

SESSION OF 2004

**SECOND CONFERENCE COMMITTEE REPORT
BRIEF ON SENATE BILL NO. 317**

As Agreed to April 29, 2004

Brief*

SB 317 amends the Code of Civil Procedure regarding the handling of subpoenaed business records; establishes a \$5 garnishment fee, amends the worthless check claims under the code of civil procedure, amends Chapter 61 (limited action) regarding admissions of parties to an action, and declares language in home inspection contracts limiting the inspector's liability against public policy and void.

- ! The bill permits the records which were subpoenaed but not used as evidence in a case to be returned to the records custodian or destroyed 30 days after the case is terminated and notice is given.
- ! The bill provides that in actions regarding worthless checks, the court may waive attorney fees upon a finding that the amount tendered is sufficient to compensate the holder of the check. Current law language refers to "damages and other amounts awarded." The provision is from HB 2565.
- ! The bill amends provisions of Chapter 61 (limited actions) that permits a judge to allow withdrawal or amendment of any admission made by nonresponse when the party to whom the admissions were sent shows good cause for failure to respond and shows evidence that the admission is not true and, the party who obtained the admission, fails to satisfy the judge that withdrawal or amendment will prejudice the party in maintaining the party's action or defense on the merits. In the event the withdrawal or amendment is made by the party to whom the admissions were sent at trial, the party who obtained the admissions shall be allowed a continuance of the trial setting. Any admission made by a party is for the purpose of the pending action only and is not an admission by the party for any

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other purpose nor may it be used against the party in any other proceeding. These provisions are from HB 2655.

- ! The bill establishes a \$5 docket fee for garnishment actions under the Code of Civil Procedure (Chapter 60) and the Code of Procedure for Limited Actions (Chapter 61). This was from SB 298.

- ! The bill declares any agreement or contract dealing with home inspections involved in a residential real estate transfer which disclaims the home inspector's liability as to any system covered in the inspection report is against public policy and thereby void.

Conference Committee Action

The Second Conference Committee agreed to the House version of the bill and deleted provisions of HB 2601 dealing with open records and added into the bill provisions of SB 298. The Conference Committee also agreed to add provisions of HB 2100 dealing with home inspections. HB 2565 and HB 2655 were amended into the bill by the House.

The Second Conference Committee deleted provisions of HB 2678 which would raise the small claims jurisdictional amount from \$1,800 to \$4,000 and placed the small claims provision into HB 2585.

Background

The bill was supported by the Kansas Association of District Court Clerks and Administrators as a way to better manage tight storage space.

The fiscal note on the original bill indicates the increase in the claim limit would create \$76,360 in new courts revenue. Of this amount \$19,920 would go to counties, \$30,495 would go to the State General Fund, and the remaining \$25,945 would be apportioned among 12 fee funds. An additional \$21,891 would be needed to fund temporary help in FY 2005 due to increased case filings.

SB 298, dealing with the \$5 garnishment fee was recommended by the 2003 Special Committee on Judiciary. A representative of the Office of Judicial Administration suggested technical amendments to

the bill. A representative of Kansas Legal Services, Inc., suggested the moneys generated (approximately \$500,000 annually) by the garnishment docket fee to be earmarked for the Access to Justice Fund to be used to provide legal assistance in debt collections and other related consumer legal issues.

A representative of the Kansas Credit Attorneys Association and the Kansas Collectors Association Inc, said the Judicial Branch needed adequate funding, suggested Chapter 61 cases be included, and recommended other clarifications.

Amendments to another bill, SB 297, by the Senate Committee of the Whole, would create the new Judicial Branch Fund and provide that portion of docket fee moneys which now go to the State General Fund would be placed in the new fund.