

## MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 8, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative David Heinemann - Excused

Committee staff present:

Jerry Donaldson, Legislative Research  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the Committee:

Representative Rand Rock  
Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration  
Representative David Adkins  
Elwaine Pomeroy, Kansas Collectors Association  
Representative Doug Mays  
Anita Larson, Security Benefit Incorporation  
Amy Lee, Security Attorney, Security Benefit Inc.

Hearings on HB 2160 were opened regarding adoptions by grandparents not being required to have an assessment and report.

Representative Rand Rock appeared before the committee as a sponsor to the bill. This bill makes an exception for the grandparents to the requirement for an assessment so it would be easier and less expensive for grandparents to adopt grandchildren. (Attachment #1)

Chairman O'Neal commented that if the requirement were left in place, and the courts allowed, upon application, a waiver of the requirement, in an appropriate case the grandparents could ask through their attorney to have the assessment waived. That way the court would have the proper information that it would need to make a judgement to have the assessment done.

Representative Rock stated that he was not opposed to this idea but the purpose of the bill is to reduce the amount of money grandparents pay when they want to adopt.

Hearings on HB 2160 were closed.

Hearings on HB 2166 were opened regarding the creation of a cause of action in favor of an employee terminated due to jury service.

Representative David Adkins appeared before the committee as a sponsor to the bill. In Johnson County civil court, a person reported that he had been dismissed from his job for serving on a jury. The judge referred the matter to the District Attorney's office where he researched the law and found there is no provision in the Kansas law prohibiting an employer from terminating an employee due to jury service.

HB 2166 is an attempt to address this matter by making it unlawful to discharge any permanent employee by reason of jury service. Provisions of this bill would make the employer pay the employee who suffered termination by restoring lost wages, applicable damages of other benefits, and reinstatement of full employment. The bill, as drafted, also includes criminal penalties.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 8, 1993.

Representative Plummer questioned if we should have a statute of limitations of one year.

Representative Adkins believed that a narrow statute of limitations was a good idea.

Paul Shelby, Office of Judicial Administration, appeared before the committee as a proponent to the bill. He stated that our standards were adopted by the Supreme Court effective July 15, 1983, as a guideline to assist the District Courts in the management of jury systems within Kansas. (Attachment #2)

Hearings on HB 2166 were closed.

Hearings on HB 2167 were opened dealing with the inclusion in the code of civil procedure for limited actions, Chapter 60 sanctions for filing frivolous claims.

Representative David Adkins appeared before the committee as the sponsor to the bill. He explained that currently the provisions of K.S.A. 60-211 and K.S.A. 60-2007 are not included by reference in Chapter 61 proceedings. These two provisions deal with sanctions for frivolous filings or claims. The bill would incorporate these Chapter 60 provisions into Chapter 61 to afford parties the protections and remedies of those sections.

Hearings on HB 2167 were closed.

Hearings on HB 2168 were opened regarding exempting student aid money from garnishment proceedings.

Representative David Adkins appeared before the committee as a sponsor of the bill. This bill proposes colleges and post-secondary education schools be exempt from garnishment of student aid.

Elwaine Pomeroy, Kansas Collectors Association, appeared before the committee to request an amendment to the bill. The amendment would remove sub-section (d) from K.S.A. 60-2310, regarding the prohibition against garnishment of accounts that have been assigned to a collection agency. (Attachment #3)

Chairman O'Neal proposed taking this issue into consideration when the committee works HB 2168.

Hearings on HB 2168 were closed.

Hearings on HB 2172 were opened regarding annual meetings for corporation.

Representative Mays appeared before the committee to introduce Anita Larson, Associate General Counsel, Security Benefit Incorporation. This bill would amend K.S.A. 17-6501 to provide that any corporation registered under the Investment Company Act of 1940 be required to hold an annual meeting of stockholders only in years in which the election of directors is required under the Investment Company Act of 1940. This would have the effect of saving thousands of dollars in printing and postage costs.

