

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 2, 2005 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Jim Clark, Kansas Bar Association
Representative Sydney Carlin
Ed Cross, Kansas Independent Oil & Gas Association
Lee Allison, Kansas Energy Council
Kathy Olsen, Kansas Bankers Association

The hearing on **HB 2112 - in divorce, if joint legal custody is not granted, findings of fact shall be supported by sufficient evidence presented at hearing.** was opened.

Representative Sydney Carlin requested the proposed bill on behalf of a constituent, Mr. Cliff Conrad, who was unable to appear before the committee today due to an illness. While Representative Carlin wasn't fully aware of his entire case she believed that he was concerned that courts can award sole custody without justifying why. She believed that he went to the custody hearing but his wife did not and she was still awarded sole custody. He's repeatedly asked the court what the reasons were for awarding sole custody and has not received an answer.

(Attachments 1 & 2)

Chairman O'Neal explained that statute sets out language that requires the courts to make specific findings of fact when ordering sole custody of children. If the court has violated that, then there are grounds for appeal.

Upon further discussion, the committee believed that the spouse was probably awarded temporary sole custody and then at a later hearing Mr. Conrad was award primary custody.

Chairman O'Neal closed the hearing on **HB 2112** but would allow the committee to receive more detailed information.

Jim Clark, Kansas Bar Association, appeared before the committee to request a bill introduction which would make changes to the Uniform Trust Code. (Attachment 3) **Representative Jack made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.**

Representative Kiegerl requested a bill be introduced:

- amending 38-1541 allowing foster care parents to be an interested party unless the court determines on the record it is not in the best interest of the child
- amending 38-1563 allowing the court to review and change any placement of SRS of a CINC case
- adding a section that makes a person who knowingly & willfully makes a false report may be reported to SRS for a criminal investigation and could be found guilty of a misdemeanor
- adding a section that if the court determines an accusation of child abuse or neglect is falsely made, the court may impose a fine not to exceed \$5,000.

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

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 2, 2005 in Room 313-S of the Capitol.

Chairman O'Neal requested a bill be introduced dealing with central registry for nursing staff. Representative Jack made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

The hearing on **HB 2104 - UCC securities interest in oil & gas production**, was opened.

Ed Cross, Kansas Independent Oil & Gas Association, appeared before the committee as the sponsor of the proposed bill which corrects an oversight which occurred when Article 9 of the UCC was amended during the 2000 Legislative Session. Before 84-9-319 was repealed it provided a security interest in favor of interest owners to secure the obligations of the first purchaser of oil and gas productions to pay the purchase price. The statute established that a signed writing giving the interest owner a right under real estate laws operated as a security agreement created under Article 9. Therefore creating a lost priority, going from a secured position to an unsecured one. (Attachment 4)

Lee Allison, Kansas Energy Council, recommended five pieces of legislation for the 2005 Session, this being one of them. (Attachment 5)

Kathy Olsen, Kansas Bankers Association, raised the question that if the proposed bill is adopted it would have an effect on existing security interests and other sections dealing with oil and gas as "as-extracted collateral" should be stricken. (Attachment 6)

Chairman O'Neal suggested that the Kansas Bankers Association & KIOGA get together and find compromise language.

Written testimony, in support of the bill, from Southwest Kansas Royalty Owners Association was distributed. (Attachment 7)

The hearing on **HB 2104** was closed.

HB 2016 - Arbitration; validity of agreement; can apply to employer employee contracts and tort claims

Chairman O'Neal asked the committee if there were any further questions on the proposed bill. The committee responded that they did not need further discussion and would be ready to work the bill.

HB 2113 - municipal court collecting fines and court costs

Representative Yoder made the motion to report HB 2113 favorably for passage. Representative Garcia seconded the motion.

Representative Davis was concerned with municipal courts being able to collect the costs of hiring someone to collect the fines.

Representative Watkins made a substitute motion to limit the provisions of the bill to "cities of the 1st class". Representative Pauls seconded the motion. The motion failed 6-7.

Representative Yoder made the motion to adopt the Office of Judicial Administration proposed amendments. Representative Jack seconded the motion. The motion carried.

