

Approved: July 13, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairperson Patton at 3:30 PM Tuesday, March 13, 2012 in 346-S of the Capitol.

All members were present except:

Mitch Holmes
Annie Kuether
Gene Suellentrop
Greg Smith
Dan Alford
Lance Kinzer

Committee staff present:

Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Nancy Schmidt Roush, Kansas Judicial Council
Ron Nelson, Kansas Judicial Council

Others in attendance:

See attached.

Vice-Chairman Patton opened the hearing on **SB 291–Amendments to the uniform trust code** and advised normally staff would provide an overview of the bill content, but proponent Nancy Schmidt Roush is competent to explain the bill.

Nancy Schmidt Roush testified in support of **SB 291** advising the bill has several parts to it. The first is amending K.S.A. 58a-411, Section 1, of the Uniform Trust Code, and 411 provides for a method to terminate or modify irrevocable trusts if there is consent of all the beneficiaries and the court finds that it does not violate a material purpose. The specific language this bill revises is the statement in current law that says a spendthrift clause is presumed to be a material purpose. Almost every trust that has been drafted has a spendthrift clause so the creditors do not have access to it- creditors of the beneficiaries. What is being proposed here is to go back to the

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actual uniform statute language that a spendthrift provision in the terms of a trust “is not presumed to” constitute a material purpose of the trust. This will be up to the court to provide whether the clause is a material purpose, it will not be presumed.

Section 2, amending 58a-505 of the Uniform Trust Code has four parts. The entire Section 505 has to do with claims after a person dies. The first thing is a procedural fix trying to bridge a disconnect between the probate code, which has its procedures for when a creditor needs to file a claim, and the court deciding whether to allow a claim. The proposed amendments to subsection (a) (3) confirm such claims are barred under the same non-claim period as applies to estates, in keeping with current law as stated in the recent decision, *Nelson v. Nelson*, 288 Kan. 570 (2009). What we are saying is let there be one forum- probate estate- and one procedure, and that way a creditor is clear you have to file in the probate court, and the creditor also does not have to file as a second step as a revocable trust. This is a procedural fix intended to comply with the result of *Nelson v. Nelson*. We are also amending the probate court language to make clear the probate court can hear both types of claims.

Ms. Schmidt Roush went on to identify the purpose of the new subsections (a) (3) (B through E) and discussed Section 4, amending K.S.A. 59-103 which gives the probate court the authority to deal with payment of claims against revocable trusts. ([Attachment 1](#))

Vice-Chairman Patton acknowledged that written testimony in support of **SB 291** has been submitted by Joe Molina, Kansas Bar Association. ([Attachment 2](#))

Vice-Chairman Patton closed the hearing on **SB 291** and opened the hearing on **SB 293–Filing of wills and admission to probate** and asked Ms. Schmidt Roush to once again explain the bill as the proponent of the bill.

Ms. Schmidt Roush testified in support of **SB 293** advising what this bill does is combine two separate statutory provisions that deal with filing a will. The reason to combine them is to eliminate some confusion about which one applies in what circumstance. Anybody who has an original will can send it to the court and, in addition, anybody that wants to preserve its validity can file an affidavit to do that. Again, this is just existing law, but it is in two different places. In addition, the affidavit that will preserve the validity of a will has been modified so there is no precondition there be a recital on the amount of assets or the amount of debt. It makes the affidavit to file the will and preserve the record simpler. ([Attachment 3](#))

Vice-Chairman Patton advised there is written testimony in support of **SB 293** from Joseph Molina, Kansas Bar Association. ([Attachment 4](#))

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Vice-Chairman Patton closed the hearing on **SB 293** and opened the hearing on **HB 2741—Amending the Kansas family law code**. Vice-Chairman Patton offered usually staff explains the bill content, but the proponent would be able to explain the bill.

