

Approved: May 1, 2012
(Date)

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairperson Forrest Knox at 8:02 AM on Monday, April 30, 2012, in Room 152-S of the Capitol.

All members were present except Clark Shultz, who was excused.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Gary Deeter, Committee Secretary

Conferees appearing before the Committee:

Whitney Damron, representing Persels and Associates
Chris Joseph, Joseph and Hollander, LLC

Others in attendance:

See attached list.

The Chair invited conferees to provide an informational hearing on **HB 2793 – Kansas credit services organization; exemptions for attorneys and such attorneys' law firm.**

Staff Matt Sterling reviewed the salient aspects of the bill, saying that the bill amends the Kansas credit services organization act, specifically exempting lawyers and law firms from certain requirements of credit-counseling associations, requirements such as providing an education program for clients or identifying a consumer's creditors. Mr. Sterling noted an ongoing lawsuit dealing with the issue of whether the 2004 act exempts law firms as well as individual lawyers, and he commented that both the district court and the appellate review found that only lawyers and not law firms were exempt from the requirements of the act (Attachment 1).

Mr. Sterling responded to numerous questions from Committee members:

- Corporations cannot be licensed to practice law in Kansas.
- The bill changes definitions to include law firms in the exemption granted to lawyers.

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- The bill does not address out-of-state law firms or out-of-state lawyers. A lawyer must be licensed to practice law in Kansas.

Whitney Damron, representing Persels and Associates, a credit-counseling law firm in Maryland with branch offices in 48 states, appeared before the Committee as a proponent for the bill (Attachment 2). Giving a brief history of the bill, he said the 2004 legislature passed **SB 509** at the request of the Office of the State Bank Commissioner (OSBC) to require registration of Credit Service Organizations under the proposed Kansas Credit Service Organization Act; the bill specifically exempted attorneys from the act. He noted that under the definition section of the act (**K.S.A. 50-1117(f)**), “person” includes corporations and partnerships, a definition which seems clear but is not shared by the OSBC. Besides the definition in the act, he said there have been no rules or regulations promulgated to explain the definition nor have any administrative orders been issued to clarify the definition. He stated that the present bill simply clarifies the original legislative intent to exempt law firms as well as lawyers from the 2004 act.

Mr. Damron provided these responses to members’ questions:

- The Persels model allows staff in Maryland to do the preliminary work, but attorneys licensed in Kansas provide the legal counsel.
- There is no definition currently provided for the term “incidental to the practice of law.”
- The OSBC lawsuit has been appealed to the Kansas Supreme Court; the Court has not indicated whether or not it will accept the appeal. This bill has no direct impact on that lawsuit.
- The Kansas Attorney General has indicated that he is not pursuing the issue.
- Several Kansas attorneys do what my client does. Oversight by the OSBC is inappropriate for legal work.
- The 2004 legislation addressed not-for-profit credit-counseling services. For that reason attorneys were specifically exempt, even if they did provide similar services.
- Across the country there is no pattern for regulating credit-counseling services.

Chris Joseph addressed the Committee as a proponent; he stated that the distinction between an attorney and the law firm that he represents is a semantic distinction irrelevant in the real world (Attachment 3). He listed 15 activities currently provided by attorneys as credit-counseling services; he explained that law firms could no longer provide these services on behalf of clients were the court to uphold the separation of a lawyer from a law firm. He noted that the court did

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not address a key question: “Is what you are doing the practice of law?” Instead, the court focused on two sentences; the bill clarifies the meaning of those two sentences.

Answering questions, Mr. Joseph replied that the exemption was originally put in place so that the OSBC did not regulate the practice of law; the intent of the original act was to regulate not-for-profit credit-counseling services.

The Chair noted written-only support for the bill:

- Thomas Gilman, Redmond and Nazar LLP ([Attachment 4](#)), and
- Deborah McIlhenny, Hutton and Hutton Law Firm ([Attachment 5](#)).

The Chair also noted that no representative from the OSBC was present.

The meeting was adjourned at 9:09 a.m. The next meeting is scheduled for Tuesday, May 1, 2012, at 8:00 a.m. in Room 152-S.