MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 ~~a.m.~~/p. m., on March 22, 1978

All members were present except: Representatives Gastl and Baker, who were excused.

The next meeting of the Committee will be held at 3:30 ~~a.m.~~/p. m., on March 23, 1978

These minutes of the meeting held on ______, 19__ were considered, corrected and approved.

Chairman

The conferees appearing before the Committee were:

Mr. Buford Watson, Jr., City Manager, Lawrence
Mr. Jack Saunders, Overland Park City Council
Mr. Ken Carter, City Administrator, Great Bend
Mr. William Douglas, League of Kansas Municipalities
Rep. Don Crumbaker
Mr. David Starkey, Thomas County Attorney
Mr. Don Smith, Colby
Mr. Fred Allen
Mr. Marion McGhehey
Mr. Jerry Shriner
Senator Bill Morris
Mr. C. L. Riley
Mr. Vern Welling
Mr. Tony Lopez, KCCR
Mr. Roger Lovitt
Mr. Will Larson

The meeting was called to order by the Chairman who noted there were a number of people appearing on SB 603, and introduced Mr. William Douglas, League of Kansas Municipalities. Mr. Douglas testified his organization opposes the bill, and offered a printed statement. (See exhibit.)

Mr. Burford Watson, City Manager of Lawrence, testified they are opposed to the concepts contained in SB 603. He offered a printed statement, as well as a Resolution which was passed by the Lawrence City Commission. (See Exhibit.)

Mr. Jack Sanders, President of the Overland Park City Council appeared in opposition to SB 603, stating that local units of government should have the right to make decisions without mandates in the statutes. (See printed statement.)

Mr. Ken Carter, City Administrator from Great Bend stated they had experienced some employee unrest in the past and they have worked out those problems in a effective and progressive fashion. He expressed opposition to mandating what the local units should do. (See printed statement.)

Mr. Fred Allen, representing the Association of Counties, spoke in opposition to the proposal.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Mr.Marion McGhehey, Kansas Association of School Boards explained the problems SB 603 would cause local school boards. He stated it would force them to deal with four separate unions as well as the teachers' union. In addition, he explained, school boards employ many part time individuals, some of which are borderline type persons who need one to one supervision, because it has been the policy that schools should be service oriented as well as education oriented. He urged the Committee to reject the bill.

Mr. Jerry Shriner, Executive Director of School Administrators spoke in opposition to the bill, reiterating some of the previous statements.

Mr. C. L. Riley, Superintendent of Schools in Holton, testified he also was in opposition to SB 603, although he was speaking for only his own district, but felt it would cause similar problems for other schools. He suggested some possible amendments if the bill is to be favorably considered.

Senator Bill Morris, the sponsor of the bill, told the committee the original intent was to solve a problem of budgets getting in on time but another bill was amended into this one and it is no longer the same bill.

Mr. Vern Welling representing the Kansas Public Employees Association appeared in support of SB 603, stating it eliminates a double standard and insures equal opportunities and equal treatment for everyone. He told of some instances he had heard about where employees had petitioned to have group representation and the governmental unit had denied their wishes and desires.

Rep. Fred Lorentz reported on SB 553, explaining the Senate had placed a number of amendments on the bill as a result of recommendations by a joint committee of District Court judges and members of SRS. He explained the controversy is in the area of status offenders but that is not in this particular bill but is in HB 2860 and SB 780. He recommended those two matters should receive interim study and not be dealt with further this session. He noted there is another bill--SB 761 concerning the age of juveniles and procedures in certain areas.

Mr. Art Griggs explained SB 553 in detail, noting the new word "deprived" rather than wayward and miscreant. He distributed a balloon version of the bill and discussed possible changes.

Rep. Hayes inquired about the rationale of sending 14 year olds to municipal court and Rep. Heinemann explained if youngsters that age are driving a vehicle they should be responsible for their acts. The Chairman noted that juvenile judges have more than they can do now, and requiring juveniles to go through their system for traffic offenses is quite a burden. Rep. Lorentz agreed that was the rationale, plus the need for a guardian ad litem and other unnecessary expenses.

The Chairman asked members to study the subcommittee report and be prepared to take action at the next meeting .

The Chairman called attention to HCR 5085, noting that most members of the committee are sponsors, calling for an interim study of rate making in product liability insurance. He distributed a balloon amendment which makes the study committee an investigatory committee. It was moved by Rep. Roth and seconded by Rep. Mills that the proposed amendments be adopted. Motion carried. It was then moved by Rep. Mills and seconded by Rep. Roth that the Resolution as amended, be recommended for adoption. Motion carried.

Rep. Brewster reminded members they had balloon copies of the proposed amendments to HCR 5062, and proceeded to discuss the areas of agreement as well as disagreement. He explained the Resolution rejects the Rules and Regulations because the subcommittee felt dissatisfied with the proposal. He noted the first change is in 21-50-1, and there is no disagreement there; that 21-50-3 speaks to various factors and the underlined words reflect changes which seem to be agreeable except the Commission may have problems with the last three lines. He pointed out a list of items which the Commission may consider in determining whether a contractor is in compliance. He noted there is no place in the Act which would require contractors to solicit bids from minorities and it was felt then it had no place in the rules.

Mr. Tony Lopez of KCCR stated they have been trying to get this incorporated into the Rules and Regulations for several years and their legal counsel feels it is within the statutory authority to include the phrase.

The Chairman told the committee that Sections 5 and 6 are less offensive than they were. Mr. Lovitt, KCCR legal counsel, stated that those sections deal with evidence and not violations; that the Commission looks for compliance as well as non-compliance.

Mr. Will Larson, representing Associated General Contractors stated they have no objection to what the statute says and if it is limited to "equal opportunity" they have no objection.

The Chairman noted the original draft incorporating the Attorney General's opinion said contractors "shall solicit minorities and females", and he does not think this is within the purvue of the statute. He suggested the phrase "contractors may not systematically...." Mr. Lopez expressed no objection and Mr. Larson stated he believed if it is made clear they could accept it. He explained contractors do not ordinarily "solicit" bids but simply let the need be known and anyone has the right to make a bid.

Rep. Gillmore offered a conceptual motion that the draft reflect what the discussion had indicated. Motion was seconded by Rep. Mills and carried by a majority. It was then moved by Rep. Gillmore and seconded by Rep. Mills that the Resolution as amended, be recommended for adoption. Motion carried.

The meeting was adjourned.

House Judiciary

March 22, 1978

Name	Address	Organization
W. Jack Sanders	Council Pres.	City of Overland Park
Daniel [illegible]	"	" " "
[illegible]	Lawrence Ks.	City of Lawrence
Buford M. Watson	" "	" " "
Mary Chaney	Lawrence, Ks.	Dept. of Transportation
[illegible]	" "	
Alvin Samuels	" "	KSCFF
Alla [illegible]	" "	Journal-World -
[illegible]	Topeka	Dept of Admin
Darrell Hoffman	Topeka	Dept of Admin
Vernon S. Welling	Topeka	Ks Public Employees
Neil Shortlidge	Topeka	League of Ks Municipalities
Ken Carter	Gt. Bend	City of Gt. Bend
Bill Douglass	Topeka	League of Ks Municipalities
Sandy McLennan	Topeka	United School Administrators
C L Riley	Holton	USD # 336
Jerry O [illegible]	Topeka	United School Admin.
William A [illegible]	Topeka	Ass. Gen Cont of Kansas

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REMARKS ON SB 603
William M. Douglass
League of Kansas Municipalities

We appear today in opposition to Section 1 of SB 603. At the same time we would make it clear that we support Section 2 of this bill relating to the resolution of impasse.

Section 1 of SB 603 will affect only local units of government. This section, if adopted, will remove the local option provisions of K. S. A. 75-4321 and will mandate local recognition of employee organizations. Such a state mandate, we believe, is an unwarranted state instrusion into matters of local affairs and government.

The convention-adopted policy statement of the League of Kansas Municipalities relating to public employee relations reads in part: "The state and federal government should not intervene in local government employee relations. Neither should city officials, employees, or employee organizations seek legislative determination of such local affairs. We strongly oppose adoption of a federal public employee relations act or any state legislation which would mandate collective bargaining or the recognition of employee organizations. The local option provisions of the Kansas public employer-employee relations law should be retained; additional local flexibility should be authorized, including the time of impasse resolution in relation to the local fiscal calendar . . . ."

We assume that the objective of Section 1 is to get the legislature to mandate a result which some employee organizations have been unable to achieve through persuasion or public endorsement at the local level. Proponents of the proposed amendment apparently believe that some public employees, as a class, are being denied certain rights.

It is a fact that some governing bodies have elected not to come under the act. We are aware of no evidence, however, to indicate that the employees of these cities have suffered any hardship or been denied any constitutional right because of the failure

of any city to come under the act. Nor are we aware of any public employers electing not to come under the act which have refused to discuss wages or other issues affecting employment with their employees. The only evidence which can be offered is that these employers have chosen to deal with employee problems under their power of home rule rather than utilizing an optional state statute.

Section 1 of SB 603 will not confer any rights upon cities which they do not now possess. Nor will it affect in any way, in our judgment, the constitutional right of an employee to join or not to join an employee organization.

It has been suggested by some that enactment of this amendment somehow will result in harmonious employer-employee relationships. We do not agree. We know of no evidence that mandated collective bargaining in both the private and public sector results in more harmonious relationships.

The League, as many of you know, sponsored the introduction and encouraged the adoption of the present, local option public employer-employee relations act. We still support this act. We feel it serves a need for both public employees and public employers. We admit the present law is not perfect. There are some improvements which need to be made. Section 2 of SB 603 is an example of what we believe to be an improvement to the act.

So far as Section 1 is concerned, the present existing law is a good law. It permits those public employers who choose to do so to operate within the framework established by the act. At the same time the present law recognizes the right of cities to elect to recognize and negotiate with employee groups outside the scope of this particular statute. Section 1 of SB 603 would destroy this constitutional right. It would say to every city in the state that there is only one way to conduct employer-employee relations and that is the manner prescribed by the state.

We would respectfully remind this committee that every city of the state, including the more than 400 cities with less than 1,000 population, will be affected by this proposed amendment. If Section 1 of SB 603 becomes law it would, for instance, permit the single full-time employee of Otis to demand recognition by the city governing body. And the unpaid, part-time governing body would have no option but to recognize this single employee as an appropriate unit and negotiate with him on his wages and other conditions of employment.

Persons employed by a city are not just employees of the governing body. They are employees of the entire community. Elected officials, in making a decision whether to recognize or negotiate with employee organizations, have as much responsibility to the community as they have to the employee. We strongly support the concept that the responsibility for making decisions should rest with local elected officials, who must assume full responsibility for their decisions. We are unaware of any evidence at this time which indicates that statewide, mandatory recognition of public employee organizations is in the best interest of the residents of every local government in this state.

Section 1 of SB 603 is an attempt, however well intentioned, to substitute the judgment of the legislature for the judgment and responsibility of those local elected officials who should be held fully accountable for their own action.

We therefore respectfully suggest that SB 603 be amended to delete Section 1. If, however, the committee cannot see its way clear to delete this section, we then request that Section 1 be amended to retain the local option provision for the smaller cities, such as those with a population of less than 5,000 persons.

# # # #

3-22

City of Lawrence
KANSAS

BUFORD M. WATSON, JR. CITY MANAGER

CITY OFFICES 910 MASSACHUSETTS ST
BOX 708 66044 913-841-7700

CITY COMMISSION
MAYOR
MARJORIE H. ARGERSINGER
COMMISSIONERS
DONALD BINNS
ED. C. CARTER
BARKLEY CLARK
JACK ROSE

March 14,1978

House Judiciary Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Representative

As Mayor of the City of Lawrence, I would like to take this opportunity to express opposition to Senate Bill 603 as amended and passed by the Senate. The bill in its present form would mandate that all cities, counties, townships, school districts, and other public employers be subject to the provisions of the state Public Employer-Employee Relations Act. That coverage is presently optional, allowing those units of government to use their home rule powers to decide whether or not they need the structure provided by Public Employer-Employee Relations Board in dealing with their employees. I urge you to allow this exercise of home rule powers to continue. Enumerated below are the reasons for the Lawrence City Commission's objections to SB-603:

First, we in Lawrence believe very strongly in the concept of home rule as provided for in the Kansas Constitution. We are presently allowed to exercise these powers when dealing with our employees. Senate Bill 603 would remove this power, forcing us to operate under the authority of PERB.

Second, we feel that the political tenor and support for organized labor differs from community to community in this state. This was demonstrated in Lawrence in the last City Commission election. Recognition of municipal labor unions was an issue during the campaign with each side of the question supported by several candidates, but when the ballots were cast only those candidates against recognition of unions were elected. We believe that this is an indication that the citizens of our city support us in our efforts to stay non-union. We do, however, feel that those units of government which exist in a more labor oriented setting should be allowed to recognize and deal with organized unions if that is their decision. The present law allows this to happen, thus satisfying the needs of all units of local government.

Third, we are concerned by the talk we have heard in Topeka about the "Lawrence problem." If SB-603 is aimed at solving the employer-employee relations problems we have experienced in Lawrence, let me assure you that we are already involved in solving any problems ourselves; mandatory PERB coverage will not help us. Management and line employees have discussed items of concern in Lawrence for nearly ten (10) years. Those discussions have not always been pleasant nor have the employees come away with everything they requested, but discussions were held in the best tradition of meet and confer. We have established our own ground rules and our own impasse resolution procedure. This hardly seems to fit the picture of a void in labor relations practice that must be filled by a state law or state agency.

