

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:35 A.M. on January 31, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donavon, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Marilyn Harp, Executive Director of Kansas Legal Services
John Hooge, Attorney, Lawrence, Kansas
Jill Michaux, Attorney, Topeka, Kansas
Paul Post, Attorney, Topeka, Kansas
Judge Phillip B. Journey, Haysville, Kansas
Ed Klumpp, Ks Assn. Chiefs of Police, Ks Sheriffs Assn., Ks Peace Officers Assn.

Others attending:

See attached list.

Bill Introductions:

Stephanie Mickelsen, office of the secretary of state, requested introduction of a bill relating to business entities; resident agents; articles of incorporation and certificates of good standing.

The Chairman opened the hearings on **SB 12 — Bankruptcy proceedings; earned income tax credit.**

Senator Vratil, sponsor of the bill, testified in support of **SB 12 (Attachment 1)**. Senator Vratil stated that the bill would protect the earned income tax credit by exempting it from a bankruptcy proceeding. The bill exemption would not limit rights of offset, attachment or other process for payment of child support or spousal maintenance.

Marilyn Harp testified in support of **SB 12 (Attachment 2)**. She noted that without the exemption, the federal income support (money) derived under the credit is paid to the creditor of the low-income person who files bankruptcy.

John Hooge testified in support of **SB 12 (Attachment 3)**. He stated that the purpose of exemptions in bankruptcy is to allow a person to have a fresh start, but not lose everything.

Jill Michaux testified in support of **SB 12 (Attachment 4)**. She stated that the Kansas general bankruptcy exemption is not broad enough to exempt the earned income tax credit.

Paul Post testified in support of **SB 12 (Attachment 5)**. He stated that the amount of the money derived from the credit, which must be turned over the bankruptcy trustee, varies depending upon when the bankruptcy is filed. He added that the trustee has the discretion to decline to accept a refund or the credit.

The Chairman called the committee's attention to the fiscal note for **SB 12**.

The Chairman closed the hearings on **SB 12**.

The Chairman opened the hearings on **SB 34 — Driver's license; habitual violators; motorized bicycles.**

Jason Thompson, Staff Revisor, reviewed the bill.

Judge Phillip B. Journey testified in support of **SB 34 (Attachment 6)**. He stated that if a person's driver's license has been suspended, that person could obtain a license to operate a moped. He noted that SB 34 is

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on January 31, 2011, in Room 548-S of the Capitol.

similar to legislation he had requested in previous sessions.

Senator Bruce stated that he does not believe that a moped is a motor vehicle, and therefore, current law does not prevent a person whose license to operate a motor vehicle has been revoked from obtaining a license to operate a moped.

Ed Klumpp testified in opposition to **SB 34 (Attachment 7)**. He noted that under current law a person whose driver's license has been suspended due to a DUI conviction cannot obtain a license to operate a moped, but if the bill is enacted, a person whose driver's license has been revoked as a habitual violator due to three DUI convictions could obtain a license to operate a moped. He asked that the bill be clarified so that a person who obtains a license under the bill remains a habitual violator for the purpose of operating other motor vehicles.

The Chairman called the committee's attention to the prison bed impact statement and the fiscal note for **SB 34**.

The Chairman closed the hearings on **SB 34**.

The Chairman opened the hearings on **SB 37 — Sentencing; payment of fines; employment of county and city prisoners**.

Judge Phillip B. Journey testified in support of **SB 37 (Attachment 8)**. He stated that the bill would allow city and county prisoners or offenders to perform community service in lieu of paying court-assessed fines and costs; a credit of \$5 for each full hour of community service performed would be applied to the fines and costs that have been assessed against the prisoners. He also stated that the court could impose a sentence of community service in lieu of fines and costs.

No testimony in opposition to **SB 37** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 37**.

The Chairman closed the hearings on **SB 37**.

The Chairman called the committee's attention to the fiscal note for **SB 7 — Driving under the influence**.

Meeting adjourned at 10:25 A.M. The next meeting is scheduled for February 1, 2011*.

