Approved: May 23, 1993
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. on March 17, 1994 in Room 313-S of the Capitol.

All members were present except:
Representative Gilbert Gregory - Excused
Representative Don Smith - Excused
Representative Elaine Wells - Excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Others attending: See attached list

Representative Carmody passed out a summary sheet regarding the action that the sub-committee took, (see attachment 1).

SB 452 - Child support, medical support orders, coverage under health benefit plans, (see attachment 2).

Representative Carmody explained that the Committee adopted the religious exemption provisions from **SB 464**. This would allow parents the option to request a hearing opposing medical treatment for any reason, and extend protection beyond the religious exemption. The second amendment would have Office of Judicial Administration receive, process and maintain records for money received under support orders.

Representative Pauls commented that courts have done this in emergency situations. However because it's an emergency there wouldn't be enough time for a hearing. She questioned if there was an exemption that would allow medical treatment in emergency situations. Representative Carmody replied that he didn't know if it would allow for this, but under present law the courts can do emergency proceedings so they should be able to act under this provision.

Representative Carmody made a motion to adopt the sub-committee report. Representative Macy seconded the motion. The motion carried.

Chairman O'Neal questioned if this was something that the State has to do, and was this the minimum that has to be done in order to be in compliance. Representative Carmody replied yes.

Representative Everhart made a motion to amend in **HB 2885** - Child in need of care code changes; relating to temporary custody orders for informal supervision and reintegration plan, into **SB 452**. **HB 2885** would allow that when a judge orders temporary custody, in abuse or neglect cases, that the time frame shall be only 90 days . Currently there are no time frames as to how long children remain under a temporary custody order. Representative Wagnon seconded the motion. Representative Plummer questioned what would happen if the 90 day order expired and nothing has been done. Would the child go back to the family? Representative Everhart replied that SRS would not have the authority to hold the child. Someone should be moving the case, the children shouldn't be left in limbo. The motion carried.

Representative Carmody made a motion to report **SB 452** favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.

SB 530 - Garnishment; orders for child support, (see attachments 3-8).

Representative Carmody explained that this bill would allow an employer to charge a fee of $10 - $20 for servicing a garnishment order on an employee. The sub-committee expanded the fee to include anyone who is administering the order of garnishment may collect the fee. The bill provides that on a child support orders there be a maximum amount that could be garnished, the $10-$20 fee would not be counted toward the maximum amount.

Representative Carmody made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Representative Wagnon made a motion to amend in **HB 2609** - Amendment to the protection from abuse act, amended into **SB 530**. Representative Everhart seconded the motion. The motion carried.

Representative Carmody made a motion to report **SB 530** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

SB 762 - Liability of officers and directors of certain financial institutions, (see attachments 9 -17)

Representative Carmody explained that this bill would give protections to outside directors of financial institutions against claims if simple negligence. The sub-committee struck new section 3. The sub-committee recommended the bill be passed as amended.

Representative Carmody made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Representative Heinemann made a motion to make the bill effective date upon the publication in the Kansas Registrar. Representative Pauls seconded the motion. The motion carried.

Kathy Taylor, Kansas Bankers Association, commented that there was some question as to whether the courts would allow retroactivity to take effect. A doctrine is currently being used by the federal government to get around the statute of limitations, on the theory that if a board is in place, and if an act happens and the board stays in place without change, then the board had adverse domination which prevented the shareholders from discovering the negligence and therefore the statute of limitations was tolled. The adverse domination bill would be a fall back position. If for any reason the courts would strike down the retroactivity, they would still have some protections on this theory. This would make it clear that adverse domination would apply only to fraud cases.

No action was taken on the adverse domination bill.

Representative Heinemann made a motion to report **SB 762** favorably for passage as amended. Representative Carmody seconded the motion. The motion carried.

SB 582 - Limited liability partnerships, (see attachments 18-20)

Representative Carmody commented that the Secretary of State requested this bill and it would allow for a partner in a general partnership to file a statement that they are not liable for the acts of fellow partners. The Secretary of States office requested that the periods be deleted from L.L.C. & L.C.

Representative Carmody made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Representative Carmody made a motion to report **SB 582** favorably for passage as amended. Representative Adkins seconded the motion. The motion carried. Representative Mays requested he be recorded as voting no.

SB 605 - Immunity from liability for architects and engineers in certain circumstances, (see attachments 21 & 22)

Representative Carmody explained that this bill would allow licensed architects and engineers to act as emergency building inspectors in a declared state of a nation emergency, but not be held liable for negligent inspections. The sub-committee recommend that **SB 605** be tabled.

Representative Carmody made a motion to adopt the sub-committee report. Representative Adkins seconded the motion.

Representative Mayans made a substitute motion to report **SB 605** favorably for passage. Representative Mays seconded the motion. Representative Plummer commented that the Committee just extended liability for financial officers and the same liability should be extended emergency building inspectors. The motion carried.

SB 807 - Family violence prevention programs, (see attachments 23-29)

Representative Carmody commented that the bill would require each county to create a Family Violence & Child Abuse and Negligence Assistance Prevention fund. The money raised for the fund would come from an additional $1 docket fee on criminal cases, county court and municipal court cases. 65 percent of the monies

would be kept at the county level to go towards domestic violence shelter programs. The language was also broadened to have the funds used for advocacy groups, such as CASA programs. Representative Carmody made a motion to adopt the sub-committee report. Representative Wagnon seconded the motion. The motion carried.

Representative Pauls questioned who would distribute the funds. Representative Adkins stated that the make up of the Board was on page two of the bill. The municipal funds that are generated would be placed in the county.

Representative Carmody made a motion to change the effective date from July 1, 1992 to July 1, 1994. Representative Wagnon seconded the motion. The motion carried.

Representative Adkins made a motion to report **SB 807** favorably for passage as amended. Representative Wagnon seconded the motion. Representative Shriver commented that he objected to having 65% of the funds collected going towards one program when there are so many other areas in the courts that could also use funds. Representative Carmody stated that he was opposed to using docket fees to support programs. If they are valid programs they should be standing on their own. This is the fifth or sixth bill that the Committee has looked at this year that would increase docket fees. Docket fees is not the way to fund programs that are necessary for the State. Chairman O'Neal stated that he was concerned where the State was going with docket fees. Historically docket fees had been used for law enforcement center training operations. The motion carried.

SB 363 - Attorney fees in actions relating to fire damages caused by railroads, (see attachment 30)

Representative Carmody explained that under current law, if a railroad causes a fire, it's liable for any damages and attorney fees. This proposed bill would allow the attorney fees to be subject for approval and if the railroad company tenders a settlement then attorneys fees would only be collected if the amount recovered was above the tender offer. The sub-committee recommended that this bill be passed.

Representative Carmody made a motion to adopt the sub-committee report. Representative Robinett seconded the motion. The motion carried.

Representative Carmody made a motion to report **SB 363** favorably for passage. Representative Bradley seconded the motion.

Representative Adkins made a substitute motion to repeal the current statute. Representative Shriver seconded the motion. Representative Adkins commented that the nature of the railroads have changed since the statute went into effect and it is appropriate to subject them to standard common law principals of negligence and causation. Representative Shriver stated that on the average there are about 280 fires a year on railroads right-of-ways, with about 1,000 acres burned each time at a cost of $130,000. The motion failed.

On the motion to report the bill favorably, the motion carried.

SB 595 - Increasing maximum amount of claim in small claims court, (see attachments 31-41)

Representative Carmody explained that the sub-committee raised the jurisdiction limit on small claims court from $1,000 to 1,500. Under present law, if the loser appeals the case they have to pay attorney fees. An amendment placed in the bill by the sub-committee would allow this to be discretionary by the judge.

Representative Carmody made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Representative Carmody made a motion to report **SB 595** favorably for passage as amended. Representative Shriver seconded the motion.

Representative Adkins made a substitute motion to amend the bill by adding a new section which would state that if a person appears in represented capacity, with their attorney or not, or with their corporation , or if there is an attorney presenting himself in a small claims action the other side would also be allowed to have an attorney. Representative Plummer seconded the motion. Representative Goodwin commented that judges in her district were concerned with keeping the number of cases that are allowed in small claim courts as low as possible. Chairman O'Neal commented that he had some concerns with the bill. It seems that fairly large businesses tend to access small claims court, when small claims courts were meant for those, small businesses or individuals, who do not have the resources to hire attorneys. There have been some companies that have

accessed the system over 20 times a year and if the courts don't know that then there are some void judgements that should have never been entered. The motion carried.

Representative Macy stated that she was opposed to the bill and doesn't believe that $1,500 is a small claim. It should be what it was intended to be for the people to be able to get satisfaction and know that the other side is not going to be bringing in an attorney.

Chairman O'Neal made a motion that upon filing a action in small claims court there be a certification on the part of the person filing the suit that they are complying with the small claims act, that they haven't accessed the small claims court more than 10 times in one year. Representative Goodwin seconded the motion. The motion carried.

Representative Everhart made a motion to amend the dollar amount back to $1,000. Representative Pauls seconded the motion. Representative Carmody commented that testimony was given that if one was to factor in inflation and the cost of living it would bring the amount to $1,400. The motion failed.

Representative Adkins made a motion to report **SB 595** favorably for passage as amended. Representative Robinett seconded the motion. The motion carried.

SB 691 - Small claims procedure, venue (see attachments 42-43)

Representative Carmody explained that this bill would allow a small claim action to be filed where the defendant lived or where the cause of the action arose.

Representative Carmody made a motion to adopt the sub-committee report. Representative Mayans seconded the motion. The motion carried.

Representative Garner made a motion to report **SB 691** favorably for passage. Representative Shriver seconded the motion. Representative Carmody commented that he was opposed to the bill. The purpose of the small claims act was to allow individuals to settle their small disputes. With the passage of this bill one could take advantage of the fact that the person they are suing is not in the same town that they live in. The motion carried.

SB 465 - Transfers of property to SRS when decedent's estate has value of less than $10,000, (see attachment 44).

Representative Carmody commented that this was a clean up bill on the probate statute which would restore the contempt powers to the district courts. The sub-committee recommended that the bill be passed.

Representative Carmody made a motion to adopt the sub-committee report. Representative Wagnon seconded the motion. The motion carried.

Representative Carmody made a motion to report **SB 465** favorably for passage. Representative Wagnon seconded the motion. The motion carried.

SB 804 - Contracts with public and private entities by secretary of social and rehabilitation services for support enforcement services, (see attachments 45-46)

Representative Carmody explained that this bill would authorize SRS to contract on a competitive bid basis for contract support collectors. The sub-committee recommend that the bill be not passed.

Representative Carmody made a motion to adopt the sub-committee report. Representative Adkins seconded the motion. The motion carried.

Representative Carmody made a motion to report **SB 804** be not passed. Representative Adkins seconded the motion. The motion carried.

The Committee meeting adjourned at 6:30 p.m. The next meeting is scheduled for March 21, 1994.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE _____

NAME	ADDRESS	ORGANIZATION
Paul Shelby	Topeka	CJA
Alene Isabel	Topeka	Corp for Change
Gerry Ray	Overland Park	City of OP
Helen Stephens	Topeka	KPOA
Kyle Smith	Topeka	KBI / A.G.
Jean Barbu	Topeka	Barbu & Associates
Marilyn Kisley Zinn	Topeka	SRS
Jamie Corkhill	"	SRS / CSE
Sydney Hardman	Lawrence	KS Action for Children
Donna Reinwebber	Vassar	Rep Sebelius Intern
Dodie Lacey	Topeka	KS Children's Service League
Jerel Wright	Topeka	KS Credit Union Assn
Randy Proctor	"	SRS/ [illegible]
T.C. Anderson	Topeka	KSCPA
Jenny Chanlik Wentz	Topeka	Sec of State
[illegible]	—	KS Gas Assn
Danielle Noe	Topeka	State Farm
Jeff Sonnich	"	KNLS
Bob Miller	Dwight	FWI / KBA
Brenda Nicolet	Dwight	FWI - KBA
Joe Lieber	Topeka	KS Co-op Council
Ron Miller	Topeka	BIDS

(over)

Bill Caton	Topeka	Consumer Credit
Jim Maag	"	KBA
Chuck Stones	"	"
Rodney Ousley	"	"
Mary Ann Keller	Parsons	"
Marilyn K. Bolander	Parsons	"
Lonita Carter	Parsons	
Darlene Stillwagon	Chapman	"
Patricia Chamberlin	Chapman	"
Laura Vogts	McPherson	"
Linda M. Root	Chapman	"
Eda Woolf	Claflin	"
Barbara Stites	Hill City	"
Marlene Unruh	McPherson	"
Lonnie R. Smith	McPherson	"
Jim McDavitt	Wichita	Ks Education Watch
Alan Weldon	Wichita	Kansans For Life

MEMORANDUM

Kansas Legislative Research Department

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March 17, 1994

To: House Judiciary Committee

From: Subcommittee No. 2

Re: Action on Senate Bills

S.B. 452

Adopted religious exemption from S.B. 464 (See Attachment 1.)

Adopted S.B. 452 balloon (See Attachment 3.)

Be Passed As Amended

S.B. 530

Adopted conceptual amendment to expand application of administrative fee (See Attachment 4.)

Adopted recommendation to add "if known" after social security number

Be Passed as Amended

S.B. 762

Strike new §3 -- added by the Senate

Be Passed as Amended

S.B. 582

Adopted the Secretary of States recommendations to add provision which delete periods (See Attachment 5.)

Bill Passed as Amended

S.B. 605

Table

S.B. 807

Adopted conceptual amendment whereby 65 percent of monies kept at the county level go to domestic violence shelter programs (See Attachment 6.)

Added CASA language (See Attachment 7.)

Adopted Paul Shelby, OJA, amendments (See Attachment 8.)

S.B. 363

Be Passed

S.B. 595

Adopted $1,500 juris dictional threshold

Be Passed as Amended

S.B. 691

Be Passed

S.B. 465

Be Passed

S.B. 804

Be Not Passed

Sec. 9. K.S.A. 38-1501 is hereby amended to read as follows: 38-1501. K.S.A. 38-1501 through ~~38-1593~~ *38-1598* shall be known as and may be cited as the Kansas code for care of children and shall be liberally construed, to the end that each child within its provisions shall receive the care, custody, guidance, control and discipline, preferably in the child's own home, as will best serve the child's welfare and the best interests of the state. *All proceedings under this code shall be disposed of without unnecessary delay.* All proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state. Proceedings pursuant to this code shall be civil in nature.

Sec. 10. K.S.A. 38-1513 is hereby amended to read as follows: 38-1513. (a) *Physical or mental care and treatment.* (1) When a child less than 18 years of age is alleged to have been *physically, mentally or emotionally abused or neglected or* sexually abused, no consent shall be required to medically examine the child to determine whether ~~there has been sexual abuse~~ *the allegation is true and whether medical treatment is necessary.*

(2) When the health or condition of a child who is a ward of the court requires ~~it~~, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records.

~~A child, or parent of any child, who is an adherent of a religious denomination whose religious teachings~~ are opposed to certain medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper.

Revised SRS balloon (1)
(OJA's request incorporated on p. 5) 3/9/94

Session of 1994

SENATE BILL No. 452

By Joint Committee on Children and Families

1-10

AN ACT concerning support of a child; relating to enforcement of support; medical support orders for children; health benefit plans; amending K.S.A. 23-4,105 and K.S.A. 1993 Supp. 23-4,106, 23-4,107, 23-4,108, 23-4,109 and 23-4,111 and repealing the existing sections.

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

New Section 1. (a) The provisions of this section and the income withholding act shall apply to all health benefit plans, as defined in this section, which are administered in this state, including, but not limited to, all health benefit plans governed by the federal employee retirement income security act (29 U.S.C. &1161 et seq.), except to the extent specifically preempted by federal law, and to all employers, sponsors and other administrators of health benefit plans doing business in this state.

(b) As used in this section:

(1) "Health benefit plan" means any benefit plan, other than public assistance, which is able to provide hospital, surgical, medical, dental or any other health care or benefits for a child, whether through insurance or otherwise, and which is available through a parent's employment or other group plan.

(2) "Participating parent" means a parent who is eligible for single coverage under a health benefit plan as defined in this section, regardless of the type of coverage actually in effect, if any.

(3) "Nonparticipating parent" means, if one parent is a participating parent as defined in this section, the other parent.

(c) No employer, sponsor or other administrator of a health benefit plan shall deny enrollment of a child under the health coverage of the child's parent on the basis that: (1) The child was born out of wedlock; (2) the child is not claimed as a dependent on the parent's federal income tax return; (3) the child does not reside with the parent or in the plan's service area; or (4) the child is receiving, is eligible for or may become eligible for medical assistance.

(d) (1) A health benefit plan, in determining or making any payment for benefits of a child who is a participant or beneficiary under the plan, shall not take into account the fact that the child is re-

pp. 2 – 11 omitted (no changes)

[Amending K.S.A. 23-4,107]

(2)

of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; ~~(5)~~ *(6)* the period within which the obligor must file a motion to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and ~~(6)~~ *(7)* the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) Before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (B) a written agreement among all interested parties provides for an alternative arrangement. *... In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.*

[from SB 464-am., §1 (p.4, l.4-9)]

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

(A) The agreement was not in writing;

(B) the agreement was not approved by all interested parties;

pp 13-15 omitted (no changes)

ments thereto, as shown in the withholding order which specifies the highest percentage of income allowed to be withheld. If the total amount required by all income withholding orders, *including premiums due from the obligor which are incurred solely because of a medical withholding order,* exceeds such limits, the payor shall withhold the amount permitted to be withheld under such limits and from the amount withheld the payor shall retain any cost recovery fee charged by the payor. The remaining funds shall first be prorated by the payor among all income withholding orders for the obligor that require payment of current support. When all current support for the month has been satisfied, any remaining funds shall be prorated among all income withholding orders for the obligor that require payment of an amount for arrearages. ~~*If funds remain after payment of all current and past due support for the month, the payor shall attempt to satisfy premium requirements for children enrolled in a health benefit plan, giving priority to children in the order they were enrolled.*~~ *The payor shall promptly notify the affected holder of the limited power of attorney of any nonpayment of premium.* The payor may request assistance from the income withholding agency in determining the amount to be disbursed for each income withholding order, but such assistance shall not relieve the payor from any responsibility under this act. Upon request of a public office or of any obligee whose income withholding order is affected by this subsection, the payor shall provide the county, case number and terms of all the obligor's income withholding orders.

(d) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, 1992, regardless of when the applicable income withholding order was entered or modified.

Sec. 12. K.S.A. 1993 Supp. 23-4,111 is hereby amended to read as follows: 23-4,111. (a) At any time~~, an obligor may petition the court to~~ *upon motion the court shall*: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying order for support; ~~or~~ (2) modify the amount of income withheld to reflect payment in full of the arrearage by income withholding or otherwise*; or (3) modify, or when appropriate terminate, an income withholding order consisting in whole or in part of a medical withholding order because of a modification or termination of the underlying medical child support order.*

(b) On request of the obligee or public office, the court shall issue an order which modifies the amount of income withheld, subject to the limitations of subsection (f) of K.S.A. 23-4,108 and amendments thereto.

[Amending K.S.A. 23-4,109] (3)

delete

(c) The obligor may file a motion to terminate ~~the~~ an income order for cash support ~~because payments pursuant to the income withholding order have been made for at least 12 months and all arrearages have been paid.~~ *if: (1) The withholding order has not previously been terminated under this subsection and subsequently initiated; and (2) there is a written agreement among all interested parties which provides for an alternative arrangement. Under* ~~Upon receipt of a motion under~~ this subsection, the court may terminate the income withholding order unless it finds good cause for denying the motion because of the obligor's payment history or otherwise. If an income withholding order is terminated for any reason and the obligor subsequently becomes delinquent in the payment of the order for support, the obligee or public office may obtain another income withholding order by complying with all requirements for notice and service pursuant to this act.

(d) *If the income withholding order includes both a medical withholding order and an income withholding order for cash support, modification or termination of one portion of the income withholding order shall not modify or terminate any other portion of the income withholding order except as expressly provided by the court.*

(e) If support payments are undeliverable to the obligee, any such payments shall be held in trust by the court until the payments can be delivered.

~~(e)~~ *(f)* The clerk of court shall cause to be served on the payor a copy of any order entered pursuant to this section that affects the duties of the payor.

(4)

[from SB 464-am., §2 (p.5, lines 38-42)]

[Insert into SB 452 at p.17, line 22]

Sec. ~~3.~~ 13. K.S.A. 23-4,118 is hereby amended to read as follows: 23-4,118. *(a)* The department of social and rehabilitation services is designated as the state income withholding agency in title IV-D cases ~~and in all instances where the total amount of multiple income withholding orders for any one obligor exceeds the limits provided for under section 303(b) of the consumer credit protection act (15 U.S.C. &1673(b)), regardless of the IV-D status of the cases involved~~. For the purpose of keeping adequate records to document, track and monitor support payments in title IV-D cases and for the purpose of initiating the income withholding process in such cases, the department may contract for the performance of all or a portion of the withholding agency function with existing title IV-D contractors or any newly created entity capable of providing such services.

(b) In all other cases, the clerk of the district court is designated as the income withholding agency for the purpose of keeping adequate records to allow the obligor and obligee to track and monitor support payments.

except as otherwise provided in this subsection,

Sec. ~~4.~~ 14. K.S.A. 23-4,128 is hereby amended to read as follows: 23-4,128. *(a)* On behalf of any obligee or other person for whom the agency is already providing services pursuant to the provisions of title IV, part D, of the federal social security act (42 U.S.C. & 651 *et seq.*), as amended, the agency shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding. The agency shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The agency also shall transmit immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the agency receives notice that the obligor is contesting income withholding in

If a district court trustee has been designated by the administrative judge to receive, process, and maintain records for money received under support orders, the district court trustee is designated as the income withholding agency for non-IV-D cases in the judicial district.

(6)

another jurisdiction, it shall immediately notify the obligee of the date, time and place of the hearings and of the obligee's right to attend.

(b) An obligee not receiving services from the agency pursuant to title IV, part D, of the federal social security act (42 U.S.C. & 651 et seq.), as amended, may request the appropriate agency or official in another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding. The obligee or the obligee's attorney, if any, shall compile and transmit all documentation required by the other jurisdiction for this purpose. The obligee or the obligee's attorney, if any, shall transmit immediately to the other jurisdiction a certified copy of any subsequent modifications of the support order.

15.

Sec. ~~5.~~ K.S.A. 23-4,129 is hereby amended to read as follows: 23-4,129. (a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) from an agency of another jurisdiction ~~established~~ *operating* pursuant to title IV, part D, of the federal social security act (42 U.S.C. & 651 *et seq.*), as amended, the agency shall file the documents with the clerk of the court in which withholding is being sought. Upon receipt of the documents the clerk of court, without payment of a filing fee or other costs, shall file them in a registry of foreign support orders. Such filing shall constitute entry of the support order under K.S.A. ~~1985 Supp.~~ 23-4,125 through 23-4,137 *and amendments thereto. Nothing in this subsection shall be construed to create an attorney-client relationship between an attorney representing the department of social and rehabilitation services and any party other than the department of social and rehabilitation services.*

(b) The following documentation is required for the entry of a support order of another jurisdiction:

(1) A certified copy of the support order with all modifications;

(2) a certified statement of child support owed and paid, including dates of payment and to whom paid;

(3) a certified copy of an income withholding notice or order, if any, still in effect;

(4) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(5) a sworn statement of the obligee or agency of the arrearages and the assignment of support rights, if any; and

(6) a statement of:

(A) The name, address and social security number of the obligor,

if known;

(B) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought; and

(C) the name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(c) If the documentation received under subsection (a) does not conform to the requirements of subsection (b), the agency shall remedy any defect which it can without the assistance of the requesting agency. If the agency is unable to make such corrections, the requesting agency shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The agency and court shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) An obligee not receiving services from any agency operating pursuant to title IV, part D, of the federal social security act (42 U.S.C. & 651 et seq.), as amended, may file the documents specified in subsection (b) with the clerk of the court in which withholding is being sought. ~~*The documents*~~ *If the documents are filed by an attorney, they shall be filed by an attorney licensed to practice law in the state of Kansas or authorized in accordance with supreme court rule 116.*

~~(d)~~ *(e)* A support order entered under subsection (a) *or (d)* shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in K.S.A. ~~1985 Supp.~~ 23-4,105 through 23-4,118 and 23-4,130 through 23-4,137 *and amendments thereto*. Entry of the order shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.

Sec. ~~6.~~ 16. K.S.A. 1993 Supp. 23-4,130 is hereby amended to read as follows: 23-4,130. (a) Except as provided in subsection (b), no later than 10 days after the date a support order is entered pursuant to K.S.A. 23-4,129 and amendments thereto, the agency *or obligee* shall serve upon the obligor a notice as provided for in subsection (h) of K.S.A. 23-4,107 and amendments thereto. The notice shall also advise the obligor that income withholding was requested on the basis of a support order of another jurisdiction. ~~As~~ *When* appropriate, the agency ~~shall then~~ *or obligee shall* file the affidavit provided for in subsection (d) of K.S.A. 23-4,107 and amendments thereto. If, in accordance with K.S.A. 23-4,110 and amendments

thereto, the obligor contests the issuance of an income withholding order, the court must hold a hearing and render a decision within 45 days of the date of service of the notice on the obligor.

(b) If the documentation received pursuant to *subsection (a) of* K.S.A. 23-4,129 and amendments thereto indicates that an income withholding order based upon the ~~registered~~ support order has been issued by another jurisdiction and has not been terminated, the agency shall file an affidavit ~~stating~~ *as provided in this subsection. An obligee entering a support order pursuant to subsection (a) of K.S.A. 23-4,129 and amendments thereto may file an affidavit as provided in this subsection if an income withholding order based upon the support order has been issued by another jurisdiction and has not been terminated. The affidavit shall state*: (1) That an income withholding order based upon the ~~registered~~ support order has been issued by another jurisdiction and has not been terminated~~,~~; (2) that immediate issuance of an income withholding order is required by this act~~,~~; and (3) a specified amount to be withheld by the payor to satisfy the order for support and to defray any arrearage. The amount specified in the affidavit shall be as near as possible to the amount specified in the most recent income withholding order issued by the other jurisdiction. A copy of the affidavit shall be served by first-class mail upon the obligor. Upon the filing of the affidavit, the income withholding order shall be issued immediately, without further notice to the obligor, except that the court may direct the agency *or obligee* to serve a notice pursuant to subsection (a) upon the obligor if the court finds that the terms of the income withholding order issued by the other jurisdiction are too vague to be compatible with the amount specified in the affidavit or that the court issuing the income withholding order lacked jurisdiction.

(c) If the obligor seeks a hearing to contest the proposed income withholding *in a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 et seq.), as amended*, the agency shall immediately notify the requesting agency of the date, time and place of the hearing.

Sec. ~~7.~~ K.S.A. 23-4,135 is hereby amended to read as follows: 23-4,135. (a) ~~The~~ *In a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 et seq.), as amended, the* agency, upon receiving a certified copy of any amendment or modification to a support order entered pursuant to K.S.A. ~~1985 Supp.~~ 23-4,129 *and amendments thereto*, shall initiate, as though it ~~was~~ *were* a support order of this state, necessary procedures to amend or modify the income withholding order of this state which was based upon the entered support order. The court

shall amend or modify the income withholding order to conform to the modified support order.

(b) *In a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. & 651 et seq.), as amended,* if the agency determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, it shall notify the agency which requested the income withholding of the changes within five working days of receiving that information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The agency shall include with the notice a certified copy of the income withholding order in effect in this state.

(c) In all other cases the obligee or the obligee's attorney, if any, shall initiate necessary procedures to amend or modify the income withholding order of this state which was based upon the entered support order. The court shall amend or modify the income withholding order to conform to the modified support order.

Sec. ~~8.~~ K.S.A. 1993 Supp. 23-4,136 is hereby amended to read as follows: 23-4,136. Any person who is the obligor under a support order of another jurisdiction may obtain voluntary income withholding by filing with the court a request for an income withholding order and a certified copy of the support order of the other jurisdiction. The court shall issue an income withholding order, as provided in subsection (i) of K.S.A. 23-4,107 and amendments thereto, which shall be honored by any payor regardless of whether there is an arrearage. In such a case, payments shall be made from the payor *or the clerk of the court* to the agency for distribution to the obligee.

(9)

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18.

Sec. ~~10.~~ K.S.A. 23-4,105 and K.S.A. 1993 Supp. 23-4,106, 23-4,107, 23-4,108, 23-4,109 ~~and~~ 23-4,111 are hereby repealed.

Sec. ~~11.~~ This act shall take effect and be in force from and after its publication in the statute book.

19

, 23-4,118, 23-4,128, 23-4,129 and 23-4,135

, 23-4,130 and 23-4,136

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Amending 60-726(F) after 1st sentence

The garnishee may withhold and retain to defray the garnisher's costs, an administrative fee of $10 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld,

#5

17-7606. Limited liability company name. (a) The words "limited company," or their abbreviation "L.C.," or "limited liability company," or their abbreviation "L.L.C.," shall be included in the name of every limited liability company formed under the provisions of the Kansas limited liability company act. In addition, the limited liability company name shall be such as to distinguish it upon the records in the office of the secretary of state from the name of any corporation, limited partnership or limited liability company reserved, registered or organized under the laws of the state of Kansas or qualified to do business or registered as a foreign corporation, limited partnership or limited liability company in the state of Kansas. A limited liability company may register under any name which is such as to distinguish it upon the records in the office of the secretary of state from the name of any domestic or foreign corporation, limited partnership or limited liability company reserved, registered or organized under the laws of the state of Kansas with the consent of the other corporation, limited partnership or limited liability company, which written consent shall be filed with the secretary of state.

Add: or "LC"

Add: or "LLC"

(b) Omission of the words "limited company," or their abbreviation "L.C.," or "limited liability company," or their abbreviation "L.L.C.," in the use of the name of the limited liability company shall render any member who actively participates in the omission, or knowingly acquiesces in it, liable for any indebtedness, damage or liability occasioned by the omission.

Add: or "LC"

Add: or "LLC"

History: L. 1990, ch. 80, § 6; L. 1991, ch. 76, § 16; July 1.

(k) "Person" means a natural person, partnership, domestic or foreign limited partnership, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

(l) "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

History: L. 1983, ch. 88, § 1; L. 1987, ch. 208, § 1; L. 1988, ch. 195, § 1; July 1.

Research and Practice Aids:
Partnership ⇐ 349 et seq.
C.J.S. Partnership § 449 et seq.

Attorney General's Opinions:
Banking code; loan limitations; partnerships. 88-66.

CASE ANNOTATIONS

1. Applicability of restrictions on partnership admission in partnership agreement to involuntary transfers of partnership interests examined. Temple v. White Lakes Plaza Assocs., Ltd., 15 K.A.2d 771, 776, 816 P.2d 399 (1991).

56-1a102. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

(a) Shall contain the words "Limited Partnership" or the abbreviation "L.P.";

(b) may not contain the name of a limited partner unless (1) it is also the name of a general partner or the corporate name of a corporate general partner or (2) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) must be such as to distinguish it upon the records in the office of the secretary of state from the name of any corporation, limited liability company or limited partnership reserved, registered or organized under the laws of the state of Kansas or qualified to do business or registered as a foreign corporation or limited partnership in the state of Kansas. A limited partnership may register under any name which is not such as to distinguish it upon the records in the office of the secretary of state from the name of any domestic or foreign corporation, limited liability company or limited partnership reserved, registered or organized under the laws of the state of Kansas with the consent of the other corporation, limited liability company or limited partnership, which written consent shall be filed with the secretary of state; and

(d) may contain the following words: "Company," "Association," "Club," "Foundation," "Fund," "Institute," "Society," "Union," "Syndicate," "Limited," or "Trust" or abbreviations of similar import.

History: L. 1983, ch. 88, § 2; L. 1987, ch. 208, § 2; L. 1988, ch. 195, § 2; L. 1991, ch. 76, § 28; July 1.

