

Substitute for HOUSE BILL No. 2113

By Committee on Judiciary

2-8

10 AN ACT concerning municipal courts; relating to the collection of fines
11 and court costs; amending K.S.A. 12-4104, 12-4108, 12-4109, 12-4112,
12 12-4113 and 12-4601 and K.S.A. 2004 Supp. 12-4106 and 60-2310 and
13 repealing the existing sections.

14

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

16 Section. 1. K.S.A. 12-4104 is hereby amended to read as follows: 12-
17 4104. (a) The municipal court of each city shall have jurisdiction to hear
18 and determine cases involving violations of the ordinances of the city.
19 Search warrants shall not issue out of a municipal court.

20 (b) *The municipal courts in each city may exercise jurisdiction to en-*
21 *force all debts owed to the court. In order to implement this authority, a*
22 *municipal court shall adopt court procedures by which the municipal*
23 *court assumes all duties and powers delineated for district courts in ac-*
24 *cord with the code of civil procedure for limited actions. This authority,*
25 *and the associated duties and powers, shall be limited to collection of debts*
26 *owed to the court and restitution ordered by municipal court.*

27 Sec. 2. K.S.A. 2004 Supp. 12-4106 is hereby amended to read as
28 follows: 12-4106. (a) The municipal judge shall have the power to admin-
29 ister the oaths and enforce all orders, rules and judgments made by such
30 municipal judge, and may fine or imprison for contempt in the same
31 manner and to the same extent as a judge of the district court.

32 (b) The municipal judge shall have the power to hear and determine
33 all cases properly brought before such municipal judge to: Grant contin-
34 uances; sentence those found guilty to a fine or confinement in jail, or
35 both; commit accused persons to jail in default of bond; determine ap-
36 plications for parole; release on probation; grant time in which a fine may
37 be paid; correct a sentence; suspend imposition of a sentence; set aside
38 a judgment; permit time for post trial motions; ~~and~~ discharge accused
39 persons; *and enforce debts owed to the court as authorized by this code.*

40 (c) The municipal judge shall maintain a docket in which every cause
41 commenced before such municipal judge shall be entered. Such docket
42 shall contain the names of the accused persons and complainant, the
43 nature or character of the offense, the date of trial, the names of all

1 witnesses sworn and examined, the finding of the court, the judgment
2 and sentence, the date of payment, the date of issuing commitment, if
3 any, and every other fact necessary to show the full proceedings in each
4 case.

5 (d) The municipal judge shall promptly make such reports and fur-
6 nish the information requested by any departmental justice or the judicial
7 administrator, in the manner and form prescribed by the supreme court.

8 (e) The municipal judge shall ensure that information concerning dis-
9 positions of city ordinance violations that result in convictions comparable
10 to convictions for class A and B misdemeanors under Kansas criminal
11 statutes is forwarded to the Kansas bureau of investigation central repos-
12 itory. This information shall be transmitted, on a form or in a format
13 approved by the attorney general, within 30 days of final disposition.

14 Sec. 3. K.S.A. 12-4108 is hereby amended to read as follows: 12-
15 4108. (a) The governing body of each city may provide for the office of
16 clerk of the municipal court. The municipal judge shall appoint such clerk
17 or if no clerk is provided for, the judge shall also serve as clerk. The clerk
18 shall issue all process of the court, administer oaths, file and preserve all
19 papers, docket cases and set same for trial and shall perform such further
20 acts as may be necessary to carry out the duties and responsibilities of
21 the court. The clerk shall receive, account for and pay to the city treasurer
22 monthly all fines and forfeited bonds paid into the court.

23 (b) The clerk of the municipal court, or the municipal judge if no
24 clerk is appointed, within 10 days after selection, and before entering
25 upon the duties of office, shall execute to the city such bond as the gov-
26 erning body may require, which shall be approved by the governing body,
27 and filed in the office of the city clerk, conditioned for the faithful per-
28 formance of the duties required of such clerk by law, and for the faithful
29 application and payment of all moneys that may come into such clerk's
30 hands in the execution of the duties of the office. The city shall pay the
31 cost of such bond.