Representative Jack made the motion to adopt the City of Wichita's proposed amendments, with the exception of "cities of the 1st class" and anywhere else it appears. Representative Yoder seconded the motion. The motion carried.

Representative Davis made the motion to report Substitute for HB 2113 favorably for passage. Representative Yoder seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 2, 2005 in Room 313-S of the Capitol.

HB 2152 - master settlement agreement for tobacco; appeal bond limitations apply to affiliates of signatory

Representative Jack made the motion to report HB 2152 favorably for passage. Representative Colloton seconded the motion.

Representative Ward made a substitute motion to adopt the Kansas Trial Lawyers Association proposed amendments. Representative Garcia seconded the motion. Kathy Damron, Phillip Morris, commented that while the proposed amendment is not exactly what they would like they will continue to work on it as it goes through the process. The motion carried.

Representative Davis made the motion to report HB 2152 favorably for passage, as amended. Representative Colloton seconded the motion. The motion carried.

Chairman O'Neal requested a bill be drafted regarding Article 1, 2 & 2a of the Uniform Commercial Code. Representative Jack made the motion to have the request introduced as a committee bill. Representative Watkins seconded the motion. The motion carried.

Representative Colloton requested a bill be introduced amending the social host law. She made the motion to have the request introduced as a committee bill. Representative Jack seconded the motion. The motion carried.

Representative Hutchins made the request to have a bill introduced regarding Children Internet Protection Act. She made the motion to have the request introduced as a committee bill. Representative Jack seconded the motion. The motion carried.

Committee minutes from January 25, 26, and February 1 were distributed via e-mail with the notification that if no changes were requested by February 1, 2005 they would stand approved.

The committee meeting adjourned at 5:00 p.m. The next meeting is scheduled for February 3, 2005 at 3:30 p.m. in room 313-S.



HOUSE OF REPRESENTATIVES

Sydney Carlin
REPRESENTATIVE, 66TH DISTRICT
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Committee Assignments:
Business, Commerce & Labor
Corrections & Juvenile Justice
Higher Education
Economic Development
Select Committee on Kansas Security
February 2, 2005

Chairman O'Neal
Honorable Representatives
Ladies and Gentlemen:

It is my privilege to come before you today to provide testimony regarding HB2112. My constituent, Mr. Cliff Conrad, was unable to be here today. I have prepared for your review an edited copy of an e-mail message I received from Mr. Conrad last August regarding this problem.

Essentially my constituent was given no stated reason by the court for denying him joint custody of his son. And there was no evidence presented in court to support the findings. Therefore he had no opportunity to challenge the evidence or the findings in order to influence the decision of the court.

The district court papers, dated August 24, 2002, case number 01 333 that ordered this state the following:

"The Court finds that sufficient reason exists for this matter to be heard immediately and without notice, and the Court ORDERS the matter to be heard instantly.

Thereupon, Petitioner presents evidence on behalf of her Petition and application for interlocutory orders and rests.

And the Court, having heard the statements of counsel, reviewing the Petitioner's evidence, and reviewing the pleadings and papers filed herein, finds good and sufficient reason for certain interlocutory orders to be issued herein pursuant to K.S.A. 60-1607, as amended."

"1. Child Custody: That during the pungeny of this action, the Petitioner is hereby granted the temporary care, custody and control of the parties' minor child namely: Paul Francisco Conrad, born on January 23, 1992, subject to the Respondent's rights to reasonable parenting time to include alternating weekends and one evening per week."

Despite repeated requests of the court, it has never been explained to me what "good and sufficient reason" was given nor have I ever been presented with the evidence that was presented in court.

.....I would like to suggest that the court ask the Petitioner to present a reason for granting anything but shared custody.

HB 2112 adds language to the existing statute that requires a court to support its finding through sufficient evidence presented at the court hearing where the decision is made.

"Such specific findings of fact shall be supported by sufficient evidence presented to the court at a hearing."

Thank you for your attention to this matter.
Representative Sydney Carlin, Dist 66.

