

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARYThe meeting was called to order by Representative Bob Frey at
Chairperson3:30 ~~xxx~~/p.m. on February 24, 1983 in room 526-S of the Capitol.

All members were present except:

Representatives Cloud, Douville, and Duncan were excused.

Committee staff present:

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

Conferees appearing before the committee: None

HB 2269 - An act relating to paramilitary training.The Chairman called attention to a letter to the Attorney General from Mrs. Wayne W. Jones, Shawnee Mission, opposing the bill (Attachment No.1).The bill was brought up for discussion. Because of concerns expressed by sportsmen's groups, Representative Miller moved to delete lines 32-36 and lines 55 and 56, seconded by Representative Knopp. Motion carried.The federal law regarding civil disorders (Attachment No.2) was considered. Representative Barkis moved to include in HB 2269 paragraph (2) of the federal law as a new section (c), seconded by Representative Whitaker. In discussion, it was noted that, although there was already a federal statute covering this paragraph, a state law would facilitate enforcement. Because of other state statutes covering the words "in commerce" in paragraph (2), Representative Barkis amended his motion to include striking this language from the amendment to which his second agreed. Motion carried. Representative Harper voted against the motion.Representative Miller moved to amend line 24 of the bill by striking ", having reason to know" which would also be deleted from the adopted amendment, seconded by Representative Patrick. Motion carried.A suggestion to limit provisions to the teaching of paramilitary training for civil disorders was discussed. The question was raised as to what constituted a public disturbance. Representative Patrick moved to define civil disorder to mean any act which constitutes a crime as defined in Articles 41 and/or 42. Representative Solbach seconded the motion for the sake of discussion. It was pointed out the definition was too broad and covered unnecessary definitions. Representative Barkis made a substitute motion to define civil disorder as it is presently defined in the bill and to amend line 40 by saying "and which obstructs, delays, or adversely affects the performance and conduct of any government function." The substitute motion was seconded by Representative Justice. It was noted this would make the law applicable to government functions only which was not the intent of the bill. The substitute motion carried.

The question was raised if Representative Barkis' substitute motion would necessitate establishing two separate bills or two separate crimes which might mean two different penalties would have to be established. Staff stated the bill's title may have to be changed.

Representative Patrick cited provisions from different statutes which he believed covered groups such as the Posse Comitatus. He moved to table HB 2269 until such time as these statutes can be considered, seconded by Representative Harper. Representative Whitaker made a substitute motion to recommend the bill, as amended, favorable for passage, seconded by Representative Peterson. In discussion, it was noted amendments to the bill had resolved some constitutional problems but there were already laws on the books covering provisions of the bill which were not being enforced. A member pointed out that, although there were federal laws covering civil disorders when the Civil Disobedience Act of 1968 was passed, it was enacted for a specific cause, and a specific bill for a specific cause was needed now for Kansas. Concern was expressed that security people trained in the use of firearms, explosives, and riot equipment to control civil disorder might be affected by provisions of HB 2269, and the person training the people could be liable. It was pointed out that instructors in this type of training would not be held criminally liable. The vote taken on the substitute motion failed to carry 7 to 8.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 24, 1983.

Representative Solbach pointed out the amendment offered by Representative Barkis and adopted which would limit provisions of the bill to government functions would not take care of violence against minorities. He made a substitute motion to reconsider the action on this amendment, seconded by Representative Matlack. Motion carried. Representative Solbach then moved to remove language added by Representative Barkis' motion, leaving the language in (4) (a) as printed, seconded by Representative Matlack. Motion carried. Representative Justice moved to report HB 2269 as amended favorable for passage, seconded by Representative Wagnon. Representative Knopp made a substitute motion to table the bill, seconded by Representative Schweiker. Substitute motion failed to carry. The vote was taken on the original motion, and it carried 10 to 6. Representatives Campbell, Schweiker, Harper, Erne, and Patrick voted against the motion.

HB 2340 - An act relating to garnishment of earnings.

Amendments to the bill (Attachment No.3) were discussed. It was the consensus of opinion that provisions for the form should be reviewed by Staff and considered at a later meeting.

HB 2260 - An act relating to reproduction of certain products.

Provisions of the California act regarding reproduction of boat hulls were considered as an alternative to HB 2260. No action was taken.

The meeting was adjourned at 5:15 p.m.

