

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 10, 2010, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Jason Long, 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:

Representative Jim Morrison  
Representative Bill Otto  
Richard Fry, November Patriots  
Benjamin Hodge, Johnson County Community College Trustee  
Doug Anstaett, Kansas Press Association, Inc.  
Melissa Wangemann, Kansas Association of Counties  
Don Moler, League of Kansas Municipalities  
Tom Krebs, Kansas Association of School Boards  
Eric Sartorius, City of Overland Park  
Tyson Longhofer, Mortgage Electronic Registration Systems, Inc.



Others attending:

See attached list.

Chairman Kinzer advised the committee they were each provided a memorandum from the Kansas Commission On Judicial Performance answering questions that were raised at the hearing on February 3, 2010 **HB 2531**, relating to Docket Fees and the Commission on Judicial Performance. (Attachment 1)

The hearing on **HB 2612 - Concerning drivers' licenses, restrictions and judgments of restitution** was opened.

Matt Sterling, Assistant Revisor of Statutes, provided the committee with a brief overview of the bill that would give the Department of Revenue the authority to restrict driving privileges of an individual who has been ordered to pay a judgement restitution if that judgement has been properly filed, the individual is more than six months delinquent in paying the judgement and the individual has not agreed to a court approved payment plan. (Attachment 2)

Representative Jim Morrison appeared before the committee to support this bill, and as the originator, explained the request he received from his local sheriff and District Judge for a law that would provide a way to place restrictions on a driver's license to anyone who has failed to pay a judgement of restitution as outlined in the bill. (Attachment 3)

Written testimony in opposition of the bill was provided in a memorandum to the committee and signed by: (Attachment 4)

Karen Arnold-Burger, Presiding Judge, Overland Park Municipal Court  
Maurice Ryan, Presiding Judge, Unified Government Wyandotte County  
Randy McGrath, Presiding Judge, Lawrence Municipal Court  
Steve Ebberts, Presiding Judge, Topeka Municipal Court  
Brenda Stoss, Presiding Judge, Salina Municipal Court  
Jennifer Jones, Presiding Judge, Wichita Municipal Court

Written testimony as a neutral position was provided by Marcy Ralston, Chief Driver Control Bureau, Division of Vehicles and had concerns of the additional workload the bill could create. (Attachment 5)

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 10, 2010, in Room 346-S of the Capitol.

The hearing on **HB 2612** was closed.

The hearing on **HB 2525 - Open meetings; recording of executive sessions** was opened.

Jill Wolters, Office of Revisor Statutes, provided the committee with an overview of the bill. She explained under current law, K.S.A. 75-4319 requires all meetings conducted by a public body or agency to be open, except under specific circumstances established by law. In a situation where a member of a public body or agency may object to participating in a closed or executive session if the member believes the action violates or subverts the intent of the open meetings act, and upon objection by the member, the closed session may commence or continue only if such meeting or session is recorded. She proceeded to explain the requirements that would need to be met regarding the recordings. ([Attachment 6](#))

Representative Bill Otto spoke before the committee as the originator and a strong supporter of the bill and gave testimony of a personal experience of how closed and executive sessions are abused and this bill would provide a means for the honest person to stand up and take action. ([Attachment 7](#))

Richard Fry, spoke on behalf of the November Patriots in support of the bill but believes the bill does not go far enough. ([Attachment 8](#))

Benjamin Hodge, spoke as an individual and the experience of being a Johnson County Community College Trustee from 2005-2009. He spoke in support of the bill and while the open meetings law is good, he stated it needs to be improved. He believes it needs to be easier to enforce and asked to give local officials the funding and tools to take Kansas Open Meetings Act (KOMA) violations directly to court. He told of a personal experience with KOMA and Johnson County Community College regarding budget information that was "merely distributed and not discussed" during a closed meeting. He asked the Legislature to consider whether Legislature should clarify, as he finds it hard to believe that interpretation was the original intent of the law-that any discussion can take place, as long as "binding action" is discussed only later. He also stated most do not realize just how much fraud and corruption there is in local government and in the Kansas schools along with the abuse of KOMA. ([Attachment 9](#))

Doug Anstaett, Executive Director addressed the committee as a proponent on behalf of the Kansas Press Association and stated KOMA was enacted by the Kansas Legislature in the mid-1980's and stated that open meetings are the declared policy of Kansas. This bill is asking to give the public and the press a realistic opportunity to make sure nothing else, nothing illegal, is being discussed when our elected officials go behind doors and a means to ascertain the facts when that trust is broken. The tape recording will provide the verification, if it should ever be needed to ensure the public body followed the law when it went behind the closed doors, and even then, only the portion of the meeting that is an issue would come under scrutiny. Boards, commissions, councils, and other public bodies will be able to freely and frankly discuss personnel issues, legal problems and other lawfully allowed topics without fear. There will be no "chilling" effect, unless they veer outside of Kansas public policy as stated in KOMA. ([Attachment 10](#))

Melissa Wangemann, General Counsel/Director of Legislative Services, appeared as an opponent on behalf of the Kansas Association of Counties and stated the current law allows only certain reasons why an executive session may be held. The reasons most often used for executive sessions among county commissioners are discussion on personnel matters and attorney/client privileged communications. They believe adding a tape recorder to the discussion will "chill" the honest disclosure. It also raised concerns about county attorneys offering privileged information in an executive session. They are also concerned about keeping the recording sealed and what county personnel would have access to the record and the risk of information being leaked leading to liability for violating an employee's privacy rights. ([Attachment 11](#))

Don Moler, Executive Director for League of Kansas Municipalities (LKM), spoke as an opponent stating this bill would alter the delicate balance that KOMA currently strikes between the need for certain privacy and the right of the public to have access to information. He stated the current law provides adequate enforcement options for addressing any perceived violation and gives the county or district attorney, and the attorney general, the ability to subpoena witnesses and documents, take testimony under oath and review any other material pertinent to an investigation. ([Attachment 12](#))

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 10, 2010, in Room 346-S of the Capitol.