Finally, we oppose mandatory PERB coverage because of the vast bureaucracy that will be required to administer it. There are presently one hundred five (105) counties, over six hundred (600) cities, and over three hundred (300) school districts in the state, with numerous townships and special districts in each county. Is the legislature prepared to allocate the funds that would be necessary to operate PERB when it asks for increased personnel to handle its increased work load? We question whether the long term expenses of such a program have been considered. Please think of this as you consider SB-603.

In summary, let me repeat that the Mayor and City Commission of the City of Lawrence are unanimously opposed to Senate Bill 603 and its provisions for mandatory coverage by PERB.

I have enclosed a copy of Lawrence City Commission Resolution No. 4235 which was passed January 31, 1978, in opposition to HB-2772 and SB-768, both of which later died in committee. Senate Bill 603 was amended on the Senate floor to include the provisions of SB-768; thus our opposition to SB-603. We urge you to kill this bill in committee.

Sincerely,

Marnie Argersinger,
Mayor

MAed

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RESOLUTION NO. 4235

A RESOLUTION INDICATING THE GOVERNING BODY'S OPPOSITION TO HOUSE BILL 2772 OF THE KANSAS HOUSE OF REPRESENTATIVES, AND SENATE BILL 768 OF THE KANSAS SENATE, ACTS RELATING TO PUBLIC EMPLOYER-EMPLOYEE RELATIONS AMENDING THE KANSAS PUBLIC EMPLOYMENT RELATIONS ACT.

WHEREAS, the Governing Body of the City of Lawrence, Kansas, is vitally concerned with maintaining harmonious and cooperative relations with its employees, and

WHEREAS, we believe in the Constitutional provision of Home Rule and self governance for cities in Kansas,

WHEREAS, we have demonstrated our concern and good faith by voluntarily meeting and conferring with our employees regarding wages and working conditions toward the goal of full communication, and

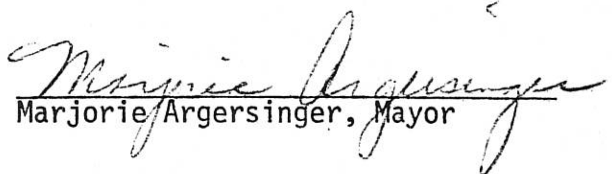
WHEREAS, the Public Employment Relations Act of Kansas provides that by majority vote of the Governing Body municipalities may voluntarily elect to bring themselves under the full provisions of the Act and the City of Lawrence has chosen to remain independent, and

WHEREAS, in light of the history of good faith full communication we have sought to maintain with our employees, we believe compulsory coverage by the Kansas Public Employment Relations Act is unnecessary, and infringes upon the precepts of local representative government and Home Rule;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

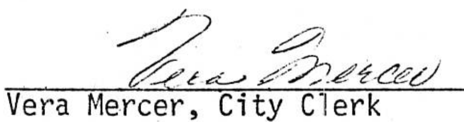
The City Commission opposes the adoption of Kansas House of Representatives Bill No. 2772 and Senate Bill 768, which repeals a Governing Body's option to elect to come under the provision of the Kansas Public Employment Relations Act and make such coverage compulsory.

ADOPTED by the Governing Body of the City of Lawrence, Kansas, this 31st day of January, 1978.



Marjorie Argersinger, Mayor

ATTEST:



Vera Mercer, City Clerk

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WHEREAS, we have demonstrated our concern and good faith by voluntarily meeting and conferring with our employees regarding wages and working conditions toward the goal of full communication, and

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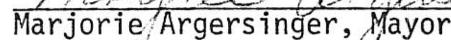
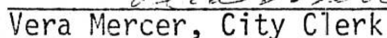

Marjorie Argersinger, Mayor

ATTEST:


Vera Mercer, City Clerk

SPEECH BY COUNCIL PRESIDENT W. JACK SANDERS

BEFORE THE

HOUSE JUDICIARY COMMITTEE

WEDNESDAY, MARCH 22, 1978

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MEMBERS OF THE HOUSE JUDICIARY COMMITTEE, GOOD AFTERNOON. I AM JACK SANDERS, PRESIDENT OF THE OVERLAND PARK CITY COUNCIL, AND I AM HERE TO SPEAK IN OPPOSITION TO PROPOSED SENATE BILL 603 WHICH,BY AMDNEMENT, MANDATES ALL LOCAL UNITS OF GOVERNMENT UNDER THE PUBLIC EMPLOYEE RELATIONS LAW. THE EFFECT OF THE AMENDMENT IS TO REMOVE FROM THE STATUTES SUBSECTION (c) OF KSA 75-4321 WHICH NOW GIVES LOCAL GOVERNING BODIES THE DISCRETION TO COME WITHIN OR STAY OUT OF THE KANSAS PUBLIC EMPLOYEE RELATIONS LAW. EVERY COUNTY, TOWNSHIP, SCHOOL DISTRICT OR PUBLIC EMPLOYER WOULD BE REQUIRED TO RECOGNIZE AND DEAL WITH PUBLIC EMPLOYEE ORGANIZATIONS UNDER THE PROPOSED LEGISLATION.

THE CITY OF OVERLAND PARK OPPOSES THIS BILL FOR THREE MAJOR REASONS:

1. LOCAL POLICY DECISIONS INVOLVING PUBLIC EMPLOYEE RELATION MATTERS SHOULD REMAIN WITHIN THE DISCRETION OF THE LOCAL GOVERNING BODY--BE IT A CITY COUNCIL OR COUNTY COMMISSION. SINCE LOCALLY ELECTED GOVERNING BODY MEMBERS ARE RESPONSIBLE FOR PROVIDING PUBLIC SERVICES, THEY SHOULD RETAIN THE FLEXIBILITY PROVIDED UNDER EXISTING STATE LAW FOR RECOGNIZING AND DEALING WITH PUBLIC EMPLOYEE ORGANIZ-TIONS.

2. WE RECOGNIZE THE IMPORTANCE OF AN "HARMONIOUS AND COOPERATIVE RELATIONSHIP" WITH PUBLIC EMPLOYEES BASED UPON THE PRINCIPLES OF MEANINGFUL TWO-WAY COMMUNICATION, BUT FEEL THAT WE CAN ACHIEVE

THIS GOAL WITHOUT A STATE MANDATE TO COME UNDER THE PROVISION OF THE KANSAS PUBLIC EMPLOYEE RELATIONS LAW.

3. WE BELIEVE THE CURRENT PROVISIONS OF THE KANSAS PUBLIC EMPLOYEE RELATIONS LAW PROVIDE THE PROTECTION SOUGHT BY THE PUBLIC EMPLOYEE AND THE FLEXIBILITY REQUIRED BY THE PUBLIC EMPLOYER AND SHOULD NOT BE AMENDED. WE HAVE YET TO SEE PROOF THAT EXISTING LEGISLATION DOES NOT ADEQUATELY PROTECT THE PUBLIC EMPLOYEE AND WE KNOW THAT IT DOES PROVIDE US THE FLEXIBILITY WE NEED IN THE AREA OF EMPLOYEE/EMPLOYER RELATIONS.

SINCE WE LOCALLY ELECTED OFFICIALS HAVE THE DIRECT RESPONSIBILITY FOR THE LEVEL OF PUBLIC SERVICES OUR CITIES PROVIDE, WE STRONGLY FEEL THAT THE KANSAS PUBLIC EMPLOYEE RELATIONS LAW SHOULD NOT BE AMENDED TO MANDATE ALL LOCAL UNITS OF GOVERNMENT UNDER ITS PROVISIONS.

THANK YOU FOR THIS OPPORTUNITY TO OUTLINE OUR POSITION ON THIS SUBJECT. WE ASK YOUR HELP AND SUPPORT FOR OUR POSITION.

- END -

TO: House Judiciary Committee
E. Richard Brewster, Chairperson

I am Ken Carter, City Administrator of Great Bend, Kansas. I am appearing before you today at the request of the Governing Body of our City. At our March 6, 1978 Council Meeting, I was directed by Council motion to appear before you in opposition to Senate Bill 603.

The City of Great Bend has a population of approximately 20,500 and has 120 full-time employees. We are a full service City providing police, fire, ambulance, park-zoo, street and sewer service. We are the seventh largest retail trade center in the State and are presently enjoying a substantial and steady growth rate. I mention these items only to show that we are a progressive City and try to plan our growth and manage our own affairs.

In late 1972, and the first part of 1973, the City of Great Bend did experience some employee unrest and discontent. The fire and police departments did receive Union Charters and requested the City to recognize their Unions and to voluntarily come under the Kansas Public Employees Relations Act. The Governing Body's decision was to refuse that request. However, that refusal did not mean that we buried our heads in the sand and refused to admit we had a problem. We did take affirmative action to find out the reasons for the problems and resolved those that we could. As in many cases, the causes of the problems were many and varied, but a lack of communication was the primary problem.

In the fall of 1973, we set up an informal system of meetings between representatives of both local Unions and our Council Committees. Each year the appropriate Council Committee meets with the Union officers to discuss their needs, concerns and desires for the coming year's budget. Additional meetings are held as needed during budget preparation to discuss problem areas. A final meeting is then held to go over the budget in final form. We have found this to be an effective method of keeping lines of communication open and still maintaining the right of the Governing Body to manage the financial resources of the City. As an indication of the system's effectiveness, the Police Department's Union voluntarily disbanded in 1975 and sent back its charter. The Fire Department on the other hand, has maintained theirs.

My point in relating our experiences to you is to show that locally elected officials can and do have the responsibility, desire and willingness to handle local problems. Our system is not without faults and we constantly strive to improve upon it. The way we operate would probably not work in other cities. Recently, there were newspaper stories about labor problems in other Cities of the State. I am quite sure that the locally elected officials in those cities will devise their own system to work out their problems in a manner that is acceptable to the employees, Governing Body and, most importantly, the citizens.

Ultimately, the citizens can and do control and it is only right that they should. If the citizenry feels that changes should be made and governmental unions recognized, they will elect those individuals who believe in that concept, which is their privilege and their prerogative. For the State to mandate therefore, that all units of local government must recognize governmental unions is imposing a viewpoint and labor system upon many units of government that is not wanted and not needed.

I fully recognize that the proposed legislation would be mandatory only if unions were organized in the first place. However, this legislation is most definitely taking away the option of the Governing Body to say "no" in the event that happens. This legislation would thus be taking away that option for the approximately 592 cities of the 625 total cities in the State that have not voluntarily come under the Act. While I cannot speak for the other 591 cities, on behalf of the Governing Body of the City of Great Bend, I urge you to continue to allow our City the option of saying "yes" or "no" to recognition of governmental unions.

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Proposed Amendments to Senate Bill #603 (as amended by Senate Committee of the whole)

Remove words in line 0101 of New section 2(b):

> "Or the following September 15 if the public employer is the state of Kansas or a state agency thereof"

Add at the end of New section 2(b) line 0113:

> "The dates specified in this subsection shall not be applicable to the state of Kansas and its agencies"

0121 ~~care, is in the custody of a children's aid society or is being~~
0122 ~~supported by the county or state; except that a child shall not be~~
0123 ~~classed as a "dependent and neglected child" under this subsec-~~
0124 ~~tion solely because of the fact that the child or such child's~~
0125 ~~parent, or both, receive assistance under the social welfare acts or~~
0126 ~~otherwise receive support from public funds.~~ *"Deprived child"*
0127 *means a child less than eighteen (18) years of age:*
0128 *(1) Who is without proper parental care or control, subsis-*
0129 *tence, education as required by law or other care or control*
0130 *necessary for such child's physical, mental or emotional health,*
0131 *and the deprivation is not due to the lack of financial means of*
0132 *such child's parents, guardian or other custodian;*
0133 *(2) who has been placed for care or adoption in violation of*
0134 *law;*
0135 *(3) who has been abandoned or physically, mentally, emo-*
0136 *tionally* ~~or sexually~~ *abused or neglected or sexually abused by his*
0137 *or her parent, guardian or other custodian; or*
0138 *(4) who is without a parent, guardian or legal custodian.*
0139 (h) "Parent" or "parents," when used in relation to a child or
0140 children, include guardian, conservator and every person who is
0141 by law liable to maintain, care for or support a child.
0142 *(i) "Law enforcement officer" means any person who by vir-*
0143 *tue of his or her office or public employment is vested by law with*
0144 *a duty to maintain public order or to make arrests for crimes,*
0145 *whether that duty extends to all crimes or is limited to specific*
0146 *crimes.*
0147 Sec. 2. K.S.A. 1977 Supp. 38-805 is hereby amended to read
0148 as follows: 38-805. (a) The record in the district court for pro-
0149 ceedings pursuant to the Kansas juvenile code shall consist of the
0150 petition, process and the service thereof, orders and writs, and
0151 ~~such~~ *[reports and evaluations received or considered by the*
0152 *court. Such]* documents shall be recorded and kept by the court,
0153 separate from other records of the court.
0154 ~~(b) The official records of the district court for proceedings~~
0155 ~~pursuant to the Kansas juvenile code shall be open to inspection~~
0156 ~~only by consent of the judge of the district court, or upon order of~~
0157 ~~a judge of the court of appeals, or upon or~~ ~~of the supreme~~