32 (c) *The clerk of the municipal court is authorized to enter into con-*
33 *tracts in accordance with this section for collection services for debts owed*
34 *to the court or restitution owed under an order of restitution. The cost of*
35 *collections shall be paid by the defendant as an additional court cost in*
36 *all criminal and traffic cases where the defendant fails to pay any amount*
37 *ordered by the court and the court utilizes the services of a contracting*
38 *agent pursuant to this section. The cost of collection shall be deemed an*
39 *administrative fee to pay the actual costs of collection made necessary by*
40 *the defendant's failure to pay [from the amount owed to] the court [as]*
41 *a debt or restitution. Any fine, penalty or any part of any fine or penalty*
42 *assessed by a municipal court which remains unpaid shall be a debt due*
43 *and owing to the municipality. Any such debts remaining unpaid in excess*

1 of 180 days after imposition of sentence, shall be a judgment against the
2 defendant which may be enforced as judgments for payment of money in
3 civil cases.

4 ~~(d) Each contract entered pursuant to this section shall provide for a~~
5 ~~fee to be paid to or retained by the contracting agent for collection serv-~~
6 ~~ices. Such fee shall be designated as the cost of collection as provided in~~
7 ~~this section, and shall not exceed 33% of the amount collected. The cost~~
8 ~~of collection shall be paid from the amount collected, but shall not be~~
9 ~~deducted from the debts owed to courts or restitution.~~

10 ~~(e) On and after July 1, 2005, any city is authorized to utilize the~~
11 ~~collection services of contracting agents pursuant to this section for the~~
12 ~~purpose of collecting all outstanding amounts owed under such order of~~
13 ~~restitution.~~

14 ~~(f) Contracts entered as provided in this section shall provide for the~~
15 ~~payment of any amounts collected to the clerk of the municipal court for~~
16 ~~the court in which the debt being collected originated, after first deducting~~
17 ~~the collection fee. In accounting for amounts collected from any person~~
18 ~~pursuant to this section, the municipal court clerk shall credit the person's~~
19 ~~amount owed in the amount of the net proceeds collected and shall not~~
20 ~~reduce the amount owed by any person by that portion of any payment~~
21 ~~which constitutes the cost of collection pursuant to this section.~~

22 ~~(g) With the appropriate cost of collection paid to the contracting~~
23 ~~agent as agreed upon in the contract, the clerk shall then distribute~~
24 ~~amounts collected as provided in this section as follows:~~

25 ~~(1) When collection services are utilized pursuant to subsection (e),~~
26 ~~all amounts shall be applied against the debts owed to the court as spec-~~
27 ~~ified in the original judgment creating the debt, or~~

28 ~~(2) when collection services are utilized pursuant to subsection (e), all~~

29 **[(e) All] amounts[, minus the cost of collections,] shall be paid to**
30 **the beneficiary under an order of restitution designated to receive such**
31 **restitution, except that where the beneficiary has received recovery from**
32 **the Kansas crime victims compensation board and such board has sub-**
33 **rogation rights pursuant to K.S.A. 74-7312, and amendments thereto, all**
34 **amounts shall be paid to the board until the board's subrogation lien is**
35 **[fully] satisfied.**

36 ~~(h) [(f)] Whenever collection services are being utilized against the~~
37 ~~same debtor pursuant to both subparagraphs (g)(1) and (g)(2) [debts~~
38 ~~owed to the court and restitution], any amounts collected by any con-~~
39 ~~tracting agent shall be first applied to satisfy debts owed to the court as~~
40 ~~provided under subsection (g)(1). Upon satisfaction of all such debts,~~
41 ~~amounts received from the same debtor shall then be applied to satisfy~~
42 ~~debts owed pursuant to an order of restitution as provided under subsec-~~
43 ~~tion (g)(2).~~