Anita Larson, Associate General Counsel, Security Benefit Inc. appeared before the committee in support of the bill. She stated that similar provisions have been adopted in Massachusetts, Delaware and Maryland. (Attachment #4)

Amy Lee, Security Attorney, Security Benefit Inc. stated that anytime you go to the stockholders for any purpose you can elect directors.

Hearings on HB 2172 were closed.

## CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 8, 1993.

Representative Adkins made a motion to report HB 2166 favorably for passage. Representative Robinett seconded the motion.

Committee discussion followed.

Representative Pauls made a substitute motion to impose a one year statute of limitations from the date of discharge. Representative Goodwin seconded the motion. The motion carried.

Representative Garner made a motion to strike lines 24 & 25 and to insert the attorney fees language that is currently used in the federal statute. Representative Pauls seconded the motion. The motion was ordered divided by Chairman O'Neal. The first half of the motion carried. The second motion carried 10-8.

Representative Pauls made a motion to strike the words "United States" in line 14 & 15. Representative Mays seconded the motion. The motion carried.

Representative Adkins renewed the motion to pass HB 2166 favorably for passage, as amended. Representative Robinett seconded the motion. The motion carried.

Representative Rock made a motion to report HB 2160 favorably for passage. Representative Bradley seconded the motion.

Committee discussion followed.

Representative Wagon offered a substitute amendment which would change the words "registered mail" to "certified mail". (Attachment #5)

Representative Everhart seconded the motion. The motion carried.

Representative Everhart made a motion that would allow the court upon application of the grandparents or upon its own motion to waive the assessment. Representative Pauls seconded the motion. The motion carried.

Representative Goodwin made a motion to allow other blood relatives to the third degree to request waiver of the assessment. Representative Rock seconded the motion. Committee discussion followed. The motion failed.

Representative Rock renewed the motion to report HB 2160 favorably for passage, as amended. Representative Bradley seconded the motion. The motion carried.

The Committee adjourned at 5:30 p.m. The next Committee meeting is February 9, 1993 at 3:30 p.m. in room 313-S.

## GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 8

| NAME                   | ADDRESS  | ORGANIZATION                                  |
|------------------------|----------|---|
| Janet Schalausky       | Topeka   | SRS - Workforce                               |
| Posibly James - Martin | Topeka   | SRS - Youth/Adult Services                    |
| JAMES CHAK             | Topeka   | KCPAA   |
| ROGER VIOA             | TOPEKA   | SBC   |
| Amy Lee                | Topeka   | Security Benefit                              |
| Anita Larson           | Topeka   | Security Benefit Group                        |
| Paul Shelby            | Topeka   | OSA   |
| Matt Lynch             | Topeka   | Judicial Council                              |
| Eva Hornbush           | Lawrence | Intern  |
| Cameron Brewer         | Topeka   | KTCL  |
| Garry Ham              | Salina   | Close-Up                                      |
| Alexa Peikert          | Salina   | Close-Up                                      |
| Alice Harmon           | Salina   | Close-Up                                      |
| Tennifer Chantk. Wentz | Topeka   | Sec. of State                                 |
| KEITH R. LAWORS        | TOPEKA   | CHRISTIAN SCIENCE COMM. ON PUBLICATION FOR KS |
| Gene Johnson           | Topeka   | Alcohol Program                               |
| Roger Fincher          | Lawrence | Legislative Intern                            |
|                        |          |   |
|                        |          |   |
|                        |          |   |
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|                        |          |   |

LAW OFFICES OF  
IVERSON AND IVERSON, P.A.  
209 SOUTH SUMMIT BOX 1065  
ARKANSAS CITY, KANSAS 67005

NORMAN M. IVERSON  
N. M. IVERSON, JR.  
E. RODNEY IVERSON

January 13, 1993

AREA CODE 316  
TELEPHONE 442-3090  
FAX 442-6600

Rand R. Rock  
Kansas State Representative  
Room 273-W  
State Capitol Building  
Topeka, KS 66612

RE: K.S.A. 59-2132

Dear Rand:

I previously visited with your dad concerning an adoption matter which I felt needed some attention. I am referring to K.S.A. 59-2132. Pursuant to this statute (a) "In independent and agency adoptions, the Court shall require the petitioner to obtain an assessment by a court approved social worker licensed to practice social work in Kansas or by a licensed child placing agency of the advisability of the adoption".