3-22

solely

0232 (b) When jurisdiction has been acquired by the district court
0233 over the person of a ~~dependent and neglected~~ *deprived* child, it
0234 may continue until the child*: (1)* Has attained the age of ~~twenty-~~
0235 ~~one (21)~~ *eighteen (18)* years~~; and when the court has not by order~~
0236 ~~retained jurisdiction, it may be reasserted at any time prior to age~~
0237 ~~twenty-one (21) if such child has not been adopted or placed for~~
0238 ~~the period of such child's minority with a children's aid society or~~
0239 ~~with a public or private institution used as a home or place of~~
0240 ~~detention or correction~~*; (2) has been adopted; or (3) has been*
0241 *discharged by the court.*
0242 (c) Except as provided by subsection (b) of K.S.A. ~~1976~~ *1977*
0243 Supp. 38-808, when any person *is* charged with having commit-
0244 ted an act ~~of delinquency before reaching the age of eighteen (18)~~
0245 ~~years is brought before the court after reaching said age~~ *which*
0246 *may cause such person to be adjudicated a delinquent, miscreant*
0247 *or wayward child or a traffic offender or truant,* the court shall
0248 proceed pursuant to the Kansas juvenile code and the person
0249 charged shall continue under the jurisdiction of said court for
0250 such act until such person is finally discharged by the court or
0251 has reached the age of twenty-one (21) years.
0252 *(d) When the district court has ordered treatment of a child in*
0253 *accordance with K.S.A. 59-2917 or has ordered referral of a child*
0254 *in accordance with K.S.A. 59-2918, the jurisdiction of the court,*
0255 *with respect to such child's status as a mentally ill person, shall*
0256 *continue until the child is finally discharged pursuant to the act*
0257 *for obtaining treatment of a mentally ill person.*
0258 New Sec. ~~4~~ *5.* (a) All summons, notices and other process of
0259 the court for proceedings pursuant to the juvenile code shall be
0260 served in accordance with this section.
0261 (b) The court shall direct the method of service of summons,
0262 notice of hearings and other process from among the following
0263 applicable alternatives:
0264 (1) *Personal Service.* Personal service is completed by de-
0265 livering a copy of the process personally to the person named
0266 therein;
0267 (2) *Residential Service.* Residential service is completed
0268 leaving a copy of the process in a conspicuous place at the usual

the age of twenty-one (21) years or has completed high school, whichever occurs first, but in no event prior to the child attaining

, except as provided in (2) or (3) of this subsection (b)

0269 place of residence of the person named therein at least forty-eight
0270 (48) hours prior to the hearing for which the summons, notice or
0271 other process is being issued;
0272 (3) *Restricted Mail Service.* Service by restricted mail, as
0273 defined by K.S.A. 60-103, is completed upon mailing;
0274 (4) *Service by Publication.* Service by publication is com-
0275 pleted by publishing a copy of the process once a week for two
0276 consecutive weeks in some newspaper ~~of the county~~ authorized to
0277 publish legal notices [~~[for either the county where the court~~
0278 ~~issuing such process is located or the county in which the subject~~
0279 ~~of such process resides, as determined by the court]~~];
0280 (5) *Service Upon Confined Parent.* If it appears that a parent
0281 of a child who is the subject of a juvenile proceeding is confined
0282 in a state penal institution, state hospital or other state institution,
0283 service shall be made by restricted mail to both the confined
0284 parent and to the person in charge of the institution. It shall be
0285 the duty of the person having charge of the institution to confer
0286 with the parent, if the parent's mental condition is such that a
0287 conference will serve any useful purpose, and to advise the court
0288 in writing as to the wishes of such parent with regard to said
0289 child~~. The failure of the person having charge of said institution~~
0290 ~~to perform such duty shall not invalidate the proceeding~~; or
0291 (6) *Oral Notice.* Oral notice may be permitted by the court for
0292 giving notice of a detention hearing only.
0293 (c) Summons issued for a hearing on a petition, as provided in
0294 K.S.A. 1977 Supp. 38-817, as amended, shall be accompanied by a
0295 copy of the petition or shall state all information required to be
0296 included in the petition.
0297 (d) When personal service or residential service of process is
0298 directed, such process shall be served by a juvenile probation
0299 officer, the sheriff or any other person appointed by the court for
0300 such purpose. The person serving the process shall inform the
0301 court of the time and manner of service.
0302 (e) If any person summoned ***and given notice of a hearing***
0303 shall fail without reasonable cause to appear and abide the order
0304 of the court, such person may be proceeded against for contempt
0305 of court. ~~No warrant shall issue for failure to appear at a hearing~~

0306 ~~unless the person failing to appear either received service of~~
0307 ~~summons for such hearing by personal service or such person~~
0308 ~~signed the receipt for a summons which had been sent by re-~~
0309 ~~stricted mail.~~
0310 Sec. 5. K.S.A. 1977 Supp. 38-807 is hereby amended to read
0311 as follows: 38-807. Where any person applies to any court having
0312 jurisdiction for a writ of habeas corpus or other writ or order for
0313 the production of a child, and the court finds that such person has
0314 abandoned or deserted the child, or that such person is not a fit
0315 and proper person to have the custody of the child, the court may
0316 refuse to issue the writ or make the order. If the court shall
0317 determine that no person claiming the custody of a child is a fit
0318 and proper person to have such custody, it may order said child
0319 delivered to the custody of the district court and order the county
0320 or district attorney to cause proper proceedings to be instituted to
0321 determine whether said child is ~~dependent and neglected~~ *a de-*
0322 *prived child.*
0323 Sec. 6 7. K.S.A. 38-811 is hereby amended to read as follows:
0324 38-811. *(a)* Venue of any case involving a ~~dependent and ne-~~
0325 ~~glected~~ *deprived* child shall be in the county of such child's
0326 residence or in the county where ~~he~~ *the child* may be found.
0327 ***[(b) Venue of any case involving a truant child shall be in the***
0328 ***county of such child's residence or in the county where the***
0329 ***attendance facility the child is to attend is located.]***
0330 ~~(b)~~ *[(c)]* Venue ~~of~~ *for adjudicatory proceedings in* any case
0331 involving a delinquent ~~child~~, ~~a~~ miscreant ~~child,~~ ~~a~~ *or* wayward
0332 child, *or* a traffic offender [~~or a truant~~] shall be in any county where
0333 ~~an~~ *the* alleged act ~~of delinquency~~ ~~is~~ *was* committed ~~or in the~~
0334 ~~county of his residence~~.
0335 ~~*(c) Venue of any case involving a truant child shall be in the*~~
0336 ~~*county of such child's residence or in the county where the*~~
0337 ~~*attendence facility the child is to attend is located.*~~
0338 ~~(c)~~ *(d) Except as provided in subsection ~~(d)~~ (e), venue for*
0339 *dispositional proceedings in any case involving a child alleged to*
0340 *be delinquent, miscreant, wayward, a traffic offender* ~~*or truant*~~
0341 *shall be in the county of such child's residence or, if such child is*
0342 *not a resident of this state, in the county where the alleged offer*

or

0417 pertaining to the child, the child's parents, guardian or other
0418 person interested in, or likely to be interested in, the child, and all
0419 other facts and circumstances which caused such child to be
0420 taken into custody.
0421 *(b) Whenever a child fourteen (14) years of age or older is*
0422 *charged with a traffic offense described in subsection (e) of K.S.A.*
0423 *1977 Supp. 38-802, as amended, the prosecution of such offense*
0424 *shall not be heard pursuant to the juvenile code but shall be*
0425 *commenced in a court of competent jurisdiction in the same*
0426 *manner as prosecutions involving adults. [The court hearing any*
0427 *such prosecution may impose any fine authorized by law for such*
0428 *offense, but no child under the age of eighteen (18) years of age*
0429 *shall be incarcerated for any such offense. Upon conviction of any*
0430 *such offense, the court may suspend the license of any child who*
0431 *was under eighteen (18) years of age at the time of committing*
0432 *such offense. Suspension of a license shall be for a period of one*
0433 *year or a part thereof as ordered by the court. Upon suspending*
0434 *any license pursuant to this section, the court shall require that*
0435 *such license be surrendered to the court who shall transmit the*
0436 *same to the division of vehicles with a copy of the court order*
0437 *showing the time for which the license is suspended. The court*
0438 *may modify the time for which the license is suspended, in which*
0439 *case it shall notify the division of vehicles in writing thereof. After*
0440 *the time period has passed for which the license is suspended the*
0441 *division of vehicles shall issue an appropriate license to the*
0442 *person whose license had been suspended upon successful com-*
0443 *pletion of the examination required by K.S.A. 1977 Supp. 8-241*
0444 *and upon proper application and payment of the required fee.]*
0445 (c) *Except as provided in subsection (b) of this section,* if a
0446 child under the age of eighteen (18) years is taken before a judge
0447 of the district court and such child is not charged in accordance
0448 with the provisions of the juvenile code or if a child under the age
0449 of eighteen (18) years is taken before a municipal judge, it shall be
0450 the duty of such judge to dismiss the charge or complaint and to
0451 refer the same for proceedings in the district court pursuant to the
0452 juvenile code.
0453 (d) *Except as provided in subsection (b) of this sect'on,* if

, subject to the provisions of section 34

0454 during the pendency of any action, charge or complaint against a
0455 person involving a public offense or quasi-public offense, before
0456 a municipal judge or judge of the district court, it shall be
0457 ascertained that such person was under the age of eighteen (18)
0458 years at the time of committing the alleged offense, it shall be the
0459 duty of such judge to forthwith dismiss such action, charge or
0460 complaint and to refer the same for proceedings in the district
0461 court pursuant to the juvenile code~~, except that no traffic offender~~
0462 ~~action, charge or complaint against a child who has attained the~~
0463 ~~age of sixteen (16) years shall be so dismissed unless it shall be~~
0464 ~~ascertained that the child was under sixteen (16) years of age at~~
0465 ~~the time of committing the alleged offense~~. *Unless the person is*
0466 *eighteen (18) years of age or more,* the officer of the court making
0467 such referral ~~having charge of such child,~~ forthwith shall ~~take~~
0468 *cause* the child *to be taken* to the place of detention designated by
0469 the district court, or to the district court itself, or shall release the
0470 child to the custody of a duly appointed juvenile probation
0471 officer or other person designated by the district court, to be
0472 brought before the district court at a time and place designated by
0473 the judge of the district court. Thereupon, the district court shall
0474 proceed as provided in subsection (d) of K.S.A. ~~1976~~ *1977* Supp.
0475 38-816*, as amended.*
0476 (e) Whenever a child under the age of eighteen (18) years is
0477 taken into custody by a ~~peace~~ *law enforcement* officer and is
0478 thereafter taken before the district court as required by this
0479 section, such child shall not remain in any detention or custody,
0480 other than the custody of the parent, guardian or other person
0481 having legal custody of the child, for more than forty-eight (48)
0482 hours, excluding Sundays and legal holidays, from the time the
0483 initial custody was imposed by a ~~peace~~ *law enforcement* officer,
0484 unless a determination is made, within such forty-eight (48) hour
0485 period, as to the necessity for any further detention or custody in
0486 a detention hearing, *or the right to such hearing is waived,* as
0487 provided in K.S.A. ~~1976~~ *1977* Supp. 38-815b*, as amended.*
0488 New Sec. ~~10~~ *11.* Whenever a person eighteen (18) years of age
0489 or more is taken into custody by a law enforcement officer for an
0490 alleged miscreant or delinquent act which was committed prior to

Saturdays,

0676 modification by the court.
0677 *(e) The right of a child to a detention hearing may be waived*
0678 *if:*
0679 *(1) The child and the child's guardian ad litem are informed*
0680 *of the right to have a determination as to the need for detention or*
0681 *custody in a detention hearing and of the right to request such a*
0682 *hearing at any time;*
0683 *(2) the child and the guardian ad litem for the child consent in*
0684 *writing to waive the right to a detention hearing; and*
0685 *(3) the judge of the district court determines that a detention*
0686 *hearing is not required to serve the welfare of the child.*
0687 *(f) Whenever the right to a detention hearing has been waived*
0688 *pursuant to subsection (e), the child, the guardian ad litem for the*
0689 *child or the child's parent, guardian or other legal custodian may*
0690 *reassert such right at any time prior to adjudication by submitting*
0691 *a written request to the judge of the district court. Upon such*
0692 *request, the judge shall immediately set the time and place for*
0693 *such hearing, which shall be held in accordance with the provi-*
0694 *sions of this section and not more than forty-eight (48) hours,*
0695 *excluding Sundays and legal holidays, after the receipt of the*
0696 *request.*
0697 ~~(e)~~ *(g)* This section shall be ~~construed as~~ supplemental to and
0698 a part of the Kansas juvenile code.
0699 Sec. 14. K.S.A. 1977 Supp. 38-816 is hereby amended to read
0700 as follows: 38-816. (a) Any reputable person eighteen (18) years of
0701 age or over having knowledge of a child who appears to be
0702 delinquent, miscreant, wayward~~;~~ *or deprived child or* a traffic
0703 offender~~;~~ ~~a~~ *or* truant, ~~or dependent and neglected~~ as defined in
0704 K.S.A. ~~1976~~ *1977* Supp. 38-802, *as amended,* may file with the
0705 district court having jurisdiction, a petition in writing, verified by
0706 affidavit, which shall set forth, in plain and concise language,
0707 without repetition, the facts which bring the child under the
0708 jurisdiction of the district court; and so far as known: (1) The
0709 name, age and residence of the child; (2) the names and residence
0710 of the child's parents; (3) the name and residence of the child's
0711 leg[illegible] guardian, if there be one; or (4) the name and residence of
0712 the [illegible]erson or persons having custody or control of the child, or of

