

Approved: May 22, 2012
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 a.m. on January 23, 2012, in Room 548-S of the Capitol.

All members were present except Senator Bruce, who was excused.

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Katherine McBride, Office of the Revisor of Statutes
Bob Allison-Gallimore, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Theresa Kiernan, Committee Assistant

Conferees appearing before the Committee:

Nancy Schmidt Rouse, Kansas Judicial Council
Kent A. Meyerhoff, Kansas Judicial Council
Professor Martin Dickinson, Kansas Judicial Council

Others attending:

See attached list

The Chairman opened the hearings on **SB 291—Amendments to the uniform trust code.**

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson stated the bill was introduced at the request of the Kansas Judicial Council and would amend provisions in the Kansas Uniform Trust Code so that a spendthrift provision would not be presumed to constitute a material purpose of the trust. The bill also would specify a procedure for the disposal of claims against trust property upon the death of a settlor and remove the tax identification number from the list of information required in an acknowledged certification of trust.

Nancy Schmidt Roush testified in support of **SB 291** (Attachment 1). She stated the bill would provide that a spendthrift provision may be a material purpose of a trust; under current Kansas law a spendthrift provision is presumed to constitute a material purpose of a trust. She stated the bill would provide that the assets in a self-settled trust remain available to the settlor's creditors to the extent the trust is revocable, and in the case of an irrevocable trust, to the extent the trustee has any authority to distribute trust assets to the settlor. The bill would amend K.S.A. 58a-505 to bridge the disconnect between probate of estates and trusts so all claims against a decedent are determined in one proceeding. The bill would allow a trustee of a revocable trust to pay a legitimate claim even if the claim had not been filed and allowed in a probate proceeding. The bill would clarify that all property of a decedent, and the proceeds of such property, which were exempt from creditors' claims immediately prior to the decedent's death remain

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exempt following the decedent's death. The bill would incorporate the same order of priority in satisfying creditor claims from assets in a revocable trust that are specified under K.S.A. 59-1405 with respect to probate assets. The bill would amend K.S.A. 58a-1013 to remove the tax identification number from the list of information required in an acknowledged certification of trust. Finally, the bill would repeal K.S.A. 58a-818.

In response to a question raised by Senator King, Ms. Roush stated the bill does not overturn the case law cited in her testimony, but it would apply to trusts created prior to the effective date of the act.

Written testimony in support of **SB 291** was submitted by Joe Molina (Attachment 2).

The Chairman closed the hearings on **SB 291**.

The Chairman opened the hearings on **SB 292—Filing of wills and admission to probate**.

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson stated the bill was introduced at the request of the Kansas Judicial Council. The bill concerns the inheritance rights of an individual upon divorce or annulment of a marriage.

Kent A. Meyerhoff testified in support of **SB 292** (Attachment 3). Mr. Meyerhoff stated unless provided otherwise by the express terms in a governing instrument, certain interests, powers, appointments and dispositions granted to a spouse or spouse's relatives would be revoked when a divorce or annulment occurs. The bill also addresses the rights of third parties with respect to any claimed forfeiture or revocation occurring under these provisions. He stated **SB 292** addresses the concerns the insurance industry had with similar legislation proposed in 2011. (The original version of 2011 HB 2071.) Mr. Meyerhoff stated the amendment proposed in **SB 292** is based upon, and is nearly identical to the language found in Section 2-804 of the Uniform Probate Code.

The Chairman closed the hearings on **SB 292**.

The Chairman opened the hearings on **SB 293—Filing of wills and admission to probate**.

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson stated the bill was introduced at the request of the Kansas Judicial Council. The bill concerns the delivery of wills to the district court and the preservation of wills for probate.

Nancy Schmidt Roush testified in support of **SB 293** (Attachment 4). She stated the bill would allow a decedent's will to be filed with the district court within six months of the testator's death with an affidavit preserving the will for probate regardless of the kind or value of the property in the estate or the amount

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of known demands against the estate. The bill also would repeal K.S.A. 59-621.

Written testimony in support of **SB 293** was submitted by Joe Molina (Attachment 5).

The Chairman closed the hearings on **SB 293**.

The Chairman opened the hearings on **SB 297—Removing the gifts from a spouse exception from marital property in a divorce**.

Jason Thompson, Staff Revisor, reviewed the bill. Mr. Thompson stated the bill was introduced at the request of the Kansas Judicial Council. The bill concerns marital property and gifts received from a spouse.

Professor Martin Dickinson testified in support of **SB 297** (Attachment 6). He stated the bill would delete the exception for gifts received from a spouse from the list of property that shall remain the person's sole and separate property, notwithstanding the marriage. The amendment clarifies that a spouse's creditors cannot reach assets given to the other spouse in circumstances where no fraud on creditors was involved. The bill would reverse the Court's decision in *Waltz v. Sheetz*, 144 Kan. 595 (1936).

Written testimony in support of **SB 297** was submitted by Joe Molina (Attachment 7).

The Chairman closed the hearings on **SB 297**.

The next meeting is scheduled for January 25, 2012.

The meeting was adjourned at 10:30 a.m.