Research and Practice Aids:
Partnership ⇐ 358.
C.J.S. Partnership § 462.

56-1a103.

Research and Practice Aids:
Partnership ⇐ 358.
C.J.S. Partnership § 462.

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Add: or "LP"

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In fact, the marriage license fee that helps to fund domestic violence programs is inconsistent and dependent on the number of licenses purchased. The state family violence prevention fund is almost $10,000 below where it was this time last year. While $10,000 does not constitute a great loss, it is a downward trend. For programs that are already inadequately funded, $1,000.00 reduction per shelter can be very problematic.

In October of this year, the National Ad Council and The Family Violence Prevention Fund will launch a national campaign against domestic violence using all the national media sources. The potential for the demand for services to significantly increase is great. SB-807 is our only new source of revenue. The funds generated from docket fees are desperately needed to incorporate the increased demand for services at current service levels.

However, the provision in SB-807 which allows counties to retain half of the funds collected for distribution to domestic violence and child abuse prevention programs may seriously compromise the effectiveness of this bill.

The network of shelter and domestic violence programs serve each of the 105 counties in Kansas, some programs serve multiple counties. We do not have the staff power to lobby within each county we serve to ensure equitable distribution of the county-retained portion. It is an irony that agencies with greater resources will have easier access to these monies.

KCSDV implores you to pass favorably SB-807 with one amendment, that 65% of the monies retained at the county level be earmarked for domestic violence shelter programs.

of this appointed board shall represent racial, ethnic and economic diversity of the ~~community~~ *county* and have experience in the allocations of funds for human service programs. ~~The members of the designated authority may be reimbursed from the family violence prevention fund for moneys actually and necessarily expended in the performance of their duties but not more than 5% of the fees in such fund may be used for such purposes.~~

(d) Agencies eligible for funding under this ~~act~~ *section* shall be those who are engaged, as their primary function, in programs aimed at preventing domestic violence *and child abuse and neglect* ~~and~~ providing residential services or facilities to family or household members who are victims of domestic violence *or child abuse or neglect*. In order for programs to qualify for funding under this ~~act~~ *section* they must meet the following requirements:

(1) Meet the requirements of internal revenue code section 501(c);

(2) registered and in good standing as a nonprofit corporation;

(3) meet normally accepted standards for nonprofit organizations;

(4) have trustees who represent the racial, ethnic and socioeconomic diversity of the ~~community~~ *county or counties* to be served;

(5) have received 50% of its funds from sources other than funds distributed through this special fund. These other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;

(6) demonstrate ability to successfully administer programs;

(7) independent certified audit of the previous year's financial records available;

(8) appropriate licensing or certification, or both;

(9) serve a significant number of county residents;

(10) do not unnecessarily duplicate services already adequately provided to county residents; and

(11) agree to comply with reporting requirements.

(e) The board of county commissioners of any county may enter into interlocal cooperation agreements with other counties pursuant to K.S.A. 12-2901 et seq. and amendments thereto, to carry out the provisions of this act.

Sec. 2. K.S.A. 1993 Supp. 12-4117 is hereby amended to read as follows: 12-4117. On and after July 1, 1992, in each case filed in municipal court charging a criminal or public offense or charging an offense defined to be a moving violation by rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto, where there is a finding of guilty or a plea of guilty, a plea of no contest,

or advocacy or

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3-14-94
SB8
Paul Shelby
#8

Testimony of Paul Shelby
Assistant Judicial Administrator
Re: Senate Bill 807
March 14,1994

Mr. Chairman: I am pleased to be here today to suggest improvements in Senate Bill 807 which will reduce workload on district court offices which are drastically understaffed and should not be given extra work, if the work can be avoided, even for such worthy projects as prevention of violence and child abuse.

Senate Bill 807 directs county governments to establish family violence prevention programs and to create family violence prevention funds.

The funds established by counties are to be partially financed by additional fees of $1 to be imposed in courts which enforce county codes and resolutions in Johnson and Sedgwick counties and possibly Shawnee and Wyandotte, as well as an additional court cost of $1 in criminal proceedings. The state protection from abuse fund is also to share in collection of criminal docket fees by a factor of an increase of $1.

Clerks of the district court will be involved in assessing, collecting and disbursing the fees in this bill as it is now written. The bill increases workload for clerks by requiring individual accounting in 105 locations which accept criminal docket fees. By incorporating the increase in docket fees intended for the protection from abuse fund into an existing statute, collections can be disbursed to the protection from abuse fund with a minimum of effort. K.S.A. 20-367 now provides for financing five projects endorsed by the Legislature; it can easily accommodate six projects.

The first change recommended is on page 4. As now written the language could be interpreted to mean $1 in addition to the $1 increase in criminal docket fees. By adding our balloon, only counties with separate courts for enforcement of county codes will assess an additional dollar on cases brought to enforce county codes.

The next change, also on page 4, is to add this bill's funds to the list at K.S.A. 20-367. The "additional" court cost in the bill as now written is translated into an additional $1 increase in criminal proceeding docket fees on page 5. Having a court cost separate from the criminal docket fee would be cumbersome and a drastic departure from the legislature's traditional practice. Finally, on page 6, the additional court cost versus a simple deduction from a docket fee is resolved.

I recommend that you adopt the changes I have suggested to prevent adding unnecessary work to an understaffed clerk's office.

As Amended by Senate Committee

Session of 1991

SENATE BILL No. 807

By Committee on Judiciary

2-16

AN ACT concerning family violence *and child abuse and neglect assistance and* prevention programs in ~~certain~~ ~~counties~~; relating to *increasing docket fees and* additional court costs; family violence *and child abuse and neglect assistance and* prevention funds and providing for reimbursement from such funds to certain agencies; amending K.S.A. 19-101e, *19-4707* and 28-172a *and K.S.A. 1993 Supp. 12-4117 and 20-362* and repealing the existing sections.

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

New Section 1. (a) As provided in subsection (c), ~~Johnson, Sedgwick, Shawnee or Wyandotte counties may~~ *the board of county commissioners of each county shall* create a family violence *and child abuse and neglect assistance and* prevention program to help implement and coordinate funding for nonprofit corporations that deal with the prevention of family violence *and child abuse and neglect*. ~~Any such county that creates a family violence prevention program,~~

(b) The board of county commissioners of each county shall create in the county treasury of ~~such~~ *each* county a family violence *and child abuse and neglect assistance and* prevention fund. Moneys shall be credited to the fund as provided by law. ~~(b)~~ The moneys in any fund created as provided in *this* subsection ~~(a)~~ by such county shall be expended for the purpose of providing for expenses of agencies as provided in subsection (d) that meet the eligibility and qualification requirements.

(c) The governing body of the ~~city or county creating a family violence prevention fund as provided in subsection (a)~~ *board of county commissioners of each county* shall designate ~~in the order or ordinance imposing the fees,~~ an appropriate board, commission, agency or other body of the county ~~or city~~ as the authority to administer the allocation and distribution of the funds to family violence *and child abuse and neglect assistance and* prevention programs. If there is no current body appropriate to serve as this authority, a board shall be appointed by the ~~governing bodies of the city or~~ *board of county commissioners of the* county. Members

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of this appointed board shall represent racial, ethnic and economic diversity of the ~~community~~ *county* and have experience in the allocations of funds for human service programs. ~~The members of the designated authority may be reimbursed from the family violence prevention fund for moneys actually and necessarily expended in the performance of their duties but not more than 5%~~ of the fees in ~~such fund may be used for such purposes.~~

(d) Agencies eligible for funding under this ~~act~~ *section* shall be those who are engaged, as their primary function, in programs aimed at preventing domestic violence *and child abuse and neglect* and providing residential services or facilities to family or household members who are victims of domestic violence *or child abuse or neglect*. In order for programs to qualify for funding under this ~~act~~ *section* they must meet the following requirements:

(1) Meet the requirements of internal revenue code section 501(c);

(2) registered and in good standing as a nonprofit corporation;

(3) meet normally accepted standards for nonprofit organizations;

(4) have trustees who represent the racial, ethnic and socioeconomic diversity of the ~~community~~ *county or counties* to be served;

(5) have received 50% of its funds from sources other than funds distributed through this special fund. These other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;

(6) demonstrate ability to successfully administer programs;

(7) independent certified audit of the previous year's financial records available;

(8) appropriate licensing or certification, or both;

(9) serve a significant number of county residents;

(10) do not unnecessarily duplicate services already adequately provided to county residents; and

(11) agree to comply with reporting requirements.

(e) The board of county commissioners of any county may enter into interlocal cooperation agreements with other counties pursuant to K.S.A. 12-2901 et seq. and amendments thereto, to carry out the provisions of this act.

Sec. 2. K.S.A. 1993 Supp. 12-4117 is hereby amended to read as follows: 12-4117. On and after July 1, 1992, in each case filed in municipal court charging a criminal or public offense or charging an offense defined to be a moving violation by rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto, where there is a finding of guilty or a plea of guilty, a plea of no contest,

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forfeiture of bond or a diversion, a sum in an amount of $5 $6 shall be assessed and such assessment shall be credited as follows: (a) During the period commencing July 1, 1992, and ending June 30, 1997, $1 to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620 and, *$4 to the law enforcement training center fund established pursuant to K.S.A. 74-5619 and amendments thereto and $1 to the family violence and child abuse and neglect assistance and prevention fund established pursuant to section 1 and amendments thereto; and (b) on and after July 1, 1997, $1 to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620, $2 to the law enforcement training center fund established pursuant to K.S.A. 74-5619 and amendments thereto* and, *$2 to the juvenile detention facilities fund established pursuant to K.S.A. 79-4803 and amendments thereto to be expended for operational costs of facilities for the detention of juveniles and $1 to the family violence and child abuse and neglect assistance and prevention fund established pursuant to section 1 and amendments thereto. The judge or clerk of the municipal court shall remit at least monthly* all *the appropriate assessments received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the local law enforcement training reimbursement fund, the law enforcement training center fund and the juvenile detention facilities fund and the appropriate assessment received pursuant to this section to the county treasurer for deposit in the county treasury to the credit of the family violence and child abuse and neglect assistance and prevention fund as provided in this section. For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed in the municipal court against one individual arising out of the same incident, all such complaints shall be considered as one case.*

Sec. 2 3. K.S.A. 19-101c is hereby amended to read as follows: 19-101c. (a) Except as provided in subseetion *subsections* (b) *and (d)* and in K.S.A. 19-4707 *and amendments thereto*, the items allowable as costs shall be the same as in cases for misdemeanor violations of state law and shall be taxed as provided in K.S.A. 22-3801, 22-3802 and 22-3803, and amendments thereto.

(b) The fees and mileage for the attendance of witnesses shall be borne by the party calling the witness, except that if an accused person is found not guilty, the county shall pay all such expenses, but the court may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person, if the court finds that there has been an abuse of the use of subpoenas by the accused person.

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(c) All fines and penalties collected in actions for the enforcement of county codes and resolutions pursuant to the code for the enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 19-101d and amendments thereto shall be paid over to the county treasurer of the county where they are imposed for deposit in the county general fund or in the special law enforcement fund, if established. All fines and penalties collected in actions brought pursuant to the provisions of subsection (a) of K.S.A. 19-101d and amendments thereto shall be remitted to the state treasurer, as provided in K.S.A. 20-2801 and amendments thereto.

(d) In any each county ~~which has created a family violence prevention program as provided in section 1~~, the court shall assess additional court costs of up to $1 for each violation of a resolution. Such additional cost shall be paid over to the county treasurer of such county for deposit in the family violence and child abuse and neglect assistance and prevention fund created as provided in section 1.

Sec. 4. K.S.A. 19-4707 is hereby amended to read as follows: 19-4707. (a) Except as provided in subsection (b), no person shall be assessed costs for enforcement and prosecution of violations of county codes and resolutions pursuant to this code, except for witness fees and mileage as set forth in K.S.A. 19-4726.

(b) On and after July 1, 1994, in each case filed for violations of county codes and resolutions, a $1 assessment shall be added to each such case. The judge shall remit at least monthly such assessments to the county treasurer, for deposit in the county treasury and credit to the family violence and child abuse and neglect assistance and prevention fund as provided in section 1.

Sec. 5. K.S.A. 1993 Supp. 20-362 is hereby amended to read as follows: 20-362. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to $10 for each docket fee paid pursuant to K.S.A. 60-2001 and 60-3005, and amendments thereto, during the preceding calendar month;

(2) a sum equal to $10 for each $36.50 or $61.50 docket fee paid pursuant to K.S.A. 61-2501, 61-2704 or 61-2709, and amendments thereto; and

(3) a sum equal to $5 for each $16.50 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preceding calendar month.

(b) To the board of trustees of the county law library fund, for

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which has created a county court for enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 1993 Supp. 19-101d and amendments thereto,

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deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month for cases filed in the county.

(d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to $.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to $5 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month.

(f) To the state treasurer, for deposit in the state treasury and distribution according to K.S.A. 1993 Supp. 20-367, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d) and (e).

~~*(g) To the state treasurer for deposit in the state treasury and credit to the protection from abuse fund as provided in K.S.A. 74-7325 and amendments thereto, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto, during the preceding calendar month.*~~

Sec. 3~~6~~7 K.S.A. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

Murder or manslaughter	~~$153.50~~	~~$154.50~~
Other felony	~~123.50~~	~~124.50~~
Misdemeanor	~~93.50~~	~~94.50~~
Forfeited recognizance	~~53.50~~	~~54.50~~
Appeals from other courts	~~53.50~~	~~54.50~~

155.50
125.50
95.50
55.50
55.50

(b) In actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act de-

(1)

(2) To the county treasurer for deposit in the county treasury and credit to the family violence and child abuse and neglect assistance and prevention fund $1 for each criminal proceeding docket fee collected pursuant to K.S.A. 28-172a, and amendents thereto, in the preceding calendar month.

Sec. 6. K.S.A. 1993 Supp. 20-367 is hereby amended to read as follows: 20-367. Of the remittance of the balance of docket fees received monthly by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the juvenile detention facilities fund, a sum equal to 5.12% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 3.93% of the remittances of docket fees; to the emergency medical services operating fund, the state treasurer shall deposit and credit a sum equal to 2.95% of the remittances of docket fees; and to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.66% of the remittances of docket fees. The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.

4.9

to the protection from abus fund a sum equal to [redacted]% o the remittances of docket fees;

cared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of ~~$37~~ *$38* shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~$37~~ *$38*.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund and the judiciary technology fund shall be paid from the docket fee. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. ~~*In any each county which has created a family violence prevention program as provided in section 4, the court shall assess an additional court cost of up to $1 in each criminal proceeding for domestic violence and child abuse and neglect assistance and prevention as provided in section 1.*~~ No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of $2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be $3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and $2 of any bond so forfeited shall be regarded as court costs.

~~New Sec. 4. Additional court costs as provided in subsection (d) of K.S.A. 28-172a and amendments thereto, relating to any county which has created a family violence prevention~~

1-25-

program as provided in section ~~1~~, shall be paid over to the county treasurer of such county for deposit in the family violence prevention fund created as provided in section ~~1~~.

Sec. ~~5~~ 7. K.S.A. 19-101c, *19-4707* and 28-172a *and K.S.A. 1993 Supp. 12-4117 and 20-362* are hereby repealed.

Sec. ~~6~~ 8. This act shall take effect and be in force from and after its publication in the statute book.

20-367,

1-26

Jamie Corrill

Department of Social and Rehabilitation Services
Child Support Enforcement Program

Before the House Judiciary Committee
Civil Law Subcommittee
March 14, 1994

Senate Bill 452
Related to medical support enforcement (OBRA '93)

==========

The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

==========

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on behalf of Secretary Whiteman concerning Senate Bill 452. The primary role of the SRS Child Support Enforcement Program (CSE) is to help children by establishing and enforcing regular and adequate support, including medical support. From that perspective, SRS strongly supports this measure.

SB 452 meets three critical needs:

- o Compliance with new federal requirements for SRS Medical Programs (Title XIX) under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93),
- o Prevention of federal audit sanctions against the CSE Program (Title IV-D), and
- o Improvement of children's health and medical care through better access to group insurance coverage.

In its December 1993 report (excerpt, Attachment A), the Joint Committee on Children and Families recommended medical support legislation to meet these three needs. The result was SB 452, on which SRS and the Department of Insurance collaborated. Federal regulators for both Title XIX and Title IV-D have also reviewed the bill and commented favorably on it.

It should be noted that SB 452 bears strong resemblance to HB 2527, passed by the House of Representatives before enactment of OBRA '93. The Senate Judiciary Committee was unable to hold hearings on HB 2527 before the end of the 1993 Session, unfortunately. The elements of HB 2527 related to medical support are preserved in SB 452 -- very few policy changes were needed to meet OBRA's requirements.

Enacting SB 452 this Session will allow SRS Medical Programs to meet the new OBRA '93 requirements by the July 1, 1994, deadline. For reference, an outline of OBRA's requirements is provided (Attachment B). Enactment will also help the CSE program meet performance standards in our anticipated follow-up audit, which is likely to include case activities in the last half of 1994.

House Judiciary
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As necessary as this legislation is for administrative and fiscal reasons, though, it is even more important for the way it will improve children's access to group health benefits. Much attention has been given in recent years to the deterioration of children's medical care because of rising costs of treatment and lack of insurance. A key to protecting children's access to routine health care and major medical treatment is to enroll them in group health plans already available to their parents.

Many children face a special barrier to group health coverage because they do not live with the parent who has access to group health benefits. Many of these parents do enroll their children voluntarily, but many more do not. The result is a child at risk of inadequate medical care, or a child receiving medical assistance at taxpayer expense.

Kansas courts have been very responsive in ordering parents to provide health insurance. Unfortunately, making sure children become enrolled -- and remain enrolled -- is currently very labor-intensive because the only remedy available for enforcement is a contempt citation.

SB 452 provides a new approach to enforcing medical support orders. Its elements are:

- o Authority for the custodial parent or SRS to enroll the child in a group health plan without depending upon the obligor's cooperation. This is accomplished by granting the custodial parent (or SRS, in Medicaid cases) a limited power of attorney to enroll the child, to submit claims, and to receive payments on the child's behalf.

- o Authority for the court to include in an income withholding order instructions for the child's enrollment in a group plan, referred to in the bill as a medical withholding order.

- o Authority for the court to award a money judgment and to modify the ongoing child support obligation if the existing cash obligation has been discounted in anticipation of health insurance premiums, but insurance was not provided or was dropped without good cause.

- o With respect to enrollment, a ban on discrimination against children because they were born out of wedlock, are not listed as dependents on income tax returns, or do not reside with the insured parent or in the benefit plan's service area.

From the obligor's perspective, once a medical support order has been imposed, it makes a great deal of sense to have the child enrolled in a group plan. It is important to note that, under the support guidelines, uninsured medical costs are to be pro-rated between the parents according to income shares -- by not providing insurance, the obligor may incur substantial liability if the child is sick or injured.

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SB 452 specifies that insurance premiums deducted under a medical withholding order are subject to the Consumer Credit Protection Act limits on deductions from earnings. Not only is this a federal requirement, it relieves the fear that a parent's whole paycheck will be eaten up by premiums. Also, cash support has priority over health insurance so that children's immediate needs for food and shelter will always be met first.

OBRA '93 requires states to adopt procedures for serving employers with medical child support orders. Senate Bill 452 meets this requirement by amending the income withholding act. Upon request, an income withholding order would include (or consist of) a medical withholding order which instructs the employer to enroll the child and provides the information required by federal law.

Using the income withholding act offers certain advantages to employers, particularly small employers. First, the use of standardized forms helps employers quickly find key information or discover what information is missing. Second, the income withholding act gives the employer the option of charging a fee to offset costs. And third, the hotline service SRS maintains to help employers with income withholding questions would be extended to include employers' medical support questions.

It would be our desire, if SB 452 were enacted, to bring together a diverse group of employers, plan providers, and support enforcement personnel to overhaul the existing income withholding forms and address the needs of the affected groups. We envision a process similar to what was done in 1985 when income withholding was first established.

Fiscal Impact

As noted earlier, Kansas is at risk of being sanctioned in a follow-up audit for failure to meet IV-D performance standards with respect to medical support enforcement. Sanctions presently range from $600,000 per year (1% of AFDC federal funding) to $18 million per year (all IV-D federal funding plus 5% of AFDC funding), with an ultimate penalty of $85 million per year (all IV-D federal funding and all AFDC funding).

Enactment of this bill by OBRA's July 1994 deadline will prevent Title XIX sanctions by insuring that Kansas' state plan conforms to federal requirements. For reference, the loss of all federal Title XIX funds (FFP and administrative funding) would total $456 million.

This measure would produce significant Medicaid savings by increasing third party resources. We estimate Medicaid savings as follows:

FY95 (phase-in year)	$1.3 million	gross savings
	$ 556,000	state share (41.43%)
FY96 (first full year)	$2.5 million	gross savings
	$1.0 million	state share.

SRS/Child Support Enforcement
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Proposed Balloon

Senate Bill 464, also referred to this committee, makes technical amendments to the income withholding law to insure compliance with the Family Support Act of 1988. That bill and SB 452 both amend K.S.A. 23-4,107. SRS recommends that the income withholding provisions of SB 464 be incorporated into SB 452, the medical support bill, to prevent enactment of any conflicting language. A proposed balloon accompanies this testimony.

Two additional changes are included in the balloon. The Department of Administration requested deletion of a sentence in SB 452 (page 3 of the balloon), and the Office of Judicial Administration requested a clarification in SB 464 (page 5 of the balloon). SRS concurs with both changes.

Conclusion

Efficiently enrolling children in existing group health plans will not only save Medicaid funds and prevent serious federal sanctions, it will allow more households with children to become self-reliant and independent of public assistance.

Thank you for this opportunity to testify in support of SB 452.

Respectfully submitted,

Jamie L. Corkhill
Policy Counsel
Child Support Enforcement
296-3237

Medical Support

As noted above, the 1992 Joint Committee recommended to the 1993 Legislature the introduction and enactment of legislation developed by SRS to establish a medical support enforcement initiative and the appropriation of funds requested by the state agency to institute a medical support enforcement program. H.B. 2527, designed to implement the Committee recommendation, was introduced, was passed as amended by the House, and was assigned to the Senate Committee on Judiciary where the bill remained at the end of the 1993 Session. However, 136 special positions were authorized in the SRS budget for FY 1994 for medical support enforcement activities.

Subsequent to the adjournment of the 1993 Session, the Congress enacted OBRA '93 which creates new requirements that must be met by the states in terms of medical support enforcement. OBRA amends Title XIX of the Social Security Act (Medicaid) state plan requirements relating to children's access to group health insurance and other employment-related health benefits. In general, the new state plan requirements concern prohibiting insurers from denying enrollment in a parent's insurance because the child was born to an unmarried parent, is not claimed as a dependent on a tax return, does not reside with the insured, or does not reside in the insurer's service area; requiring insurers to enroll the child upon application by the other parent or SRS when a medical support order exists and the enrolled parent fails to enroll the child; prohibiting insurers from eliminating coverage of the child when there is a medical support order unless certain evidence is provided the insurer; requiring the enrollment of a child for whom a support order exists without regard to open enrollment provisions in the health benefits plan; requiring the employer to withhold the employee's share of the family health insurance premium and to remit the premium to the carrier; prohibiting health benefit plans from imposing special requirements on Medicaid agencies; requiring insurers providing coverage through a noncustodial parent's plan to provide information to the custodial parent, to allow the custodial parent to submit claims for covered services, and to make payments to the custodial parent or provider directly; and permitting wage garnishment and state tax refund intercepts to reimburse Medicaid costs caused by a parent for whom a medical support order exists who collected a third-party payment but failed to reimburse the parent, guardian, or provider. OBRA '93 also amended ERISA, the federal act that governs self-insured employers who are exempt under ERISA from state insurance regulation of health benefit plans, to give the states authority to impose and enforce state laws that relate to children's health benefits claimed under medical support orders.

As noted by the 1992 Joint Committee on Children and Families in its recommendations to the 1993 Legislature, there is a need for effective enforcement of medical support orders, including a way to initiate coverage and premium deductions when an order is not obeyed voluntarily. H.B. 2527, introduced in 1993, was intended to permit effective enforcement of medical support orders and would be generally compatible with OBRA '93 requirements, with the addition of some provisions and some changes.

In essence, 1993 H.B. 2527, as amended by the House, would authorize a court to issue a medical support order for a child against either parent after consideration of specific factors set out in the bill; require a court, when a medical support order has been issued and a request is made, to include in an income withholding order an order requiring the payor to enroll the child in a health benefit plan if one is available to the obligor or to modify an existing income withholding order in a like manner; provide, when a medical support order is issued, the obligor shall be deemed to have been granted a limited power of attorney to submit health benefit claims on the child's behalf and otherwise to deem the limited power of attorney provided for in the bill to be retained by the obligee; prohibit a health benefit plan from discriminating against a child with a medical support order on the basis of the marital status of the parents at the time of conception or birth or otherwise and to deem the child the legitimate child of the party if benefits are limited to the legitimate child of an insured; and provide for, except for good cause, the granting of judgement against the obligor to the obligee if conditions set out in the bill exist. H.B. 2527 also would amend sections of the Income Withholding Act to add definitions relating to medical support, to add the duty to enroll a child in a health benefit plan to specified duties of a payor when a medical support order has been issued, and to add health benefit premiums to sections of the law that concern the withholding of support. The House further amended H.B. 2527 to amend several statutes that concern direct and indirect contempt to allow a court to restrict the driving privileges of a person found guilty of contempt in a child support enforcement proceeding.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on Children and Families developed recommendations in regard to the Kansas child support enforcement program as a result of its continued study of the program, the federal audit results, and conclusions of members in regard to several issues with which the Committee has been concerned.

Medical Support Enforcement

The Committee concluded that the medical support enforcement program through which access to a parent's employer-related health benefits for a child can be ordered should be strengthened through enactment of legislation that authorizes appropriate enforcement action and legislation that allows the state to meet new federal requirements resulting from OBRA '93. A strong medical support enforcement program can reduce costs to the state that would otherwise be paid through the Medicaid program and result in increased collections by health care providers for services to children who might otherwise receive charity care.

Recommendation. The Joint Committee recommends legislation which incorporates the recommendations of SRS concerning the enforcement of medical support orders and the new OBRA '93 requirements that must be met by July 1, 1994. The bill incorporates many provisions of H.B. 2527 (described above) that was introduced through the House Committee on Appropriations in 1993, but adds provisions that reflect new federal requirements. The 1993 Joint Committee bill has been submitted for review by federal officials, and SRS staff has been asked to bring additions or changes that may be recommended as a result of such review, if any, to the attention of the committee having jurisdiction over the bill during the 1994 Session.

Highlights of OBRA '93 (Omnibus Budget Reconciliation Act of 1993):
Title XIX plan requirements --

NOTE: In OBRA'93, "insurer" is defined to include group health plans under ERISA (including self-insured plans), HMO's, and an entity offering a service benefit plan.

Non-discrimination in enrollment -- Prohibit insurer from denying enrollment in parent's insurance because child:

- o Born out of wedlock,
- o Is not claimed as dependent on tax return,
- o Does not reside with the (insured) parent, or
- o Does not reside in the insurer's service area.

Special Medicaid requirements banned -- Prohibit insurers from imposing special requirements on medicaid agencies.

Relations with custodial parents (NOTE: Not limited to families with a medical child support order) -- When a child is covered through the non-custodial parent's group plan, require insurers to:

- o **Provide information** to the custodial parent so the child may obtain the benefits available,
- o Permit the custodial parent (or provider, with custodial parent's approval) to **submit claims** for covered services, and
- o **Make payments** on claims submitted by the custodial parent (or provider) directly to the custodial parent, the provider, or the Medicaid agency.

Enrollment season -- When there is a health insurance order and the parent is eligible for family coverage, require employers and insurers to let that parent enroll an eligible child without regard to enrollment season requirements (i.e., immediately)

Enrollment by others -- When there is a health insurance order, the parent is eligible for family coverage and the parent is enrolled but fails to apply for coverage for the child, require employers and insurers to enroll the child upon application by the other parent or by SRS (Medicaid or CSE).

Disenrollment or elimination of coverage -- When there is a health insurance order, the parent is eligible for family coverage, and the child is enrolled/covered, prohibit employers and insurers from disenrolling or eliminating coverage of the child unless the employer or insurer is provided satisfactory written evidence that:

- o Health insurance order is no longer in effect,
- o Child is or will be enrolled in comparable coverage through another insurer that takes effect without a (time) gap in coverage, or
- o (Employers only) Family health coverage eliminated for all employees.

Employee's share of premiums -- When there is a health insurance order and the parent is eligible for family coverage through an employer doing business in Kansas, require the employer to withhold employee's share of premiums (not exceeding CCPA cap) and remit the premiums to the insurer. Federal regulations (Department of Labor) may provide for a lower cap on premiums.

OBRA '93 (Omnibus Budget Reconciliation Act of 1993):
New ERISA provisions (These changes in federal law are already in effect) -

Group health plans -- Group health plans shall provide benefits in accordance with the applicable requirements of any qualified medical child support order.

Definition: Qualified medical child support order (QMCSO) - means a medical child support order that:

- o Gives an alternate recipient (child) the right to receive benefits under a group health plan;
- o Gives the name and last known mailing address(es) of the participant (insured parent) and of each child;
- o Gives a reasonable description of the type of coverage required for each child, or tells how the type of coverage is to be determined;
- o Gives the period to which the order applies;
- o States each plan the order applies to; and
- o Does NOT require a plan to provide any type or form of benefit or option not otherwise provided under the plan.

Plan notifications/determinations -- When an ERISA plan receives a medical child support order (MSCO), the plan must:

- o **Acknowledge receipt** - promptly notify insured parent and each child that order was received and plan's process for deciding whether MCSO is a QMCSO.

- o **Determine status of MCSO** - Plan administrator to decide within reasonable time whether MCSO is "qualified" and notify insured parent and each child.

Procedures for determination - Plan must set reasonable procedures for deciding whether MCSO's are "qualified" and for administering benefits under QMCSO's. The procedures must:

- o Be in writing,
- o Give each child named in MCSO notices as required, and
- o Permit each child to designate a representative to receive copies of notices to the child.

Actions by plan fiduciaries - If fiduciary acts in accordance with OBRA '93 in treating a MCSO as qualified (or not), then the plan's duty towards the insured parent and each child are discharged to the extent of payments made.

Treatment of alternate recipient (child)

- o Child under a QMCSO must be treated as a plan beneficiary.
- o Child under any MCSO must be considered a plan participant for certain reporting and disclosure requirements.

Reimbursement payments on claims -- If the child or child's custodial parent or legal guardian has paid for covered medical expenses, the plan must make the benefit payment to that person.

Medicaid assignments -- Plan has to honor assignment to Medicaid of participant/beneficiary's rights under plan.

New ERISA provisions (continued)

Medicaid eligibility must be ignored -- Plan can't consider Medicaid eligibility in enrolling or providing benefits.

Third-party liability -- If the plan is liable for payment and Medicaid has paid for the service/item already, then the insurer has to comply with the State's third-party liability law.

Regulations -- Regulations for this section will come from the Secretary of Labor in consultation with Health & Human Services.

Civil actions -- A civil action may be brought by a State to enforce compliance with a QMCSO (qualified medical child support order).

Jurisdiction -- Gives concurrent jurisdiction over QMCSO enforcement actions to state and federal courts.

ERISA preemption - exception -- Adds QMCSO's to list of areas where state law is NOT preempted by ERISA.

ERISA preemption - exception -- Adds another exception, that the preemption section shall not be construed to preclude any State cause of action for:

- o Enforcement of third-party liability laws, or
- o Enforcement of assignment rights (recoupment of benefit payments based on unjust enrichment).

(ERISA) **Effective date** -- ERISA amendments take effect upon enactment (8-10-93). Plan amendments don't have to be made until 1-1-94, if the plan operates under the new requirements after 8-10-93 and the plan amendments are retroactive to 8-10-93.