Saturdays,

0824 ~~if the parent's mental condition is such that a conference will~~
0825 ~~serve any useful purpose, and to advise the court in writing as to~~
0826 ~~the wishes of such parent with regard to said child. The failure of~~
0827 ~~the person having charge of said institution to perform such duty~~
0828 ~~shall not invalidate the proceeding.~~
0829 ~~(e) If the person summoned as herein provided shall fail~~
0830 ~~without reasonable cause to appear and abide the order of the~~
0831 ~~court, or to bring the child, such person may be proceeded against~~
0832 ~~for contempt of court.~~
0833 ~~(f)~~ *(b)* At the time fixed in the summons, or by order of the
0834 court, the court shall proceed to hear and dispose of the case and
0835 enter judgment or decree therein. ~~The court may apply the~~
0836 ~~schedule of fees provided for in K.S.A. 1977 Supp. 28-171, where~~
0837 ~~appropriate, to compute the costs of all proceedings under the~~
0838 ~~Kansas juvenile code and, in~~ the discretion of the court, the costs
0839 of such proceedings may be adjudged against the person or
0840 persons so summoned or appearing, and collected as provided by
0841 law in civil cases, or charged to the county and paid out of the
0842 general fund.
0843 ~~(g) All summonses issued pursuant to this section shall state~~
0844 ~~the court in which the petition is filed and all the information~~
0845 ~~appearing in the petition pursuant to subsection (a) of K.S.A. 1977~~
0846 ~~Supp. 38-816. Except as otherwise specifically provided in this~~
0847 ~~section, such summons shall be served as provided in K.S.A. 1977~~
0848 ~~Supp. 38-810.~~
0849 Sec. 16. K.S.A. 1977 Supp. 38-818 is hereby amended to read
0850 as follows: 38-818. In any proceedings pursuant to the juvenile
0851 code in the district court in which the parent, guardian or other
0852 person having legal custody of a child may be deprived of the
0853 permanent custody of such child, summons shall issue to such
0854 parent, guardian, or other person. Such summons shall state the
0855 name of the court and shall contain notice of the time and place of
0856 the hearing and a statement requiring the person named in the
0857 summons to appear and there show cause why he or she should
0858 not be deprived of the permanent custody of
0859 ______________ (name of child). ~~Such summons~~
0860 ~~shall be served as provided by K.S.A. 1976 Supp. 38-810.~~

The court may assess court costs of up to fifteen dollars ($15) for the services provided by district court employees in conjunction with proceedings pursuant to the juvenile code. The court also may assess as court costs witness fees and other charges authorized by law to be assessed as costs in a case. In

except that no court costs for services provided by district court employees shall be charged to a county

0861 Sec. 17. K.S.A. 1977 Supp. 38-819 is hereby amended to read
0862 as follows: 38-819. (a) Prior to or during the pendency of a
0863 hearing on a petition to declare a child to be *a* delinquent,
0864 miscreant, wayward~~,~~ *or deprived child* or a traffic offender~~, a~~ or
0865 truant ~~or dependent and neglected, filed~~, *commenced* pursuant to
0866 K.S.A. ~~1976~~ *1977 Supp.* 38-816, *as amended,* the district court
0867 may order that such child be placed in some form of temporary
0868 detention or custody as provided in this section~~, but only after~~.
0869 *Any such detention or custody shall not exceed forty-eight (48)*
0870 *hours, excluding* [Saturdays,] *Sundays and legal holidays, unless within such*
0871 *forty-eight-hour period* a determination is made as to the neces-
0872 sity therefor in a detention hearing as provided by K.S.A. ~~1976~~
0873 *1977 Supp.* 38-815b, *as amended. If the hearing on the petition*
0874 *results in the child being adjudged a delinquent, miscreant,*
0875 *wayward or deprived child or a traffic offender or truant, the*
0876 *court may order that the child be placed in some form of tempo-*
0877 *rary detention or custody as provided by this section pending*
0878 *execution of the order of disposition.*
0879 (b) ~~Upon such a determination,~~ *Pursuant to subsection (a),* the
0880 court may make an order temporarily granting the custody of such
0881 child to some person, other than the parent, guardian or other
0882 person having legal custody, ~~or~~ *who shall not be required to be*
0883 *licensed under article 5 of chapter 65 of the Kansas Statutes*
0884 *Annotated*~~; but who shall become licensed thereunder within thirty~~
0885 ~~(30) days of the entry of the court order if the child remains in such~~
0886 ~~person's custody~~; to a children's aid society~~; or~~; to a public or
0887 private institution used as a home or place of detention ~~or cor-~~
0888 ~~rection,~~; or to the secretary of social and rehabilitation services.
0889 (c) ~~Upon such a determination,~~ *Pursuant to subsection (a),* the
0890 court may order any such child who is alleged *or adjudged* to be a
0891 delinquent or miscreant child to be placed in detention in the
0892 county jail or police station in quarters separate from adult
0893 prisoners. ~~In such cases, the court, if it deems it advisable, may~~
0894 ~~order such child confined in a jail or police station prior to or~~
0895 ~~during the pendency of the hearing on the petition.~~ When such
0896 provisions for separate quarters have not been made ~~for the care~~
0897 ~~and custody of the child in such detention~~, the court may order

0935 (4) the secretary of social and rehabilitation services.
0936 *In addition to the foregoing provisions of this section, the court*
0937 *may order the child and the parents of any child who has been*
0938 *adjudicated a deprived child to attend such counseling sessions*
0939 *as the court may direct. The costs of any such counseling may be*
0940 *assessed as costs in the case.*

No mental health center shall charge a fee for court ordered counseling if such center would not charge a fee to the person receiving such counseling when such person requests counseling on his or her own initiative.

0941 (c) When the parents, or parent in case there is one parent
0942 only, are found and adjudged to be unfit to have the custody of
0943 such ~~dependent and neglected~~ *deprived* child, K.S.A. ~~1976~~ *1977*
0944 Supp. 38-820, *as amended,* and other applicable provisions of
0945 this act having been fully complied with, the district court may
0946 make an order permanently depriving such parents, or parent, of
0947 parental rights and commit the child:
0948 (1) To the care of some reputable citizen of good moral
0949 character;
0950 (2) to the care of some suitable public or private institution
0951 used as a home or place of detention ~~or correction~~;
0952 (3) to the care of some association willing to receive the child,
0953 embracing in its objects the purpose of caring for or obtaining
0954 homes for ~~dependent and neglected~~ *deprived* children;
0955 (4) to the secretary of social and rehabilitation services.
0956 (d) In any case where the court shall award a child to the care
0957 of an individual or association, in accordance with clause (1) or
0958 (3) of subsection (c) of this section, the child shall, unless other-
0959 wise ordered, become a ward of, and be subject to the guardian-
0960 ship of the individual or association to whose care the child is
0961 committed. Such individual or association shall have authority to
0962 place such child in a family home, give consent for the adoption
0963 of such child, and be party to proceedings for the legal adoption
0964 of the child, and such consent shall be the only consent required
0965 to authorize the court to enter proper order or decree of adoption.
0966 In any case where the court shall award a child to the care of the
0967 secretary of social and rehabilitation services, in accordance with
0968 clause (4) of subsection (c) of this section, the secretary of social
0969 and rehabilitation services shall be the guardian of the person and
0970 the estate of said child and shall be empowered to place such
0971 child for adoption and give consent therefor, or to m[illegible] transfer

0972 of such child for adoption and give consent therefor, or to make
0973 transfer of such child as provided for by K.S.A. ~~1976~~ *1977* Supp.
0974 38-825, *as amended.* In any such case, upon the filing of the
0975 application provided for in K.S.A. ~~1976~~ *1977* Supp. 59-3009 by
0976 the secretary of social and rehabilitation services, the court shall
0977 forthwith appoint the secretary of social and rehabilitation ser-
0978 vices the "conservator" of such child.
0979 (e) When the health or condition of such ~~dependent and~~
0980 ~~neglected~~ *deprived* child shall require it, the district court may
0981 cause the child to be placed in a public or private hospital under
0982 the care of a competent physician. In cases other than those
0983 provided for in subsection (d) above, the court may delegate the
0984 authority to issue consents to the performance and furnishing of
0985 hospital, medical or surgical treatment or procedures to the indi-
0986 vidual, association, or agency to whom the court has granted
0987 custody of such child.
0988 ***(f) On and after January 1, 1980, any order authorized by***
0989 ***this section relating to placement or custody of a child shall be***
0990 ***subject to the limitations provided in section 32.***
0991 Sec. 20. K.S.A. 1977 Supp. 38-825 is hereby amended to read
0992 as follows: 38-825. (a) When a ~~dependent and neglected~~ *deprived*
0993 child has been committed to the secretary of social and rehabili-
0994 tation services, said secretary, if he or she deems it to be in the
0995 best interest of the child, may place the child in [~~the youth center~~
0996 ~~at Atchison~~] or in a foster care facility, or may transfer such child
0997 to the jurisdiction of a children's aid society willing to accept the
0998 child, or with the written consent of the judge of the district court
0999 to the home of the parent, or parents, who have not been deprived
1000 of parental rights.
1001 (b) A parent or parents of a child under the jurisdiction of the
1002 secretary of social and rehabilitation services, who has not been
1003 deprived of parental rights, may file with the district court having
1004 jurisdiction, a petition in writing for the return of such child to
1005 such parent or parents. Such petition shall be verified by affidavit
1006 and shall state the name, age and residence of the child and name
1007 and residence of each petitioner. The court shall fix a time and
1008 p'-ce for a hearing on such petition and shall notify each peti-

a residential center operated by the department of social and rehabilitation services

Notwithstanding the foregoing, no deprived child shall be placed in the youth center at Topeka, Atchison or Beloit. On and after January 1, 1980, the provisions of this section relating to placement or custody of a child shall be subject to the limitations of new section 32.

1120 her a traffic offender under the provisions of this act, and the
1121 division of vehicles of the department of revenue shall forthwith
1122 comply with said order by suspending or revoking such of-
1123 fender's motor vehicle operator's license;
1124 (3) directing such offender to attend a police department
1125 traffic school in a city of the county in which such offender has
1126 residence; or
1127 (4) placing such offender in the same manner as provided in
1128 paragraphs (1), (2), (3), (4) and (5) of subsection (a) of this section.
1129 (d) When a child has been committed to the state secretary of
1130 social and rehabilitation services, pursuant to paragraph (6) of
1131 subsection (a) or subsection (b) of this section, said secretary may
1132 place the child in any institution operated by the director of
1133 mental health and retardation services, or it may contract and pay
1134 for the placement of the child in a county detention home or in a
1135 private children's home, as defined by K.S.A. ~~1076 Supp.~~ 75-
1136 3329, or for the placement of such child in a child care facility, or
1137 boarding home for children, or in a community mental health
1138 clinic. *Notwithstanding the foregoing, no wayward or truant child*
1139 *shall be placed in the youth center at Topeka or the youth center at*
1140 *Beloit.*
1141 *(e) In addition to the orders authorized pursuant to the fore-*
1142 *going provisions of this section, the court may order the child or*
1143 *the parents of any child who has been adjudicated a delinquent,*
1144 *miscreant or wayward child or a traffic offender or truant to*
1145 *attend such counseling sessions as the court may direct. The costs*
1146 *of any such counseling may be assessed as costs in the case.*

No mental health center shall charge a fee for court ordered counseling if such center would not charge a fee to the person receiving such counseling when such person requests counseling on his or her own initiative.

