

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:35 a.m. on February 11, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

Sheri Smiley, Staff Attorney, Kansas Secretary of State
Jason Maxwell, Haskell County Counselor
Ed Klumpp, Kansas Association of Chiefs of Police

Others attending:

See attached list.

Senator Vratil moved, Senator Schodorf seconded, to un-table **SB 67 - Creating the crime of endangering a dependent adult; amending mistreatment of a dependent adult** as a result of a substitute bill addressing concerns raised during the hearing last session. Motion carried.

The Chairman opened the hearing on **SB 437 - Secretary of state; resident agent filing requirements.**

Sheri Smiley appeared in support stating **SB 437** would create new law regarding limited liability partnerships so that limited liability partnerships have the same requirements regarding resident agents and registered offices as the current law on domestic or foreign limited partnerships. (Attachment 1)

There being no further conferees, the hearing on **SB 437** was closed.

The Chairman opened the hearing on **SB 438 - Business trusts; required filings with the secretary of state.**

Sheri Smiley appeared in support stating **SB 438** would eliminate the requirement in current law that a domestic or a foreign business trust file a balance sheet with the Kansas Secretary of State's Office. The passage of this bill would create uniformity and consistency among formation documents and would follow Delaware law. (Attachment 2)

There being no further conferees, the hearing on **SB 438** was closed.

The Chairman opened the hearing on **SB 439 - Kansas register; contents, procedure for submitting materials for publication.**

Sheri Smiley appeared in support stating **SB 439** would update and clarify the laws regarding the publication of the *Kansas Register*. The statutes authorizing and prescribing requirements for publication of the *Kansas Register* have become increasingly outdated since their inception in 1982. (Attachment 3)

There being no further conferees, the hearing on **SB 439** was closed.

The Chairman opened the hearing on **SB 440 - Repealing statutes on registration of insignias by secretary of state.**

Sheri Smiley appeared in support stating **SB 440** would repeal the insignia law. The law is seldom used and an insignia could be filed as a service mark or a trademark under current Kansas law. (Attachment 4)

There being no further conferees, the hearing on **SB 440** was closed.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:35 a.m. on February 11, 2010, in Room 548-S of the Capitol.

The Chairman opened the hearing on **SB 441 - Business entity transactions act; limited partnership mergers.**

Sheri Smiley appeared in support stating **SB 441** would repeal the Revised Uniform Limited Partnership Act to allow limited partnership mergers to take place under the Business Entity Transaction Act (BETA). Limited partnerships would be required to file a certificate of merger or merger agreement as opposed to a notice of cancellation, which gives the false impression that they are no longer in business. (Attachment 5)

There being no further conferees, the hearing on **SB 441** was closed.

The Chairman opened the hearing on **SB 537 - Liens and claims against property; actions concerning validity.**

Jason Maxwell testified in support stating **SB 537** was drafted to address numerous false liens that had been filed strictly as a form of harassment, targeting various elected officials and organizations in the area. The basic remedy is to set aside the lien or claim pursuant to K.S.A. 58-4301. There is no deterrent that would keep the violator from taking the exact same action again and the aggrieved person cannot even recover their attorney fees or costs. This legislation would add remedies to collect up to \$10,000 in damages plus costs and attorney fees. (Attachment 6)

Ed Klumpp spoke in support, indicating the filing of false liens is not new and comes up every few years. A legislative remedy is well justified and provides a tool for a court to protect against repeat fraudulent claims. This bill balances the protection against fraudulent claims with the right of filing future legitimate liens. (Attachment 7)

Written testimony in support of **SB 537** was submitted by:
Kyle Smith, Kansas Peace Officers (Attachment 8)

There being no further conferees, the hearing on **SB 537** was closed.

The Chairman called for final action on **SB 305 - Kansas tort claims act; charitable health care providers.**

Senator Lynn moved to recommend **SB 305** favorably for passage.

Senator Vratil made a substitute motion to amend SB 305 by striking the bold font language on page 2, lines 20-25, beginning with "(1)" and ending with "Kansas; and" and allow the revisor authority to correct the sequencing, Senator Bruce seconded. Motion carried.

Senator Lynn moved, Senator Kelly seconded, to recommend SB 305, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 398 - Indemnification; amendments to certificate of incorporation or corporate bylaws.**

Senator Vratil moved, Senator Schmidt seconded, to amend SB 398 on page 3, line 6, by striking the word "certificate" and insert the word "articles". Motion carried.

Senator Schmidt moved, Senator Kelly seconded, to recommend SB 398, as amended, favorably for passage. Motion carried.