Chronological application of SB 452:

- o Judge reviews family's financial situation; orders employee-parent to provide group health coverage. Obligee or SRS may request immediate issuance of a Medical Withholding Order.

- o If a Medical Withholding Order is not requested or issued when the medical child support order (health insurance order) is entered, the obligee or SRS may obtain one only upon motion and opportunity for hearing.

- o Medical Withholding Order can operate alone or be attached to a cash withholding order.

- o Medical Withholding Order is served on employer -- if there is also a cash withholding order, they are packaged and served together. Service on the employer is sufficient service on the Plan; the employer is responsible for sharing information with the Plan administrator.

- o A properly completed Medical Withholding Order should meet federal definition of "Qualified Medical Child Support Order" -- the only kind of medical support order an ERISA (self-insured) Plan must honor.

  Under ERISA, the Plan has an undefined length of time to decide whether the Medical Withholding Order meets ERISA's requirements. Under ERISA, the Plan must immediately send information back to the obligee and/or SRS, explaining the Plan's procedures. (Timeframes under the Income Withholding Act still apply to the cash income withholding order.)

- o If the Plan finds that the Medical Withholding Order meets ERISA requirements, enrollment is required if certain conditions are met. If the employee is requesting enrollment and is eligible to participate in the Plan, the Plan must enroll the child. If the obligee or SRS requests enrollment, the Plan only has to enroll the child if the employee is a plan participant (i.e., has at least single coverage). Either way, open enrollment limitations don't apply.

- o Once the child is enrolled, the employer deducts and pays premiums according to the Plan. Premiums are NOT sent or mingled with cash support.

- o Unless the U.S. Secretary of Labor issues regulations, the regular Consumer Credit Protection Act percentages (50, 55, 60, 65%) limit deductions for cash support and premiums under an order. If there is not enough income, cash support has priority over premiums.

- o If the obligee or SRS has a medical claim for the child, it is submitted and paid without the employee-parent's participation. Payments go directly to the obligee, Medicaid, or the provider.

- o The employer/Plan cannot disenroll or terminate the child's benefits except as specifically allowed by the federal law.

Attachment C

Highlights of SB 452

Requirements which apply to all health benefit plans (Section 1)

- o Includes self-insured plans governed by ERISA (federal Employee Retirement Income Security Act)
- o Plans cannot discriminate **in enrollment** against children who are:
  - * Born out of wedlock
  - * Not claimed on employee/parent's tax return
  - * Not residing with the employee/parent or in the plan's service area
  - * Eligible for medical assistance
- o Plans cannot consider medical assistance in paying benefits for children and must honor assignments/third-party subrogation rights for medicaid

Entry of the medical child support order (health insurance order) (Section 2)

- o Court required to consider insurance costs in relation to family finances
- o Court prohibited from considering medicaid eligibility as a factor, assuring SRS will be the payer of last resort
- o Entry of medical support order makes the obligee (the nonparticipating parent) the holder of a limited power of attorney with ability to negotiate checks for payment of child's claims. Secretary of SRS is holder of limited power of attorney with respect to medical assistance.

Plan requirements when there is a medical child support order (Section 2)

- o Must allow child's enrollment without regard to open enrollment period
- o Must allow the employee-parent to enroll the child (OBRA does not say whether the plan may require that parent to enroll, too)
- o Must allow the other parent or SRS to enroll the child, but ONLY IF the employee-parent is actually a plan participant
- o Limits termination of child's coverage to conditions specified in OBRA

Medical Withholding Order (Sections 3 through 5, 7 through 12)

- o Employer able to recover costs through employer fee
- o Payroll deductions for cash support and premiums are capped
- o Continuing nature of withholding order allows it to apply to future employers without further court hearings
- o When the court enters the underlying medical child support order, a Medical Withholding Order may be issued immediately (with or without a withholding order for cash support); otherwise a Medical Withholding Order issues only upon motion and opportunity for hearing
- o Formal requirements (names, addresses, etc.) for Medical Withholding Order are the same as ERISA's requirements under OBRA '93

Specific Plan duties under a Medical Withholding Order (Section 5)

- o Service of Medical Withholding Order on the employer is sufficient service on the plan administrator
- o Procedure if more information or forms needed to complete enrollment
- o Continuing nature of order to enroll child
- o Premiums are remitted as provided in the plan (NOT sent to the court)

Remedies for parent's failure to enroll child (Section 6)

- o Judgment against parent for either the cost of replacement insurance or the difference in cash child support (adjusted to credit the parent who actually paid for the child's insurance)
- o Automatic grounds for modification of support order

3-14-94
SB530
Jim Cobler

STATE OF KANSAS

DEPARTMENT OF ADMINISTRATION
DIVISION OF ACCOUNTS AND REPORTS

JOAN FINNEY
Governor

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March 14, 1994

The Honorable Tim Carmody, Chairperson
House Judiciary Sub-committee #2
State Capitol - Room 254-E
Topeka, Kansas 66612

Dear Representative Carmody:

My comments for testimony regarding changes in the garnishment law, Senate Bill (SB) 530, are as follows:

The statutes to be amended govern the withholding of wages due to income withholding orders and orders of garnishment including:

- The amount subject to withholding.
- The maximum amount which may be withheld.
- The payor's responsibilities and rights.
- The legal forms and procedures, including the serving of summonses.
- The garnishment of wages of officers and employees of governmental bodies.

The majority of the statutes to be amended affect all garnishments in the state, not just those for governmental officers and employees.

The proposed legislation, as amended by the Senate, modifies the garnishment laws in several areas:

House Judiciary
Attachment 3
3-17-94

Administrative Fees: Present law for income withholding orders allows employer's to charge a $5 administrative fee for each pay period when income is withheld, not to exceed $10 in each month. There is no provision to allow administrative fees for orders of garnishment. The proposed legislation originally increased the fee on income withholding orders from $5 to $10 for each pay period and the maximum allowable fee from $10 to $20 for each month in which income is withheld. The statutes were also originally amended to allow the fee to be deducted from the amount of support, if the amount withheld plus the fee exceeds the maximum withholding allowable, to ensure collection of the fee. These same provisions were added to the statutes governing orders of garnishment as well. However, the Senate deleted Section 1. related to the administrative fees for income withholding orders.

It is recommended that a portion of original Section 1. be restored. The income withholding orders require processing time and effort each month and the $5 fee does not recover related costs. It is recommended that the portion of Section 1.(e) related to the rate of fee and the maximum fee for income withholding orders be restored to SB 530. However, to avoid penalizing the recipient of the child support, it is recommended that the additional amendment to Section 1.(e) remain deleted. This language is as follows:

> "If the addition of this fee causes the total amount to exceed the restriction imposed by subsection (g) of K.S.A. 60-2310, and amendments thereto, the fee shall be deducted from the amount withheld as support."

Deletion of this language will allow no fee to be collected if the fee cannot be collected from the paying parent.

Serving of Income Withholding Orders: No instructions for serving income withholding orders for state officers and employees currently exist and orders may go to a variety of agencies. The bill requires that income withholding orders be served to the Director of Accounts and Reports as is done for orders of garnishment. This clarification will streamline the process and help ensure timely withholding and remittance of support.

The 'Order of Garnishment' Form: The defendant's address and social security number, the address of the plaintiff's attorney and the amount of the plaintiff's claim against the defendant are proposed to be added to the 'Order of Garnishment' form. Often, substantial time is required to correctly identify the employee to be garnished. This information will assist in the identification process.

In addition, two time restrictions are proposed to be added to the form to streamline the withholding process:

- A 60 day time limit for the initiating party to respond to the 'Answer of Garnishee'.

- A 10 day time limit for reply to the 'Answer to Garnishee'.

The time restrictions serve two different purposes. In the first, if no response is received within 60 days from the date the answer is filed, then the employer may petition the court to allow withheld funds to be returned to the employee. This permits withheld funds to be returned to the employee as soon as possible if no action to order in funds withheld is taken by the court. In the second, if no reply to the 'Answer of Garnishee' is received within 10 days, then the answer cannot be disputed. There is currently no established time limitation in the law for the initiating party to respond to the 'Answer of Garnishee'. The 10 day time restriction clarifies the current time limitation and in particular the consequence of failing to timely reply.

Amount of Earnings Subject to Withholding: The statute governing the amount of earnings subject to withholding is amended to allow the amount to be the "lesser of" the current computation or "the amount of the plaintiff's claim as found in the order for garnishment". This will lessen the excess funds withheld from an employees' wages and accelerate the disbursement of such funds.

The 'Statement of Garnishee' Form: The amendments to the 'Statement of Garnishee' form primarily concern the computations of the amount to be returned to the employee and the amount to be withheld, in accordance with the amendments to the statutes. The form is proposed to include:

- Recognition of any income withholding orders that may already be imposed.

- The amount of the administrative fee.

- A provision to refund the employee any excess withholdings if the plaintiff's claim is less than the amount withheld.

Effect of Amendments on the Division of Accounts and Reports:
The amendments found in SB 530 will allow the Division of Accounts and Reports to process income withholding orders and orders of garnishment in a more timely manner and, in some cases, with fewer procedural steps. No reduction in work force will occur from these changes.

The increased administrative fee for income withholding orders and the new administrative fee for orders of garnishment will allow the Division to recover more of the costs related to processing of the orders. Based upon fiscal year 1993 data, if the fee increase for income withholding orders is restored to SB 530, the revenues to the Accounting Services Recovery Fund would increase by $33,500 annually. The fees for orders of garnishment would represent a new source of revenue to the Accounting Services Recovery Fund. Based upon the number of garnishments in fiscal year 1993, the fee revenue would be $21,010 annually. Assuming no change in the quantity of orders of garnishment or income withholding orders, the revenues for administrative fees to the Accounting Services Recovery Fund could be $54,510 greater per year than fiscal year 1993 revenues.

Additional Recommendations:
Prior to implementation of SB 530 as it is currently written, we recommend further amendments to the 'Statement of Garnishee' which is a part of the 'Answer of Garnishee', contained in Sections 4. and 10. of SB 530. We recommend form sections (f) through (j) be presented as per the attached document to clarify the intent of the form.

If you have any additional questions, please contact me.

Sincerely,

James R. Cobler
Director of Accounts and Reports

JRC:SLF:jw

Attachment

Attachment to Testimony on Senate Bill 530
March 14, 1994

Further amendments to the 'Statement of Garnishee', which is a part of the 'Answer of Garnishee' contained in Sections 4. and 10., are recommended. Form sections (f) through (j) are recommended to be presented as follows to clarify the intent of the form.

(f) Disposable earnings for the pay period or periods covered by (b) are (subtract (e) from (c))..... $_____

(g) In accordance with the instructions accompanying this answer form, I have determined that the amount which may be paid to defendant is..... $_____

(h) I am subtracting from the amount available for this garnishment an amount for an income withholding order for support, including an administrative fee..... $_____

(i) I am withholding from the amount available for this garnishment an administrative fee in the amount of... $_____

(j) After paying to defendant the amount stated in (g), I am holding the remainder of defendant's disposable earnings in the amount of (line (f) less lines (g), (h), and (i))..... $_____
(Please note: If the amount in (j) is $0 or less, then enter $0 and hold nothing for this garnishment.)

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 530 March 14, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Judiciary - Subcommittee #2

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. On the behalf of the members of KCCI and its Industrial Council, thank you for this opportunity to express our support for SB 530.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Kansas law has made employers across our state the middle man between their employees and the people they owe money. KCCI has no quarrel with the courts in our state imposing this mission on employers. However, there are several areas where Kansas law makes it an imposition to carry out this responsibility. SB 530 addresses several of those problems.

House Judiciary
Attachment 4
3-17-94

First, SB 530 permits employers to withhold and retain a fee to defray their expenses for complying with a wage garnishment order. An employer faces expenses for complying with the court's wishes concerning wage garnishments, and an employer becomes responsible for their employee's debt if they fail to comply with the court's order. As a result, it is fair to permit an employer to defray their expenses by retaining an administrative fee for wage garnishments.

SB 530 also will help an employer meet their wage garnishment obligations by requiring the amount owed by an employee to a plaintiff be shown on the order. This should help rectify situations where more money than is needed is withheld to satisfy a judgment.

Finally, another employer concern is addressed by including an employee's address and social security number on a wage garnishment order. For an employer of individuals with the same common name, complying with a garnishment order becomes impossible without this additional identification. However, it should be noted that requiring social security numbers could complicate the garnishment process for plaintiffs. KCCI's hope is to streamline the employer's role in satisfying orders, not to complicate the process for plaintiffs.

The President of the Kansas Industrial Council, Mr. Phil Jarvis of Rubbermaid Specialty Products in Winfield, had hoped to testify before the Committee today to expresss his support for SB 530. Unfortunately, Mr. Jarvis' schedule did not permit him to appear. However, Mr. Jarvis did request I share with the Committee a letter concerning SB 530, which is attached to my testimony.

Mr. Chairman, thank you for the opportunity to explain why KCCI supports SB 530. I would be happy to attempt to answer any questions.

Rubbermaid®

Rubbermaid Specialty Products Inc.

1616 WHEAT ROAD • P.O. BOX 652 • WINFIELD, KANSAS 67156 • (316) 221-2230 • Fax (316) 221-0092

March 11, 1994

Representative Mike O'Neal
Room 426S
State Capitol
Topeka, KS 66612

Dear Representative O'Neal:

I am Manager of Payroll, Payables and Administrative Services for Rubbermaid Specialty Products Inc. and am also President of the Kansas Industrial Council.

I am writing to you as Chairman of the House Judiciary Committee and asking for your support of SB 530.

As a division of Rubbermaid Incorporated, we employ more than 1,000 people at our plant in Winfield where plastic products for recreational and lawn & garden use are manufactured. We are also the largest employer in Cowley County.

During 1993, more than 130 garnishments were served against our employees. The paperwork and time involved in processing the orders is of significant proportions. SB 530 will assist us in this regard in three ways.

First, by requiring the amount of the judgment to be entered on the order we can prevent overwithholding from our employees. This happens on many occasions and results in our employee having to wait several days until an order to pay in comes back from the court and directs us to pay the overwithheld amount back to the defendant. Here again, taking time of both the court and the employer.

Second, with over 1,000 persons on our payroll many similar names can be found. Requiring the social security or other form of identification to appear on the order will assure that funds are not withheld from the wrong person.

Finally, provisions of the bill which allow for a cost recovery fee to be charged for processing the garnishment will help us to gain back some of the expense we incur in the action. Employers are middlemen in these proceedings and have had no involvement in dealing between plaintiff and defendant. Why then should we incur the extra expense involved in settling their differences?

3-14-94
SB 53.
Anne McDonald

HOUSE JUDICIARY SUBCOMMITTEE NO. 2
MARCH 14, 1994 3:30 P.M.

S.B. 530

TESTIMONY OF ANNE MCDONALD, COURT TRUSTEE, 29TH JUDICIAL DISTRICT

Senate Bill 530 changes the amount of the "cost recovery fee" in Income Withholding Orders and adds a "cost recovery fee" in the same amount to garnishments. It further allows the deduction of the cost recovery fee from the support being garnished in some circumstances. And it changes some of the language and procedure in the Order and Answer forms for garnishments.

I am very much opposed to the doubling of the amount of the cost recovery fee and to the deduction of same from the amount of support on Income Withholding Orders. I understand that this has been changed and Sec. 1 of the bill has been deleted. The bill in its present form now sets a fee only for answering garnishments. Although I would prefer no fee, I do not believe a fee on garnishments will have as large and impact on child support enforcement efforts as a fee on Income Withholding Orders would.

S.B. 530 amends K.S.A. 60-717 to change the form of the Order of Garnishment and add a requirement that the defendant's social security number and address be included, along with the amount of the claim and the address of the plaintiff's attorney. It also states that if the garnishee does not receive an Order to Pay within sixty days, the garnishee can release the funds back to the

defendant. I think these changes are good ideas. They help the garnishee verify the identity of the defendant and complete the garnishment process within a reasonable time. A company should not have to hold funds indefinitely. With the additional information and provisions, the employer can contact the attorney or the court and get the matter resolved.

Inclusion of the amount of the claim (in child support cases, the amount of current support and arrears owed) appears to be a good idea also. In some rare instances, the amount of the claim is less than the total garnishment amount being held; in that circumstance, the plaintiff would only have a right to the lesser amount and the remainder could be released back to the employee/defendant.

S.B. 530 makes some beneficial changes in the garnishment procedures. Although I believe compliance with a court order is part of doing business and that we should not have to pay companies to do so, a small cost recovery fee is understandable. So long as it applies only to garnishments and not to Income Withholding Orders, the fee is not expected to have a major impact on the area of child support enforcement. I support S. B. 530 in its amended form. Thank you.

Respectfully submitted,

Anne McDonald, No. 11394
Court Trustee
Wyandotte County Courthouse
710 No. 7th St.
Kansas City, Kansas 66101
(913) 573-2992 FAX: 573-2969

SRS

3-14-94
SB
JAMIE L MILL

Senate Bill 530

Effect of doubling the existing income withholding fee --
Existing fee: $5 per withholding up to $10 per month
Proposed fee: $10 per withholding up to $20 per month

Based on 10,000 active IV-D withholding orders, it is assumed that 2400 involve relatively low-paying jobs, of which 1/3 would be affected by doubling the fee (either through increased transience or "capping out" under the CCPA). It is estimated that 400 additional cases (not low wage jobs) would "cap out" due to relatively high total withholdings (high arrearage installments or multiple withholding orders).

Dept. of Administration currently processes about 725 withholding orders per month; it is estimated that about 300 of those are IV-D cases (30% to 50%, or 217 to 362). The ratio of State IV-D withholding orders to all IV-D withholding orders is about 3%.

Transience

It is estimated that 400 cases would involve increased transience, causing CSE to lose at least 1 month's collections while relocating and reimposing the withholding order. Average collection per order per month = $102 (include all orders, whether the obligor is paying or not). $102 x 1 x 400 = $40,800 in lost collections (gross).

"Capping out" under the CCPA

NOTE: The federal limits of 50%, 55%, 60%, and 65% cannot be superseded by state law. Although states are allowed to set lower limitations on deductions from disposable earnings, they cannot exceed the federal maximums.

It is estimated that 400 additional low-wage cases would involve losses because of the federal Consumer Credit Protection Act limitation -- the additional fee would have to be deducted from support collections or waived by the employer.

Worst case: Total of 800 new cases in which employer fees would be collected out of support deductions. It is assumed that extra losses caused by multiple order situations (employers deducting full fee for each order) would be offset by minimal losses from cases in which employee is paid less than twice per month. It is assumed that in many cases only a portion of the increased fee would have to come out of support collections or that income would fluctuate so that only in certain pay periods would the fee be deducted from support; of the potential $120 cost per year per case, it is estimated the actual loss per year per case would be $60. At that rate, the gross loss in IV-D child support collections would be $48,000.

Best case: If 50% of employers in the 800 cases voluntarily waived their fees in "capped out" cases, it is estimated that the losses could be reduced. (NOTE: About 50% of employers waive all income withholding fees -- this was part of the assumption made in estimating the original 800 cases that would be affected.) At that rate, the gross loss would be $24,000 per year.

House Judiciary
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3-17-94

Losses to IV-D Program

Transience and worst-case "capping out":

$40,800	Increased job transience
48,000	CCPA "cap out"
$88,800	**Gross IV-D losses**

67.4% (about $60,000) of lost collections would be Non-AFDC collections that would otherwise go to the family.

Loss to SRS fee fund would be about $13,000 per year.

Transience and **best**-case "capping out":

$40,800	Increased job transience
24,000	CCPA "cap out"
$64,800	**Gross IV-D losses**

67.4% (about $43,000) of lost collections would be Non-AFDC collections that would otherwise go to the family.

Loss to SRS fee fund would be about $10,000 per year.

JLC 3/14/94

3-14-94
SB
Ed Mil

House Judiciary Committee
Testimony of Edward R. Miller
Vice President Human Resources
Learjet Inc.
March 14, 1994

I am the Vice president Human Resources for Learjet Inc. I am here to testify in support of Senate Bill 530.

For several years, debt collections for garnishment orders have been provided for by employers to help with the collection of debts from employees to their creditors. This has become an increasingly costly burden for employers to process and administer this collection process required by statute.

I am not here to complain about the need for this type of activity. I believe it is a necessary social responsibility for us as employers to help collect bills for employees who are not responsible for their financial affairs.

I would request that you authorize employers to recover part of the cost for processing garnishments. A payment for administrative costs for collections is only reasonable and fair.

Currently there is no recovery for garnishment orders. This is simply not fair for employers to be required to fully pay the administrative costs required for collection of bad debts. To process the order, We must receive it, verify the individual being garnished is our employee, make a determination on how to comply with the order, attach the paycheck for an undisclosed amount of money, then prepare an accounts payable check to submit the payment to the court system. We process garnishments across the country for a multitude of courts. As an employer, we do not know the amount due; resulting in us deducting more money than is required in some cases and dealing with the employee relations problems which result. In these cases, we ultimately receive the money back from the court system; requiring us to reverse the payment process and refund the money to the employee.

A payment to employers to the lessor of $10 per pay period or $20 per month is the minimum that should be considered by this committee. Our estimates are that this will allow us to only recover approximately 2/3 of the current cost of processing the garnishments.

Further, if the legislature allows up to $30 as a service charge for retailers to collect a bad check, it would seem that a fee for processing garnishments is only reasonable.

House Judiciary
Attachment 7
3-17-94

Let me put the garnishment issue into better perspective. Learjet processes over 750 garnishments a year. This is against an employee population of 3000. We have only 60 employees on garnishment orders. Most of these are repeat garnishment orders from several creditors against the same employee. These employees are using their employer as a payment system for their bills.

Learjet faces an unrealistic cost in processing garnishments for a small number of employees. In addition, Learjet can be held responsible if these garnishment orders are not processed in the correct sequence.

For example, in Arizona employers may deduct $5 per pay period in which a garnishment order is processed. In addition, the employer receives a processing fee of $50 for the initial answer to the garnishment to set up the deductions.

The administrative costs proposed in this bill should be applied in addition to the withholding amount remitted to the creditor.

If another change could be made to the system, we would like to see the amount of money owed to the creditor be included in the garnishment order. This would help solve the employee relations problem with over withholding of small amounts due. It is a simple process to include and would ease our administration of the garnishment to avoid excess withholding.

Please remember employers cannot discharge an employee for any amount of garnishments or being socially irresponsible. That is a statutory determination you have made. We are simply asking you to help defray some of the costs on a more equitable basis.

E. Pomeroy

REMARKS CONCERNING SENATE BILL 530
HOUSE JUDICIARY SUBCOMMITTEE #2
MARCH 14, 1994

Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas, and the Kansas Collection Attorneys, a group of attorneys, primarily in the Topeka and Wichita area, whose practice includes considerable collection work, would like to suggest some amendments to Senate Bill 530, as amended by Senate Committee.

On page 6, line 39, we would suggest that after "social security number" the words "if known" be inserted; and that the same amendment me made on page 7, line 21. As a matter of practice, the defendant's social security number is provided, if it is known; but knowing that number should not be a prerequisite to obtaining an order of garnishment. In some instances, the plaintiff may not know the social security number of the defendant. The words "if known" should also be inserted on page 20, line 6.

On page 7, in lines 13 through 16, we are concerned that in some instances, the plaintiff might not be aware of the filing of the answer by the garnishee; we would suggest that at least, there be a provision for the garnishee to notify the plaintiff if the garnishee files a petition with the court for an order allowing return of withheld funds to the defendant. That concern would also apply to the provisions which appear on page 19, beginning with line 41 and continuing on page 20, line 1.

We are concerned with the administrative fee authorized by the amendatory language on page 7 beginning at line 41 and continuing on page 8 through line 4, and on page 18, lines 9 through 18. We question the justification for this administrative fee; in most instances, the garnishee will be an employer, and most of the employers are computerized. It should be no harder for the employer to withhold the amount garnished than it would be to withhold the amounts necessary for social security, or withholding taxes.

We would suggest that on page 8, line 9, before the period, the following be

House Judiciary
Attachment 8
3-17-94

inserted:", except that an order of garnishment may be served by ordinary, first class mail unless another form of service is requested". We would request that the same amendment be made on page 17, before the period in line 16. Particularly in the metropolitan areas, the sheriffs are overburdened and under-funded. There are instances where an order of garnishment is not served simply because service by one of the existing methods cannot be accomplished within the required period of time, because of the crush of the workload on the sheriff's department. Presently, garnishments have to be served by certified mail; by personal service; or residental service. An order of garnishment is typically issued against an employer or a financial institution. The recepients of the order of garnishment are ones that can easily be reached by ordinary mail. This is an attempt to economize on time and expenses, which is particularly needed in the larger counties. This would not mandate the new method of service of orders of garnishment; it would simply permit it as an additional alternative.

Another matter which we would like to see addressed in this bill deals with the language on page 15, beginning at ~~page~~ line 38 and continuing on page 16 through line 6. This is an outdated statutory prohibition against garnishment if an account has been assigned. Quite often accounts are assigned, particularly in the telephone industry. The existing statute denies the remedy of garnishment for accounts that have been assigned. We would request that on page 15, in line 41, before the period "unless the garnishment action is filed by an attorney" be inserted.

As you can see, although we object to the administrative fee which this bill would authorize being withheld by garnishees, we view the bill as lovely vehicle for amendments. Our last request for an amendment is on page 16, where, following line 34, we would request that an addition section be added, amending K.S.A. 61-1725, as listed on the attachment to my remarks, relating to permissive joinder of plaintiffs

in Chapter 61 proceedings. This amendment would authorize the joinder in one action of several plaintiffs if they had claims against the same defendant or defendants. This is not a new concept, because it has been in practice in some judicial districts for several years. This procedure would benefit everyone involved. It would reduce the number of lawsuits that have to be filed; it would save the time of judges, because several matters could be concluded at one time; it would reduce the burden on the clerks of the court; it would reduce the burden on process servers; it would permit the recovery of small debts; it would reduce costs to the plaintiffs; it would benefit defendants who could dispose of their obligations to several plaintiffs in one action; defendants would have fewer lawsuits filed against them; and it would be of great benefit to garnishees. Such a procedure would reduce the number of garnishment orders because there would be fewer lawsuits.

Please consider our requested amendments very seriously.

Elwaine F. Pomeroy
For Kansas Collectors Association, Inc., and
Kansas Collection Attorneys

61-1725. Adoption by reference of certain provisions of article 2 of chapter 60. The following provisions of article 2 of chapter 60 of the Kansas Statutes Annotated are hereby adopted by reference and made a part of this act as if fully set forth herein, insofar as such provisions are not inconsistent or in conflict with the provisions of this act:

(a) K.S.A. 60-215, relating to amended and supplemental pleadings, except that the time for filing amended pleadings and for responding thereto shall be ten (10) instead of twenty (20) days;

(b) K.S.A. 60-217, relating to capacity of parties;

(c) K.S.A. 60-218, providing for joinder of claims and remedies, K.S.A. 60-219 and 60-220, providing for joinder of parties, and K.S.A. 60-221, relating to misjoinder of parties and claims;

(d) K.S.A. 60-224, relating to intervention, and K.S.A. 60-225, providing for substitution of parties;

(e) K.S.A. 60-234, relating to production of documents and things for inspection;

(f) K.S.A. 60-241, providing for dismissal of actions;

(g) K.S.A. 60-244, providing for proof of records;

(h) K.S.A. 60-256, relating to summary judgment;

(i) K.S.A. 60-259 and 60-260, concerning new trial and relief from judgment or order, respectively;

(j) K.S.A. 60-261 and 60-263, relating respectively to harmless error and disability of a judge; and

(k) K.S.A. 60-264, relating to process in behalf of and against persons not parties.

History: L. 1969, ch. 290, § 61-1725; Jan. 1, 1970.

except that persons who have claims against the same defendants may be joined under the code of civil procedure for limited actions,

STATE OF KANSAS

TIM EMERT
SENATOR, 15TH DISTRICT
ALLEN, CHAUTAUQUA, SE COFFEY,
MONTGOMERY, WILSON, WOODSON COUNTIES
P.O. BOX 747
INDEPENDENCE, KANSAS 67301
(316) 331-4831
STATE CAPITOL BUILDING, ROOM 143-N
TOPEKA, KS 66612-1504
(913) 296-7363

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIRMAN: JOINT COMMITTEE ON CLAIMS AGAINST THE STA
VICE CHAIRMAN: JUDICIARY
MEMBER: EDUCATION
ENERGY AND NATURAL RESOURCES
TRANSPORTATION AND UTIL

March 15, 1994

HOUSE JUDICIARY SUBCOMMITTEE ON CIVIL LAW

TESTIMONY IN FAVOR OF SB 762

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to testify before you in favor of SB 762.

This bill makes retroactive the provisions of a law enacted in 1993 Session which provided that the standard of care to be used by directors and officers of financial institutions shall be one of gross and wanton negligence.

I would like to provide the legislative history of this concept.

Last year, SB 125 provided limited immunity from personal liabilities to officers and directors of state and national banks, state and federal savings and loans institutions and credit unions. The grant of limited immunity applied only to what are commonly referred to as outside directors.

When SB 125 came before the House Judiciary Committee last Session, retroactive provisions were amended into the bill. Those retroactive provisions were identical to these which are now provided in this bill before you. SB 125 passed out of the House with a vote of 83-36; however, problems arose in the conference committee with the Senate members and eventually the provisions set out in SB 762 were deleted from that bill.

House Judiciary
Attachment 9
3-17-94

During this Session, SB 762 was introduced by the Senate Judiciary Committee, was subsequently passed by the committee and debated on the floor and the bill before you was passed out of the Senate this year on a vote of 33-6.

Presently, there are nine lawsuits pending in the state of Kansas which would be affected by this bill. Kansas citizens who previously served as outside directors are being subjected to standards of care which are much higher than those imposed in other states or even those imposed by federal law. The vast majority of the people that are being sued (and in my opinion harassed) by RTC are merely citizens of their communities who were attempting to do their civic duty by serving on local savings and loan association boards of directors. I ask you to help those people and to pass this bill out favorably.

I appreciate this opportunity to make this brief presentation and ask your support of this legislation

The KANSAS BANKERS ASSOCIA
A Full Service Banking Association

March 15, 1994

TO: House Judiciary Committee
RE: **SB 762** - Liability of outside directors of financial institutions

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present comments concerning **SB 762**. This bill would extend existing statutory provisions relating to outside directors of financial institutions to any actions filed prior to May 20, 1993. Members of the committee will recall that the issue of retroactivity was part of the discussion on SB 125 during the 1993 session. At the request of the Senate conferees on that bill, the retroactive provisions of the bill were ultimately removed.

The KBA was supportive of the retroactive provisions of SB 125 and we would reiterate that support by requesting favorable action on **SB 762**. Current law has permitted the Resolution Trust Corporation (RTC) to file actions against outside directors whose only shortcoming was not being able to foresee hyper inflation, collapse of the oil industry, and a complete shift in federal tax policy relating to real estate investments.

We do not believe any directors guilty of fraudulent activities should escape prosecution, but the RTC and other federal agencies bringing actions against these directors should be required to prove gross negligence in such situations. We would request that the committee report **SB 762** favorably.

James S. Maag
Senior Vice President

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

House Judiciary
Attachment 10
3-17-94

To: House Judiciary Sub-Committee.

I am here in support of Bill #762. My name is Jim Scaletty, and I was president of Peoples Savings, Parsons, for 21 years, from 1968 to 1989.

In the early 80's, Peoples Savings had income problems due to high interest rates. We had to pay more for deposits than we were earning on loans. With the encouragement of Federal Regulators, we set out to grow to increase earnings. One of the few parts on the country where loans were being made was in the "oil patch." We bought participation loans, pieces of whole loans, in Dallas and Houston when oil prices were $40 a barrel. Those loans ran into difficulty when oil prices went to $8, and the population growth of those areas slowed. Congress passed the disastrous 1986 tax act that destroyed real estate values, and the loans became almost total losses.

