

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, February 12, 2004, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Barbara Allen  
Janet Schalansky, Secretary of Kansas Social and Rehabilitation Services  
Melinda Lewis, El Centro, Inc.  
Louis Wade, Kansas Credit Association  
James Clark, Kansas Bar Association  
Leola Foster, Columbian National Title Insurance Co.

Others attending: See attached list.

### **SB 460 - Taxpayer identification numbers not to be used in obtaining drivers' licenses and other identification cards**

Chairman Vratil opened the hearing on **SB 460**, and explained the bill addressed tax payer identification numbers currently used to obtain a Kansas driver's license. Senator Barbara Allen testified in support of **SB 460**. An amendment added to SB 16 on the floor of the Senate last year is the subject of **SB 460**. The bill would strike the amendatory language that allows an applicant for a Kansas driver's license or identification card to provide an individual taxpayer identification number (ITIN) as proof of identification.

Senator Allen explained that she requested the statutory change as a result of a, August 8, 2003 letter from the Internal Revenue Service (IRS) to Sheila Walker, Director, Kansas Division of Motor Vehicles (DMV). A copy was attached to her written testimony. (Attachment 1) She went on to quote an excerpt from the IRS letter, "Several state government motor vehicle departments are accepting IRS-issued Individual Taxpayer Identification Numbers (ITINs) as proof of identification for state driver's licenses, prompting us to issue this reminder –**ITINs are not valid for identification outside the tax system.**" The letter went on to say, "Although we require ITIN applicants to provide proof of identity documents, we accept these documents at face value without validating their authenticity with issuing agencies or conducting applicant background investigations. We do not require applicants to appear in person, and third parties may submit applications and provide documentation on behalf of others. Also, since we issue ITINs for tax filing purposes only, we do not verify applicants' legal presence in the U.S."

Senator Allen said the IRS letter states: "If your state is considering legislation to accept ITINs as proof of identify for driver's licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings." Senator Allen stated that the language in current law allowing an applicant to submit an ITIN if that person does not have an SSN, compromises the security and verifiability of state-issued identification, and asked the Committee to support **SB 460**.

Chairman Vratil clarified the bill deletes the option of using ITIN to obtain a driver's license or ID card. He added that the options that would remain in statute were for an applicant to present a social security number or have an affidavit indicating the applicant had a SSN. Senator Allen agreed with the Chairman's interpretation of the bill.

Senator Donovan asked if this would impact any people currently holding driver's licenses in Kansas that used ITINs to acquire them. Chairman Vratil responded that it would not impact those people until

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renewal time.

Janet Schalansky, Secretary of Social and Rehabilitation Services, submitted written testimony in support of **SB 460**. (Attachment 2)

Melinda Lewis, El Centro, Inc., submitted written testimony as a neutral conferee on **SB 420**. (Attachment 3)

The Chairman distributed copies of the Fiscal Note for **SB 460** which said the Department of Revenue had stated that changes would have to be made to drivers' license handbooks and staff would have to be retrained. These costs could be absorbed within the agency's current budget. (Attachment 4)

Chairman Vratil closed the hearing on **SB 460**.

### **SB 423 - Wage garnishment, assignment of account**

The Chairman opened the hearing on **SB 423**, and explained that the bill would repeal a provision of the Code of Civil Procedure which prohibits wage garnishments for assigned accounts. He gave the background for a bill. In current law, if an account is sold, assigned or transferred to a third party, that third party cannot use garnishment to collect the account. The bill would eliminate that provision from current law.

Louis Wade, Kansas Credit Attorney's Association, testified in support of **SB 423**. He said Kansas law imposes an unreasonable restriction on commerce, and is the only state in the Union to impose a limitation on wage garnishment based on who is entitled to payment. He described the process used in collection cases. Mr. Wade commented that the current limitation against use of wage garnishment for assigned accounts is bad policy for the State of Kansas. He stated that the owner of an account, or debt by assignment, is free to use bank garnishment under the current law. Mr. Wade continued that such action poses a more drastic and harmful remedy to the judgment debtor because the entire account is frozen, and may be taken in payment of a judgment. He pointed out that with wage garnishment there is a 25% limitation, providing some protection to the judgment debtor, and at the same time allowing the creditor to receive some payment. He explained that the judgment debtor is protected by other laws, obviating the need for protection under KSA 60-2310(d), i.e. the Fair Debt Collection Practices Act and the Kansas Consumer Protection Act. (Attachment 5)

Senator Pugh asked Mr. O'Connor to furnish the Committee members with a copy of a garnishment form which was received with Mr. O'Connor's written testimony and included therein.

Senator Umbarger called attention to a technical error in the drafting of the bill on page 2, line 40, Sub Section (g) should be (f), and Revisor so noted.

Copies of the Fiscal Note for **SB 423** were distributed to Committee members. (Attachment 6)

Chairman Vratil closed the hearing on **SB 423**:

### **SB 424 - Transfer of property into a trust; affect of insurance coverage, homestead exemption, redemption rights and due on sale clause**

Chairman Vratil opened the hearing on **SB 424**. James Clark, Kansas Bar Association (KBA), spoke in support of **SB 424**. He said the Kansas Bar Association requested the bill on behalf of the KBA Real Estate, Probate and Trust Section, have increasingly relied on the creation of revocable trusts as a significant part of an estate plan, often in lieu of a will. He explained that besides avoiding probate proceedings, revocable trusts are easily established, and generally require only the preparation of the trust document and transfer of the property to the trust. He said the ease of use was being threatened, and gave several examples of cases where problems ensued.

Mr. Clark stated that an estate planner can no longer assure a client that the use of a revocable trust will avoid the expense and delay of probate, because of the increased likelihood of litigation and uncertain results. He said the passage of **SB 424** would greatly reduce the uncertainty of the use of trusts to avoid

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probate, and urged the Committee to give favorable recommendation on the bill. (Attachment 7)

Leola Foster, Columbian National Title Insurance Co., testified in opposition to **SB 424**. She stated her Company had serious concerns that **SB 424** encroached upon their ability to contract with customers in a manner acceptable to all parties to the contract and in compliance with Kansas Statutes and the requirements of the Kansas Department of Insurance.

Ms. Foster testified that **SB 424** was in conflict with KSA 40-236 (b), and described the consequence of the conflict. Within Ms. Foster's written testimony she outlined some of the issues which could appear in the title to real estate after the title policy was issued to the original insured and which would affect the title conveyed to the Trust. (Attachment 8)

Ms. Foster affirmed that if the proposed bill is not defeated in Committee, Columbian National Title Insurance Co. recommended the underlined changes in the copy of the bill included with their written testimony. She said without those changes, the title insurance company is placed in the position of insuring acts suffered and assumed by other parties without knowledge and which in her opinion would constitute unsound underwriting practices, and a violation of KSA 40-236 (b). She added that the financial soundness of insurance companies would be affected to the detriment of all consumers. Ms. Foster asked that if the proposed bill passes out of the Judiciary Committee that it be amended in accordance with the changes underlined in the bill copy as noted above.

Following brief Committee questions and discussion, the Chair closed the hearing on **SB 424**.

Minutes of the February 26, 2004 meeting were presented for approval. Senator Donovan made a motion to approve the minutes, seconded by Senator Umbarger, and the motion carried.

The next scheduled meeting of Senate Judiciary is February 16, 2004.