*Meeting scheduled for February 1, 2011 subsequently was canceled.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 31, 2011

NAME	REPRESENTING
Ed Klump	KACP/KSA/KPOB
Stephanie Mickelsen	KSOS
Claire Crawford	Senator Kelly (Intern)
Kelly Navinsky-Wenzel	Kearney & Assoc
Marilyn Harp	Kansas Legal Services
Jill A. Michaux	Weis & Michaux, P.A.
John Hooze	John Hooze A Hyatt Law PA.
Michelle Butler	Cap. Strategies
Jeff Bottenberg	Polshill Shydt, P.A.
Tara Mays	KDOT
Dale Somers	Self
Shen Smiley	Sec. of State
Susan Allen	Legis
Joe Molen	KS BAR Assn
Kenn Barne	The Cap. Lobby Grp
Shannon Little	Little Government Relations

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State of Kansas



Vice President Kansas Senate

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COMMISSION

Testimony Presented to
Senate Judiciary Committee
By Senator John Vratil
January 31, 2011
Concerning Senate Bill 12

Good morning! Thank you for the opportunity to appear before the Senate Judiciary Committee in support of Senate Bill (SB) 12. The language in SB 12 protects the earned income tax credit by exempting it from a bankruptcy proceeding.

The earned income tax credit (EITC) is a critical tool for low income Kansans as they struggle to maintain and improve their lives. Under current law, the debtor can be forced to forfeit the EITC. Such forfeiture is counterproductive and further inhibits the debtor's ability to recover, making it more likely that the debtor will come to require state services.

Senate Bill 12 clarifies that the exemption does not limit rights of offset, attachment or other process for payment of child support or spousal maintenance.

I ask that you support SB 12.

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STAT
TO Senate Judiciary
1-31-11
joh Attachment 1

Testimony in support of

Senate Bill 12

I am Marilyn Harp, Executive Director of Kansas Legal Services, a statewide program providing legal services to low and moderate income persons. Senate Bill 12 deserves your support.

In 2010, we provided advice and legal representation to over 20,000 low income Kansans. In that regard, we have contact daily with low income Kansans who qualify for and may receive Federal Earned Income Tax credits (EITC). This program was designed to replace the Federal support for low income families, which was delivered through direct monthly payments in the Aid to Families with Dependent Children (AFDC) program. Unlike the AFDC program, which was administered in Kansas by the Kansas Department of Social and Rehabilitation Services, the EITC program is administered through the Federal Income Tax program. Families file a federal income tax return. If they qualify for EITC, they receive a payment larger than the amount of their earnings withheld for Federal Income tax payments. Eligible families (parent and one minor child) have annual incomes of \$35,063. Those with the least amount of earnings would receive a credit of \$3,043. This is applied to taxes due from the worker and can be received as a "refund".

Since 1975, the Earned Income has become the largest income transfer from the Federal government to low income Americans. In 2007, 24 million Americans received \$48 billion through the EITC program. The state of Kansas provides a credit figured at 17% of the Federal EITC for Kansas low income workers.

One concern about the EITC program is that about 20% of the eligible participants do not file a Federal income tax return, and, therefore, don't qualify for the payment through this program. The requirement of paying a tax preparer to complete a return in order to participate has been an obstacle for low income workers. As one response to this, legal services programs nationwide have worked together to create and distribute a easy to use program designed to maximize the EITC benefit available. There is no charge for accessing this program, called I CAN e-file. A link to this program can be found on the Kansas Legal Services website, www.kansaslegalservices.org.

Kansas Legal Services advises and represents clients who are contemplating filing for bankruptcy.

Because of an unpaid debt, perhaps a child's hospital bill, they have been sued and their wages have been garnished. They are regularly losing 25% of their very limited income to garnishment. The only solution that will end the garnishment is filing for bankruptcy. However, under the law today, they face the loss of perhaps \$3,000 in a EITC enhanced income tax return.

The purpose of the EITC is not to transfer Federal income support to the creditors of low income persons. Yet, without the law change, this is exactly what happens. Federal income support directed toward low income persons goes to their creditors. When a low income person files for bankruptcy, the income tax return due them at that point (or a pro rata portion of their annual return, based on when they file) becomes the property of the bankruptcy trustee. This money is distributed to the creditors by the trustee, in partial payment of the creditor's debts.

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Testimony in favor of 2011 Senate Bill 12
Before the Kansas Senate Judiciary Committee
January 31, 2011
by John R. Hooge, Lawrence, K.s

My name is John Hooge. I am a four-generation native Kansan. I attended Ottawa University, Kansas Univ. Law School and Indiana Univ. School of Law-Indianapolis. After graduating from IU in 1977 I returned to Lawrence where I have been an attorney for over 30 years.