Tom Krebs, Governmental Relations Specialist for the Kansas Association of School Boards, (KSAB) addressed the committee as an opponent to this bill and that opposition can easily be traced back to a long-standing policy that is supported annually in their Delegate Assembly: KSAB opposes any requirement that executive sessions be recorded. KSAB also supports that current practices monitoring executive session limitations are sufficient. He reported the president of the board has an ethical and legal obligation to keep the conversation related to the reason the session was called and if he or she does not do that, another board member has the right to call it to the president's attention. If the conversation would continue to stray from the approved topic, any and all members who feel the intent of the law is being violated simply should leave the session and it will be recorded in the minutes; modeling the appropriate behavior of not engaging in such activity by leaving the meeting, the conscientious board member has done much more to encourage ethical and legal behavior over the long term among his or her peers than any threat of "I'll have this recorded" will ever have. (Attachment 13)

Eric Sartorius spoke as an opponent on behalf of the City of Overland Park, Kansas and believes KOMA currently strikes a fair balance to create open and efficient government. He stated their focus of the ability to go into executive session is to protect the privacy of individuals discussed in such sessions, to allow discussion of litigation strategies or other legal issues with the public entity's attorneys or to allow public entities to negotiate effectively for the purchase of land. Even though the bill purports to ensure the recording of the executive session will neither become an open public record nor a waiver of the attorney-client privilege, such measures are untested, and arguably will not maintain the protection of the attorney-client privilege and, arguably may not protect the recording from inappropriate disclosure under the KOMA. In addition the recording of the executive sessions will certainly have a "chilling" effect on frank discussions. (Attachment 14)

The hearing on **HB 2525** was closed.

The hearing on **HB 2613 - Concerning joinder of persons** was opened.

Representative Whitham addressed the committee in support of the bill and also proposed a technical amendment to the bill. (Attachment 15)

Tyson Langhofer, Esq., Partner, Stinson Morrison Hecker LLP, addressed the committee as a proponent of the bill on behalf of Mortgage Electronic Registration Systems, Inc. (MERS). He explained MERS was created to improve the efficiency of mortgage lending by reducing errors, costs, and delays associated with frequent and multiple assignments of the mortgage lien interest when servicing rights or beneficial ownership interests are sold. He further explained the process of how members contract with MERS. He added this bill to amend the statute is necessary due to a recent Kansas Supreme Court decision, Landmark National Bank v. Boys a. Kesler, et al., 289 Kan.528, 216 P.3d 158 (2009) which has recently created some potential confusion as to whom is to be included in the class of contingently necessary parties. He urged the committee to support this bill to ensure all parties will be joined before a foreclosure action can be held to foreclose his or her rights to property in Kansas. (Attachment 16)

Chris St. John, President-Elect and Legislative Chair, Kansas Land and Title Association provided written testimony in support of the bill. (Attachment 17)

Barkley Clark, on behalf of Stinson Morrison Hecker, LLP, submitted written testimony in support of the bill. (Attachment 18)

Kathy Olson, on behalf of Kansas Bankers Association, presented written testimony in support of the bill. (Attachment 19)

There were no opponents to the bill.

The hearing on **HB 2613** was closed.

**HB 2467 - Marking of vehicles owned by public subdivision; exception.**

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 10, 2010, in Room 346-S of the Capitol.

Representative Pauls made the motion to move **HB 2467** favorably for passage.  
Representative Kuether seconded the motion. Motion carried.

**HB 2557 - Removing references to the inheritance tax and limiting the applicability of its provisions.**

Representative Whitham made the motion to move **HB 2557** favorably for passage.  
Representative Crow seconded the motion. With the permission the first and second, the motion was corrected to report **HB 2557** favorably for passage as amended, to include the technical amendment requested by the Department of Revenue when the bill was heard on February 8, 2010. (Attachment 20)  
Motion carried.

The next meeting is scheduled for February 11, 2010.

The meeting was adjourned at 5:20 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 2-10-10

NAME	REPRESENTING
Garmen Alldritt	KBOR
Mary Balster	KBOR
Kelly Bollen	KOR
Don Wokor	LKM
Melissa Wargemann	KAC
Erik Sartorius	City of Overland Park
Kent Cornish	KAB
Doug Anstætt	KPA
Richard Gunn	KPA
Ben Hodges	myself
Hannah Sanders	KHPA
Diane Gjerstad	ZWD 259
Dick Carter	city of Manhattan
David Rounes	Kearney & Assoc.
Tom Kuh	KASB
Shannon Bell	LGR
Kevin Barone	The Capital City Group, LLC
Kathy Olsen	Ko Banker Assn
Doug Warcham	"

# JUDICIARY COMMITTEE GUEST LIST

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NAME	REPRESENTING
Luke Bell	Kansas Association of REALTORS