

Approved: 2/9/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:00 a.m. on February 4, 1994 in Room 514-S of the Capitol.

All members were present except: Senator Rock (excused)
Senator Feleciano (excused)

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Elwaine Pomeroy, Kansas Collection Attorneys
Sheriff Dave Meneley, Shawnee County
Mark A. Andersen, Barber, Emerson, Springer, Zinn & Murray, L.C. of Lawrence
James R. Cobler, Director of Division of Accounts and Reports, Department of Administration
Edward R. Miller, Vice-President of Human Resources, Learjet, Wichita
Art Brown, Kansas Lumbermens Association
Terry Leatherman, Kansas Chamber of Commerce and Industry
Ron Smith, Kansas Bar Association
John Wine, Jr., General Counsel, Secretary of State
Jennifer Chaulk Wentz, Legal Counsel, Secretary of State
Ben Langel, Faulston-Seifkin
Ed Field, Lindburg & Vogel

Others attending: See attached list

SB 477--civil procedure-form

Mark Andersen, Barber, Emerson, Springer, Zinn & Murray, L.C. of Lawrence testified in favor of SB 477 and provided written testimony (Attachment No. 1). He recommended for the sake of consistency that Form No. 16 in K.S.A. 61-2605 be amended to require a judge's signature.

A motion was made by Senator Bond, seconded by Senator Emert to report the bill favorably and place it on the consent calendar. The motion carried.

SB 580--annual reports

John Wine, Jr., General Counsel, Secretary of State testified in favor of SB 580 and provided written testimony (Attachment No. 2). He said the basic affect of this bill would be to increase consistency in the business reporting requirements.

Chairman Moran closed hearings on SB 580.

SB 581--annual reports

Ed Field, Lindburg & Vogel testified in favor of SB 581 and provided written testimony (Attachment No. 3). He said this bill would bring within conformity the filing date of the annual reports of the Secretary of State's office with the Federal Tax Laws that apply to cooperatives.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 4, 1994.

Jennifer Chaulk Wentz, Legal Council, Secretary of State testified in support of SB 581 and provided written testimony (Attachment No. 4). She said this bill is a corporate "clean-up" bill addressing provision on domestic cooperatives organized under the cooperative marketing act; the general corporation code; and the limited liability company act.

Chairman Moran closed hearings on SB 581.

SB 582--limited liability partnerships

Ben Langel, Faulston-Seifkin, Wichita testified in support of SB 582. He said the purpose of this statute is to permit partnerships to have the same protection available within the statutes without incurring the paper work, income tax, accounting and cultural disadvantages of those organizations. He provided proposed language changes on page three, lines 22, 23, and 24, and page four, lines 25, 26, and 33 (Attachment No. 5).

John Wine, Jr. General Counsel, Secretary of State testified in support of SB 582 and provided written testimony. Mr. Wine provided suggested amendments to SB 582 (Attachment No. 6). He said in New Section 1, line 35, the words "doing business" were confusing and suggested they be changed to "having an office". He said on page 4, lines 2 and 3 there is a reference to statute numbers that do not yet exist. Mr. Wine said there were 6 states who had adopted limited liability partnership.

Chairman Moran assigned SB 580, SB 581, and SB 582 to Civil Law Sub-Committee, chaired by Senator Harris to consider and look at amendments and report back to the Senate Judiciary Committee.

SB 358--garnishment by mail

Elwaine Pomeroy, Kansas Collection Attorneys testified in favor of SB 358 and provided written testimony (Attachment No. 7). He introduced Walt Scott, attorney and Sheriff Meneley of Shawnee County who were available to answer questions.

Sheriff Dave Meneley, Shawnee County testified in favor of SB 358 and provided written testimony (Attachment No. 8).

Chairman Moran closed hearings on SB 358 and referred it to Civil Law Sub-Committee, chaired by Senator Harris to consider and report back to the Senate Judiciary Committee.

SB 530--civil procedure-garnishment

James R. Cobler, Division of Accounts and Reports, Department of Administration testified in favor of SB 530 and provided written testimony (Attachment No. 9).

Edward R. Miller, Vice President Human Resources, Learjet, Inc. testified in support of SB 530 and provided written testimony (Attachment No. 10).

Ron Smith, Kansas Bar Association provided written testimony in opposition of SB 530 (Attachment No. 11).

Elwaine Pomeroy, Kansas Collection Attorneys provided written testimony in favor of SB 530 with suggested amendments (Attachment No. 12).

Terry Leatherman, Kansas Chamber of Commerce and Industry provided written testimony in favor of SB 530 (Attachment No. 13).

Art Brown, Kansas Lumbermens Association provided written testimony in favor of SB 530 (Attachment No. 14).

Chairman Moran referred SB 530 to Civil Law Sub-Committee, chaired by Senator Harris to consider and report back to the Senate Judiciary Committee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m.
on February 4, 1994.

A motion was made by Senator Bond, seconded by Senator Vancrum to introduce a bill limited to Shawnee, Sedgwick, Johnson, and Wyandotte Counties regarding court cost of \$1 per case for county and municipal ordinance violations, optional with the city and county, for the purpose of funding domestic violent center. The motion carried.

A motion was made by Senator Ranson, seconded by Senator Bond to approve the minutes of January 20, 21, 25, 26 and 27. The motion carried.

A motion was made by Senator Emert, seconded by Senator Ranson to introduce a bill in regard to any crime committed with a gun, there be no presumption of probation. The motion carried.