Peoples Savings was taken over by the RTC in early 1989. Three years later, on the very last day of the statute of limitations, the RTC filed suit against the directors of Peoples over their decisions on 3 Participation loans. This suit was 9 years after the loans were made. The lawsuit had its second birthday last month, and no trial date is on the horizon. When the lawsuit was filed, it named two directors who had been dead over 5 years, and since then one has died at age 86. The RTC has admitted, in the discovery part of the case, that they do not allege fraud or criminal conduct.

The passage of this bill affects only outside directors, and that would not be me. It will affect my father, however, since he was an outside director. My father is 84 years old. Before he retired, he owned the family hardware business that

House Judiciary
Attachment 11
3-17-94

was started in Parsons by my grandfather in 1904. His reputation is very important to him, and his integrity has never been questioned. This lawsuit hurts him a great deal.

It is almost impossible for a private citizen to fight a lawsuit brought by the Federal Government. First, the RTC has unlimited tax payer money to use. The defense of this lawsuit has cost our directors several hundreds of thousands of dollars. Second, the RTC is in possession of all the records of Peoples Savings. Everything necessary to refresh our memory and establish our innocence must be requested from them. Many of these documents have been lost by RTC and on others they argue that they are either burdensome to produce or not relevant. One entire loan file has been lost.

It is a sad thing when the Federal Government, in trying to find a scapegoat for its own bad economic policy, goes after private citizens. Our directors are citizens who served the local community on the Chamber of Commerce, school and church boards, worked for charitable causes and gave their time to civic projects. As a director of Peoples they were paid $250 per month. They are now, in their elder years, forced to spend maybe their entire estate defending themselves against the Federal Government.

ROUSE, HENDRICKS, GERMAN, MAY & SHANK, P.C.

ONE PETTICOAT LANE BUILDING
1010 WALNUT · SUITE 400
KANSAS CITY, MISSOURI
64106

TELEPHONE
(816) 471-7700

FACSIMILE
(816) 471-2221

February 21, 1994

1-296-6718

Senator Tim Emert
State Capital
300 S.W. 10th, Room 143N
Topeka, KS 66612-1504

Re: Senate Bill 762

Dear Senator Emert:

We represent many of the former members of the board of directors of Franklin Savings Association, and one of its former officers. Franklin was the largest savings association in Kansas before its seizure by the federal government in February 1990. Consistent with the federal government's "thrift crisis" tactics elsewhere, and for the apparent purpose of trying to justify its continued presence at Franklin four years after the ill-advised seizure, the Resolution Trust Corporation has sued our clients for over $135 million. We are writing to urge your support of Senate Bill 762, which we understand would establish a retroactive gross negligence standard for director and officer liability.

Specifically, we represent: Ernest M. Fleischer; Mary Louise Greene; Ted Greene; Harry Coffman; Stanley Dreher; Lawrence Kramer; Harold Yokum; Glenn McGuire (Mr. McGuire recently died--the RTC reportedly intends to pursue these claims against Mrs. McGuire as her husband's personal representative); and John Scowcroft. Mr. Yokum and Mr. Dreher resigned from the Franklin board in 1985, five years before the RTC was placed in control. The claims asserted by the RTC against these people arise from two areas of Franklin's operations: (i) sixteen transactions in 1983-86, in which Franklin participated in public bond financing of low and moderate income multi-family housing; and (ii) the acquisition by a subsidiary of Franklin of three securities firms. Ironically, none of these matters were among the reasons cited by the government as reasons for Franklin's seizure.

Much could be written about the tragedy of the government's intervention at Franklin Savings Association. In time, the full story of this case wil be understood. For now, however, Senate Bill 762 presents an opportunity for our legislature to provide justice to people whose lives are being ruined by undeserved litigation.

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3-17-94

The RTC's claims are based solely on claims of simple negligence, as confirmed by the RTC's "expert witness," John Carr, the man who was appointed to manage Franklin for the RTC after the seizure. The RTC is represented by a law firm that has assigned at least ten lawyers to the case. The result of all this litigation could well be financial devastation to most of the defendants, even if we ultimately prevail.

There is no just reason for people to endure this kind of abuse. If a plaintiff can prove gross mismanagement by an institution's directors, the law should provide a remedy for any damages caused by such conduct. On the other hand, if a plaintiff can do no more than prove an erroneous business judgment–simple negligence--directors and officers of financial institutions should not be forced to devote their lives to the defense of hindsight based litigation. The distinction between claims of gross and simple negligence should be susceptible to an early court ruling as a matter of law, so that claims that do not meet the higher standard can be dismissed without protracted proceedings. As a matter of fairness, this distinction should apply to pending cases.

As we understand its provisions, Senate Bill 762 strikes this balance in a proper manner, and could put a stop to the unjust process in which our clients have been embroiled by the RTC. This kind of legislative action should clarify the Kansas law applicable in these kinds of cases, making plain that the exercise of informed business judgment does not open the door to years of litigation. Please support this legislation. If we can provide you any further information about the Franklin case or general information on this subject–we will be happy to respond.

Very truly yours,

ROUSE, HENDRICKS, GERMAN,
MAY & SHANK, P.C.

By
Charles W. German

CWG:dja

cc: Mr. Ernie Fleischer
Mrs. Mary Louise Greene
Mr. Ted Greene
Mr. Harry Coffman
Mr. Stanley Dreher
Mr. Lawrence Kramer
Mrs. Isabel McGuire
Mr. John Scowcroft
Mr. Harold Yokum

12-2

BYRON BIRD AND ASSOCIATES, CHARTERED
CERTIFIED PUBLIC ACCOUNTANTS

316-624-1994
224 N. LINCOLN
LIBERAL, KANSAS 67901

SB 762

Senate Judiciary Committee
Topeka, Kansas
C/O Senator Marian K. Reynolds

My name is Gregory J. Bird, and I am a Certified Public Accountant in Liberal, Kansas. I was an outside director for Colonial Savings and Loan from April 1986 to February 1989. I am currently involved in litigation with the Resolution Trust Corporation.

When I accepted the position on the board, I understood my responsibility was to help guide and direct Colonial Savings and Loan in their overall business plan and help establish overall policies and procedures. I also understood my fiduciary responsibility to promote and represent Colonial in the business world. I do not believe that it is an outside directors responsibility to prepare the documentation of loan underwriting, become a certified appraiser, or be a financial genius able to predict what loans might go bad.

After spending three days in depositions with RTC's attorney's, it became obvious to me that RTC is trying to make the outside directors responsible for the actual preparation of loan underwriting documentation, not just setting policy, and experts on preparing appraisals. A large part of the three days were spent reading the past minutes of Colonials board meetings so that I could agree that was what was written. My attorney called it the trained chimpanzee response. If this is cost effective litigation I would hate to see what they consider not cost effective.

Finally, I just want you to know that I made the best decisions I could with the information available at the time.

Sincerely

Gregory J. Bird

Gregory J. Bird

House Judiciary
Attachment 13
3-17-94

Good Morning, Senators,

I have never had the honor of addressing any State Committee and therefore felt it best if I read a brief statement to the committee and then I will be happy to answer any questions.

My name is Montie Taylor, and I have served as President of First National Bank and Trust Company, Parsons, Kansas, since 1986. Our bank holds a "five star" Bauer Financial rating and although we are not permitted by National bank regulators to publicly disclose our national bank rating, I will tell you it is very, very good.

I would like to give you a personal chronology of myself, if I may. I graduated from Pittsburg State university in 1972, and went to work for a thrift in Parsons, Kansas, eventually becoming a Vice President in 1975, and a Director in 1980.

The thrift was established in 1924, survived the Great Depression, and had been profitably run as a conservative traditional thrift, making home loans and offering savings plans.

In October, 1979, our Federal government deregulated the money supply and a short time later deregulated the thrift business. Banking 101 requires that a financial institution should collect

more interest from loans than the bank pays to savers. This is obviously called "profit".

While many persons benefited from this inflationary deregulated environment by earning higher rates on savings than they were having to pay on long term borrowings, financial institutions became insolvent by the hundreds. One of those institutions was locally owned, Peoples Savings and Loan Association, Parsons, Kansas.

In 1983, at the urging of federal regulators, Peoples Savings' Board of Directors, comprised of ten local business people, acquired some short term, high rate loan participations in the fast growing Sunbelt.

In May, 1990, Peoples Savings failed and was liquidated. In February, 1992, all of the Directors of Peoples Savings who were on the Board in 1983 were sued for negligence based on three loan participations that were acquired in 1983. No fraud or self dealing has been alleged by the government.

These former directors were pillars of our community who took their Director responsibilities seriously, and who today, with the benefit of 20/20 hindsight made three bad loans. They also made thousands of good ones.

These former Directors have spent hundreds of thousands of dollars trying to defend their honor and integrity against an opponent with unlimited resources. The personal stress caused by the litigation has been severe. The outside directors, as one might expect, were generally older than the inside directors. In our case, one director has died. He was an outside director. I understand that the stress and health problems are not unique to our case.

Financial institution Directors greatly appreciate the passage of Senate Bill 125 which offers protection to Directors against simple negligence, going forward.

In closing, I want you to know that I am not here today, looking for a handout or expecting you to feel sorry for me. Senate Bill #762 does nothing for me. However, I do ask for your support of Senate Bill #762 which will retroactively help dozens of community minded former directors who are involved in financial institution litigation based on simple negligence which occurred during an unprecedented time in the history of savings and loans.

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

I am appearing before you today on behalf of my friend, Jim C. Page, who was my next door neighbor for 27 years.

He was a Director of Coffeyville Industries, Inc. for 21 years; a two-term Trustee on the National Small Business Association; Director of the Kansas Chamber of Commerce; a Director of Kansas Industrial Development Corporation; and a three term Trustee of World Neighbors. He was an officer and director of The Page Milk Company of Merrill, Wisconsin, which operated a Grade "A" and Grade "C" milk processing plant in Coffeyville, Kansas. He was an ordinary citizen and was and still is a dedicated public servant, was and still is a man of limited means.

He was one of the outside directors of First Federal Savings and Loan of Coffeyville, Kansas, during the period from 1979 thru 1985 when difficult problems arose in the oil industry and agricultural industry which were aggravated by the changing tax laws. These difficulties in the local economics finally led to the collapse of value of commercial real estate. It was also during these years that the government was pressuring savings and loans to become engaged in lending on commercial real estate because it realized that the accelerated interest rates that banks and savings and loans had to pay to attract funds required them to lend "long term" at the same time they were required to borrow "short term". The loans upon which these directors were sued were made from 1982 thru 1985.

House Judiciary
Attachment 15
3-17-94

All of the First Federal directors did the best that they knew how. Theirs were no exceptions. Theirs was one of the 179 banks and 42 savings and loan failures that occurred during that period.

Our Kansas courts have held that Directors of corporations are chargable only with gross negligence, but have set a lower standard to apply to Directors of banks and savings and loan associations, that of negligence.

You may wonder why I am here. I represent Jim Page who was a member of the Board of Directors of First Federal Savings & Loan of Coffeyville, Kansas, who is not accused of gross negligence, fraud, self-dealing, or any criminal misconduct, yet he has been sued for 12.8 million dollars. He, along with the other directors, are defending the lawsuit. The cost of defense will bring finandial ruin to several of the directors and harm to all.

Senate Bill No. 762 makes the retroactive provisions of last year's Senate Bill No. 125 applicable to a wider range of actions. It requires the plaintiff to establish acts or omissions that constitute wilful or gross and wanton negligence.

It is for this reason that I appear before you today asking you to support Senate Bill No. 762.

DATED THIS 23rd day of February, 1994.

Respectfully submitted,

Route 1, Box 17
Edna, KS 67342
January 8, 1994

Senator Robert Dole
444 SE Quincy
Topeka, KS 66683

Dear Sir:

I am presently being sued for $12,737,052.00 by RTC, due to serving on the Board of Directors of First Federal Savings & Loan Association, Coffeyville, Kansas, which was closed by RTC in August, 1989. I was first notified of this pending suit in a letter from RTC, dated September 10, 1991, stating the Board was guilty of mismanagement of the institution. RTC is well-aware that no illegal activities, nor self-dealing was done by any board member, but are accusing them of over-sight. Formal filing of the suit was made February 27, 1992.

It was the practice of First Federal of Coffeyville to include two employees on the Board of Directors: (1)--the President/Managing Officer who carried the same responsibilities as the outside board members: (2)--one other officer-for the purpose of taking the minutes and interpreting reports from various departments, and <u>not</u> for the purpose of setting company policy. I was appointed to the Board, in this second capacity, in 1979. My position in the Association was Senior Vice-President, specifically in charge of personnel, supervision of the departments on the second floor (Accounting, Loan Servicing, Data Entry, Print Shop), supervision of the Branch Manager at Caney, Kansas and the Janitorial staff. From time to time, I did exercise my right of vote, especially in areas of personnel benefits, purchase of equipment and other general operational decisions of which I had knowledge. I was not involved in the lending area of the Association, as this was specifically supervised by the managing officer.

I was employed at First Federal for 30 years. Ironically, RTC presented an award to me on Thursday, which stated it was for "Outstanding and devoted service for 30 continuous years", then closed the company on Friday. I was advised on leaving that "I would not be pursued due to the closing of the company". This was a great surprise, as I did not believe anyone would "be pursued" if they had not acted illegally. The bad loans at our Association were the result of the collapse of the oil industry and Coffeyville's loss of two large industries, plus high cost of savings rates. Unfortunately our Directors did not have a crystal ball to foretell these problems.

House Judiciary
Attachment 16
3-17-94

The Federal Home Loan Bank had our Board of Directors sign a "Consent Agreement" in September, 1985, when our losses first appeared. This agreement effectively put us under the management of the FHLB, rather than our Board. Then Franklin Savings offered to merge with us and this seemed to be favorable with FHLB. However, approval was delayed by Washington for almost two years. Franklin subsequently withdrew their offer. We were actually "put on hold" by FHLB and Franklin during this period, causing great deterioration of our company. It would appear to me that since our Board was not in a managerial position after September, 1985, the statute of limitations for RTC suit would have long since expired.

First Federal's liability policy expired in 1985 and will not cover cost of our defense in this suit. My own legal costs to date are $74,464.63 (see attached). My husband is a small farmer, and I am on Social Security. Our savings will soon be exhausted by my defense costs, and also the medical costs resulting from the emotional stress of this suit.

Since RTC first took over management of the association in March, 1989, I have suffered 2 Retina detachments; pneumonia, resulting from the second Retina surgery; hiatal hernia surgery, including 4 other major repairs due to the damage of the hiatal hernia; heart surgery for replacement of the Aortic valve; blood clot in right lung after the heart surgery; and major loss of vision.

It is my understanding that the Association's attorneys (who do have liability coverage) have offered RTC a settlement of $1,000,000, and the Chairman of the Board has offered $250,000. RTC attorneys have not accepted this offer and have apparently stated "why should we settle, we get paid by the hour."

Our Board of Directors were honest, hard working people who served as a matter of civic responsibility and not for any personal gain. I hope that you will investigate this matter and halt the squandering of tax funds by RTC.

My attorney is Mr. Robert Hecht, Scott, Quinlan & Hecht, 3301 Van Buren, Topeka, KS 66611, 913) ~~267-6745~~ 267-0040. Thank you.

Yours very truly,

Lauretta (Ruth) ~~Eikenberry~~

LRE:re
enc.

16-2

2/21/94

MARIAN REYNOLDS -

MY APOLOGIES FOR THIS BEING HANDWRITTEN BUT WANTED TO GET THIS TO YOU AS SOON AS POSSIBLE - I WAS ASKED TO SERVE AS AN OUTSIDE DIRECTOR IN 1981. LEONARD THOMAS, A DEVELOPER FROM DALLAS BOUGHT COLONIAL SAVINGS IN NOV. '84. HE BEGAN BRINGING LOANS TO OUR BOARD THAT WERE LOCATED ALL OVER THE U.S. AT ONE MEETING HE BROUGHT OVER 30 MILLION IN LOANS WHICH WE WERE EXPECTED TO REVIEW & ACT ON IN AN 8 HOUR BOARD MEETING - HE WAS THE 100% STOCKHOLDER & HAD TOTAL CONTROL OVER OUR BOARD - OUR BOARD CONSISTED OF LOCAL BUSINESSMEN THAT ALL SERVED OUR COMMUNITY IN MANY VOLUNTEER CAPACITIES THE RTC CLOSED COLONIAL IN DEC '89 AND DUE TO ECONOMICAL REASON (THE PRICE OF OIL DROPPING FROM 20$ TO 10$ A BARREL) THE TEXAS LOANS & OTHERS BEGAN FAILING - APPROX. 95% OF THE LOANS WERE GOOD LOANS WHEN ORIGINATED - OUR LAWSUIT WAS FILED IN OCT '91 - OUR TRIAL HAS BEEN POSTPONED FOR

House Judiciary
Attachment 17
3-17-94

THE 4TH TIME & IS SET FOR OCT '94. IN THE MEANTIME THE DEFENDANTS CONTINUE TO PAY LEGAL FEES. I HAVE SPENT 10,000 MYSELF & I KNOW 2 OF THE DEFENDANTS THAT HAVE SPENT 28,000 EACH. ALL THIS TIME THE RTC CONTINUES TO BILL THE TAXPAYERS - THE ENCLOSED INFORMATION WILL HOPEFULLY HELP YOU UNDERSTAND OUR SITUATION - THANKS FOR YOUR TIME & LISTENING -

MIKE Riney

ARTICLES ENCLOSED:

- 2/22 RTC - COST TO TAXPAYERS 150 BILLION +
- INSIDER ABUSE BY RTC - $ PAID TO LAW FIRM REP. RTC IN OUR CASE
- OUR CASE IS A CIVIL CASE / IN CRIMINAL CASES - SHOWS $ PAID BACK BY TOP S&L OFFENDERS
- MAKING WRONG PEOPLE PAY / TELLS OUR STORY —

BUSINESS IN BRIEF

Resolution Trust nears conclusion of its mission

Nearly five years after the government launched its cleanup of the savings-and-loan industry, the end is in sight, but the cost to the taxpayers is $150 billion and counting.

Last year, only 10 S&Ls failed, the fewest since 1979. None have failed so far this year. The industry — about half its former size — is profitable. It's earned $8.9 billion since the start of 1992.

The Resolution Trust Corp., the agency in charge of the cleanup, has whittled its work force from a peak of 8,800 to 6,740. It has wrapped up the affairs of 680 S&Ls and disposed of $394 billion in assets — the equivalent of the country's two biggest banks, Citicorp and BankAmerica Corp., combined.

By the time the RTC shuts down, it expects to have handled an additional 63 failed thrifts now operating under its control and sold the $64 billion in assets left in its portfolio.

Cattle, hog prices mostly steady

Cash prices for cattle and hogs were mostly steady Monday, a day when commodity futures exchanges were closed for the Presidents Day holiday. Slaughter-ready steers in western Kansas sold for $74 per hundred pounds, steady with prices late last week. Butcher hogs were $45 per hundred pounds at Clearwater and $44.50-$46 at Arkansas City, 50 cents lower than last week. Sows brought $32-$37 at Clearwater and $34 at Arkansas City.

BMW buys rest of Rover Group

BMW said Monday in Frankfurt, Germany, that it would take over the remaining 20 percent of Britain's Rover Group from Honda Motor Co.

The agreement would give Bayerischer Motoren Werke AG full control of Rover Group Ltd. Last month, BMW announced plans to acquire an 80 percent stake in the Rover Group.

That accord, as well as the new agreement, are subject to the approval of shareholders of British Aerospace, owner of the Rover holding company.

Under the transaction, Honda's 20 percent stake in Rover would revert to the Rover holding company, giving BMW a 100 percent stake.

Innovative CD center of attention

A small Browning, Mont., bank owned by the Blackfeet Indian Tribe is offering a controversial new investment that's captured the attention of bank and insurance executives across the nation.

Blackfeet National Bank is selling a "retirement certificate of deposit" that is insured like a bank deposit and offers many of the tax advantages of an annuity. Annuities are investment contracts, usually purchased from insurance companies, that make a series of payments over a specific period.

The CD appears headed for legal challenges, since banks traditionally have been unable to underwrite investment products such as annuities. The Comptroller of the Currency, the arm of the Treasury Department that regulates nationally chartered banks, has

Employees deser

Run-down hotel can't house groups

By Steve Painter
The Wichita Eagle

Nearly all the remaining employees of the Century II Plaza Hotel in downtown Wichita, where workers haven't been paid in nearly two months, walked out Saturday after a meeting with a potential new manager, former workers said Monday.

The workers said that Mark Guilds, whose company manages the Wichita Royale Hotel, met with them and said he was considering a proposal to manage the Century Plaza. Guilds said he could guarantee them wages in the future but would not cover back pay, the workers said.

Guilds also told the workers he would not proceed with any plans to manage the hotel until he checked out reports that withholding taxes on employees' wages had not been paid to the Internal Revenue Service, the workers said.

The 30 or so workers walked off the job after the meeting. Guilds and Ed Winkler, the Ohio businessman who ow the hotel, did not return telephone ca Monday.

No more than 10 workers were on t job Monday at the Century Plaza, a they were being paid in cash daily at rate that some former workers said w double their normal pay.

Meanwhile, the hotel has begun noti ing convention groups that had book rooms that they will be unable to hou them, according to Sherry Graham, pu lic relations director for the Wichita Co vention and Visitors Bureau. Tho groups include the Kansas Music Educ tors Association, which is bringing an timated 5,000 people to town Thursd through Saturday and which would ha filled the Century Plaza and several o er hotels and motels.

Don Daugherty, who works Winkler as temporary manager, arriv at the hotel early Monday afterno from an out-of-town trip and said he h no idea what discussions were taki place regarding new management. I referred inquiries to Winkler.

Nan Massey attended the Saturd meeting even though she had left her j as head of housekeeping three wee

"Special Edition"

17-3

An opponent of Russian President Boris Yeltsin ties a Liberal Democratic Party flag to a statue in Moscow on Thursday. Also on Thursday, the Russian legislature held a late-night session

Insiders' abuses compound S&L mess

By David Hess
Eagle Washington bureau

WASHINGTON — If you thought the $500 billion savings and loan scandal was a disaster for taxpayers, you should hear what's happening at the Resolution Trust Corp., the agency created to clean up the mess.

A litany of horror stories about the RTC's haphazard pursuit of S&L wrongdoers and sloppy disposal of overvalued properties was delivered Thursday by 13 current and former agency employees in testimony before the Senate Banking Committee.

In one case in Atlanta, outside attorneys gained access to confidential RTC billing records and were "given the authority to use the system to pay their own bills," according to computer specialist William Henderson, who worked in the RTC's legal division.

The result? "Duplicate, even triplicate payments dispensed to law firms for a sin-

See WASTE, Page 6A

Students' FA

Companies pledge to limit work hours

By Suzanne Perez
The Wichita Eagle

Flipping burgers or bagging groceries past midnight can make it difficult to concentrate on calculus the next morning.

That's why Wichita-area educators hope to limit the hours high school students spend working part-time jobs.

As part of a new program called

INSIDE

Business & Farm	8B
Cityline Index	3D
Classified Marketplace	4D-16D
Comics	10C, 11C
Editorials	8A, 9A
Kansas	1D-3D
Living	1C-12C
Markets	9B-11B
Movie Listings	3C-5C
Obituaries	2D
Sports	1B-7B
TV	9C
Weather	2D

News summaries and how to reach us, 2A

17-4

roundings -- "that's kind of the end of the Earth out there." He had no survival gear or food. And his ... get became his sleeping bag. Mussels and kelp from the beach provided his main diet, supplemented ... just dropped everything and ran to the beach and shot off the flare gun," Legler said from the

WASTE

Punishment dealt to whistle-blowers

From Page 1A

gle invoice for legal services," Henderson said.

The overall cost to taxpayers of the 4-year-old RTC's alleged incompetence was estimated at $30 billion to $50 billion, according to one independent analysis cited by a senator.

The panel of whistle-blowers — from RTC's offices in Denver, Dallas, Atlanta, Chicago and Newport Beach, Calif. — accused several regional higher-ups and lawyers of offenses ranging from gross mismanagement of real estate assets to sexual harassment and job-retaliation against subordinates who objected to their misdeeds.

The panel also included a special agent for the agency's inspector general, who accused some employees from the same branch of helping cover up misdeeds by high-ranking RTC officials.

"The General Accounting Office has (already) documented that RTC has never had adequate controls on its operations," said Sen. John Kerry, D-Mass. "A number of private law firms, accounting firms and real estate contractors have taken advantage of RTC's management weaknesses to rip off the public, increasing the overall cost of the S&L bailout."

Sen. Howard Metzenbaum, D-Ohio, said the bipartisan National Commission on Financial Institution Reform had estimated that 10 to 15 percent of the bailout costs "are due to culpable misfeasance."

Padding of bills by lawyers, accountants and other RTC consultants is commonplace, according to agency whistle-blowers, and is probably costing taxpayers millions a year.

Hans Mangelsdorf, an assets-disposal specialist in the RTC's California office, said the agency's practice of auctioning commercial properties has led to deflated prices for the property, inflated transaction costs — and millions of dollars in losses to taxpayers.

"A number of private law firms, accounting firms and real estate contractors have taken advantage of RTC's management weaknesses to rip off the public, increasing the overall cost of the S&L bailout."

Sen. John Kerry

"In effect," he said, "through these auctions, the RTC and American taxpayer pay a high cost for sales only to achieve discounted sales prices."

James Romer, a contracting officer at the RTC's Dallas office, said the agency there had not always observed competitive bidding and, on occasion, appeared to be awarding contracts to favored bidders with connections to key agency officials.

In one case, Romer said, he was ordered to award two contracts to a second-ranked bidder whose chairman was friends with several of the senior staff members at RTC.

When he protested and threatened to report the case to the RTC's ethics office, the order was withdrawn. But, Romer said, senior management then "dictated that the second-ranked firm be awarded (other) business."

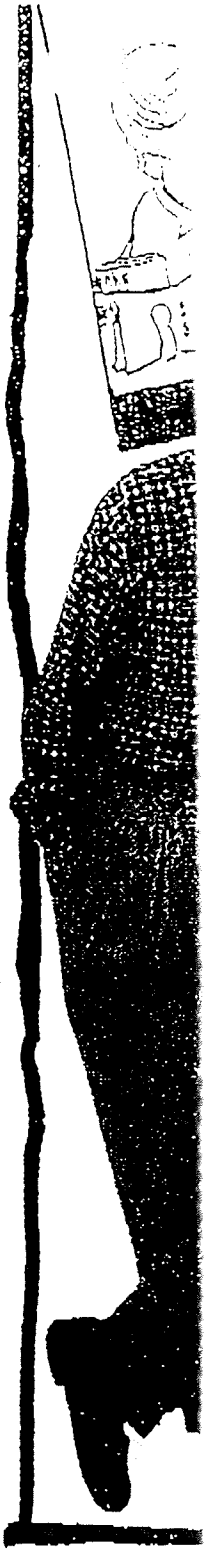
Debbie Sherrill, a claims-settlement specialist at the RTC's Atlanta office, said the agency there routinely "wastes tens of thousands of dollars" on many financial asset transfers by failing to shift the assets promptly to banks buying them.

Michael Koszola, a special agent for the RTC inspector general, accused his department of failing to vigorously investigate accusations of wrongdoing — and even of helping accused executives cover up alleged misdeeds.

Koszola said the inspector general "engaged in rewriting reports to avoid embarrassment, misleading Congress, covering up high-level misconduct, shredding incriminating documents and grossly distorting the agency's investigative priorities."

In one incident, Koszola said a higher-up denied his request to investigate a tip that the girlfriend of a high-ranking RTC executive was buying RTC-controlled properties in Dallas for the executive.

In virtually every case in which the whistle-blowers spoke out against what they perceived as wrongdoing and wastefulness, they suffered retaliation from bosses — ranging from withheld promotions to transfers to dead-end jobs. Koszola has been put on administrative leave with pay, after being ordered not to have any further contacts with congressional investigators.



Mark
Keep me up
at work!
L H

--Regulatory WATCHDOG

GUARDING AGAINST THRIFT AND BANK REGULATORY ABUSE

Thank you for your subscription to the Regulatory Watchdog. As promised, here is the information on legal fees paid to the law firm about which you inquired. The information was obtained for you from the RTC and FDIC under the provisions of the Freedom of Information Act.

Law Firm McAnany, Van Cleave & Phillips (Getto's Firm)

	Amount Paid By: RTC	FDIC	Total
1991	$317,416	$347,354	$664,770
1992	438,638	601,062	1,039,708
	$756,054	$948,416	$1,704,470
1993 - Jan 1 - Apr 30		171,499	$1,875,969

I expect you are outraged by the amount of taxpayer money being spent on this law firm. If the situation is typical, the amount spent on fees is smaller than the government can ever hope to collect based on the merits of the case and the resources of the defendants. The fact that goes unnoticed by the press, and unmentioned by politicians, is that this witch hunt is not about restitution. It's rather a wildly expensive PR campaign by Congress to create private sector scapegoats. The only beneficiaries beyond members of Congress are their close friends and loyal lobbyists from the American Trial Lawyers Association.

I hope you can use this information with your local media and political representatives. The law firm involved will not be happy to have the amount of fees it has (so far) collected become generally known. Please make sure the taxpayer rip-off is revealed in your community.

Very truly yours,

Edward L. Morris,
Editor and Publisher

8182 Maryland Avenue, Suite 102 • Saint Louis, Missouri 63105 • 314-862-1047 • FAX 314-862-6035

17-6

...ential season

Kim D. Johnson/The Wichita Eagle

n silence in Aggie Berkebile's sixth-grade class at Christ the King
...h Wednesday, which marks the beginning of Lent, Catholics receive
...s on the forehead as a reminder to do penance.

Pillagers not paying S&L fines

Some say huge sums may never be repaid

By Richard Keil
Associated Press

WASHINGTON — More than 100 savings-and-loan defendants who escaped long prison terms in exchange for making penalty payments have repaid less than a half-penny per dollar of the $133.8 million they owe, according to a review of federal court records.

Some defendants — and some government officials, too — readily acknowledge there is little chance that the 109 convicted S&L figures who received plea bargains will ever repay the huge fines and restitutions.

Prosecutors have given up on collecting, instead leaving that task to overworked probation and parole officers.

"The restitution orders in these cases are thrown around like there are nickels and dimes involved," said Woodrow Brownlee, former president of Dallas-based Commodore Savings Association. He has repaid just $3,000 of the $1 million in restitution ordered in a plea bargain that spared him any prison time.

When asked about his slow repayment, Brownlee, who earns about $15,000 per year in commissions from a sales job, pounded on his calculator.

"Let's see — I'm 53, and let's say I have a life expectancy of 75 years." Brownlee said. He figures that his annual repayment works out to $47,500 per year.

Though prosecutors can try to revoke probation for defendants who fail to pay up, the Justice Department has forgone a get-tough approach and left it instead to overburdened probation and parole officers to collect the money.

George Calhoun, a senior Justice Department prosecutor, said an aggressive approach would do little because "in a good number of the cases ... they've pretty well been stripped clean by the time they get to court."

Attorney Christopher Cannon, who represented the head of a San Francisco thrift convicted of misusing funds in 1990, said the fines are "unenforceable" and "do nothing more than give the appearance of government action."

Cannon's client, Ted Musacchio, was given five years' probation and ordered to pay $9.3 million in restitution to his former thrift. Musacchio paid less than $1,000 before dying of cancer last month.

"He had zero assets, and everybody knew at the time

See **REPAYMENT,** *Page* **4A**

17-7

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REPAYMENT

From Page 1A

of sentencing that he had no assets," Cannon said.

A Justice Department document shows Musacchio and Brownlee are far from alone.

Overall, the government has recovered just 4.5 percent of the $846.7 million in fines and restitution orders assessed in the 2,603 S&L criminal cases from October 1988 through the end of 1992, according to the General Accounting Office, the investigatory arm of Congress.

And the recovery rate for defendants involved in plea bargains is 0.43 percent, $577,540 of $133.8 million.

More than two dozen plea bargain defendants listed in the Justice report escaped without any prison time at all and those who did serve time spent fewer months behind bars on average than car thieves, the review also found.

