

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on March 19, 2003, in Room 123-S of the Capitol.

All members were present except: Senator Donovan (E)
Senator Pugh (E)

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Bill Henry, Kansas Credit Union Association
Kathy Olsen, Kansas Bankers Association
Doug Smith, Kansas Credit Attorneys Association
Arlene Clayton, Citizen
Representative Jan Pauls
Kyle Smith, Kansas Bureau of Investigation
Keith Schroeder, Reno County District Attorney
Tom Drees, Ellis County Attorney
Paul Morrison, Johnson County District Attorney (written only)
Trista Curzydlo, Kansas Bar Association

Others attending: see attached list

HB 2297 - Garnishment; release of funds if no order to pay issued

Chairman Vratil opened the hearing on **HB 2297**. Bill Henry, Director of Government Affairs for the Kansas Credit Union Association, appeared before the Committee in support of **HB 2297**. The bill corrects a current problem for credit unions that receive a garnishment on the funds of a member, but never receive an order to pay the subject funds to the court. This bill would allow the financial institution to release the funds within a specified time if no order to pay the court was received by the financial institution. (Attachment 1)

Senator O'Connor asked for clarification of the garnishment process. The Chair explained the procedure with respect to garnishment and said that it requires an "Order to Pay In". He said the purpose of this bill is to clarify any doubt which occurs if an "Order to Pay In" is not presented to the judge for signature. Mr. Henry commented that the period of this procedure runs from six months to a year.

The Chair commented that he had a problem with the way the House amended the bill because he thought they created an ambiguity. Mr. Henry agreed and said the language beginning in line 28, page 1, says, "If, after 60 days following such receipt, no order to pay the court has been received, the garnishee shall release the funds..". He stated there could be reasons for a notice being missed, and suggested that the language would be better if it said "may release" instead of "shall release" because a vagueness exists here.

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Chairman Vratil explained that the ambiguity he was talking about regarded that under current Kansas law the Order of Garnishment issued by the Court attaches upon service on the garnishee. The language added by the House says, “ the Order of Garnishment pursuant to this section shall attach to such property if an Order to Pay the Court is served within 60 days.” He said that implies that the Order of Garnishment doesn’t attach when it is served on the garnishee”. Discussion continued on this issue and the confusing language in the previous statute. The Chairman stated that he had requested the Revisor to rewrite sections 1 and 2 in this bill so that it would be simplified and straight forward.

Kathy Olsen, Kansas Bankers Association (KBA), testified in support of **HB 2297**. She stated that in drafting the bill KBA was trying to provide a solution that after a period of time, the garnishee could unfreeze the account, thereby releasing the funds to the owner. Ms. Olsen explained that the House Committee’s amendment makes it clear that ownership does not transfer unless the garnishing creditor gets the order to pay served within 60 days of receipt of the answer by the garnishee. She said KBA was willing to work with the collection industry to establish a time period that all parties believe to be a reasonable period of time. She added that there was some suggested changes attached to her written testimony. (Attachment 2)

Doug Smith, Kansas Credit Attorneys Association (KCAA), testified in support of **HB 2297**. He stated that KCAA has been working with the KBA on the language of this bill since its introduction, and KCAA supports KBA’s amendments. He said KCAA has two concerns, one of which is the 60-day time frame which is not adequate, and asks that the Committee extend that period to 6 months. Mr. Smith explained the second change would be to delete the following language, contained on page 1, lines 25-29 and page 1, line 43 and continued on the top of page 2, lines 1-3: “*An order of garnishment pursuant to this section shall attach to such property if an order to pay the court is served within 60 days of receipt of the answer of the garnishee by the court.*” (Attachment 3)

Arlene Clayton appeared before the Committee to testify as a private citizen who has been a victim of garnishment in Saline County. She shared with the Committee her experiences of being garnished, and was working towards rectifying the burden of frivolous garnishments. (no written testimony submitted)

The Chair closed the hearing on **HB 2297**.