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 8, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/4/94

NAME (Please Print)	ADDRESS	COMPANY/ORGANIZATION
J. P. SMALL	TOPEKA	LEARJET, INC
ED MILLER	WICHITA	LEARJET, INC
RON SMITH	TOPEKA	KBA
PATRICA HENSHALL	TOPEKA	OJA
Diane Gruver	Topeka	Ks Co-op Council
Benjamin C. Langl	Wichita	KBA
Kelly Johnson	Topeka	
Dave Henkele	Topeka	Shawnee Cty Sheriff
Walt Scott	"	Asen Credit Bureau
Tom Stratton	"	
Tammy Bothwell	"	JOS
Mark P. Amburn	Lawrence	Attorney
ART Brown	Topeka	KS KRA Dealers
T.C. Jensen	Topeka	KSCPA
Kathy Taylor	"	KBA
Terry Leatherman	"	KCCT
Janice Mayhew	Topeka	Dept Admin. A&R
Bob North	Topeka	Dept. Adm - Legal
Jenny Maxwell West	"	Sec. of State
Donna McDaniel	"	Sen. Burke's office
John Vire	"	Sec. of St.
James R. Coble	"	Dept of Adm. A+R

#1

MEMORANDUM OF TESTIMONY
on
SENATE BILL 477

From: Calvin J. Karlin
Mark A. Andersen

BARBER, EMERSON, SPRINGER,
ZINN & MURRAY, L.C.
1211 Massachusetts Street
P.O. Box 667
Lawrence, Kansas 66044-0667

Senate Bill 477 was introduced by Senator Praeger at our request. Senate Bill 477 is necessary to correct a statutory inconsistency in the eviction statutes.

K.S.A. 61-2310 (copy attached) requires a "judge" to issue a writ of execution "in the form prescribed in the appendix to this act."

Form No. 16 at K.S.A. 61-2605 (copy attached) is a Writ of Restitution and Execution that indicates that the "Clerk" is to sign it.

We are aware of Judges who will not sign the Writ of Execution because Form No. 16 shows that it is to be signed by the Clerk. This raises serious due process questions where the Court Clerks and the Sheriff's office are proceeding in accordance with Form No. 16, but are not in compliance with the specific statute that requires a Judge's signature.

Certainly K.S.A. 61-2310 and Form No. 16 in K.S.A. 61-2605 should be made consistent. Perhaps K.S.A. 61-2310 could be amended to provide for a Clerk to issue the Writ, but it is our opinion that eviction of someone from premises that they occupy is a serious matter and a Judge's signature should be required. It is therefore our recommendation for the sake of consistency that Form No. 16 in K.S.A. 61-2605 be amended to require a Judge's signature. This is what Senate Bill No. 477 will accomplish.

There is a danger so long as this goes uncorrected that someone removed from their premises could claim unlawful state action and unlawful actions by the Clerk and the Sheriff in proceeding in violation of the direct mandate of K.S.A. 61-2310. This would be unfortunate for all parties concerned and can be easily avoided by passage of the simple amendment contained in Senate Bill No. 477.

Thank you for your consideration of this matter.

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attached 1-1

when. Actions under this article shall be tried within eight (8) days after the appearance or answer date stated in the summons, unless the defendant applying for a continuance shall give an undertaking to the adverse party, with good and sufficient security to be approved by the court, conditioned for the payment of all damages and rent that may accrue, if judgment be rendered against the defendant: *Provided*, That in an action for ejectment of a tenant for the nonpayment of rent, no continuance shall be granted on account of the absence of evidence, unless the defendant shall file an affidavit showing the nature of the absent evidence, and if an absent witness, the name and residence of the absent witness and what facts he or she believes the absent witness will prove, and that he or she believes them to be true.

If thereupon the adverse party will consent that on the trial the facts alleged in the affidavits shall be read and treated as the deposition of the absent witness, or that the facts in relation to other evidence shall be taken as proved to the extent alleged in the affidavit, no continuance shall be granted on the ground of the absence of such evidence.

History: L. 1969, ch. 290, § 61-2308; L. 1975, ch. 306 § 10; July 1.

Source or prior law:
61-1308.

Cross References to Related Sections:

Power of court to adjourn or continue action at any stage of proceedings, see 61-1714.

Law Review and Bar Journal References:

Cited as violative of due process and equal protection in comment on forcible entry and detainer actions in Kansas, Russell Read, 21 K.L.R. 71, 78, 79, 80, 82 (1972).

61-2309. Trial; judgment; costs. If the suit be not continued or place of trial changed or neither party demands a jury trial, the judge shall try the case at the time appointed for trial; and if, after hearing the evidence, said judge shall conclude that the facts alleged in the petition are not true, said judge shall enter judgment against the plaintiff for costs. If said judge finds the facts alleged in the petition are true, said judge shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of the suit; if said judge finds the facts alleged in the petition are true in part, said

judge shall enter a judgment for the restitution of such part only, and costs may be taxed as the judge may deem just and equitable. If the action is brought for the purpose of recovering possession from a tenant for nonpayment of rent, in addition to the judgment hereinbefore provided for, the judge shall enter judgment against the defendant for the amount of rent which said judge shall find to be due the plaintiff, and shall enter costs against the defendant as in civil suits for the recovery of money. The jurisdiction of the judge hearing such action shall not be limited by the amount of dollars involved in such judgment.

History: L. 1969, ch. 290, § 61-2309; L. 1976, ch. 258, § 51; Jan. 10, 1977.

Source or prior law:
61-1309.

Law Review and Bar Journal References:

Comment discussing the constitutionality of certain provisions of forcible entry and detainer law, Russell Read, 21 K.L.R. 71, 75 (1972).

"URLTA, Kansas, and the Common Law," Michael J. Davis, 21 K.L.R. 387, 413 (1973).

Note on landlord-tenant implied warranty of habitability, 22 K.L.R. 666, 681 (1974).

CASE ANNOTATIONS

1. Jury trial not mandatory hereunder; reference to a jury trial is mechanical, not mandatory. *Koerner v. Custom Components, Inc.*, 4 K.A.2d 113, 121, 122, 603 P.2d 628.