~~1147~~ ~~(e)~~ *(f)* After placement of a child, the secretary of social and
1148 rehabilitation services shall retain jurisdiction over the child and
1149 may transfer such child at any time to any institution, detention
1150 home, mental health clinic, private children's home, child care
1151 facility or boarding home for children.
1152 ***(g) From and after January 1, 1980, any order authorized by***
1153 ***this section relating to placement or custody of a child shall be***
1154 ***subject to the limitations provided in section 32.***
1155 Sec. 24. K.S.A. 1977 Supp. 38-827 is hereby amended to read
1 as follows: 38-827. (a) Unless otherwise provided for, and subject

1157 to payment or reimbursement as required by K.S.A. ~~1976~~ *1977*
1158 Supp. 38-828, or any amendments thereto, the expenses of the
1159 care and custody of a ~~dependent and neglected~~ *deprived* child,
1160 committed under clauses (2), (3) and (4) of subsection (b) of
1161 K.S.A. ~~1976~~ *1977* Supp. 38-824, or any amendments thereto, or
1162 placed in a hospital under subsection (e) of K.S.A. ~~1976~~ *1977*
1163 Supp. 38-824, or any amendments thereto, or referred to [~~the youth~~
1164 ~~center at Atchison~~] [~~or~~] facility [~~thereof~~] under subsection (c) of
1165 K.S.A. ~~1976~~ *1977* Supp. 38-823, or any amendments thereto, shall
1166 be paid out of the state social welfare fund if such child is eligible
1167 for assistance under K.S.A. ~~1976~~ *1977* Supp. 39-709, or any
1168 amendments thereto, otherwise out of the general fund of the
1169 county in which the proceedings are brought. For the purpose of
1170 this subsection, a child who is a nonresident of the state of Kansas
1171 or whose residence is unknown shall have residence in the county
1172 where the proceedings are instituted.
1173 (b) Unless otherwise provided for, and subject to payment or
1174 reimbursement as required by K.S.A. ~~1976~~ *1977* Supp. 38-828, or
1175 any amendments thereto, the expenses of the care and custody of
1176 a child placed in accordance with the provisions of clauses (2),
1177 (3), (4), (5) and (6) of subsection (a) of K.S.A. ~~1976~~ *1977* Supp.
1178 38-826, or any amendments thereto, or referred to [~~the youth~~
1179 ~~center at Atchison~~] [~~or~~] facility [~~thereof~~] [~~or other facility~~] under
1180 subsection (c) of K.S.A. ~~1976~~ *1977* Supp. 38-823 shall be paid out
1181 of the state social welfare fund if such child is eligible for
1182 assistance under K.S.A. ~~1976~~ *1977* Supp. 39-709, or any amend-
1183 ments thereto, otherwise out of the general fund of the county in
1184 which the proceedings are brought, except that the expenses of
1185 the care and custody of any child committed to the secretary of
1186 social and rehabilitation services pursuant to clause (6) of sub-
1187 section (a) of K.S.A. ~~1976~~ *1977* Supp. 38-826, or any amendments
1188 thereto, shall not be paid out of the county general fund.
1189 (c) When a child is committed under clause (4) of subsection
1190 (b) of K.S.A. ~~1976~~ *1977* Supp. 38-824, or any amendments thereto,
1191 or under clause (6) of subsection (a) of K.S.A. ~~1976~~ *1977* Supp.
1192 38-826, or any amendments thereto, the expenses of the care and
1193 custody of such child may be paid out of the state social welfare

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1268 district judge or associate district judge in the county; any such
1269 appeal shall be heard *de novo* and a decision thereon rendered
1270 within thirty (30) days from the date of the filing of the notice of
1271 appeal.
1272 (c) An appeal pursuant to subsection (a) or (b) shall [~~not~~] stay
1273 [~~any~~] the order or proceeding so appealed, but the court [~~to~~] from which the
1274 appeal is taken may make such temporary orders for care and
1275 custody of the child as it may deem advisable.
1276 (d) Except as otherwise provided by this section or rule of the
1277 supreme court, any appeal pursuant to this section shall be taken
1278 in accordance with article 21 of chapter 60 of the Kansas Statutes
1279 Annotated. Costs on appeal shall be assessed in accordance with
1280 the provisions of the juvenile code.
1281 New Sec. 28. Whenever an appeal is taken pursuant to the
1282 juvenile code, other than appeals from prosecutions pursuant to
1283 K.S.A. 1977 Supp. 38-830, expenses incurred on appeal for fees of
1284 the guardian *ad litem* and costs of transcripts and records on
1285 appeal shall be taxed as costs on appeal. The court to which the
1286 appeal is taken may assess such costs against the parent, guardian
1287 or conservator of the child or order that they be paid from the
1288 general fund of the county. When the court orders such costs
1289 assessed against the parent, guardian or conservator of a child:
1290 (a) The costs shall be paid from the county general fund,
1291 subject to reimbursement by such parent, guardian or conserva-
1292 tor.
1293 (b) The county may enforce such order in the same manner as
1294 enforcement of a civil judgment in the district court, except that
1295 the court shall not require the county to pay any docket fee or
1296 other fee for execution.
1297 Sec. 29. K.S.A. 38-829 is hereby amended to read as follows:
1298 38-829. In any proceedings where a ~~dependent and neglected~~
1299 *deprived*, delinquent, miscreant, wayward or a truant child has
1300 been placed in the care and custody of any children's aid society
1301 or individual by the court, the court may cause the child to be
1302 brought before it, together with the person or persons in whose
1303 custody he may be, and if it shall appear that a continuance of
13 such custody is not for the best interests of such child, the court

1416 *shelter facility, except as permitted by subsection (b).*

1417 *(b) A status offender may be placed in a juvenile detention or*
1418 *correctional facility pending a detention hearing provided for*
1419 *by K.S.A. 1977 Supp. 38-815b, as amended. Pursuant to a de-*
1420 *tention hearing a court may order a child to remain in a juvenile*
1421 ~~*detention or correctional facility for not to exceed twenty-four*~~
1422 *(24) hours following the detention hearing, excluding Saturdays,*
1423 *Sundays and other days when the district court is not open for*
1424 *the regular conduct of business.*

1425 *(c) This section shall not take effect or be in force until on*
1426 *and after January 1, 1980.*

1427 *New Sec. 33. (a) If the court finds from a petition filed*
1428 *pursuant to K.S.A. 1977 Supp. 38-816, as amended, that there is*
1429 *probable cause to believe that a child is a delinquent or mis-*
1430 *creant child or a traffic offender, the court may issue a warrant*
1431 *commanding that the child named in the petition be taken into*
1432 *custody and brought before the court. The warrant may desig-*
1433 *nate the place the child is to be taken in the event the child is*
1434 *taken into custody at a time when the court is not open for the*
1435 *regular conduct of business. Such warrant shall describe the*
1436 *offense charged in the petition.*

1437 *(b) When there is probable cause shown under oath or affir-*
1438 *mation that a person is in contempt of an order of the court*
1439 *issued pursuant to the juvenile code, the court may issue a*
1440 *warrant commanding the person alleged to be in contempt to be*
1441 *taken into custody and brought before the court to show cause*
1442 *why such person should not be held in contempt of court.*

New Sec. 34. Subject to the provisions of this section, court of competent jurisdiction may hear prosecutions of traf... offenses as permitted by subsection (b) of K.S.A. 1977 Supp. 38-815, as amended, involving any child fourteen (14) years of age or more but who is less than eighteen (18) years of age. The court hearing any such prosecution may impose any fine authorized by law for such offense, but no child under the age of eighteen (18) years of age shall be incarcerated for any such offense. Upon conviction of any such offense, the court may suspend the license of any child who was under eighteen (18) years of age at the time of committing such offense. Suspension of a license shall be for a period of one year or a part thereof as ordered by the court. Upon suspending any license pursuant to this section, the court shall require that such license be surrendered to the court who shall transmit the same to the division of vehicles with a copy of the court order showing the time for which the license is suspended. The court may modify the time for which the license is suspended, in which case it shall notify the division of vehicles in writing thereof. After the time period has passed for which the license is suspended the division of vehicles shall issue an appropriae license to the person whose license had been suspended upon successful completion of the examination required by K.S.A. 1977 Supp. 8-241 and upon proper application and payment of the required fee.

1443 New Sec. ~~31~~ [35]. New sections ~~4, 8, 10,~~ *3, 5, 9, 11,* 12, 21, 22,
1444 26, 27, ~~and~~ 28, *31, 32 and 33* shall be a part of and supplemental
1445 to the Kansas juvenile code.

35

1446 Sec. ~~32~~ [36]. K.S.A. 38-811 and 38-829 and K.S.A. 1977 Supp.
1447 38-802, 38-805, 38-806, 38-807, 38-810, 38-812, 38-815, 38-815a,
1448 38-815b, 38-816 to 38-820, inclusive, 38-824 to 38-827, inclusive,
1449 38-828 and 38-834 are hereby repealed.

36

1450 Sec. ~~33~~ [37]. This act shall take effect and be in force from and
1451 after its publication in the statute book.

37

3-22

Session of 1978

House Concurrent Resolution No. 5085

By Representatives Brewster, Augustine, Baker, Foster, Frey, Gastl, Gillmore, Glover, Heinemann, Hoagland, Hoy, Hurley, Justice, Laird, Lorentz, Martin, Matlack, Mills, Myers, Roth, J. Slattery, Stites and Whitaker

3-9

0018 A CONCURRENT RESOLUTION providing for a special com-
0019 mittee to make a legislative study concerning the rate-making
0020 practices and procedures of insurance companies with regard
0021 to products liability insurance coverage.

0022 *Be it resolved by the House of Representatives, the Senate*
0023 *Concurring therein:* That the legislative coordinating council
0024 appoint or designate a special committee to make a study ~~of~~ the
0025 rate-making practices and procedures of insurance companies
0026 with regard to products liability insurance coverage. Such special
0027 committee shall make its report and recommendations to the
0028 legislature and transmit the same to the legislative coordinating
0029 council on or before December 1, 1978, unless the legislative
0030 coordinating council authorizes an extension of such time.

, inquire into and investigate

The powers of compulsory process are hereby conferred upon such special committee in relation to the study, inquiry and investigation provided for by this resolution

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 5062

By House Judiciary

Be amended:

On page 1, in line 18, by striking "rules and regulations"; in line 19, by striking all before ", as adopted" and inserting in lieu thereof the following: "Kansas administrative regulation 21-50-7"; in line 21, by striking "are" and inserting in lieu thereof "is"; also in line 21, by striking "; and" and inserting in lieu thereof a period; following line 21, by inserting the following:

"<u>Be it further resolved</u>: That Kansas administrative regulations 21-50-1, 21-50-3 and 21-50-4, as adopted by the Kansas commission on civil rights and submitted to the 1978 session of the Kansas legislature, are hereby modified to read as follows:

"21-50-1. <u>Applicability</u>. This article shall apply to every ~~contract~~ <u>contractor</u> covered by K.S.A. 1977 Supp. 44-1030 and K.S.A. 1977 Supp. 44-1031.

"21-50-3. <u>Compliance Review</u>. a. In determining whether a contractor is in compliance <u>with the Kansas act against discrimination</u>, the contract compliance review ~~shall~~ <u>may</u> consider, but <u>shall</u> not be limited to, the following <u>evidentiary</u> factors<u>, except that a finding adverse to the contractor as to any one of the following factors will not alone constitute conclusive proof of noncompliance</u>:

"1. The ratio of ~~minority~~ <u>minorities</u> and ~~female population of~~ <u>females in</u> the area in which the contractor operates as compared to the ratio of minority and female employees in the contractor's workforce.

"2. The availability of promotable and transferable minorities and women within the contractor's employment.

"3. The existence of local training institutions capable of training persons in the requisite skills.

"4. The degree of training which the contractor is

reasonably able to undertake as a means of making all job classifications available to otherwise qualified minorities and women.

"~~5. The extent to which contractors solicit bids from minority and female owned and operated businesses on contracts as defined in K.S.A. 44-1030.~~

"~~6. The evidence that the contractor has furnished each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding and every other source of recruitment regularly utilized a notice advising of its commitment to non-discrimination.~~

"b. Notifying Contractor. After review, the Commission shall notify the contractor whether or not ~~it is deficient in its employment of minorities and females~~ there is evidence of noncompliance with the Kansas act against discrimination. Where ~~deficiencies~~ possibilities of non-compliance are found to exist as a result of contract compliance review, reasonable efforts shall be made through negotiation and persuasion to secure written commitments to eliminate such ~~deficiencies~~ problem areas. ~~The Commission may require~~ Written commitments may include the preparation and implementation of an affirmative action program as described below, and/or the precise action to be taken and dates for completion.

"21-50-4. Affirmative Action Program. Affirmative action programs ~~shall~~ may contain, but are not ~~necessarily be~~ limited to:

"a. Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

"b. Formal internal and external dissemination of the contractor's policy.

"c. Establishment of responsibilities for implementation of the contractor's affirmative action program.

"d. Identification of problem areas (deficiencies) by organizational units and job classification, development of goals to remedy such problems, including timetables for completion.

"e. Development and execution of action oriented programs designed to attain specific goals and objective.

"f. Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

"g. Compliance of personnel policies and practices with the regulations of the Commission.

"h. Solicitation of the support and cooperation of the local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and females.

"i. Consideration of minorities and females not currently in the labor market having requisite skills who can be recruited through affirmative action measures.

"j. Consideration of the anticipated expansion and turnover of and in the contractor's workforce as one of the bases for development of goals and timetables. Supporting data and the analysis thereof in which goals and timetables are based may be part of the contractor's written affirmative action program.

"Be it further resolved: That Kansas administrative regulations 21-50-1, 21-50-3 and 21-50-4, as adopted by the Kansas commission on civil rights and submitted to the 1978 session of the Kansas legislature, as here and before modified shall become effective as modified on May 1, 1978.";

In the title, in line 14, by inserting before "rejecting" the following: "modifying Kansas administrative regulations 21-50-1, 21-50-3 and 21-50-4 and"; also in line 14, by striking all after "rejecting"; in line 15, by striking all before "21-50-7" and inserting in lieu thereof the following: "Kansas administrative regulation"; also in line 15, by striking ", inclusive, of" and inserting in lieu thereof ", as adopted by"; in line 16, by striking "relating to contract compliance" and inserting in lieu thereof "and submitted to the 1978 session of the Kansas legislature";

And the resolution by passed as amended.

SUBCHAPTER II.—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

Pub.L. 90–321, Title III, § 301, May 29, 1968, 82 Stat. 163.

Historical Note

Effective Date. Section 504(c) of Pub. L. 90–321 provided that: "Title III [which enacted this subchapter] takes effect on July 1, 1970."

Legislative History. For legislative history and purpose of Pub.L. 90–321, see 1968 U.S.Code Cong. and Adm.News, p. 1962.

§ 1672. Definitions

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

Pub.L. 90–321, Title III, § 302, May 29, 1968, 82 Stat. 163.

3 basis for Garnishment

3.22

Historical Note

Effective Date. Section effective July 1, 1970, see section 504(c) of Pub.L. 90–321, set out as a note under section 1671 of this title.

Legislative History. For legislative history and purpose of Pub.L. 90–321, see 1968 U.S.Code Cong. and Adm.News, p. 1962.

