

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 31, 2011, in Room 345.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Loren Snell, Attorney General Office
Kent Meyerhoff, Executive Committee of KBA Real Estate, Probate and Trust Section
Kirk Nystrom, Attorney, Topeka
Helen Pedigo, Special Council to Chief Justice

Others Attending:

See attached list.

There were no bill introductions.

The Hearing on **HB - 2068 - Amending the Kansas power of attorney act regarding durable power of attorney and duties of the attorney in fact**, was opened.

Loren Snell, Deputy Attorney General and Director of the Medicaid Fraud and Abuse Division of the Attorney General's Office, spoke to the committee as a proponent. He explained their need to participate in meetings with the Kansas Judicial Council Probate Law Advisory Committee in the review and drafting of the amendments in this bill. Their goal was to find a balance between the need to maintain the ease of acquiring and utilizing DPOA's (Durable Power of Attorney) and still protect our vulnerable citizens from exploitation. He stated this bill will also serve as an education tool to give notice to the requirements and responsibilities of a DPOA for all concerned. ([Attachment 1](#))

Written testimony in support of this bill was provided by the following:

Joe Ewert, Kansas Association of Homes and Services for the Aging (KAHSA). ([Attachment 2](#))
Robert Harvey, AARP-Diversity Counsel Member Volunteer ([Attachment 3](#))

Kent Meyerhoff, Executive Committee of KBA Real Estate, Probate and Trust Section, addressed the committee in opposition of the bill. While he agrees abuse of fiduciary authority by individuals acting as Agents has increased over the last several decades, he is dubious as to whether this bill will have a substantive ameliorative effect on the very problem it is intended to address. He offered many comments on the content of the bill. ([Attachment 4](#))

After many questions and answers, Representative Colloton asked Mr. Meyerhoff if he would provide the additional language to the Revisors for preparation of a balloon to cover some of the issues he would like to see changed before passage.

Kirk Nystrom, Attorney, Topeka, spoke in opposition of the bill, stating he has worked in the areas of estate planning and probate for thirty years and this proposed amendment has some language that will have the effect of making Powers of Attorney void or unenforceable. He stated he has prepared thousands of these forms and they were only misused a few times, and that this is a problem not in search of a solution. He also agreed with the problem of the "do it yourself" forms you can purchase at the store or get off the internet. ([Attachment 5](#))

The Hearing on **HB 2068** was closed.

The Hearing on **HB 2071 – Inheritance rights; automatically revoking ex-spouses inheritance rights**

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on January 31, 2011, in Room 345.
upon divorce, was opened.

Kent Meyerhoff, Attorney, presented testimony on behalf of the Kansas Judicial Council as a proponent. He stated Kansas law addressed the divorce issue to require that divorce decrees provide for any changes in beneficiary designation, however, statute K.S.A. 30-1610 still requires the obligation to actually change the beneficiary by the filing of such change with the insurer in accordance with terms of the policy. Although K.S.A. 59-610 has provided a provision whereby a will for a spouse is automatically revoked if the spouses divorce after the will is executed, it does not cover the more current methods such as revocable trusts or placing “pay on death” or “transfer on death” designations on most of their property so the property does not pass by the will. (Attachment 6)

After discussion, Chairman Kinzer asked the Revisor Staff to prepare a balloon that states everything would be revoked and if the desire was for the divorced spouse to remain as a beneficiary, it would require the initiation of notification to the insurers.

There were no opponents.

The Hearing on **HB 2071** was closed.

The Hearing on **HB 2070 - Requiring plaintiff or plaintiff's attorney to notify defendants of payment of appraisers' award within 15 days** was opened.

An overview of the bill was presented by Staff Revisor, Tamera Lawrence.

Due to the icy roads, Alice Adams, Clerk of the District Clerk, Geary County, Eighth Judicial District, was unable to attend, therefore, Helen Pedigo, Special Counsel to the Chief Justice, presented testimony on her behalf as a proponent. She stated this bill involves condemnation procedures and this amendment would eliminate duplicate reporting by the clerks as they have found the plaintiff's attorneys are generally sending the notice as well. She stated that the responsibility should lie with the attorneys, as does the rest of the process. (Attachment 7)

The Hearing on **HB 2070** was closed.

Chairman Kinzer announced the meeting scheduled for tomorrow, February 1, 2011, would be canceled due to the announcement that Legislative Session was being canceled on account of the incoming blizzard conditions.

Chairman Kinzer also announced the play at the Women's Prison has been canceled for this evening due to weather conditions.

The next meeting is scheduled for February 2, 2011.

The meeting was adjourned at 5: 25 p.m.