

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARYThe meeting was called to order by Representative Bob Frey at  
Chairperson3:30 ~~XXX~~/p.m. on March 3, 1983 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused.  
Representative Ediger was absent.

Committee staff present:

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

Conferees appearing before the committee: None

The minutes of February 25 and 28, 1983, were approved.

HB 2163 - An act relating to traffic laws.

(Attachment No.1)

Representative Cloud said HB 2287, a Transportation Committee bill concerning a fee schedule and bond forfeiture provisions, was currently on General Orders and could be amended into HB 2163. He moved to insert provisions of HB 2287 into HB 2163 after line 478 and before line 480. The motion was seconded by Representative Patrick. Representative Schweiker made a substitute motion to table HB 2163 and go with HB 2287, seconded by Representative Campbell. The substitute motion carried.

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

The Chairman called attention to additional information regarding the bill furnished by Representative Chronister, sponsor (Attachment No.2). Representative Wagon moved to define molded product as being any direct molding process in which the original manufactured item was itself used as a plug for the making of the mold which is used to manufacture the duplicate item, seconded by Representative Erne. Representative Barkis made a substitution motion to table HB 2163, seconded by Representative Miller. On a vote of 9 to 8, the substitute motion carried.

HB 2340 - An act relating to garnishment.

Staff said amendments to the bill had necessitated that a substitute bill be drafted. The amended portion of HB 2340 is attached (Attachment No.3) and provides a new form on which an employer can indicate the defendant's employment was terminated. Representative Erne moved to substitute the amendment for HB 2340, seconded by Representative Douville. Motion carried. Representative Erne then moved that the substitute bill for HB 2340 be recommended favorable for passage, seconded by Representative Peterson. Motion carried.

HB 2352 - An act relating to radioactive waste.

Concern was expressed regarding how a determination could be reached as to what is high or low-level waste and if the state should have a policy of not storing its own low-level waste. The point was made that by passing the bill the state will have a statute on the books when the federal decision on sites is made. Representative Matlack moved to recommend HB 2352 favorable for passage, seconded by Representative Buehler. Motion carried.

HB 2477 - An act relating to defense in civil rights cases.

Representative Knopp moved to insert, on page 1, line 26, after "which", "allegedly" and after "States", "or of the state of Kansas"; in line 44, after "for", "alleged"; and in line 68, after "States", "or of the state of Kansas". The motion was seconded by Representative Douville. Motion carried. Representative Patrick moved to recommend HB 2477, as amended, favorable for passage, seconded by Representative Harper. Motion carried.

HB 2494 - An act relating to presentence investigation reports.

With the understanding that a similar bill, SB 318, will be available for consideration, Representative Patrick moved to table HB 2494, seconded by Representative Douville. Motion carried.

CONTINUATION SHEET

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

HB 2523 - An act relating to age discrimination.

Representative Solbach moved to recommend the bill favorable for passage, seconded by Representative Harper. In order to include the Internal Revenue Code under provisions pertaining to pensions and retirement plans, Representative Patrick made a substitute motion to amend lines 116 and 117 by striking all after "retirement" and before "ordinance" and adding "pension or other benefit plan established pursuant to state or federal law or by", seconded by Representative Duncan. The substitute motion carried.

Representative Duncan moved to recommend HB 2523, as amended, favorable for passage, seconded by Representative Harper. The fiscal effect of the bill was discussed. Any impact could be voted upon in the omnibus bill. Representative Patrick said many family businesses were now corporations, and the intent in lines 27 and 28 was to exempt out family businesses. He made a substitute motion to add, in this section, wording to the effect that corporations in which the majority of the stock in the corporation is owned by the individual's parents, spouse, or child would not be included in the definition. Representative Campbell seconded the substitute motion. In discussion, Sylvia Hougland, Secretary of the Department on Aging, said the definition was adapted from Kansas Commission on Civil Rights statutes. She did not believe the amendment was necessary to the intent of the bill. The vote was taken, and the substitute motion failed to carry. The vote on the original motion carried.

HB 2131 - An act relating to domestic relations.

