

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 25, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Annie Kuether-excused
Representative Jason Watkins-excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Kyle Mead, Lawyers Title of Topeka
Representative Rocky Fund
Bruce Tomlinson, Kansas Association of Licensed Investigators
John Ellis, Kansas Association of Private Investigators
Randy Hearrell, Kansas Judicial Council
Mark Knackendoffell, Kansas Judicial Council-Probate Law

Others attending:

See attached list.

The hearing on **HB 2305- Manufactured homes and mobile homes, treated as real property, when** was opened.

Kyle Mead, representing Lawyers Title of Topeka, spoke as a proponent of the bill. He explained some of the unforeseen, unintended consequences that arose from the application of the Kansas manufactured housing act, specifically K.S.A. 58-4214. He said prior to the amendment of the statute and creation of the "surrender" title procedure, it was a commonly accepted practice in the title industry to consider a Mobile Home or Manufactured Housing unit to be an affixed part of the real estate and no longer personal property if the following attributes were true:

- 1, The manufactured home or mobile home has been permanently affixed to real property, by placement upon a permanent foundation of a type not removable intact from such real property and the axles and wheels have been removed.
2. The manufactured home or mobile home is being taxed as real property;
3. All personal property liens on the manufactured home or mobile home have been paid and released.

This bill would amend the Kansas Manufactured Housing act and establish a manufactured or mobile home as real property if a certificate of title was issued on the property before January 1, 2003 and meets the three criteria previously mentioned. In addition, this bill would allow for, and require, documentation to be filed with the local Register of Deeds, as evidence of the status of the property as real property, which had been generally accepted and presumed. He advised this bill should provide the workable solutions to the problems they have been facing. (Attachment 1)

Neutral-Written Only:

Martha Smith, Executive Director of the Kansas Manufactured Housing Association, provided written support as a neutral position of the bill. (Attachment 2)

There were no opponents.

The hearing on **HB 2305** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 25, 2009, in Room 143-N of the Capitol.

The hearing on **HB 2311 - Authorizing licensed private detectives to serve process statewide** was opened.

Representative Rocky Fund, appeared as a sponsor and proponent of the bill and introduced Mr Bruce Tomlinson to the committee.

Bruce Tomlinson, representing the Kansas Association of Licensed Investigators , outlined several items that were developed by their association that would make the serving process part of their work more efficient. (Attachment 3)

John Ellis spoke on behalf of the Kansas Association of Private Investigators and also supports passage of this bill. He also stated the current Private Detective Licensing Act defines “detective business” in KSA 75-7b01 using this definition as the basis for determining who must be licensed based on their activities. Terminology in that definition includes location investigations of the type frequently done by process servers making licensing a requirement unless a specific exemption to the licensing act is met. He also advised in the past, some attorneys, process servers and others have asserted that the court appointment order for process servers overcomes the private detective licensing act requirement or that the requirement to license presents undue burden and therefore suggested an amendment to the bill, amending KSA 75-7b03 to state “Any person performing duties as a court appointed process server when any investigation is conducted incidental to serving the legal process”. (Attachment 4)

There were no opponents.

The hearing on **HB 2311** was closed.

The hearing on **SB 70 - Trusts; unitrust conversion; uniform principal and income** act was opened.

Randy Hearrell, Executive Director of the Kansas Judicial Council, provided each Committee member with a current list of the members of the Judicial Council Probate Law Advisory Committee and also listed some examples of the work performed this Committee. (Attachment 5)

Mark Knackendoffell, a member of the Kansas Judicial Council-Probate Law, provided the committee with an explanation of how most trusts are drafted to direct the trustee to distribute income to a beneficiary for a specific amount of time. Trustees attempt to invest trust assets so to produce enough income to meet the current beneficiary’s needs. Under current law Kansas uses the “prudent investor rule” for guiding and assessing the trustee’s investment decisions. Under this rule results are evaluated on their role and impact with respect to the entire portfolio rather than asset-by-asset. This process has sacrificed total investment returns for the whole portfolio. Response to this dilemma is the adoption of “unitrust conversion statutes”.

Under this statutes, when a trust agreement directs the trustee to distribute income, the trustee is granted the authority to “convert” or redefine “income” so that distributions in income beneficiaries are determined by a unitrust distribution formula. Using this formula, a trustee distributes a fixed percentage of the assets to the beneficiary each year as “income” which adjusts as the portfolio grows or falls in value. The objectives of the income and beneficiaries are unified so that both are motivated by the total return of the portfolio.

He advised twenty-six states have adopted unitrust conversion statutes and that this bill was patterned from the Pennsylvania conversion, however their language would not allow you to convert back from a Unitrust and the Kansas statute will allow such a change. The Probate Law Advisory Committee proposed this statute be adopted and become a part of the Uniform Principal and Income Act as a new section 58-9-105. (Attachment 6)

There were no opponents.

The hearing on **SB 70** was closed.

The next meeting is scheduled for February 26, 2009.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 25, 2009, in Room 143-N of the Capitol.

The meeting was adjourned at 4:20 p.m.