Mr. and Mrs. Wayne Jones
5800 Renner Road
Shawnee Mission, Kansas 66217

ATTACHMENT # 1

February 18, 1983

Mr. Robert T. Stephen
Kansas State Attorney General
Kansas Judicial Center
Topeka, Kansas 66612

Re: Paramilitary Training

Dear Mr. Stephan:

As a law abiding citizen who does not even know how to fire a gun, I am far more fearful of the criminals that are permitted to run the streets than I am of the group or groups who participate in paramilitary training.

Further, I consider those citizens who continually promote propaganda to disarm our nation to be far more dangerous to my personal safety.

Two weeks ago I visited your office with a blatant pornographic book that is in libraries across our state and could not get past the front desk. This book is listed as sex education for parents and children and shows children from roughly four years of age to twelve or thirteen and some perhaps sixteen, in all sorts of poses and stages of arousal including positions for intercourse. I was told this did not come under your jurisdiction even if I would mail it within the State of Kansas and had a complainst filed against me for sending pornography through the mail. There have been studies made which show pornography as a contributing factor to sex crimes. This book in our libraries could well be the impetus to start one of our youth on this path. I assume if one of these youths murdered an innocent young woman, or boy, it would come under your jurisdiction. This possibility, too, frightens me more than paramilitary training groups.

Since my country has dismantled its internal security and has failed to maintain an adequate defense for its people it is not difficult to understand why these groups are being formed.

Quite frankly, I hope one of these groups will be near when and if my country, the judiciary and/or law enforcement officers fail to protect me and my rights as a free citizen. We need more enforcement of the laws we already have.

By no stretch of the imagination could I be considered anti-semitic. One of the dearest friends of my lifetime is jewish and my most highly cherished compliment was from a jewish man. However, I fail to understand why the Jewish Anti-defamation League of New York presumes to take it upon themselves to write a law for the State of Kansas, or any other State.

Representative Frey said he did not think we need guns to control the situation. Representative Frey should consult with the people of Poland. The Russians need-
ed guns to control them. It seems to be a question of who wants to control whom.

Sincerely,

Mrs. Wayne W. Jones

CHAPTER 12—CIVIL DISORDERS

- Sec.
- 231. Civil disorders.
- 232. Definitions.
- 233. Preemption.

Historical Note

1968 Amendment. Pub.L. 90-284, Title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90, added chapter 12 and items 231-233.

§ 231. Civil disorders

(a) (1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; or

Failed?

(2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or

(3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function—

Shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties.

Added Pub.L. 90-284, Title X, § 1002(a), Apr. 11, 1968, 82 Stat. 90.

Historical Note

Short Title. Section 1001 of Pub.L. 90-284 provided that: "This title [which enacted this chapter] may be cited as the 'Civil Obedience Act of 1968'." Legislative History. For legislative history and purpose of Pub.L. 90-284, see 1963 U.S.Code Cong. and Adm.News, p. 1537.

§ 232. Definitions

For purposes of this chapter:

(1) The term "civil disorder" means any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual.

(2) The term "commerce" means commerce (A) between any State or the District of Columbia and any place outside thereof; (B) between points within any State or the District of Columbia, but through any place outside thereof; or (C) wholly within the District of Columbia.

(3) The term "federally protected function" means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof; and such term shall specifically include, but not be limited to, the collection and distribution of the United States mails.

(4) The term "firearm" means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.

(5) The term "explosive or incendiary device" means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile, or similar device, and (C) any incendiary bomb or grenade, fire bomb, or similar device, including any device which (i) consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by one individual acting alone.

(6) The term "fireman" means any member of a fire department (including a volunteer fire department) of any State, any political subdivision of a State, or the District of Columbia.

(7) The term "law enforcement officer" means any officer or employee of the United States, any State, any political subdivision of a State, or the District of Columbia, while engaged in the enforcement or prosecution of any of the criminal laws of the United States, a State, any political subdivision of a State, or the District of Columbia; and such term shall specifically include, but shall not be limited to, members of the National Guard, as defined in section 101(9) of title 10, United States Code, members of the organized militia of any State, or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, not included within the definition of National Guard as defined by such section 101(9), and members of the Armed Forces of the United States, while engaged

0054 purpose of attaching earnings of the defendant, is declared to be
0055 sufficient if substantially in the following form:

0056 "In the District Court of _____ County, Kansas, A. B., Plaintiff,
0057 vs. C. D., Defendant, and E. F., Garnishee. The State of Kansas to the Garnishee:
0058 You are hereby ordered as a garnishee to file with the clerk of the above named
0059 court, within 30 days after service of this order upon you, your answer under oath
0060 stating whether you are indebted to the defendant by reason of earnings (com-
0061 pensation for personal services, whether denominated as wages, salary, commis-
0062 sion, bonus or otherwise) due and owing the defendant and stating the amount of
0063 any such indebtedness. Computation of the amount of your indebtedness shall be
0064 made as prescribed by the answer form served herewith and shall be based upon
0065 defendant's earnings for the entire normal pay period in which this order is served
0066 upon you. You are further ordered to withhold the payment of that portion of
0067 defendant's earnings required to be withheld pursuant to the directions accom-
0068 panying the answer form until the further order of the court. Your answer on the
0069 form shall constitute substantial compliance with this order.

0070 "Failure to file your answer may entitle the plaintiff to judgment against you for
0071 the full amount of the claim and costs.

0072 "Witness my hand and seal of the court at _____ in this county,
0073 this _____ day of _____, 19____, _____, Clerk
0074 of the court, _____ County."

0075 If such order of garnishment is issued at the written direction
0076 of the party entitled to enforce the judgment, pursuant to K.S.A.
0077 60-716 to enforce (1) an order of any court for the support of any
0078 person, (2) an order of any court of bankruptcy under chapter
0079 XIII of the federal bankruptcy act or (3) a debt due for any state or
0080 federal tax, the clerk of the district court shall cause such purpose
0081 to be clearly stated on the order of garnishment and the accom-
0082 panying garnishee's answer form immediately below the caption.
0083 If the garnishment is to enforce a court order for the support of
0084 any person, the garnishment shall not exceed 50% of an individ-
0085 ual's disposable earnings unless the person seeking the garnish-
0086 ment specifies to the garnishee a greater percent to be withheld,
0087 as authorized by subsection (g) of K.S.A. ~~1982~~ *Supp.* 60-2310 *and*
0088 *amendments thereto.*

0089 (b) *Service and return.* The order of garnishment shall be
0090 served on the garnishee, together with two copies of the form for
0091 the garnishee's answer prescribed in K.S.A. ~~1982~~ *Supp.* 60-718
0092 and amendments thereto and returned by the officer making
0093 service in the same manner as an order of attachment. ~~If the order~~
0094 ~~is issued for the purpose of attaching earnings, the person serving~~
95 ~~the order shall be a person authorized by law to administer oaths.~~

0096 If the order is served prior to a judgment on the plaintiff's claim,
0097 the order shall also be served on the defendant, if the defendant

0135 shall be sufficient if substantially in the following form, but the
0136 garnishee's answer shall contain not less than that prescribed in
0137 the form:

ANSWER OF GARNISHEE

0138 State of Kansas

0139 County of _____

0140 _____ being first duly sworn, say that on the _____ day of

0141 _____, 19____, I was served with an order of garnishment in the

0142 above entitled action, that I have not delivered to the defendant

0143 _____, any money, personal property, goods, chattels, stocks,

0144 rights, credits nor evidence of indebtedness belonging to the defendant, other

0145 than earnings, since receiving the order of garnishment, and that the following is a

0146 true and correct statement:

0147 (1) (Money or indebtedness due) I hold money or am indebted to the defend-

0148 ant, other than for earnings due and owing defendant, as of the date of this

0149 answer, in the following manner and amounts: _____

0150 (2) (Personal property in possession) I have possession of personal property,

0151 goods, chattels, stocks, rights, credits, or effects of the defendant, as of the date of

0152 this answer, described and having an estimated value as follows:

0153 _____

0154 (3) (To be answered by garnishee who is an executor or administrator of an

0155 estate) I am an _____ (executor or administrator) of the estate of

0156 _____ containing funds or property to which defendant is or may

0157 become entitled as a _____, (legatee or distributee) and I under-

0158 stand that the order of garnishment shall attach and create a first and prior lien on

0159 all such property or funds to which defendant becomes entitled upon distribution

0160 of the estate and that I am prohibited from delivering to defendant any such

0161 property or funds until further order of the court from which the order of

0162 garnishment was issued. The approximate date for distributing the assets of the

0163 estate is _____, 19____.

0164 I will hold the above described moneys or other items in my possession until

0165 the further order of the court.

