

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARYThe meeting was called to order by Vice Chairman Joe Knopp at
Chairperson3:30 ~~am~~/p.m. on February 15, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Frey and Whitaker were excused.

Committee staff present:

Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research
Mary Ann Torrence, Revisor or Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Representative Jim Patterson
Marjorie Van Buren, Judicial Administrator
Walter Scott, Credit Bureau of Topeka, Associated Credit Bureaus of Kansas
Ann Lolley, Kansas Bankers Association
Kyle Smith, District Attorney's Office, Emporia
Jim Clark, Kansas County and District Attorneys Association

The minutes of February 10, 1983, were approved.

HB 2209 - An act relating to garnishment.

A hearing was held on the bill. Representative Patterson, sponsor, said the bill was requested by a constituent and prevents all of the cash and assets of a person who has been garnisheed from being held. By withholding twice the amount due but not all of that person's assets, he/she could continue to function while garnishment procedures are in progress. The main thrust of the bill starts on line 65. A member questioned, if the person had not paid the debt and had more money than the debt required, why the legislature should protect that money. Another point made was that some garnishment judgments were intricate making it impossible for clerks to determine how much was being garnisheed. There was discussion on the form used. Representative Patterson said the bill changed the form because it was believed lawyers would prefer a form prescribed by the Supreme Court. He had no objections to striking this change.

Marjorie Van Buren, representing the Judicial Administrator, said some court clerks were concerned regarding lines 50 and 51 of HB 2209 which would complicate journal entries. The amount to be collected may not be the full amount of the judgment to be paid. Regarding the provision to hold twice the amount owed, she suggested the party be required to do the multiplication and state the amount rather than the clerk who would be subject to suit for mistakes. She had no opinion on the forms to be used.

Walter Scott, representing the Credit Bureau of Topeka and Associated Credit Bureaus of Kansas, said his groups were neither for or against HB 2209 but had several suggestions. Making changes in the form would be difficult because of federal law. A study should be made to determine the present form's adequacy. Eliminating the present form would have a ripple effect on other statutes. Mr. Scott saw no reason for the provision regarding twice the amount of judgments being held as the judgment speaks for itself. He suggested retaining the present system of entering the amount on the journal entry. He supported the concept of banks being able to notify persons as to which account was affected, and something should be in the law requiring notification to the depositor of the balance in order to avoid bad checks. On page 11, lines 475 and 478, (a)(2) should be on line 478 and (a)(1) should be on line 175.

Ann Lolley, representing the Kansas Bankers Association, gave a statement in support of HB 2209 (Attachment No.1).

HB 2212 - An act relating to concurrent and consecutive sentences.

A hearing was held on the bill. Kyle Smith, representing the District Attorney's Office, Emporia, said Representative Lowther intooroduced the bill at his request. Because of problems his office has had with persons on probation committing crimes, he believed being on probation was no different from being on parole, and probation should be included in provisions of K.S.A. 1982 Supp.21-4608.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 15, 1983.

In discussion, it was noted a bill requested by the Adult Authority was being drafted, and Mr. Smith's suggestion for probation could be implemented into this draft.

Jim Clark, Kansas County and District Attorneys Association, supported the bill, noting the court would still have some discretion under this bill to revoke sentences. The public is demanding that something be done about crimes committed by persons on probation. In his opinion, a clear statement to the judge would be preferable to a laundry list of crimes covered.

HB 2092 - An act relating to SRS and illegal acquisition or disposition of assistance.

Motions were made and seconded to amend the bill in line 28 to add, after "not", "knowingly", and to strike all new language after "anyone"(in line 29). The motions carried. Representative Erne moved to recommend HB 2092, as amended, favorable for passage, seconded by Representative Peterson. Motion carried.

HB 2102 - An act relating to claims against the state.

Representative Solbach made a motion to adopt the amendments specifying exemption for home-makers in Attachment No.2, seconded by Representative Justice. In discussion, Representative Solbach said without the amendments, every agency would come under provisions of HB 2102. The amendments would speak only to the problem. Motion carried. Representative Patrick moved to recommend HB 2102, as amended, favorable for passage, seconded by Representative Justice. Motion carried.

The Vice Chairman adjourned the meeting at 4:20 p.m.