Senator Vratil moved, Senator Schmidt seconded, to recommend SB 437, SB 438, SB 439, SB 440, and SB 441 favorably for passage and place them on the consent calendar. Motion carried.

The next meeting is scheduled for February 12, 2010.

The meeting was adjourned at 10:22 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 11, 2010

| NAME | REPRESENTING |
|---------------------|--------------------------|
| SLADE BAND | SENATOR VAATI (INTERCOM) |
| Bill Lower | Haskell Co. |
| Jason Maxwell | Haskell Co. |
| Shen Smily | Sec. of State |
| Stephanie Mickelsen | Sec of State |
| Diane Minzar | Sec. of State |
| Jaene Carlson | Sec OF State |
| Chris MacDonald | Sec. of State |
| Nancy Reddy | Sec. of State |
| Levi Henry | Sandstave Group LLC |
| Robert Stiles | KDHE |
| Peggy Schmitt | Senator Bruce (Page) |
| Jesse McClutchen | Senator Bruce (page) |
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TESTIMONY OF THE SECRETARY OF STATE
ON SB 437
DATE: 2/11/10

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 437, a bill regarding resident agents for Limited Liability Partnerships and regarding a change of name and change of address form for resident agents that are on file with our office.

Limited Liability Partnership Resident Agents: We are recommending that both foreign and domestic Limited Liability Partnerships be required to maintain a resident agent for service of process. All other business entities that are required to file with our office are required by Kansas law to maintain a resident agent. Under KSA 56a-1001, and 56a-1102 there are requirements under the formation of a limited liability partnership to list the street address of the partnership's principal office, and if there is no office in this state then to give the name and street address of the partnership's agent for service of process. We recommend that the law is clarified to require that a resident agent must be appointed. The current Limited Liability Partnership law does not contain provisions for who can serve as a resident agent, who can change the address of the registered office, or what happens when a resident agent resigns, moves from the state or dies. This is, however, all set out in the current Limited Partnership law regarding resident agents. We would, therefore, recommend that the language regarding resident agents from the current Limited Partnership law be mirrored in the Limited Liability Partnership law. This change helps standardize Kansas formal filing requirements.

Changes for name and address of a resident agent: We recommend that a filing by a resident to change his/her name AND address be permitted on one document. Under current law, KSA 17-6204, a resident agent can file a certificate to change his/her name, or a certificate to change his/her address. We recommend clarifying the law to allow both changes to occur on one document. This would eliminate an extra, costly and cumbersome filing for the resident agent when both changes occur.

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

Sheri L. Smiley, Staff Attorney
Kansas Secretary of State

Senate Judiciary

2-11-10

Attachment 1

TESTIMONY OF THE SECRETARY OF STATE
ON SB 438
DATE: 2/11/10

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 438, a bill regarding Business Trusts.

We are recommending that when a domestic or a foreign business trust files with this office they would no longer be required to file a balance sheet. The legislature eliminated the requirement to file balance sheets from the annual reports in 2005. No other business entity is required to submit a balance sheet at the time of formation. SB 438 removes balance sheets from these entities' formation document. It creates uniformity and consistency among formation documents, and is in line with Delaware law.

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

Sheri L. Smiley, Staff Attorney
Kansas Secretary of State

Senate Judiciary

2-11-10
Attachment 2

TESTIMONY OF THE SECRETARY OF STATE
ON SB 439
FEBRUARY 11, 2010

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 439, a bill regarding the authorizing and prescribing requirements for publication of the Kansas Register. SB 439 proposes to amend K.S.A. 75-430, 75-431, and repeal 75-432.

The statutes authorizing and prescribing requirements for publication of the Kansas Register have become increasingly outdated since their inception in 1982. SB 439 proposes amending the Register-related statutes to better organize the subject matter and clean up and remove outdated and duplicative language.

K.S.A. 75-430:

- Section granting the secretary of state authority to publish a summary of adopted administrative regulations (e.g., length and cost of publication, technical subject, etc.), has been removed, as it is duplicative of another section in the same statute that gives the secretary of state the authority to omit from publication any information deemed "cumbersome, expensive, or otherwise inexpedient" and instead publish a notice/summary of such information and a manner in which it may be obtained.
- The section addressing distribution of the Register has been amended to clarify that **paper** copies shall be made available upon payment of a fee fixed by the secretary of state. The register is available electronically at no charge. Further requirements regarding fees for subscriptions and publication in the Register are found at KSA 75-433, which is referenced in this section.

K.S.A. 75-431:

- Removes the requirement that documents be submitted in duplicate and adds the requirement that materials filed for publication be submitted in an electronic format.
- Removes specific requirements for the filing of administrative rules and regulations, referring to provisions found Article 4, Chapter 77 (the Rules and Regulations Filing Act).

