

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 13, 2008 in Room 313-S of the Capitol.

All members were present except:

Representative Paul Davis - excused  
Representative Ben Hodge - excused  
Representative Jason Watkins - excused  
Representative Kevin Yoder - excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Jason Thompson, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Alice Adams, Clerk of District Court, Geary County  
Phil Fielder, Court Administrator  
Leslie Kaufman, Kansas Cooperative Council  
Melissa Wangemann, Office of Secretary of State

The hearing on **SB 423 - notice of filing of foreign judgements**, was opened.

Alice Adams appeared before the committee as a proponent of the bill. She explained that it is currently the responsibility of the court to mail the notice of filing of foreign judgements to the judgement debtor. This bill would require the creditor or the creditor's lawyer to file notice with the debtor. (Attachment #1)

The hearing on **SB 423** was closed.

The hearing on **SB 424 - oil & gas leases, distribution of monies deposited with the court**, was opened.

Phil Fielder, Court Administrator, explained that currently when a oil and gas lease is sold and the owner cannot be found the proceeds are deposited with the court to hold. The proposed bill will allow the company purchasing the oil and gas lease to deposit the monies with the Unclaimed Property Act. (Attachment #2)

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

The hearing on **SB 448 - applicability of Kansas general corporation code to certain cooperative**, was opened.

Melissa Wangemann, Office of Secretary of State, offered the bill as a clarifying amendment. Without this bill cooperatives have no authority to file corrections or restate articles of incorporations with the Secretary of State. (Attachment #3)

Leslie Kaufman, Kansas Cooperative Council, was supportive of the proposed bill and would like to have the bill pass without any amendments. (Attachment #4)

The hearing on **SB 448** was closed.

The hearing on **SB 449 - UCC secured transactions, striking forms**, was opened.

Melissa Wangemann, deletes financing statement forms that provides private information. New forms have been developed and are now available on the Secretary of State's website. (Attachment #5)

The hearings on **SB 449** was closed.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 13, 2008 in Room 313-S of the Capitol.

The hearing on **SB 450 - cemetery corporations, investment of permanent maintenance fund**, was opened.

Melissa Wangemann removes the authority of cemetery corporations to maintain a permanent maintenance fund to build a mausoleum. (Attachment #6)

The hearing on **SB 450** was closed.

**SB 419 - criminal procedure; form and consent of journal entry**

Representative Pauls made the motion to report SB 419 favorably for passage, and be placed on the consent calendar. Representative Proehl seconded the motion. The motion carried.

**SB 467 - manufactured housing, filing of security notice**

Representative Whitham made the motion to report SB 467 favorably for passage and be placed on the consent calendar. Representative Pauls seconded the motion. The motion carried.

**SB 418 - Kansas sentencing commission; duty to annually produce official juvenile correctional facility population projections**

Representative Pauls made the motion to report SB 418 favorably for passage. Representative Crow seconded the motion.

Members expressed that the Juvenile Justice Authority does not need the Kansas Sentencing Commission's services and therefore should not have to pay for the projections. If the Sentencing Commission wants \$50,000 for three full time employees they should ask for it in their budget.

With permission of the second Representative Pauls withdrew her motion.

The committee meeting adjourned at 4:15 p.m. The next meeting was scheduled for March 17, 2008.

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FOREIGN JUDGMENTS – NOTICE OF FILING  
SB 423 – K.S.A. 60-3003  
TESTIMONY

By: Alice Adams, Clerk of the District Court  
Geary County District Court – 8<sup>th</sup> Judicial District

K.S.A. 60-3003 concerns the notice of filing of a foreign judgment. It requires that the judgment creditor or his or her attorney shall make and file with the clerk of the court an affidavit, setting forth the name and last known address of the judgment debtor and the judgment creditor.

Currently, section (b) requires that the clerk mail to the judgment debtor a notice of filing, including the name and address of the judgment creditor. Section (b) further states that the judgment creditor may mail a notice as well, and the lack of mailing of the notice of filing by the clerk of the district court shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Our association recommends that Section (b) read: "Promptly upon the filing of the foreign judgment and the affidavit, the judgment creditor or the judgment creditor's lawyer shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state."