From: Cliff Conrad [conrad@lib.ksu.edu]
Sent: Friday, August 06, 2004 4:49 PM
To: syndcar20@cox.net
Subject: HB2112

Dear Sydney,

Thank you for taking time from your schedule this afternoon.

Without going into great detail, I have put together a short history of events. I have tried to keep it as factual as possible. I have the original of the orders I mention below.

I was married to Arlette Conrad on December 15, 1986. On January 23, 1992 we had our only child, Paul.

Arlette began working on a Master of Information Science degree at Emporia State University and took three years to complete it during which time she worked part time at Hale Library. She was gone most weekends and evenings. I took care of our son.

When she graduated, she accepted a position in Ft. Lauderdale Public Library in Ft. Lauderdale, Florida and was there for six months. During that time I was the sole care giver of our son. She returned to Manhattan and took a job with the Manhattan Public library which also kept her evenings and weekends. After a few months she took a position with the Fort Riley Post Library and that job kept her busy Tuesday through Saturday until 9:30 in the evening. That allowed me much time with my son.

My son and I had so many evenings and weekend together and over so many years, especially when he was young, that made us very close. I cooked almost every meal for him and I was the only one to help him with his homework in school.

During the summer of 2001, the marriage broke apart. I offered to move out of the house and was not given an answer. However, one evening, with little warning, I was court ordered out and was immediately asked to pay child support. For the next two months, I was only allowed to have my son visit me one evening a week and every other weekend.

The district court papers, dated August 24, 2002, case number 01 333 that ordered this state the following:

"The Court finds that sufficient reason exists for this matter to be heard immediately and without notice, and the Court ORDERS the matter to be heard instantly.

Thereupon, Petitioner presents evidence on behalf of her Petition and application for interlocutory orders and rests.

And the Court, having heard the statements of counsel, reviewing the Petitioner's evidence, and reviewing the pleadings and papers filed herein, finds good and sufficient reason for certain interlocutory orders to be issued herein pursuant to K.S.A. 60-1607, as amended."

"1. Child Custody: That during the pendency of this action, the Petitioner is hereby granted the temporary care, custody and control of the parties' minor child namely: Paul Francisco Conrad, born on January 23, 1992,

subject to the Respondent's rights to reasonable parenting time to include alternating weekends and one evening per week."

When Paul asked his mother if he could see me for my birthday, she replied to him that he could not see me because I would be arrested for being near him when it was not my time with him. It became very clear to me that she was using him as a weapon to hurt me.

During the two months when my time with my son was extremely limited, I hired an attorney and petitioned to be allowed to be with my son for fifty percent of the time. I was granted my request in November of 2001. Over the subsequent two to two and a half years, I found myself more and more with my son even during times when he was not supposed to be with me. Last spring, my ex-wife moved out of state. I petitioned the court and I was granted temporary full custody of our son. Unlike the orders that I was given, I stated the reason that I was asking for full custody and that was my fear that my wife would take our son from school and not return. At the court hearing in June where I requested our son for the school year and she would be allowed summers, even though she was in town and knew of the hearing my ex-wife chose not to attend.

I am grateful to the court for having granted me primary custody of my son. That my ex-wife chose not come to court suggests that she too must be in agreement. She had expressed little interest in being a mother until the divorce at which time she felt like becoming a full time mother. I believe that it was obvious that she was using my son as a weapon to hurt me. My son also made similar comments to me unprovoked. "She is just trying to get at you, dad."

Despite repeated requests of the court, it has never been explained to me what "good and sufficient reason" was given nor have I ever been presented with the evidence that was presented in court.

I imagine that there are many cases where one parent, during the beginning of a divorce, asks the court for custody of a child or children. **I would like to suggest that the court ask the Petitioner to present a reason for granting anything but shared custody.** Divorces are frequently times of upheaval and high emotion and it is expected that the court keep a level head rather than grant the wishes of a highly emotional parent. The court cannot possibly act in the best interest of the child when it hears the pleading of only one parent.

Thanks again for your time. Please feel free to ask me questions or make suggestions. As I mentioned earlier, I have tried to NOT go into great detail about the divorce. I also would like to point out that this is not an issue of gender. Any parent can be guilty of using a child was a weapon to damage their spouse.