The average prison term for an S&L convict is 21 months; the average car thief convicted in federal court spends 28 months behind bars.

Even though most defendants don't pay up, the Justice Department frequently touts the large fines and restitution orders as a sign of its success in prosecuting S&L cases.

For instance, the Justice Department boasted in its 1991 report to Congress that Oklahoma banker Gary Hobbs was penalized with a 7½-year jail term and a $10.2 million restitution order for defrauding a thrift. But the 1992 Justice document shows that Hobbs has repaid just $204,830.

Ira Raphaelson, the former Justice Department special prosecutor who coordinated the government's attack on S&L fraud, conceded, "It misleads the public to suggest that there will be a substantial recovery."

"The recovery rate is going to be quite low" because many defendants simply lack the assets, Raphaelson recently told a congressional commission.

He said that prosecutors often agree to the plea bargains to avoid costly trials. And they often ask for the large penalties hoping "there will be a lottery winning or an insurance settlement."

Top five S&L offenders

Name; banking institution; prison term; fine; amount paid

1. E. Frank Neisch, Puget Sound National Bank, Tacoma, Wash.; 3 years; $19,950,943; $0
2. E. Michael Sheheen, Bullmount Mortgage Co. of Camden, S.C., and other institutions; 9 years; $11,849,507; $0
3. Gerald Cernero, City Federal Savings Bank, Jersey City, N.J.; 1 year; $10,788,873; $0
4. Larry G. Frankenhous, Puget Sound National Bank, and institutions in six other states; 2 years, 3 months; $9,972,500; $0
5. James R. Cruce, Peoples Heritage Federal Savings and Loan Association of Salina; 14 years; $8,000,000; $0

Wm. J. Castello/*Associated Press*

GRAMMY

From Page 1A

mance by a duo or group for the album "Achtung Baby."

Other rock winners were Melissa Etheridge for female rock vocal with "Ain't It Heavy" and the late Stevie Ray Vaughan for rock instrumental performance for "Little Wing." Vaughan also won the contemporary blues album trophy for "The Sky is Crying."

"I'm so happy it hurts. I felt like I had to get off the stage before I cried," said Vaughan's close friend, Chris Layton, who accepted the award.

"I Still Believe in You" earned the best country song Grammy for songwriters Vince Gill and John Barlow Jarvis.

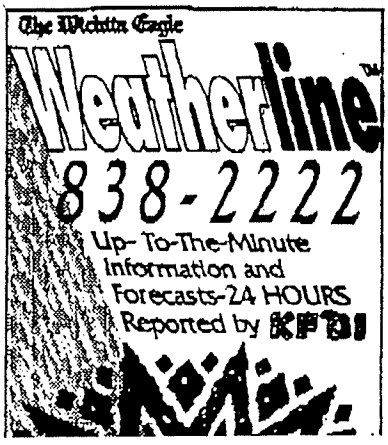
Mary-Chapin Carpenter won female country vocal performance for "I Feel Lucky" and Emmylou Harris & The Nash Ramblers won country performance by a duo or group with vocal.

The top country vocal collaboration was "The Whiskey Ain't Workin'" by Travis Tritt and Marty Stuart, while Chet Atkins and Jerry Reed won the country instrumental

James Brown, the godfather of soul, took the suspense out of Clapton's pop vocal performance victory by inadvertently ripping open the envelope and reading "Tears in Heaven" before the other nominees were announced.

male vocal performance for the album "Heaven and Earth." The Miles Davis album "Doo-Bop" won the instrumental performance Grammy. The top R&B song was "End of the Road," recorded by Boyz II Men.

Classical album of the year was "Mahler: Symphony No. 9" with Leonard Bernstein conducting the Berlin Philharmonic Orchestra. Michael Fine was classical producer of the year.



The Top 40

Who's hot and what's hot in the entertainment business

September 28, 1992 Four Dollars

Forbes

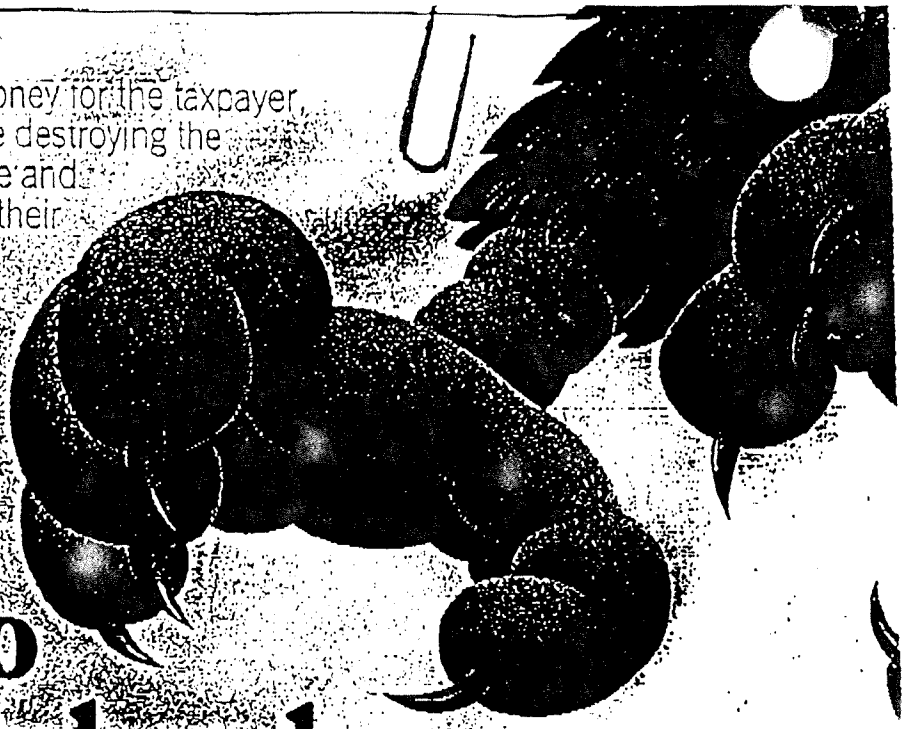
THE SAVINGS & LOAN MESS

MAKING THE WRONG PEOPLE PAY

0 439338 2 39

17-9

In the name of recovering money for the taxpayer, two government agencies are destroying the livelihoods of innocent people and scaring bankers into closing their loan windows.



What did pop expect to happen when he gave the kid his credit card?

By Gretchen Morgenson

RICHARD BLAIR, 69, a lawyer who lives in McLean, Va., was much like the other outside members on the board of McLean Savings & Loan, a medium-size Virginia thrift. He was chosen for the position because of his local prominence and business connections. In 1975 he joined a retired army general, a newsletter editor, a book publisher and a psychiatrist on the board, along with several of the bank's managers.

Late one Friday afternoon in July 1988 the Federal Deposit Insurance Corp. stormed McLean's headquarters—making sure that a local television news crew was there to record the event—and locked the doors. The thrift failed. McLean had lost millions through a mortgage subsidiary that wrote too many home loans in Texas.

Thus began an ordeal for Blair and his family.

To recover some of the money the government lost in paying off McLean's depositors, the FDIC sued the S&L's officers and directors, alleging breach of fiduciary duty and gross negligence in loan practices. Blair was amazed to find himself a defendant. He had even voted no on one of the loans that the government said was negligently made. Even more shocking: For most of the time that the allegedly negligent lending had taken place, Blair had been lying comatose in a hospital bed.

All three magistrates in the Eastern District of Virginia that have presided over the McLean case at various times

17-10

S&L mess

Standing, left to right: Richard Blair, John Ham II, Major General Lloyd Ramsey, Marshall McClean, Harvey Cohen, Robert Goldsten, John Harrison, Sandra Hughes, Thomas Leonard III; kneeling: Frank Howard, Vincent Callahan Jr., Jack Wuerker, Jonathan Schraub

McLean S&L's board and lawyers have won two battles against the FDIC. But not the war.

have criticized the FDIC for improper conduct or for failure to follow rules or prior court orders. The last judge ordered the agency to pay $6,600 in court, transcript and deposition costs because the FDIC's case was abusive.

Still, the FDIC presses on, regardless of cost and regardless of the merits of its case. This is a government agency utterly out of control, terrorizing innocent bystanders and frequently costing the taxpayers far more in legal fees than it is recovering.

To date, the FDIC has spent an estimated $10 million on its case against the Virginia thrift's officers and directors. The defendants have spent about $1 million. Recovery to the FDIC: $40,000 so far, from two officers settling immediately for $20,000 each. Most of the other defendants, including Blair, are still fighting. The legal bills will continue, since the FDIC is appealing yet again.

Why this miscarriage of justice, this waste of taxpayer money? Because the private law firms that have been hired to recover money lost in bank and thrift failures are billing by the hour for their services. They have no real incentive to settle cases and every incentive to drag them on.

No matter how absurd their claims, or how little the prospect for a recovery, they can bill the taxpayers for their time on these professional liability cases, at $200 an hour and up. Total costs? Well over $100 million of the FDIC and Resolution Trust Corp.'s legal budget, which comes to a combined $1 billion this year for outside law firms. (Much of the rest is for routine collections and foreclosures.)

No one knows how much the defendants are spending fighting the professional liability cases, but it is enough to break many of them financially. And the defendants are not all Charles Keating types who cynically bilked unsuspecting people. Plenty of them are honest citizens whose connection to the events was peripheral.

This is the S&L crisis, part II. In part I, the federal government in effect lent out its own capital by providing an all but unlimited guarantee of deposits and allowing the deposit takers to speculate with the money. As it turned out, this was equivalent to giving your 14-year-old kid your American Express card and telling him to go out and

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Candice Brown, a student at Oregon State University **Of the government's $28 million case against her late father: "I know we'll win. But it's a struggle."**

have a good time.

The payoff was that the federal government expects to lose $300 billion (not counting future interest payments) in making good the credit card charges. In part II, the government looks for scapegoats. Instead of blaming itself for letting the kid have the card, it tries to pin the blame on the merchants who sold stuff to the kid. With its band of legal mercenaries, the two government agencies responsible for closing more than 2,100 institutions that have failed so far are suing accountants, lawyers, neighborhood real estate appraisers and anyone else remotely connected to a sick thrift or bank.

The worst that many of these folks can be accused of is taking a businessman's risk, voting yes on a loan that looked solid but that later failed, not because of fraud or wrongdoing, but because of an economic downturn.

Lawrence Brown was a well-respected real estate appraiser in Medford, Ore. In the early 1980s Brown appraised the value of six apartment complexes in California for a subsidiary of Pacific Savings Bank. In 1989 Pacific [illegible] group of 20 officers, directors and associated professionals for $70 million.

Brown was included in the suit for allegedly over [illegible] the properties in his six appraisals. Never mind that four of the six appraisals were made months and in one case more than a year *after* Pacific had financed the properties, so that Brown's appraisals had nothing to do with the bank's decision to make these loans. Brown was sued for $28 million, $3 million more than the value of the properties he had appraised.

Brown died two years ago in a farming accident at the age of 52. His insurer has had to pay $400,000 in legal bills. In 1991, after two years of litigation, a U.S. district court judge in California threw out the case, ruling that the FDIC's law firm, Tuttle & Taylor of Los Angeles, had never proved that the appraisals it said were negligently prepared by Brown were prepared by him at all.

Not to be stopped, the agency has appealed the judge's decision. Meanwhile, its $28 million in claims against Brown's estate has effectively locked up what remains of his assets, about $1.5 million. Thanks to this regulatory extortion, Brown's daughter Candice, in her junior year at Oregon State University, is having trouble paying her college bills. "It was hard enough when my dad was alive. Now he's not even here to defend himself," she says.

Cost to the FDIC of six lawyers and three paralegals in the Brown case: about $400,000, with more to come. Cost to the defendant: $400,000. Recovery to the taxpayer: zero.

Torquemada, updated. The Bill of Rights gives procedural protections to criminal defendants, but it doesn't protect the innocent against financial ruin from lawyers' bills.

Lincoln Savings & Loan Association, not to be confused with Keating's Lincoln S&L, was a solvent thrift in Miami Beach owned by a group of local businessmen. In 1984 they sold Lincoln to a cadre of Texas investors. Unfortunately, these folks didn't know much about the S&L business; Lincoln failed in 1989.

Earlier this year the RTC sued the entire 1984 board of Lincoln for selling it to the Texas folks. The government's claim? The board should have known Lincoln's buyers would run it into the ground five years after they bought the thrift. It is almost comical that the RTC is pursuing Lincoln's directors and officers in spite of the fact that the federal government itself approved the thrift's sale to the Texas investors. The RTC is even suing Fred Rizk, an advisory director to the Texas owners who never voted on bank matters. Oddly, the RTC is suing only one other member of Lincoln's board, letting the other Texas directors off the hook.

Who's funding this witch-hunt? You are, the taxpayers. Any money spent on outside lawyers pursuing ridiculous cases reduces the net amount the government collects by liquidating the assets of failed banks and thrifts, and thus increases the taxpayers' or, in the case of the FDIC, the bank depositors' outlays needed to bail out the industry.

The defense costs are in the first instance borne by individuals and some insurance companies. But in the long run those costs spread into the economy as a whole. The threat of litigation has a lot to do with the disastrous drop

17-12

in bank lending that has added to the severity of the recession. Commercial loans outstanding in March totaled $552 billion, $54 billion below the total a year earlier.

In part because the RTC has terrorized everyone, small businesses, which created much of the growth of the 1980s, can no longer get financing to expand their operations. According to the National Federation of Independent Business, the fraction of firms borrowing on a regular basis today has fallen to 34%, from 41% ten years ago. Says Timothy Harris, a Los Angeles lawyer defending the estate of the Oregon appraiser: "The FDIC's eagerness to sue has made the threat of possible litigation a silent partner in every loan decision made in the U.S."

Caseloads at both bailout agencies are exploding. Of the more than 200 professional liability cases at the RTC, half were filed in the first six months of this year; another 240 are expected over the next few years. The FDIC has about 300 of these claims pending and more coming. Pending RTC cases against accounting firms seek more than $1.4 billion in damages.

This little growth industry extends into other arms of the government as well: The RTC is now a major employer of FBI agents who don't have enough counterintelligence work to keep them busy.

How do the FDIC and RTC justify their cause? "The FDIC has a statutory and fiduciary duty to the American people to maximize recovery," orates FDIC general counsel Alfred Byrne III. He insists: "We do not file suit for mistaken, ill-formed business judgment."

Oh no? To hear the government talk about the S&L losses, you'd think they were all a result of massive fraud and misdealings. The RTC claims that 81% of S&L failures involved fraud or wrongdoing. That simply isn't so. Many of the government's cases boil down to what Victor Simon, a lawyer and editor of *Bank Bailout Litigation News* in Washington, D.C., calls 20-20 hindsight. Says Simon, "If members of Congress who make our banking laws don't have a clue about how banks work, why should outside directors?"

The staffs at the FDIC and RTC say they closely monitor outside firms' expenses. But the fact remains that outside law firms have but one incentive: to keep on billing.

Even before its cases get to trial, the FDIC and RTC seem more interested in litigating than in settling. The FDIC says settlement discussions always take place prior to suits' being filed today; this was not the case a year and a half ago. At the RTC, such talks are only a "general practice." One target of a professional liability suit, who fears retribution if he is identified, says he was never invited to a prelitigation discussion before the RTC sued him for over $1 million.

Other stories emerge of settlements offered, only to be rejected by the government. Minneapolis lawyer Susan Barnes is defending a $5 million case, involving a Wisconsin bank, in which the insurer for one of the directors offered a settlement of $325,000. Even though its chances of getting more out of the defendant were slim, the FDIC rejected the offer and continued to litigate.

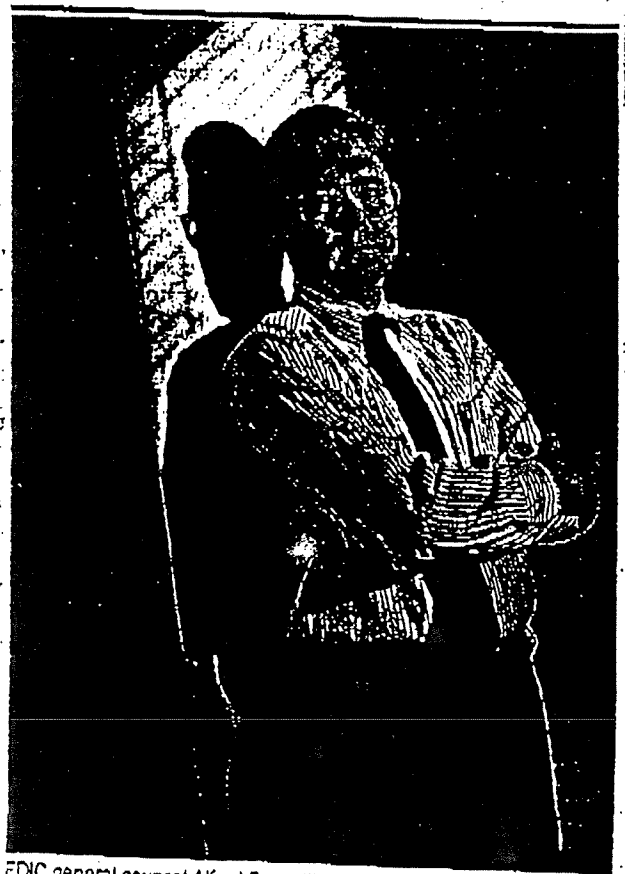
This, in spite of the fact that the insurer had won its case in two venues. Both judges ruled against the FDIC because the insurance policy carried a clause nullifying coverage if the director is sued by a regulatory agency. Still, to avoid more legal bills, the insurer offered to settle. The director has no other assets that the FDIC could get its hands on. No matter, the case is pending in appellate court in Wisconsin; it is highly likely the government will lose it. The defendant's cost of litigating the case so far is an estimated $150,000. The FDIC's costs are probably greater.

The government's tactics aren't merely impractical, they are abusive. One is to convince a defendant in a suit to provide information the government needs in return for promising to drop the defendant's name from the suit; then the government sues him or her anyway.

Morrison & Hecker, the Kansas City-based law firm that is getting rich litigating the RTC's case against Charles Keating—it earned $11 million from the RTC last year alone—used this trick on Lee Henkel Jr., the former head of the Federal Home Loan Bank Board and a lawyer involved in the Keating case.

In May 1990 Henkel was named as a defendant in Shields v. Keating, the securities law case Keating lost this past year. In January 1991 Henkel was told by Morrison & Hecker that if he helped the RTC in its case against Keating, it would advise the government to settle his case and not sue him further. Henkel agreed to the proposal and provided information to the RTC late that month.

Three weeks later, having gotten what it wanted, Morri-



FDIC general counsel Alfred Byrne III
Now a silent partner in every loan decision made in the U.S.

17-13

RTC acting general counsel Richard Aboussie **Escalating legal costs don't seem to trouble him. "You've got to spend money to develop cases."**

son & Hecker withdrew its settlement offer and began legal proceedings against Henkel. Soon after his lawyers brought the government's egregious turnabout to light, the proceedings were quietly settled.

Another abusive tactic: changing the venue in a lawsuit. In a case alleging "undue enrichment" involving Heritage Bank, a California institution that failed in 1983, the FDIC filed suit in state court to recover some $200,000 in money advanced to Heritage customers. The case dragged on for years and was about to be dismissed in early 1988, when the FDIC brought a new suit in federal court. Having spent five years and hundreds of thousands of dollars litigating in state court, the defendants now have to fight the FDIC all over again in federal court.

FDIC lawyer Byrne claims his operation is cost-effective, taking in $2.50 in cash or in judgments "highly likely to be collected" for every dollar spent. The folks at the RTC can't say what their recovery ratio is; Ira Parker, associate general counsel for litigation, says: "You can't expect our recoveries to be as high as the FDIC's," because the agency's upfront expenses have been high and recoveries come later.

Unfortunately for the folks ultimately paying these bills, the FDIC's 2.5-to-1 recovery ratio is highly suspect. Here are just two examples, turned up in a review of a handful of cases. In papers filed by the FDIC to close a receivership in a Wisconsin bank, the government says it recovered $303,000 in a directors' and officers' liability claim. But the FDIC has not received a dime, according to the only lawyer defending the directors and officers in the case. And in the McLean suit, the FDIC listed in its papers a $250,000 "likely-to-be-recovered" settlement. In fact, the settlement was for a range of $30,000 to $250,000, based on a percentage of the defendant's annual income in a given year, and the high-end figure is unlikely to be recovered. The defendant, a small-town physician, would have to make $1 million in income during the year to cough up that settlement. So far, no money has changed hands.

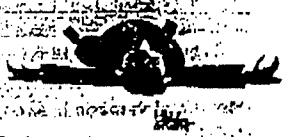
As for the expense side of the balance sheet: When the RTC figures its recoveries against its costs, it includes only outside counsel fees, not internal RTC lawyer or investigatory costs. And where the FDIC is concerned, litigation costs are understated because they are often billed to the failed institution itself rather than to the FDIC.

And so, even as litigation costs are skyrocketing, the chances of the government's recovering cash are declining. The single biggest source of liability case recoveries is the insurance industry, accounting for 95% of recoveries received by the FDIC between 1989 and 1991. But this fountain of funds is drying up. Fewer failed institutions have insurance coverage today than had it in the past. What's more, the so-called regulatory exemption, which lets an insurer off the hook if a regulatory agency sues a director or officer of a failed institution, is now a feature in almost all directors' and officers' insurance policies and has been deemed enforceable by nine out of ten appellate courts across the U.S.

The FDIC supports pending legislation that could make this exemption illegal. If the law is enacted, insurance premiums will go up accordingly. The government also wants to extend the statute of limitations on professional liability cases from three years to five, thereby giving the freelance lawyers two more years of legal hours to bill.

The real villains of the great S&L escapade—the likes of Charles Keating, Vernon S&L's Don Dixon and Centrust's David Paul—are, thankfully, behind bars and facing huge civil lawsuits. Michael Milken, who may or may not have caused some thrifts to buy bonds that subsequently went bad, has coughed up a $400 million restitution fund, a sizable chunk of which is likely to end up with the RTC and FDIC. But crooks account for only a fraction of the money lost, and junk bonds for almost none.

It's time for Congress to call off this witch-hunt and face up to its own responsibility in causing the disaster. What did Congress think would happen when it handed Uncle Sam's credit cards to a lot of people and didn't put proper restrictions on how they used them?



17-14

Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

Testimony in Support of Senate Bill No. 582
House Judiciary Subcommittee #2
March 14, 1994

Limited Liability Partnerships

Senate Bill No. 582 would recognize limited liability partnerships in Kansas. Delaware and five other states have already amended their Uniform Partnership Acts to permit partners of registered partnerships to limit their liability for the acts of other partners.

The bill does not adopt any new policy but extends to partnerships the limits on liability currently available to corporations and limited liability companies. Amendments that clarify the intent of the bill were made in the Senate and the amended bill passed 40 - 0.

This limited liability would be available to any partnership, but has been extensively used in other states by professional service firms (particularly certified public accountants and attorneys). Annual registration filings are required and an annual fee of $75 is collected for each partner whose principal office is in Kansas. The maximum fee is $2,500. Although the same limited liability is available today for professionals who organize as professional corporations or limited liability companies, many firms prefer the partnership form.

We ask the committee to adopt an additional amendment. A Senate amendment (page two at line 35) clarified that a limited liability partnership can drop the periods from the abbreviation of its name (LLP). We are concerned that this might imply that a limited liability company (LC or LLC) and limited partnership (LP) couldn't similarly drop the periods from its abbreviation. We have given the Revisor a draft of an amendment that would make it clear that the Legislature authorizes this current practice.

We ask that this subcommittee recommend the amendment and bill favorably for passage.

John R. Wine, Jr.
General Counsel

Summary of SB 582

§ 1 New Section 1 sets forth the filing requirements and fees for recognition as a limited liability partnership (LLP). The LLP must annually file an application that sets out the name of the partnership; the registered office and agent; the number of partners; and, a description of the principal business activity. Foreign LLP's must also indicate the state of organization. The application must be accompanied by a fee of $75 for each partner whose principal office is in Kansas, but the fee shall not exceed $2,500.

§ 2 New Section 2 requires LLP's to have a distinguishable name and to use the words "registered limited liability partnership" or the initials "L.L.P." or "LLP" at the end of their name.

§ 3 New Section 3 clarifies that Kansas recognizes foreign LLP's and expects other states to recognize Kansas LLP's.

§ 4 Section 4 amends the professional corporation code to clarify that professionals may also organize as an LLP.

§ 5 & 6 Sections 5 & 6 add the definition of an LLP to the Uniform Partnership Act.

§ 7 Section 7 limits the liability of each partner to the partner's own acts of negligence. Unlike professional corporations and limited liability companies, contractual liability is unlimited.

§ 8 - 11 The remaining sections make technical amendments to the Uniform Partnership Act to reflect the recognition of LLP's.

Proposed Amendment: KSA 17-7606 lists the acceptable names for limited liability companies. KSA 56-1a104 lists those names for limited partnerships. The proposed amendment would be identical to the one on page two at line 35 which clarifies that the abbreviation without the periods is acceptable.

Kansas Society of
Certified Public Accountants

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460 / FAX 913-267-9278

TESTIMONY ON SB 582

BY

T. C. Anderson, Executive Director
Kansas Society of Certified Public Accountants

Presented to

HOUSE JUDICIARY CIVIL LAW SUBCOMMITTEE

March 15, 1994

Chairman Carmody:
Members of the House Judiciary Civil Law Subcommittee

I'm T.C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants, and I appear before you today in support of SB 582 as amended by the Senate Judiciary Committee.

If enacted, SB 582 would authorize the formation of registered limited liability partnerships, a next-generation development in the limited liability movement.

As many of you will recall the Kansas Legislature amended the Professional Corporation Act in 1989 to place into statute the concept that a shareholder of a PC would not be held personally responsible for the negligent acts of other shareholders.

This was followed in 1990 by the enactment of the Kansas Limited Liability Company Act. It provides that "neither the members of a limited liability company nor the managers of a limited liability company are liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company" [K.S.A. 17-7620], and "a member or manager of a limited liability company is not a proper party to proceedings by or against a limited liability company, except when the object is to enforce a member's or manager's right against, or liability to, the limited liability company" [K.S.A. 17-7631].

With that brief background, first let me explain what SB 582 will not do. It will not adversely affect the liability of a partnership, to the extent of its assets, for the wrongful acts of its members. It does not protect partners from personal liability for the LLP's non-tort obligations such as loans, leases, taxes or wages. An LLC does protect its members or managers from such obligations.

SB 582 would enable partners in general partnerships to gain a measure of limited liability without making basic changes in the partnership mode of operation. Under SB 582 limits are placed on the personal liability of partners on the debts and obligations of the firm arising from the negligence, malpractice, wrongful acts and omissions, or misconduct of other partners or the employees those partners directly supervise. Like all other forms of organization, the LLP provides no protection against personal liability for a partner's own acts and omissions.

On behalf of our member partnerships that practice solely in Kansas and those who practice regionally or nationwide, I want you to know this legislation is important.

There are attributes of professional services corporations, limited liability companies, and other types of organizations that have made them unattractive to some

professional partnerships. As an example, it is impossible for a professional services firm that practices on a truly multi-state basis to operate as one entity. A professional service firm, operating throughout the United States, would need to divide itself into many separate entities, if it wished to avail itself of the protection afforded by the professional services corporation form of organization. Thus, for those firms that must operate as a single integrated unit, this would be inefficient and uneconomical and possibly could seriously hamper the viability of a firm as a service provider.

The passage of this amendment to the Kansas Partnership Act as well as similar action by other states seems to be the easiest solution to this problem. It is our understanding that 25 state Legislatures are addressing or will address LLPs this year.

Thank you and I'll be happy to stand for questions.

KANSAS BAR ASSOCIATION

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601-1037
FAX (913) 234-3813
Telephone (913) 234-5696

KBA testimony SB 582
Limited Liability Partnerships

SUMMARY:

The Kansas Bar Association supports Limited Liability Partnerships.

Background;

As a practical matter, the impact of this bill is to allow lawyers and CPAs, -- all partnerships -- the same limitations on liability already allowed to Limited Liability Corporations and professional corporations. The LLP achieves the same management arrangement that is achieved if two or more single-shareholder professional corporations agree to form a partnership composed of the PCs.

In fact the limitations on liability in LLPs do not extend as far as LLC or the PC. For example, while tort liability is limited in the LLP concept just the way it is in the LLC or PC, PC and LLCs can limit liability of shareholders for non-tort debts, such as the rent.

The main reason behind the change is the "collegiality" that partners have towards each other, and running the partnership, rather than the more formal corporation route. To the extent that a partnership composed of formal PCs or LLCs is put together, things like rent agreements, pension plans and other control documents for the partnership require paperwork trails in all these corporation partners. That extra paperwork hassle is avoided with the LLP.

Mr. Stan Andeel of Foulston-Seifken, who helped create the limited liability corporation law that you have before you, is available to answer technical questions on SB 582.

House Judiciary
Attachment 20
3-17-94

AIA Kansas

A Chapter of The American Institute of Architects

March 15, 1994

TO: Representative Carmody and Members of the House Judiciary Subcommittee #2

FROM: Trudy Aron, Executive Director

RE: Support for SB 605

I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas). We ask for your support of SB 605.

This Good Samaritan Bill gives architects and engineers liability protection when they are asked by a public official to provide voluntary structural inspection services at the scene of a declared national, state or local emergency. This bill would extend to architects and engineers the same immunity public officials, public safety officers, and city or county building inspectors receive under the state or municipal statutes as long as architects and engineers provide these services, without compensation, during times of disaster.

Each year Kansas experiences a number of tornadoes and other disasters. Sometimes these disasters are of such magnitude that the local building inspector at the location of the disaster does not have the personnel to inspect damaged buildings and determine their condition (from those which need no repair to those which are so heavily damaged that they require demolition). Architects and engineers are often needed to help the local building inspector supplement his/her staff in the inspection and determination of the condition of damaged structures.

Architects and engineers are protected by liability insurance for their errors and omissions. These policies do not cover design professionals when there is no contract. In a disaster, it is often impossible to find the owner before the inspection team visits a structure, let alone get a release from the owner. It is crucial that all potentially damaged buildings be inspected. Until these buildings can be inspected and tagged as to their safety, the community cannot start the rebuilding process.

AIA Kansas and the Heart of America Chapter of the International Conference of Building Officials (ICBO) have worked together to develop a Disaster Assistance Program that has been accepted by the Kansas Division of Emergency Preparedness as part of the Kansas Disaster Plan. In the event of a disaster in which the local building inspector needs assistance, he/she will notify the Kansas Division of Emergency Preparedness office which will notify AIA/ICBO to contact the number of volunteers (architects, engineers, and/or building officials) needed at the disaster site. All volunteers must attend a training session prior to assisting at the site of a disaster. AIA Kansas has received a grant which will enable us and our program partners ICBO to print and distribute the "Kansas Uniform Disaster Building Damage Assessment, Inspection and Recovery Plan" to each of Kansas' 105 counties. In addition to the plan, each county will receive a kit that will include all the forms, model ordinances, model news releases, identification signs, markers, etc. needed for inspections of structures.

This Good Samaritan bill is needed to protect architects and engineers who volunteer their services in times of disaster. We ask for your support of this bill. Thank you.

Trudy Aron, Hon. AIA
Executive Director

700 SW Jackson, Suite 209
Topeka, Kansas 66603-3757
Telephone: 913-357-5308
800-444-9853
Facsimile: 913-357-6450

House Judiciary
Attachment 21
3-17-94

KANSAS
CONSULTING
ENGINEERS

GEORGE BARBEE, EXECUTIVE DIRECTOR
JAYHAWK T.
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TOPEKA, KANSAS 66603-3740
PHONE: (913) 357-1824
FAX: 913-357-6629

Statement to
House Judiciary Committee
Senate Bill 605

Mr. Chairman and members of the committee my name is George Barbee appearing today on behalf of the Kansas Consulting Engineers in support of Senate Bill 605.