61-2310. Form of writ of execution. Where a judgment of restitution shall be entered by the judge, said judge shall issue, at the request of the plaintiff or said plaintiff's agent or attorney, a writ of execution thereon which shall be in the form prescribed in the appendix to this act. *

History: L. 1969, ch. 290, § 61-2310; L. 1976, ch. 258, § 52; Jan. 10, 1977.

Source or prior law:
61-1313.

61-2311. Execution; stay of proceedings. The officer to whom the writ is addressed shall, within ten (10) days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the money judgment, if any, the costs and make return, as upon other executions. If the officer shall receive a notice from the judge that the proceedings have been stayed by appeal, the officer shall immediately delay all further proceedings upon the execution; and if the premises have been restored to

Revisor's Note:

L. 1969, ch. 290, § 61-2605.

Form No. 16: WRIT OF RESTITUTION AND EXECUTION AND RETURN

(Caption of Case)

WRIT OF RESTITUTION AND EXECUTION

The State of Kansas to the Sheriff (Marshal) of _____ County:

WHEREAS, on the _____ day of _____, 19____, in an action pending in this court, _____, plaintiff, recovered judgment against, _____, defendant, for restitution of the following described premises, to wit: _____, for court costs, actual and estimated, in the sum of _____ dollars, and for rent in the sum of _____ dollars.

You are hereby commanded to cause said defendant to be forthwith removed from said premises and the plaintiff to be restored to possession of the same and that of the non-exempt personal property of the said judgment debtor, _____, you cause judgment and costs, together with your fees for execution of this writ, to be satisfied as provided by law.

You shall execute that portion of this writ requiring you to restore the plaintiff to the possession of said premises within ten (10) days, and make return of this execution, showing the manner in which you have executed the same, within thirty (30) days from the time of your receipt thereof.

(Signature), Clerk

Dated _____
[Seal of the court]

SHERIFF'S (MARSHAL'S) RETURN

On _____, 19____, at _____ o'clock _____ M., received this writ.

On _____, 19____, above described premises vacated and plaintiff(s) restored to possession.

On _____, 19____, advertised the same for sale.

On _____, 19____, sold the following goods and chattels at the prices indicated, and the moneys received from said sale are herewith delivered to the court.

_____ \$ _____ \$ _____
_____ \$ _____ \$ _____

Total received . . \$ _____

The following goods remain unsold _____
for want of bidders.

(Signature and Title of Officer)

FEES

Executing writ	\$ _____
Levy under execution	\$ _____
Advertising property	\$ _____
Offering for sale or selling	\$ _____
Issuing certificates of sale	\$ _____
No property found	\$ _____
Mileage: _____ miles	\$ _____
Total	\$ _____

Revisor's Note:

L. 1969, ch. 290, § 61-2605.

Form No. 17: NOTICE OF APPEAL FROM JUDGMENT FOR POSSESSION OF PREMISES

(Caption of Case)

NOTICE OF APPEAL

To _____, the above-named plaintiff:

Take notice that the above-named defendant does and has appealed to _____ from the judgment entered and made in the above-entitled action on the _____ day of _____, 19____, whereby the court rendered judgment against the defendant and in favor of the plaintiff for restitution of the premises described in the plaintiff's petition herein and for costs and rent.

(Signature)

Dated _____

ATTORNEY'S CERTIFICATE OF SERVICE

(This notice may be served and proof of service made in the same manner as shown in Form No. 10.)

Revisor's Note:

L. 1969, ch. 290, § 61-2605; L. 1976, ch. 258, § 62.

Form No. 18: SUPERSEDEAS BOND ON JUDGMENT FOR POSSESSION OF PREMISES

(Caption of Case)

SUPERSEDEAS BOND—FORCIBLE DETAINER

WHEREAS, in the above-entitled court and action a judgment was rendered on the _____ day of _____, 19____, in favor of said plaintiff and against said defendant for restitution of the premises in controversy and for the sum of _____ dollars;

AND WHEREAS, the said defendant has and does appeal from said judgment;

Now, we, _____, as principal, and _____, as suret____, bind ourselves, our heirs, executors and administrators to said plaintiff in the penal sum of _____ dollars, that said defendant will prosecute said appeal without unnecessary delay and will satisfy the money judgment in full together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed; or will satisfy in full any modification of the judgment and such costs, interest and damages as the district court may adjudge and award. We further bind ourselves, our heirs, executors, and administrators that said defendant will not commit or suffer waste to be committed on the premises in controversy, and if the district court shall render judgment against said defendant for possession of said premises, said defendant will pay the value of the use and occupation of the property from the date of this bond until the delivery of the property pursuant to the judgment, and all damages and costs that may be awarded against said defendant.

(Signature), Principal
(Signature), Surety

Approved: _____, 19____
(Signature), Judge

Revisor's Note:

L. 1969, ch. 290, § 61-2605; L. 1975, ch. 306, § 11; L. 1976, ch. 258, § 63.

Bill Graves
Secretary of State



2nd Floor, State Capitol
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STATE OF KANSAS
Testimony in Support of Senate Bill No. 580
Senate Judiciary Committee
February 4, 1994

Annual Reports for Business Organizations

Since 1989, qualifying domestic and foreign corporations have been able to request that the balance sheet information on the corporate annual report be kept confidential. SB 580 would give other forms of business organization that same privilege.

Under current law qualifying general corporations are given the opportunity to keep their financial information confidential for ten years by paying a \$20 fee and completing an application. The annual report requirements for professional corporations, limited partnerships and limited liability companies are otherwise similar to those of corporations. We request that they be treated alike in this respect also.

In addition, current law requires domestic corporations to report the name and address of investors owning five percent or more of the stock. There is no similar disclosure required of domestic limited partnerships or limited liability companies. Again, the law should treat these entities consistently and we request that limited partnerships and limited liability companies also be required to disclose investors owning at least five percent of the capital.