Upon reviewing the bill draft, it became apparent that an additional amendment is needed. We are requesting the deletion of additional language in current law that would no longer be needed. The two sentences that begin on line 26 of the bill should be amended to read as follows: "In addition, the judgment creditor may mail a notice of the filing of the judgment to the ~~judgment debtor~~ clerk of the district court and may file proof of mailing with the clerk of the district court. ~~Lack of mailing notice of filing by the clerk of the district court shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.~~"

It makes sense that if the judgment creditor supplies the information and is already allowed by statute to send the notice of filing, he or she could be required to send the notice of filing, thus removing one step and simplifying the process. At present the clerk is acting as an unnecessary middleman in this process. KADCCA feels that the statute no longer reflects current practice and should be changed to require the notice be mailed by the party filing the foreign judgment.

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Jane E Hrabik, Immed. Past Pres.  
Rice County  
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House Judiciary  
Date 3-13-03  
Attachment # 1

Donna Oswald, *Preside*  
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Fielder, *President-Elect*  
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SB 424 - K.S.A. 55-221

Oil and Gas Leases

TESTIMONY

By: Phil Fielder, Court Administrator  
23<sup>rd</sup> Judicial District

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators in regard to K.S.A. 55-221. This bill deals with payments made after the sale of an oil or gas lease.

Currently, when a company wants to buy an oil or gas lease and there are owners who cannot be found, a civil case is filed in district court, and a receiver is appointed to represent those parties who cannot be located. When the lease is sold, the statute directs that payments to those unknown parties be deposited with the district court. If this process stopped here, with the one-time payment to the court, this would not be an issue. Problems arise if the lease later goes into production, and ongoing payments start coming into the court.

This situation can become complex, especially now, with the increase in oil and gas prices. More and more older gas and oil leases are being purchased and placed back in production, many whose ownership has been passed down from generation to generation. Others may have been sold to investment companies. For example, Trego County has a case in which several owners have a 1/49,000<sup>th</sup> or a 1/37,000<sup>th</sup> share of the lease. Some of the amounts owed to those owners were as small as 43¢ and \$1.40. More than half of the lease owners in this case could not be found. Several of those that could be found were issued checks for as little as 43¢. Parties are more likely to frame the check than to cash it. As you can easily see, in addition to becoming difficult to manage, it is costly and time consuming.

We propose that future production proceeds be retained by the oil or gas purchasing company. Our position is that the company holds money in suspension already for many types of leases and cases, and has more resources to locate and keep track of these parties. This would save both the Courts and the oil and gas companies the time and expense of receipting, holding, and issuing checks. The money would still be subject to the Kansas statute concerning unclaimed property. The persons we have spoken to in the oil and gas industry have expressed no opposition to this change in the statute.

Thank you for allowing me the opportunity to appear before you today on this bill. I would be glad to answer any questions you may have.

Ann McNeill  
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Jane S. Kralik, *Immed. Past Pres.*  
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House Judiciary

Date 3-13-03

Attachment # 2

RON THORNBURGH  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE HOUSE JUDICIARY COMMITTEE  
ON SB 448

MARCH 13, 2008

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 448, a bill requested by the Secretary of State.

SB 448 ties the general corporate code to cooperative associations; specifically, cooperative societies, electric cooperatives and renewable energy electric cooperatives.

Our office is currently reviewing business entity laws and their filings with our office as we prepare to build a new filing system. While reviewing the cooperative laws last summer we concluded that the general corporate code had to apply to them in order to fill in gaps found in the cooperative acts. Without reference to the general corporate code, cooperatives have no authority to file corrections or restated articles of incorporations with the Secretary of State's Office. More importantly, these cooperatives have no authority to file a certificate of reinstatement, a document that reinstates the entity after forfeiture. Cooperative societies also cannot participate in mergers without the tie-in to the general corporate code.

We reviewed our proposed bill with the Kansas Cooperative Council, Kansas Electric Cooperatives, and the Kansas Electric Power Cooperative. All parties agree that the general corporate code is assumed to apply now, and that a clarifying amendment would provide notice to the public of that relationship.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

House Judiciary  
Date 3-13-08  
Attachment # 3



**Kansas Cooperative Council**

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## House Judiciary Committee

March 13, 2008

Topeka, Kansas

### **SB 448 - Clarifying the general corporation code applies to certain cooperatives.**

Chairman O'Neal and members of the House Judiciary Committee, thank you for the opportunity to share our support of SB 448 as it currently stands. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Executive Director. The Kansas Cooperative Council is a voluntary trade association representing all forms of cooperative businesses across the state, including agricultural, utility, credit, financial and consumer cooperatives.