February 15, 1983

TO: House Committee on Judiciary
RE: HB 2209 - Garnishment Procedure

Mr. Chairman and members of the Committee:

The members of the Kansas Bankers Association appreciate this opportunity to appear before the Committee to discuss HB 2209 which makes amendments to the existing garnishment law. This bill contains two basic changes relating to garnishment procedures:

1. It would eliminate the statutory forms for garnishment and would require the Supreme Court to prescribe forms for Orders of Garnishment and Answers of Garnishees; and
2. It would limit the amount to be withheld by the garnishee to twice the amount of the judgment.

We wish to address the second change--that of limiting the amount which must be withheld by the garnishee. Under existing law, a garnishee--such as a bank--is required to withhold all funds of the debtor which are in possession of that bank. In many instances, this law deals an injustice to the debtor. For example, in one representative case during 1982, a Kansas restaurant had disputed the validity of an alleged debt in the amount of \$400 and refused to pay that obligation. Judgment was ultimately granted in the amount of \$400, and garnishment procedures began. The bank in which the restaurant had its checking account was required to withhold the entire amount of the checking account, that account balance being in excess of \$8,000. As a result, the restaurant could not meet its payroll obligations and could not purchase supplies necessary to carry on its business during the garnishment proceedings. Because of the various documents which must be filed in a garnishment proceeding, actual garnishment from start to finish may take as long as two months.

The same problem exists for individuals. Under current law, individual accounts subject to a garnishment proceeding must be

frozen and the monies in those accounts withheld even though the actual judgment may be in an amount much smaller than the account balance. During the garnishment process, that individual would not have access to his or her own money to pay monthly bills, to cover utilities, or to purchase ordinary necessities. Accordingly, we believe the current law may result in extremely harsh and unreasonable measures in many cases. Further, our conversations with bankers have indicated that this is a fairly typical problem for their customers.

HB 2209 would eliminate this problem because it would limit the amount required to be withheld for garnishment purposes to twice the amount of the judgment. In the example I just gave concerning the restaurant, the bank would have to withhold only \$800 - not the entire \$8,000. We believe such an amendment to existing garnishment law would eliminate an unreasonable and unnecessary burden on debtors. At the same time, the amendments set forth in HB 2209 would continue to adequately protect judgment creditors and assure payment on debts.

Kansas Bankers Association has not taken an official position on HB 2209 because this issue has not come before our State Affairs Committee as of this date. However, this bill is virtually identical to SB 315 which the KBA had endorsed in the 1981 session. Our State Affairs Committee will again meet February 23, 1983, and HB 2209 will officially be endorsed at that time.

Again, we want to thank the Committee for the opportunity to appear on this legislation and we respectfully request that the Committee recommend HB 2209 favorably for passage.

Anne E. Lolley
Staff Attorney

HOUSE BILL No. 2102

By Committee on Public Health and Welfare

(By request)

1-25

0018 AN ACT concerning certain claims against the state; providing
0019 authority for certain state agencies and officers of the state to
0020 make payments in settlement of such claims; amending K.S.A.
0021 46-922 and repealing the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 46-922 is hereby amended to read as fol-
0024 lows: 46-922. As used in this section and in K.S.A. 46-923, the
0025 term "state agency" shall have the meaning ascribed thereto in
0026 K.S.A. 1980 1982 Supp. 75-3701, and amendments thereto. The
0027 head of any state agency is authorized to make payment to the
0028 officers or employees of such state agency for property damage or
0029 loss occurring while ~~such~~ that officer or employee is acting
0030 within the scope of such office or employment if such property
0031 loss or damage, in the opinion of ~~such~~ the state agency head, did
0032 not occur as a result of negligence of the claimant. ~~Also,~~ The
0033 head of any state agency is authorized to make payment to any
0034 other person for property damage or loss occurring under cir-
0035 cumstances which establish, in the state agency head's opinion,
0036 that such damage or loss was caused by the negligence an act of
0037 the state or any agency, officer or employee thereof. No payment
0038 shall be made under this section on any claim for an amount in
0039 excess of ~~five hundred dollars (\$500)~~ \$500.

0040 Sec. 2. K.S.A. 46-922 is hereby repealed.

0041 Sec. 3. This act shall take effect and be in force from and
0042 after its publication in the statute book.

the negligence

Delete

The secretary of social and rehabilitation services is authorized to make payment from funds appropriated to the secretary for the homemaker program to any person for property damage or loss caused by an act of a homemaker employed by the secretary.