K.S.A. 75-432

- Sections concerning content and submission of materials for the Register have been incorporated into 75-430 and 75-431, respectively.
- The section requiring documents submitted for publication in the Register be certified by an official of the submitting agency has been removed. This requirement falls under the liaison officer's responsibilities, now contained in 75-431.
- The section concerning the designation of an agency liaison has been removed and incorporated into 75-431.
- The section requiring the Register be punched for standard three-ring binders has been removed.

Again, we appreciate the opportunity to share our suggestions today, and I am happy to stand for questions.

Sheri L. Smiley
Staff Attorney, Kansas Secretary of State

Senate Judiciary

2-11-10

Attachment 3

TESTIMONY OF THE SECRETARY OF STATE
ON SB 440
DATE: 2/11/10

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 440, a bill regarding insignias.

We are recommending that the law allowing insignias be repealed. We have found that insignias are seldom, if at all, being used by the public. The law went into effect in 1953. Since that time, our office has filed a total of 70 insignias. However, 35 of those have been filed by the same person, who is an incarcerated felon. In fact, we have not had an insignia filing from anyone other than this prisoner for the past 11 years. This causes us concern that perhaps the insignia is not being used in the way it was intended. We also did a survey of other states asking if they allow for insignia filings. Out of 17 that responded, only one other state allowed insignia filings. The other states would allow an insignia to be filed as a servicemark.

Kansas does allow for servicemark and trademark filings under KSA 81-202 *et seq.*, and an insignia could be filed as a servicemark or a trademark. There are strict remedies found in the trademark and servicemark statutes (see KSA 81-215) when a violation occurs.

SB 440 repeals the insignia law, however, it does not take away any options for consumers as they can file the insignia under current Kansas trademark and servicemark law.

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

Sheri L. Smiley, Staff Attorney
Kansas Secretary of State

Senate Judiciary

2-11-10

Attachment 4

TESTIMONY OF THE SECRETARY OF STATE
ON SB 441
DATE: 2/11/10

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 441, a bill regarding Limited Partnership Mergers.

We are recommending that when a limited partnership merges that they are required to file the same documents with our office as all other business entities that are a party to a merger. Currently a Limited Partnership can merge or consolidate under KSA 56-1a609. However, according to the statute they file a "certificate of cancellation" with our office as set out in KSA 56-1a153. Filing a certificate of cancellation in the record would make it appear to the public that the Limited Partnership has dissolved or cancelled, not merged. One of the key distinctions is that there is a survivor in a merger, but there is not a survivor in a cancellation. All other business entities are required to file a Certificate of Merger or an Agreement of Merger with our office.

We propose that the merger be permitted under the Business Entity Transaction Act, a law the legislature passed last session as Senate Bill 132 and goes into effect on July 1, 2010. The Business Entity Transactions Act is a comprehensive Act that allows for, among other things, business entity mergers. It requires that either a Certificate of Merger or the Agreement of Merger be filed with our office. The Business Entity Transactions Act currently has a provision in it stating that it does not apply to Limited Partnerships. We ask that this provision be repealed so that Limited Partnership Mergers are allowed under the Business Entity Transactions Act.

SB 441 repeals the current Limited Partnership Merger law, but it also repeals the section of the Business Entity Transaction Act that removes Limited Partnerships from the Act. By repealing the current Limited Partnership Merger law and a section of the Business Entity Transactions Act, Limited Partnerships would be able to merge under the Business Entity Transactions Act. This would require that Limited Partnerships file a Certificate of Merger or an Agreement of Merger, just as all other business entities do, and it puts the public on notice that a merger has occurred rather than a cancellation. This law change would allow the business record to accurately reflect the business transaction—a merger would be recorded as a merger.

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

Sheri L. Smiley, Staff Attorney
Kansas Secretary of State

Written Testimony in Support of Senate Bill 537
Jason E. Maxwell, Haskell County Counselor

I. Overview

Senate Bill 537 was drafted to address numerous documents that had been filed by one individual in Haskell County, Kansas. These documents stated that the individual was owed money from county, state and bank officials and typically stated that he had a lien or some form of interest in the official's property.

The individual had been the subject of numerous collection actions and at least one foreclosure. He represented himself in the actions and was unsuccessful in defending the actions. After this, he first began filing documents that indicated that he had been wronged by the judge. Soon thereafter, new documents indicated that he had been wronged by the sheriff due to the sheriff's assistance in recovery of assets pursuant to the court orders. Eventually, the documents that he filed covered many of the employees in the courthouse. Numerous documents have been filed with the District Court, Register of Deeds, Secretary of State and the Disciplinary Administrator's Office.