The effect of this bill is to require these alternative forms of business to provide more information to the public about who is involved with the business, but permit them to keep confidential their balance sheets if they meet certain financial tests. It makes business organization reporting in Kansas more consistent.

We ask that this committee favorably report SB 580 for passage.

John R. Wine, Jr.
General Counsel

Senate Judiciary
2-4-94
attachment 2-2

Summary of SB 580

§ 1 Section 1 deletes the requirement that corporations report exactly how many shares each principal shareholder personally owns.

§ 2 Section 2 permits a member of a limited liability company to request a copy of the company's extension of time to file an annual report and therefore a copy of the company's confidential balance sheet.

§ 3 Section 3 amends the statute describing the requirements for filing a confidential balance sheet to include professional corporations, limited liability companies and limited partnerships.

§ 4 Section 4 requires limited liability companies to include on each annual report a list of the investors owning five percent or more of the capital of the company.

§ 5 Section 5 requires limited partnerships to include on each annual report a list of the partners owning five percent or more of the capital of the partnership.

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SENATE BILL 581

Senate Judiciary Committee

Presented By: Ed Field, Lindburg & Vogel, Chartered

Cooperative Annual Report filing dates should be no earlier than the fifteenth day of the ninth month following the close of the taxable year.

1. IRC 1.6072-2 does not require Federal Tax Return of Cooperatives to be filed until such date due to calculation of patronage dividends. IRC 1.6072-2 states in part:

- a. Time for filing returns of corporations.--Paragraph (d) Cooperative organizations.

The income tax return of the following cooperative organizations shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year:

- (1) A farmers', fruit growers', or like association, organized and operated in compliance with the requirements of section 521 and 1.521-1; and
 - (2) For a taxable year beginning after December 31, 1962, a corporation described in section 1381(a)(2), which is under a valid enforceable written obligation to pay patronage dividends (as defined in section 1388(a) and paragraph (a) of 1.1388-1) in an amount equal to or at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings. Net earnings for this purpose shall not be reduced by any taxes imposed by subtitle A of the Code and shall NOT be reduced by dividends paid on capital stock or other proprietary interest.
2. Earlier filing of Annual Report than Federal return would result in incorrect balance sheet on Annual Report as compared to Federal Return.
3. All other Annual Reports are required 30 days after Federal Tax Return filing dates.

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attachment 3-1

4. Historically the fifteenth day of the ninth month following the close of the taxable year has been accepted by the Kansas Department of Revenue.
5. The Kansas Secretary of State office legal counsel has verbally indicated agreement with the filing date.

Bill Graves
Secretary of State



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

STATE OF KANSAS

Senate Judiciary Committee
Hearing on Senate Bill No. 581
February 4, 1994

Mr. Chairman and Member of the Committee: Thank you for the opportunity to appear before you to testify in support of Senate Bill No. 581.

This bill is a corporate "clean-up" bill addressing provisions on domestic cooperatives organized under the cooperative marketing act; the general corporation code; and the limited liability company act.

Section one of the bill addresses the time at which a domestic cooperative must file its annual report. Current law requires this report to be filed on the 15th day of the sixth month following the close of the tax year. The proposed amendment requires the report to be filed at the time the cooperative's Kansas income tax return is filed, which is nine and one-half months after the close of the tax year. This is a more practical due date, as a cooperative does not file its federal return or make distributions to its patrons until eight and one-half months after the close of its tax year.

Section two authorizes a corporation to reinstate after it has been forfeited for failure to designate a new resident agent following the resignation of its previous resident agent. The Delaware Code also permits reinstatement in this circumstance.

Sections three and four address the signature requirements for an amendment to a limited liability company's articles of organization. Current law requires all members to sign the amendment. This bill proposes that a member or manager may sign the amendment. This requirement is comparable to the signature requirements for an amendment to a certificate of limited partnership.

Thank you.

Jennifer Chaulk Wentz, Legal Counsel
Deputy Assistant Secretary of State

Senate Judiciary
2-4-94
attach must 4-1

SB 582
1 States.

3

2 (c) It is the policy of this state that the internal affairs of part-
3 nerships, including registered limited liability partnerships, formed
4 and existing under this act, including the liability of partners for
5 debts, obligations and liabilities chargeable to partnerships, shall be
6 subject to and governed by the laws of this state.

7 (d) It is the policy of this state that the internal affairs of part-
8 nerships, including registered limited liability partnerships, formed
9 and existing under the laws of another jurisdiction, including the
10 liability of partners for debts, obligations and liabilities chargeable
11 to partnerships, shall be subject to and governed by the laws of such
12 other jurisdiction.

13 Sec. 4. K.S.A. 1993 Supp. 17-2708 is hereby amended to read
14 as follows: 17-2708. Except as otherwise provided, the Kansas general
15 corporation code contained in K.S.A. 17-6001 *et seq.*, and amend-
16 ments thereto, shall apply to a professional corporation organized
17 pursuant to this chapter. Any provisions of the professional corpo-
18 ration law of Kansas shall take precedence over any provision of the
19 Kansas general corporation code which conflicts with it. The pro-
20 visions of the professional corporation law of Kansas shall take pre-
21 cedence over any law which prohibits a corporation from rendering
22 any type of professional service. Any person or organization ~~as de-~~
23 ~~finied in K.S.A. 17-2707, and amendments thereto, which is au-~~
24 ~~thorized to form a professional corporation also may incorporate un-~~
25 ~~der the Kansas general corporation code contained in K.S.A. 17-~~
26 ~~6001 et seq., and amendments thereto, or organize under the Kansas~~
27 ~~limited liability company act contained in K.S.A. 17-7601 et seq.,~~
28 ~~and amendments thereto, or organize as a registered limited liability~~
29 ~~partnership as defined in K.S.A. 56-302 and amendments thereto.~~

under K.S.A. 17-2707
et seq. and amend-
ments thereto

30 Sec. 5. K.S.A. 56-302 is hereby amended to read as follows: 56-
31 302. As used in this act:

32 (a) "Court" includes every court and judge having jurisdiction in
33 the case.