I have always handled bankruptcy cases. Debtor bankruptcy has been practically the only thing I have handled for a # of years and I have filed thousands of bankruptcies.

I do not believe bankruptcy should be filed when unnecessary. The bankruptcy law now requires people to get credit counseling from non-profit credit counseling agencies before they can file bankruptcy. To see if they have another viable option. But, often, the people filing bankruptcy have no other reasonable choice in dealing with their debts.

The purpose of exemptions in bankruptcy is to allow people to have a fresh start and not have everything taken from them.

People with higher income generally possess more assets often with greater equity. In Kansas a person can have an unlimited amount of value in their homestead and retain that in a bankruptcy case. A person can have an unlimited amount in an IRA, a 401K, other tax qualified pensions and whole life insurance policies. They can keep a vehicle up to \$20,000, their household goods and furnishings. Up to \$7,500 value of trade-tools. Their homestead. But, folks with these type of assets don't generally have earned income credits.

A person only gets an earned income credit (EIC) if he or she is a wageearner with minor children--and if the wages are under a certain amount. It is almost always a working mother--often who is not receiving child support but is supporting her children.

A good bankruptcy lawyer usually can prevent his or her client from losing an EIC. I have a # of clients who need to file bankruptcy now but are waiting until they get their EIC to spend it wisely before they file bankruptcy. I require my clients to tell me how they wish to spend their EIC as well as their refund before they spend it. To make sure they don't run afoul of the bankruptcy law. And I also want to make sure they use their EIC wisely.

So I speak with clients--often single mothers--on how they intend to use their EIC. It is almost always for necessities. Last year, I was asked when testifying before this committee or the House Judiciary Committee how someone would actually spend this money. And I mentioned the 22 year old young woman I represented. Caitlin received an EIC of \$2,795. She spent that by purchasing a bed and dresser for her 2 year old son, a laptop computer, rent, gasoline and food and the rest was spent on car repair. She replaced a bad tire and purchased a spare tire she did not have, an oil change, new brakes, front axles and repaired her air conditioner.

This is very typical of how I see people spending their earned income credits. They get caught up on utilities, car repair or buy an inexpensive car, and buy groceries, pay rent or pay for dental work they need. Hardly ever is this money wasted. This is part of their annual budget. A necessity for them. They spend it locally—in our state, in their community, benefiting this state and its businesses. And granting this exemption costs our state government nothing.

Every person filing bankruptcy must file a budget showing how their current income is spent. It is always eye-opening to help a person with children put that budget together. A person with children making \$10 an hour or even less has difficult choices to make. \$1,600 a month does not go very far. Often the choice is doing without necessities. Not buying medicine, not getting dental work, not fixing the car, not getting basic necessities. Their annually received EIC helps them immeasurably.

The current recession has made the EIC even more important. The working poor have felt this recession more than any others. They pay a higher percentage of their income for rent, medical costs, food costs, necessities. They often cannot find employment with medical insurance provided. Many employers hire temporary workers for this reason. Income as well as benefits has been reduced. Overtime is harder to come by. People have been laid off and are trying to make it on unemployment benefits.

Sometimes a person must file a bankruptcy even though they know they will lose their refund or EIC. To stop a house from being foreclosed or a needed car from being repossessed.

But, all too often a person who loses their EIC is a mother who felt she couldn't afford a lawyer and filed bankruptcy on her own. Or who used an attorney who doesn't handle enough bankruptcy to give appropriate advice.

As Paul Post will testify, the creditors in a bankruptcy often get as their share only small amounts from an EIC taken from a Debtor. This has minimal benefit for them. But, the impact on the person or family with children and limited income can be devastating.

To watch a person be told by the bankruptcy judge that the court has no choice but to take that money from them because of the law, who did not understand they would lose it—who needed that money for their family--can be heart wrenching. Such should not happen. The lack of this exemption defeats the very purposes of the earned income tax credit—to encourage work and keep people out of poverty.

Respectfully submitted,

John Hooge

Testimony in favor of 2011 Senate Bill 12
Before the Kansas Senate Judiciary Committee
January 31, 2011
by Jill A. Michaux, Neis & Michaux, P.A., Topeka

Thank you members of the Judiciary Committee. I come before you in support of Senate Bill 12 to create a Kansas state law exemption for EIC for use in bankruptcy.