Notes of Decisions

Earnings 1
Garnishment 2

1. Earnings

"Earnings" within provisions of this subchapter relating to garnishment means periodic payment of compensation and does not pertain to every assset that is traceable in some way to such compensation. In re Kokoszka, C.A.Conn.1973, 479 F.2d 990.

Regardless of whether debtor employee's wages remain accrued but unpaid or have been reduced to payroll check, whenever they remain in possession of employer, they are "withheld" within context of this subchapter and, upon debtor's paycheck being issued it does not become personal property fully subject to levy and does not lose its identity as earnings within this subchapter. Hodgson v. Christopher, D.C.N.D. 1973, 365 F.Supp. 583.

For purposes of this subchapter refund of income tax withheld from bankrupt's wages should be characterized as "earnings." In re Cedor, D.C.Cal.1972, 337 F. Supp. 1103, affirmed 470 F.2d 996, certiorari denied 93 S.Ct. 2148, 411 U.S. 973, 36 L.Ed.2d 697.

2. Garnishment

This subchapter applies to proceedings in aid of execution as well as attachment proceedings. Hodgson v. Christopher, D. C.N.D.1973, 365 F.Supp. 583.

Where Department of Labor had not reached final conclusion regarding its position on coverage of term "garnishment" as used in this subchapter, plaintiffs were not entitled to declaratory relief that term included wage assignments or injunctive relief requiring Secretary to enforce provisions of this subchapter as so interpreted, and controversy between plaintiffs and Secretary was not ripe for judicial determination. Western v. Hodgson, D.C.W.Va.1973, 359 F.Supp. 194.

For purposes of this section defining the term garnishment as any legal or equitable procedure through which earnings of any individual are required to be withheld for payment of any debt, the process by which bankruptcy trustee takes title is "a legal or equitable procedure." In re Cedor, D.C.Cal.1972, 337 F. Supp. 1103, affirmed 470 F.2d 996, certiorari denied 93 S.Ct. 2148, 411 U.S. 973, 36 L.Ed.2d 697.

§ 1673. Restriction on garnishment—Maximum allowable garnishment

(a) Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a

multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

Exceptions

(b) The restrictions of subsection (a) of this section do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

(3) any debt due for any State or Federal tax.

Execution or enforcement of garnishment order or process prohibited

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

Pub.L. 90–321, Title III, § 303, May 29, 1968, 82 Stat. 163.

Historical Note

References in Text. Chapter XIII of the Bankruptcy Act, referred to in subsec. (b) (2), is classified to section 1001 et seq. of Title 11, Bankruptcy.

Effective Date. Section effective July 1, 1970, see section 504(c) of Pub.L. 90–321, set out as a note under section [illegible] of this title.

Legislative History. For legislative history and purpose of Pub.L. 90-321, see 1968 U.S.Code Cong. and Adm.News, p. 1962.

West's Federal Forms

Garnishment, matters pertaining to, see §§ 5196 to 5226.

Code of Federal Regulations

Policies and procedures applicable, see 29 CFR 870.1 et seq.

Notes of Decisions

Constitutionality 1
Construction 2
Mandatory nature of section 5
Maximum allowable garnishment
Generally 6
Period for computation 7
Order or process in violation of section 8
Purpose 3
Retroactive effect 4

1. Constitutionality

This section does not offend due process by unconstitutionally impairing obligation of contracts. Hodgson v. Hamilton Municipal Court, D.C.Ohio 1972, 349 F.Supp. 1125.

Congress had rational basis for determining that this subchapter was needed to carry into execution powers of Congress to reg[illegible]te commerce and to establish uniform bankruptcy laws, and restriction of this section on garnishment is constitutional and valid exercise of congressional power. Hodgson v. Cleveland Municipal Court, D.C.Ohio 1971, 326 F.Supp. 419.

2. Construction

This section is remedial in general purpose, and the exceptions to its coverage should be strictly construed. In re Cedor, D.C.Cal.1972, 337 F.Supp. [illegible], affirmed 470 F.2d 996, certiorari denied [illegible] S.Ct. 2148, 411 U.S. 973, 36 L.Ed.2d [illegible].

3. Purpose

The intent of this section was to make sure that wage earners were able to receive at least 75% of their take home pay in any one pay period so that they would have enough cash to meet basic needs. In re Kokoszka, C.A.Conn.[illegible], 479 F.2d 990.

Congress intended by this section to maximize protection available to debtor. Hodgson v. Christopher, D.C.N.D.1973, 365 F.Supp. 583.

4. Retroactive effect

This section may be applied retroactively and is not subject to a defense of impairment of contract, if it meets due process requirements. Hooter v. Wilson, La.1973, 273 So.2d 516.

5. Mandatory nature of section

It was congressional intention to make mandatory the restrictions of this section on garnishment. Hodgson v. Cleveland Municipal Court, D.C.Ohio 1971, 326 F. Supp. 419.

6. Maximum allowable garnishment—Generally

Garnishment procedures should never operate so as to deprive employee of more than 25% of his disposable earnings paid for any one pay period. Hodgson v. Hamilton Municipal Court, D.C.Ohio 1972, 349 F.Supp. 1125.

Authorized condition, in court's preliminary injunction against garnishment, that garnishment of personal earnings should not exceed 17½% of disposable earnings of debtor which are actually due, owing and payable from garnishee at time of garnishment did not violate this section or its prohibition against garnishment of more than 25% of person's weekly disposable earnings. Hodgson v. Cleveland Municipal Court, D.C. Ohio 1971, 326 F.Supp. 419.

Under this section, plaintiff in garnishment action was entitled to 25% of \$264.-[illegible], which was the disposable sum due debtor. Sterling Finance Co. v. Thornhill, 1970, 263 N.E.2d 925, 25 Ohio Misc. [illegible].

7. —— Period for computation

This section applies directly to garnishments of disposable earnings of Ohio employees, whether paid on weekly, biweekly, or semi-monthly basis. Hodgson v. Hamilton Municipal Court, D.C.Ohio 1972, 349 F.Supp. 1125.

Use of week as unit for computing maximum of disposable earnings subject to garnishment is reasonable exercise of legislative power. Hodgson v. Cleveland Municipal Court, D.C.Ohio 1971, 326 F. Supp. 419.

Under this section, employee's disposable earnings, where pay period is biweekly, are to be exempt to extent of \$96 or 25% of earnings, whichever is lesser amount, regardless of point in time within pay period when writ of garnishment is served. First Nat. Bank of Denver v. Columbia Credit Corp., Colo.1972, 499 P.2d 1163.

Under this section where pay period was biweekly, exemption formula could not be computed to related exemption for one week to wages earned for partial pay period, and where, writ being served during first week of two-week pay period, wages earned did not exceed exemption for two-week period, all wages were exempt, although wages then earned exceeded exemption applicable to one week. Id.

8. Order or process in violation of section

This section forbids making, executing or enforcing, in any state court, "order or process" which violates restrictions on garnishment contained in this section or any regulation of Secretary, and effect of any state garnishment law which underlies such offending state court "order or process" is federally preempted. Hodgson v. Cleveland Municipal Court, D.C. Ohio 1971, 326 F.Supp. 419.

§ 1674. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Pub.L. 90–321, Title III, § 304, May 29, 1968, 82 Stat. 163.

KOKOSZKA v. BELFORD, TRUSTEE IN BANKRUPTCY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 73-5265. Argued April 22, 1974—Decided June 19, 1974

1. An income tax refund is "property" that passes to the trustee under § 70a (5) of the Bankruptcy Act, being "sufficiently rooted in the bankruptcy past," and not being related conceptually to or the equivalent of future wages for the purpose of giving the bankrupt wage earner a "fresh start." *Lines* v. *Frederick*, 400 U. S. 18, distinguished. Pp. 645–648.

2. The provision in the Consumer Credit Protection Act limiting wage garnishment to no more than 25% of a person's aggregate "disposable earnings" for any pay period does not apply to a tax refund, since the statutory terms "earnings" and "disposable earnings" are confined to periodic payments of compensation and do not pertain to every asset that is traceable in some way to such compensation. Hence, the Act does not limit the bankruptcy trustee's right to treat the tax refund as property of the bankrupt's estate. Pp. 648–652.

479 F. 2d 990, affirmed.

BURGER, C. J., delivered the opinion for a unanimous Court.

Thomas R. Adams argued the cause for petitioner. With him on the briefs were *Joanne S. Faulkner, Joseph Dean Garrison, Jr., Frederick W. Danforth, Jr., John T. Hansen,* and *Michael H. Weiss.*

Benjamin R. Civiletti, by invitation of the Court, 415 U. S. 956, argued the cause as *amicus curiae* in support of the judgment below. With him on the brief was *Harry D. Shapiro.*

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case, 414 U. S. 1091 (1973), to resolve the conflict among the Courts of Appeals on the questions of whether an income tax refund is "property" under § 70a (5) of the Bankruptcy Act[1] and whether, assuming that all or part of such tax refund is property which passes to the trustee, the Consumer Credit Protection Act's[2] limitation on wage garnishment serves to exempt 75% of the refund from the jurisdiction of the trustee.[3]

[1] The pertinent parts of § 70a (5) of the Bankruptcy Act, 11 U. S. C. § 110 (a) (5), read as follows:

"(a) The trustee of the estate of a bankrupt . . . shall . . . be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title . . . to all of the following kinds of property wherever located . . . (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered . . . ."

It is undisputed that the refunds could have been transferred under Connecticut law at the time of the filing of the petition, cf. *Segal* v. *Rochelle,* 382 U. S. 375, 381–385 (1966).

[2] 82 Stat. 146, 15 U. S. C. § 1601 *et seq.*

[3] Title 15 U. S. C. § 1673 reads, in pertinent part:

"(a) Maximum allowable garnishment.

"Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

"(1) 25 per centum of his disposable earnings for that week, or

"(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206 (a) (1) of Title 29 in effect at the time the earnings are payable,

"whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

"(b) Exceptions.

"The restrictions of subsection (a) of this section do not apply in the case of

The petitioner was employed for the first three months of 1971. He was then unemployed from April 1971 until late in December of that year. He was re-employed for about the last week and a half of December 1971. While employed, petitioner claimed two exemptions for federal income tax purposes, the maximum number of deductions to which he was entitled, and his employer withheld the appropriate portion of his wages. 26 U. S. C. § 3402. During the year 1971, petitioner had a gross income of $2,322.

On January 5, 1972, petitioner filed a voluntary petition in bankruptcy. With the exception of a 1962 Corvair automobile which the trustee abandoned as an asset upon the bankrupt's payment of $25, the sole asset claimed by the trustee in bankruptcy was an income tax refund entitlement for $250.90. On February 3, 1972, the referee in bankruptcy entered an *ex parte* order directing petitioner to turn the refund over to the trustee upon its receipt. The bankrupt moved to vacate that order and, after a hearing, the referee denied the motion. In mid-February 1972, petitioner filed his income tax return for the calendar year 1971. Several weeks later, he received his refund check from the Internal Revenue Service. Upon its receipt, petitioner complied with the order of the trustee but filed a petition for review of the referee's decision in the United States District Court.[4] The District Court denied relief. Petitioner was granted

"(1) any order of any court for the support of any person.

"(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

"(3) any debt due for any State or Federal tax.

"(c) Execution or enforcement of garnishment order or process prohibited.

"No court of the United States or any State may make, execute, or enforce any order or process in violation of this section."

[4] 11 U. S. C. § 67 (c).

leave to appeal.[5] On May 18, 1973, the United States Court of Appeals for the Second Circuit affirmed the order of the District Court, holding that the tax refund was property within the meaning of § 70a (5) of the Bankruptcy Act and that it therefore vested in the trustee. 479 F. 2d 990. The court further held that the limitations on garnishment contained in the Consumer Credit Protection Act did not apply to bankruptcy situations and that, consequently, the trustee was entitled to the entire refund. Petitioner seeks review of these questions here.

(1)

We turn first to the question of whether petitioner's income tax refund was "property" within the meaning of § 70a (5) of the Bankruptcy Act. The term has never been given a precise or universal definition. On an earlier occasion, in *Segal* v. *Rochelle,* 382 U. S. 375 (1966), the Court noted that " '[i]t is impossible to give any categorical definition to the word "property," nor can we attach to it in certain relations the limitations which would be attached to it in others.' " *Id.,* at 379, quoting *Fisher* v. *Cushman,* 103 F. 860, 864 (CA1 1900). In determining the term's scope—and its limitations—the purposes of the Bankruptcy Act "must ultimately govern." 382 U. S., at 379. See also *Lines* v. *Frederick,* 400 U. S. 18 (1970); *Local Loan Co.* v. *Hunt,* 292 U. S. 234 (1934).

In applying these general considerations to the present situation, there are some guidelines. In *Burlingham* v. *Crouse,* 228 U. S. 459 (1913), for example, the Court stated:

> "It is the twofold purpose of the Bankruptcy Act to convert the estate of the bankrupt into cash and distribute it among creditors and then to give

[5] § 47 (a).

the bankrupt a fresh start with such exemptions and rights as the statute left untouched." *Id.*, at 473.