34 (b) "Business" includes every trade, occupation or profession.

35 (c) "Person" includes individuals, trustees, partnerships, corpo-
36 rations and other associations.

37 (d) "Bankrupt" includes bankrupt under the federal bankruptcy
38 act or insolvent under any state insolvency act.

39 (e) "Conveyance" includes every assignment, lease, mortgage or
40 encumbrance.

41 (f) "Real property" includes land and any interest or estate in
42 land.

43 (g) "Registered limited liability partnership" includes a partner-

Steve J. J. J.
2-4-94
attachment 5-1

SB 582

4

1 ship formed pursuant to an agreement governed by the laws of this
2 state, registered under the provisions of K.S.A. 56-345 and amend-
3 ments thereto and complying with the provisions of K.S.A. 56-346
4 and amendments thereto.

5 Sec. 6. K.S.A. 56-306 is hereby amended to read as follows: 56-
6 306. (a) A partnership is an association of two (2) or more persons
7 to carry on as co-owners a business for profit and includes, for all
8 purposes of the laws of this state, a registered limited liability part-
9 nership.

10 (b) Any association formed under any other statute of this state,
11 or any statute adopted by authority, other than the authority of this
12 state, is not a partnership under this act, unless such association
13 would have been a partnership in this state prior to the adoption
14 of this act. ~~but~~ This act shall apply to limited partnerships except
15 in so far as the statutes relating to such partnerships are inconsistent
16 herewith.

17 Sec. 7. K.S.A. 56-315 is hereby amended to read as follows: 56-
18 315 (a) ~~Except as provided in subsection (h),~~ all partners are liable
19 jointly and severally for everything chargeable to the partnership;
20 but any partner may enter into a separate obligation to perform a
21 partnership contract.

22 (b) ~~Subject to subsection (c), a partner in a registered limited~~
23 ~~liability partnership is not liable directly or indirectly, including by~~
24 ~~way of indemnification, contribution or otherwise, for debts, obli-~~
25 ~~gations and liabilities chargeable to the partnership arising from~~
26 ~~negligence, wrongful acts or misconduct committed while the part-~~
27 ~~nership is a registered limited liability partnership and in the course~~
28 ~~of the partnership business by another partner or an employee, agent~~
29 ~~or representative of the partnership.~~

• If (i) the performance
of professional
services as
defined in K.S.A.
17-2707 and
amendments
thereto; or
(ii)

30 (c) ~~Subsection (b) shall not affect the liability of a partner in a~~
31 ~~registered limited liability partnership for the partner's own negli-~~
32 ~~gence, wrongful acts or misconduct, or that of any person under~~
33 ~~the partner's direct supervision and control at the time~~
the negligence, wrongful acts or misconduct occurred.

34 Sec. 8. K.S.A. 56-318 is hereby amended to read as follows: 56-
35 318. The rights and duties of the partners in relation to the part-
36 nership shall be determined, subject to any agreement between
37 them, by the following rules:

38 (a) Each partner shall be repaid ~~his or her~~ such partner's con-
39 tributions, whether by way of capital or advances to the partnership
40 property and share equally in the profits and surplus remaining after
41 all liabilities, including those to partners, are satisfied; ~~and~~ Except
42 as provided in subsection (b) of K.S.A. 56-315 and amendments
43 thereto, each partner must contribute towards the losses, whether

#6



2nd Floor, State Capitol
Topeka, KS 66612-1594
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Bill Graves
Secretary of State

STATE OF KANSAS
Testimony in Support of Senate Bill No. 582
Senate Judiciary Committee
February 4, 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 partnerships to obtain the same limited liability that corporations and limited liability companies have, but retain their partnership status.

This new form of business organization 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 doing business in Kansas. Although the same limited liability is available today for professionals who organize as professional corporations or limited liability companies, many service firms prefer the partnership form.

Because Kansas already offers professionals the opportunity to organize as corporations or limited liability companies, we do not expect limited liability partnerships to achieve the same level of popularity in Kansas as they have in some other states. However, we believe that those businesses who want these advantages while retaining their partnership form should be able to do so.

We ask that this committee favorably report SB 582 for passage.

John R. Wine, Jr.
General Counsel

Senate Judiciary
2-4-94
attached to 6-1

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 doing business 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." 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.

#7

REMARKS CONCERNING SENATE BILL 358

SENATE JUDICIARY COMMITTEE

FEBRUARY 4, 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, support the enactment of Senate Bill 358. Because this bill was introduced in the 1993 session, a technical amendment would be necessary to update the statutory citations of the sections being amended, as well as in the repealer section.

With me today is Walt Scott, who practices in this area, who would be available to answer questions that you might have, and also here today is Sheriff Meneley, of Shawnee County.

This bill would add a fourth method of serving orders of garnishment. On page 2, lines 42 and 43, the present statutory method of serving orders of garnishment is listed, by stating that it is the same as an order of attachment. We have to refer to K.S.A. 60-706 to learn how an attachment order is served, and we find that it is to be served in the same manner as an ordinary summons. By looking at still another statute, we find that there are three methods approved for serving a summons: certified mail; personal service; or residential service. As you can see from the bill, a fourth method of serving an order of garnishment would be permitted, by ordinary, first class mail unless another form of service is requested.

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.

An order of garnishment is typically issued against an employer or a financial

Senate Judiciary
2-4-94
attached 7-1

institution. In other words, the recipients of the order of garnishment are ones that can easily be reached by ordinary mail.

