

Approved: February 16, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on February 14, 1994 in Room 527-S of the Capitol.

All members were present except: Representative Robert Watson
Representative Kenneth King
Representative Tom Bruns

Committee staff present: William Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Brad Smoot, AIA
Representative David Heineman
Chuck Stones, KBA
Sara Ullman, Register of Deeds Association
Representative Joann Flower
Mike Ferrell, Concerned Citizen

Others attending: See attached list

Brad Smoot, representing the American Insurance Association, requested introduction of a bill which would repeal K.S.A. 40-1126 requiring the submission of reports to the Kansas Insurance Department covering professional liability claims (Attachment 1). The data is unused and unnecessary.

Representative Kline moved that the bill be introduced into legislation. The motion was seconded by Representative Helgerson. Motion carried.

Representative Barbara Allen asked for the introduction of legislation regarding garnishment as requested by the Kansas Bankers Association. Representative Dawson moved that the proposed bill be introduced. The bill; was seconded by Representative Helgerson. Motion carried.

Hearings on HB 2654: Mortgages on real property, satisfaction thereof
HB 2799: Mortgage release fees

Representative David Heineman stated that HB 2799 contains the amendment added by the House Committee of the Whole to HB 2654 (Attachment 2). This amendment would clarify that when a property owner refinances an existing loan upon which a mortgage has been filed, the property owner would not have to repay the fee on that part of the principal amount of the mortgage upon which a mortgage registration fee has been paid. This would provide equal treatment to those who refinance with a different lender.

Chuck Stones, Kansas Bankers Association, requested that HB 2799 which was amended into HB 2654 be stripped and heard as a separate bill. In Section 1, the KBA would prefer that the customer be charged the \$5.00 fee. Regarding Section 3, Kansas is not a community property state and property owned individually prior to marriage remains the property of that partner unless divorce should occur. At that point it is up to the divorce judge to allocate the property. The federal government only requires one signature when such property is used as security interest. This bill would bring Kansas into compliance as Kansas now requires both signatures. Property owned solely by one person should only require the signature of that person.

Sara Ullman, Kansas Association of Counties, spoke in opposition to the bill which would decrease registration fees in Johnson County by \$5.5 million (Attachment 3). This would have dramatic effects as the budgets for Register of Deeds offices were set in August of 1993 and this bill is set to become effective upon publication in the Kansas Register. Mortgage registration fees go into the general fund of the counties and with such a reduction, these losses would have to be made up in higher tax levies. This bill would essentially

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on February 14, 1994.

eliminate mortgage registration fees and the additional paperwork would continue. It is unknown how many mortgages which were filed were for refinancing.

Beverly Bradley, Kansas Association of Counties, presented written testimony only (Attachment 4).

The Committee indicated that the intent of the bill was to eliminate charging the same borrower mortgage registration fees for the same property when refinancing.

Chairman Bryant appointed a subcommittee comprised of Representatives Barbara Allen, Chairperson, Henry Helgersen and Melvin Neufeld.

Hearing on HB 2721: Pay on death accounts

Bill Wolff of Research stated that any bank account can have a "pay upon death" clause at which time the account proceeds go to the beneficiary. These funds are outside of probate.

Representative Flower introduced Mike Ferrell whose family was a victim of the misuse and misrepresentation of such an account.

Mike Ferrell stated that this bill would place all monies back in probate and reviewed their circumstances in dealing with a "pay on death" account (Attachment 5).

Chuck Stones, Kansas Bankers Association, stated that POD's can be any type of banking account (Attachment 6). This money goes directly to an heir and many times is used for payment of last expenses of the deceased such as burial, illness, etc. Such accounts are a valuable tool in estate planning. The passage of the proposed bill would not eliminate fraud or the misuse of this law by unscrupulous lawyers.

Representative Cornfield moved for the approval of the minutes of February 8 and 9. Representative Allen seconded the motion. The motion carried.

The meeting adjourned at 4:50 p.m. The next meeting is scheduled for February 15, 1994.

