 3. (Amends K.S.A 38-1506)

Proposed K.S.A. 38-1506, like the current provision, would address access to court records. There are two principal changes in the proposed provision. First, the definitions of court records, the official file, and the social file would be moved to proposed K.S.A. 38-1505b(a)(1) in accordance with the broader organizational changes described in the general comments to the confidentiality provisions. (*See also* Comment to proposed K.S.A. 38-1505b.) Second, access to court records would be expanded to include persons and entities with a need to know who are currently excluded from access. Under proposed subsection (a), a court appointed special advocate for the child and a citizen review board would have access to the official file. Under proposed subsection (b), a court appointed special advocate for the child, a citizen review board, and the secretary of social and rehabilitation services (and authorized agents) would have access to the social file. The committee considered this additional access as likely to further the best interests of the child and to be necessary and appropriate to the functions of those given access.

SECTION 4. (Amends K.S.A. 38-1507)

Proposed K.S.A. 38-1507 would address access to agency records, which have been defined under proposed section 1505b(a)(2) to include records held by the Secretary, as well as those held by juvenile intake and assessment agencies, but to exclude law enforcement records. Law enforcement records would be governed exclusively by K.S.A. 38-1508, thus eliminating the overlapping and conflicting directives to law enforcement agencies under current law. The section has been restructured and reworded for purposes of clarity and incorporates a few relatively minor substantive changes.

Proposed subsection (a), which would authorize access to agency records by persons and entities as provided in the section, would also incorporate a general statement of principle of access for those who need it. This statement, which is not mandatory, reflects the committee's view that under current law, concerns about confidentiality sometimes prevent the timely and effective transfer of information to those who need to know.

Proposed subsection (b) is a new provision that would cross-reference proposed K.S.A. 38-1505c (free sharing of information) in order to clarify the relation between the two sections.

Proposed subsection (c) corresponds to current subsection (d), and carries forward its provisions with the following changes:

1. This provision would incorporate language from current subsection (i) preventing the disclosure of the identity of a person reporting abuse or neglect.

2. This provision would add the following persons or entities to those who have access to agency records: The child's guardian ad litem or an attorney for the child (added to proposed (c)(1)); an attorney for a private party who filed a child in need of care petition (proposed (c)(4)); and other federal state, or local agencies with a need to know (proposed (c)(13)). The guardian ad litem was removed from the free exchange of information and included here for reasons discussed in the comment to proposed K.S.A. 38-1505c. The child's attorney was added because children in these cases are increasingly represented by attorneys of their own who require access. The attorney for a private petitioner was added because the committee considered access to be necessary and appropriate for such a party to the proceedings. On the other hand, the committee was concerned that the petition process might be abused by people to gain access to information, and therefore provided access for the party's attorney, but not direct access. The general provision was added to comply with recent amendments to federal law which require the state to make information available to these entities on a need to know basis. *See* 42 U.S.C. § 5106a(b)(2)(A)(ix) (added by Safe Children and Families Act of 2003).
3. A number of persons and entities currently listed as having access to agency records were removed from this provision because they participate in free sharing of information and therefore do not require a separate provision granting access. These include the persons and entities listed in current K.S.A. 38-1507(d)(9), (14), (15), and (16).
4. Paragraph (c)(9) was expanded to include the obligation of ongoing affirmative disclosure requirements of current K.S.A. 38-134. The list of those entitled to this information has been expanded to include not only foster parents (and prospective foster parents), but also permanent custodians and adoptive parents (and prospective permanent custodians and adoptive parents). The committee considered that these care-givers and prospective care-givers have an ongoing need for such information concerning a child who may be in need of care.

Proposed subsection (d) would combine several subsections of current law granting access to particular persons or entities for specific purposes, including the legislative committees, persons who report abuse and neglect, and the general public (current subsections (e), (f), (g), and (h)). Some of the provisions have been reworded for increased clarity and to provide further guidance. Access would continue to be subject to the requirement that the identity of a person reporting abuse or neglect is not be disclosed

Proposed subsection (e), which would authorize a court to provide for further disclosure under some circumstances, carries forward existing law with some changes in wording. (Current subsection (a)(2)). The committee considered specific language concerning the privacy interests of those involved to be unnecessary in view of the incorporation of general standards for ordering disclosure that would encompass privacy considerations.

Proposed K.S.A. 38-1507 would not incorporate current subsections (j), (k) and (l), which would be relocated to the general provision on confidential records, proposed K.S.A. 38-1505b. (See Comments to proposed K.S.A. 38-1505b.)

SECTION 5. (Amends K.S.A. 38-1508)

Proposed K.S.A. 38-1508 would address law enforcement records (as defined in proposed K.S.A. 38-1505b) and carries forward the current provision without major changes in existing law. The committee does propose a significant reorganization of the provision and a few substantive changes.

1. Proposed subsection (a) would provide that access to law enforcement records is available to persons and entities listed in the section and would contain a general statement of principle that access to law enforcement records should be limited to those with a need to know. This statement, which is not mandatory, is intended to provide guidance to law enforcement agencies. Whereas the general principle in proposed K.S.A. 38-1507 is designed to promote necessary access, the committee considered that access should be somewhat more selective in the case of law enforcement records.

2. Proposed subsection (b) is a new provision that would cross-reference proposed K.S.A. 38-1505c (free sharing of information) in order to clarify the relation between the two sections.

3. Proposed subsection (c) would provide access for government agencies and officials whose responsibilities require it. This subsection carries forward the access provisions of current K.S.A. 38-1508(a) for courts and court personnel, 1508(c) for SRS, 1508(e) for law enforcement and prosecutorial personnel, and 1508(g) for intake and assessment workers. Proposed subsection (c) would add access provisions for the juvenile justice authority, members of a court-appointed multi-disciplinary team, and other agencies with a need to know. The committee considered these persons and entities as requiring access and the catch-all provision ensures compliance with federal law.