1 (i) *The collection services authorized by this section shall not be util-*
2 *ized until the debt or restitution remains unpaid for more than 45 days.*

3 Sec. 4. K.S.A. 12-4109 is hereby amended to read as follows: 12-
4 4109. Each city shall provide at the expense of the city a suitable court-
5 room for the municipal court, together with all necessary supplies and
6 records. Municipal court shall be held at such time and places designated
7 by ordinance. *If the court of any city elects to utilize the civil procedure*
8 *and remedies authorized by this act for collection of debts owed to the*
9 *court, a record of such proceedings shall be maintained.*

10 Sec. 5. K.S.A. 12-4112 is hereby amended to read as follows: 12-
11 4112. No person shall be assessed costs for the administration of justice
12 in any municipal court case, except for witness fees and mileage as set
13 forth in K.S.A. 12-4411, and amendments thereto; for the assessment
14 required by K.S.A. 2001 Supp. 20-1a11, and amendments thereto; for the
15 judicial branch education fund; for the assessment required by K.S.A. 12-
16 4117 and amendments thereto for the law enforcement training center
17 fund established pursuant to K.S.A. 74-5619 and amendments thereto,
18 the local law enforcement training reimbursement fund established pur-
19 suant to K.S.A. 74-5620, and amendments thereto, and the juvenile de-
20 tention facilities fund as provided in K.S.A. 12-4117, and amendments
21 thereto; ~~and~~ for the assessment required by K.S.A. 12-16,119, and amend-
22 ments thereto, for the detention facility processing fee; *and court costs*
23 *created under city home rule authority, and assessments for debts owed*
24 *to the court.*

25 Sec. 6. K.S.A. 12-4113 is hereby amended to read as follows: 12-
26 4113. As used in this act:

27 (a) “Appearance bond” means an undertaking, with or without se-
28 curity, entered into by a person in custody by which the person is bound
29 to comply with the conditions of the undertaking.

30 (b) “Accused person” means a person, corporation or other legal en-
31 tity accused by a complaint of the violation of a city ordinance.

32 (c) “Arraignment” means the formal act of calling the person accused
33 of violating an ordinance before the municipal court to inform the person
34 of the offense with which the person is charged, to ask the person whether
35 the person is guilty or not guilty and, if guilty, to impose sentence.

36 (d) “Arrest” means the taking of a person into custody in order that
37 the person will appear to answer for the violation of an ordinance. The
38 giving of a notice to appear is not an arrest.

39 (e) “Bail” is the security given for the purpose of insuring compliance
40 with the terms of an appearance bond.

41 (f) *“Beneficiary under an order of restitution” means the victim or*
42 *victims of a crime to whom a municipal court has ordered restitution be*
43 *paid.*