COMMITTEE:

F. D. D.

DATE:

2-14-24

NAME (PLEASE PRINT)

ADDRESS

COMPANY/ORGANIZATIO

EIGHTH & JACKSON STREET
MERCANTILE BANK BUILDING
SUITE 808
TOPEKA, KANSAS 66612
(913) 233-0016
(913) 234-3687 FAX

BRAD SMOOT
ATTORNEY AT LAW

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206
(913) 649-6836

February 14, 1994

The Honorable William Bryant
Chairman
House Financial Institutions & Insurance Committee
Capitol
Topeka, KS 66612

Re: Bill Request

Dear Chairman Bryant:

On behalf of the American Insurance Association, I am requesting the House Financial Institutions & Insurance Committee to introduce a bill repealing K.S.A. 40-1126, a statute requiring submission of reports to the Kansas Insurance Department covering professional liability claims. To my knowledge, the data collected under this statute is not being used by anyone and thus, creates an unnecessary expense for Kansas professionals and their insurance carriers.

Enclosed, please find a copy of the current statute and a draft bill repealing same. Thank you for your consideration of this request.

Sincerely,



Brad Smoot
Legislative Counsel
American Insurance
Association

Enclosures

*House F&I
Attachment 1
Feb. 14, 1994*

INSURANCE

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§ 11; L. 1986,

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§ 12; L. 1965,

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art. If any sec-
paragraph, sen-
held invalid or

unconstitutional, such decision shall not affect
the remaining portions of this act.

History: L. 1945, ch. 215, § 13; Jan. 1,
1946.

Research and Practice Aids:

Statutes 64(2).

C.J.S. Statutes § 96 et seq.

40-1124. Joint underwriting and rein-
surance subject to regulation; exceptions.
Every group, association or other organization
of insurers which engages in joint underwriting
or joint reinsurance under article 11 of chapter
40, shall be subject to regulation with respect
thereto as herein provided, subject, however,
with respect to joint underwriting, to all other
provisions of this act and, with respect to joint
reinsurance, to K.S.A. 40-1114 (d) and 40-1120
to 40-1123.

History: L. 1965, ch. 303, § 15; June 30.

40-1125. Unfair, unreasonable or incon-
sistent practices; order, hearing. If, after a
hearing conducted in accordance with the pro-
visions of the Kansas administrative procedure
act, the commissioner finds that any activity
or practice of any such group, association or
other organization as set forth in K.S.A. 40-
1111 and amendments thereto is unfair or un-
reasonable or otherwise inconsistent with the
provisions of this act, the commissioner may
issue a written order specifying in what re-
spects such activity or practice is unfair or un-
reasonable or otherwise inconsistent with the
provisions of this act, and requiring the dis-
continuance of such activity or practice.

History: L. 1965, ch. 303, § 16; L. 1988,
ch. 356, § 96; July 1, 1989.

40-1126. Reports by insurers of health
care providers, attorneys and persons engaged
in technical professions; certain claims, actions
and charges; health care provider defined. (a)
Every insurer providing professional liability
insurance to a health care provider, a person
engaged in any technical profession, as defined
by K.S.A. 74-7003 and amendments thereto,
any attorney admitted to practice before the
supreme court of this state or any certified
public accountant licensed to practice by the
board of accountancy shall report to the com-
missioner of insurance: (1) Any claim or action
for damages for personal injuries or loss
claimed to have been caused by error, omis-
sion, or negligence in performance of such in-
sured's professional services or based on a
claimed performance of professional services.

CASUALTY, SURETY AND FIDELITY

without consent, if the claim resulted in: (i) A
final judgment in any amount; (ii) a settlement
in any amount; (iii) a final disposition not re-
sulting in payment on behalf of the insured;
and (2) the amount of premiums charged for
professional liability insurance of the types de-
scribed in clause (1) of subsection (a) for the
past calendar year, which shall be reported as
separate items so that each such type may be
distinguished from premiums charged for other
types of insurance.