This is not a trap for employers. Walt Scott tells me that in more than thirty five years of practice in this area, there has been only one time where he has taken judgment against the garnishee, and that was where the garnishee requested him to do so.

This is an attempt to economize on time and expenses, which is particularly needed in the larger counties. The bill does not mandate the new method of service of orders of garnishment; it simply presents it as an additional alternative. Attached to my remarks is a letter from Bruce Ward, addressing the situation in Sedgwick County.

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

Don W. Riley
President
Paul J. Mohr
Vice President
Robert Fuqua
Secretary
John B. Gilliam
Treasurer

COLLECTION ATTORNEYS ASSOCIATION

P. O. BOX 20200
WICHITA, KANSAS 67208

(316) 683-5637
Fax: (316) 683-5630

Donald C. Astle
Director
S. A. (Tim) Scimeca
Director
Wilbur D. Geeding
Director
Kurt A. Holmes
Director
Bruce C. Ward
Director

February 3, 1994

Senate Judiciary Committee
State Capitol
Topeka, KS 66612

RE: SB 358

Dear Committee Members:

Our association supports the passage of SB 358 which will allow service of garnishment orders by ordinary mail.

As you may know, the Sedgwick County Sheriff has had increasing difficulty the last few years in serving civil process in Sedgwick County because of budget constraints, reduced personnel and increased court filings. The Sheriff is called upon to serve many garnishment orders.

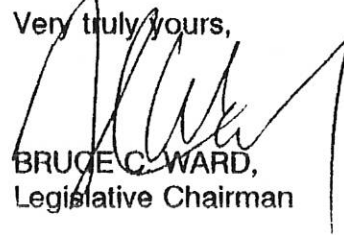
This bill would allow the Sheriff to significantly reduce the manpower needed to serve garnishment orders and reduce expenses now incurred by certified mail and devote that personnel and money to other civil as well as criminal process. This is a real way the legislature can help counties.

You may have fears that this change will lead to abuse of process against garnishees. We think such fears are not warranted for these reasons:

- (1) Most garnishees are businesses and banks. They are accustomed to receiving and responding to important documents by mail. They know to treat any legal process with the same importance regardless of how it is served on them.
- (2) Collection attorneys who file the vast majority of garnishments are not in this business to find ways to take advantage of businesses and banks. We work with them every day in resolving all types of problems and questions raised by garnishments.
- (3) Very few motions are actually filed against garnishees in Sedgwick County. It is only used in clear cut cases of abuse on the part of the garnishee. Likewise, our judges are reluctant to grant judgment against a garnishee except in such cases of clear abuse.

Again, we would urge passage of SB 358. Thank you for your time and consideration.

Very truly yours,


BRUCE C. WARD,
Legislative Chairman



#8

**Shawnee County
Sheriff's Department
Sheriff Dave Meneley**

200 EAST 7TH STREET
TOPEKA, KANSAS 66603-3932
COURTHOUSE ROOM B-16 913-233-8200 EXT: 4044

I am here this morning to encourage this committee to pass SB 358. Just in the Shawnee County Sheriff's Department alone the volume of Civil Process filed each year is escalating out of control.

In 1992 we had eighty thousand (80,000) pieces of process come through our Department, in 1993 there were over ninety thousand (90,000) pieces for my officers to serve. The volume is pulling more and more of my deputies away from the actual duty of fighting violent crime.

As all of you are aware the tax dollar is being stretched to it's limit and there is just not the funding to hire the amount of deputies it would take to personally serve all these papers. When we are able to hire more deputies it is imperative for me and other Sheriff's across the State to dedicate them to the service of dealing with drugs, gangs, and violent crime. As all law enforcement is doing across the State we are asking for help from our citizens, through neighborhood watch, the implementation of community policing and just plain asking citizens to get involved.

As the Chief Law Enforcement Officer in Shawnee County and for all the other County Sheriff's across the State, I am here this morning asking for your help in the area of serving Civil Process, just one facet of duties in serving the citizens of Kansas. I am asking for you to pass this bill to serve just one small area of Civil Process. Let us send these garnishment papers by regular mail and help me to free up more of my officers to fight this war on crime.

*Senate Judiciary
2-4-94
attachment 8-1*



DEPARTMENT OF ADMINISTRATION

DIVISION OF ACCOUNTS AND REPORTS

JOAN FINNEY
Governor

JAMES R. COBLER
Director of Accounts and Reports

900 Jackson, Room 251
Landon State Office Building
Topeka, KS 66612-1220
(913) 296-2311
FAX (913) 296-6841

February 4, 1994

The Honorable Jerry Moran, Chairperson
Senate Committee on Judiciary
State Capitol - Room 255-E
Topeka, Kansas 66612

Dear Senator Moran:

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 amends the garnishment laws in several areas:

Senate Judiciary
2-4-94
attachment 9-1

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. The proposed legislation increases the fee from \$5 to \$10 and the maximum allowable fee from \$10 to \$20. To ensure collection of the fee, the statutes are further 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. These same provisions have also been added to the statutes governing orders of garnishment. Previously, no administrative fees were allowed for orders of garnishment.

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, the increase in income withholding order fees from \$5 to \$10 would increase revenues to the Accounting Services Recovery Fund 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 would be \$54,510 greater per year than fiscal year 1993 revenues.

Jerry Moran
February 4, 1994
Page 4

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,

A handwritten signature in cursive script that reads "James R. Cobler".

James R. Cobler, Director
Division of Accounts and Reports

JRC:SLF:jw

Attachment

Attachment to Testimony on Senate Bill 530
February 4, 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.)