- 1 ~~(f)~~ (g) “City attorney” means any attorney who represents the city in
2 the prosecution of an accused person for the violation of a city ordinance.
- 3 ~~(g)~~ (h) “Complaint” means a sworn written statement, or a written
4 statement by a law enforcement officer, of the essential facts constituting
5 a violation of an ordinance.
- 6 (i) “Contracting agent” means a person, firm, agency or other entity
7 who contracts as provided in this code to provide collection services.
- 8 (j) “Costs of collection” means the fee specified in contracts as pro-
9 vided in this code to be paid to or retained by a contracting agent for
10 collection services. Costs of collection also includes any administrative
11 costs prescribed by the clerk of the municipal court.
- 12 ~~(h)~~ (k) “Custody” means the restraint of a person pursuant to an
13 arrest.
- 14 (l) “Debts owed to the court” means any assessment of court costs,
15 fines, fees or moneys expended by the municipality in providing counsel
16 and other defense services to indigent defendants or other charges which
17 a municipal court judge has ordered to be paid to the court, and which
18 remain unpaid in whole or in part. Such debts include any interest or
19 penalties on such unpaid amounts as provided for in the judgment or by
20 law ~~and the cost of collection when collection services of a contracting~~
21 ~~agent as provided in this section are utilized.~~
- 22 ~~(i)~~ (m) “Detention” means the temporary restraint of a person by a
23 law enforcement officer.
- 24 ~~(j)~~ (n) “Law enforcement officer” means any person who by virtue of
25 office or public employment is vested by law with a duty to maintain
26 public order and to make arrests for violation of the laws of the state of
27 Kansas or ordinances of any municipality thereof.
- 28 ~~(k)~~ (o) “Notice to appear” is a written notice to a person accused by
29 a complaint of having violated an ordinance of a city to appear at a stated
30 time and place to answer to the charge of the complaint.
- 31 ~~(l)~~ (p) “Subpoena” is a process issued by the court to cause a witness
32 to appear and give testimony at a time and place therein specified.
- 33 ~~(m)~~ (q) “Ordinance traffic infraction” is a violation of an ordinance
34 that proscribes or requires the same behavior as that proscribed or re-
35 quired by a statutory provision that is classified as a traffic infraction in
36 K.S.A. 8-2118 and amendments thereto.
- 37 ~~(n)~~ (r) “Warrant” is a written order made by a municipal judge di-
38 rected to any law enforcement officer commanding the officer to arrest
39 the person named or described in it.
- 40 ~~(o)~~ (s) “Ordinance cigarette or tobacco infraction” is a violation of an
41 ordinance that proscribes the same behavior as proscribed by subsection
42 (m) or (n) of K.S.A. 79-3321 and amendments thereto.
- 43 Sec. 7. K.S.A. 12-4601 is hereby amended to read as follows: 12-

1 4601. (a) An appeal may be taken to the district court in the county in
2 which said municipal court is located:

3 ~~(a)~~ (1) By the accused person in all cases; and

4 ~~(b)~~ (2) By the city upon questions of law.

5 The appeal shall stay all further proceedings upon the judgment ap-
6 pealed from.

7 (b) *An appeal may be taken from the civil remedies utilized by the*
8 *municipal court to collect debts owed to the court or to the district court*
9 *in the county in which the municipal court is located. For purposes of*
10 *such appeal, the municipal court judgment shall be considered to be a*
11 *judgment by a district magistrate judge.*

12 Sec. 8. K.S.A. 2004 Supp. 60-2310 is hereby amended to read as
13 follows: 60-2310. (a) *Definitions.* As used in this act and the acts of which
14 this act is amendatory, unless the context otherwise requires, the follow-
15 ing words and phrases shall have the meanings respectively ascribed to
16 them:

17 (1) “Earnings” means compensation paid or payable for personal
18 services, whether denominated as wages, salary, commission, bonus or
19 otherwise;

20 (2) “disposable earnings” means that part of the earnings of any in-
21 dividual remaining after the deduction from such earnings of any amounts
22 required by law to be withheld;

23 (3) “wage garnishment” means any legal or equitable procedure
24 through which the earnings of any individual are required to be withheld
25 for payment of any debt; and

26 (4) “federal minimum hourly wage” means that wage prescribed by
27 subsection (a)(1) of section 6 of the federal fair labor standards act of
28 1938, and any amendments thereto.

29 (b) *Restriction on wage garnishment.* Subject to the provisions of sub-
30 section (e), only the aggregate disposable earnings of an individual may
31 be subjected to wage garnishment. The maximum part of such earnings
32 of any wage earning individual which may be subjected to wage garnish-
33 ment for any workweek or multiple thereof may not exceed the lesser of:

34 (1) Twenty-five percent of the individual’s aggregate disposable earnings
35 for that workweek or multiple thereof; (2) the amount by which the in-
36 dividual’s aggregate disposable earnings for that workweek or multiple
37 thereof exceed an amount equal to 30 times the federal minimum hourly
38 wage, or equivalent multiple thereof for such longer period; or (3) the
39 amount of the plaintiff’s claim as found in the order for garnishment. No
40 one creditor may issue more than one garnishment against the earnings
41 of the same judgment debtor during any one 30-day period, but the court
42 shall allow the creditor to file amendments or corrections of names or
43 addresses of any party to the order of garnishment at any time. In an-

1 swering such order the garnishee-employer shall withhold from all earn-
2 ings of the judgment-debtor for any pay period or periods ending during
3 such 30-day period an amount or amounts as are allowed and required
4 by law. Nothing in this act shall be construed as charging the plaintiff in
5 any garnishment action with the knowledge of the amount of any de-
6 fendant's earnings prior to the commencement of such garnishment
7 action.