(b) Reports of the information required by
clause (2) of subsection (a) shall be filed with
the commissioner of insurance annually on or
before March 1; reports of the information re-
quired by clause (1) of subsection (a) shall be
filed with the commissioner of insurance no
later than 30 days following the results of a
claim set out in items (i), (ii) or (iii) of clause
(1) of subsection (a).

(c) As used in K.S.A. 40-1126 to 40-1128,
inclusive, and amendments thereto, the term
"health care provider" means a person licensed
to practice the healing arts or engaged in a
postgraduate training program approved by the
state board of healing arts, a person who holds
a temporary permit to practice any branch of
the healing arts, a licensed dentist, a licensed
professional nurse, a licensed practical nurse,
a licensed optometrist, a licensed pharmacist,
a licensed medical care facility, a health main-
tenance organization issued a certificate of au-
thority by the commissioner of insurance, a
licensed podiatrist, a professional corporation
organized pursuant to the professional corpo-
ration law of Kansas by persons who are au-
thorized by such law to form such a corporation
and who are health care providers as defined
by this subsection, a registered physical ther-
apist or a community mental health center or
mental health clinic licensed by the secretary
of social and rehabilitation services.

History: L. 1975, ch. 241, § 1; L. 1976,
ch. 216, § 1; L. 1977, ch. 160, § 1; L. 1978,
ch. 178, § 1; L. 1986, ch. 231, § 3; L. 1988,
ch. 246, § 11; July 1.

Cross References to Related Sections:

Kansas healing arts act, see ch. 65, art. 28.

Law Review and Bar Journal References:

"Report on Health Care Provider Insurance Availability
Act," Fletcher Bell, 82 J.K.M.S. 308, 316 (1981).

CASE ANNOTATIONS

1. Referred to in upholding constitutionality of mal-
practice insurance act (40-3401 et seq.). State, ex rel.
Schneider v. Liggett, 223 K. 610, 611, 576 P.2d 221.

40-11

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HOUSE BILL No. _____

By Committee on Financial Institutions and Insurance

2-14

AN ACT relating to insurance; submission of reports of professional liability insurance claims, repealing K.S.A. 40-1126.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-1126 is hereby repealed.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS

DAVID J. HEINEMANN
REPRESENTATIVE, 123RD DISTRICT
FINNEY COUNTY
P.O. BOX 1346
GARDEN CITY, KANSAS 67846-1346
(316) 275-7424
FAX: (316) 275-9123



TOPEKA

HOUSE OF
REPRESENTATIVES

HOUSE BILL 2799

COMMITTEE ASSIGNMENTS
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MEMBER: APPROPRIATIONS
JUDICIARY
JOINT COMMITTEE ON STATE
BUILDING CONSTRUCTION
KANSAS JUDICIAL COUNCIL
ADVISORY COMMITTEE ON TECHNOLOGY
INTERSTATE MIGRANT EDUCATION COUNCIL
OF THE EDUCATION COMMISSION
OF THE STATES
KANSAS GEOLOGICAL SURVEY
ADVISORY COMMITTEE
KANSAS SECURITIES COMMISSIONER'S
ADVISORY COMMITTEE
NATIONAL COUNCIL OF STATE LEGISLATURES
COMMERCE AND ECONOMIC
DEVELOPMENT COMMITTEE

Thank you for the opportunity to continue the discussion we had on the floor of the House the other day. House Bill 2799 contains the amendment added by the House Committee of the Whole to House Bill 2654. This amendment to K.S.A. 1993 Supp. 79-3102 will make it clear that when you refinance your existing loan upon which a mortgage has been filed that you will not have to repay the fee on that part of the principal amount of the mortgage upon which you have already paid the mortgage registration fee. Existing law currently exempts the "principal indebtedness covered in a previously recorded mortgage or other instrument with the same lender or their assigns upon which the registration fee . . . has been paid" from the payment of the fee. This legislation will give equal treatment to those who refinance with a different lender and will not penalize them when they refinance with a different lender. In my case, I recently refinanced my home mortgage with my local home town bank rather than from the out of town financial institution to whom my existing mortgage had been assigned by a former local savings and loan. While this legislation will come too late to help me, it should provide some fairness and equity to those still in the process of refinancing their existing mortgages.