Engineers perform their services with a high exposure to professional liability negligence suits from clients and third parties. They find themselves forced to carry professional liability insurance that costs about 4% of their annual gross billings. A firm with $1,000,000 in annual gross billings will pay about $30,000 to $40,000 in premium for a "claims made" policy issued for a one year period.

Engineers and architects are fearful of providing "free" services when it may have the effect of increasing their annual premium due to exposure by performing services without a contract. It certainly increases their exposure to claims for property damage or personal injury. They want to help when a disaster strikes our state. They are the ones who can make an informed assessment of the life safety to occupy a tornado damaged school, courthouse, hospital, etc. or to determine the safety of a flood damaged bridge.

The response to requests by public officials needs to be quick and as accurate as possible because of time restraints. This increases the possibility of negligence and the professionals reluctance to perform these services can only be alleviated with immunity to liability as offered in Senate Bill 605.

We all recall the terrible hurricane Andrew that struck southern Florida. After the hurricane the Florida Legislature passed "Good Samaritan" legislation to extend immunity to liability not only for architects and engineers, but a broad range of volunteers.

We are suggesting that Kansas not wait until the need has passed, but be prepared for the need of the future and act favorably on Senate Bill 605 to allow architects and engineers to step forward as volunteers when requested by public officials in the aftermath of a disaster.

Thank you for allowing us to appear on this bill as we urge you to act favorably on Senate Bill 605.

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3-17-94

3-14-94
SB 807
Doug Bowman

THE CORPORATION FOR CHANGE

A Partnership for Investing in The Future of Kansas Children and Families

Testimony before House Judiciary Committee
Rep. Michael O'Neal
Senate Bill 807
March 14, 1994

Mr. Chairman, thank you for the opportunity to visit with you today in support of Senate Bill 807. This bill would create a funding mechanism for programs which address family violence and child abuse and neglect.

The Corporation for Change administers two funds with functions similar to those called for in the bill. The Kansas Family and Children Trust Fund provides support to local projects addressing child abuse/neglect prevention. The Permanent Families Fund provides support to local Court-Appointed Special Advocate Programs (CASA) and Citizen Review Boards (CRB). Both CRB and CASA programs assist children and families who have come before the judiciary. We are commited to helping local people addresss the problems associated with family violence.

There is much to like in the provisions of Senate Bill 807. Local efforts to prevent and address family problems are not only encouraged, but provided a source of funding. Decisions as to how this money is spent remains at the local level. Language is used which encourages the utilization of an existing body, rather than automatically creating something new.

One major flaw remains: The provisions of this bill are mandated, not permissive. A county should be able to choose not to participate in this effort. In that instance, funds raised by the higher court fees should revert to the state treasurer to be administered in a manner consistent with the rest of the bill. Attaching funds to this proposal does make it better than the many unfunded mandates. Better still would be for the state to encourage participation at the local level, not require it.

Thank you again for the opportunity to speak with you. I would be happy to answer any questions.

700 SW Jackson • Suite 902 • Topeka, Kansas 66603-3758
Voice (913) 296-4300 • Fax (913) 296-4880

3-14-94
SB
Dr. Jas. McHenry

Testimony Before the House
Judiciary Committee
Subcommittee #2
SB 807
March 14, 1994

Kansas Children's Service League

Presented by: Kansas Children's Service League

Kansas Children's Service League is a statewide agency whose mission is to promote the well-being of children by strengthening the quality of their family life through the provision of prevention, early intervention, treatment, advocacy and placement services.

The Kansas Children's Service League wishes to endorse the intention of SB 807, which would bolster resources dedicated to the prevention of family violence and child abuse and neglect. With reports of domestic violence rising within our state, strategies that address this social crisis deserve support.

Using support from the Crime Victim's Assistance Fund and private donors, KCSL initiated a pilot project last year with the Crisis Center, Inc. in Manhattan. Termed "Circles of Affection", this project places a child specialist on staff at the Crisis Center's Shelter to work directly with the children and their mothers who are served there. Reports from both the Center and the project's independent evaluator confirm the significant positive impact of the joint venture.

It is our impression that SB 807 would encourage collaborative projects such as "Circles of Affection." A study of child maltreatment prevention conducted by the Kansas Legislative Research Department last fall concluded that attention should be paid to building prevention and early intervention services into existing programs and systems rather than trying to create them as separate entities. This conclusion affirms the value of the potential alliances anticipated by SB 807.

KCSL encourages you to recommend SB 807 favorably for passage.

Presented by: James McHenry, Ph.D., Assoc. Ex. Dir.

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P.O. BOX 5314
TOPEKA, KS 66605
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FIELD OFFICES

227 SOUTHWIND PLACE
MANHATTAN, KS 66502
913-539-3193

JUNCTION CITY
913-762-5066

EMERGENCY
YOUTH SHELTER
2600 S.E. 23RD
TOPEKA, KS 66605
913-234-5424
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EMERGENCY CHILDREN'S
SHELTER
802 BUCHANAN
TOPEKA, KS 66606
913-232-8282
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CHILD ABUSE
PREVENTION
715 W. 10TH STREET
TOPEKA, KS 66612
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100 YEARS
OF SERVICE
TO CHILDREN

3-14-94
SB: 807

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Donna L. Whiteman, Secretary

House Judiciary Committee
Testimony on Senate Bill 807

March 14, 1994

****

SRS Mission Statement

"The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities and benefits of full citizenship by creating conditions and opportunities for change, by advocating for human dignity and worth, and by providing care, safety and support in collaboration with others."

****

TITLE

An Act concerning family violence and child abuse and neglect assistance and prevention programs; relating to increasing docket fees and additional court costs; family violence and child abuse and neglect assistance and prevention funds and providing for reimbursement from such funds to certain agencies; amending K.S.A. 19-101e, 19-4707 and 28-172a and K.S.A. 1993 Supp. 124117 and 20-362 and repealing the existing sections.

Mr. Chairman, I am pleased to provide you with this testimony in support of Senate Bill 807 which establishes the family violence prevention funds and program. The bill provides that the board of county commissioners of each county shall create a family violence and child abuse and neglect assistance and prevention program to help implement and coordinate funding for nonprofit corporations that deal with the prevention of family violence and child abuse and neglect.

Family violence is a sensitive problem because it involves such value-laden ideas as home and family. Both home and family are no more immune to violence than any other aspect of American life. Violence in the home strikes at the heart of our society. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood . Violence is learned behavior. A great proportion of people who portray abusive and violent behavior were raised themselves in violent households.

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EFFECT OF PASSAGE

The provisions of Senate Bill 807 will have little immediate effect on the Department, the long range effect would be positive intervention for social services and juvenile delinquency.

RECOMMENDATION

The Department of Social and Rehabilitation Services recommends favorable consideration of Senate Bill 807.

Carolyn Risley Hill
Commissioner
Youth and Adult Services
Social and Rehabilitation Services
(913) 296-3284

THE LEAGUE
OF KANSAS
MUNICIPALITIES

Municipal
Legislative
Testimony

HARRY HERINGTON

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: **House Judiciary Committee**
Subcommittee #2

FROM: Harry Herington, Associate General Counsel

RE: SB 807 -- Opposition by League of Kansas Municipalities

DATE: March 14, 1994

Thank you for the opportunity to appear today and offer the views and recommendations of the League of Kansas Municipalities with regard to SB 807. At the outset, I wish to acknowledge the important role which family violence and child abuse and neglect assistance and prevention programs play in the cities of our state to meet demonstrated needs. As you know, many cities deal directly with the problem of family violence and neglect, and a network of local agencies can play an important role in meeting the needs of persons who experience these problems. Our main concerns about this bill fit into three categories:

- **Institutional**--Rather than simply authorize the creation of family violence programs and create optional funding sources, SB 807 would **mandate** the creation of programs in <u>every</u> county in the state, including those in which there may be little revenue generated or other local support for the program. We respectfully suggest there are few counties in which this docket fee would generate sufficient funding--yet the county commissions would be required to establish a 'program" and appoint an administrative body to allocate the funding. Our research indicates, for instance, that this docket fee would general approximately $2,000 from the Hutchinson municipal court, which handles the vast majority of the municipal court cases in Reno County. This is hardly enough money to create a new "program" to allocate. While the bill authorizes interlocal agreements to carry out the act, in most areas of the state much more money will be spent handling the funds generated than would justify the expense. Finally, the bill requires that a board of <u>appointed</u> rather than elected officials allocate the funding (p. 1, line 39).

- **Fiscal/Ability to Pay**--In the legislature's efforts in recent years to fund an increasing number of programs from <u>nontax</u> sources of revenue such as docket fees, we may be losing sight of who pays municipal court docket fees. In Kansas the over 300 municipal courts handle approximately 500,000 cases each year (in comparison tot the state's 350,000 cases). Most of these cases are traffic related, involving people, for example, who both are hard pressed financially to maintain a current vehicle registration. We now have $5.50 in state mandated municipal court docket fees -- $5 for law enforcement training and $.50 for the training of judges (this amount is set by the Supreme Court). This bill would add an additional $1 in docket fees -- an 18% increase. Persons convicted in municipal court would be required by SB 807 to pay this amount **in addition** to any locally set fine and court costs.

- **Intergovernmental** --While cities currently levy mandated docket fees in municipal courts for support of the law enforcement training center and for the training of judges, these funds are paid to state government. SB 807 would mandate an entirely new and unprecedented intergovernmental payment systems -- payments by cities to counties, without any municipal

House Judiciary
Attachment 26
3-17-94

involvement in the selection of county board members or approval of the expenditure of the funds. While cities and counties around Kansas have forged many voluntary partnerships in eh delivery of services, our experience leads us to believe that SB 807's mandated reverse revenue sharing arrangement is likely to cause increased intergovernmental tension between cities and counties that were not part of the process of developing the concept of this bill yet are required to carry it our.

RECOMMENDATIONS: Based on the information we have at this time, we respectfully recommend that if the Subcommittee wishes to endorse legislation on this subject that the following options be considered:

1. **Revenue Options.** Rather than a mandated docket fee that will likely fall disproportionately on the shoulders of low income persons, authorize a specific exemption from the tax lid for such programs. sufficient funding could then be made available for such programs in all areas of the state, and local officials would be part of a voluntary partnership to fund these important programs.

2. **Intergovernmental Issues.** Since the funding of such programs with a municipal court docket fee originates through the city, provide cities with the option of administering any mandated program before cities are required to turn the funds over to the state. The City of Wichita, for example, has a well established domestic violence counseling program in place already and would be well positioned to administer such programs at the local level, and should be allowed to use the funds to finance such a program. A forced marriage between city and county governments is likely to lead to increased friction.

3. **Governance Issues.** Provide that any mandated board is an **advisory** board only, and levy all allocation decisions up to the elected city and county governing bodies. Vesting control of the allocation of funds in an appointed board reduces accountability and is inconsistent with our political tradition of making elected officials responsible for the expenditure of public funds. Finally, if municipal courts are required to make payments to the county, city governing bodies should have direct appointment powers for membership on the county committee in proportion to their city's direct payments. This would create an enhanced degree of accountability. On balance, we would recommend complete city management of the funding and the program, however.

Thank you for the opportunity to offer our observations and recommendations. Please let us know if we can work with the Subcommittee further on this bill.

3-14-94
SB8
Paul Shelby

Testimony of Paul Shelby
Assistant Judicial Administrator
Re: Senate Bill 807
March 14,1994

Mr. Chairman: I am pleased to be here today to suggest improvements in Senate Bill 807 which will reduce workload on district court offices which are drastically understaffed and should not be given extra work, if the work can be avoided, even for such worthy projects as prevention of violence and child abuse.

Senate Bill 807 directs county governments to establish family violence prevention programs and to create family violence prevention funds.

The funds established by counties are to be partially financed by additional fees of $1 to be imposed in courts which enforce county codes and resolutions in Johnson and Sedgwick counties and possibly Shawnee and Wyandotte, as well as an additional court cost of $1 in criminal proceedings. The state protection from abuse fund is also to share in collection of criminal docket fees by a factor of an increase of $1.

Clerks of the district court will be involved in assessing, collecting and disbursing the fees in this bill as it is now written. The bill increases workload for clerks by requiring individual accounting in 105 locations which accept criminal docket fees. By incorporating the increase in docket fees intended for the protection from abuse fund into an existing statute, collections can be disbursed to the protection from abuse fund with a minimum of effort. K.S.A. 20-367 now provides for financing five projects endorsed by the Legislature; it can easily accommodate six projects.

The first change recommended is on page 4. As now written the language could be interpreted to mean $1 in addition to the $1 increase in criminal docket fees. By adding our balloon, only counties with separate courts for enforcement of county codes will assess an additional dollar on cases brought to enforce county codes.

The next change, also on page 4, is to add this bill's funds to the list at K.S.A. 20-367. The "additional" court cost in the bill as now written is translated into an additional $1 increase in criminal proceeding docket fees on page 5. Having a court cost separate from the criminal docket fee would be cumbersome and a drastic departure from the legislature's traditional practice. Finally, on page 6, the additional court cost versus a simple deduction from a docket fee is resolved.

I recommend that you adopt the changes I have suggested to prevent adding unnecessary work to an understaffed clerk's office.

House Judiciary
Attachment 27
3-17-94

As Amended by Senate Committee

Session of 1991

SENATE BILL No. 807

By Committee on Judiciary

2-16

AN ACT concerning family violence *and child abuse and neglect assistance and* prevention programs in ~~certain~~ counties; relating to *increasing docket fees and* additional court costs; family violence *and child abuse and neglect assistance and* prevention funds and providing for reimbursement from such funds to certain agencies; amending K.S.A. 19-101e, *19-4707* and 28-172a *and K.S.A. 1993 Supp. 12-4117 and 20-362* and repealing the existing sections.

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

New Section 1. (a) As provided in subsection (c), ~~Johnson, Sedgwick, Shawnee or Wyandotte counties may~~ *the board of county commissioners of each county shall* create a family violence *and child abuse and neglect assistance and* prevention program to help implement and coordinate funding for nonprofit corporations that deal with the prevention of family violence *and child abuse and neglect*. ~~Any such county that creates a family violence prevention program,~~

(b) The board of county commissioners of each county shall create in the county treasury of ~~such~~ *each* county a family violence *and child abuse and neglect assistance and* prevention fund. Moneys shall be credited to the fund as provided by law. ~~(b)~~ The moneys in any fund created as provided in *this* subsection ~~(a)~~ by such county shall be expended for the purpose of providing for expenses of agencies as provided in subsection (d) that meet the eligibility and qualification requirements.

(c) The governing body of the ~~city or county creating a family violence prevention fund as provided in subsection (a)~~ *board of county commissioners of each county* shall designate in the ~~order or ordinance~~ imposing the fees, an appropriate board, commission, agency or other body of the county ~~or city~~ as the authority to administer the allocation and distribution of the funds to family violence *and child abuse and neglect assistance and* prevention programs. If there is no current body appropriate to serve as this authority, a board shall be appointed by the governing bodies of the ~~city or~~ *board of county commissioners of the* county. Members

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of this appointed board shall represent racial, ethnic and economic diversity of the community *county* and have experience in the allocations of funds for human service programs. ~~The members of the designated authority may be reimbursed from the family violence prevention fund for moneys actually and necessarily expended in the performance of their duties but not more than 5% of the fees in such fund may be used for such purposes.~~

(d) Agencies eligible for funding under this ~~act~~ *section* shall be those who are engaged, as their primary function, in programs aimed at preventing domestic violence *and child abuse and neglect* and providing residential services or facilities to family or household members who are victims of domestic violence *or child abuse or neglect*. In order for programs to qualify for funding under this ~~act~~ *section* they must meet the following requirements:

(1) Meet the requirements of internal revenue code section 501(c);

(2) registered and in good standing as a nonprofit corporation;

(3) meet normally accepted standards for nonprofit organizations;

(4) have trustees who represent the racial, ethnic and socioeconomic diversity of the ~~community~~ *county or counties* to be served;

(5) have received 50% of its funds from sources other than funds distributed through this special fund. These other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;

(6) demonstrate ability to successfully administer programs;

(7) independent certified audit of the previous year's financial records available;

(8) appropriate licensing or certification, or both;

(9) serve a significant number of county residents;

(10) do not unnecessarily duplicate services already adequately provided to county residents; and

(11) agree to comply with reporting requirements.

(e) The board of county commissioners of any county may enter into interlocal cooperation agreements with other counties pursuant to K.S.A. 12-2901 et seq. and amendments thereto, to carry out the provisions of this act.

Sec. 2. K.S.A. 1993 Supp. 12-4117 is hereby amended to read as follows: 12-4117. On and after July 1, 1992, in each case filed in municipal court charging a criminal or public offense or charging an offense defined to be a moving violation by rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto, where there is a finding of guilty or a plea of guilty, a plea of no contest,

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forfeiture of bond or a diversion, a sum in an amount of $5 $6 shall be assessed and such assessment shall be credited as follows: (a) During the period commencing July 1, 1992, and ending June 30, 1997, $1 to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620 and, *$4 to the law enforcement training center fund established pursuant to K.S.A. 74-5619 and amendments thereto and $1 to the family violence and child abuse and neglect assistance and prevention fund established pursuant to section 1 and amendments thereto; and (b) on and after July 1, 1997, $1 to the local law enforcement training reimbursement fund established pursuant to K.S.A. 74-5620, $2 to the law enforcement training center fund established pursuant to K.S.A. 74-5619 and amendments thereto* and, *$2 to the juvenile detention facilities fund established pursuant to K.S.A. 79-4803 and amendments thereto to be expended for operational costs of facilities for the detention of juveniles and $1 to the family violence and child abuse and neglect assistance and prevention fund established pursuant to section 1 and amendments thereto. The judge or clerk of the municipal court shall remit at least monthly* all *the appropriate assessments received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of the local law enforcement training reimbursement fund, the law enforcement training center fund and the juvenile detention facilities fund and the appropriate assessment received pursuant to this section to the county treasurer for deposit in the county treasury to the credit of the family violence and child abuse and neglect assistance and prevention fund as provided in this section. For the purpose of determining the amount to be assessed according to this section, if more than one complaint is filed in the municipal court against one individual arising out of the same incident, all such complaints shall be considered as one case.*

Sec. 2 3. K.S.A. 19-101c is hereby amended to read as follows: 19-101c. (a) Except as provided in subsection *subsections* (b) *and (d)* and in K.S.A. 19-4707 *and amendments thereto*, the items allowable as costs shall be the same as in cases for misdemeanor violations of state law and shall be taxed as provided in K.S.A. 22-3801, 22-3802 and 22-3803, and amendments thereto.

(b) The fees and mileage for the attendance of witnesses shall be borne by the party calling the witness, except that if an accused person is found not guilty, the county shall pay all such expenses, but the court may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person, if the court finds that there has been an abuse of the use of subpoenas by the accused person.

4-27

(c) All fines and penalties collected in actions for the enforcement of county codes and resolutions pursuant to the code for the enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 19-101d and amendments thereto shall be paid over to the county treasurer of the county where they are imposed for deposit in the county general fund or in the special law enforcement fund, if established. All fines and penalties collected in actions brought pursuant to the provisions of subsection (a) of K.S.A. 19-101d and amendments thereto shall be remitted to the state treasurer, as provided in K.S.A. 20-2801 and amendments thereto.

(d) In any each county which has created a family violence prevention program as provided in section 1 ~~A~~ the court shall assess additional court costs of up to $1 for each violation of a resolution. Such additional cost shall be paid over to the county treasurer of such county for deposit in the family violence and child abuse and neglect assistance and prevention fund created as provided in section 1.

Sec. 4. K.S.A. 19-4707 is hereby amended to read as follows: 19-4707. (a) Except as provided in subsection (b), no person shall be assessed costs for enforcement and prosecution of violations of county codes and resolutions pursuant to this code, except for witness fees and mileage as set forth in K.S.A. 19-4726.

(b) On and after July 1, 1994, in each case filed for violations of county codes and resolutions, a $1 assessment shall be added to each such case. The judge shall remit at least monthly such assessments to the county treasurer, for deposit in the county treasury and credit to the family violence and child abuse and neglect assistance and prevention fund as provided in section 1.

Sec. 5. K.S.A. 1993 Supp. 20-362 is hereby amended to read as follows: 20-362. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to $10 for each docket fee paid pursuant to K.S.A. 60-2001 and 60-3005, and amendments thereto, during the preceding calendar month;

(2) a sum equal to $10 for each $36.50 or $61.50 docket fee paid pursuant to K.S.A. 61-2501, 61-2704 or 61-2709, and amendments thereto; and

(3) a sum equal to $5 for each $16.50 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the eceding calendar month.

(b) To the board of trustees of the county law library fund, for

SB 807 - as ~~D~~ Amend

which has created a county court for enforcement of county codes and resolutions as provided in subsection (b) of K.S.A. 1993 Supp. 19-101d and amendments thereto,

27-5

deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month for cases filed in the county.

(d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to $.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to $5 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month.

(f) To the state treasurer, for deposit in the state treasury and distribution according to K.S.A. 1993 Supp. 20-367, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d) and (e).

~~*(g) To the state treasurer for deposit in the state treasury and credit to the protection from abuse fund as provided in K.S.A. 74-7325 and amendments thereto, a sum equal to $1 for each docket fee paid pursuant to K.S.A. 28-172a and amendments thereto, during the preceding calendar month.*~~

Sec. 3~~6~~7 K.S.A. 28-172a is hereby amended to read as follows: 28-172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

Murder or manslaughter	$153.50	~~$154.50~~
Other felony	~~123.50~~	~~124.50~~
Misdemeanor	~~93.50~~	~~94.50~~
Forfeited recognizance	~~53.50~~	~~54.50~~
Appeals from other courts	~~53.50~~	~~54.50~~

(b) In actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act de-

(1)

155.50
125.50
95.50
55.50
55.50

(2) To the county treasurer for deposit in the county treasury and credit to the family violence and child abuse and neglect assistance and prevention fund $1 for each criminal proceeding docket fee collected pursuant to K.S.A. 28-172a, and amendents thereto, in the preceding calendar month.

Sec. 6. K.S.A. 1993 Supp. 20-367 is hereby amended to read as follows: 20-367. Of the remittance of the balance of docket fees received monthly by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the juvenile detention facilities fund, a sum equal to 5.12% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 3.93% of the remittances of docket fees; to the emergency medical services operating fund, the state treasurer shall deposit and credit a sum equal to 2.95% of the remittances of docket fees; and to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.66% of the remittances of docket fees. The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.

to the protection from abuse fund a sum equal to [redacted]% of the remittances of docket fees;

cared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of ~~$37~~ *$38* shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be ~~$37~~ *$38*.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund and the judiciary technology fund shall be paid from the docket fee. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. ~~*In any such county which has created a family violence prevention program as provided in section 4, the court shall assess an additional court cost of up to $1 in each criminal proceeding for domestic violence and child abuse and neglect assistance and prevention as provided in section 4.*~~ No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of $2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be $3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and $2 of any bond so forfeited shall be regarded as court costs.

New Sec. 4. Additional court costs as provided in subsection (d) of ~~K.S.A. 28-172a~~ and amendments thereto, relating to any county which has created a family violence prevention

27-7

program as provided in section ~~1~~, shall be paid over to the county treasurer of such county for deposit in the family violence prevention fund created as provided in section ~~1~~.

Sec. ~~5~~ 7. K.S.A. 19-101c, *19-4707* and 28-172a *and K.S.A. 1993 Supp. 12-4117* and *20-362* are hereby repealed.

Sec. ~~6~~ 8. This act shall take effect and be in force from and after its publication in the statute book.

20-367,

27-8

3-14-94
SB 7
Sandy L ETT

KCSDV

KANSAS COALITION AGAINST SEXUAL & DOMESTIC VIOLENCE

P. O. BOX 1341 • PITTSBURG, KS 66762 • 316-232-2757

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1974 Wichita
1976 Emporia Lawrence Wichita Hutchinson
1977 Topeka McPherson
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1979 KCSDV Pittsburg Overland Park
1980 Salina Kansas City El Dorado
1981 Topeka City Coffeyville Kansas City Liberal
1982 Iola Great Bend
1983 Hillsboro
1989 Manhattan

TO: House Judiciary Committee

RE: SB No. 807

FROM: The Kansas Coalition Against Sexual and Domestic Violence (KCSDV)

Subcommittee Members;

Thank you for the opportunity to speak before you regarding SB 807.

Today I represent the Kansas Coalition Against Sexual and Domestic Violence.

The Coalition is comprised of a network of 30 programs providing services to victims of domestic violence and/or sexual assault in each of the 105 counties in Kansas. In 1992, those programs served 35,000 people via crisis lines, housed more than 7,000 people in shelters and 18,000 people in non-residential programs. There were more than 4,500 protection form abuse orders filed with Kansas courts.

Domestic Violence programs serve more children than adults. It is those children that are some of the most at-risk kids in Kansas to either be victims of abuse or to be abusive as adults. The single most effective crime prevention strategy is to intervene in domestic violence as a central component of a comprehensive approach which combines prevention, intervention and punitive action. Every dollar spent on intervention through domestic violence programs is also a dollar spent on prevention.

The first step to accomplishing this is to commit adequate resources to domestic violence programs. Currently, funding is so limited that the progams' capacity to meet the service demand is severely compromised. Each year the demand for services across the state increases, yet the funding does not.

In fact, the marriage license fee that helps to fund domestic violence programs is inconsistent and dependent on the number of licenses purchased. The state family violence prevention fund is almost $10,000 below where it was this time last year. While $10,000 does not constitute a great loss, it is a downward trend. For programs that are already inadequately funded, $1,000.00 reduction per shelter can be very problematic.

In October of this year, the National Ad Council and The Family Violence Prevention Fund will launch a national campaign against domestic violence using all the national media sources. The potential for the demand for services to significantly increase is great. SB-807 is our only new source of revenue. The funds generated from docket fees are desperately needed to incorporate the increased demand for services at current service levels.

However, the provision in SB-807 which allows counties to retain half of the funds collected for distribution to domestic violence and child abuse prevention programs may seriously compromise the effectiveness of this bill.

The network of shelter and domestic violence programs serve each of the 105 counties in Kansas, some programs serve multiple counties. We do not have the staff power to lobby within each county we serve to ensure equitable distribution of the county-retained portion. It is an irony that agencies with greater resources will have easier access to these monies.

<u>KCSDV implores you to pass favorably SB-807 with one amendment, that 65% of the monies retained at the county level be earmarked for domestic violence shelter programs.</u>

3-14-94
SE 7
Dorothy Miller

House Judiciary Subcommittee #2
March 14, 1994
Re: SB807

Chairman Carmody and other Committee Members;

On behalf of Safehouse, which provides services to domestic violence victims in Southeast Kansas, I want to thank you for considering this bill.

Funding for shelter programs is desperately needed. When salaries, operating costs, and cost per unit of service is compared with other social service agencies, it becomes clear that domestic violence shelters are probably the most underfunded of all social service agencies in the state.

I have no doubt that the shelter programs could significantly enhance their service provision if provided additional funding. We know that domestic violence shelters, probably more than any other type of agency, have potential to make significant positive change for children being raised in violent homes in the most cost-efficient way; we have ready-access to the most at-risk youth population, at the time their caregiver has the highest motivation for change. This resulted in 93.4% of women sheltered in Safehouse in 1992 relocating themselves and their children away from the abuse.

Safehouse is one of the busiest shelters in Kansas, rating second highest in total number of victims served and the highest in new clients sheltered in 1992 according to KCSDV statistics, yet is experiencing the same critical funding crunch felt by many shelters; without new funds made available, we will be forced to cut services. We already had to borrow money to make payroll once in the past four months, and cannot afford to continue meeting the needs without additional funds.

Thank you for your consideration of our concerns. We urge you to earmark the funds specifically for domestic violence programs. By so doing, you will certainly help meet the needs of many abused women and children across the state.

If you need additional information in reference to our funding crisis, I would be happy to provide that. We urge you to pass this bill out of committee.

Thanks, again, for your consideration.

Dorthy Miller,
Executive Director,
Safehouse, Inc.

House Judiciary
Attachment 29
3-17-94

SB 363

Amendment of Attorney Fees Statute
K.S.A. 66-233

March 15, 1994

K.S.A. 66-232 and the case law interpreting it holds railroads absolutely liable to landowners for fire damage. The railroad's liability is easily proved by showing that a train had traveled through the vicinity where the fire originated. In the State of Kansas, trains may travel through a particular area up to twelve times in a 24 hour period. Once the landowner shows this, the burden then shifts to the railroad to prove that it did not start the fire, which is a difficult and usually unsuccessful task. It does not matter how the fire started, only that the railroad is responsible. For example, if a train is put into emergency to avoid colliding with a motorist stalled on the tracks, and a spark from the engine or from the wheels during that emergency braking ignites the right-of-way and a nearby pasture, then the railroad must pay for all of the landowners' damages, including lost present and future profits. Plus, K.S.A. 66-233, states that the railroad must also pay the claimant's attorney fees and expenses, which include expert fees, deposition costs, travel, meals, and lodging.

Eighteen other states have statutes designed to hold railroads liable for fire damage. Some of them create absolute liability, such as Kansas, and others make it a simple negligence action. However, no other state has an automatic attorney fees award. All the states have repealed its attorney fees statute in this area. In fact, the State of Illinois, a comparative fault state, has repealed all of its railroad fire liability statutes.

The automatic award of attorney fees and costs discourages settlement and promotes litigation. Even if the railroad has just cause to dispute liability, or if it makes a good faith effort to settle the claim which is rejected by the claimant, if the case then proceeds to trial and plaintiff is awarded any damages, the railroad must pay all of plaintiff's attorney fees and expenses. This has resulted in a disparaging impact on the railroads. No other individual or corporation must automatically pay attorney fees and costs to a plaintiff in a strict liability situation.

House Judiciary
Attachment 30
3-17-94

regulations as may be deemed necessary for the proper administration of this act.

History: L. 1972, ch. 212, § 2; July 1.

DAMAGES BY FIRE

66-232. Action for damages by fire. In all actions against any railway company organized or doing business in this state, for damages by fire caused by the operating of said railroad, it shall be only necessary for the plaintiff in said action to establish the fact that said fire complained of was caused by the operating of said railroad, and the amount of his damages (which proof shall be prima facie evidence of negligence on the part of said railroad): *Provided,* That in estimating the damages under this act, the contributory negligence of the plaintiff shall be taken into consideration.

History: L. 1885, ch. 155, § 1; May 1; R.S. 1923, 66-232.

Research and Practice Aids:

Railroads ⇐ 483.

C.J.S. Railroads § 546.

Petition in action against railroad company for damages by fire, Vernon's Kansas Forms § 8728.

CASE ANNOTATIONS

1. Measure of damages for burning and destruction of orchard. Mo. Pac. Rly. Co. v. Haynes, 1 K.A. 586, 42 P. 259; St. L. & S. F. Rly. Co. v. Hoover, 3 K.A. 577, 43 P. 854; Barker v. Railway Co., 94 K. 61, 145 P. 829.

2. Effect of showing of contributory negligence; negligence not compared. Mo. Pac. Rly. Co. v. Haynes, 1 K.A. 586, 42 P. 259.

3. Instruction concerning presumption that defendant set out fire, held erroneous. Mo. Pac. Rly. Co. v. Haynes, 1 K.A. 586, 42 P. 259.

4. Instruction concerning negligence held not prejudicial to defendant. A. T. & S. F. Rld. Co. v. Huitt, 1 K.A. 781, 41 P. 1049.

5. Statute construed; negligence of plaintiff not contributory to injury. U. P. Rly. Co. v. Eddy, 2 K.A. 291, 42 P. 413.

6. Care and caution required of railway company. St. L. & S. F. Rly. Co. v. Hoover, 3 K.A. 577, 43 P. 854.

7. Railway company not liable for unavoidable accidental escape of fire. St. L. & S. F. Rly. Co. v. Hoover, 3 K.A. 577, 43 P. 854.