I have represented Kansas individuals and small business proprietors in bankruptcy since 1982. I was the attorney in the 10th Circuit case called Montgomery. (In Re Montgomery, 224 F.3d 1193, 1194 (10th Cir. 2000)).

Montgomerys' attempt to exempt EIC in their bankruptcy was rejected. The circuit court said an specific exemption for EIC is required. The general exemption for social welfare in K.S.A. 39-717 is not sufficient.

38-717(c) None of the money paid, payable, or to be paid, or any tangible assistance received under this act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Many states have specific EIC exemptions or an exemption for any property up to a certain limit that can be used for EIC. The status of other state laws is listed on page 38-41 of "When Welfare Becomes Work Support: Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy", American Bankruptcy Law Journal, Summer, 2004. A summary is attached to this testimony.

I urge you to adopt Senate Bill 12. Thank you.

Earned Income Tax Credit

Earned Income Tax Credit (EITC or EIC) is a **refundable tax credit** designed to encourage low-income workers and offset the burden of U.S. payroll taxes. Both the United States and the State of Kansas have the EITC.

EIC recipients must have a minimum amount of earned income and at least one qualifying child sharing their residence. The credit phases out for earned income over \$43,352. Maximum credit is \$4050 to \$5666 depending on income and number of children.

There is a much more modest EIC for persons and couples without children with earned income of \$5980 to \$13,460. The maximum EIC is \$457.

Enacted in 1975, the EIC has been expanded many times, including the more widely-publicized Reagan EIC expansion of 1986. Today, the EITC is one of the largest anti-poverty tools in the United States, and enjoys broad bipartisan support.

Kansas is one of at least 20 states with their own EIC. Kansas residents claiming an EIC on their Federal return, may claim an EIC on their Kansas income tax return. Nonresidents cannot claim the Kansas EIC. **The Kansas EIC is 17% of the federal EIC.**

<http://www.ksrevenue.org/faqs-taxii.htm>

The EIC has significant impact on the lives and the communities of the nation's lowest paid workers. The EIC encourages more work during the phase in period to qualify for a larger EIC. It lifts the lowest paid working people above the federal poverty line. Dollars are spent in local communities on commodities and services.

Economists suggest that every increased dollar received by low and moderate-income families has a multiplier effect of between 1.5 to 2 times the original amount, in terms of its impact on the local economy and how much money is spent in and around the communities where these families live.

Source: http://en.wikipedia.org/wiki/Earned_Income_Tax_Credit

I. Exemption of the Federal Earned Income Tax Credit in states that do not allow people who file for bankruptcy to choose the federal exemptions under § 522(b) and (d) ("Opt-out states").

1. Alabama "Public assistance to needy persons" is exempt. Case law says EITC is covered by this exemption.
2. Arizona Statutory chapter on state welfare assistance programs is not subject to operation of any bankruptcy law. Case law says EITC is not exempt under state law.
3. California Aid under state Welfare and Institutions Code is exempt. EITC is either not exempt or whether it is exempt is unclear.
4. Colorado Express exemption for EITC. Colo. Rev. Stat. § 13-54-102(1)(o) (West 2009).
5. Delaware Statutory chapter on public assistance says assistance under it is not subject to operation of bankruptcy law. EITC is either not exempt under this provision or whether it is exempt is unclear. Separate exemption provided for property with aggregate fair market value of not more than \$5,000 (excluding retirement plans).
6. Florida Express exemption for EITC (by reference to § 32 of the Internal Revenue Code). Fla. Stat. § 225.25(3) (West 2009).
7. Georgia Exemption provided for a local public assistance benefit. EITC is not exempt under this provision.
8. Idaho Exempts benefits under "federal, state, or local public assistance legislation." Case law says this covers EITC.
9. Illinois Exempts public assistance benefit, which case law says covers EITC.
10. Indiana No exemption available that even arguably covers EITC.
11. Iowa Exempts "public assistance benefit," which case law says covers EITC. Iowa Code § 627.6(8)(a) used to cover a "local public assistance benefit" but was amended to say "any public assistance benefit."