Representative Duncan made a motion to amend the bill by striking all new language and creating a new section on line 52 concerning the waiver of privileges to allow confidentiality of physician-patient and psychologist-client records except in court-ordered cases. The motion was seconded by Representative Douville. Representative Solbach made a substitute motion to strike all new language and all of lines 52 through 56, seconded by Representative Barkis. Representative Solbach said present law covers this provision. It was clarified the substitute motion would return present law which was inadvertently changed last year. The vote on the substitution motion carried and repealed 60-1610(a) to (C) with a conformity amendment to 60-1615(b).

Representative Wagnon moved that HB 2131, as amended, be recommended favorable for passage, seconded by Representative Solbach. In discussion, Representative Barkis said HB 2131 had not received enough consideration and it should be considered again in 1984. Motion carried.

HB 2475 - An act relating to articles of incorporation.

Representative Schweiker moved to insert, on line 22, "otherwise" before "for", seconded by Representative Wagnon. Motion carried. Representative Barkis moved to recommend HB 2475, as amended, favorable for passage, seconded by Representative Peterson. Motion carried.

The meeting was adjourned at 5:00 p.m.

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Session of 1983

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## HOUSE BILL No. 2287

By Committee on Transportation

2-8

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0015 AN ACT concerning motor vehicles; appearance bond for certain  
0016 violations; amending K.S.A. 8-2107 and repealing the existing  
0017 section.

0018 *Be it enacted by the Legislature of the State of Kansas:*

0019 Section 1. K.S.A. 8-2107 is hereby amended to read as fol-  
0020 lows: 8-2107. (a) Notwithstanding any other provisions of this  
0021 act, whenever any person shall be halted by a member of the state  
0022 highway patrol or any other police officer for any of the violations  
0023 described in subsection (e) of this section and such person is not  
0024 given an immediate hearing as hereinbefore provided, the officer  
0025 may require the person so halted, subject to the provisions of  
0026 subsection (c), to deposit with the officer a valid Kansas driver's  
0027 license in exchange for a receipt therefor issued by such officer,  
0028 the form of which shall be approved by the division of vehicles.  
0029 Such receipt shall be recognized as a valid temporary Kansas  
0030 driver's license authorizing the operation of a motor vehicle by  
0031 the person halted to the date of the hearing stated on the receipt.  
0032 Such license and a written copy of the notice to appear shall be  
0033 rendered by the halting officer to the court having jurisdiction of  
0034 the offense charged as soon as reasonably possible. If the hearing  
0035 on such charge is continued for any reason, the judge may note on  
0036 the receipt the date to which such hearing has been continued  
0037 and such receipt shall be recognized as a valid temporary Kansas  
0038 driver's license until such date, but in no event shall such receipt  
0039 be recognized as a valid Kansas driver's license for a period  
0040 longer than 30 days from the date set for the original hearing. Any  
0041 person who has deposited a driver's license with the officer shall  
0042 have such license returned upon final determination of the charge  
0043 against such person.



0044 In the event the person halted deposits a valid Kansas driver's  
0045 license with the halting officer and fails to appear in court on the  
0046 date set for appearance, or any continuance thereof, and in any  
0047 event within 30 days from the date set for the original hearing, the  
0048 court shall forward such person's driver's license to the division  
0049 with an appropriate explanation attached thereto. Upon receipt of  
0050 such person's driver's license, the division shall suspend such  
0051 person's privilege to operate a motor vehicle in this state until  
0052 such person appears before the court having jurisdiction of the  
0053 offense charged, the court makes a final disposition thereof and  
0054 notice of such disposition is given by the court to the division. No  
0055 new or duplicate license shall be issued to any such person until  
0056 such notice of disposition has been received by the division and  
0057 the provisions of K.S.A. 8-256, and amendments thereto, limiting  
0058 the suspension of a license to one year, shall not apply to sus-  
0059 pensions for failure to appear as provided herein.

0060 (b) It shall be unlawful for any person to apply for a duplicate  
0061 or new driver's license prior to the return of such person's  
0062 original license which has been deposited in lieu of bond as  
0063 provided in this section. The filing of any such application shall  
0064 constitute a class C misdemeanor and shall constitute sufficient  
0065 cause for the division to suspend such person's driver's license  
0066 for a period of not to exceed one year from the date the division  
0067 receives notice of the disposition as provided in subsection (a).