SENATE JUDICIARY COMMITTEE
TESTIMONY OF EDWARD R. MILLER
VICE PRESIDENT HUMAN RESOURCES
LEARJET INC.
February 4, 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 and child support payments 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 consider authorizing employers to recover part of their costs for processing garnishments as contemplated by this bill and allowing the proposed increase in the administrative costs for collections regarding income withholding orders. Currently, the statute allows an employer to recover for the lessor of \$5 per pay period or \$10 per month on income withholding orders only. Since most employers pay employees on a weekly basis, we are allowed only \$2.50 per pay check. This is simply not adequate to cover the costs of verifying the order's requirements, attaching the paycheck, then cutting an accounts payable check to submit the payment to the court system. 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 and then are required to reverse our processes to refund the money to the employee.

An increase in the 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 for a bad check, it would seem that the increase in processing charges for garnishments and other support payments is simply reasonable.

Senate Judiciary
2-4-94
attached 10-1

Let me put this issue into perspective. Learjet processes over 750 garnishments a year. This is against an employee population of 3000. We have only about 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.

In addition to the garnishments, we have over 120 income withholding orders being processed per week.

Learjet faces an unrealistic cost in processing garnishments and income withholding orders for a small number of employees. In addition, if a withholding error occurs due to either judgmental or court errors, Learjet can and has been assessed the total debt of the garnishee. With these liabilities, employers should be entitled to recover legitimate administrative fees.

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

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 employee relations problems 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 that you allow us to recover our costs on a more equitable basis with retailers.

MS0203T1



*Legislative Information
for the Kansas Legislature*

TO: *Senate Judiciary Committee*
FROM: *Ron Smith, KBA General Counsel*
SUBJ: *SB 530, garnishment changes*

February 4, 1994

SUMMARY:

KBA opposes *mandatory* requirements of putting amounts due or social security numbers on the garnishment summons.

Requiring **social security numbers** of defendants be put on garnishment summons by creditor attorneys is a subtle way of limiting garnishments. The problem is some debtors do not give reliable social security numbers at debtor exams. If creditors can garnish only when they have such information, garnishments cannot be issued.

If the creditor's attorney knows the social security number and considers it to be correct, having them *voluntarily* place them on garnishment summons is appropriate. It helps the garnished employer or financial institution know with certainty they are attaching the right funds. However, making it mandatory is impractical.

As to putting the **amount of the debt on the garnishment summons**, that is fine for the first garnishment but as garnishments are returned, amounts may -- or may

not be withheld. The amount "owed" may not change as fast as the garnishments sent out. Garnishments are sent out in sequence so that the subsequent garnishment picks up the next pay period. Previous garnishments may not have been returned in time for the attorney to know what was withheld (if anything). Thus later numbers may not be accurate and "up to date."

Other points in the bill:

1. page 2, line 4, the current policy is that the fee withheld by the employer is in addition to that which is garnished. The new language changes this to mean *children needing the child support pay the employer the fee* if the garnishment exceeds the amount allowed in the cited statute. Is this the policy you want?

2. Page 7, lines 32-38: If the \$10 or \$20 fee is deducted from the

This legislative analysis is provided in a format easily inserted into bill books. We hope you find this convenient.

*Senate Judiciary
2-4-94
attachment 11-1*

amount withheld the plaintiff, how does the plaintiff recover that withheld fee from the defendant in later garnishments or debt collection actions? The defendant rightly can say "I paid someone that \$20.00. Why do I have to pay it twice?"

4. Page 18, lines 3-12: Same criticism as in item #3 above.

Suggested Amendment: If you really want to lower the frequency for garnishing employers, thus reducing the paperwork of the proponents of this bill, another item you can include in this bill is an amendment to allow multiple plaintiffs to file a single action through a single collection attorney against the same defendant. Then there would be only one garnishment, the proceeds of which are applied against two, three or four different judgments at a time.

Currently each plaintiff must file separate actions with separate costs and fees. Each garnishment is separate.

A House bill making that change was sent to the Senate last year. KBA would support such an amendment.

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REMARKS CONCERNING SENATE BILL 530

SENATE JUDICIARY COMMITTEE

FEBRUARY 4, 1994

The Kansas Collectors Association, Inc. and the Kansas Collection Attorneys would like to suggest some amendments to SB 530.

We are concerned about the additional fees that would be authorized by this bill. On page 2, the changes in lines 4 through 12 would increase the fee from \$5.00 to \$10.00 per pay period. Present law provides that the cost recovery fee shall be in addition to the amount withheld as support. The amendatory language would permit the fee to be deducted from the amount withheld as support in certain circumstances. Is it good public policy to give money to employers by taking that money away from children receiving child support?

On page 6, in line 30, we would suggest that after "social security number" the words "if known by the plaintiff" be inserted. As a matter of practice, the defendant's social security number is included, if it is known; but in some instances, the plaintiff may not know the social security number of the defendant.

On page 7, in lines 4 through 7, 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, the plaintiff be required to be notified by the garnishee when the garnishee files a petition with the court for an order allowing the garnishee to return withheld funds to the defendant.

We are concerned with the amendatory language on lines 32 through 38 on page 7, because we do not feel that the administrative fee is justified; 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. Furthermore, in most instances of wage garnishment, the restriction referred to in

Senate Judiciary
2-4-94
attachment 12-1

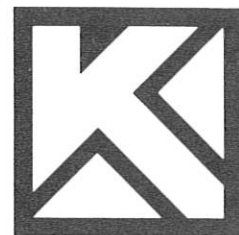
line 37 would be applicable, in which case, the fee would be deducted from the amount due the plaintiff. We do not think this is fair; there is no provision for that amount to be added to the amount recoverable by the plaintiff as additional court costs.

Although we have some concerns with some portions of the bill, it is a lovely vehicle for an amendment to deal with an outdated statutory prohibition against garnishment if an account has been assigned. Quite often accounts are assigned, and I understand that it is quite common in the telephone industry for accounts to be assigned. The language on page 15, lines 32 through 43, which is present law, denies the remedy of garnishment for accounts that have been assigned. We would request that in line 35, before the period, "unless the garnishment action is filed by an attorney" be inserted.