12. Kansas The Social Welfare chapter of Kan. Stat. Ann. (K.S.A. 2008 Supp. 39-717(c)) says benefits under that act are not subject to legal process, or to the operation of any bankruptcy law; K.S.A. 60-2313(a)(2) exempts public assistance benefits covered by K.S.A. 39-717.
13. Kentucky Non-commingled public assistance is not assignable and is exempt from levy or execution, which case law says sometimes makes EITC exempt. Kentucky also has a \$1,000 wildcard exemption for people who file for bankruptcy.
14. Louisiana Express exemption for EITC, except for seizure by the state department of revenue or arrears in child support payments. La. Rev. Stat. Ann. § 12:3881 (2009) (Added in 2004.)
15. Maine Exempts a local public assistance benefit. EITC is not exempt under this provision.
16. Maryland Assistance under specified subtitle of state statutes is not subject to bankruptcy law. EITC is either not exempt or whether it is exempt is unclear. Md. Code Ann., Cts. & Jud. Proc. § 11-504(b)(5) provides exemption for up to \$6,000 worth of cash or other property.
17. Mississippi Exempts public benefits for disabled, blind, and the elderly. EITC is either not exempt or whether it is exempt is unclear.
18. Missouri Exempts local public assistance benefit. Case law says EITC not covered because it is not a "local" benefit. Head of household may claim exemption for up to \$1,250 plus \$350 per minor child or disabled dependent. EITC that qualifies as a married couple's entireties property would be exempt from creditors with claims against only one spouse.
19. Montana Assistance under chapter about administration of public assistance is not subject to any bankruptcy law. EITC is either not exempt or whether it is exempt is unclear.
20. Nebraska Exempts county and state assistance. State supreme court said EITC is a "means-tested public assistance benefit"

excluded from child support income calculations. EITC is either not exempt or whether it is exempt is unclear.

21. Nevada Statutory chapter about public welfare says assistance under it is not subject to the operation of any bankruptcy law. Case law says EITC is not exempt under this provision.
22. New York Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear. A debtor who claims no homestead exemption can claim up to \$2,500 in cash or yet-to-be-received tax refund (including federal refund).
23. North Carolina Allows wildcard exemption up to \$3,500 under certain circumstances that could be used to exempt EITC.
24. North Dakota Exempts aid to families with dependent children under statutory chapter; allows wildcard exemption of \$7,500 (in addition to other specific exemptions) to resident who claims no homestead exemption; allows head of family a wildcard exemption of \$5,000 (in addition to other specific exemptions); allows a single person a wildcard exemption of \$2,500.
25. Ohio Express exemption for EITC. Ohio Rev. Code Ann. § 2329.66 (2009).
26. Oklahoma Provides undue hardship exemption for part of earnings from personal services necessary for maintenance of family or other dependents. Case law says this covers EITC. Other exemptions held not to cover EITC.
27. Oregon Express exemption for EITC. Or. Rev. Stat. Ann. § 18.345(1)(n) (West 2009).
28. South Carolina Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear.
29. South Dakota Statutory chapter about temporary assistance for needy families exempts assistance provided under it. EITC is either not exempt or whether it is exempt is unclear. Provides

wildcard exemption for personal property, but might be needed for vehicles, furnishings, and other personal property, as well as EITC.

30. Tennessee Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear. Statutory chapter on programs and services for children says assistance under it is not subject to any bankruptcy law. Tennessee has a wildcard exemption for up to \$4,000 that can be used to exempt EITC. Tenn. Code Ann. § 26-2-103 (West 2009).
31. Utah Statutory chapter on workforce services says public assistance provided under it is not subject to any bankruptcy law.
32. Virginia Provides wildcard exemption that might protect large EITC payment, depending on value of homestead exemption debtor claims.
33. West Virginia Exempts a local public assistance benefit. EITC is either not exempt or whether it is exempt is unclear.
34. Wyoming Statutory chapter exempts public assistance and social services provided under it. Case law says EITC is not exempt under that chapter.

II. Exemption of the Federal Earned Income Tax Credit in states that allow people who file for bankruptcy to choose under § 522(b) either the exemptions provided in § 522(d) (“the federal exemptions”) or the exemptions provided by state law (and other federal law).

A debtor who chooses the federal exemptions, as allowed by these 16 states, can claim a wildcard exemption for property worth up to \$1,075, plus up to \$10,125 of unused part of the exemption amount allowed for a residence. § 522(d)(1) & (5). (These dollar amounts may be adjusted on April 1, 2010).

There have apparently been almost no reported decisions in these states about exempting the EITC under § 522(d) or under state exemption laws.