K.S.A. 59-2112 defines an independent adoption as "the adoption of the minor child where the child's parent or parents, legal guardian or non-agency person in loco parentis has the authority to consent to the adoption; but does not include a step-parent adoption". An agency adoption is self-explanatory.

The problem that I have run into on three occasions within the last 12 months is the case of grandparents wishing to adopt their grandchild. On each of these cases, the father has never been in the picture and in two of the cases, the father is allegedly unknown. The grandparents are the maternal grandparents and their daughter has had nothing or very little to do with her child for an extended period of time. In each case, the grandchild has resided, been cared for, and supported by the maternal grandparents for an extended period of time in excess of one year. Each set of maternal grandparents are of limited means and contact this office hoping that they can protect the young child by an adoption proceeding without a great deal of cost. I then explained to them the publication costs as well as the court costs. The big stumbling block is the requirement of an investigation pursuant to K.S.A. 59-2132. In Cowley County, the only people licensed to prepare the report are with the Cowley County Mental Health Center. On a previous case, I contacted Helen Finley from the Cowley County Mental Health Center and was advised that her minimum costs are \$350.00. She advised that she was extremely busy and referred me to a Ms. Alexander from the Center. I contacted Ms. Alexander and advised as to the financial situation of the parties and was advised she would do it at a reduced fee of \$300.00. In that case, my client simply did not have the ability to find that sort of funds. With the court costs being

HOUSE JUDICIARY  
Attachment #1  
02-08-93

\$39.00 and the publication fees possibly running near \$90.00, the grandparents would have expenses of approximately \$430.00 even before any attorney fees were charged.

I would hope you would consider excluding from the Investigation Report, grandparent adoptions. Or, in the alternative, set fees for the report at a sum not to exceed \$100.00.

The optimum result is to care for the child and K.S.A. 59-2132, as written, in many circumstances is counter-productive. Many grandparents do not have access to these funds.

Thank you.

Very truly yours,

IVERSON & IVERSON, P. A.

N. M. Iverson, Jr.

NMIJ:lg

House Bill No. 2166  
House Judiciary Committee  
February 8, 1993

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman and members of the committee I thank you for the opportunity to appear and support House Bill No. 2166 which relates to jury service.

Kansas was one of the first states to adopt Standards relating to Jury Use and Management. Our standards were adopted by the Supreme Court effective July 15, 1983, as guidelines to assist the District Courts in the management of jury systems within the State of Kansas. There are a total of 19 such standards which are published and appear in the Report of Rules enacted by the Supreme Court of the State of Kansas.

I bring to your attention Standard 15 (c): Juror Compensation and I quote:

(c) "State law should prohibit employers from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service".  
End Quote.

We fully support House Bill No. 2166 which addresses this standard and we urge the committee to pass this bill favorably.

Thank you Mr. Chairman and I will stand for any questions.

February 8, 1993

COMMENTS CONCERNING HOUSE BILL 2168

I am Elwaine F. Pomeroy, appearing on behalf of the Kansas Collectors Association, Inc. We take no position with regard to HB 2168, except that we would like to see an amendment made to KSA 1992 Supp. 60-2310, and we would like to see that statute amended either in a separate bill, or, if HB 2168, which amends KSA 1992 Supp. 60-2308 is a non-controversial measure, we would like to have the committee consider amending HB 2168 to also include our desired amendment to KSA 1992 Supp. 60-2310.