8. Negligence of parties a question for the jury. Padgett v. Railroad Co., 7 K.A. 736, 52 P. 578.

9. Burden of proof upon defendant to disprove negligence. Walker v. Kendall, 7 K.A. 801, 54 P. 113.

10. Rule of negligence changed by this act; distinction between cases. Railroad Co. v. Hays, 8 K.A. 545, 54 P. 322.

11. Direct evidence that fire escaped from engine unnecessary; circumstantial evidence. Railroad Co. v. Hutchinson, 8 K.A. 605, 56 P. 144; Railway Co. v. Ellithorp, 9 K.A. 503, 59 P. 286.

12. Fire escaping from sectionmen; burden of proof concerning negligence. Railway Co. v. Ellithorp, 9 K.A. 503, 59 P. 286.

13. Dry grass, etc., on right of way question of negligence for jury. White v. Mo. Pac. Rly. Co., 31 K. 280, 1 P. 611; St. L. & S. F. Rly. Co. v. Richardson, 47 K. 517, 28 P. 183.

14. Allegations of negligence construed; defective engine. St. L. & S. F. Rly. Co. v. Fudge, 39 K. 543, 18 P. 720.

15. Presumption applies to all cases where fire results; negligence. Mo. Pac. Rly. Co. v. Merrill, 40 K. 404, 19 P. 793.

16. Statute held valid. Mo. Pac. Rly. Co. v. Merrill, 40 K. 404, 19 P. 793.

17. Prima facie case made by evidence; burden of proof. A. T. & S. F. Rld. Co. v. Gibson, 42 K. 34, 21 P. 788.

18. "Burning off grass on right of way" is within "operation of railroad." Mo. Pac. Rly. Co. v. Cady, 44 K. 633, 24 P. 1088.

19. Burden of proof on railroad after prima facie case made. Ft. S. W. & W. Rld. Co. v. Karracker, 46 K. 511, 516, 26 P. 1027.

20. Prima facie case; contributory negligence not chargeable; facts shown. Ft. S. W. & W. Rly. Co. v. Tubbs, 47 K. 630, 28 P. 612.

21. Sufficiency of petition; facts to make prima facie case sufficient. St. L. & S. F. Rly. Co. v. Snavely, 47 K. 637, 28 P. 615.

22. Joinder of company and others; separate trial refused, not error. Latham v. Brown, 48 K. 190, 29 P. 400.

23. Evidence held sufficient to sustain finding; conflicting testimony. Ft. S. W. & W. Rly. Co. v. Fortney, 51 K. 287, 32 P. 904.

24. Evidence considered and held prima facie case made. C. R. I. & P. Rly. Co. v. McBride, 54 K. 172, 186, 37 P. 978.

25. Interest not recoverable on claim for damages from fire. A. T. & S. F. Rld. Co. v. Ayers, 56 K. 176, 183, 42 P. 722.

26. Direct evidence of origin of fire not indispensable; circumstantial evidence. Railroad Co. v. Matthews, 58 K. 447, 49 P. 602, (Affirmed: Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U.S. 96, 19 S.Ct. 609, 43 L.Ed. 909); Railroad Co. v. Perry, 65 K. 792, 70 P. 876.

27. Act held constitutional. Railroad Co. v. Matthews, 58 K. 447, 49 P. 602. Affirmed: Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U.S. 96, 19 S.Ct. 609, 43 L.Ed. 909.

28. Judgment on findings; when not rendered for defendant; negligence. Railroad Co. v. Chace, 64 K. 380, 67 P. 853.

29. Destruction of orchard and hedge; measure of damages; instructions. Railroad Co. v. Perry, 65 K. 792, 70 P. 876.

30. Pleading of negligence; proof must sustain allegations; sufficiency of petition. Railway Co. v. Garrison, 66 K. 625, 72 P. 225.

31. Evidence to overcome prima facie case; question for the jury. Railway Co. v. Geiser, 68 K. 281, 282, 75 P. 68; Manley v. Railway Co., 82 K. 211, 107 P. 540.

32. Two measures of damages; when both methods used. Railway Co. v. Geiser, 68 K. 281, 282, 75 P. 68.

33. Offer to burn fire guard no defense. U. P. Rld. Co. v. Holmes, 68 K. 810, 74 P. 606.

34. Leasing right of way does not excuse railroad for fires. Sprague v. Railway Co., 70 K. 359, 78 P. 828.

35. Instruction as to company's duty held erroneous. Railway Co. v. Sprague, 74 K. 574, 87 P. 733.

36. Company held liable for fire set out by independent contractor. Railroad Co. v. Madden, 77 K. 80, 85, 93 P. 586.

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37. Market value of growing crops destroyed; cost of restoring hedge. Hilligoss v. Railway Co., 84 K. 372, 114 P. 383.

38. Jury need not specify particular element of negligence of defendant. Hilligoss v. Railway Co., 84 K. 372, 114 P. 383.

39. Damages for growing grass and for restoration of meadow allowable. Hayden v. Railway Co., 84 K. 376, 114 P. 384.

40. Evidence of other fires under similar circumstances admissible. Tuttle v. Railway Co., 86 K. 28, 119 P. 370.

41. Burden of proof concerning negligence of parties; instruction held erroneous. Tuttle v. Railway Co., 86 K. 28, 119 P. 370.

42. Party may demand answers to special questions, when; expert testimony. Saunders v. Railway Co., 86 K. 56, 119 P. 552.

43. Fire caused by defective engine; finding held within issues joined. McVeigh v. Railway Co., 87 K. 527, 124 P. 898.

44. Negligence restricted by petition; prima facie case; burden of proof. Murry v. Railway Co., 96 K. 740, 742, 153 P. 493.

45. Statutory presumption of negligence overcome by defendant's evidence. Tacha v. Railway Co., 97 K. 571, 574, 155 P. 922.

46. Proof fire caused by railroad prima facie evidence of negligence. Smith v. Railroad Co., 102 K. 150, 154, 169 P. 217; Rice v. Monroe, 108 K. 526, 530, 196 P. 756.

47. Fire from sparks from engine; issue of fact for jury. Otey v. Railroad Co., 108 K. 755, 758, 197 P. 203.

48. Where appeal involves sufficiency of evidence, complete transcript necessary. Barker v. Chicago, R. I. & P. Rly. Co., 158 K. 549, 550, 148 P.2d 493.

49. Discussed; justice court has jurisdiction to award attorney's fee as statutory penalty. Hinds v. Fine, 162 K. 328, 336, 176 P.2d 847.

50. Court may separate issue of liability from attorney's fees and determine fees without jury. Thomas v. Kansas City Southern Rly. Co., 197 K. 747, 748, 754, 755, 421 P.2d 51.

51. Construed as having been intended to cover damages to persons as well as property. Daily v. Missouri Pacific Railroad Company, 298 F.Supp. 911, 912, 913, 914, 915.

66-233. Same; attorney's fee. In all actions commenced under this act, if the plaintiff shall recover, there shall be allowed him by the court a reasonable attorney's fee, which shall become a part of the judgment.

History: L. 1885, ch. 155, § 2; May 1; R.S. 1923, 66-233.

Research and Practice Aids:
Railroads ⇐ 483.
C.J.S. Railroads § 546.

Law Review and Bar Journal References:
"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 538, 562 (1979).

CASE ANNOTATIONS

1. Evidence concerning reasonable attorney's fees; finding of jury; judgment. A. T. & S. F. Rld. Co. v. Huitt, 1 K.A. 788, 41 P. 1051.

2. Party recovering against company entitled to reasonable attorney's fees. St. L. & S. F. Rly. Co. v. Hoover, 3 K.A. 577, 43 P. 854.

3. Section does not violate fourteenth amendment to federal constitution. Clark v. Ellithorpe, 7 K.A. 337, 51 P. 940.

4. Necessary to demand attorney's fee in petition and submit question. Ft. S. W. & W. Rld. Co. v. Karracker, 46 K. 511, 519, 26 P. 1027; Ft. S. W. & W. Rly. Co. v. Tubbs, 47 K. 630, 28 P. 612.

5. Section held constitutional and valid. Railroad Co. v. Matthews, 58 K. 447, 49 P. 602. Affirmed: Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U.S. 96, 19 S.Ct. 609, 43 L.Ed. 909.

6. Section cited in construing insurance statute. Insurance Co. v. Corbett, 69 K. 564, 571, 77 P. 108. Modified: Insurance Co. v. Corbett, 81 K. 209, 105 P. 7.

7. Reasonable attorney's fee is question of fact. Wheat Growers Ass'n v. Rowan, 125 K. 657, 658, 266 P. 104.

8. Discussed; justice court has jurisdiction to award attorney's fee as statutory penalty. Hinds v. Fine, 162 K. 328, 336, 176 P.2d 847.

9. Court may separate issue of liability from attorney's fees and determine fees without jury. Thomas v. Kansas City Southern Rly. Co., 197 K. 747, 748, 752, 753, 754, 755, 421 P.2d 51.

10. Applicable where undersheriff was injured while fighting fire caused by the railroad. Daily v. Missouri Pacific Railroad Company, 298 F.Supp. 911, 912, 913.

DAMAGES CAUSED BY NEGLIGENCE

66-234. Liability for negligence. Railroads in this state shall be liable for all damages done to person or property, when done in consequence of any neglect on the part of the railroad companies.

History: L. 1870, ch. 93, § 1; March 24; R.S. 1923, 66-234.

Research and Practice Aids:
Railroads ⇐ 214.
C.J.S. Railroads §§ 390 to 392.

Law Review and Bar Journal References:
Liability of a land occupier to persons injured on his premises, William D. Stites, 18 K.L.R. 161, 177 (1969).

CASE ANNOTATIONS

1. Statute applied; section held to govern liability for damages. St. L. & S. F. Rly. Co. v. Fruit Co., 1 K.A. 551, 557, 42 P. 267.

2. Negligence must be alleged and proved under this section. A. T. & S. F. Rld. Co. v. Ditmars, 3 K.A. 459, 463, 43 P. 833.

3. Section does not abolish fellow-servant rule; negligence between employees. K. P. Railway v. Salmon, Adm'x, 11 K. 83, 93.

4. Section has changed law; instruction concerning exercise of ordinary care. St. Jos. & D. C. Rld. Co. v. Grover, 11 K. 302, 306.

5. Section has not wiped out defense of contributory negligence. K. C. Ft. S. & G. Rld. Co. v. McHenry, 24 K. 502; Central Branch, U. P. R. Co. v. Walters, 24 K. 504.

6. The words "any neglect," as used herein, construed. A. T. & S. F. Rld. Co. v. Shaft, 33 K. 521, 526, 527, 6 P. 908.

7. Rules of common law concerning "contributory negligence" not overturned. A. T. & S. F. Rld. Co. v. Shaft, 33 K. 521, 527, 6 P. 908.

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MID-AMERICA LUMBERMENS ASSOCIATION

ARKANSAS KANSAS
MISSOURI NEBRASKA
OKLAHOMA

TESTIMONY BEFORE THE HOUSE JUDICIARY SUB-COMMITTEE

Senate Bill #595 March 15, 1994 Room 313-S

Mr. Chairman, members of the Sub-Committee, it is my pleasure to address you as a proponent for Senate Bill #595, which raises the limit on a small claim from $1,000.00 to $2,000.00.

This bill dovetails into another Senate Bill, #564. To give you the reasoning as to why we support #595, I would like to give you an overview of what occurred in the Senate on this bill.

#564 allows collection of attorney fees on consumer credit transactions that are not collected in the amount of $2,000.00 and above. The original language of the bill had the current small claims limit of $1,000.00. We had asked for a $2,500.00 limit in the original language of #595. It was decided by the Senate Judiciary Committee to raise the level for the collection of attorney fees to $2,000.00 and lower the limit on small claims to $2,000.00. What happens now is that there is access to the average small business person to pursue legal action up to the amount of $2,000.00 to settle a grievance they may have against a defendant or if the default of payment is over $2,000.00, an attorney can be utilized to close the matter and reasonable attorney fees would be remunerated, which correlates with the worthless check statue. We support this entire concept and with implementation of same would probably keep the limit of small claims at $2,000.00 for quite some time provided that SB #564 also goes into effect.

LUMBER GROWS ON TREES

House Judiciary
Attachment 31
3-17-94

We seek support of this bill, not for our larger operations, but for many of our rural lumber dealers. As far as we can research, many years ago merchants in small communities extended credit, primarily to farmers in the area, and collected on these debts as the harvest came in. Generally thought to be initiated by the co-op in the community where the farmer was doing the most business, other merchants followed the same policy and this was more or less the status quo for a great many years.

Times have changed dramatically. Visa, MasterCard, Discover and the other forms of plastic, now account for much of the receivables that are collected from a business. We are literally becoming a plastic society. However, old ways die hard in the rural community, and credit and open accounts are still the norm with many of the small businesses in Kansas. As such, there is a risk any time you are in business, and occasionally action has to be taken to collect monies owed.

The situation is akin to you, as an individual, loaning someone $2,000.00 of your money. I am confident you would be very careful about who you loaned it to and work out very carefully the details of repayment. So, let's say you loan this money to twenty people. You feel comfortable with this decision and all goes well and you are paid on an agreed schedule. Suddenly, one of these folks has a financial impact: serious illness, divorce, loss of job or whatever. Many people, in fact most, do try to work out these problems with a reduced payment schedule, with at least a good effort to satisfy their obligation. There are those, and it is always the case where a minority seems to hurt a majority, that make no such attempt. For them we have to try and apply some sort of leverage to satisfy the situation. Hopefully, this example gives you an idea of how these situations develop in most cases. Small claims

is an excellent opportunity to settle just such matters. It is indeed a "peoples court". It is not designed for attorney involvement, rather for one party to go face to face with another to try and settle differences.

You have heard the complaint about case load. I have attached to this testimony the opponent's testimony from the 1986 hearing on House Bill #2678 that raised the limit on small claims from $500.00 to $1,000.00. You will notice much of the same reasoning used before that committee, one just like yours is today. I did include the testimony from the sponsor of the bill. In that we concur with Representative Burt DeBaun that getting attorneys to try to handle claims under $2,000.00 can be problematic. HB #2678 passed the 1986 session on a vote of 120-3 from the House and 39-0 in the Senate. Why such an overwhelming margin? There is an excellent reason that I am confident is not lost on this committee. Every small business in the State wanted it passed and needed it passed. These courts are here for the use of the people. All the salaries for the judges and staff are funded by the people they serve. I think it is very, very important to keep that thought in mind. I feel I should remind you that many of the people who utilize this venue are ones who work very long hours, are in most cases not able to pass on salary increases to employees on any kind of consistent basis, are trying desperately hard to keep the doors open to their businesses against larger competitors and declining population base, and probably are not really in the mood to listen to complaints about caseload or anything else from the people who serve them.

The Legislature in 1986 realized that, and I have to believe the intelligence level has not diminished any with the current body and that you can see the logic behind this reasoning. You take a poll of the small business community in your area, the people **you** serve, and I am confident you will find they want you to support this bill. Other states have found a way

to make it work for them at a level on or around $2,000.00 and I don't feel they have found any type of solution to many of their revenue problems that face them any better than the budget problems that confront this Legislature. By going back to your constituents after the adjournment of this session and telling the people in your district, particularly the small business community, that you supported this bill and voted for its passage, I am confident they will be most pleased with your support.

I stand ready to answer any questions. Thank you for the opportunity to testify before you.

STATE OF KANSAS

BURT DeBAUN
REPRESENTATIVE, THIRTEENTH DISTRICT
OSAGE AND PART
OF LYON COUNTY
726 S 9TH
OSAGE CITY, KANSAS 66523

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: INSURANCE
LABOR AND INDUSTRY
LOCAL GOVERNMENT

February 6, 1986

To: House Judiciary Committee
Re: House Bill 2678 relating to small claims procedure.

Mr. Chairman and members of the committee

House bill 2678 would revise the small claims procedure to increase the maximum amount claimed from $500. to $2,000 and also increase the number of claims that may be filed in a calendar year from 5 to 10.

I believe that it could best be described as a part of a small business economic development plan. My personal experience has been that lawyers generally do not want to handle claims as small as $2,000.

The Revisors office advised me this week that an amendment is necessary to complete this bill.

Attached you will find a news article by a district court clerk encouraging the use of the small claims court and also some relative data from 2 courts in the 13th district.

Your favorable consideration would be appreciated.

Are there any question ?

Attachment 2
House Judiciary
2-6-86

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507
(913) 296-2256

January 21, 1986

To: Gary Stotts, Acting Director of the Budget

From: Jerry Sloan, Budget and Fiscal Officer

Re: House Bill No. 2678

This bill would raise the limit for a claim to be filed under the small claims procedure from $500 to $2,000. It would also raise the maximum number of small claims that may be filed by a person annually from 5 to 10.

The 1979 Legislature raised the limit for the small claims procedure from $300 to $500 (see Chapter 187, Session Laws of 1979). At the same time (see Chapter 80, Session Laws of 1979), the jurisdictional limit in Chapter 61 cases was increased from $3,000 to $5,000. Following this action, it was found that case filings in both small claims and Chapter 61 increased dramatically, the former by 26.7% and the latter by 18.8%. At the same time, Chapter 60 case filings also increased, but at a more normal 3.8%. Thus the increase in small claims and Chapter 61 case filings does not appear to have been caused merely by regular civil cases being filed under simpler procedures. We could anticipate this historical phenomenon to again occur with small claims filings with this bill.

During FY 1985, 14,429 small claims cases were filed. While the jurisdictional limit increase proposed is more, both in amount and percentage, than the increase that occured in 1979, if we use a conservative estimate of the same percentage increase in case filings, we would expect about 3,852 more small claims cases from only the jurisdictional limitation increase. Historically, we would expect this to occur without a decrease in other civil filings, except for any impact the filing fee differential might have.

Changing the maximum number of cases a person may file annually from 5 to 10 would also impact the caseload. In reviewing the caseload in Shawnee County, 896 small claims cases were filed during calendar year 1985. During this period

Attachment 8
House Judiciary
2-6-86

39 individuals or businesses filed the maximum five cases. If each of these were to file ten cases, which is not unlikely, this would add 195 cases to the caseload, or an increase of 22%. If this were extrapolated statewide to the increased estimate noted above, it would add an additional 4,022 cases.

Thus, the total impact of this bill would be to increase small claims filings from 14,4[illegible] in FY 1985 to an estimated 22,303 in FY 1987 or a 55% increase.

Small claims cases often take more clerical time than other cases, since the people filing and responding to these cases are less familiar with court forms and precedures than attorneys. It is estimated that this increase would require an additional 6 clerical positions, either in additional positions or an equivalent in temporary help. The cost for this additional staff in FY 1987 would be $86,409, including fringe benefits. There would also be an impact on judicial work load with this caseload increase. Estimating 30 minutes per case of judge time, this would require almost the equivalent of two full-time judges. While this increase would be statewide, it would require the additional useage of retired judges, if available, or more cross-assignments. It is estimated that the cost to provide this additional judicial time would be approximately $50,000, which would include travel.

This additional caseload would generate additional revenues from more filing fees being collected. For the increase in filings noted above, an additional $78,738 would be generated. Of this amount, an estimated $27,558 would go to the State General Fund, $39,369 to the Counties' general funds and $11,811 to the counties' law libraries. The on-going revenues might decrease somewhat if some cases having a claim between $500 and $2,000, that would be normally filed under Chapter 61 with a docket fee of $30, were filed as small claims cases with a docket fee of $10. I do not have an estimate on this impact.

There would also be an additional cost to the counties. Since most district courts order their forms on an annual basis, if this bill were to become law on July 1, the remainder of the existing forms would have to be discarded and new forms purchased. For small claims cases, it is estimated this would cost, in the aggregate, $7,500.

JS:myb

3-20-86

KANSAS BAR ASSOCIATION
1200 Harrison
P.O. Box 1037
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(913) 234-5696

HB 2678

Senate Judiciary Committee

March 20, 1986

Mr. Chairman, Judiciary Committee Members. I am Ron Smith, Legislative Counsel for KBA.

Our Executive Council makes our legislative policy. They have discussed this legislation through the delegation of legislative authority within the Executive Committee of the Council.

KBA has serious reservations about the wisdom of expanding the Small Claims procedure to the point where defendants into litigation that might result in a $1,000 judgment, plus costs--all without advice and assistance of an attorney.

But there are ramifications that the businessman must be prepared to meat with this bill, too.

On the House side, businessmen indicated that in rural parts of the state, especially, they could not find attorneys to collect smaller debts. I suspect what the problem is that the attorney regularly used by the small town businessman, who ordinarily works by the hour, does not want to collect small debts for the customary contingent fee, and the businessman perhaps doesn't want to divide his legal work between local lawyers. In our major cities, however, there are lawyers who specialize

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31-8

in debt collection, and who can collect a debt in rural county courts on behalf of these businessmen, and do so on the contingent fee basis. The costs to business of such specialty lawyers is not materially different than using a local lawyer.

Sometimes, having a lawyer from "out of town" collecting a debt produces better results.

Chapter 61 courts are also available to the businessman -- without hiring a lawyer.

There are some practical reasons why previous legislatures allow cases with an amount in controversy exceeding $500 to be brought in Chapter 61 Limited Actions court. For example, KSA 61-2709 allows defendants the right to appeal a small claims judgment de novo. If done, the defendant can get Chapter 61 jurisdiction anyway, which gives him the right to hire an attorney and have a 6-person jury trial. The right of this new trial is granted without posting a bond. A judge that renders a small claims verdict probably will advise the defendant of this right of appeal.

Obtaining the judgment is the least difficult portion of debt collecting. Debtors are sometimes quite sophisticated, and there may be times when that businessman will be glad he has hired an attorney to collect the debt. With wrongful garnishment and abuse of process lawsuits on the rise, the businessman who acts on his own in order to save a legal fee may find himself a defendant in a lawsuit with much graver consequences.

For all these reasons, KBA opposes the bill.

800 WESTPORT ROAD • KANSAS CITY, MISSOURI 64111-3198
816/931-2102 FAX 816/931-4617

MID-AMERICA LUMBERMENS ASSOCIATION

MLA
ARKANSAS KANSAS
MISSOURI NEBRASKA
OKLAHOMA

APPENDIX TO TESTIMONY ON SENATE BILL #595 - from Art Brown - Kansas Lumber Dealers

March 15, 1994

CASE LOAD REPORT FROM CLERKS OF THE DISTRICT COURT

County	Person Contacted	# 1993 Claims Small Claims	# Appeals Small Claims - 1993
Bourbon	Karen	105	Less than 5
Wyandotte	Dorothy	631	No idea
Johnson	Vi	1291	Between 35 and 50
Shawnee	Joyce	820	About 20
Leavenworth	DeAnna	303	Less than 10
Sedgwick	Mickey	1957	About 35
Finney	Did not get	246	Maybe 12

Of the 16,000 plus Small Claim cases heard in 1993, 5353 were heard in these 7 counties.

No clerk had a real accurate idea of the number of appeals heard, but it would appear about 2% is a number with some credence, but still hard to verify.

NONE OF THESE CLERKS HAD ANY REAL GOOD FEEL FOR THE AMOUNT OF ATTORNEY INVOLVEMENT FROM CORPORATIONS!! If this is such a concern, as the opponents of this bill profess, we would ask they present documentation to support this claim.

LUMBER GROWS ON TREES

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 595

March 15, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Judiciary Subcommittee

by

Bud Grant
Vice President and General Manager

Mr. Chairman and members of the Committee:

My name is Bud Grant and I am here today on behalf of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to express our organization's support for SB 595.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Mr. Chairman, as you and the other members of this committee know, Kansas laws are very restrictive when it comes to the issue of awarding attorney fees in court cases. In fact, you have a subcommittee now examining what changes might be made to bring Kansas more in line with current practices in other states.

This proposal is another effort moving in that same direction, i.e., what changes can the Legislature make in the area of the courts and its associated costs to retain the integrity of the

system and yet increase availability and reduce costs. In keeping with that effort, I urge this subcommittee to recommend the reinstatement of the language stricken by the Senate Committee on page 2, lines 40 through 43.

Small businesses with small accounts receivable are particularly vulnerable under the current statutes. Increasing the dollar limit is important, Mr. Chairman, but so is the need to increase the number of times the small claims procedures act can be accessed annually. The current limit of ten times is totally inadequate.

I urge the committee to recommend this long overdue bill to the full House. Thank you Mr. Chairman.

The Kansas Association of Financial Services
George Barbee, Executive Director
Jayhawk Tower, 700 SW Jackson, Suite 702
Topeka, KS 66603-3740
913/233-0555 Fax: 913/357-6629

Statement To:
House Judiciary Committee on
Senate Bill 595

Mr. Chairman and members of the committee my name is George Barbee and I am appearing today on behalf of the Kansas Association of Financial Services. KAFS is in support of Senate Bill 595.

The present small claims amount of $1,000 has been in the statutes for several years (eight I believe) and should be adjusted to be more consistent with 1994 dollars.

The bill does not amend 61-2704, but it should. That section limits any one person to use of the small claims court to 10 times in the same court in any one calendar year. We believe this restriction is unreasonable for some financial offices with large numbers of customers in metropolitan areas. We suggest you raise the number of the allowed uses. While any number is arbitrary, given the variety of businesses needing to use the small claim court process, we believe 30 per year to be a reasonable amount.

Thank you for the opportunity to appear today and I would be glad to respond to questions.

RE: SB595, to increase small claims limit to $2000

I am in favor of increasing small claims limit to $2000.

My name is David E. Marshall, Credit Manager for an agribusiness concern doing business as WHITE CLOUD GRAIN CO., INC., in Northeast Kansas, and even though we have locations in Morris, Shawnee, Douglas, Brown, and Doniphan counties we are a relatively small business that cannot afford to lose any portion of credit sales through nonpayment or outside collection fees.

Accounts with balances of $1000 or less are nearly non-existent in todays economy in our industry. These small accounts (**we consider anything $2000 or less a small account**) are in a range where collection fees assessed by an outside collector are not feasible. If the limit remains at $1000, businesses will at times write off the amount above $1000 and use the small claims process for the remaining $1000. The logic being, that if we had an account with a balance of $1700 or $1800 or even $2000, collection fees would be at least one half or one third of the total anyway.

Our neighboring States have recognized the need for higher limits and have set the following amounts.

Colorado----------$3500
Iowa----------$2000
Missouri----------$1500
Nebraska----------$1800
Oklahoma----------$2500

Please vote in favor of SB595 and help KANSAS business retain margins.

Thank you for your attention.

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SENATE BILL 595 (Small claim limit, $1000 to $2000)

1. Ken Heaton, General Manager - Jackson Farmers, Inc. Holton, Ks. (Jackson County)

2. We are an ag supply business serving member customers in Jackson, Atchison, and Jefferson counties. We employ 32 people. Our sales are mainly for livestock feed, seed, fertilizer, fuels, propane and grain. I consider anything up to $3000 a small account.

   We extend open credit to approved applicants for purchases of our products and services. Our terms are 30 days. We offer credit as a convenience for our customers. Many of our products and services are delivered when the customer is not home. (Example - Livestock feed, refined fuels, and custom applied ferfilizer.)

3. We use the small claims system to recover unpaid accounts for which we can not work out a payment program with the customer. I believe it is a convenient system a and simple to use.

4. We do not have an in-house attorney for the collection process and these tasks are usually handled by the manager or office manager.

5. I support increasing small claims from $1000 to $2000 for convenience, because many claims that use to qualify for small claims a few years ago will not qualify today for the same sales because of inflation.

   We are a small business in a rural community. We are a cooperative type of business which means we are owned by our customer members who are mostly farmers and part time farmers.

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Ed Jaskinia
President
(913) 299-8383

James Dunn
Vice President (Zone 1)
(913)843-5272

TALK

The Associated Landlords of Kansas

P.O. Box 2025 • Topeka, Kansas 66601
(913) 232-0507

Bill Nelson
Vice President (Zone 2)
(913)827-1865

Pat McBride
Vice President (Zone 3)
(316) 331-4379

The Associated Landlords of Kansas (TALK) was created in 1975 by a group of people from across Kansas to "Promote a strong voice in the legislature, a high standard of ethics, and provide educational opportunities for landlords." Some of our members helped create "The Landlord-Tenant Act of 1975, a model of fair law for both landlords and tenants. Our organization has several thousand members in 12 cities across the state, and new chapters are in the process of being formed.

In this 1994 legislative session, we are working in a number of different arenas, some of which we have listed below.

1) SRS Direct Pay to Landlords - In committee hearings last year on HB 2279, much testimony was given to support the concept of direct pay to landlords and utility companies. The most compelling testimony was from a grade school principal and a truant officer from Kansas City, Kansas. They testified that constant moving of people on welfare was a big problem for both the children and the schools. The education process for these children is being severely hampered by the inability of their parents to maintain a stable living environment.

While we understand the desire of people to maintain complete control over where their money is spent, we also see that in many, many cases there is an inability to make the right choices. Government understands this and issues food stamps as a remedy to help alleviate hunger. Government can make the same choice for housing.

2) Small Claims Court - Small claims court in Kansas is an excellent tool for both tenants and landlords to settle minor and not so minor differences. The law allows both parties to save money by allowing us to represent ourselves in cases of non-payment of rent, evictions, and failure of the landlord to perform. The law currently allows small claims court to be used 10 times a year, with a $1,000 limit per case.

We will be working toward increasing these limits to 20 appearances a year with a $1,500 per case limit. The effects of this change will be minimal on most people who use small claims, but for those who need it in a particular year, the difference in cost savings for both tenant & landlord could be dramatic.

3)Small Claims Court: Appeals - While the small claims court system is very "user friendly," the appeals process out of small claims to district court can be devastating. Currently the law says that the party that loses the appeals is ***required*** to pay the winning attorneys expense. We have no objection to the court having ***the right*** to order doing this, but we feel that ***to require*** the judge to order this is taking from the judge the ability to look at all pertinent information and allowing the court to decide what is best.

We will be working towards eliminating the mandatory language of this law and replacing it with language that allows the judge more freedom of decisions.

If we can be of help to you in these or any other areas concerning property, tenants, or landlords, please feel free to contact us.

Ed Jaskinia
President

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STATEMENT OF

KANSAS GRAIN AND FEED ASSOCIATION

AND

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION

TO HOUSE JUDICIARY SUBCOMMITTEE #2

REGARDING S.B. 595

MARCH 15, 1994

Mr. Chairman and members of the subcommittee, the following statement is submitted on behalf of the more than 1800 members of the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). The two associations have distinct memberships and association programs and activities, but share staff. KFCA's member firms provide production inputs and services to producers. KGFA member companies are involved in the transportation, warehousing and merchandising of grain, as well as feed manufacturing. The majority of our members are small businesses. We strongly support S.B. 595.

KFCA and KGFA support an increase in the small claims limit for several reasons. These include (1) retaining feasibility of small claims for our members given the current economy of scale in production agriculture; (2) ensuring small claims court as a viable option for debt collection; (3) leveling the playing field with neighboring states; and, (4) a small step to assist firms in a competitive market to collect debt owed.

As background, credit is an integral part of the grain, feed and input business. Agriculture by nature requires substantial outlays at planting while waiting until harvest for income. Also, open credit is extended to customers because they may not be home when products are delivered, i.e., feed, fuel and custom applied fertilizer.

KFCA and KGFA believe the proposed increase will keep the small claims court a viable option for our members. Since the limit was last increased, consolidation has

increased producer size and therefore the amount of product purchased, while feed, seed, fertilizer and agrichemical prices have increased. These costs, relative to the small claims limit make an increase a logical step. Just as the original limit of $500 in the mid-1970s is devalued given inflation and economy of scale, so has the $1000 limit established in the mid-1980s.

The Associations also feel the increase in the small claims limit will ensure the continued viability of small claims court for debt collection. When handling small accounts -- the industry standard is an account of approximately $3000 or less -- collection agencies and attorneys are not cost-effective options. Some have suggested that including attorney fees in civil settlements makes an increase in the small claims limit unnecessary. KFCA and KGFA believe this is not so. Our members have experience with other institutions, specifically lending institutions who have first right to money collected. There is no reason to believe that attorney fees would be any different; very little left over for accounts receivable. So, after firms have exhausted efforts to work out payment with the customer, small claims becomes the last resort. Small claims court is, as was originally intended, an avenue for wage earners and small businessmen alike to use the court system to collect wages or accounts which they were owed. By leaving the limit stagnant, the ability to use the system when necessary is eroded as well.