4. Proposed subsection (d) would provide necessary access to persons or entities providing medical care or treatment and to school administrators, incorporating provisions in current subsection (d) with some changes. Access for these persons or entities would be subject to a general requirement of necessity and to a requirement that the identity of a person reporting abuse or neglect may not be disclosed. The committee also proposes eliminating direct access to law enforcement records by individual teachers and paraprofessionals, as provided in current law, because it considered such access to be unnecessary and potentially undesirable. The proposal authorizes access by administrators, who may pass necessary information along to teachers or paraprofessionals as needed to meet the educational needs of a child in need of care or to protect the health and safety of students and school personnel.

5. Proposed subsection (e) would provide for legislative access. The provision corresponds to current subsection (f), but has been redrafted to track the language of legislative access to agency

records under proposed K.S.A. 38-1507. Currently the two sections provide for legislative access under different scope and conditions, which adds unnecessarily to confusion and uncertainty.

6. Proposed subsection (f) authorizes disclosure by court order, and parallels the similar provision of proposed K.S.A. 38-1507. Current K.S.A. 38-1508 does not contain such a provision, but law enforcement records are included in the definition of agency records in current K.S.A. 38-1507 and therefore subject to release by court order under current K.S.A. 38-1507(a)(2). Thus, this provision does not reflect a change of substantive law.

7. Under the committee proposals, a guardian ad litem would no longer have direct access to law enforcement records; i.e., would no longer be included in proposed K.S.A. 38-1508. The guardian ad litem would continue to have access to agency records, which would provide indirect access (via the secretary), who would participate in a free exchange of information with law enforcement agencies. The committee considered separate and direct access to law enforcement records for the guardian ad litem to be unnecessary and potentially problematic given the changing role of the guardian ad litem.

SECTION 6. (Amends K.S.A 75-4319)

Contains technical changes required by amendments to the previous sections.

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Judiciary Committee

March 11, 2004

HB 2742 - Access to Official Files

Integrated Service Delivery

Candy Shively, Deputy Secretary

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Senate Judiciary

3-11-04
Attachment 10

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

Senate Judiciary Committee
March 11, 2004

HB 2742 - Access to Official Files

Mr. Chairman and members of the committee, I am Candy Shively, Deputy Secretary of SRS. Thank you for the opportunity to appear today to support House Bill 2742, as amended. This bill revises the provisions of the Kansas Code for Care of Children related to the sharing of information and confidentiality.

The bill balances the sometimes competing interests when sensitive information concerning children and their families becomes part of an agency or court record. Information must be made available to those who need it in order to make sound decisions, provide services, or protect the health and safety of children. At the same time the privacy of individual children and families who are in need of services must be respected.

Historically, it has been difficult to provide the statutory framework most likely to support this balance. The current statute has been amended many times and, as a result, actually adds confusion for those attempting to work together in service of children who may be in need of care. House Bill 2742 provides clear guidance and organizes the provisions to facilitate practical application. SRS appreciates the efforts of the Judicial Council and the opportunity to work with the subcommittee on this proposal. It is a significant improvement in a difficult-to-navigate area.

The House amended this bill in Section 4(e) on page 9 to require *in camera* inspection prior to ordering release of otherwise confidential information. We believe it was the intent of the House for Section 5(f) on page 11 contain similar language. Therefore, a technical change to include this language on page 11, section (f) is recommended.

Thank you for the opportunity to present; I would be happy to stand for questions.

10-2



K A N S A S

DENISE L. EVERHART
COMMISSIONER

JUVENILE JUSTICE AUTHORITY

KATHLEEN SEBELIUS, GOVERNOR

Memorandum

DATE: March 10, 2004

TO: Senate Judiciary Committee
Senator John Vratil, Chair

FROM: Denise L. Everhart, Commissioner *DLE/ht*

SUBJECT: House Bill 2742 – JJA Testimony

Senator Vratil and Members of the Committee, the Juvenile Justice Authority (JJA) provides this written testimony on HB 2742 as neither a proponent nor opponent of the measure. HB 2742 proposes modification to existing law pertaining to confidentiality of records, reports and documents regarding child in need of care cases pursuant to Chapter 38, article 15 of the Kansas Code.

The Commissioner of the JJA is vested with certain statutory roles and responsibilities that either explicitly or implicitly require access to the records, reports and other documents that are governed by the bill's provisions. For example: Pursuant to KSA 75-7024, the Commissioner of the Juvenile Justice Authority is required to operate the juvenile intake and assessment system for juvenile offenders; pursuant to a memorandum of agreement between the Commissioner and the Secretary of SRS as authorized by statute, JJA also operates intake and assessment for child in need of care cases in most judicial districts.

In addition, offenders in the care and custody of the Commissioner of the JJA have often also been under the care and custody of the Secretary of SRS. The free exchange of information is important to efficiently and effectively carry out these responsibilities.

When the House Corrections and Juvenile Justice Committee heard this bill, JJA offered proposed amendments that would include the Commissioner of Juvenile Justice as a party to have access to information. This was included in the amended version. Apparently a technical oversight, when the language was changed to include the Commissioner, the numbers from "7" on down were shifted to the next number. Page 4 lines 29-33 - specifically line 30: The reference to (a)(7) and (b)(7) should be changed to read (a)(8) and (b)(8).

Thank you for the opportunity to present this information.

DLE:WB:bt

Senate Judiciary

3-11-04
Attachment 11