For your convenience, I have attached a copy of KSA 1992 Supp. 60-2310. Sub-paragraph (d) of that statute prohibits wage garnishment where an account has been assigned.

You will note that sub-paragraph (d) has several internal exceptions to the garnishment prohibition.

Our request is that sub-paragraph (d) be removed in its entirety from KSA 1992 Supp. 60-2310.

In some business arrangements, accounts are routinely assigned, such as long distance telephone charges from one company being included in the statement issued by another company.

If it were not for this prohibition against garnishment when there is assignment, assignments might be common, and could be useful in for instance, a situation where a health care provider would prefer not to be named as plaintiff in an action to collect the balance due on an account.

We would request your consideration of our proposed amendment.

Elwaine F. Pomeroy  
For Kansas Collectors Association, Inc.

HOUSE JUDICIARY  
Attachment #3  
02-08-93



**History:** L. 1963, ch. 303, 60-2308; L. 1980, ch. 176, § 5; L. 1986, ch. 220, § 1; July 1.

**Law Review and Bar Journal References:**

"Counselling Debtors on Bankruptcy—Which Chapter to Choose," David J. Berkowitz, 53 J.K.B.A. 272 (1984).  
 "ERISA Retirement Benefits Under Bankruptcy Law—A Kansas Perspective," Kathy A. Stover, 55 J.K.B.A. No. 8, 18, 19 (1986).  
 "Survey of Kansas Law: Family Law," Nancy G. Maxwell, 37 K.L.R. 801, 819 (1989).  
 "Bankruptcy and Divorce in Kansas," J. Scott Pohl and C. J. Wahrman, 29 W.L.J. 551, 593 (1990).

**CASE ANNOTATIONS**

2. 1986 amendments hereto (L. 1986, ch. 220, § 1) inapplicable to garnishment filed previously; IRA not exempt from garnishment under federal law. *Bartlett Cooperative Ass'n v. Patton*, 239 K. 628, 634, 722 P.2d 551 (1986).
3. Social security disability benefits subject to garnishment for past-due child support; garnishment not precluded by statute. *Mariche v. Mariche*, 243 K. 547, 552, 758 P.2d 745 (1988).
4. Assets, including I.R.A.s., subject to execution for past-due maintenance owed former spouse, but not attorney fees, other obligations. *In re Marriage of Schoneman*, 13 K.A.2d 536, 541, 775 P.2d 194 (1989).
5. Social security and veterans disability benefits as exempt from garnishment examined. *Younger v. Mitchell*, 245 K. 204, 206, 777 P.2d 789 (1989).
6. IRA subject to statute; construed as revocable inter vivos trust subject to rights of nonconsenting surviving spouse. *McCarty v. State Bank of Fredonia*, 14 K.A.2d 552, 558, 795 P.2d 940 (1990).
7. Kansas exemption for independent retirement accounts (IRAs) not preempted by employee retirement income security act (ERISA). *In Re Chadwick*, 113 B.R. 540, 544 (1990).
8. Chapter 7 debtor could claim Kansas exemption in individual retirement account (IRA) plan; not preempted by federal law. *In Re Galvin*, 121 B.R. 79 (1990).

**60-2310. Wage garnishment; definitions; restrictions; sickness preventing work; assignment of account; exceptions; prohibition on courts.** (a) *Definitions.* As used in this act and the acts of which this act is amendatory, unless the context otherwise requires, the following words and phrases shall have the meanings respectively ascribed to them:

- (1) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise;
- (2) "disposable earnings" means that part of the earnings of any individual remaining after the deduction from such earnings of any amounts required by law to be withheld;
- (3) "wage garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and