HB 2375 - Criminal procedure; preliminary examination, evidence, chain of custody

Chairman Vratil opened the hearing on **HB 2375**. Representative Janice Pauls testified in support of **HB 2375**, and explained that the bill will save time and expense for the prosecutors in the state when presenting evidence regarding physical evidence involved in a criminal preliminary examination. She said the bill provides that evidence may be introduced without actual testimony from all individuals involved in the chain of custody, and would be similar to that presently used in presenting lab reports in preliminary hearings. (Attachment 4)

Kyle Smith, KBI, testified in support of **HB 2375** which could save a lot of time and money at no cost to constitutional protections. He explained what the ‘chain of custody’ is in the trial process, and stated that real issues, if any, concerning the chain of custody could still be explored during suppression hearings or trial. He stated that the passage of **HB 2375** would allow officers to be out on the street protecting the

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public rather than waiting to testify, and would allow forensic scientists to spend more time on the bench and speed justice. He added that the bill would save the state and counties money by reducing continuances and save court, attorney, scientist and evidence custodian time. (Attachment 5)

Keith Schroeder, Reno County District Attorney, appeared in support of **HB 2375**. He said that the number of cases filed on adult criminal matters has doubled in Reno County over the past 15 years, and the number of drug related prosecutions has doubled over the past 4 years. He added that this year they are on a pace to double that number again. Mr. Schroeder stated that as the drug prosecutions rise, so do the demands on prosecutors and law enforcement agencies, and the defense bar has learned to recognize that the prosecution has limited time and resources. The amended **HB 2375** does not solely address drug prosecution concerns, and it will have an impact on many other types of prosecutions. He urged the Committee to pass the amended **HB 2375** as it will not infringe upon a criminal defendant's due process rights and it will free up valuable assets and time for the court system. (Attachment 6)

Tom Drees, Ellis County Attorney, testified in support of **HB 2375**, and submitted in his written testimony suggested changes in lines 20 and 22 regarding law enforcement officers and all persons who collected the evidence. (Attachment 7)

Paul Morrison, Johnson County District Attorney, submitted written testimony in support of **HB 2375**. (Attachment 8)

After brief Committee discussion and questions, the Chair called upon the only opponent to testify. Trista Curzydlo, Kansas Bar Association, spoke in opposition to **HB 2375**, and said the KBA Board of Governors is concerned that if this bill were enacted it would limit the ability of a defendant to contest the chain of custody in a preliminary hearing. She added that KBA's Board of Governors feels this bill inappropriately limits the ability of a defendant to mount a proper defense. (Attachment 9)

Following discussion and questions, the Chair closed the hearing on **HB 2375**.

Final action on:

HB 2032 - Eminent domain; interested parties; appeals; relocation assistance

Chairman Vratil reviewed **HB 2032**, and distributed a letter from James McLean, on behalf of KDOT. The letter indicates that the interested parties have gotten together and agreed on proposed amendments to **HB 2032**. Mr. McLean said the parties that worked together in drafting the language were KDOT, Kansas League of Municipalities, the Kansas Judicial Council, and the City of Olathe. (Attachment 10)

The Chair explained there were two concerns expressed during the hearing. On page 2, lines 23 through 27, were deleted by the House. The balloon amendment would propose to put language back in the bill indicating that the only issue to be determined upon an appeal of the appraiser's award, is for the compensation for the land that is being condemned.

The Chair explained that the second amendment that KDOT was proposing relates to the relocation award, and add new section 3 and new section 4. He said the difference between the two is that new section 3 deals with those cases where federal financial assistance is available in which the relocation

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award is required by federal law. He added that Section 4 deals with those cases where there is no federal funding involved, but the purpose of this bill is to require a relocation award in those cases as well. The purpose of sections 3 and 4 is to make that process a separate administrative process outside the confines of the eminent domain proceedings.

Committee questions and discussion continued. The Chairman announced that he would give Committee members time to study these proposed amendments, and will not take final action on this bill today.

The meeting adjourned at 10:37 a.m. The next scheduled meeting is March 20, 2003.