*House F&S
Attachment 2
2-14-94*

REGISTER OF DEEDS

KANSAS ASSOCIATION

PRESIDENT Rose Ann Rupp
VICE-PRESIDENT Jacque Webb

Sharlene Wright
Sue Neustifter

SECRETARY
TREASURER

TO: House Committee on Financial Institutions and Insurance

FROM: Sara F. Ullmann, Johnson County and Linda Fincham, Marshall County
Co-Chairs, Register of Deeds Legislative Committee

RE: House Bill 2654 as amended and House Bill 2799

DATE: February 10, 1994

Thank you very much for the opportunity to testify today. The Register of Deeds Association is here to explain the role of mortgage registration tax in funding county government and the impact of the proposed legislation on budgets and personnel in the register of deeds' office.

County governments have relied on revenues collected from mortgage registration tax since 1915. Revenue collected from this tax is deposited directly into the county general fund except the one cent allocated for the Heritage Trust Fund. The tax represents slightly over a quarter of a percent. Example: On a \$50,000 mortgage, \$130 in mortgage registration tax is collected -- \$125 is remitted to the county general fund and \$5 is remitted to the Heritage Trust Fund. The State of Kansas has a variety of taxes, including mortgage registration tax, property tax, motor vehicle tax, sales tax, income tax, etc., that support government operations.

This bill would result in an estimated 60% decrease in mortgage registration tax revenue in the first year and eventually eliminate all revenue from mortgage registration tax. We have prepared examples under the current statutes and examples under the proposed bill which are attached to this testimony. We believe that our examples show that revenue loss. This revenue loss could only be recovered with a shift to property taxes. An increase in property taxes, would be paid by every property owner every year. In past legislative sessions, it appeared that the legislature was striving to reduce property taxes and stabilize the tax package in Kansas. This bill would have the opposite effect.

This bill would also increase the workload in the register of deeds office. Affidavits would be filed with almost all mortgages. This would create another burden on the budget by requiring additional personnel or if more personnel could not be hired, the result would be a slow down in the recording process. This would have a direct impact on the industries which interface with the register of deeds office.

This bill would create an unexpected burden on the 1994 county budgets, since it requires that it

House F&D
Attachment 3
Feb. 14, 1994

Page 2 of 2

go into effect upon publication in the Kansas Register. Since the budgets for 1994 were set months ago, there is no way to make up for the expected revenue losses. This could only be viewed as an unfunded mandate or an unfunding of county government.

We ask that you consider the impact of this legislation. We thank you for this opportunity to testify. We will be happy to stand for any questions.

EXAMPLES UNDER PROPOSED BILL

Example #1

Lender A Borrower A Property A Mortgage \$50,000

Mortgage Registration Tax Collected \$130

Example #2

Lender B Borrower A Property B Mortgage \$50,000

Affidavit presented showing that a Mortgage for \$50,000 had been recorded with same Borrower.

Mortgage Registration Tax Collected None

Example #3

Lender B Borrower B Property A Mortgage \$50,000

Affidavit presented showing that a Mortgage for \$50,000 had been recorder with same property.

Mortgage Registration Tax Collected None

Example #4

Lender B Borrower B Property B Mortgage \$50,000

Affidavit presented showing that a mortgage for \$50,000 has been recorded with the same lender.

Mortgage Registration Tax Collected None

Once mortgage registration tax has been paid by any borrower, on any piece of property, with any lender, no further mortgage registration tax would be collected.