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

(b) *Restriction on wage garnishment.* Subject to the provisions of subsection (e), only the aggregate disposable earnings of an individual may be subjected to wage garnishment. The maximum part of such earnings of any wage earning individual which may be subjected to wage garnishment for any workweek or multiple thereof may not exceed either (1) twenty-five percent of the individual's aggregate disposable earnings for that workweek or multiple thereof, or (2) the amount by which the individual's aggregate disposable earnings for that workweek or multiple thereof exceed an amount equal to 30 times the federal minimum hourly wage, or equivalent multiple thereof for such longer period, whichever is less. No one creditor may issue more than one garnishment against the earnings of the same judgment debtor during any one 30-day period, but the court shall allow the creditor to file amendments or corrections of names or addresses of any party to the order of garnishment at any time. In answering such order the garnishee-employer shall withhold from all earnings of the judgment-debtor for any pay period or periods ending during such 30-day period an amount or amounts as are allowed and required by law. Nothing in this act shall be construed as charging the plaintiff in any garnishment action with the knowledge of the amount of any defendant's earnings prior to the commencement of such garnishment action.

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

~~(d) *Assignment of account.* If any person, firm or corporation sells or assigns an account to any person or collecting agency, that person, firm or corporation or their assignees shall not have or be entitled to the benefits of wage garnishment. The provision of this subsection shall not apply to assignments of support rights to the secretary of social and rehabilitation services pursuant to K.S.A. 39-709 and 39-756.~~

and amendments thereto, or to support rights which have been assigned to any other state pursuant to title IV-D of the federal social security act (42 U.S.C. § 651 *et seq.*), or to the assignments of accounts receivable or taxes receivable to the director of accounts and reports made under K.S.A. 75-3728b and amendments thereto.

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

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

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

(3) any debt due for any state or federal tax.

(f) *Prohibition on courts.* No court of this state may make, execute or enforce any order or process in violation of this section.

(g) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(1) If the individual is supporting a spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50% of the individual's disposable earnings for that week;

(2) if the individual is not supporting a spouse or dependent child described in clause (1), 60% of such individual's disposable earnings for that week; and

(3) with respect to the disposable earnings of any individual for any workweek, the 50% specified in clause (1) shall be 55% and the 60% specified in clause (2) shall be 65%, if such earnings are subject to garnishment to enforce a support order for a period which is prior to the twelve-week period which ends with the beginning of such workweek.

**History:** L. 1963, ch. 303, 60-2310; L. 1967, ch. 324, § 2; L. 1968, ch. 404, § 1; L. 1970, ch. 238, § 1; L. 1972, ch. 222, § 4; L. 1976, ch. 210, § 7; L. 1977, ch. 206, § 1; L. 1978, ch. 227, § 5; L. 1979, ch. 183, § 5; L. 1982, ch. 250, § 1; L. 1983, ch. 289, § 1; L. 1985, ch. 115, § 51; L. 1988, ch. 212, § 3; L. 1988, ch. 213, § 3; Jan. 1, 1989.

#### Law Review and Bar Journal References:

"Counselling Debtors on Bankruptcy—Which Chapter to Choose," David J. Berkowitz, 53 J.K.B.A. 272 (1984).

"Kansas Enacts New Provisions for Child Support Enforcement—Mandatory Wage Withholding," Yvonne C. Anderson, Richard A. Forster, 25 W.L.J. 91, 102, 111 (1985).

"Little Used Procedures for Collecting Child Support and Maintenance," Charles F. Harris, Vol. VIII, No. 5, J.K.T.L.A. 9 (1985).

"Survey of Kansas Law: Family Law," Nancy G. Maxwell, 37 K.L.R. 801, 819 (1989).

"The Risks of Underinsuring," Wayne T. Stratton, 90 Kan. Med. No. 11, 300 (1989).

#### CASE ANNOTATIONS

7. Parent with duty to support not entitled to notice, prior to garnishment, of assignment of support payments to S.R.S. Whisler v. Whisler, 9 K.A.2d 624, 627, 628, 684 P.2d 1025 (1984).

8. Cited in showing protection of wage earners as principal objective of many laws; constitutionality of no-fault act (40-3101 *et seq.*) upheld. Burris v. Northern Assurance Co. of America, 236 K. 326, 333, 691 P.2d 10 (1984).