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

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

February 4, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Committee on Judiciary

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.

*Senate Judiciary
2-4-94
attached 13-1*

First, SB 530 permits employers to withhold and retain a fee to defray their expenses for complying with an income withholding order and a wage garnishment order. An administrative fee is already permitted in child support orders, but would be permitted for the first time in wage garnishments.

In both arrangements, an employer faces expenses for complying with the court's wishes. In both arrangements, 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, as well as income withholding for support orders.

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 express 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.

In addition, attached are comments from Mr. Steve Gaylor, with Collins Bus Service in Hutchinson and a member of the Kansas Industrial Council Board of Directors, supporting SB 530.

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

February 2, 1994

Senator Jerry Moran
2758 Thunderbird Drive
Hays, KS 67601

Dear Senator Moran:

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 Senate Judiciary Subcommittee on Civil Procedures 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?

Senator Jerry Moran
February 2, 1994
Page 2

Kansas law presently permits such a fee to be collected for income withholding orders. We petition you to allow us to do the same for garnishments.

I appreciate the opportunity to share my views with you and seek your support of SB 530.

Yours very truly,

Phillip Jarvis
Manager of Payroll, Payables and Administrative Services

PRJ:klh

cc: Terry Leatherman
Kansas Chamber of Commerce and Industry



SB 351

February 4, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Subcommittee on SB 351

by

Steve Gaylor
Controller
Collins Bus Corporation
Hutchinson, Kansas

Mr. Chairman and Members of the Subcommittee:

I am Steve Gaylor with Collins Bus Corporation, and a member of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today in support of SB 351, legislation which addresses several concerns Kansas employers have regarding wage garnishment.

When Collins Bus receives an order of garnishment, we take every step to make sure that the garnishment order is fulfilled. However, we are acting as the middleman in resolving a dispute between our employee and a plaintiff in a wage garnishment action. I feel the role of the employer in the garnishment process should be streamlined. I believe SB 351 accomplishes that action.

Listed below are three major reforms:

1. SB 351 informs the employer of the amount needed to satisfy the judgment against the employee.

- 1 -

SHIPPING ADDRESS:
415 WEST 6TH STREET
SOUTH HUTCHINSON, KS 67505
(316) 662-9000

MAILING ADDRESS:
P.O. BOX 2946
HUTCHINSON, KS 67504-2946
FAX: (316) 662-3838

a subsidiary of COLLINS INDUSTRIES, INC.

13-5



Currently, the order of garnishment delivered to Collins Bus does not include a dollar amount which is needed to satisfy the judgment against the employee. As a result, Collins Bus will comply by withholding a percent of the employee's pay and will admittedly withhold more than what is required to satisfy the judgement. We must then send an answer to the court and distribute the funds to the court. After hearing from the court what is needed to satisfy that judgment, we must then turn around and write a check to the employee for the excess money deducted. This creates double paperwork. By informing the employer of the judgment amount, the withholding can be halted when the judgment is fulfilled.

2. Identifying the employee:

Currently, when Collins Bus receives an order of garnishment, the defendant is only by name. In the past, with fathers and sons working for our company, this has created confusion on not knowing what person to take the garnishment action against. If a social security number or another form of identification would be used, it would eliminate this problem. There are also times when the address of the plaintiff's attorney and the address of the employee is needed. The SB 351 legislation includes these items and I think this would help streamline the process.

3. Allowing the employer to retain some cost recovery for performing the wage garnishment.

- 2 -

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415 WEST 6TH STREET
SOUTH HUTCHINSON, KS 67505
(316) 662-9000

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FAX: (316) 662-3838

a subsidiary of COLLINS INDUSTRIES, INC.

13-6



As I stated earlier, the employer is the middleman in the wage garnishment. The employer had no role in the debt incurred by the employee or in the garnishment action taken by the plaintiff. However, the employer is responsible to comply with the garnishment order and meeting this responsibility costs the employer. SB 351 extends the same opportunities to recover the employer's cost in complying with the wage garnishment orders as it does with the incoming withholding orders to satisfy an employee's child support payments. I also believe that a fee of \$20 each month to defray partial employer expenses to comply with the court order is not unreasonable.

I would encourage all of the legislators who are on this subcommittee to support SB 351.

I thank you for your attention.

A handwritten signature in cursive script, appearing to read "Steve Gaylor".

Steve Gaylor

- 3 -

SHIPPING ADDRESS:
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MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY ON SENATE BILL #530

Senate Bill #530

RM. 514-S

February 3, 1994

Mr. Chairman, members of the Senate Judiciary Committee, it is my pleasure to appear before you as a proponent of Senate Bill #530, which provides a recovery fee for garnishments.

I appeared before this committee to press our case for smaller operations in the area of small claims. I now appear on behalf of some of our larger operations in the support of this bill.

I do notice you have several bills today, and many conferees on this matter, so my presentation will be brief.

Simply stated, there is certainly a cost to a business owner when he has to go through the process of a garnishment. Because of the turnover, and the size of payroll, this occurs more in a larger operation than it does in a more rural operation. We feel the ratio of the recovery fee to the amount to be garnished would be proper in the time needed to handle such a matter for an employer.

More than anything else, this simply becomes a matter of principle to us. If we are going to be asked as business people to apply a garnishment to an employee's wages for a matter that has nothing to do with the employer, or any action that was caused by the employer, then any added costs to his staff to handle a garnishment should be compensated. We are confident any person who has come in contact with this situation agrees that such a recovery fee is reasonable.

With that thought in mind, we ask the committee to seriously consider passage of Senate Bill #530 favorably. I appreciate the opportunity to visit with you on this matter and stand ready to answer any questions you may have.



Senate Judiciary
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