

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on February 9, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Joe Molina, Kansas Bar Association

Others attending:

See attached list.

The Chairman opened the hearings on **SB 36 -- Exemption from creditors for assets held in qualified retirement plans and regular and Roth individual retirement accounts.**

Jason Thompson, Staff Revisor, reviewed the bill.

Joe Molina, appearing in place of Nancy Schmidt Roush on behalf of the Kansas Bar Association, testified in support of **SB 36 (Attachment 1)**. He stated that the KBA had requested introduction of the bill, which would clarify and update the Kansas exemptions (from creditors claims) to include assets in IRAs, Roth IRAs and moneys a beneficiary of an inherited IRA.

Senator Vratil asked whether the spendthrift provision in the bill is necessary? He requested that additional information be provided to the committee.

No testimony in opposition to **SB 36** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 36**.

The Chairman closed the hearings on **SB 36**.

The Chairman opened the hearings on **SB 44 -- Domestic relations; marital property.**

Jason Thompson, Staff Revisor, reviewed the bill.

Joe Molina, appearing in place of Nancy Schmidt Roush, testified in support of **SB 44 (Attachment 2)**. He stated that the KBA had requested introduction of the bill, which would provide that property owned separately by one spouse, irrespective of, whether brought into the marriage or received from a third party during the marriage, remains free of the other spouse's debts. The bill would not apply to property transferred from one spouse to the other.

Senator Vratil asked, "If the bill passes, is property treated differently under two different rules?"

Mr. Molina responded, "Yes."

Mr. Molina added, "The bill does not protect fraudulent transfers or transfers to avoid creditors."

No testimony in opposition to **SB 44** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 44**.

The Chairman closed the hearings on **SB 44**.

Committee Action:

The Chairman turned the committee's attention to **SB 12 -- Civil procedure; bankruptcy.**

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on February 9, 2011, in Room 548-S of the Capitol.

Senator Vratil moved, Senator Haley seconded, that SB 12 be passed.

Senator King proposed an amendment (Attachment 3) that would limit the exemption to an amount equal to the maximum credit allowed to the debtor under the internal revenue code for the previous tax year.

Senator Bruce moved, Senator King seconded, to change the wording in Senator King's proposed amendment from "previous" to "current" tax year. The motion was adopted.

Senator Bruce moved, Senator Lynn seconded, that SB 12 be passed as amended. The motion was adopted.

The Chairman turned the committee's attention to **SB 34 — Driver's licenses; habitual violators; motorized bicycles.**

Senator Pilcher-Cook moved, Senator Schodorf, seconded, that SB 34 be passed.

Senator Bruce stated that he does not believe the bill is necessary because a moped is not a motor vehicle for which a license is required to operate legally.

Senator Owens stated the bill would clarify that a habitual violator could be issued a license to operate a moped.

The motion was adopted.

The Chairman turned the committee's attention to **SB 37 -- Sentencing; payment of fines; employment of county and city prisoners.**

Senator King moved, Senator Haley seconded, that the revisor be authorized to make any necessary technical or cleanup amendments to SB 37 and the bill be passed, as amended. The motion was adopted.

The Chairman turned the committee's attention to **SB 44 -- Domestic relations; marital property.**

Senator Bruce moved, Senator Lynn seconded, that SB 44 be tabled. The motion was adopted.

The Chairman turned the committee's attention to **SB 24 -- Reorganization of Domestic Relations Statutes.**

Senator Bruce moved, Senator Umbarger seconded, that SB 24 be passed. The motion was adopted.

The Chairman announced that the hearings on **ERO 34 -- Abolishing Parole Board and Establishing the Prisoner Review Board within the Department of Corrections** would continue on February 18, 2011.

Meeting adjourned at 10:25 A.M. The next meeting is scheduled for February 10, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 9, 2011

[illegible]



KANSAS BAR
ASSOCIATION

TO: The Honorable Tim Owens
And Members of the Senate Judiciary Committee

FROM: Nancy Schmidt Roush
On Behalf of the Kansas Bar Association

RE: SB 36 – Amending K.S.A. 60-2308

DATE: February 2, 2011

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Nancy Schmidt Roush and I appear on behalf of the Kansas Bar Association in support of SB 36 which modifies K.S.A. 60-2308.