0068 (c) In lieu of depositing a valid driver's license with the  
0069 halting officer as provided in subsection (a), the person halted  
0070 may elect to give bond in the amount specified in subsection (e)  
0071 of this section for the offense for which the person was halted,  
0072 and in the event such person does not have a valid driver's  
0073 license, such person shall be required to give such bond. Such  
0074 bond shall be subject to forfeiture if said person halted does not  
0075 appear at the court and at the time specified in the written notice  
0076 provided for in K.S.A. 8-2106 *and amendments thereto*. Such  
0077 bond may be a cash bond, a bank card draft from any valid and  
0078 unexpired credit card approved by the division or a guaranteed  
0079 arrest bond certificate issued by either (1) a surety company  
0080 authorized to transact such business in this state or (2) an au-

0081 tomobile club authorized to transact business in this state by the  
0082 commissioner of insurance. If any of the approved bank card  
0083 issuers redeem the bank card draft at a discounted rate, such  
0084 discount shall be charged against the amount designated as the  
0085 fine for the offense. In the event such bond is not forfeited, the  
0086 amount of the bond less the discount rate shall be reimbursed to  
0087 the person providing the bond by the use of a bank card draft.  
0088 Any such "guaranteed arrest bond certificate" must be signed by  
0089 the person to whom it is issued and must contain a printed  
0090 statement that such surety company or automobile club guaran-  
0091 tees the appearance of such person and will, in the event of  
0092 failure of such person to appear in court at the time of trial, pay  
0093 any fine or forfeiture imposed on such person not to exceed an  
0094 amount to be stated on such certificate.

0095 Such cash bond shall be taken in the following manner: The  
0096 officer shall furnish the person halted a stamped envelope ad-  
0097 dressed to the judge or clerk of the court named in the written  
0098 notice to appear and the person shall place in such envelope the  
0099 amount of the bond, and in the presence of the officer shall  
0100 deposit the same in the United States mail. After having complied  
0101 with such, the person halted need not sign the written notice to  
0102 appear, but the officer shall note the amount of the bond mailed  
0103 on the notice to appear form and shall give a copy of such form to  
0104 the person. If the person halted furnishes the officer with a  
0105 guaranteed arrest bond certificate or bank card draft, the officer  
0106 shall give such person a receipt therefor and shall note the  
0107 amount of the bond on the notice to appear form and give a copy  
0108 of such form to the person halted. Such person need not sign the  
0109 written notice to appear, and the officer shall present the notice to  
0110 appear and the guaranteed arrest bond certificate or bank card  
0111 draft to the court having jurisdiction of the offense charged as  
0112 soon as reasonably possible.

0113 (d) Whenever any motor carrier, truck or truck tractor is halted  
0114 by an agent or employee of the department of revenue duly  
0115 authorized under K.S.A. 8-1910 or 66-1319 *and amendments*  
0116 *thereto* to stop such motor carrier, truck or truck tractor for those  
0117 violations described in subsection (e) of this section which relate

0118 to the regulation of motor carriers, trucks or truck tractors, such  
 0119 agent or employee may require the driver of the motor carrier,  
 0120 truck or truck tractor so halted to give a driver's license or bond in  
 0121 the same manner and to the same extent as in subsections (a) and  
 0122 (c).

0123 (e) The offenses for which appearance bonds may be required  
 0124 as provided in subsection (c) and the amounts thereof shall be as  
 0125 follows:

0126	Speeding, minimum bond . . . . .	\$20
0128	Eleven to fifteen over limit . . . . .	30
0130	Sixteen to twenty over limit . . . . .	40
0132	Twenty-one to twenty-five over limit . . . . .	50
0134	Twenty-six to thirty over limit . . . . .	60
0136	Thirty-one to forty over limit . . . . .	80
0138	Forty-one and over the limit . . . . .	100
0140	Reckless driving . . . . .	50
0142	Fail to comply with lawful order of officer . . . . .	25
0144	Fail to yield right-of-way to emergency vehicle . . . . .	25
0146	Fail to obey official traffic-control signal . . . . .	20
0148	Driving less than posted minimum speed, or impeding the normal 0149 and reasonable flow of traffic . . . . .	20
0151	Driving left of center, in wrong lane or in wrong direction on one- 0152 way . . . . .	20
0154	Illegal passing . . . . .	20
0156	Failure to yield right-of-way . . . . .	20
0158	Failure to stop at stop sign . . . . .	20
0160	Illegal turn, turn approach or failure to signal . . . . .	20
0162	Following too close . . . . .	20
0164	Illegal stop, stand or park . . . . .	20
0166	Illegal backing . . . . .	20
0168	Fail to stop for railroad electric or mechanical signal devices . . . . .	20
0170	Depositing or throwing trash or destructive or injurious material on 0171 highway . . . . .	50
0173	Passing school bus which is displaying stop signal . . . . .	25
0175	Brakes inadequate or defective . . . . .	20
0177	Registration violation . . . . .	20
0179	No operator's or chauffeur's license or violation of restrictions . . . . .	20
0181	Driving while license suspended or revoked . . . . .	100
0183	Spilling load on highway . . . . .	20
0185	Failure to dim headlights . . . . .	20
0187	Illegal or defective lights . . . . .	20
0189	Overload:	
0190	Gross weight of vehicle or	
0191	combination of	
0192	vehicles . . . . .	an amount equal to the fine
0193		to be imposed if convicted
0194	Gross weight upon any	
0195	axle or tandem, triple	
0196	or quad axles . . . . .	an amount equal to the fine
0197		to be imposed if convicted
0198	Failure to obtain proper registration, clearance or to have current	
0199	certification as required by K.S.A. 66-1324 and amendments	
0200	thereto . . . . .	250

0202	<i>Insufficient liability insurance for motor carriers pursuant to K.S.A.</i>	
0203	<i>66-1,128 or 66-1314 and amendments thereto . . . . .</i>	100
0205	<i>Failure to obtain interstate motor fuel tax authorization pursuant to</i>	
0206	<i>K.S.A. 79-34,122 and amendments thereto . . . . .</i>	100
0208	Improper equipment (horn, muffler, rear vision mirror, wiper, glass,	
0209	safety devices, fire extinguishers, flares, reflectors, flags, or other	
0210	required equipment) . . . . .	20
0212	No authority as private, contract or common carrier. . . . .	100
0214	No drivers daily log . . . . .	20
0216	Invalid or no physical examination card . . . . .	20
0218	Transporting open container of alcoholic liquor or cereal malt bev-	
0219	erage accessible while vehicle in motion. . . . .	200

0221

0222 (f) In the event of forfeiture of any of the bonds set forth in  
 0223 this section, then \$10 of said forfeited bond shall be regarded as  
 0224 court costs in any court having jurisdiction over said violation of  
 0225 state law.

0226 Sec. 2. K.S.A. 8-2107 is hereby repealed.

0227 Sec. 3. This act shall take effect and be in force from and after  
 0228 its publication in the statute book.

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

ROCHELLE CHRONISTER  
ASSISTANT MAJORITY LEADER  
REPRESENTATIVE NINTH DISTRICT  
WILSON WOODSON COUNTIES  
LIBERTY AND NEOSHO TOWNSHIPS  
IN COFFEY COUNTY  
ROUTE 2-BOX 321A  
NEODESHA, KANSAS 66757

COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN: COMMUNICATION, COMPUTERS,  
AND TECHNOLOGY  
MEMBER: CALENDAR AND PRINTING  
WAYS AND MEANS

ATTACHMENT # 2

TO: House Judiciary Members  
FROM: Rochelle Chronister  
RE: HB 2260

I am enclosing for your perusal, a copy of the letter that came to me from Vern Schooley today.

I had requested additional information in light of the questions from the Committee last week. I would particularly call your attention to two areas:-

- a) on page one of the letter, the reference to a "plug" that must be designed before the original mold can be built. (Cobalt's costs in this area are in the \$100,000 to \$200,000 range due to the type of boat they produce; although other boat manufacturer's costs are much less).
- b) the court cases on pages three and four of the letter.