8 (c) *Sickness preventing work.* If any debtor is prevented from work-
9 ing at the debtor's regular trade, profession or calling for any period
10 greater than two weeks because of illness of the debtor or any member
11 of the family of the debtor, and this fact is shown by the affidavit of the
12 debtor, the provisions of this section shall not be invoked against any such
13 debtor until after the expiration of two months after recovery from such
14 illness.

15 (d) *Assignment of account.* If any person, firm or corporation sells or
16 assigns an account to any person or collecting agency, that person, firm
17 or corporation or their assignees shall not have or be entitled to the ben-
18 efits of wage garnishment. The provision of this subsection shall not apply
19 to the following:

20 (1) Assignments of support rights to the secretary of social and re-
21 habilitation services pursuant to K.S.A. 39-709 and 39-756, and amend-
22 ments thereto, and support enforcement actions conducted by court trust-
23 ees pursuant to K.S.A. 23-492, *et seq.*, and amendments thereto;

24 (2) support rights which have been assigned to any other state pur-
25 suant to title IV-D of the federal social security act (42 U.S.C. § 651 *et*
26 *seq.*);

27 (3) assignments of accounts receivable or taxes receivable to the di-
28 rector of accounts and reports made under K.S.A. 75-3728b, and amend-
29 ments thereto; ~~or~~

30 (4) collections pursuant to contracts entered into in accordance with
31 K.S.A. 75-719, and amendments thereto, involving the collection of res-
32 titution or debts to district courts; *or*

33 (5) *collections pursuant to contracts entered into in accordance with*
34 *K.S.A. 12-4104 et seq., and amendments thereto, involving the collection*
35 *of restitution or debts owed to municipal courts.*

36 (e) *Exceptions to restrictions on wage garnishment.* The restrictions
37 on the amount of disposable earnings subject to wage garnishment as
38 provided in subsection (b) shall not apply in the following instances:

39 (1) Any order of any court for the support of any person, including
40 any order for support in the form of alimony, but the foregoing shall be
41 subject to the restriction provided for in subsection (g);

42 (2) any order of any court of bankruptcy under chapter XIII of the
43 federal bankruptcy act; and

- 1 (3) any debt due for any state or federal tax.
- 2 (f) *Prohibition on courts.* No court of this state may make, execute
3 or enforce any order or process in violation of this section.
- 4 (g) The maximum part of the aggregate disposable earnings of an
5 individual for any workweek which is subject to garnishment to enforce
6 any order for the support of any person shall not exceed:
- 7 (1) If the individual is supporting a spouse or dependent child (other
8 than a spouse or child with respect to whose support such order is used),
9 50% of the individual's disposable earnings for that week;
- 10 (2) if the individual is not supporting a spouse or dependent child
11 described in clause (1), 60% of such individual's disposable earnings for
12 that week; and
- 13 (3) with respect to the disposable earnings of any individual for any
14 workweek, the 50% specified in clause (1) shall be 55% and the 60%
15 specified in clause (2) shall be 65%, if such earnings are subject to gar-
16 nishment to enforce a support order for a period which is prior to the
17 twelve-week period which ends with the beginning of such workweek.
- 18 Sec. 9. K.S.A. 12-4104, 12-4108, 12-4109, 12-4112, 12-4113 and 12-
19 4601 and K.S.A. 2044 Supp. 12-4106 and 60-2310 are hereby repealed.
- 20 Sec. 10. This act shall take effect and be in force from and after its
21 publication in the statute book.