EXAMPLES UNDER EXISTING STATUTES

Example #1:

Lender A Borrower A Property A Mortgage \$50,000

Mortgage Registration Tax Collected \$130

Example #2

Lender B Borrower A Property A Mortgage \$50,000

Affidavit presented showing assignment of mortgage instrument from Lender A to Lender B

Mortgage Registration Tax Collected None

Example #3

Lender B Borrower A Property A Mortgage \$50,000

New Lender, No Assignment

Mortgage Registration Tax Collected None



"Service to County Government"

215 S.E. 8th
Topeka, Kansas 66603-3906
(913) 233-2271
FAX (913) 233-4830

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Bourbon County Clerk
210 S. National
Fort Scott, KS 66701
(316) 223-3800, ext. 54

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100 E. 4th
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(913) 448-5411

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Murray Nolte
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9021 W. 65th Dr.
Merriam, KS 66202
(913) 432-3784

Roy Patton
Harvey County Weed Director
P.O. Box 687
Newton, KS 67114
(316) 283-1890

Nancy Hempen
Douglas County Treasurer
110 Massachusetts
Lawrence, KS 66044
(913) 832-6275

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Rice County Commissioner
101 W. Commercial
Lyons, KS 67554
(316) 257-2629

Ethel Evans
Grant County Commissioner
108 S. Glenn
Ulysses, KS 67880
(316) 356-4678

Frank Hempen
Douglas County Director of
Public Works
1242 Massachusetts
Lawrence, KS 66044
(913) 832-5293

Mary Ann Holsapple
Nemaha County Register of Deeds
607 Nemaha
Seneca, KS 66538
(913) 336-2120

Eldon Hoyle
Geary County Commissioner
106 Bunker Hill Road
Junction City, KS 66441
(913) 762-4748

NACo Representative

Marjory Scheufler
Edwards County Commissioner
312 Massachusetts
Kinsley, KS 67547
(316) 995-3973

Darrell Wilson
Saline County Sheriff
300 W. Ash
Salina, KS 67401
(913) 826-6500

Executive Director

John T. Torbert, CAE

TO: House Financial Institutions and Insurance
Committee

FROM: Kansas Association of Counties

RE: HB 2799 - Mortgage Release Fees

DATE: February 14, 1994

The Kansas Association of Counties opposes HB 2799. After reviewing the legislation with the Kansas Register of Deeds Association, both of our associations were concerned with the loss of revenue that would result if this bill is passed.

The Kansas Association of Counties has a membership-approved platform statement regarding mortgage registration tax: "The mortgage registration tax is a valuable and fair type of intangibles tax. The Kansas Association of Counties opposes any legislative efforts to limit the applicability of this tax."

We thank the committee for their attention to this matter.

Shane F. D. D.

Attachment 4

Feb. 14, 1994

It is my hope by amending Section 1 KSA 1993 Supp 9-1215 that attorneys and others acting in a fiduciary capacity for elderly people and others will be deterred and prohibited from becoming the beneficiary of P.O.D. accounts and other assets of their clients. Especially those assets obtained by undue and unethical influence, also that the concealment and misrepresentation of such assets to the legal heirs and to the court, be unlawful as well as unethical, and subject to penalty.

As noted in the paper given to you, it appears, at least to me, that P.O.D. accounts, no matter how they are obtained, become the property of attorney, upon the death of the person they are entrusted to protect.

My wife has expended considerable mental anguish, sleeplessness time, and money to learn that contrary to popular opinion attorneys can inherit from their clients.

Excerpts from the memorandum opinion.

No. 68,668 No. 68,748

In The Court of Appeals Of The State Of Kansas

"Despite the conflicting evidence, the trial court's determination that the C.D. was an asset of the Haynes estate was erroneous as a matter of law. P.O.D. accounts are statutorily authorized by K.S.A.-1992 Supp. 9-1215. and the unambiguous language of the statute excludes P.O.D. accounts from all provisions of the Kansas Probate Code.

We note that the executor's and attorney's fees were calculated on the initial inclusion of the C.D. as an asset of the estate. We conclude that the aforementioned fees calculated on value of the inclusion of the C.D. in the estate must be reimbursed to the estate."

