

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 12:00 p.m. on February 24, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Tim Owens - Excused
Representative Dan Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Ethel Peterson
Tim O'Sullivan, Kansas Bar Association

The hearing on **HB 2351 - identity theft; certificate for repair of damage**, was opened.

Representative Ethel Peterson appeared before the committee as the sponsor of the proposed bill which would mandate that the Attorney General design an application form to establish that the victim has indeed been a victim of identity theft. The certificate could then be presented to any credit reporting agency, financial institution, business, governmental agency or any other entity so show that the bad credit record is related to identity theft (Attachment 1).

The hearing on **HB 2351** was closed.

The hearing on **HB 2290 - amendments to the Uniform Trust Code**, was opened.

Tim O'Sullivan, Kansas Bar Association, appeared before the committee and explained the proposed changes to the Uniform Trust Code (Attachment 2)

The hearing on **HB 2290** was closed.

HB 2294 - construction defects; contractor's rights to cure prior to filing a civil action

A balloon amendment was provided by Kansas Trial Lawyers and Kansas Building Industry. (Attachment 3) Gary White, Kansas Trial Lawyers Association, explained the two industries had met and worked out the following agreements:

- most references to subcontractors and suppliers have been stricken from the bill
- Section 2(a) requires the homeowner to give notice of the claim before it is filed. If notice is not given the contractor may ask the case to be dismissed without prejudice. The amendment would provide that the case that is refilled will be deemed filed on the date of the original filing and shall not count as a dismissal under K.S.A. 60-241(a)(1).
- an option to remedy the defect without the inspection has been added as an option in Section

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- 4(d) to help resolve the construction dispute in a timely manner
- Due to the dismissal without prejudice provision in Section 4(o) a requirement has been added to preserve the homeowner's statute of limitations when the statute would expire during the period of notice, remedy of the construction defect or when payment is to be made.
- Section 10(b) has been stricken due to concerns that it infringes upon the attorney-client privilege.

Representative Patterson made the motion to adopt the balloon. Representative Long seconded the motion. The motion carried.

Representative Loyd made the motion to replace on page 2, line 27 "In every action brought" with "Before the filing of an action". Representative Goering seconded the motion. The motion carried.

Representative Pauls made the motion to amend (e) to allow "In the absent of a contractual agreement the executive board..." Representative Long seconded the motion. The motion carried.

Representative Patterson made the motion to report Substitute for **HB 2294** favorably for passage. Representative Long seconded the motion.

After committee discussion regarding the tolling provisions, the Chairman informed members that they would study the balloon amendment and continue to work the bill the next day.

The committee meeting recessed at 1:25 p.m and returned at 3:30 p.m.

HB 2217 - ignition interlock devices, certificate requirements

Representative Pauls made the motion to amend the bill so those who have not installed an ignition interlock but instead have chosen not driven to would be able to provide an affidavit at the end of the period of suspension to receive their license back. Representative Long seconded the motion.

Chairman O'Neal requested that staff prepare an amendment for the committee review at the committee meeting the next day.

HB 2293 - Sheriff's fee for service of process

Representative Long made the motion to adopt the balloon amendment provided by Kansas Sheriffs' Association (see February 20, 2003 minutes). It would strike New Section 3 and clarify that the \$10 fee is to be paid up front to the court and remitted to the county general fund. Representative Pauls seconded the motion. The motion carried.

Representative Jack made the motion that if the sheriff failed to serve the papers then the fee would be reimbursed. Representative Ward seconded the motion for purposes of discussion. The motion failed.

Representative Patterson made the motion to have a fee fund established and earmarked to a specific fund to

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offset the cost of service process with a 50/50 split of money going to the district clerk and the sheriff's department, of which funds should go outside the county purchasing department. Representative Crow seconded the motion. The motion carried.

Representative Long made the motion to report **HB 2293** favorably for passage, as amended. Representative Patterson seconded the motion. Representative Goering was concerned that the proposed bill would not allow those with small cases to hire someone to serve papers due to the \$10 fee. Representative Loyd saw the proposed bill as an increase in court costs.

Representative Klein made the substitute motion to change the proposed bill to allow the chief judge of the court administer the fund. Representative Ward seconded the motion. The motion carried.

Representative Long renewed her motion with Representative Patterson seconding. The motion carried.

HB 2215 - Increasing claim limit in small claims court from \$1,800 to \$5,000

Representative Long made the motion to report **HB 2215** favorably for passage. Representative Goering seconded the motion.

Representative Swenson made the substitute motion to table the bill. Representative Loyd seconded the motion. The motion failed 7-7.

The motion to report **HB 2215** failed 6-8.

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

Representative Long made the motion to report **HB 2297** favorably for passage. Representative Crow seconded the motion.

Representative O'Neal made the substitute motion to have the order to pay the garnishment be 60 days from the date of when the answer is served. Representative Loyd seconded the motion. The motion carried.

Representative Long made the motion to report **HB 2297** favorably for passage, as amended. Representative Jack seconded the motion. The motion carried.

HB 2133 - Municipal courts collecting fines and court costs

Representative Patterson made the motion to adopt the balloon amendment. Representative Goering seconded the motion. The motion carried.

Representative Ward made the motion to adopt a 180 day time frame for trying to get the amount due before turning it over to a collection agency. The motion was seconded. The motion carried.

Representative Patterson made the motion to amend in the provisions of **HB 2200** with the correct reference

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to chapter 61 instead of the limited actions provisions. Representative Long seconded the motion. After committee discussion the motion was withdrawn.

Representative Davis made the motion strike lines 33-37 with is the intent to have defendants pay the cost of collection. Representative Swenson seconded the motion. The motion failed.

Representative Rehorn made the motion to clarify that the bill is referring to Chapter 61 cases. Representative Long seconded the motion. The motion carried.

Representative Long made the motion to report **HB 2133** favorably for passage, as amended. Representative Goering seconded the motion. The motion carried.

HB 2307 - Elimination or reassignment of district magistrate judge positions upon vacancy

Chairman O'Neal announced it was his intent to take up the proposed bill at the next meeting and to only consider the authority of the Chief Justice to reassign district magistrate judges.

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for February 25, 12:00 p.m. in room 313-S.