If the Committee has difficulty with the bill in its present form two types of changes could be made:

- 1) limit the bill only to the boat industry instead of dealing with all molded products, or
- 2) add language referring to a mold that is designed from a wooden "plug" as the California bill has. This also would limit the type of molding process.

I would appreciate your favorable consideration of this bill.



FULWIDER, PATTON, RIEBER, LEE & UTECHT

A Partnership Including Professional Corporations

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February 28, 1983

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Representative Rochelle Chonister  
Room 170 W. State House  
Topeka, Kansas 66612

Re: Unfair Competition Legislation

Dear Representative Chonister:

At the request of Joseph Niosia, Esq. of the National Marine Manufacturers Association, I am writing this letter to provide some background on the problem in the marketplace stemming from competitors duplicating fiberglass products. Frequently, this is accomplished by using the product of the original manufacturer in constructing a mold, from which duplicate products may then be produced to compete with the original manufacturer.

As you may know, this practice has been prevalent in the fiberglass boat manufacturing industry. The practice is typically referred to as "splashing" of the competitors boat. Typically, the legitimate manufacturer will spend on the order of \$20,000 in originating the production molds for fabrication of a boat of modest size, such as a 20' length. When a new design configuration is conceived, the designer may draw the boat configuration on a hard surface, such as sheets of plywood so his or her design can be studied and modified to arrive at a final design configuration. This process is typically referred to as "lofting". Working from the lofted design, the mold maker will then typically construct a full size three dimensional framework incorporating the lofted design. The exterior of the framework is then covered with, for instance, sheets of plywood formed to the desired contour to thus form a wooden boat having the external configuration of the new design. This wooden boat is referred to as a "plug". The plug is then further shaped and worked to provide a smooth finish.

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Fiberglass is then laid up on the plug to form a male mold having an internal cavity defining the desired configuration of the new design. The male mold may be made in two or more sections, as in a first section having the configuration of the bottom and sides of the boat to form the "hull" mold and a second section in the form of the top surface of the boat to form the "deck" mold. The hull and deck molds may then have a framework built thereon to establish rigidity and durability for maintaining the integrity of their shapes during use. After this expensive and time consuming procedure is completed, the manufacturer is then in position to lay up fiberglass in the molds to form the hull and deck of the new design. The hull and deck then join together, and construction of the new boat is completed. If the new design proves popular in the marketplace, the manufacturer will then have an opportunity to recoup his expenditure and turn a profit from his efforts.

However, unscrupulous competitors recognizing the popularity of a new design of this type are frequently unable to resist the temptation to merely acquire a production boat constructed from the original manufacturer's molds, and use that boat as a plug to fabricate a new set of production molds which he can then employ to immediately enter the market with boats duplicating the original design. While construction of the original plug is expensive and may take many months, the cost to lay up the mold from the production boat to duplicate the original design amounts to only a fraction of the cost of the plug, and can be accomplished in only a couple of days thus placing the imitator at a tremendous advantage, both in the time lag for introducing a new model and in original cost.

The courts have shown a great reluctance to prohibit copying of an unpatented article, such as a boat, under any legal theory without some direction from the legislature. The federal courts recognize that the patent and copyright laws are not designed to provide satisfactory protection in this limited area. Most courts hold that while the act of copying does not amount to unfair competition under either federal or state law, that fact may be coupled with another element to form the basis for a claim for unfair competition as defined by the legislature.

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Consequently, prior to enactment of §17300 of the California Business and Professions Code, there was no relief readily available to the original manufacturer. Prior to enactment of Business and Professions Code §17300, I represented a number of manufacturers endeavoring to block splashing of their boats, so speak from first hand experience. Only in exceptional circumstances and at great expense, could the original manufacturer succeed in protecting his design from splashing.

The difficulty in protecting the original design arose from two factors. First, under the patent laws of the United States, the important features of a new design frequently do not lend themselves to strong patent protection. Secondly, the original manufacturer was faced with the obstacle laid down by the U.S. Supreme Court in the cases of Compco Corp. v. Day-Brite Lighting Inc. 376 U.S. 324 and Sears Roebuck & Co. v. Stiffel 376 U.S. 225 (1964) wherein the Court held that unpatented or unpatentable articles, like an article on which the patent has expired, is in the public domain and may be sold by whoever chooses to do so.