We also believe that an increase in the small claims limit is necessary to stay in line with the limits in surrounding states. For example, the limit in Iowa is $2000, Missouri $1500, Oklahoma $2500, Nebraska $1800 and Colorado $3500. Firms along the border compete not only with other Kansas firms but also with firms in surrounding states. Bringing the Kansas limit in line with other states balances out that slight advantage held by out-state firms who may sell in Kansas. The increase in the small claims limit will also assist in retaining the slim margins our members now have. While not a big ticket item, collecting debt is important to our businesses. Further, helping small business be more profitable will likely create jobs in that community.

Opponents to S.B. 595 have stated that corporations will use in-house attorneys to prepare cases and therefore put the defendant at a disadvantage. We would suggest that this is not the case in our industries. Very few grain, feed or input firms have in-house attorneys. Further, the opposition has yet to produce any evidence to support their case. Have they looked at who files small claims and how many of these firms have in-house counsel? They further contend the system will be overburdened if such an increase is granted. KFCA and KGFA believe the small claims system was designed to serve the needs of small business. Our members would be willing to pay somewhat higher filing fees if necessary. We wonder however, why the opponents are not worried about the burden being placed on the current civil law system.

KFCA and KGFA strongly support S.B. 595. It will help retain the feasibility of small claims court for our members given the current economy of scale in production agriculture, ensure small claims court as a viable option for debt collection, level the playing field with neighboring states and be a small step to assist firms in a competitive market to collect debt owed. If you have any questions, you can contact Jamie Clover Adams, Director of Legislative and Regulatory Affairs at 234-0461.

Senate Bill No. 595
House Judiciary Subcommittee
March 15, 1994

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Thank you Mr. Chairman and members of the committee for the opportunity to appear today to oppose Senate Bill No. 595, which amends the small claims procedure act.

This proposal increases the maximum amount claimed from $1,000 to $2,000, which causes concern to the Judicial Branch. Enactment of this bill will increase judicial business in the district courts to a marked degree.

Historically, increasing the limit has caused an increase in the number of small claims filed. For example, in 1979, when the limit was increased from $300 to $500, district courts experienced a 27% increase in filings statewide. Case filings went from 11,875 to 15,045.

In 1986, the limit was raised from $500 to $1,000 and a 17.7% increase in case filings followed. Case filings went from 15,096 to 17,773. In years when the amount remained unchanged, the number of cases filed fluctuated very little.

There is a possibility that increasing the small claims limit will reduce the number of cases filed as chapter 61, limited actions. This, however, has not been the case in the past. In the years immediately following both the 1979 and 1986 amendments to the small claims limit, the number of limited actions also increased quite substantially. Thus, it appears, the increase in the number of small claims filings is not strictly the result of chapter 60 and 61 actions being filed under the simplified procedures of the small claims act.

We anticipate enactment of SB595 would cause an increase in small claims filings between 17.7% and 27%. We believe the increase will actually be closer to 27% because:

1) SB595 does not propose an increase in docket fees for cases in excess of $500, which, in the past, has moderated the increase in filings; and

2) The proposed increase is greater in magnitude than increases in the past.

For FY 1993 16,055 small claims cases were filed. We estimate an additional 4,335 small claims will be filed as a result of this bill.

Small Claims cases often take more judicial and clerical time than other cases filed with the court, because many of the persons filing cases are not familiar with any of the court's forms or procedures. Because they are unfamiliar with the system causes more time in the hearing trying to explain the process; continuances are common due to the defendant not being prepared. An increase in this magnitude would require additional clerical and perhaps even judicial help in some districts.

Altering the jurisdictional limit likely will increase printing costs at the district court level because new forms will be required. Because of the nature of small claims suits, district courts assist small claims litigants by providing form petitions, answers and directions. Existing forms will have to be replaced. Making the change in mid-calendar year intensifies the effect. We estimate $7,500 will be needed to reprint and replace forms if SB595 is approved. This expense would be borne by county general funds.

Another concern of ours would be post-judgment remedies. The increase in cases will generate an increase in these remedies. Last year in Shawnee County, the court issued 16,466 garnishments (1,272 in Chapter 60 and Domestic and 15,194 in Chapter 61). This proposal will increase the post-judgment workload dramatically.

I might remind the committee that K.S.A. 61-2707 excludes representation by an attorney in small claims actions except on appeal. The higher claim the greater need for legal representation.

We urge the committee to consider our concerns with this bill.

STATEWIDE FILINGS
SMALL CLAIMS AND CHAPTER 61

	SMALL CLAIMS	CHAPTER 61
FY 78	10,670	29,345
FY 79	11,875	33,956
FY 80	15,045	40,345
FY 81	14,707	41,129
FY 82	15,090	41,602
FY 83	14,043	41,923
FY 84	14,229	43,661
FY 85	14,429	47,319
FY 86	15,096	53,396
FY 87	17,773	54,526
FY 88	18,202	57,070
FY 89	18,111	62,051
FY 90	18,718	68,525
FY 91	18,569	77,480
FY 92	17,540	84,514
FY 93	16,055	80,404

ADMINISTRATIVE OFFICES OF THE DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
ROOM 1110, 11TH FLOOR
525 N. MAIN
WICHITA, KANSAS 67203

Michael Corrigan
Administrative
Judge

(316) 383-7302

March 14, 1994

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: JUDGE MICHAEL CORRIGAN
ADMINISTRATIVE JUDGE
18TH JUDICIAL DISTRICT
WICHITA, KANSAS

SUBJECT: **SENATE BILL 595**

In 1990 the state's economic situation caused a cutback of funding to the state's judicial system. As a result, the Sedgwick County District Court had 21 clerical positions frozen and unfilled in 1991. Since then we have been allowed to fill all but 4 1/2 of those clerical positions. Those 4 1/2 positions are permanently lost.

At this time we continue to wait 60 days or more to fill a vacant position.

The combination of this history along with an increased workload has meant a very difficult four years for our state court system in Wichita. In order to stay afloat I have been forced to close to the public all five of our clerical offices one hour early every work day. This is to give our clerks one uninterrupted hour to work the mountain of documents filed with our court every day. We have also cut back the hours of phone service to our clerical offices. This affects thousands of calls every year.

In normal times I would highly favor legislation raising the maximum amount in small claims cases from $1,000 to $2,000. However, these are times of great austerity for the state trial court system in Wichita.

If passed, Senate Bill 595 would substantially and negatively impact Sedgwick County District Court.

During the calendar year 1993, our Small Claims Department

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heard 1,957 cases. These cases are heard in our "Old Historical Courthouse" on Tuesdays, Wednesdays and Thursdays in a physical area reserved for other purposes on Mondays and Fridays.

Under authority provided by KSA 20-310(d) small claims cases are heard in this court by specially appointed pro-tem judges who are paid by Sedgwick County. These part-time judges are lawyers engaged in the practice of law.

No one knows the full caseload impact that would result from passage of Senate Bill 595, but I believe that it would produce a minimum of 1,000 additional cases filed per year.

The following are some of the results that would come from the passage of Senate Bill 595:

1) These cases are clerical nightmares. They are extremely labor intensive. Many of the litigants are unfamiliar with litigation and require much clerical help with petitions, answers, judgments, garnishments, executions, contempts and hearings-in-aid of execution. Due to a shortage of clerks we are already unable to handle many required clerican functions. Passage of this bill would seriously worsen the problem.

2) There are no space facilities for hearing additional small claims cases. Space is a hotly contested matter in our courtroom complex.

3) Increased county funding would be required for pro-tem judges to handle the additional cases. We would have a difficult time obtaining the funding in this bleak economic environment.

4) The Sedgwick County Sheriff's office is overwhelmed in it's efforts to serve process in Sedgwick County. Many attorneys resort to the use of private process servers. A substantial increase in small claims cases would further tax a service of process system that is not now working.

It is distasteful to oppose a bill that would allow greater access to our court system. However, it would be a disservice to our citizens to promise them something we cannot deliver.

If you desire further information I am completely at your disposal.

MC/jb

KANSAS BAR ASSOCIATION

Legislative Information for the Kansas Legislature

TO: *House Judiciary Committee*

FROM: *Ron Smith, KBA General Counsel*

SUBJ: *SB 595, Small Claims Court*

March 15, 1994

SUMMARY

The Kansas Bar Association opposes further expansion of small claims jurisdiction.

Small claims court originally was intended to allow *individuals* to resolve disputes with a minimum of time and cost. Expansion of jurisdictional amounts only encourages the business community to use small claims court, a usage of that court not originally intended.

Background.

The small claims statute provides "persons" who may appear in small claims courts not only include individuals but also full time employees of corporations or other entities.

When nonlawyers represent others in courts, that is the unauthorized practice of law. The fact this UPL is authorized by statute is irrelevant. In *State ex rel Stephan v. Williams,* the Court has held that only lawyers may represent corporations in courts of record in a representative capacity. *Williams* is but the latest in a long line of cases with that holding, some of which go back to 1824, 1870 in Kansas.

Further, some Kansas corporations have abused the jurisdiction limits. I can get on the Information Network of Kansas and within ten minutes find at least one corporation in Wichita which has filed more than ten cases per year for each of the last five years.

The limit is ten per year.

The fact is businesses use small claims as a collection court. Since businesses collect other claims in Chapter 61, there are only two reasons to appear in small claims court: either (1) the corporations can appear without lawyers (and engage in UPL practices) or (2) they want to keep defendants from hiring lawyers (which is not good public policy).

Small claims was not intended as a collection court.

History

The need for a less expensive

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

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forum to resolve small civil disputes was a principle reason the 1973 Kansas legislature created a small claims court.

Under Article III, Section 1 of the state constitution, there is no power that allows the legislature to decide when courts can require attorneys to appear before them. We are not saying that you should allow attorneys in small claims court, although 43 other states allow such. By denying all parties the use of an attorney, it was intended the Small Claims Court litigants would be on more or less equal footing.

However, the definition of "full time employee" allows some attorneys to appear for plaintiffs but not defendants.

- attorneys can collect overdue bills for their law firms, while denying defendants the ability to use an attorney;
- corporate general counsel or trust officers who are attorneys can appear on behalf of the corporation.

A 1972 interim studies report suggests:

"In many states, *assignees and collection agencies are barred as plaintiffs in small claims cases in an attempt to prevent the court from becoming an agency to assist in the collection of accounts at public expense.* **Generally speaking, these businesses can afford to collect their accounts by other means.** While the committee strongly believes that a small claims procedure should be available to merchants as well as consumers, *it is also of the opinion that such procedure should be provided primarily to benefit the individual who is without other means of collecting a claim."*

The legislature may indeed have wanted the small claims court available for unincorporated businesses and sole proprietorships.

But when lay defendants face a corporate plaintiff represented, in some instances, by the corporation's in-house general counsel, the footing is hardly equal.

It cannot be said with a straight face that banks, utility companies, major universities and other major corporations need small claims court -- especially when for purposes of court costs, the cost of filing a $2,000 case in small claims court or in Chapter 61 is the same.

Most business collections are not "disputed." Default judgments are the norm, both in small claims court and under Chapter 61 Limited Actions.

Practice of Law

Since the 1870s, our courts have held corporations cannot appear in our courts without an attorney. If this rule is to be changed it must come from the Court, not the legislature. The Court could using its administrative powers, if it so desired, create within its current district court a small claims structure. The Small claims *statute* itself was unnecessary.

Unauthorized Law Practice?

The rules controlling the unauthorized practice of law are not to protect attorney livelihoods. Rather they assure members of the public

are not damaged by inept, inadequate or unethical representation.

While states constitutionally preserve the right of access to courts for dispute resolution, *lay persons have no constitutional right to represent others.* Thus, corporations have no right to expect to be represented by a layperson.

Further, disallowing lay representation of corporations preserves the corporation as a separate entity from its stockholders. As one court has put it, *"When a business accepts the benefits of incorporation, it must also accept the burdens, including the need to hire counsel to sue or defend in court."*

Kansas has a long history of prohibiting corporations from appearing in court without attorneys, and follows the majority rule. *State ex rel Stephan v. Williams* cites several instances that constitute unauthorized law practice by laypersons representing incorporated or unincorporated businesses, and concludes that "centuries of historical precedent" establish that a corporation must be represented by an attorney.

Practical Reasons

We suggest that corporations and other legal entities not be allowed to appear in small claims court. Chapter 61 is available to them. The costs and procedures between Chapter 61's informal way of doing things and the small claims court's informal way of doing things is virtually identical.

There are practical reasons to keep corporations out of small claims court.

- A large corporation with a lot of collection cases could hire a disbarred lawyer as a full time employee and let that employee use his or her former legal knowledge to appear in small claim courts. That is contrary to public policy. So long as corporations never appeal a small claims case to the appellate courts, the doctrine of Judicial Restraint deprives the Supreme Court the opportunity to rule on this UPL issue.
- If courts allow corporations to appear in small claims court with lay representation, can other persons seek lay representation in that court? What about Chapter 61 (limited actions Court) where the amount in controversy is less than $1,000? Would not such litigants, denied such representation, have an equal protection complaint? Assuming you had the power to authorize laypersons to represent others, what rational basis is there for the legislature to allow corporations a privilege of lay representation in small claims court and not other litigants?
- Under the small claims act, what keeps a businessman with a small corporation from filing ten claims in his own name, ten in the name of the corporation, ten more in his wife's name, then appear on all 30 claims? The law allows plaintiffs only ten such filings per year. Some district court clerks report this type of "abuse."
- With the current $1,000 limit, some lawyers collect their fees from their former clients through the small claims court. This means one party has an attorney, and the

other party is precluded from using an attorney. If you increase the jurisdiction amount, you'll see more such imbalance.

Recommendation

What should be done is to redefine "person" to exclude corporations or partnerships. That would return small claims courts to its original purpose, *disputes between individuals.*

Will denying use of small claims court to businesses, counties and municipalities work a material fiscal hardship on the collection of municipal or corporation debts?

We think not. *The trend in this legislature is to allow the business community attorney fees and cost shifts onto debtors so businesses can be reimbursed for their cost of hiring attorneys in small collection actions.*

In years past you have allowed businesses their attorney fees and costs in shoplifting cases, in bad check cases, and other areas. You are considering SB 564, an attorneys fee bill regarding mortgage and debt collection matters.

If Barkley Clark's legislation is enacted, there is no reason for ANY bank or financial institution to appear in small claims court. Depending on what you do with all other creditors, there is no reason for corporations to appear in small claims court.

Further, the prohibition against attorney fees collected as part of open account debtor claims may already allow contracts for legal services. Mr. Clark indicated in his discussion of SB 564 that open accounts between merchants and buyers are not credit transactions within the meaning of the UCCC and, so long as subsequent merchant activities do not turn the open account into a credit transaction, attorneys fees can be collected by contract NOW.

These cases can be brought in Chapter 61 district court.

If the sole reason for avoiding Chapter 61 is for businesses to avoid the possibility of the defendant hiring an attorney, that is contrary to public policy.

In my experience collecting all sorts of bills in Chapter 61, if the defendant doesn't have money to pay a merchant's just debt he doesn't have money to hire an attorney.

Tax Subsidy

A final reason corporations should not be allowed to use small claims court is that along with attorney fee shifts, they are given state income tax subsidies for the cost of litigation. The assumption is *that they will hire lawyers and litigate in court.* Legal costs are deductible. This income tax subsidy is not available to individuals who litigate.

If you are going to allow corporations to continue to litigate in small claims court, you are subsidizing them twice.

Corporations have tended to view the small claims court as a collection court, and a few have abused the privilege . Better alternatives exist than expanding the jurisdiction of small claims court.

We oppose SB 595.

REMARKS CONCERNING SENATE BILL 595
HOUSE JUDICIARY #2
MARCH 15, 1994

Thank you for the opportunity to appear in opposition to Senate Bill 595, as amended by Senate Committee, on behalf of the Kansas Collectors Association, Inc., and the Kansas Collection Attorneys. These groups ask you to proceed very cautiously with increasing the jurisdictional amount for small claims. We would especially caution you concerning a combination of raising the jurisdictional amount and increasing the number of claims that may be filed by any one person in any one year, as was suggested in the Senate.

When you consider the public policy questions involved in increasing jurisdictional amounts, you must consider both the plaintiff and the defendant in such an action. Remember that in small claims procedures, neither the plaintiff nor the defendant have the opportunity to be represented by an attorney. Would you like to be named defendant in a lawsuit asking for a judgment against you of $1,999.00 by someone who had not received any counselling or legal advice as to the lawfulness of such a claim against you?

Another concern we have is that by doubling the jurisdictional amount, and especially if the number of claims allowed were increased, there would be some companies who would have law-trained salaried employees who would be filing these claims for those companies in small claims court, so the plaintiff in those cases would have an advantage over defendants, who were denied access to an attorney to held them defend against the claims brought by the plaintiff.

We also agree with the Kansas Bar Association that it is the illegal practice of law for corporations to appear in court by persons who are not lawyers.

We oppose the enactment of SB 595.

Elwaine F. Pomeroy for
Kansas Collectors Association, Inc., and
Kansas Collection
Attorney

House Judiciary
Attachment 41
3-17-94

State of Kansas
Senate Chamber

BILL BRADY
SENATOR, FOURTEENTH DISTRICT
LABETTE & NEOSHO COUNTIES AND
PARTS OF CHEROKEE AND MONTGOMERY COUNTIES
319 CRESTVIEW
PARSONS, KANSAS 67357-3513
(316) 421-6281

COMMITTEES:
ELECTIONS
CONGRESSIONAL & LEGISLATIVE APPORTIONMENT & GOVERNMENTAL STANDARDS
JOINT COMMITTEE ON COMPUTERS & TELECOMMUNICATIONS
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
JUDICIARY
TRANSPORTATION & UTILITIES
WAYS AND MEANS

STATE CAPITOL
TOPEKA, KANSAS 66612-1504
913-296-7389

TO: SENATE JUDICIARY
FROM: BILL BRADY
RE: SB 691
DATE: 3-25-94

SB 691 WOULD CHANGE THE VENUE STATUTE WHICH GOVERNS SMALL CLAIMS CASES. CURRENT LAW DOES NOT ALLOW A PLAINTIFF TO BRING A CASE IN SMALL CLAIMS COURT UNLESS THE PARTY CAN BE SERVED WITHIN THE COUNTY IN WHICH THE ACTION OCCURRED. MANY LANDLORDS CANNOT USE SMALL CLAIMS COURT BECAUSE THE TENANT HAS MOVED OUT OF THE COUNTY BEFORE A CASE CAN BE FILED. THIS BILL WOULD ALLOW A CASE TO BE FILED IN SMALL CLAIMS COURT IF THE DEFENDANT WAS A RESIDENCE AT THE TIME OF THE ACTION.

THANK YOU FOR REVIEWING THIS LEGISLATION.

BILL BRADY,
STATE SENATOR
FOURTEENTH DISTRICT

House Judiciary
Attachment 42
3-17-94

800 WESTPORT ROAD • KANSAS CITY, MISSOURI 64111-3198
816/931-2102 FAX 816/931-4617
MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY FOR THE HOUSE JUDICIARY SUB-COMMITTEE

Senate Bill #691 March 15, 1994 Room 313-S

Mr. Chairman, members of the Sub-Committee, my name is Art Brown and it is my pleasure to testify before you today as a proponent of Senate Bill #691.

This will be extremely brief, because the nature of this bill simply makes good sense. Changing the venue for occurrence for a defendant in a small claims action from their place of residence at the time the action is filed to where the defendant was residing at the time the occurrence took place is a real plus for so many of our "Mom and Pop" business which do not always have the resources or the time, due to limited staffing at their place of business, to pursue this matter to other areas outside their county.

We encourage passage of this bill and hope that the Sub-Committee recommends to the full House Judiciary Committee that this bill should be passed favorably. I will stand for any questions or address any comments that you may have. Thank you.

3-14-94
SB 5
Randy Hendrix

HOUSE JUDICIARY SUB-COMMITTEE #2
S.B. 465, HEARING MARCH 14th, 1994
3:30 p.m. ROOM # 254

DEAR COMMITTEE MEMBERS:

KSA 59-2217 WAS REPEALED IN 1985 AFTER HAVING EXISTED AS A PART OF THE PROBATE CODE SINCE 1939.

THE EXACT REASON FOR REPEALER IS UNKNOWN, AT LEAST BASED ON THE LIMITED INQUIRY I HAVE BEEN ABLE TO CONDUCT.

IT IS POSSIBLE REPEALER OCCURRED WITH THE IMPRESSION THAT KSA 20-1204a ENACTED IN 1978 WAS AN ADEQUATE REMEDY IN ALL DISTRICT COURT SETTINGS. I DO NOT CONCUR.

FOR DISTRICT COURTS HANDLING PROBATE MATTERS A PERSONAL REPRESENTATIVE IS APPOINTED TO ACCOMPLISH THE TASKS OF ADMINISTRATION IN ACCORD WITH STATUTORY PROCEDURE. WHERE THE PERSONAL REPRESENTATIVE REFUSES OR NEGLECTS TO COMPLY WITH THE ORDERS OF THE COURT THIS PROCESS MUST BE AVAILABLE TO THE DISTRICT COURT.

IT IS NOT ALWAYS POSSIBLE TO PROCEED ON MOTION NOR DO THE COURTS HAVE ACCESS TO A PUBLIC ADMINISTRATOR TO STEP IN AND RESOLVE THE PROBLEM AS AN IMMEDIATE SUCCESSOR.

MARCH 14th, 1994

SAM K. BRUNER

Sam K. Bruner

House Judiciary
Attachment 44
3-17-94

JAMIE CORKHILL

Department of Social and Rehabilitation Services
Child Support Enforcement Program

Before the House Judiciary Committee
Civil Law Subcommittee
March 14, 1994

Senate Bill 804
Related to contracts for CSE services

==========

The SRS Mission Statement

The Kansas Department of Social and Rehabilitation Services empowers individuals and families to achieve and sustain independence and to participate in the rights, responsibilities, and benefits of full citizenship by creating conditions and opportunities for change; by advocating for human dignity and worth; and by providing care, safety, and support in collaboration with others.

==========

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on behalf of Secretary Whiteman today concerning SB 804. The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS supports this measure.

Although there has been no challenge to SRS' authority to contract with public and private entities, a specific provision such as SB 804 would emphasize that child support is not exclusively the concern of government. In the CSE Program, for example, contracts have been established with a private collection agency and with special process servers in Wichita and Kansas City. These contracts supplement the efforts of agency staff and of our public sector contractors, the district court trustees and four county and district attorneys.

There is one area in which specific authorization to contract would be of great benefit, namely obtaining a feasibility study for a statewide order registry and center for processing support payments. Experiences in other states suggest that an order registry and payment center can be extremely beneficial for employers, families, enforcement agencies, and the courts by allowing efficient processing of payments. But a critical first step is conducting an in-depth, reliable feasibility study not confined to one branch of government. To assure that the Secretary would have authority to seek such a broad feasibility study, we recommend Senate Bill 804 be amended as suggested in Attachment A.

We believe that contract services play an important role in the IV-D Program, so long as appropriate safeguards are established for compliance with federal requirements and accountability. To the extent that appropriate funding is available, we will continue to seek contracts which can benefit both state government and the children we serve.

Jamie L. Corkhill
Child Support Enforcement
296-3237

House Judiciary
Attachment 45
3-17-94

As Amended by Senate Committee

Session of 1994

SENATE BILL No. 804

By Joint Committee on Children and Families

2-16

AN ACT authorizing the secretary of social and rehabilitation services to enter into certain contracts for support enforcement services.

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

Section 1. The secretary of social and rehabilitation services may enter into contracts with one or more public or private entities for the performance of any or all support enforcement services that the secretary is required to provide under part D of title IV of the federal social security act (42 U.S.C. 651 *et seq.*)/ *Such contracts shall be based on competitive bids in accordance with the statutes governing state agency contracts.*

Sec. 2. This act shall take effect and be in force from and after its publication in the ~~statute book~~ *Kansas register*.

, including but not limited to a contract to conduct a feasibility study for a consolidated order registry for processing support payments.

45-2

ED Bruske

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 804

March 14, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Judiciary Subcommittee #2

by

Edward G. Bruske
President

Mr. Chairman and members of the Committee:

We would like to take this opportunity to voice our support for SB 804. In 1991 KCCI made a commitment to become more involved in children and family issues. We participated as a full partner in developing the Blueprint for Children and Families, and since the conception of the blueprint, we have made every effort to participate in those programs called out in the blueprint for more participation by the business community. I have attached a partial list of some of those activities that we have participated in.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

It has been quite an education for KCCI. We have had many more requests for assistance than we have been able to commit ourselves. In fact, we find it impossible to say "no" to any individual or agency asking us for assistance as it relates to children. The problem is a big one as most of you know. When you make a commitment to become involved with children's issues, you are partially replacing the commitment of a parent. That's why Senate Bill 804 gained our support. Our three years of experience on this subject has shown that most of the kids we're trying to assist come from single parent families, and, in most cases, it is a single mother trying to support two or three children not only financially but also minus the usual advice and support of a father at home. It's one thing for a father not to be at home helping with advice and love, but it's another thing when the father abandons his financial obligations.

Senate Bill 804 is patterned after a very successful technique now used in the state of Tennessee. It utilizes private firms to search and locate parents who are delinquent on child support payments. It is a completely voluntary program that can be utilized by the parent seeking support. It does not subtract any funds now being made available to the children, and, in fact, could produce additional funds owed to children. It also helps reimburse the taxpayers of the state.

It's our understanding that the state is now utilizing a limited practice of this kind. However, Senate Bill 804 would allow the state to broaden its contracts for privatization of this activity.

In closing, we think Senate Bill 804 offers the single parent the support they need to level the playing field for their children. And, at the same time, it should decrease the number of children dependent upon the taxpayers for their monetary support.

Kansas Chamber of Commerce and Industry
Initiative for Children and Families Blueprint Activities

- February, 1993 - Presented the first Caring Corporation Award to Security Benefit Group of Companies, Topeka (large business) and State Radiator Inc., Lawrence (small business). The award is sponsored by Cessna Aircraft and Sprint/United Telephone, and presented during the annual CAUCUS.

- Healthy Babies/Healthy Business Seminar - April, 1993, Wichita, — Educational seminar to encourage and inform business community about family oriented policies and programs that are beneficial to employee and employers.

- Operation Immunization - KDHE campaign to immunize children 0-2 and 0-5 in Kansas. KCCI served on promotion committee and provided publicity for campaign.

- Publish articles submitted by The Corporation for Change on children and families in Strictly Business, the KCCI monthly newsletter.

- Governors Conference for the Prevention of Child Abuse - served as a sponsor and planning committee member.

- Kansas Children's Service League - staff member serves as Board Member.

- Kansas Family Initiative - sponsor and committee member

- Sent out childcare materials for SRS JOBS program

- Developed "Take One" mentor program with KCSL, which encourages a business to "adopt" a child in need, and bring them to the business to give a positive role model to the child from a business setting.

- Sent out second KCCI children and family Caring Corporation survey to membership - November 1993. Copies of the survey provided to all legislators to distribute in their districts.

- February, 1994, Presented second Caring Corporation Award to Southwestern Bell Telephone, Topeka (large business) and Plastic Packaging Corporation (small business).

TENNESSEE PRIVATIZES LOCAL CHILD SUPPORT OFFICE

In March 1991, Tennessee's child support program was faced with the prospect of losing a long term participant in child support enforcement. The District Attorney General who had contracted with the IV-D agency for 13 years to provide child support services in the four county area of the 10th judicial district was concerned that resources available to his agency were insufficient to perform effectively. Although his program was one of the more effective in the state, he knew that his staff of 9 could not meet the new performance standards with a caseload of 8,700.

Without the District Attorney providing these services, the State's only options within the public sector were to assume operation of the program within the Department of Human Services, which administers the program statewide, or to seek contracts with the four individual county governments. The latter choice would have replaced one contract for four, not a desirable alternative and the first option would place the Department in the same position as the District Attorney, that is, not having enough resources to do the job since the Department's funding comes from the same source.

After review of options, Bob Grunow, Commissioner of the Department of Human Services, asked the IV-D Director, Joyce McClaran, to take a radical step in child support enforcement -- to issue a Request for Proposal (RFP) to the private community to see what interest there was in privatizing this government service and if it could be done at a cost the State could afford. With the current contract with the District Attorney expiring effective 6/30/91 and this decision being made in mid-March, 1991, there was little time to ponder over the pros and cons or to dwell on the fact that, if successful, this would be an innovative, first ever experiment in privatizing a child support program.

Prior to writing the RFP, two basic issues had to be considered and decisions made. First, we had to determine how we wanted to reimburse for this project, i.e. a specified dollar amount per annum, a dollar amount for each instance and type of service provided, a percentage of collections with no cap, etc. Opting for simplicity and with the awareness that both AFDC and non-AFDC cases must be treated equally, we elected to ask bidders to couch their cost bid as a percentage of total collections which would be fixed for the entire contract term. As the bottom line expectation of the child support program is to collect support, we felt that this would encourage the successful bidder to work every case to the full end result -- collection. Since adherence to all federal and state laws, regulations and policies

would be a part of the contract terms, any tendency to only work the "easy cases" for the quick return could result in contract termination for non-performance.

The second issue to be determined was the length of the contract term. Traditionally Tennessee had contracted with local governments and District Attorneys for one year at a time. Recognizing that bids would be extremely high for a one year contract with the bidders attempting to recoup all their start-up costs plus make a profit in one year and recognizing that one year would not be long enough for the State to assess the long term benefits of this type service delivery, approval was sought and granted by the Department of Finance and Administration and the Comptroller of the Treasury, both of whom must approve all state contracts, to contract for a five year period of time.

With these decisions made, an RFP was written, approved by the Department of Finance and Administration and the Comptroller of the Treasury, and released to the vendor community on 4/1/91 (Could this be an April Fool's joke?)

Nine potential bidders came to the 4/12/91 bidder's conference and four bids were received by the closing date, 5/8/91. On 5/23/91 the contract was awarded to Policy Studies, Inc., of Denver, Colorado at a cost of 13 and 1/2 percent of total collections.

For Policy Studies, Inc. (who registered with the Tennessee Secretary of State as Child Support Services of Tennessee) the fun was only just beginning. With a commitment to offer employment to the existing 9 staff members of the District Attorney's office, they soon learned that 2 were scheduled to be out for major surgery during the month of July (first month of operations) and another decided to remain with the staff of the District Attorney. Office space had to be found and leased for three sites, furniture purchased, telephones installed, positions advertised and interviews conducted for the two new positions to be added and the unexpected vacancy. The State had to inventory and transfer the case files, reclaim and move all furniture and equipment which was paid for by IV-D funds and advertise the new office locations. Without the cooperation of the District Attorney General, the four local DHS county directors, the sheriffs' offices (who moved boxes of files utilizing inmate labor) and numerous others the transition could not have been accomplished within the short time frame. Remarkably, the offices were open for business on the first working day of July, 1991 as Child Support Services of Tennessee.

Progress to date has been beyond expectations. In the first seven months of operation, total collections were up by 37% (AFDC up by 41% and Non-AFDC up by 36%) over the same time period of

the prior year. The offices are automated for the first time. There is an obvious awareness that the State is the client and working relationships with the State IV-D agency are excellent.

Tennessee's faith in this alternative to service delivery is evidenced by the recent award of another privatization contract for child support services in the two county 29th judicial district effective 2/1/92. Policy Studies, Inc. was once again the successful bidder.

With declining state resources and increasing demands on state agencies to provide more comprehensive child support services to a larger population, privatization offers an extremely effective and attractive alternative method of service delivery.

Submitted By: Joyce D. McClaran
Tennessee IV-D Director

2/2/92