States that have not opted out of the federal exemptions

1. Alaska
2. Arkansas
3. Connecticut
4. Hawaii
5. Massachusetts
6. Michigan
7. Minnesota
8. New Hampshire
9. New Jersey
10. New Mexico
11. Pennsylvania
12. Rhode Island
13. Texas
14. Vermont
15. Washington
16. Wisconsin

Case law says a debtor who chose the federal exemptions could not exempt the EITC under § 522(d)(10) as a "local public assistance benefit," but a debtor who chose the state exemptions could exempt the EITC under a Minnesota statute as "relief based on need."

SUMMARY OF TESTIMONY IN SUPPORT OF KANSAS SENATE BILL 12

Senate Judiciary Committee: January 31, 2011

My name is Paul Post. I have been a lawyer for over 36 years, and in private practice in Topeka since 1978. A significant percentage of my private practice involves representing persons and families filing for bankruptcy. I generally represent debtors rather than creditors. My bankruptcy practice for debtors is about evenly divided between filing Chapter 7 bankruptcies and Chapter 13 repayment plans.

As part of the bankruptcy process, debtors are required to list all of their assets, which includes income tax refunds which they expect to receive. The refunds also include the earned income credit. If a tax refund is received after the case is filed, the debtor is usually required to turn the tax refund over to the bankruptcy trustee, for distribution by the trustee to unsecured creditors. It is also possible for me to accept an income tax assignment to pay all or a portion of my attorney fees in connection with the case.

The amount of the income tax refund and earned income credit required to be turned over to the trustee varies depending on when the case is filed. If a bankruptcy is filed early in the year, but after the previous year's tax refund or earned income credit is received, then the trustee will only require turnover of that portion of the refund or EIC that was "earned" prior to the time that the case was filed. In other words, if a case is filed on April 1, which is one fourth of the way through the year, then one fourth of the tax refund or EIC must be turned over. As the year progresses, more or the refund or EIC must be turned over. If a bankruptcy is filed after the new year begins, but before the tax return is filed and the refund received, then all of the tax refund and EIC from the previous year is subject to turnover to the trustee.

A trustee has discretion to decline to accept a refund or the EIC. If the refund is small, then

a trustee may allow the debtor to keep the refund, since there would not be a meaningful payment to unsecured creditors arising out of the refund. In my experience, if the refund is less than \$1,000.00, then the trustee may decline to administer the refund for the benefit of creditors. However, this is not always true, especially if there are other potential non-exempt assets which the debtor owns that may be required to be turned over.

Court decisions in the 1990's determined that the earned income credit was subject to turnover to the trustee. This credit is available to the "working poor" who have minor children dependent upon the working parent for support. A person cannot receive the earned income credit if he or she does not work or if there are no minor children at home. Oftentimes, depending upon the number of children in the family and the amount of income received, the EIC can be substantial, oftentimes amount to several thousand dollars. A working parent can receive the EIC even if no taxes were withheld on account of employment, which oftentimes happens with a parent who has a low wage and several children in the home. Since the EIC is available only to working parents, it is specifically intended to encourage persons with minor children to work outside the home – it is a work-incentive program that is part of our federal welfare system, and when combined with the Temporary Aid to Needy Families program (TANF), is intended to assist those families in meeting their basic needs after the TANF payments expire.

The court rulings which allowed bankruptcy trustees to require turnover of the earned income credit are at cross-purposes with the national welfare assistance programs. The effect of these decisions is to remove the money from families who need the funds essentially to survive, and allow the money to be distributed to creditors. The question becomes whether it is fair result to redirect money away from low incomes families who need the funds for essential survival, and pay it to creditors. This question can be answered by looking how unsecured creditors receive money from

the bankruptcy estate. The trustee is allowed to base a fee on 25% of the first \$5,000.00 of recovered assets in a Chapter 7 case, with a 10% fee charged for sums received thereafter on amounts up to \$50,000.00. A \$5,000.00 earned income credit refund would result in a fee of \$1,250.00 to the trustee. A Chapter 7 trustee may also charge additional expenses against the recovered asset. Most trustee's charge separately, and usually at an hourly rate, for actual legal work that benefits the estate, and this on top of the trustee fee previously discussed. The attorney fee charges usually add an additional \$500.00 to \$1,000.00 to the total bankruptcy estate expenses, which are deducted from the recovered asset. Again, using the hypothetical \$5,000.00 earned income credit, fees could easily exceed \$2,000.00, leaving the balance for unsecured creditors, who share *pro rata* in the net recovered assets based upon the amount of each claim compared to the entire recovery.