9. Mere placement of account with collection agency where ownership and control remain with creditor does not preclude garnishment. Bieber v. Associated Collection Services, Inc., 631 F.Supp. 1410, 1415 (1986).

10. Cited; limitations on modifications of separation agreement incorporated into divorce decree examined. Bair v. Bair, 242 K. 629, 631, 750 P.2d 994 (1988).

11. Garnishment of social security disability benefits not subject to percentage limitations herein. Mariche v. Mariche, 243 K. 547, 553, 758 P.2d 745 (1988).

#### 60-2311.

#### Law Review and Bar Journal References:

"Rights of Kansas Non-Union Employees Against Unjust Termination—Where Are We Now?" William C. Nulton, 54 J.K.B.A. 237, 239 (1985).

"Personnel Policy Manuals as Legally Enforceable Contracts: The Implied-in-Fact Contract—A Limitation on the Employer's Right to Terminate at Will," Michael D. Strong, 29 W.L.J. 368, 373 (1990).

**60-2312. No right to elect exemptions under federal law, exception.** (a) Except as provided in subsection (b), no person, as an individual debtor under the federal bankruptcy reform act of 1978 (11 U.S.C. §101 *et seq.*), may elect exemptions pursuant to subsection (b)(1) of section 522 of such federal act.

(b) An individual debtor under the federal bankruptcy reform act of 1978 may exempt, in addition to any other exemptions allowed under state law, any property listed in subsection (d)(10) of section 522 of such federal act. The provisions of this subsection shall apply to any bankruptcy action which: (1) Is filed on or after July 1, 1986; or (2) was filed on or after April 26, 1980, and is pending or on appeal on July 1, 1986.

**History:** L. 1980, ch. 176, § 1; L. 1986, ch. 220, § 2; July 1.



The Security Benefit  
Group of Companies

Security Benefit Life Insurance Company  
Security Benefit Group, Inc.  
Security Distributors, Inc.  
Security Management Company

700 Harrison St.  
Topeka, Kansas 66636-0001  
(913) 295-3000

February 8, 1993

Subj: House Bill No. 2172  
Annual Meetings for Corporations Registered under the  
Investment Company Act of 1940

Dear Chairman and Committee Members:

The Security Benefit Group of Companies is a diversified financial services organization offering life insurance, mutual funds, annuities and retirement plans. The parent company, Security Benefit Life Insurance Company, has been in business for 100 years. The Security Benefit Group of Companies has nearly \$4 billion in assets under management and employs approximately 570 Kansans. We support House Bill 2172.

Security Management Company, a member of the Security Benefit Group of Companies, is an investment adviser registered with the Securities and Exchange Commission. Security Management Company provides investment advisory services to eight open-end management investment companies, more commonly called mutual funds. Each of the funds is organized as a Kansas corporation.

K.S.A. 17-6501 presently provides that a corporation shall hold a meeting of stockholders each year for the election of directors at the date and time specified in the corporation's bylaws. House Bill 2172 would amend this statute to provide that corporations registered under the Investment Company Act of 1940 are required to hold an annual meeting of stockholders only in years in which the election of directors is required under the Investment Company Act of 1940 Act ("1940 Act").

Section 16(a) of the 1940 Act requires that before any vacant directorship may be filled otherwise than pursuant to an election by stockholders, at least two-thirds of the directors then holding office shall have been elected to such office by the stockholders of the company at an annual or special meeting. We believe that this provision provides adequate safeguards for investment company stockholders.

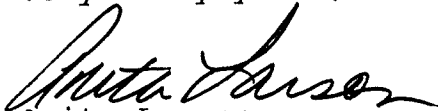
Similar provisions have been adopted in other states, specifically Massachusetts and Delaware do not require annual meetings of stockholders for investment companies that are organized as business trusts, and Maryland does not require annual meetings for investment companies organized as corporations.

