

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Ray Cox at 3:30 P.M. on March 7, 2005 in Room 527-S of the Capitol.

All members were present except:
Tom Burroughs- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Michele Alishahi, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Patti Magathan, Committee Secretary

Conferees appearing before the committee:

Scott Strasburg, Byrd Memorial, Atchison
Bill Wright, Kansas Cemetery Association, Hutchinson
Lavanta Hall, Lawrence
Bill Stalter, Stewart Enterprises, Kansas City
Warren (Ren) Newcomer, Newcomer Funeral Service Group, Topeka
Mark Tomb, League of Kansas Municipalities
Judi Stork, Office of State Bank Commissioner
Doug Wareham, Kansas Bankers Association
Kathy Olsen - Kansas Bankers Association

Others attending:

See attached list.

Chairman Cox opened the floor to work **SB 57 - Consumer protection; exemption for occasional sale of certain repossessed collateral.**

Melissa Calderwood, Kansas Legislative Research Department, provided overviews of **SB 57** and **SB 104**. **SB 57** amends the Kansas Consumer Protection Act by providing a definition of a supplier under the act. **SB 104** authorizes the State Bank Commissioner to examine the fiduciary affairs of any officer or employee of any bank or trust company serving in a fiduciary capacity specifically related to the safety and soundness of that company, without receiving authorization from the State Banking Board.

Representative O'Malley made a motion to pass **SB 57** favorably. Motion was seconded by Representative George. The motion passed.

Chairman Cox opened the floor to work **SB 104 - Banks and banking; examination of certain business entities affiliated with banks or trust companies.** Representative Dillmore made a motion to pass **SB 104** favorably. The motion was seconded by Representative Olson. The motion passed.

Chairman Cox opened the floor to hear **SB 101 - Banks and banking; prohibition of employment of officers or directors who have been removed for cause.**

Proponent **Judi Stork**, Office of the State Bank Commissioner, explained that this bill gives the State Banking Board the authority to prohibit officers or directors who have been removed from their position from serving in another state bank or trust company in Kansas. **(Attachment 1)**

Proponent **Kathy Olsen**, Kansas Bankers Association, said that the KBA wants to register their support for this bill which empowers the state banking board to not just remove an officer or director from employment at the particular state bank or trust company, but to also prohibit the further participation in any other state bank or trust company in Kansas. **(Attachment 2)**

Chairman Cox closed the floor for hearing on **SB 101** and opened the floor to hear **SB 114 - Banks and banking; civil penalty authority for state bank commissioner.**

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Proponent **Judi Stork**, Office of the State Bank Commissioner, opened by saying that this bill creates a new statute in the banking code which provides adequate enforcement tools for the Office of the State Bank Commissioner to ensure compliance with state banking laws. **(Attachment 3)**

Doug Wareham, Kansas Bankers Association, stated that his organization was neutral on this bill. They appreciate that a strong majority of other states, as well as the Federal Deposit Insurance Corporation and Federal Reserve, already possess this authority. They also acknowledge that a fine is a better tool than “cease and desist” orders, which is the tool they now have, but they are not entirely happy with a civil money penalty. **(Attachment 4)**

Written testimony was provided by proponents **Renee Murray**, Community Bankers Association, **(Attachment 5)**, **Richard Rucker**, Home Bank & Trust Co., Eureka, **(Attachment 6)** and Conference of State Bank Supervisors **(Attachment 7)**.

Chairman Cox closed the hearing on **SB 114** and opened the floor to work **SB 101**. Representative George made a motion that the bill be passed favorably which was seconded by Representative Vickery. Motion passed.

Chairman Cox opened the floor to work **SB 114**. Representative Olson made a motion to pass the bill favorably. Representative Grant seconded the motion. Motion passed.

Chairman Cox opened the floor for hearings on **HB 2275 - Cemetery companies, monument companies, prohibitions, penalties.**

Proponents:

Scott Strasburg, Byrd Memorial, Atchison, testified that **HB 2275** would provide Kansas consumers protection against unethical and illegal business practices currently being used by some Kansas cemeteries. **HB 2275** will not have any effect on properly managed cemeteries. Mr. Strasburg provided information on related Federal case law and results of an informal poll of three Kansas cemetery’s fees. **(Attachment 8)**

Representative Grant asked Mr. Strasburg how often this happens. Mr. Strasburg replied that approximately ten to twelve times a year he becomes aware of situations where the cemetery either charges higher fees for their customers who want to set their own stones, or is not cooperative with these customers.