It is not uncommon for unsecured creditors to receive small distributions amounting to only a few dollars. Oftentimes, the original creditor has sold its claim to a collection agency or a company that buys claims in bankruptcy for cents on the dollar. Thus, the small amount of money paid to creditors in Chapter 7 may end up in the coffer of a speculator who has purchased another company's bankruptcy claim. This comes at the expenses of working parents who would otherwise use the earned income tax exemption to purchase needed goods and services in the local economy. Exempting the earned income credit would allow those low income families to keep this source of funds for the benefit of their children.

**Phillip B. Journey
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(o) 316-660-5601**

**Testimony for the Kansas Senate Judiciary Committee
Presented January 31, 2011, in Support of Senate Bill 34**

I would like to thank the committee for allowing me to testify in support of Senate Bill 34.

Senate Bill 34 amends K.S.A. 8-235, 8-286, 8-287 and 8-288. The effect of this legislation would be to allow the licensing of individuals declared to be habitual violators by the Kansas Department of Revenue to operate a moped. In 2005, this act was filed as SB 76, it passed the Senate but was used as a vehicle for a gut and go at the end of the 2006 session. Filed in 2007 as Senate Bill 6, it passed the Senate floor vote again.

The Kansas Department of Revenue may declare an individual to be a habitual violator upon the conviction of three serious traffic misdemeanors in any five-year period. The revocation of a habitual violators driver's license upon three convictions is for a minimum three years. Conviction of operating a motor vehicle after being declared a habitual violator is a Class A misdemeanor subject to a penalty of up to one year in custody and a \$2,500 fine. Under current Kansas law individuals whose driver's license has been suspended for other reasons such as failing to pay for traffic ticket for failing a breath alcohol test may receive a moped only license from the Kansas Department of Revenue, habitual violators may not. In 2007 approximately 5500 drivers per year are declared to be habitual violators in Kansas. Offenses that can trigger the declaration of someone being a habitual violator include, no proof of insurance, driving while suspended, transporting an open container, hit and run and driving under the influence.

Mopeds are vehicles defined in Kansas statutes as having less than three and half brake horsepower and a maximum speed of 30 miles per hour. Kansas citizens who have run afoul of the law must still continue with their lives. I am sure no one on this committee nor I wish to ease the legal penalty imposed upon drunk drivers. The reality of the situation individuals are confronted with is difficult to say the least. With little or no public transportation in the vast majority of the State of Kansas, those declared to be habitual violators who must go to work, attend school, and complete the tasks of their lives. They are faced with an impossible choice. They must decide whether they should violate the law and risk a year in jail or lose their jobs. They must decide whether to take the children to the doctor in a medical emergency and risk a \$2,500 fine or wait until the taxi arrives.

Individuals who have been placed on probation for convictions for crimes such as driving under the influence are required as a condition of their probation to attend probation meetings, outpatient substance abuse counseling and Alcoholics Anonymous meetings. They must get there somehow. Too many Kansas citizens faced with this choice make the wrong choice. This bill gives them a real choice. It presents no threat to public safety and allows those declared to be habitual violators the opportunity to support their families and get the help they need to deal with their issues. I hope that the committee recommends Senate Bill 34 favorably for passage.

Respectfully submitted

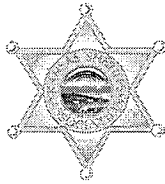
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**Testimony to the Senate Judiciary Committee
In Opposition to SB34
January 31, 2011**

Chairperson Owens and Committee Members,

This bill is about accommodating persons who have had their driver's license revoked as a result of being declared an habitual violator by allowing them to operate a motorized bicycle. It is important to understand how a person becomes a habitual violator. A habitual violator is a person who has three or more convictions in five years for listed offenses. Some of those offenses are very serious traffic offenses. These offenses are 1) vehicular homicide; 2) DUI; 3) driving while suspended; 4) Perjury relating to licensing; 5) Using a false or fictitious name or address to acquire a vehicle title or registration; 6) a felony using a motor vehicle; or 7) liability insurance violation.