0166 _____

0167 (Signature), Garnishee

0168 Subscribed and sworn to before me this _____ day of

0169 _____, 19____.

0170 _____

INSTRUCTIONS TO GARNISHEE

0171 This form is provided for your convenience in furnishing the answer required

0172 of you in the order of garnishment. If you do not choose to use this form, your

0173 answer, under oath, shall not contain less than that prescribed herein. Your

0174 answer must be filed with the clerk of the above-named court within the time

0175 prescribed in the order of garnishment.

0176 _____

0177 (b) Within 30 days after service upon a garnishee of an order

0178 of garnishment issued for the purpose of attaching any earnings

0179 due and owing the defendant, the garnishee shall file a verified

0180 answer thereto with the clerk of the court, stating the facts with

0181 respect to the demands of the order. The answer of the garnishee

0182 is declared to be sufficient if substantially in the following form

0183 ~~as follows~~, but the garnishee's answer shall contain not less than

0184 that prescribed in the form. ~~Both of the following answer forms~~

0185 ~~shall accompany any order issued for the purpose of attaching~~

Except as otherwise provided by subsection (d),

0106 earnings:

0187 (1) If the defendant is not employed by the garnishee and the
0188 garnishee is not holding any earnings of the defendant, the gar-
0189 nishee may file the following answer by executing it at the time of
0190 service of the order of garnishment and returning it with the
0191 person making service or by mailing it to the clerk of the court.

ANSWER OF GARNISHEE

0192 State of Kansas
0193 County of _____
0194 _____, being first duly sworn, state that on the _____ day of
0195 _____, 19____, I was served with an order of garnishment in the above entitled
0196 action and that the defendant _____ is not employed by me and that I
0197 hold no earnings of the defendant.

0198 _____
0199 _____
0200 _____ (Signature), Garnishee
0201 Subscribed and sworn to before me this _____ day of _____, 19____.

0202 _____
0203 _____ (Person authorized to administer oaths)
0204 Answer of garnishee must be returned with the person making service or by
0205 mailing it to the clerk of the court.

0206 (2) In all other cases, the garnishee shall file the following
0207 answer in the office of the clerk of the court.

ANSWER OF GARNISHEE

0208 State of Kansas
0209 County of _____
0210 _____, being first duly sworn, say that on the _____ day of
0211 _____, 19____, I was served with an order of garnishment in the
0212 above entitled action, that since being served with said order I have delivered to
0213 the defendant _____, only that portion of the defendant's earnings
0214 authorized to be delivered to the defendant pursuant to the instructions accom-
0215 panying this form and that the statements in my answer are true and correct.
0216

INSTRUCTIONS TO GARNISHEE

0217 The order of garnishment served upon you has the effect of attaching that
0218 portion of the defendant's earnings (defined as compensation for personal ser-
0219 vices, whether denominated as wages, salary, commission, bonus or otherwise)
0220 which is not exempt from wage garnishment. This form is provided for your
0221 convenience in furnishing the answer required of you in the order. It is designed
0222 so that you may prepare your answer in conjunction with the preparation of your
0223 payroll. Wait until the end of the normal pay period in which this order has been
0224 served upon you and apply the tests set forth in these instructions to the entire
0225 earnings of the defendant-employee during the pay period, completing your
0226 answer in accordance with these instructions. If you do not choose to use this
0227 form, your answer, under oath, shall not contain less than that prescribed herein.
0228 Your answer must be filed with the clerk of the above-named court within the time
0229 prescribed in the order of garnishment.

0230 First, furnish the information required by paragraphs (a) through (f) of the form
0231 below. Read carefully the "Note to Garnishee" following paragraph (f). Then, if
0232 the total amount of the defendant-employee's disposable earnings are not exempt
0233 from wage garnishment, complete paragraphs (g) and (h) of the form by comput-
0234 ing the amount of defendant-employee's disposable earnings which are to be paid
0235 over to the defendant-employee by using the following table:

0236 I. If the defendant-employee's disposable earnings are less than
0237 \$100.50 for a Weekly pay period
0238



0301 (Deduct only those items listed above)
0302 (f) Disposable earnings for the normal pay period covered by (b) above are
0303 (subtract (e) from (c) above \$_____