Sincerely

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Kansas Bar Association

BILL REQUEST

UNIFORM TRUST CODE CHANGES

1. 58a-103(10)

“Power of withdrawal” means a presently exercisable general power of appointment other than a power exercisable by a trustee or only upon consent of the trustee or a person holding an adverse interest.

2. 58a-103(12)

(a) “Qualified beneficiary” means a beneficiary who, *as of the date in question, either is receiving, or in the discretion of the trustee is then entitled to receive, distributions of trust income or principal, or would be so entitled if the trust terminated on that date.* ~~on the date of the beneficiary’s qualification is determined to be either:~~

(A) ~~— a distributee or permissible distributee of trust income or principal; or~~

(B) ~~— a distributee or permissible distributee of trust income or principal if the trust terminated on that date.~~

(b) As used in this section a “permissible distributee” means a person presently entitled to receive income or principal in the discretion of the trustee.

(c) For the purpose of the trustee determining “qualified beneficiaries” of a trust in which a beneficial interest is subject to a power of appointment of any nature, the trustee may conclusively presume such power of appointment has not been exercised unless the trustee has been furnished by the powerholder or the legal representative of the powerholder or the powerholder’s estate with the original or a copy of an instrument validly exercising such power of appointment, in which event the “qualified beneficiaries” shall be subsequently determined by giving due consideration to such exercise unless and until the trustee has been given notification in a similar manner of an instrument which validly revokes or modifies such exercise.

4. 58a-110(a)

(a) A charitable organization that is a distributee or permissible distributee of trust income or principal or would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date

under the terms of a trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in K.S.A. 2003 Supp. 58a-405 or 58a-408, and amendments thereto, has the rights of a qualified beneficiary under this Code.

5. 58a-411(a)

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust; provided, however, if a principal intent of the settlor in establishing the trust, either as indicated by the provisions of the trust or as can be established by extrinsic evidence, is for the trust estate not to be included in the settlor's estate for federal estate tax purposes, then the settlor shall not possess the foregoing authority to modify or revoke the trust if such authority would cause the inclusion of any property of the trust estate in the settlor's taxable estate unless the consent to such modification or termination is obtained by all parties whose consent would be required under applicable federal law in order to preclude such estate tax inclusion. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

6. 58-411(b) – Two Alternatives

(b) A noncharitable irrevocable trust may be terminated for good cause shown upon consent of all of the qualified beneficiaries if the court concludes (i) that continuance of the trust is not necessary to achieve any material purpose of the trust; or (ii) that notwithstanding any inconsistency between such termination and achieving a material purpose of the trust, any potential detriment to such material purpose resulting from such termination is either of a strictly *de minimis* or insubstantial nature or has only a remote possibility of occurring such that the continuance of the trust is no longer merited.

Or

(c) A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

7. 58a-417

(a) After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or

adversely affect achievement of the purposes of the trust. The terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its combination as authorized by this section. The trustee may make a division under this section by:

8. **58a-603 Trustee's duties to settlor of a revocable trust; settlor's powers; powers of withdrawal.**

(a) While a trust is revocable and ~~the settlor has capacity to revoke the trust,~~ rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(d) If a settlor of a revocable trust is a disabled person, on petition of the settlor's legal representative, an adult member of the settlor's family or any interested person, including a person interested in the welfare of the settlor, for good cause shown, the court may:

(1) Order the trustee to exercise or refrain from exercising the trustee's authority in a manner inconsistent with the trustee's fiduciary responsibilities under the provisions of the trust;

(2) remove the trustee;

(3) require the trustee to account; and

(4) issue such other orders as the court finds will be in the best interest of the settlor.

The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the trustee or the trust estate for the expenses, including attorney fees, incurred with respect to such proceeding. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to the trustee, the settlor, and any legal representative of the settlor, such as a conservator or attorney-in-fact under a durable power of attorney authorizing the attorney-in-fact to act on the behalf of the settlor in such matters. If there is no legal representative of the settlor, the court shall appoint a guardian ad litem to represent the settlor in such proceeding. In the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

9. 58a-802(f)

(f) The following transactions are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest provided that any investment made pursuant to the transaction complies with the Kansas Prudent Investor Act:

(1) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee; is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of article 9 of this code.