HOUSE JUDICIARY  
Attachment #4  
02-08-93

We believe that adoption of House Bill 2172 would benefit the eight mutual funds managed by Security Management Company and, as a result, the funds' stockholders. The expense of proxy solicitation and mailing is a fund expense and can amount to as much as \$30,000 per meeting for the larger funds. The proposed amendment would also benefit Kansas by providing an incentive for other mutual funds to organize as Kansas corporations. In addition, it would eliminate an incentive for funds organized under Kansas law to reorganize in a state that does not require annual meetings of stockholders.

Thank you for your time and consideration. I would be happy to address any questions you may have.

Very truly yours,



Anita Larson  
Assistant Counsel  
Security Benefit Group, Inc.

## HOUSE BILL No. 2160

By Representatives Rock, Ballard, Benlon, Blumenthal, Bradley, Bruns, Bryant, Correll, Cox, Dawson, Donovan, Edlund, Gilbert, Goodwin, Hayzlett, King, Krehbiel, Lahti, Larkin, Long, Lowther, Macy, Mays, McKinney, Minor, Myers, Pauls, Pettey, Rezac, Ruff, Rutledge, Scott, Sebelius, Smith, D., Vickrey, Wagle, Watson, Weinhold, Welshimer

1-29

13 AN ACT concerning adoption; relating to the assessment by a li-  
14 censed social worker; amending K.S.A. 1992 Supp. 59-2132 and  
15 repealing the existing ~~section~~

59-2136

16  
17 *Be it enacted by the Legislature of the State of Kansas:*

sections

18 Section 1. K.S.A. 1992 Supp. 59-2132 is hereby amended to read  
19 as follows: 59-2132. (a) *Except as provided in subsection (h)*, in  
20 independent and agency adoptions, the court shall require the pe-  
21 titioner to obtain an assessment by a court approved social worker  
22 licensed to practice social work in Kansas or by a licensed child-  
23 placing agency of the advisability of the adoption.

24 (b) The petitioner shall file with the court, not less than 10 days  
25 before the hearing on the petition, a report of the assessment and,  
26 if necessary, confirmation or clarification of the information filed  
27 under K.S.A. 59-2130, *and amendments thereto*.

28 (c) If there is no licensed social worker or licensed child-placing  
29 agency available to make the assessment and report to the court,  
30 the court may use the department of social and rehabilitation services  
31 for that purpose.

32 (d) The costs of making the assessment and report may be as-  
33 sessed as court costs in the case as provided in article 20 of chapter  
34 60 of the Kansas Statutes Annotated and amendments thereto.

35 (e) In making the assessment, the social worker, child-placing  
36 agency or department of social and rehabilitation services is au-  
37 thorized to observe the child in the petitioner's home, verify financial  
38 information of the petitioner, shall clear the name of the petitioner  
39 with the child abuse and neglect registry through the department  
40 of social and rehabilitation services and to contact the agency or  
41 individuals consenting to the adoption and confirm and, if necessary,  
42 clarify any genetic and medical history filed with the petition. This  
43 information shall be made a part of the report to the court. The

1 report to the court by the social worker, child-placing agency or  
2 department of social and rehabilitation services shall include the  
3 results of the investigation of the petitioner, the petitioner's home  
4 and the ability of the petitioner to care for the child.

5 (f) In the case of a nonresident who is filing a petition to adopt  
6 a child in Kansas, the assessment and report required by this section  
7 must be completed in the petitioner's state of residence by a licensed  
8 social worker, a licensed child-placing agency or a comparable entity  
9 in that state and filed with the court not less than 10 days before  
10 the hearing on the petition.

11 (g) The assessment and report required by this section must have  
12 been completed not more than one year prior to the filing of the  
13 petition for adoption.