0304 Note to Garnishee: If the order of garnishment states at the top of the order that
0305 it is issued to enforce (1) an order of any court of bankruptcy under chapter XIII of
0306 the federal bankruptcy act or (2) a debt due for any state or federal tax, you must
0307 retain in your possession until further order of the court all of the disposable
0308 earnings shown in (f) above. If the order of garnishment states at the top of the
0309 order that it is issued to enforce an order of any court for the support of any
0310 person, you must retain in your possession until further order of the court 50% of
0311 the disposable earnings shown in (f) above, or such greater percentage as may be
0312 indicated in paragraph IV above. If the order of garnishment is not issued for any
0313 of such purposes, compute the amount of earnings which may be paid to
0314 defendant pursuant to the instructions accompanying this form and furnish the
0315 information required by (g) and (h) below.

0316 (g) In accordance with the instructions accompanying this answer form, I
0317 have determined that the amount which may be paid to
0318 defendant is \$_____

0319 (h) After paying to defendant the amount stated in (g) above, I am holding the
0320 remainder of defendant's disposable earnings in the amount of .. \$_____

0321 I will hold in my possession until further order of the court all of the moneys
0322 required herein to be withheld.

0323 _____
0324 (Signature), Garnishee

0325 Subscribed and sworn to before me this _____ day of
0326 _____, 19_____.

0327 Answer of garnishee must be filed with the clerk of this court pursuant to
0328 Kansas law.

0329 (c) The clerk shall cause a copy of the answer to be mailed
0330 promptly to the plaintiff and the defendant. Within 10 days after
0331 the filing of the answer the plaintiff or the defendant or both of
0332 them may reply thereto controverting any statement in the an-
0333 swer. If the garnishee fails to answer within the time and manner
0334 herein specified ~~or if the garnishee wrongfully answers that the~~
0335 ~~defendant is not employed by the garnishee and that the garnishee~~
0336 ~~holds no earnings of the defendant,~~ the court may grant judgment
0337 against garnishee for the amount of the plaintiff's judgment or
0338 claim against the defendant, but if the claim of the plaintiff has
0339 not been reduced to judgment, the liability of the garnishee shall
0340 be limited to the judgment ultimately rendered against the de-
0341 fendant. Such judgments may be taken only upon written motion
0342 and notice given in accordance with K.S.A. 60-206 *and amend-*
0343 *ments thereto.* Notwithstanding the foregoing, if the garnishee is
0344 a public officer for the state or any instrumentality thereof and
0345 the indebtedness sought by plaintiff to be withheld from de-
0346 fendant is an indebtedness to defendant incurred by or on behalf
0347 of the state or any instrumentality thereof, judgment against the

responds

0348 state or such instrumentality shall be limited to an amount for
0349 claim and costs not exceeding the total amount of the indebted-
0350 ness of the state or instrumentality thereof to defendant. If the
0351 garnishee answers as required herein and no reply thereto is filed,
0352 the allegations of the answer are deemed to be confessed. If a
0353 reply is filed as herein provided, the court shall try the issues
0354 joined, the burden being upon the party filing the reply to
0355 disprove the sworn statements of the answer, except that the
0356 garnishee shall have the burden of proving offsets or indebted-
0357 ness claimed to be due from the defendant to the garnishee, or
0358 liens asserted by the garnishee against property of the defendant.

0359 Sec. 3. K.S.A. 1982 Supp. 61-2005 is hereby amended to read
0360 as follows: 61-2005. (a) *Form of garnishment order.* An order of
0361 garnishment, issued independently of an attachment for the pur-
0362 pose of attaching earnings or for the purpose of attaching other
0363 property of the defendant, and the answer of the garnishee are
0364 declared to be sufficient if substantially in compliance with the
0365 appropriate form prescribed in the appendix to this act. If ~~such~~
0366 *the order of garnishment is issued at the written direction of the*
0367 *party entitled to enforce the judgment, pursuant to K.S.A. 61-2004*
0368 *and amendments thereto, for the purpose of enforcing (1) an order*
0369 *of any court for the support of any person, (2) an order of any*
0370 *court of bankruptcy under chapter XIII of the federal bankruptcy*
0371 *act or (3) a debt due for any state or federal tax, the clerk of the*
0372 *court shall cause such purpose to be clearly stated on the order of*
0373 *garnishment and the accompanying garnishee's answer form im-*
0374 *mediately below the caption thereof. If the garnishment is to*
0375 *enforce a court order for the support of any person, the garnish-*
0376 *ment shall not exceed fifty percent (50%) 50% of an individual's*
0377 *disposable earnings unless the person seeking the garnishment*
0378 *specifies to the garnishee a greater percent to be withheld, as*
0379 *authorized by subsection (g) of K.S.A. 1982 Supp. 60-2310 and*
0380 *amendments thereto.*