While some of these seem innocuous as it pertains to allowing them to operate a motorized bicycle, others are problematic. If these were only the insurance violations, the perjury, or using a false name or address we might feel differently. But do the citizens using the roadways of our state really want offenders legally operating a vehicle, even a motorized bicycle, when they have three offenses of vehicular homicide, DUI, driving while suspended or using a motor vehicle in a felony? Motorized bicycles are capable of speeds up to 30 mph. A speed which even a motorized bicycle could cause serious injury or damage to others especially pedestrian and particularly children. Should we allow a person who has previously refused to provide liability insurance along with a couple of DUIs or vehicular homicide be on the road where they can cause damage again? We do not think this is a good idea.

Subsection (d)(3) was passed in 2000. In 2007 there was a conscious decision by legislators to not allow a person suspended for DUI to have a motorized bicycle only license under that provision. (L. 2007, ch181§1) This bill leaves that intact. However, as proposed, this bill would allow a person who is revoked as an habitual violator due to three DUIs in five years to obtain a motorized bicycle only license. So if this bill passes and a person is currently suspended due to a DUI conviction they cannot get class C motorized bicycle only license, but if they are revoked as a habitual violator because they have three DUI convictions this bill would allow it.

The proposed law does not seem very clear on whether the suspension or revocation remains enforceable if the person is operating any class of motor vehicle other than a motorized bicycle. There is also an issue with how the suspension or revocation can be enforced by officers. The driver's license will only indicate they have a valid class C motorized bicycle only license. Only if the officer runs a computer check can they know the person is suspended or revoked for the purposes of operating any other type of vehicle.

This bill is a bad idea and we strongly encourage you to not recommend it favorably.

Ed Klumpp
Kansas Association of Chiefs of Police, Legislative Committee Chair
Kansas Sheriffs Association, Legislative Liaison
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Senate Judiciary
1-31-11
Attachment 7

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TESTIMONY BEFORE THE KANSAS STATE SENATE JUDICIARY COMMITTEE IN SUPPORT
OF SB-37

Presented on Monday, January 31, 2011

Mr. Chairman, Members of the Committee thank you very much for approving this bill request, and the opportunity to have a hearing and to testify before the committee in support of Senate Bill 37. When I originally made the request for SB 520, I intended to rectify what I perceived to be an inequity regarding labor provided either as a jail trustee or in community service in lieu of paying court assessed fines or costs for those indigent and unable to satisfy the obligation imposed by the court as a result of their convictions for various crimes. Currently, K.S.A. 22-4603 only provides for a credit of \$5 per day in programs utilizing individuals in custody by a county sheriff, town marshal, chief of police, under the direction of county commissioners or the governing body of a city. The intent of the request was to bring provisions similar to K.S.A. 8-1567(j) into the statute proposed to be amended. I appreciate the committee's approval of the bill request and the reviser's efforts in accomplishing that request.

This bill was originally requested in 2010 and was denoted as SB 520. In 2010, the bill passed out of The Senate and The House Corrections Committee but was taken below the line in The House at the end of the session.

This modification of current Kansas statute brings consistency to these similar provisions. Many of the defendants I see through my service to the state as a District Court Judge run afoul of the law, are indigent, and are unable to have the means to satisfy their obligations to the court for fines and court costs. Many of the individuals who appear before me suffer with some type of disability and do not have the earnings capacity necessary to satisfy minimum fines mandated by statute. Their service to the community has the potential to provide value to our state far in excess of the \$5 per hour rate granted by this statutory modification. It is important that individuals that are indigent have the ability to resolve these obligations to close these cases, and this is an equitable modification of statute bringing inconsistent statutory provisions into a congruent public policy dealing with various defendants' guilty of various crimes, and giving them all the same opportunities to resolve these matters that come before the court and satisfy their probationary or other obligations, as those convicted of driving under the influence. It is of course the committee's and legislative body's prerogative whether court costs should be included in these provisions. K.S.A. 8-1567(j) does not allow for community service to be credited against assessments such as probationary fees or court costs, only fines. Once again, let me thank the committee and the chairman for the opportunity to testify in support of SB 37. I hope that the proposed modifications and amendment to the statute are accepted by the committee as these are an expression of the original intent of the request.

Respectfully submitted,

Phillip B. Journey
PHILLIP B. JOURNEY

Senate Judiciary

1-31-11
Attachment 8