

SESSION OF 2010

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 234**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 234 would amend existing law concerning garnishments that attach to earnings of a judgment debtor. The bill would:

- Require a creditor to return to the garnishee any amount in excess of what is due, who would then be required to distribute the amount *pro-rata* to any other creditors or, if none, refund the money to the judgment debtor;
- Eliminate the requirement for a written explanation of garnishment computation with each paycheck;
- Provide that the garnishee has 14 days from the date of service of an initial garnishment order to complete an answer. No further answer would be required; however, a party or the court may request an affidavit, explaining the garnishment computation for any pay period. The affidavit is required to be submitted within 14 days of the service of the request;
- Require the party requesting the garnishment to provide the garnishee the amount of the unsatisfied balance of the judgment at the time the order of garnishment is issued; and
- Provide that if the garnishee asks for but does not receive a payoff balance within 7 days of the written request, the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

garnishee may submit a written statement to the judgment creditor of plans to stop withholding earnings pursuant to the garnishment order 7 days after the date of the written statement, unless a written notice of objection is received from the judgement creditor.

Background

In the Senate Committee hearing, the Secretary of the Kansas Department of Administration and representatives of Tyson Foods, Inc. and the American Payroll Association (APA) appeared as proponents of the bill. The APA is a professional organization consisting of 23,000 payroll professionals. APA's primary purpose is to educate payroll professionals on all aspects of properly paying employees as well as withholding and remitting taxes, healthcare benefits, child support, and other garnishments. No opponents of the bill presented testimony in the Senate Committee hearing.

In the House Committee, a representative of Tyson Foods Inc. presented testimony in favor of the bill. No opponents appeared at the hearing.

The House Committee adopted a substitute bill that would amend SB 234 as follows:

- Add KSA 60-734 and KSA 60-737 to the bill title and to the provision listing bills to be repealed;
- Replace "shall" with "must" throughout the bill;
- Amend KSA 60-734 by:
 - Allowing a party or the court to request a written explanation of the garnishee's computation of earnings withheld, which, within 14 days of the request, must be submitted by affidavit;

- Deleting a provision that allowed a garnishee to withhold \$10 for each pay period, so that now a garnishee may only withhold \$10 for each 30-day period for which income is withheld;
 - Specifying that when the income due is for child support, for each 30-day period for which income is withheld, the garnishee may withhold \$10 to defray administrative expenses;
 - Requiring that the party requesting the garnishment must provide the amount of the unsatisfied balance of the judgment to the garnishee at the time of issuance of the order of garnishment;
 - Allowing the garnishee to request the unsatisfied balance from the judgment creditor or the creditor's attorney, if represented. A request of the judgment creditor should be in writing, by first class mail and, if requested of the creditor's attorney, it also may be by fax or email with read receipt confirmation; and
 - If the judgment creditor or the creditor's attorney does not respond to such a request within 7 days, the garnishee may advise them by a request in the same fashion as the original request that the garnishee intends to release the garnishment order, unless the garnishee receives written notice of objection and the requested unsatisfied balance within 14 days;
- Amend KSA 60-737 by:
 - Replacing the "end of each month" with the "date of service upon a garnishee of an initial order of garnishment," as the day the clock starts running for a garnishee to complete an answer;
 - Changing from 15 to 14 the number of days a garnishee has to complete an answer to an initial garnishment

order and send it to each judgment creditor and judgment debtor;

- Specifying that once a garnishee has sent the answer to the initial order of garnishment, no further answer is required; and
 - Allowing a party or the court to request a written explanation of the garnishee's computation of earnings withheld, which, within 14 days of the request, must be submitted by affidavit;
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- In both KSA 61-3507 and KSA 61-3510, change from 15 to 14 the number of days within which an affidavit, upon request of a party or the court, must be submitted to the court and all parties with an explanation of the garnishee's computations of earnings withheld during any pay period;
 - Specify the methods by which a garnishee may request the unsatisfied balance of a judgment: a request of the judgment creditor should be in writing, by first class mail or, if represented by an attorney, the request also may be by fax or email with read receipt confirmation;
 - For any continuing garnishment, change from 10 to 7 the number of days within which a judgment creditor or the creditor's attorney, if represented, must respond to a request by the garnishee to supply the unsatisfied balance of a judgment. If the judgment creditor does not meet this deadline, the garnishee may submit a request to the judgment creditor or the creditor's attorney (pursuant to a House Committee amendment, in the same fashion as the original request) advising that the garnishee intends to release the garnishment order unless the garnishee receives written notice of objection;
 - In situations where a garnishee has advised the judgment creditor or the creditor's attorney that without receipt of written notice of objection the garnishee intends to release

the garnishment order, change from 15 to 14 the number of days within which such written notice of objection must be received. Otherwise, pursuant to an amendment made by the House Committee, the garnishee may then release the garnishment. An additional House Committee amendment provides that the garnishee may release the garnishment if the garnishee does not also receive the requested unsatisfied balance at that time;

- Change from 15 to 14 the number of days within which, upon service of an initial order of garnishment, the garnishee must complete the answer in accordance with the instructions accompanying the answer form and send the completed answer to each judgment creditor and judgment debtor; and
- Renumber sections to reflect the amendments made by the House Committee.

The House Committee of the Whole amended House Substitute for SB 234 by modifying the language in the bill that refers to releasing a garnishment order: “release” would be replaced by “stop withholding earnings” and instead of allowing a garnishee to “release the garnishment,” the garnishee would “thereafter have no duty to withhold earnings.”

The fiscal note for SB 234, as introduced, may no longer be accurate because of the amendments passed in the House Committee. Originally, however, the fiscal note indicated that passage would result in one-time costs for the design, programming, and testing required to implement the changes proposed by the bill. The Department of Administration estimates that the cost would be \$7,960, which would represent 100 programmer analyst hours at \$60 per hour and 70 business analyst hours at \$28 per hour. The Department also anticipates ongoing savings will be realized due to the decrease in the cost to generate and mail the garnishment answers, which it estimates will decrease from 7,200 to 520. The agency states that it is impossible to estimate the potential costs or savings

from the proposed changes to the explanation letter. Overall, however, the Department expects that any costs involved with passage of SB 234 would be offset by savings realized. Any fiscal effect resulting from enactment of SB 234 is not accounted for in *The FY 2010 Governor's Budget Report*.