End of excerpts.

House PS 4
Attachment 5
Feb. 14, 1994

If my wife had not become suspicious of the handling and the misrepresentations of the estate of which she was the residual legatee more of the assets would be gone, with no penalty to the executor and the attorney.

According to N.B.C.'s recent program, Prime Time Live, California recently passed a law to keep attorneys from getting in to their clients wills.

Why does Kansas allow lawyers to have P.O.D. accounts that may have been illegally or unethically obtained from their clients?

I hope that by amending K.S.A. 1993 Supp 9-1215, and repealing the existing section, someone else does not have to endure this judicial nightmare.

Thank you

Elderly Woman

- Lawyer has Power of Attorney from at least 1975 to 1986.
 - Lawyer is conservator from spring 1986 until death December 25, 1988.
 - Woman takes out Certificate of Deposit in out of town bank December 26, 1981. Amount \$18,846.25.
 - April 3, 1982 requests bank to change Certificate of Deposit to pay on Death Certificate, naming lawyer and his wife as beneficiaries in questionable letter.
 - Moves to nursing home May 25, 1982.
 - October 1982, certificate changed to P.O.D. to lawyer and wife.
 - 1986 lawyer becomes conservator and until clients death lists certificate as CD in court accounting.
 - Woman dies December 25, 1988.
 - Lawyer files and becomes executor of woman's estate.
 - Executor's statement of assets and inventory 1989, lists CD as asset of estate.
 - Lawyer/Executor and wife cash CD as P.O.D. on January 9, 1991 amount \$45,462.00
 - Inventory February 6, 1991 sworn to by the executor. CD listed as estate asset.
 - Inheritance taxes were paid on this CD/P.O.D. by the estate.
 - Income taxes were paid by the estate on the income from this CD/P.O.D.
 - Probate attorney and executor fees were paid by the estate on the money recieved by the executor on this CD/P.O.D.
 - Improper notice of Final Settlement
 - Final settlement by court
 - Trial to set aside Final Settlement and return P.O.D. assets to estate.
 - Executor returns income taxes on CD/P.O.D. to estate.
 - Trial court finds fraud on court and sets aside Final Settlement and orders money from CD/P.O.D. paid to court.
 - Upon petition court orders money paid to Residual Legatee minus several thousand dollars for possible future estate expenses.
 - Case is appealed in Appellate Court citing KSA 1992 SUP 9-1215
 - Appellate Court reverses Trial Court opinion.
 - Supreme Court refuses to hear appeal from Appeals Court. Allows Appeal's Court decision to stand.
- Lawyer and wife walk away from estate with \$45,642.00

The Kansas Bankers Association

1500 Merchants National Bank Bldg.

Topeka, KS 66612

913-232-3444 FAX 913-232-3484

TO: House Financial Institutions and Insurance Committee

FROM: Chuck Stones, Director of Research

RE: HB 2721

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association appreciates the opportunity to appear before you to discuss HB 2721.

After discussions with Representative Flower, we became somewhat familiar with the circumstances involving the request for the introduction of this bill. We are certainly sympathetic regarding this particular case, but we have some concerns involving the proposed remedy.

HB 2721 would make Payable-on-Death accounts subject to the terms of a persons will. We feel this would eliminate the purpose and the need for P.O.D. accounts. P.O.D. accounts are a very valuable tool in estate planning and were placed outside Chapter 59 of the K.S.A. to allow a person to pass financial assets directly to to a beneficiary outside that persons estate. This allows immediate access to the property and is not frozen with estate property until the estate has been fully probated.

It is also important to understand that this bill will not eliminate fraud, it would be possible for this circumstance to happen even if this were covered by the deceased persons will. Again, we are sympathetic to this particular case, but we feel the elimination of P.O.D. accounts as an estate planning tool is not the correct remedy.

Chuck Stones

*House FID
Attachment 6*