II. Documents Filed

A. Persons Targeted. The documents that have been filed since 2005 have included liens and/or claims targeting the following people:

1. Twenty-two (22) current and former officials/employees of Haskell County;
2. Four (4) district judges;
3. Three (3) non-judicial district court employees;
4. One (1) local bank officer;
5. Five (5) attorneys; and
6. One (1) bankruptcy trustee.

This is only a list of the persons that are listed in the county counselor file. There may be other documents that have been filed.

B. Organizations Targeted. Some of the documents have included liens or claims against the following:

1. Haskell County Sheriff;
2. Haskell County Court Clerk;
3. Board of County Commissioners of Haskell County; and
4. Centera Bank.

C. Titles of the Documents. The documents are not typically titled like normal legal documents. Some of the titles of documents are:

1. *Notice;*
2. *Demand;*
3. *Notice of Demand;*
4. *Bill for Restitution and Damages;*
5. *Affidavit and Notice of Default;*
6. *Judicial Notice;*
7. *UCC Financing Statement;*
8. *Letter of Inquiry with Affidavit of Merits;*
9. *Non-negotiable Registered Affidavit of Claim and Associated Security Agreement;*
10. *Demand for Payment;*
11. *Public Notice;*
12. *Application for Writ of Quo Warranto; and*
13. *Certificate of Dishonor and Breach of Contract Notice.*

D. Nature of the Documents. Regardless of the title, the documents typically have three elements. First, the documents allege that person has violated their duties of office or oath as an attorney, trustee or judge either by commission or omission. Second, the person owes him money. Third, he either has an interest in that person's assets or he has a claim against the person's insurance policy and/or bond.

III. Damages From Fraudulent Liens or Claims

- A. When either selling or refinancing a home, the aggrieved person cannot close due to a cloud on the title. Either or both parties could lose financing while waiting to clear the title.
- B. When the aggrieved person has sold their crops or livestock, their payment could be withheld due to a fraudulent financing statement. This could cause the farmer/rancher to fail to make a payment to the bank in a timely fashion. The end result could be a foreclosure.

III. Current Remedy

Currently, the basic remedy is to set aside the lien or claim pursuant to K.S.A. 58-4301. This statute does not have any remedies available other than the right to set aside the lien or claim. There is no deterrent that would keep the violator from taking the exact same action again. The aggrieved person cannot even recover their attorney fees or costs.

IV. Senate Bill 537

A. Remedies/Damages. The legislation would add the following remedies for someone who was the subject of a fraudulent lien:

1. Damages up to \$10,000.00;
2. Costs and Attorney Fees;

B. Restraining Order. The district court could enter an order restraining the from filing any fraudulent liens or claims. The court could also restrain the person from filing any future liens or claims of any kind without court approval. This order could be modified or terminated by the court that enters the order.

C. Due Process. The new statute would require normal civil service to begin the action.

VI. Amendments

Senate Bill 537 should probably be amended to add the following language in the New Section as stated on the first page in the following regard:

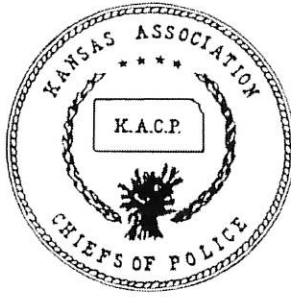
A. Subsection (b) should be amended to read as follows:

In such an action, the burden shall be on the plaintiff *to prove by a preponderance of the evidence* that the defendant knew or should have known that the documents filed or recorded were in violation of K.S.A. 4301, and amendments thereto.

B. Subsection (g) should be amended to reflect that the first paragraph would be labeled as (g)(1) and the following subsection should be added as (g)(2):

A contempt action under this section may brought by any person who is aggrieved as a result of the violation of the court order entered pursuant to subsection (e) regardless of whether the person was a party to the original proceeding.

Respectfully Submitted,
Jason E. Maxwell



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James Braun
Region V
Hays Police Dept.

Vernon Ralston
Region VI
St. John Police Dept.

February 11, 2010

Testimony to the Senate Judiciary Committee In Support of SB537 Concerning Liens

Chairman Owens and Committee Members,

The problem of the filing of false liens is not a new one. It comes up every few years. About 12 or so years ago, there was a group in north central Kansas filing unjustified liens against law enforcement officers, chiefs of police, sheriffs, and other public officials. These people had no basis for the filing of their lien which was done purely to harass and cause hardships on the persons against whom the lien was filed. As a result there was legislative action to expedite the determination of validity of a lien to allow the person whom the lien was placed against to more quickly remove these fraudulent liens. That legislation helped and the activity stopped for a short period. Since then there have been isolated cases of this abuse.