Ron Nelson testified in support of **HB 2741** and explained last year, the Legislature passed *SB 24* which reorganized all of the domestic code statutes into a single family law code in Chapter 23. There were a number of problems with the way *SB 24* was drafted, including the omission of some 2010 amendments to various divorce statutes, omission of some prefatory sections, and some unintentional changes to substantive provisions. The Revisor's office and the Judicial Council's Family Law Committee agreed that a clean-up bill was necessary, and **HB 2741** is the result of the combined efforts. (Attachment 5)

Vice-Chairman Patton acknowledged written testimony in support of **HB 2741** was submitted by Joseph Molina, Kansas Bar Association. (Attachment 6)

Vice-Chairman Patton closed the hearing on **HB 2741**.

Vice-Chairman Patton asked the Committee to consider final action on **SB 330—Relating to malpractice liability screening panels**. Katherine McBride provided an overview of the bill content.

Representative Rubin moved, Representative Bruchman seconded, to recommend SB 330 favorably for passage. Motion carried.

Vice-Chairman Patton asked the Committee to consider final action on **SB 366—Relating to attachment and garnishment**. Katherine McBride provided an overview of the bill content.

Representative Rubin moved, Representative Brookens seconded, to recommend SB 366 favorably for passage. Motion carried.

Vice-Chairman Patton asked the Committee to consider final action on **SB 367—Expanding jury pools to include Kansas income tax filers**. Katherine McBride provided an overview of the bill content.

Representative Rubin moved, Representative Brookens seconded, to recommend SB 367 favorably for passage.

Representative Rubin moved, Representative Brookens seconded, to amend SB 367 with a balloon amendment.

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Representative Rubin stated he had a balloon amendment to this bill, which staff handed out. (Attachment 7) The intent of the amendment came about from the Secretary of State's office. Sometimes prospective jurors disqualify themselves from serving on a jury by stating they are not citizens, and so the intention of this bill is to have that information reported to the Secretary of State's office so those individuals can be compared to the voter rolls. If they are not legal citizens, they shouldn't be listed on the voter rolls. Apparently, the Secretary of State has requested this information in the past and has been told the information is confidential and is not accessible unless there is a change in the law. This amendment is to correct that deficiency.

The amendment has a balloon at the bottom of page 1, at the end of Section 1. For completeness, there will be a new additional section, separately numbered, that requires the court to ask the juror separately to verify they meet the qualifications to be a juror, which includes Subsection (b) above, which requires they be a citizen of the United States.

Representative Brookens inquired of Representative Rubin what specifically K.S.A. 43-156 does as a statute. Representative Rubin stated it is on the back page of the amendment, information will be included as a section. There is a balloon on the front and the amendment will bring in the information on the back side as well. Ms. McBride stated it is only a requirement that the juror be a resident of the county.

Representative Pauls suggested on the back page on (b), a juror no longer has to be a citizen of Kansas. Representative Rubin offered we may want to affirm this with the staff revisors, but he believes it is stated elsewhere in the law they be a citizen of the United States, and it is intended to address the circumstance where the home domicile of the individual might be a state other than Kansas, and one the individual will return to permanently, but they can still serve as a juror in Kansas as long as they are a citizen of the United States. Ms. McBride stated it is only a requirement the juror be a resident of the county.

Representative Pauls inquired if someone were in the military and was a resident of Iowa but were living in Kansas, are you saying that they now, under the current law, they could not be a member of the jury because they could not be a citizen of the state of Kansas. It appears to me that you are actually making a change in existing law.

Ms. McBride stated she did not think the Secretary of State's office meant to affect members of the military.

Representative Pauls stated under current law right now, if you are a citizen, if you are in the military- and could be living on base somewhere- they could still be called for jury trials.

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Rubin stated he agrees with Representative Pauls, this changes current law. It was not the intent he had in this amendment as is expressed on the back page of the amendment in subparagraph (c). That change was not something he requested, nor is he aware the Secretary of State's office requested either. Ms. McBride stated the Secretary of State did look at this and this was an issue we raised with them. Representative Rubin stated, as the maker of the amendment, he would not object to changing it back to "state" instead of the "United States" subparagraph (b). Representative Pauls offered he could do a combination of both as an option. Representative Brookens inquired whether you could be a citizen of the state of Kansas without being a citizen of the United States. He did not think so; it is rather impossible. Representative Pauls stated she would not think so, but it is still an interesting change.

