

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 3, 2011, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Tamera Lawrence, Office of the Revisor of Statutes  
Lauren Douglass, Kansas Legislative Research Department  
Robert Allison-Gallimore, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Paul Post, Attorney, Topeka, Kansas  
Jill Michaux, Attorney, Neis & Michaux, P.A.  
John Hodge, Attorney, Lawrence, Kansas  
Alice Adams, District Court Clerk, Eighth Judicial District

Others attending:

See attached list.

The Hearing on **SB 12 - Allowing debtors to exempt the right to receive earned income tax credits from bankruptcy proceedings** was opened

Matt Sterling, Staff Assistant Revisor, presented an overview of the bill. ([Attachment 1](#))

Paul Post, Attorney, Topeka, Kansas, spoke before the committee as a proponent, and said that exempting the earned income credit would allow low income families, “the working poor”, to keep this source of funds for the benefit of their children. He stated he has been a lawyer for thirty-six years and a significant percentage of his private practice involves representing persons and families filing for bankruptcy, and provided the committee with information of how the earned income tax credit currently works when bankruptcy is involved. ([Attachment 2](#))

Jill Michaux, Attorney, Neis & Michaux, P.A., Topeka, addressed the committee in strong support of the bill. She told the committee she has represented Kansas individuals and small business proprietors in bankruptcy since 1982 and that she was the attorney in the 10<sup>th</sup> Circuit case called *Montgomery*, (*In Re Montgomery*, 224 F.3d 1193, 1194 (10<sup>th</sup> Cir. 2000), in which the Montgomery's attempt to exempt EIC in their bankruptcy was rejected. The circuit court said a specific exemption for EIC is required and that the general exemption for social welfare in K.S.A. 39-717 is not sufficient. She provided additional information regarding the policy of other states. ([Attachment 3](#))

John Hodge, Attorney, Lawrence, Kansas, appeared before the committee in support of the bill. He told of his years of experience in handling bankruptcy cases and that bankruptcy should not be filed when unnecessary, and that the bankruptcy law now requires people to get credit counseling from non-profit credit counseling before they can file bankruptcy. He said the purpose of exemptions in bankruptcy is to allow people to have a fresh start and not have everything taken from them. Often, people filing bankruptcy have no other choice in dealing with their debts and stated over sixty percent are caused by medical expenses. Most people who are entitled to earned income credits don't have a lot of assets and therefore, the earned income credit is very important to them and their children. He reminded the committee that the people who are entitled to the earned income are working people, many with low income jobs and barely making a living. ([Attachment 4](#))

Senator Vratil, Eleventh District, provided written testimony in support of the bill. ([Attachment 5](#))

Marilyn Harp, Executive Director, Kansas Legal Services, provided written testimony in support of the bill. ([Attachment 6](#))

There were no opponents.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 3, 2011 in Room 346-S.

The Hearing on **SB 12** was closed.

The Hearing on **SB 62 - Assessment of court costs under the Kansas standard asset seizure and forfeiture act** was opened.

Jill Wolters, Staff Revisor, provided an overview of the bill for the committee. (Attachment 7)

Alice Adams, District Court Clerk, Eighth Judicial District, addressed the committee in support of this bill. She stated the Asset Seizure and Forfeiture Act provides in K.S.A. 2009 Supp. 60-4177 that the proceeds of any sale shall be distributed in a prescribed order of priority, and includes “sale and court costs” as an item that may be paid in the second order or priority. She also explained while this provision appears to allow the assessment of the docket fee when forfeited assets are actually sold, there appears to be no express authority for the court to assess the docket fee when the object of forfeiture proceeding is cash and no sale occurs. She further provided the committee with information of how much money could be recouped in docket fees. Therefore, the KADCCA is in strong support to amend K.S.A. 2009 Sup 60-4107 and K.S.A. 60-4109 to provide that court costs, which in most cases would include only the docket fee, may be assessed by the court in asset forfeiture cases. (Attachment 8)

There were no opponents.

The Hearing on **SB 62** was closed.

The next meeting is scheduled for March 7, 2011.

The meeting was adjourned at 4:15 p.m.