(2) the placing of securities transactions by a trustee through a securities broker that is a part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

(3) In addition to the trustee's fees charged to the trust, the trustee, its affiliate, or associated entity may be compensated for any transaction or provision of services described in this subsection; provided, however, that with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under K.S.A. 2003 Supp. 58a-813 to receive a copy of the trustee's annual report of the rate or method by which the compensation was determined. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust if the trustee at least annually notifies the persons entitled under K.S.A. 2003 Supp. 58a-813, and amendments thereto, to receive a copy of the trustee's annual report of the rate, formula or method by which the compensation was determined.

10. 58a-813

K.S.A. 2003 Supp. 58a-813 is hereby amended to read as follows: 58a-813.

(a) A trustee shall keep the qualified beneficiaries and ~~permissible current distributees~~ of the trust income or principal reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's and ~~a permissible current distributee's~~ request for information related to the administration of the trust.

(b) *Except as otherwise provided under the terms of the trust, A trustee of a trust created on or after January 1, 2003 shall:*

(1) Upon request of a qualified beneficiary ~~or a permissible current distributee~~, shall promptly furnish to the qualified beneficiary ~~or permissible current distributee~~ a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries and ~~permissible current distributees~~ of the acceptance and of the trustee's name, address, and telephone number;

(3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable on or after January 1, 2003, whether by the death of a settlor or otherwise, shall notify the qualified beneficiaries and ~~permissible current distributees~~ of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in subsection (c); and

(4) shall notify the qualified beneficiaries and ~~permissible current distributees~~ in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or ~~permissible current distributees~~ of trust income or principal, and to other qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property including liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values, and if requested, the trust's association of investment management and research compliant rate of return. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A person representative, conservator, or guardian may send the qualified beneficiaries and ~~permissible current distributees~~ a report on behalf of a deceased or incapacitated trustee.

(d) A qualified beneficiary or ~~permissible current distributee~~ may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A qualified beneficiary or ~~permissible current distributee~~, with respect to future reports and other information, may withdraw a waiver previously given.

(e) The provisions of this section are inapplicable to persons other than a surviving spouse so long as a surviving spouse is a qualified beneficiary of the trust or ~~may be entitled to receive income or principal distributions from a trust~~, or holds any power of appointment over the entire trust estate therein, and where any or all other qualified beneficiaries are the issue of the surviving spouse.

(f) ~~As used in this section "permissible current distributee" means a person presently entitled to receive, subject to the discretion of the trustee, income or principal.~~

11. 58a-1008(b)

(b) Unless the settlor was represented by an attorney not employed by the trustee with respect to the trust containing the exculpatory term, an exculpatory term drafted or cause to be drafted by the trustee is

invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

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Testimony to the House Judiciary Committee
House Bill 2104 – An Act concerning the uniform commercial code;
concerning securities interests in oil and gas production

Edward P. Cross, Executive Vice President
Kansas Independent Oil & Gas Association

February 2, 2005

Good afternoon Chairman O'Neal and members of the committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association and I am here today to express our support for House Bill 2104.

House Bill 2104 is intended solely to correct an oversight which occurred when Article 9 of the Uniform Commercial Code was amended in the 2000 session of the Kansas legislature. The 2000 amendments to the UCC were recommended in 1998 by the National Conference of Commissioners on Uniform State Laws. All sections of the article in effect at such time were repealed and the numbers reassigned to the new sections of the revised article by Senate Bill 366.

At that time, Kansas UCC Section 9-319 (K.S.A. 84-9-319) was repealed. Prior to its repeal, K.S.A. 84-9-319 provided a security interest in favor of interest owners (as secured parties) to secure the obligations of the first purchaser of oil and gas production (as debtor) to pay the purchase price. Among other provisions, the statute established that a signed writing giving the interest owner a right under real estate laws operated as a security agreement created under Article 9. Certain acts of the first purchaser, including signing an agreement to purchase oil or gas production or issuing a division order, operated as an authentication and adoption of the security agreement which was perfected automatically without the filing of a financing statement. The security interests were treated as purchase money security interests for purposes of determining their relative priority under 84-9-312 over other security interests not provided for by 84-9-319.