See also *Wetmore* v. *Markoe*, 196 U. S. 68, 77 (1904); *Williams* v. *U. S. Fidelity Co.*, 236 U. S. 549, 554–555 (1915); *Stellwagen* v. *Clum*, 245 U. S. 605, 617 (1918). On two rather recent occasions, the Court has applied these general principles to the precise statutory section and to the precise term at issue here. In *Segal* v. *Rochelle, supra,* the Court said:

> "The main thrust of § 70a (5) is to secure for creditors everything of value the bankrupt may possess in alienable or leviable form when he files his petition. To this end the term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed." 382 U. S., at 379.

At the same time, the Court noted that this construction must be tempered by the intent of Congress "to leave the bankrupt free after the date of his petition to accumulate new wealth in the future," *ibid.*, and thus "make an unencumbered fresh start," *id.*, at 380. Several years later, in *Lines* v. *Frederick, supra,* these same considerations were repeated in almost identical language. 400 U. S., at 19. *Segal* and *Lines,* while construing § 70a (5) in almost identical language, reached contrary results. In each case, the Court found the crucial analytical key, not in an abstract articulation of the statute's purpose, but in an analysis of the nature of the asset involved in light of those principles.

In *Segal, supra,* this Court held that a business-generated loss carryback tax refund—which was based on prebankruptcy losses but received after bankruptcy—

should pass to the trustee as § 70a (5) property. Balancing the dual purpose of the Bankruptcy Act, see *Burlingham* v. *Crouse, supra,* the Court concluded that the refund was "sufficiently rooted in the prebankruptcy past and so little entangled with the bankrupt's ability to make an unencumbered fresh start that it should be regarded as 'property' under § 70a (5)," 382 U. S., at 380. The Court noted that "the very losses generating the refunds often help precipitate the bankruptcy and injury to the creditors," *id.*, at 378, and that passing the claim to the trustee did not impede a "fresh start." On the contrary, a bankrupt "without a refund claim to preserve has more reason to earn income rather than less." *Id.*, at 380.

In *Lines, supra,* on the other hand, the Court held that vacation pay, accrued prior to the date of filing and collectible either during the plant's annual shutdown for vacation or on the final termination of employment, does not pass to the trustee as § 70a (5) property. As in *Segal, supra,* the Court analyzed the nature of the asset in the light of the dual purposes of the Bankruptcy Act. It concluded that such vacation pay was closely tied to the bankrupt's opportunity to have a " 'clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.' " 400 U. S., at 20, quoting *Local Loan Co.* v. *Hunt, supra,* at 244.

The income tax refund at issue in the present case does not relate conceptually to future wages and it is not the equivalent of future wages for the purpose of giving the bankrupt a "fresh start." The tax payments refunded here were income tax payments withheld from the petitioner prior to his filing for bankruptcy and are based on earnings prior to that filing. Relying on *Lines,* however, petitioner contends that the refund is necessary for a "fresh start" since it is solely derived from wages.

In *Lines,* we described wages as "'a specialized type of property presenting distinct problems in our economic system'"[6] since they provide the basic means for the "economic survival of the debtor." 400 U. S., at 20.

Petitioner is correct in arguing that both this tax refund and the vacation pay in *Lines* share the common characteristic of being "wage based." It is also true, however, that only the vacation pay in *Lines* was designed to function as a wage substitute at some *future* period and, during that *future* period, to "support the basic requirements of life for [the debtors] and their families . . . ." *Ibid.* This distinction is crucial. As the Court of Appeals noted, since a "tax refund is not the weekly or other periodic income required by a wage earner for his basic support, to deprive him of it will not hinder his ability to make a *fresh* start unhampered by the pressure of preexisting debt," 479 F. 2d, at 995. "Just because some property interest had its source in wages . . . does not give it special protection, for to do so would exempt from the bankrupt estate most of the property owned by many bankrupts, such as savings accounts and automobiles which had their origin in wages." *Ibid.*

We conclude, therefore, that the Court of Appeals correctly held that the income tax refund is "sufficiently rooted in the prebankruptcy past"[7] to be defined as "property" under § 70a (5).

(2)

Our disposition of the first issue requires that we turn next to the petitioner's contention that 75% of the refund is exempt under the provisions of the Consumer

[6] 400 U. S. 18, 20, quoting *Sniadach* v. *Family Finance Corp.,* 395 U. S. 337, 340 (1969).

[7] *Segal* v. *Rochelle,* 382 U. S., at 380.

Credit Protection Act. The Act provides that no more than 25% of a person's aggregate disposable earnings[8] for any workweek or other pay period may be subject to garnishment. A trustee in bankruptcy takes title to the bankrupt's property "except insofar as it is to property which is held to be exempt . . . ." Bankruptcy Act, § 70a, 11 U. S. C. § 110 (a). Another section provides that the Act "shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States . . . ." Bankruptcy Act § 6, 11 U. S. C. § 24. Petitioner argues that the Consumer Credit Protection Act's restrictions on garnishment, 15 U. S. C. § 1671 *et seq.,* are such an exemption. In essence, the petitioner's position is that a tax refund, having its source in wages and being completely available to the taxpayer upon its return without any further deduction, is "disposable earnings" within the meaning of the statute. 15 U. S. C. § 1672 (b). He further argues that the taking of custody by the trustee is a "garnishment" since a bankruptcy proceeding is a "legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." § 1672 (c).

[8] Title 15 U. S. C. § 1672, entitled "Definitions," states:

"For the purpose of this subchapter:

"(a) The term 'earnings' means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

"(b) The term 'disposable earnings' means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

"(c) The term 'garnishment' means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

The Congress did not enact the Consumer Credit Protection Act in a vacuum. The drafters of the statute were well aware that the provisions and the purposes of the Bankruptcy Act and the new legislation would have to coexist. Indeed, the Consumer Credit Protection Act explicitly rests on both the bankruptcy and commerce powers of the Congress. 15 U. S. C. § 1671 (b). We must therefore take into consideration the language and purpose of both the Bankruptcy Act and the Consumer Credit Protection Act in assessing the validity of the petitioner's argument. When "interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature . . . ." *Brown* v. *Duchesne*, 19 How. 183, 194 (1857).

An examination of the legislative history of the Consumer Protection Act makes it clear that, while it was enacted against the background of the Bankruptcy Act, it was not intended to alter the clear purpose of the latter Act to assemble, once a bankruptcy petition is filed, all of the debtor's assets for the benefit of his creditors. See, *e. g., Segal* v. *Rochelle,* 382 U. S. 375 (1966). Indeed, Congress' concern was not the *administration* of a bankrupt's estate but the *prevention* of bankruptcy in the first place by eliminating "an essential element in the predatory extension of credit resulting in a disruption of employment, production, as well as consumption"[9] and a consequent increase in personal bankruptcies. Noting that the evidence before the Committee "clearly established a causal connection between harsh

[9] H. R. Rep. No. 1040, 90th Cong., 1st Sess., 20 (1967).

garnishment laws and high levels of personal bankruptcies,"[10] the House Report concluded:

> "The limitations on the garnishment of wages adopted by your committee, while permitting the continued orderly payment of consumer debts, will relieve countless honest debtors driven by economic desperation from plunging into bankruptcy in order to preserve their employment and insure a continued means of support for themselves and their families." H. R. Rep. No. 1040, 90th Cong., 1st Sess., 21 (1967).

See also *id.,* at 7. In short, the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place. However, if, despite its protection, bankruptcy did occur, the debtor's protection and remedy remained under the Bankruptcy Act.

The Court of Appeals held that the terms "earnings" and "disposable earnings," as used in 15 U. S. C. §§ 1672, 1673, did not include a tax refund, but were limited to "periodic payments of compensation and [do] not pertain to every asset that is traceable in some way to such compensation." 479 F. 2d, at 997. This view is fully supported by the legislative history. There is every indication that Congress, in an effort to avoid the necessity of bankruptcy, sought to regulate garnishment in its usual sense as a levy on periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis. There is no indication, however, that Congress intended drastically to alter the delicate balance of a debtor's protections and obligations during the bankruptcy procedure.[11] We

[10] *Id.,* at 20–21.

[11] Petitioner argues that, since Chapter XIII of the Bankruptcy Act had been explicitly excluded from the scope of the Consumer Credit Protection Act (see 15 U. S. C. § 1673 (b)), it must have

therefore agree with the Court of Appeals that the Consumer Credit Protection Act does not restrict the right of the trustee to treat the income tax refund as property of the bankrupt's estate. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

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intended to include the other portions of the Bankruptcy Act. Chapter XIII permits a wage earner to satisfy his creditors out of future income under a supervised plan. This particular procedure resembles the normal credit situation to which the CCPA is directed more than other bankruptcy situations and, for this reason, Congress might well have felt it necessary to ensure that the CCPA was not enforced at the expense of the bankruptcy procedures.

WARDEN, LEWISBURG PENITENTIARY *v.* MARRERO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 73–831. Argued April 29, 1974—Decided June 19, 1974

The Comprehensive Drug Abuse Prevention and Control Act of 1970, which became effective May 1, 1971, makes parole under the general parole statute, 18 U. S. C. § 4202, available for almost all narcotics offenders. Respondent, who had been sentenced before May 1, 1971, and was ineligible for parole under 26 U. S. C. § 7237 (d), which was repealed by the 1970 Act, sought habeas corpus in the District Court, claiming parole eligibility when one-third of his sentence had been served. The District Court denied relief on the ground that the prohibition on parole eligibility under 26 U. S. C. § 7237 (d) had been preserved by § 1103 (a) of the 1970 statute (which provides that "[p]rosecutions" for violations before May 1, 1971, shall not be affected by repeals of statutory provisions) and by the general saving clause, 1 U. S. C. § 109 (which provides that "[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute . . ."). The Court of Appeals reversed. *Held:*

1. Section 1103 (a) of the 1970 statute bars the Board of Parole from considering respondent for parole under 18 U. S. C. § 4202, since parole eligibility, as a practical matter, is determined at the time of sentencing, and sentencing is a part of the concept of "prosecution," saved by § 1103 (a), *Bradley* v. *United States*, 410 U. S. 605. Pp. 657–659.

2. The Board of Parole is also barred by the general saving clause from considering respondent for parole, since it is clear that Congress intended ineligibility for parole in § 7237 (d) to be treated as part of the offender's "punishment," and therefore the prohibition against the offender's eligibility for parole under 18 U. S. C. § 4202 is a "penalty, forfeiture, or liability" under the saving clause. Pp. 659–664.

483 F. 2d 656, reversed.

trial ... was ... R...

...AGENCY, INC., ...nt,

v.

...Lulu MUCK, Defendants,

and

...k Truck Lines, Inc., Garnishee-Appellant.

No. KCD 26400.

Missouri Court of Appeals, Kansas City District.

May 6, 1974.

Judgment creditor served summons in garnishment upon trucking company which was indebted to judgment debtor. The 9th Judicial Circuit Court, Linn County, G. Derk Green, J., entered judgment against trucking company for the full amount of the indebtedness and trucking company appealed. The Court of Appeals, Swofford, J., held that where agreement between judgment debtor and trucking company provided that debtor would lease equipment to company and pay expenses incidental to operation and maintenance of the equipment and compensation to debtor for use of the equipment was to be a percentage of company's revenues, debtor did not come within terms of the consumer's protection act and amount owed debtor by company was not exempt from garnishment.

Affirmed.

1. Appeal and Error ⚿846(1), 1024.2

Review on appeal by garnishee was upon both the law and the evidence as in suits of an equitable nature, and judgment would not be set aside unless clearly erroneous. V.A.M.R. Civil Rule 73.01(b, d).

2. States ⚿4.14

Garnishment exemption of the consumers protection act has preempted the field over state laws so far as applicable to certain types of garnishment proceedings. Consumer Credit Protection Act, § 301, 15 U.S.C.A. § 1671.

3. Exemptions ⚿4

Intent of Congress in enactment of subchapter of Consumer Credit Protec... Act granting exemption from garnishm... was to grant exemption to wage earners from burdensome garnishments, to protect employment of wage earners, and to prevent bankruptcies. Consumer Credit Protection Act, § 301, 15 U.S.C.A. § 1671.

4. Exemptions ⚿48(2)

In determining applicability of exemption from garnishment in the Consumer Protection Act, courts should ignore the label given to the money due, i. e., wages, salary, commission, etc.; the sole criteria for the exemption is that the funds subject to the garnishment, in fact and in a strict sense, represent "compensation" for "personal services." Consumer Credit Protection Act, §§ 301 et seq., 302, 303, 15 U.S.C.A. §§ 1671 et seq., 1672, 1673; Section 525.030 RSMo 1969, V.A.M.S.

5. Exemptions ⚿4

Each case dealing with the construction or interpretation of an exemption statute must be decided upon its own facts.

6. Exemptions ⚿48(2)

Money owed truck driver by trucking company pursuant to agreement by which driver leased equipment to company and paid all expenses and received percentage of company's revenues did not come within exemption from garnishment provided by the Consumer Protection Act. Consumer Credit Protection Act, § 302, 15 U.S.C.A. § 1672.

William R. Fish, Douglas H. Delsemme, Lowell L. Knipmeyer, Knipmeyer, McCann, Fish & Smith, Kansas City, for garnishee-appellant.

Richard N. Brown, Brown & Case..., Brookfield, for respondent.

Before PRITCHARD, P. J., and SWOFFORD and SOMERVILLE, JJ.

SWOFFORD, Judge.

This is an appeal from a judgment against garnishee-appellant entered in a court-tried case. The facts are relatively simple and are not in substantial dispute.

On November 17, 1970, the respondent obtained a judgment in the Magistrate Court against James B. and Lulu Muck in the amount of $1482.71.