The Kansas exemption from creditors for IRAs and qualified retirement plans under K.S.A. 60-2308 has been in existence for a number of years. The revisions made by SB 36 are intended to update the statute in a manner consistent with the intent of the legislature in enacting the original exemption, as well as the expectation of and reliance by the general public regarding what is exempt. The revisions should benefit the citizens of Kansas by providing clarity and avoiding issues of interpretation that can lead to litigation and unintended results.

SB 36 clarifies that the status of the debtor as it relates to the IRA or qualified retirement plan can be as owner (such as the contributor to an IRA), participant (such as someone participating in an employer plan), or as a beneficiary (such as the beneficiary of an inherited IRA after the participant's death). The protection of an inherited IRA under similar state exemptions has been the subject of recent litigation in bankruptcy courts around the country. The protection provided by K.S.A. 60-2308 (as originally enacted and clarified in this amendment) follows the only appellate decision on this matter, *In re Nessa*, 2010 Bankr. Lexis 931 (B.A.P. 8th Cir. Apr. 9, 2010), which upheld the protection of a similar state statute from the creditors of the beneficiary of an inherited IRA.

SB 36 also adds references to additional relevant sections under the Internal Revenue Code - §457(b) regarding qualified deferred compensation plans for state and local governments and tax exempt entities, and §501(a) regarding tax exempt organizations.

On behalf of the Kansas Bar Association, I thank you for the opportunity to appear before the committee in support of SB 36.

About the Kansas Bar Association:

Senate Judiciary

2-9-11
Attachment 1

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org



KANSAS BAR
ASSOCIATION

TO: The Honorable Tim Owens
And Members of the Senate Judiciary Committee

FROM: Nancy Schmidt Roush
On Behalf of the Kansas Bar Association

RE: SB 44 – Amending K.S.A. 23-201

DATE: February 2, 2011

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Nancy Schmidt Roush and I appear on behalf of the Kansas Bar Association in support of SB 44 which modifies K.S.A. 23-201.

K.S.A. 23-201 provides that the separate property owned by one spouse, irrespective of whether brought into the marriage or received from a third party, remains free of the other spouse's debts, except for transfers from the other spouse. As originally drafted (prior to 1936), the exception appears to be absolute regardless of the circumstances of the spousal transfer, and contradicts other applicable Kansas law. K.S.A. 33-101 and 33-201 specifically address the circumstances under which creditors can reach transferred assets, including transfer to a trust for the use of the transferee or a transfer made "in fraud of creditors." We believe that whether a transfer to a spouse can be reached by the creditor of transferring spouse is best determined under these other statutes.

On behalf of the Kansas Bar Association, I thank you for the opportunity to appear before the committee in support of SB 47.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

SENATE BILL No. 12

By Committee on Ways and Means

1-13

1 AN ACT concerning civil procedure; relating to bankruptcy; exempt
2 property; earned income tax credit.
3

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

5 Section 1. An individual debtor under the federal bankruptcy reform
6 act of 1978 (11 U.S.C. §101 et seq.), may exempt the debtor's right to
7 receive tax credits allowed pursuant to section 32 of the federal internal
8 revenue code of 1986, as amended, and K.S.A. 2010 Supp. 79-32,205,
9 and amendments thereto. Nothing in this section shall be construed to
10 limit the right of offset, attachment or other process with respect to the
11 earned income tax credit for the payment of child support or spousal
12 maintenance.

13 Sec. 2. This act shall take effect and be in force from and after its
14 publication in the Kansas register.

An exemption pursuant to this section shall not exceed
the maximum credit allowed to the debtor under
section 32 of the federal internal revenue code of
1986, as amended, for the ~~previous~~ tax year.

current

Proposed Amendment to SB12

February 4, 2011

For Senate Judiciary Committee

by Scott Wells, Assistant Revisor

Requested by Senator King

Senate Judiciary

2-9-11

Attachment 3