The disadvantage caused by the repeal of K.S.A. 84-9-319 became painfully obvious when Farmland Industries, Inc., filed for protection under the United States Bankruptcy Code. Several oil and gas producers who had sold oil to Farmland (on some occasions, with the oil being picked up from the tank batteries on the very day of the filing of the bankruptcy petition) would arguably

be only general unsecured creditors with respect to the money owed them. K.S.A. 84-9-319 would have been of assistance to many of them.

It appears that the repeal of K.S.A. 84-9-319 was by oversight rather than design. The purposes for the 2000 amendments to the UCC, which included the statutory accommodation of the advent of electronic filing of financing statements, was not substantially related to security interests in oil and gas. In these regards, note that K.S.A. 84-9-319 was modeled after similar provisions existing in the UCC in effect in Oklahoma (52 Okl. St. Ann. Sec. 548) and Texas (TX Bus & Com Sec. 9.343). Although the UCC was amended in those states for largely the same intents and purposes as the 2000 amendments in Kansas, 52 Okl. St. Ann. Sec. 548 and TX Bus & Com Sec. 9.343 remain in effect.

Oil and gas operators will benefit if K.S.A. 84-9-319 is placed back in the UCC in effect in Kansas. Therefore, I would urge Kansas Legislature to pass House Bill 2104.

**Testimony on HB2104
presented to the
House Judiciary Committee**

February 2, 2005

**Lee Allison, Chair
Kansas Energy Council**

Mr. Chairman, I appreciate the opportunity to speak today in support of HB 2104. My name is Lee Allison, and I am appearing today as chair of the Kansas Energy Council. I am also the Science and Energy Policy Advisor to Governor Sebelius, but I would like to clarify that I am not speaking on behalf of her office on this matter.

The Kansas Energy Council formally recommended five legislative actions in the 2005 Kansas Energy Report. One of them was to “amend Article 9 of the Uniform Commercial Code to restore a priority creditor status for sellers of oil and gas production when a purchaser is in bankruptcy. Such an amendment would follow the language of the former K.S.A. 84-9-319, which was repealed in 2000.”

House Bill 2104 will carry out the recommendation of the Kansas Energy Council. I urge you to pass it out favorably.

I would be pleased to stand for questions.



February 2, 2005

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2104

Mr. Chairman and Members of the Committee:

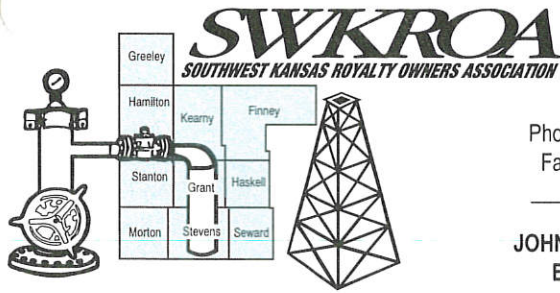
Thank you for the opportunity to appear before you today regarding **HB 2104**, which reinstates a Kansas-specific provision in the Uniform Commercial Code, Article 9 – the former K.S.A. 84-9-319.

As described in the Kansas Comments, this nonuniform amendment was adopted by the legislature in 1991 to give the oil and gas interest owner a security interest in any oil or gas production and in the proceeds to secure the purchase price and all taxes that should be withhold or paid. The security interest is automatically perfected and is treated in the same manner as a security interest in inventory.

The KBA is here today only to raise a question regarding the effect that this provision has on the existing language found in Article 9 dealing with extracted oil and gas and the effect that this change will have on existing security interests. If it is the will of this body to reinstate these nonuniform provisions, then should the existing sections of Article 9 that now deal with extracted oil and gas as “as-extracted collateral” rather than inventory be stricken?

We have some questions, too, how this change would affect existing security interests created under the current law.