This judgment was filed in the Circuit Court of Linn County, Missouri and a general execution was issued. In aid of such execution a summons in garnishment was directed to Kissick Truck Lines, as garnishee, and served upon it in Jackson County, Missouri. The issues below were made upon the judgment creditors' denial of the garnishee's answers to interrogatories and the garnishee's reply to such denial.

Thus drawn, the basic issues presented may be simply stated. At the time of the service of the garnishment, Kissick owed the judgment debtor, James B. Muck, the sum of $1116.16 under the terms of a "Lease and Operating Agreement" between Muck and Kissick. In response to the garnishment, Kissick voluntarily paid into the registry of the court the sum of $279.04, which was 25% of the amount of its indebtedness to Muck under this agreement. Its position is that the amount it owed Muck was "earnings" for "personal services" furnished by Muck and that under the Consumer Credit Protection Act, Sub-chapter II, Restrictions on Garnishment, 15 U.S.C., § 1671 et seq., only 25% of the $1116.16 was subject to the garnishment. On the other hand, the respondent judgment-creditor asserts that such federal statute does not apply because the money due Muck was not derived from "earnings" for "personal services" but was derived from "equipment rentals" under the contract above referred to and, therefore, the whole sum of $1116.16 was subject to execution and garnishment.

This issue was decided in favor of the respondent in the trial below and judgment entered against the garnishee for the full sum of $1116.16, although Kissick had theretofore voluntarily paid to Muck, after the service of garnishment upon it, 75% of the amount involved. From this adverse result, garnishee appeals.

[1] The parties did not request of the trial court any findings of fact or conclusions of law and it made none. We must assume on this appeal therefore, that all issues of fact were "found in accordance with the result reached", Rule 73.01(b), V.A.M.R. That is to say, the trial court found that the money due from Kissick to Muck did *not* represent "earnings" for "personal services" and therefore did not enjoy any exemption from garnishment under the federal statute. Our review is upon both the law and the evidence as in suits of an equitable nature, and the judgment of the trial court will not be set aside unless clearly erroneous. Rule 73.01(d); Wykle v. Colombo, 457 S.W.2d 695, 699 (Mo.1970); Mission Ins. Co. v. Ward, 487 S.W.2d 449, 451 (Mo. banc 1972).

In determining whether the judgment of the trial court is proper, on the one hand, or clearly erroneous, on the other hand, we must, to a large degree, plow virgin ground. Neither able counsels' briefs nor our independent research has revealed any decision of state or federal courts which marks any clear road of precedential value involving the garnishment exemption of the federal act.

[2] Of this we can be sure, we are dealing with an *exemption* statute which has preempted the field over state laws so far as applicable to certain types of garnishment proceedings. Hodgson v. Cleveland Municipal Court, 326 F.Supp. 419 (N.D.Ohio, 1971).

Before looking at the actual terms of the federal garnishment law applicable to the case before us, the intent of Congress in the enactment of that law is clearly recorded and may be found in 1968 U.S.Code

Cong. and Admin.News, p. 1962 et seq. At page 1963, it is stated:

"Title II restricts the garnishment of *wages,* which the committee finds to be a frequent element in the predatory extension of credit, resulting, in turn, in a *disruption of employment,* production, and consumption." (Emphasis added)

and

"Title II of your committee's bill, restricting the garnishment of *wages,* will relieve many consumers from the greatest single pressure, forcing *wage earners* into bankruptcies." (Emphasis added)

Likewise, at page 1979, it is stated:

"The limitations on garnishments of *wages* adopted by your committee, * * * will relieve countless honest debtors driven by economic desperation from plunging into bankruptcy in order to preserve *their employment* and *insure a continued means of support for themselves and their families.*" (Emphasis added)

This same service at page 1966 quotes from the President's message to Congress on poverty, which message may well have been the genesis for the statute here considered:

"Hundreds of *workers* among the poor lose their jobs or *most of their wages* each year as a result of garnishment proceedings. * * * (Emphasis added)

*I am directing the Attorney General * * * to recommend the steps that should be taken to protect hard-earned wages and the jobs of those who need the income most.*" (Emphasis not the Court's)

When the statute was enacted on May 29, 1968 (to take effect on July 1, 1970), it contained the following:

"Section 1671. Congressional findings and declaration of purpose.

(a) The Congress finds:

(1) The unrestricted garnishment of *compensation due for pers[...]al services* encourages the makin[...] of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditor's remedy frequently results in *loss of employment* by the debtor, and the resulting *disruption of employment,* production, and consumption constitutes a substantial burden on interstate commerce.

(3) *The great disparities among the laws of the several States relating to garnishment* have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purpose thereof in many areas of the country.

(b) On the basis of the findings stated in subsection(a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws." (Emphasis added)

[3] It is manifestly clear that the intent of Congress in the enactment of this subchapter of the Consumer Credit Protection Act was to grant an exemption to *wage earners* from *burdensome garnishments,* to protect *employment* of *wage earners,* and to prevent bankruptcies. It was to grant relief for the wage earr[...] debtors and "more particularly for [...] family", against economically destructive garnishments. Murray v. Zuke, 408 F.2d 483 (8th Cir., 1969); In re Kokoszka, 479 F.2d 990, 996–997 (2d Cir., 1973). Its provisions are remedial in nature and should

be liberally construed. In re Cedor, 337 F.Supp. 1103 (N.D.Cal., 1972).

In implementing this purpose, the Congress was faced with "the great disparities among the laws of the several States relating to garnishments" [1] as noted in Section 1671 of the Act as above quoted and used the term "earnings" as description of the subject matter of the garnishment to which the exemption was applicable. It did so, however, without diminishing in any degree the basic and avowed purpose of the law. Section 1672, 15 U.S.C., is in the following terms:

"Section 1672. Definitions.
For the purposes of this subchapter:

(a) The term '*earnings*' *means compensation* paid or payable for *personal services,* whether denominated as wages, salary, commission, bonus, or otherwise, * * *

(b) The term '*disposable earnings*' means that part of the earnings of any individual remaining *after the deduction* from those earnings of any amounts required by law to be withheld.

* * *" (Emphasis added)

Section 1673, 15 U.S.C.A., in pertinent part is as follows:

"Sec. 1673. Restriction on garnishment.

(a) Maximum allowable garnishment.

* * * the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

* * * * * *

(c) Execution or enforcement of garnishment order or process prohibited.

No court of the United States or any State may make, execute, or enforce any order or process in violation of this section."

[4] It seems clear that in ruling this matter the courts are not concerned with and should ignore any "label" given to the money due, i. e. wages, salary, commission, etc. The sole criteria for the exemption is that the funds ("earnings") subject to the garnishment, in fact and in a strict sense, represent "compensation" for "personal services".

[5] We are dealing with the construction or interpretation of an exemption statute and in such an undertaking each case must be decided upon its own facts. Bethesda General Hospital v. State Tax Commission, 396 S.W.2d 631 (Mo.1965).

The garnishee, Kissick Truck Lines, was a common carrier of certain specified commodities in several midwestern states. However, it owned no trucking equipment, employed no drivers and it had no employees except office personnel. We glean from this record that its method of operation was to solicit freight from its customers and rent the necessary equipment to transport the freight, and thus fulfill its obligations as common carrier under contracts designated "Lease and Operating

1. The federal statute, 15 U.S.C., Section 1671 et seq., was adopted in 1968 (effective 1970). At that time, the Missouri statute, Section 525.030 RSMo 1969, V.A.M.S. provided that only 10% of any wages due to an "employee" who was the "head of a family" was subject to garishment. This statute was amended, however, to substantially conform with the federal law that the aggregate "earnings" of *any* individual, after deductions, subject to garnishment may not exceed 25%, and if such individual "is the head of a family and a resident of this state, ten percentum, whichever is less." Laws 1971, p. 465, S.B. 34, Sec. 1. This amendment also defines "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise." We are not confronted in this case with any claim that Muck is "head of a family" and thus entitled to a 90% exemption. No such exemption is recognized under the federal law.

Agreement". John B. Muck was such a lessor.

The agreement here involved was dated January 2, 1970 and was a printed form in which Kissick Truck Lines, Inc. was named as lessee and Muck as lessor. The subject matter of the lease was 8 tractors and 8 trailers, described and designated in an appendix to the agreement. The provisions of this lease (Garnishee's Exhibit A) may be summarized as follows:

1. Muck agreed to *"lease* and deliver complete possession and control" of the equipment to Kissick for a one-year period; provided that after the lease had been in effect for 30 days, either party could terminate by giving written notice.

2. Muck agreed to furnish all gas, oil, tires, license plates "and other expenses incidental to the operation and maintenance of said equipment". Muck agreed to *"indemnify against any liability for expense of labor,* materials or appliances purchased or used in connection" with the equipment "and for any loss or damage to said equipment."

3. Muck agreed (at his own expense) to paint and letter the equipment according to Kissick's specifications before delivery of the equipment.

4. Muck agreed to "observe all safety and other requirements" of the ICC and all other regulatory bodies and to pay all fines which may result from a failure to comply with such requirements.

5. Kissick agreed to maintain the required insurance coverage to cover the equipment for such periods as the equipment was "being used in connection with the transportation of property under the authority and with the authorization" of Kissick.

Muck agreed to indemnify Kissick against liability arising from the negligence of the drivers of the trucks.

6. Muck agreed to purchase liability and property insurance to insure his equipment at all times such equipment was not in use by Kissick.

7. All shipments were to be handled, billed and delivered in Kissick's name.

8. The compensation to Muck "for the use of the equipment" was to be:

75% of Kissick's revenues when tractors and trailers were used;

65% of Kissick's revenues when a tractor alone was used.

Muck also agreed to remit 10% of his revenues to Kissick for shipments hauled by Muck for himself.

9. Muck granted Kissick an "exclusive option to purchase the equipment" at any time during the lease "for the sum of $_______". (Amount not filled in)

10. "This *lease* shall supersede and cancel all such *lease* agreements heretofore entered into between the lessee and the lessor on the equipment herein." (Emphasis added)

The only witness to testify was Kenneth Smith, Executive Vice President of Kissick. He testified that Muck hired and paid the drivers of the equipment and that they were Muck's employees; that Muck's drivers picked up the freight and loaded and unloaded it; that Muck made safety inspections of the equipment; that Muck performed his own maintenance and repairs in his own shop; that Muck occasionally drove some of the equipment himself; that Muck sometimes solicited business for Kissick and was paid his percentage of the freight billings therefor and Muck was paid weekly upon the basis of his percentage of the billings as provided in the lease agreement.

It should be noted that throughout the pleadings and this record the parties referred to the arrangement between Muck

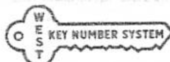
and Kissick as an "equipment rental" agreement or "lease".

[6] It is clear that Muck did not occupy the traditional relationship of an employee of Kissick. There is no evidence that Kissick exercised any control over the details of the work of Muck or his drivers, other than to assign loads of freight to be hauled under its common carrier's permit, the details of the actual transportation being under the control and supervision of Muck. In return for this, Muck was not paid wages, salary or commission, but a fixed percentage, without deductions, of the revenue derived from such shipments. Since Muck did engage in personal activity in connection with this transportation and apparently exercised a substantial degree of supervision over the work, the arrangement cannot be viewed as strictly and solely a lease or rental situation. It partakes also of elements of an independent contractor relationship. Restatement of the Law of Agency 2d, Section 2, pp. 12–15; 56 C.J.S. Master and Servant § 3(1); Dean v. Young, 396 S.W.2d 549 (Mo.1965); Jokisch v. Life and Casualty Insurance Co., 424 S.W.2d 111 (Mo.App.1968); Handley v. State Division of Employment Security, 387 S.W.2d 247 (Mo.App.1965).

It is not necessary to the resolution of this case that we further distill or define the exact legal relationship of Muck-Kissick resulting in the existence of the fund here involved. It is sufficient for us to conclude that Muck under the facts and the law did not qualify for the statutory exemption either under the expressed and recorded intent of Congress or the terms of the act. He did not come within the descriptive ambit of a wage earner whose income and thus his employment (and the welfare of his family) would be jeopardized by burdensome garnishments or bankruptcy. Neither did his "compensation" depend upon "personal services" as used in the statute.

We hold that Muck did not come within the terms of Section 1672, 15 U.S.C., the Consumers Protection Act, and therefore was not entitled to the exemption therein provided from garnishment. The judgment of the trial court is supported by the law and the evidence, is not clearly erroneous, and is therefore affirmed.

All concur.



Lloyd SEARCY, Plaintiff-Respondent,

v.

John C. NEAL, Defendant-Appellant.

No. KCD 26328.

Missouri Court of Appeals,
Kansas City District.

May 6, 1974.

Employee brought action against employer for injuries sustained when employer's truck overturned. The Clay County Circuit Court, James S. Rooney, J., entered judgment on verdict against employer, and employer appealed. The Court of Appeals, Shangler, P. J., held, inter alia, that evidence was sufficient to support finding that one of two right rear dual tires which blew out was defective but was not sufficient to support findings that the other tire was defective; that inference of contemporaneous blow outs was not permissible in light of evidence that truck did not run over any foreign object; that, therefore, no submissible issue of actionable negligence was made by plaintiff; and that giving of plaintiff's verdict-director instruction which was designed for F.E.L.A. cases, and which for that reason allowed a general submission of negligence and did not require finding of particular unsafe condition which could have been the proximate cause of the injury, was prejudicially erroneous.

Reversed and remanded.