Vice-Chairman Patton clarified the motion maker wishes to make this change, and the second agrees, so the amendment can be considered changed. Representative Rubin concurred stating paragraph (b) on the back will read "citizen of the state" and delete "United States", which puts it back to existing law.

Representative Meier inquired if one has a green card and works in Kansas, are they considered a citizen of the state. The consensus was no, they are not citizens.

Representative Rubin moved, Representative Brookens seconded, to amend SB 367 with the balloon amendment as edited. Motion carried.

Representative Pauls moved, Representative Ward seconded, to amend SB 367 to add information in Section 1 of K.S.A. 43-158 (a) that identifies what persons may be excused from jury service.

Representative Pauls advised this was a proposed amendment from Representative Colloton. She stated when the language was first added to the statute, when it was passed, breastfeeding a child created lot of controversy, and some judges were more amenable to excusing these persons, and this is probably to address judges who might not want to excuse these women. She closed on her motion. (Attachment 8)

Representative Pauls moved, Representative Ward seconded, to amend SB 367 to add information in Section 1 of K.S.A. 43-158 (a) that identifies what persons may be excused from jury service. Motion carried.

Representative Brookens stated he would like to reconsider his yes vote on the Rubin amendment.

Vice-Chairman Patton restated Representative Brookens' motion to reconsider the motion to

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amend the Rubin amendment, which already was passed. Representative Brookens concurred, stating having been on the prevailing side, reluctantly, he thinks this bill is an important one to be able to increase the jury pool. He is concerned it may not run on the floor with issues that relate to the amendment. He does not think this is why it was added, but he would respectfully ask to reconsider it.

Representative Brookens moved, Representative Ward seconded, to reconsider the Rubin amendment to **SB 367**.

Vice-Chairman Patton stated there is a motion and second to reconsider the decision the Committee made to add the Rubin amendment, and if the motion passes, we will be back on the amendment.

Representative Brookens stated it is with reluctance he does this because he is not opposed to the amendment, but is concerned that dealing with the issues of citizenship, non-citizenship, voting, etcetera, this bill- which he does believe needs to pass out- is ripe for not just one, but a ton of amendments dealing with the aspect of lawful residence in the United States. He would like this bill to be able to come out and be dealt with. Consequently, he would like to reconsider his vote so we do not enter that aspect of life.

Representative Rubin expressed whether this will open the bill up to additional amendment or discussion on the floor is problematic and something to debate, but he feels the Committee acted wisely in passing the amendment. What we are saying is folks who are non-citizens should not be able to pick and choose when they want to assert it and want not to assert it. Asserting non-citizenship for the purposes of escaping jury duty is why he thinks it is very germane to the bill. Asserting their non-citizenship to escape jury duty but staying on voter rolls is an inconsistency that this amendment addresses. Representative Rubin suggested the Committee should vote against the motion to reconsider.

Representative Ward stated, having been involved with jury trials for a long time, one of the big problems they have in Sedgwick County is getting jurors- having a pool large enough to deal with particular major felony cases. He is worried that this makes it harder, unintentionally, for that to happen, and asked if Representative Rubin could see this problem. Representative Rubin stated coming from Johnson County it is not so much a problem, but he can see in other counties it might be. An individual who is not a citizen is not qualified to serve in any event. We do not want to be increasing jury pools with individuals who are not qualified, and this is what the amendment addresses.

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Representative Brookens moved, Representative Ward seconded, to reconsider the Rubin amendment to **SB 367**. Motion failed.

Representative Rubin moved, Representative Bowman seconded, to recommend **SB 367** favorably for passage as amended. Motion carried.

Vice-Chairman Patton advised he was not sure if the Chair would be presiding tomorrow or not. Two bills are scheduled for hearing tomorrow, **SB 292** and **SB 297**. He advised the Committee to be prepared to work any bills previously heard.

The next meeting is scheduled for March 14, 2012.

The meeting was adjourned at 5:53 p.m.