Unfortunately, we do not stand here today with answers to these questions, but believe they should be explored before these changes are made to the UCC.



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ERICK NORDLING, Executive Secretary **B.E. NORDLING**, Ass't Secretary

Testimony before the House Judiciary Committee

House Bill No. 2104

February 2, 2005

Chairman O'Neal and Members of the Committee:

My name is Erick E. Nordling, of Hugoton, Kansas. I am a lawyer and a member of the Hugoton law firm of Kramer, Nordling & Nordling, LLC. I have practiced law for twenty years and have spent my entire legal career representing landowners. I am currently serving as Executive Secretary of the Southwest Kansas Royalty Owners Association (SWKROA). That Association's mission is the protection of the rights of royalty owners in the Hugoton Gas Field in southwest Kansas. The voluntary association has over 2,600 members and on behalf of its members and Kansas royalty owners **supports the passage of House Bill 2104.**

From time to time, the oil and gas industry in Kansas has experienced hard economic and financial times. An operator's financial distress is seldom confined to its own financial statement, but rather clearly impacts the financial welfare of others. In many instances, the law in Kansas provides some level of protection for those affected. For example, if an operator fails to pay a drilling contractor or the supplier of pipes for his well, those suppliers of materials and services can acquire a lien on the oil and gas leasehold estate of the nonpaying operator. Those lien rights are provided in K.S.A. 55-207, et seq.

It is not, however, only the supplier who feels the operator's financial strain. An operator who cannot pay his supplier will most likely fail to pay the royalty owner and other working interest owners who are entitled to proceeds from the production of oil and gas. There is, however, no Kansas statute to protect their rights, as in the case of a supplier. If an operator files for bankruptcy, these interest owners are mere unsecured creditors who generally receive nothing for their unsecured claims in a bankruptcy. House Bill No. 2104 is designed to correct that problem.

House Bill 2104 provides a security interest to both royalty and working interest owners, as secured parties, in oil and gas production, as defined in the Bill, and the proceeds therefrom, to secure the obligations of the first purchaser. In 1991 the Kansas Legislature adopted a comparable bill (Senate Bill No. 12, from the Session of 1991). However, in 2000, following a nationwide trend to overhaul Article 9 of the Uniform Commercial Code to keep the code uniform among the states, the Kansas Legislature deleted these protective provisions. There is

still a need for a statutory security interest for unsecured creditors entitled to proceeds from oil and gas production.

The Bill's approach is simple.

A signed division order, agreement to purchase oil or gas production or other writing recognizing the interest owners' interest is sufficient to serve as security agreement between the interest owner and the first purchaser and automatically perfects the interest owners' interest. (Section 1). If the interest is evidenced by a recorded deed, mineral deed, reservation in either, oil or gas lease, assignment or other writing, that writing serves as a filed financing statement. The writings, whether recorded or not, serve to create a security interest in oil and gas production, as well as any proceeds therefrom. No other filing is required, simplifying the manner in which the interest is obtained and detected. (Sections 2 and 3).

The security interest created serves to protect the interest owner in the event of a bankruptcy filing, by elevating the status of the interest owner to that of a secured creditor - a position that those unfamiliar with bankruptcy law might have assumed the interest owner already occupied.

The relative priorities of the various interest owners among themselves and with respect to other creditors are also set forth in the Bill (Sections 7 and Sections 6 and 8, respectively).

If a dispute arises among the interest owners and the first purchaser, the Bill provides for the manner in which the dispute can be resolved, which protects both the interest owner and the first purchaser. (Sections 11 and 12).

Likewise, the rights of buyer in the ordinary course of business will find that his rights have not been impaired by the Bill. (Sections 5 and 13). He retains his ability to buy oil and gas production free and clear of any liens. The Bill, to the extent possible, protects the rights of those who, until now, were long forgotten, while at the same time leaving essentially undisturbed the sale of oil and gas to others.

On behalf of the Southwest Kansas Royalty Owners Association, I urge that the Legislature of the State of Kansas to enact House Bill No. 2104.

Respectfully submitted,

/s/ Erick E. Nordling

Erick E. Nordling
Executive Secretary, SWKROA