Today, we have further activity of this nature and again, a legislative remedy is being sought. This is well justified based on the fraudulent liens reportedly being filed targeting public officials. This bill proposes a civil remedy as well as the tools for a court to protect against repeat fraudulent claims. Importantly, this is done in a way that also allows the person filing a fraudulent lien to file legitimate liens in the future with court approval. So this bill balances the protection against fraudulent claims with the right of filing future legitimate liens.

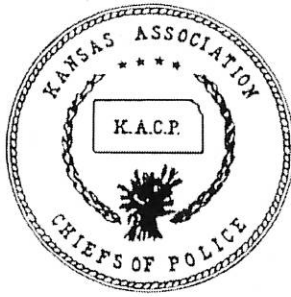
It is sad this legislation is necessary, but clearly it is. We urge the committee to recommend this bill favorably for passage.

Ed Klumpp
Legislative Committee Chair
eklumpp@cox.net
Phone: (785) 640-1102

Senate Judiciary

2-11-10

Attachment 7



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Hays Police Dept.

Vernon Ralston
Region VI
St. John Police Dept.

February 11, 2010

Testimony to the Senate Judiciary Committee In Support of SB537 Concerning Liens Supplemental Testimony

Chairman Owens and Committee Members,

There are actually two different problems occurring with the fraudulent liens leading to this legislation.

First, the property owner most often has not been given notice a lien was filed. This results in the property owner not even knowing they have an issue to ask the court to resolve. In these fraudulent liens, the property owner typically becomes aware of them when they attempt to sell their property or use the property for loan collateral. This results in the property owner's inability to conclude the business transaction until the lien is removed through the court process. This part of the problem is still not addressed in the bill, and from the information I have been provided is not addressed in current law.

Second, the court actions needed to clear the lien, a remedy for expenses and damages, some punitive damage to the person filing the fraudulent lien, and finally the courts ability to stop further fraudulent liens. This part is covered in existing law and in the proposed new law already in the bill.

One solution is to add some language to these statutes on liens similar to the notification language contained in the mechanics lien statutes. The following comes from K.S.A. 60-1103 (c):

"Recording and notice. When a lien is filed pursuant to this section, the clerk of the district court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien statement to be served personally upon any one owner, any holder of a recorded equitable interest and any party obligated to pay the lien in the manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of the lien statement to any one owner of the property, any holder of a recorded equitable interest and to any party obligated to pay the same by restricted mail or (3) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises. The provisions of this subsection requiring that the claimant

serve a copy of the lien statement shall be deemed to have been complied with, if it is proven that the person to be served actually received a copy of the lien statement. No action to foreclose any lien may proceed or be entered against residential real property in this state unless the holder of a recorded equitable interest was served with notice in accordance with the provisions of this subsection."

While this subsection covers the mandate to give notice, there still could be a problem not addressed. The lien would still be on the property if notice is not given by the person filing the lien. This is due to no penalty or verification of notice. Perhaps a provision could be added to require the filing of an affidavit of notice with the court within a specified time period or the lien would be removed.

We would appreciate the consideration of this additional protection.

Ed Klumpp
Legislative Committee Chair
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Kansas Peace Officers' Association



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Senate Judiciary Committee

Testimony of Kyle Smith

In Support of SB 537

February 11, 2010

Chairman Owens and Members of the Committee,

On behalf of the Kansas Peace Officers Association, this testimony is submitted in support of SB 537. This legislation addresses an abuse of process problem that has occurred before. Some of you may remember back in the late 1990's when members of the 'posse comitatus' decided that filing bogus liens was a way of disrupting government and harassing public servants. As a result, K.S.A. 58-4301 was created to provide a quicker means to remove these bogus liens that were designed merely to harass and had no basis law.

Unfortunately that statute has met with limited success. As demonstrated by the recent events in Haskell County, merely facilitating elimination of the lien is insufficient to deter some people from filing fraudulent liens again and again. Law enforcement officers have quite enough challenges in their careers without being subject to the hassle and legal expense of fighting these bogus claims. While not experts in U.C.C. law, we do know that the current system is lacking and stronger deterrence is needed. While we are most comfortable with criminal sanctions, and those might be ultimately what it takes to stop this abuse, we urge the passage of SB 537 as a step in the right direction.

Thank you for your time and consideration.

Senate Judiciary

2-11-10

Attachment 8