14 (h) *The assessment and report required by this section shall not*  
15 *be required for adoptions of a child by such child's grandparent or*  
16 *grandparents unless ordered by the court.*

17 Sec. 2. K.S.A. 1992 Supp. 59-2132 ~~is~~ hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after  
19 its publication in the statute book.

[Section 2. K.S.A. 1992 Supp. 59-2136,  
see attached.]

[and 59-2136 are

Section 2. K.S.A. 1992 Supp. 59-2136 is hereby amended to read as follows: 59-2136. (a) The provisions of this section shall apply where a relinquishment or consent to an adoption has not been obtained from a parent and K.S.A. 59-2124 and 59-2129, and amendments thereto, state that the necessity of a parent's relinquishment or consent can be determined under this section.

(b) Insofar as practicable, the provisions of this section applicable to the father also shall apply to the mother and those applicable to the mother also shall apply to the father.

(c) In stepparent adoptions under subsection (d), the court may appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. In all other cases, the court shall appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. If no person is identified as the father or a possible father, the court shall order publication notice of the hearing in such manner as the court deems appropriate.

(d) In a stepparent adoption, if a mother consents to the adoption of a child who has a presumed father under subsection (a)(1), (2) or (3) of K.S.A. 38-1114 and amendments thereto, or who has a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the consent of such father must be given to the adoption unless such father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption or is incapable of giving such consent. In determining whether a father's consent is required under this

subsection, the court may disregard incidental visitations, contacts, communications or contributions. In determining whether the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption, there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support as required by judicial decree, when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent.

(e) Except as provided in subsection (d), if a mother desires to relinquish or consents to the adoption of such mother's child, a petition shall be filed in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court. The petition may be filed by the mother, the petitioner for adoption, the person or agency having custody of the child or the agency to which the child has been or is to be relinquished. Where appropriate, the request to terminate parental rights may be contained in a petition for adoption. If the request to terminate parental rights is not filed in connection with an adoption proceeding, venue shall be in the county in which the child, the mother or the presumed or alleged father resides or is found. In an effort to identify the father, the court shall determine by deposition, affidavit or



hearing, the following: (1) Whether there is a presumed father under K.S.A. 38-1114 and amendments thereto;

(2) whether there is a father whose relationship to the child has been determined by a court;

(3) whether there is a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction;

(4) whether the mother was cohabitating with a man at the time of conception or birth of the child;

(5) whether the mother has received support payments or promises of support with respect to the child or in connection with such mother's pregnancy; and

(6) whether any man has formally or informally acknowledged or declared such man's possible paternity of the child.

If the father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (f).

(f) Notice of the proceeding shall be given to every person identified as the father or a possible father by personal service, ~~registered-mail~~ certified mail return receipt requested or in any other manner the court may direct. Proof of notice shall be filed with the court before the petition or request is heard.

(g) If, after the inquiry, the court is unable to identify the father or any possible father and no person has appeared

claiming to be the father and claiming custodial rights, the court shall enter an order terminating the unknown father's parental rights with reference to the child without regard to subsection (h). If any person identified as the father or possible father of the child fails to appear or, if appearing, fails to claim custodial rights, such person's parental rights with reference to the child shall be terminated without regard to subsection (h).

(h) When a father or alleged father appears and asserts parental rights, the court shall determine parentage, if necessary pursuant to the Kansas parentage act. If a father desires but is financially unable to employ an attorney, the court shall appoint an attorney for the father. Thereafter, the court may order that parental rights be terminated, upon a finding by clear and convincing evidence, of any of the following: (1) The father abandoned or neglected the child after having knowledge of the child's birth;

(2) the father is unfit as a parent or incapable of giving consent;

(3) the father has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(4) the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(5) the father abandoned the mother after having knowledge

of the pregnancy;

(6) the birth of the child was the result of rape of the mother; or

(7) the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition.

In making a finding under this subsection, the court may disregard incidental visitations, contacts, communications or contributions. In determining whether the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption, there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support as required by judicial decree, when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent.

Renumber remaining sections accordingly.