The court did recognize one narrow exception, where it could be proven that the "nonfunctional" features which were not essential to the use of the article and which had acquired a "secondary meaning" identifying the original product in the marketplace with the original manufacturer. The legitimate manufacturer was further required to prove that, as a result of the similarity of the nonfunctional features which had acquired a secondary meaning, the purchasing public seeing the copied design was likely to be confused as to sponsorship of the copied design. This narrow exception has little application to the boat industry since the important features in the configuration of a new design are frequently functional in that they improve the performance of the boat and thus, could not be protected under the nonfunctionality theory. Moreover, it is recognized that until a boat has been marketed for a substantial period of time, there would be no evidence available to prove that customers in the marketplace have come to recognize the configuration of that boat as being identified with the original manufacturer.

The only cases wherein the original manufacturer was successful in protecting his original design on the foregoing theory, were the cases of Bruce C. Nescher dba Sleekcraft Boats v. Western States Marine Products Inc.

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76 3187 MML in the District Court for the Central District of California and the case of Wood Manufacturing Co. Inc. v. Hearst Enterprises Inc. 78-178-ORL-CIV-Y in the Middle District of Florida, Orlando Division. The difficulty which had to be overcome in both of those cases was the garnering of proof to show that the copied features were (1) nonfunctional, (2) had acquired a secondary meaning in the marketplace and that the defendant's sale of a similar appearing boat was (3) likely to cause confusion amongst the purchasing public. That is, it was necessary to prove that customers seeing the duplicate design would likely think that the imitator was somehow connected with the original manufacturer. The difficulty in proving that issue when both boats are clearly marked with the respective manufacturer's name is self-evident. The expense of proving nonfunctionality, secondary meaning and likelihood of confusion places relief under this theory beyond the economic reach of most manufacturers. Moreover, since attorney's fees are not typically recoverable under the Sleekcraft theory, the unscrupulous imitator has little risk since the total cost to him of defending the litigation may not exceed the expense he would have incurred by originating his own design, plug and molds.

You will recall from your review of California Business and Professions Code §17300, that the elements requiring proof are merely the fact that the imitator's boat was manufactured by a "direct molding process" using the original manufactured boat as a plug for making a mold. Under this statute, the plaintiff can prove his case by merely presenting evidence that the defendant had access to one of the plaintiff's boats and commenced manufacturing a duplicate thereof. These facts may be proven in a rather straight forward manner without the undue expense involved in endeavoring to prove nonfunctionality, secondary meaning and likelihood of confusion.

From my experience, both before and after enactment of §17300, I can say that this statute is particularly effective in discouraging boat splashing and has been successfully enforced to achieve its intended purposes. Baker Custom Boat v. John's Custom Marine and Eliminator Boats Inc. et al. Case No. 391136 in the Superior Court in the State of California in and for Orange County.



Representative Rochelle Chonister  
February 28, 1983  
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Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely,

FULWIDER PATTON RIEBER LEE & UTECHT

By:

  
Vern Schooley

VS:pjf

cc: Joseph Niosia, Esq.  
State Legislation Attorney  
National Marines Manufactures Association  
41 North Michigan Avenue, Suite 2950  
Chicago, Illinois 60611

prescribed in the order of garnishment.

(b) Within 30 days after service upon a garnishee of an order of garnishment issued for the purpose of attaching any earnings due and owing the defendant, the garnishee shall file a verified an answer thereto with the clerk of the court, stating the facts with respect to the demands of the order. If the defendant is not employed by the garnishee or has terminated employment with the garnishee, the answer is not required to be verified. Otherwise, the answer shall be verified. The answer of the garnishee is declared to be sufficient if substantially in the following form, but the garnishee's answer shall contain not less than that prescribed in the form:

ANSWER OF GARNISHEE

The defendant \_\_\_\_\_

Terminated employment on \_\_\_\_\_ (date)  (check one)

Was never employed.

\_\_\_\_\_  
(Signature) Garnishee

If one of the above applies, you are not required to complete the remainder of this form and it is not required to be verified. You must return the form within the time prescribed in the order of garnishment.

If neither of the above applies, you must complete the remainder of this form and have it verified.