0381 (b) *Service and return.* The order of garnishment shall be
0382 served on the garnishee, together with two (2) copies of the
0383 appropriate form for the garnishee's answer prescribed in the
0384 appendix to this act, and returned by the ~~officer~~ *person* making

(d) If an order of garnishment is issued for the purpose of attaching earnings, the answer form shall provide a place where the garnishee may respond to the order by signing a statement that the defendant is not employed by the garnishee and that the garnishee holds no earnings of the defendant. If the garnishee does not employ the defendant and holds no earnings of the defendant, the garnishee shall sign that statement, which shall not be required to be verified, and return it to the clerk of the district court within 30 days after service of the order.

0385 service in the same manner as an order of attachment. ~~If the order~~
0386 ~~is issued for the purpose of attaching earnings, the person serving~~
0387 ~~the order shall be a person authorized by law to administer oaths.~~

0388 If the order is served prior to a judgment on the plaintiff's claim,
0389 ~~said~~ the order shall also be served on the defendant, if ~~he or she~~
0390 ~~the defendant~~ can be found, ~~except that said~~ but the order shall
0391 not be served on the defendant until after service has been made
0392 on the garnishee, ~~but~~. Failure to serve the defendant shall not
0393 relieve the garnishee from liability under ~~said~~ the order.

0394 (c) *Effect.* An order of garnishment issued for the purpose of
0395 attaching any property, funds, credits or other indebtedness be-
0396 longing to or owing the judgment debtor, other than earnings,
0397 shall have the effect of attaching (1) all such personal property of
0398 the defendant which is in the possession or under the control of
0399 the garnishee, and all such credits and indebtedness due from the
0400 garnishee to the defendant at the time of service of the order, and
0401 (2) all such personal property coming into the possession or
0402 control of the garnishee and belonging to the defendant, and all
0403 such credits and indebtedness becoming due to the defendant
0404 between the time of the serving of the order of garnishment and
0405 the time of the filing of the answer of the garnishee; ~~except that~~
0406 ~~where~~. If the garnishee is an executor or administrator of an estate
0407 ~~where~~ and the defendant is or may become a legatee or distributee
0408 ~~thereof of the estate~~, the order of garnishment shall have the
0409 effect of attaching and creating a first and prior lien upon any
0410 property or funds of ~~such~~ the estate to which the defendant is
0411 entitled upon distribution of the estate, and ~~such~~ the garnishee
0412 shall be prohibited from paying over to the defendant any of ~~such~~
0413 ~~that~~ property or funds until ~~so~~ ordered by the court from which
0414 ~~said~~ the order of garnishment was issued.

0415 An order of garnishment issued for the purpose of attaching
0416 earnings of the defendant shall have the effect of attaching the
0417 nonexempt portion of the defendant's earnings for the entire
0418 normal pay period in which the order is served. Nonexempt
0419 earnings are earnings which are not exempt from wage garnish-
0420 ment pursuant to K.S.A. 1982 ~~Supp.~~ 60-2310 and amendments
0421 thereto and computation thereof for a normal pay period shall be

0422 made in accordance with the directions accompanying the gar-
0423 nishee's answer form served with the order of garnishment.

0424 Sec. 4. K.S.A. 61-2006 is hereby amended to read as follows:
0425 61-2006. ~~Within ten (10) 10 days after service upon him or her a~~
0426 ~~garnishee~~ of an order of garnishment issued for the purpose of
0427 attaching any property, funds, credits or indebtedness belonging
0428 to or owing the defendant, other than earnings, and within ~~thirty~~
0429 ~~(30) 30~~ days after service upon ~~him or her a~~ *garnishee* of an order
0430 of garnishment issued for the purpose of attaching any earnings
0431 due and owing the defendant, the garnishee shall file ~~his or her a~~
0432 verified answer thereto with the clerk of the court stating the facts
0433 with respect to the demands of the order: ~~Provided, That where.~~
0434 *If the office or principal place of business of the garnishee is*
0435 *outside the county where said the court is situated, said the*
0436 *garnishee shall not be required to file an answer within thirty (30)*
0437 *days before 30 days in all cases.* The answer of the garnishee may
0438 be on the appropriate form prescribed in the appendix to this act,
0439 but in no event shall the garnishee's answer contain less than that
0440 ~~so~~ prescribed in ~~said the~~ form.