Representative Faust-Goudeau asked if these were the majority or were they isolated incidents. Mr. Strasburg replied that he is not talking about all cemeteries, but he does encounter some level of difficulty with approximately one-half of the cemeteries he deals with.

Lavanta Hall, Lawrence, recounted difficulties she had while arranging for interment of her son. They included sloppy records, unexpected fees, and exploitive methods. She asked the committee to pass **HB 2275** to protect consumers, like herself, from being taken advantage of at a vulnerable time while trying to deal with the loss of a loved one. **(Attachment 9)**

Opponents:

Bill Wright, representing Fairlawn Cemetery, Hutchinson and the Kansas Cemetery Association, spoke about how his cemetery treats third party monument clients, dealers, and installers, and how the industry deals fairly with third party providers. He also explained the Fairlawn Cemetery fee structure and explained that fee structures are unique to each cemetery. Mr. Wright informed the committee that the Cemetery Consumer Service Council is a process already in place which allows consumers to obtain recourse in the advent of problems. **(Attachment 10)**

Bill Stalter, Stewart Enterprises, Kansas City, voiced his opposition to the provision in this bill that would prohibit a cemetery from “bundling” property and services for sale. The bill also fails to recognize the cemetery’s rights to ensure the installer is qualified and that the installation is done properly. **(Attachment**

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Warren (Ren) Newcomer, Newcomer Funeral Service Group, Topeka, explained that his cemeteries allow the placement of monuments and markers which are not purchased from them. They ask that those companies who wish to enter their grounds to set monuments abide by the rules applicable to all and promise through insurance that they are responsible. They require that the third party supplier apply on standard forms so that they may see that the monuments comply with their rules. They require that the foundation future care fees are paid, and that the costs the cemetery incurs are compensated. **HB 2275** would eliminate any responsibility on the part of the monument seller and place the entire burden of future care of the marker upon the cemetery, without any consideration for that service. (**Attachment 12**)

Mark Tomb, League of Kansas Municipalities spoke as a representative of the many cities across the state who own and operate cemeteries as a public service to the residents of their communities. HB 2275 would dramatically impact the ability of municipally owned cemeteries to impose reasonable fees on any monument vendor. It would also increase the operational costs of cemeteries owned and operated by local governments, without the added liability protection awarded to third party suppliers under this bill. (**Attachment 13**)

Representative Dillmore asked if publically owned cemeteries could be exempt from the bill. Mr. Tomb replied that they could. Representative Dillmore then inquired if there are known specifications for monuments and if they are disclosed at purchase. Mr. Wright replied that there are specifications and they are disclosed. Representative Dillmore then asked if there is protection of the "memorial care fund" if the cemetery is transferred to a new owner. Mr. Wright replied that there is not.

Representative Faust-Goudeau asked for clarification on future upkeep fees, and whether they would apply to markers purchased from a third party. Mr. Wright replied that the actual grounds are maintained thru the perpetual care trust fund which is mandated and audited by the State. Any improvement, such as a memorial, flower bed, or tree, is not included in the perpetual care fee. Improvements are covered under the memorial care fund.

Representative Hummerickhouse asked Mr. Wright if the memorial care fund is a requirement of the State of Kansas. Mr. Wright stated that it is not. Representative Hummerickhouse also asked if a third party supplier bears responsibility for care of a monument once it is placed. Mr. Wright stated that, in his cemetery, care of all monuments is assumed by the cemetery once it is placed.

Representative Brown asked if there are specifications provided to third party suppliers and if there are inspections once a monument is placed. There are specifications provided by the cemetery and there may be inspections at the discretion of the cemetery, although it is not a common practice in Kansas.

Representative Grant asked how common it is for problems to arise similar to those described by Mrs. Hall. Mr. Newcomer replied that problems similar to Mrs. Hall's are rare. He is familiar with the cemetery with which she was dealing and it is falling into disrepair due to a lack of funds.

Representative Dillmore asked about memorial care (monument) funds and how excess funds are distributed and how future rates are adjusted. Mr. Newcomer replied that the memorial care funds are voluntary on the part of the cemetery. He stated that the funds are utilized by most modern cemeteries.

Representative Cox closed the hearings on **HB 2275** and adjourned the meeting at 4:50 P.M.

Next meeting will be March 14, 2005.