-----  
State of Kansas

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, say that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, I was served with an order of garnishment in the above entitled action, that since being served with said order I have delivered to the defendant \_\_\_\_\_, only that portion of the defendant's earnings authorized to be delivered to the defendant pursuant to the instructions accompanying this form and that the statements in my answer are

manner herein specified, the court may grant judgment against garnishee for the amount of the plaintiff's judgment or claim against the defendant, but if the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the defendant. Such judgments may be taken only upon written motion and notice given in accordance with K.S.A. 60-206 and amendments thereto. Notwithstanding the foregoing, if the garnishee is a public officer for the state or any instrumentality thereof and the indebtedness sought by plaintiff to be withheld from defendant is an indebtedness to defendant incurred by or on behalf of the state or any instrumentality thereof, judgment against the state or such instrumentality shall be limited to an amount for claim and costs not exceeding the total amount of the indebtedness of the state or instrumentality thereof to defendant. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answer are deemed to be confessed. If a reply is filed as herein provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against property of the defendant.

Sec. 2. K.S.A. 61-2006 is hereby amended to read as follows: 61-2006. Within ~~ten-(10)~~ 10 days after service upon ~~him--or-her~~ a garnishee of an order of garnishment issued for the purpose of attaching any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings, and within ~~thirty--(30)~~ 30 days after service upon ~~him-or-her~~ a garnishee of an order of garnishment issued for the purpose of attaching any earnings due and owing the defendant, the garnishee shall file ~~his-or-her-verified~~ an answer thereto with the clerk of the court stating the facts with respect to the demands of the order. Provided, That--where. If the garnishment is for the

purpose of attaching earnings and the defendant is not employed by the garnishee or has terminated employment with the garnishee, the answer is not required to be verified. Otherwise, the answer shall be verified. If the office or principal place of business of the garnishee is outside the county where said the court is situated, said the garnishee shall not be required to file an answer within-thirty-(30)-days before 30 days in all cases. The answer of the garnishee may be on the appropriate form prescribed in the appendix to this act, but in no event shall the garnishee's answer contain less than that so prescribed in said the form.

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

If the garnishee fails to answer within the time and manner herein specified, the court may grant judgment against garnishee for the amount of the plaintiff's judgment or claim against the defendant, but if the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the defendant. ~~Provided,~~ however, said, but the judgment may be taken only upon written motion and notice given in accordance with subsection (d) of K.S.A. 60-206 and amendments thereto. If the garnishee answers as required herein and no reply thereto is filed, the allegations of the answers are deemed to be confessed. If a reply is filed as herein provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against personal property of the defendant.

New Sec. 3. Form No. 8a in the appendix of forms following



article 26 of chapter 61 of the 1982 supplement of the Kansas Statutes Annotated is hereby amended to read as follows:

Form No. 8a: GARNISHEE'S ANSWER TO  
ACCOMPANY ORDER OF GARNISHMENT  
IN FORM No. 7a  
(Caption of Case)  
ANSWER OF GARNISHEE

The defendant

Terminated employment on \_\_\_\_\_  (check  
(date) \_\_\_\_\_ one)  
Was never employed.

\_\_\_\_\_  
(Signature) Garnishee

If one of the above applies, you are not required to  
complete the remainder of this form and it is not required to be  
verified. You must return the signed form within the time  
prescribed in the order of garnishment.

If neither of the above applies, you must complete the  
remainder of this form and have it verified.

-----  
State of Kansas

County of \_\_\_\_\_ ss.

\_\_\_\_\_, being first duly sworn, say that on the \_\_\_  
day of \_\_\_\_\_, 19\_\_\_, I was served with an order of  
garnishment in the above entitled action, that I have delivered  
to the defendant, \_\_\_\_\_, only that portion of ~~his-er-her~~  
the defendant's earnings authorized to be delivered to ~~him-er-her~~  
the defendant pursuant to the instructions accompanying this form  
and that the statements in my answer are true and correct.

INSTRUCTIONS TO GARNISHEE

The order of garnishment served upon you has the effect of  
attaching that portion of the defendant's earnings (defined as  
compensation for personal services, whether denominated as wages,