0441 *If the order is issued for the purpose of attaching earnings and*
0442 *if the defendant is not employed by the garnishee and the gar-*
0443 *nishee holds no earnings of the defendant, the garnishee may file*
0444 *the answer prescribed in form 8b in the appendix following K.S.A.*
0445 *61-2605 and amendments thereto by executing it at the time of*
0446 *service of the order and returning it with the person making*
0447 *service or by mailing it to the clerk of the court. In all other cases,*
0448 *the garnishee shall file the answer by executing the answer pre-*
0449 *scribed in form 8a in the appendix and filing it in the office of the*
0450 *clerk of the court. Both answer forms shall accompany any order*
0451 *issued for the purpose of garnishing wages.*

0452 ~~The~~ clerk shall cause a copy of the answer to be mailed
0453 promptly to the plaintiff and also to the defendant at the address
0454 to which summons was directed. Within ~~ten (10) 10~~ days after the
0455 filing of the answer, the plaintiff or defendant, or both of them,
0456 may reply thereto, controverting any statement therein.

0457 ~~If~~ the garnishee fails to answer within the time and manner
0458 herein specified ~~or if the garnishee wrongfully answers that the~~

(a) Except as otherwise provided by subsection (d),

(b)

(c)

responds

0459 defendant is not employed by the garnishee and that the gar-
 0460 nishee holds no funds of the defendant, the court may grant
 0461 judgment against garnishee for the amount of the plaintiff's
 0462 judgment or claim against the defendant, but if the claim of the
 0463 plaintiff has not been reduced to judgment, the liability of the
 0464 garnishee shall be limited to the judgment ultimately rendered
 0465 against the defendant: *Provided, however, Said, but the judgment*
 0466 *may be taken only upon written motion and notice given in*
 0467 *accordance with subsection (d) of K.S.A. 60-206 and amendments*
 0468 *thereto.* If the garnishee answers as required herein and no reply
 0469 thereto is filed, the allegations of the answers are deemed to be
 0470 confessed. If a reply is filed as herein provided, the court shall try
 0471 the issues joined, the burden being upon the party filing the reply
 0472 to disprove the sworn statements of the answer, except that the
 0473 garnishee shall have the burden of proving offsets or indebted-
 0474 ness claimed to be due from the defendant to the garnishee, or
 0475 liens asserted by the garnishee against personal property of the
 0476 defendant.

0477 ~~Sec. 5. The appendix of forms following K.S.A. 61-2605 is~~
 0478 ~~hereby amended to include the following form:~~

0479 ~~Form No. 8b. GARNISHEE'S ANSWER TO ACCOMPANY ORDER OF~~
 0480 ~~GARNISHMENT IN FORM 7a~~

0481 ~~(Caption of Case)~~
 0482 ~~ANSWER OF GARNISHEE~~

0483 ~~State of Kansas~~

0484 ~~County of _____~~

0485 _____, being first duly sworn, state that on the _____ day
 0486 of _____, 10____, I was served with an order of garnishment in the above
 0487 entitled action and that the defendant _____ is not employed by
 0488 me and that I hold no earnings of the defendant.
 0489 _____

0490 _____ (Signature), Garnishee
 0491 Subscribed and sworn to before me this _____ day of
 0492 _____, 10____.

0493 _____
 0494 _____ (Person authorized to administer oaths)
 0495 Answer of garnishee must be returned with the person making service or by
 0496 mailing it to the clerk of the court.

0497 Sec. 6. K.S.A. 61-2006 and K.S.A. 1982 Supp. 60-717, 60-718
 0498 and 61-2005 are hereby repealed.

0499 Sec. 7. This act shall take effect and be in force from and after
 0500 its publication in the statute book.

(d) If an order of garnishment is issued for the purpose of attaching earnings, the answer form shall provide a place where the garnishee may respond to the order by signing a statement that the defendant is not employed by the garnishee and that the garnishee holds no earnings of the defendant. If the garnishee does not employ the defendant and holds no earnings of the defendant, the garnishee shall sign that statement, which shall not be required to be verified, and return it to the clerk of the district court within 30 days after service of the order.

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