Melissa Wangeman with the Kansas Secretary of State's office contacted our association several months ago about the possibility of clarifying that the general corporation code applies to cooperative entities (where not in conflict with the co-op statutes). We certainly appreciate the Secretary of State and Melissa including us in these discussions. In addition to working with our association, Kansas Electric Cooperatives, Inc., and KEPCo were also consulted. I believe the coordination ahead of the session has helped ensure this change could be recommended in a non-controversial manner.

The changes proposed in SB 448 are not problematic to the co-op family. The changes essentially take language from the cooperative marketing act (which most of our non-utility and non-financial cooperatives are organized under) and apply it to cooperative societies, rural electric co-ops and renewable energy electric generating cooperatives.

As such, we would respectfully request you pass SB 448 without amendment. Thank you for your consideration.

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

House Judiciary

Date 3-13-08

Attachment # 4

RON THORNBURGH  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE HOUSE JUDICIARY COMMITTEE  
ON SB 449

MARCH 13, 2008

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 449, a bill requested by the Secretary of State.

SB 449 eliminates from statute the forms for financing statements and amendments filed pursuant to the Uniform Commercial Code. The bill's new language allows the Secretary of State to prescribe the forms.

The forms listed in the statute date back before the July 1, 2001 effective date of Revised Article Nine of the Uniform Commercial Code, as they were created by the International Association of Commercial Administrators in 1998. The forms contain a field for social security number or federal employer identification number, even though that information is not required for filing a U.C.C. U.C.C. filings are public record and generally list names and addresses; thus, the inclusion of SSNs or FEINs makes these records ripe for identity theft.

Although our office has not received complaints about these records, nor have we heard any reports that any harm has resulted from these records, we believe eliminating forms with this information from public record is a good preventative measure. We note that the state of Ohio was sued by a victim of identity theft after the criminal obtained his SSN from the U.C.C. filing system, and both Virginia and Colorado were criticized by watchdog groups for the availability of SSNs in their U.C.C. databases. In 2007 the U.S. Inspector General released a report encouraging states to limit or eliminate use of SSNs on public record and the National Association of Secretaries of State held a symposium and issued a report on redacting SSNs from public record.

IACA no longer promotes these statutory forms, and their current version of the forms does not list SSNs or FEINs. The Kansas Secretary of State provides its own version of the forms to the public for use, which blackens out the SSN/FEIN box altogether to prevent the listing of any information in that box (we anticipated some customers would continue to write that information in that box based on habit). We would continue to accept the current version of IACA forms and our own model following passage of SB 449, but would not accept the outdated statutory forms.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

House Judiciary  
Date 3-13-08  
Attachment # 5

**RON THORNBURGH**  
Secretary of State



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TESTIMONY OF THE SECRETARY OF STATE  
TO THE HOUSE JUDICIARY COMMITTEE  
ON SB 450

MARCH 13, 2008

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 450, a bill requested by the Secretary of State.

SB 450 deletes the last sentence of K.S.A. 17-1349, removing the authority of a cemetery corporation to use its permanent maintenance fund to build a mausoleum.

Cemeteries are required to deposit 15% (but not less than \$25) of each burial lot sold into a trust fund with a trust company, state or national bank, or savings and loan association located in Kansas. The purpose of this trust fund is the future maintenance of the cemetery – it is used to preserve and maintain the cemetery after the cemetery no longer has an income source, i.e., all plots are sold. Kansas law protects this money by requiring that it be deposited in a trust account, which is subject to audit by the Secretary of State. No part of the principal in the trust account may be paid over to the cemetery without the Secretary of State's approval, and funds invested in the trust account are subject to prudent investor rules. Misuse of this fund is a felony. If and when a cemetery's Permanent Maintenance Fund (PMF) is depleted and the cemetery can no longer maintain itself, the local governing body must be appointed as receiver and take over the maintenance of the cemetery. In other words, the local taxpayers become responsible for paying for the cemetery's upkeep.

As outlined above, Kansas laws generally protect this fund; however, K.S.A. 17-1349 allows the fund to be used for one type of capital improvement—building a mausoleum. The Secretary of State believes this exception in the law is bad policy and should be repealed. Our concern about this section was realized this last year when a cemetery was unable to repay its PMF following the erection of a mausoleum using PMF funds.

In closing, we emphasize that the PMF should be used exclusively for the cemetery's permanent maintenance and not redirected to other purposes; this policy reduces the prospect of the cemetery becoming the responsibility of its local government.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel  
Deputy Assistant Secretary of State

House Judiciary  
Date 3-13-08  
Attachment # 4