

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYThe meeting was called to order by Elwaine F. Pomeroy at  
Chairperson10:00 a.m. ~~XXX~~ on March 23, 1984 in room 514-S of the Capitol.~~All~~ members ~~were~~ present ~~except~~ were: Senators Winter, Burke, Feleciano, Gaar, Gaines, Hein, Hess, Mulich and Werts.Committee staff present:  
Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

## Conferees appearing before the committee:

Secretary Robert Harder, Social and Rehabilitation Services  
Walt Scott, Associated Credit Bureaus of Kansas  
Denny Burgess, Association For Physical Fitness CentersHouse Bill 2698 - Collection of debts of patients at certain state hospitals.

Secretary Robert Harder testified this bill would allow them a more effective method of collecting on bad debts. He pointed out the new language in the bill is on page 3. A copy of his statement is attached (See Attachment No. 1). In answer to a question, Dr. Harder replied, they would like similar modification of the bill as was given the board of regents. The board of regents was given the authority to negotiate. The low bid is not the only satisfactory way to get the job accomplished. He stated there would be an advantage if they could negotiate, and suggested having the authority of either by contract or negotiated.

Walt Scott testified he represents collection agencies, and stated the bill is not clear whether a lawsuit can be filed for collecting these amounts, or whether can negotiate directly to effect collection of these debts. Mr. Scott is concerned whether the bill would allow a debt collection agency to forward to the attorney to effect collection of state's debts; the agency can't file in its own name. Committee discussion followed. A committee member inquired of Dr. Harder, would you like to have it clear the agency you retain the right to hire counsel? Dr. Harder replied, he felt it would be useful.

House Bill 2931 - Proceedings in aid of execution.

Walt Scott testified Representative Vic Miller introduced this bill. He explained the bill to the committee. He pointed out a clean up amendment is needed on page 2, line 59, the word "day" be reinserted. Following Mr. Scott's testimony, Senator Werts passed out copies of a proposed amendment, and explained it to the committee. Senator Werts then moved the committee amend the bill by adopting the proposed amendment; Senator Burke seconded the motion. See attachment No. 2.

Walt Scott pointed out this legislation has been before the legislature for about six years; it has been coming and going. He has no objection to stating the amount of the judgment. The only problem with this type of legislation is the statutory service fee to which he strongly objects. He doesn't see why one group should have this fee. Committee discussion with Mr. Scott followed. Senator Feleciano made a substitute motion to amend the bill by adopting the proposed amendment without item #2. Senator Mulich seconded the motion. Considerable committee discussion followed. With two voting in favor of the motion, and five in opposition, the substitute motion failed. Following further discussion, Senator Gaar made a motion to amend the bill by adopting the proposed amendment and allow a fee charged not in excess of \$5.00. Walt Scott noted, this should apply only to funds in an account. Senator Werts made a substitute motion to amend the bill as proposed, take the word property out of new Section 2, and allow service fee in the amount of no more than five dollars. Senator Burke seconded the motion, and the motion carried. Senator

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~PM~~ on March 23, 1984

House Bill 2931 continued

Senator Werts moved to amend the bill in line 59, page 2, by inserting "debts specified in the citation". Senator Burke seconded the motion, and the motion carried.

The revisor will draft the amendments and bring back for committee's consideration.

Senate Bill 826 - "Health spa" defined; consumer protection.

Denny Burgess appeared on behalf of the Association For Physical Fitness Centers, and stated they are both a proponent and opponent. They support Sections 1 and 3 and oppose Sections 2 and 4. He stated the group is very interested in trying to protect the consumer and see that they are getting what they are paying for. The centers have a problem with executive fitness training programs for companies and groups of employees. It is difficult to know ahead of time what the company will want; many times people go to a fitness program and after they show improvement, they want to go to something different, but they don't know what they want to go to next. Mr. Burgess stated it would be a mistake to put a minimum on the bond. He thinks the \$50,000 bond should apply to everybody. He suggested, with the lateness in the session, it would be a good idea to hold this bill and allow people time to sit down with the attorney general and work out their problems.

The meeting adjourned.

3-23-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Tom Miller	Topeka	Assoc. Credit Bureau of Kan.
Walt Smith		" " " "
Denny Burgess	Wamego	Assn phys. Fitness Centers
G. Johnson	Lawrence	Topeka Lawrence
Bunch Poir	Topeka	KSLX-MAGIC 108 Radio
Frances Kastner	Topeka	Ks Food Dealers Assn

3-23-84  
Attach. #1

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding House Bill 2698

I. Short Title of Bill

An act concerning the support of patients at certain state hospitals; requiring periodic demands; authorizing contracts with debt collection agencies; amending K.S.A. 59-2006.

II. Background and Discussion

This bill amends K.S.A. 59-2006 in the following three areas: (1) a technical change that changes reference to patients from "his or her" to "such patient"; (2) the requirement for an annual demand is changed to periodic demands that will be made not less than once per fiscal year; (3) authorization is provided to permit contracting with a debt collection agency.

Present statutory language about an annual demand is a holdover from a time when patients and relatives were not provided with monthly or quarterly statements billing them for amounts due. The annual demand was to inform responsible parties about charges that had accrued during the year. Now that monthly or quarterly statements are provided for responsible parties, the former requirement is not necessary to keep persons informed.

State hospitals encounter a number of patient accounts that they are unable to collect and do not qualify for legal pursuit. A private collection agency that is tied to national collection networks is better equipped to collect these problem accounts. The amendment would authorize the Secretary of SRS to contract with a collection agency on a commission basis.

Following are examples of cases where the services of a professional collection agency most likely would be utilized if statutory authority were granted.

1. Cases owing relatively small amounts (less than \$500) but the hospital reimbursement offices were unable to collect for various reasons.
2. Cases owing larger amounts that have been reviewed by the Department Legal Section and where assistance is necessary because the responsible person has moved or other circumstances that make legal action undesirable or impossible.

The amounts referred to a collection agency would be that part of the total charges determined to be within the patients'/relatives' ability to pay after considering income, assets, liabilities and number of dependents. The determination of the amount a patient/relative is to pay is a part of the payment plan developed for each patient. While we

Attch. 1

want to collect all that is coming to us, we wish to do it in an ethical and professional manner by soliciting proposals, investigating applicants and instituting all necessary safeguards to protect our patients as well as the good name of the department and the state.

Authority to use collection agencies will be an incentive to study the service and to develop packages suitable to our needs. They would be helpful in skip tracing, out-of-state delinquent accounts, uncooperative responsible parties such as representative payees, guardians, conservators, etc.

The usage of collection agencies may also free our legal department to pursue true legal actions. Since its staff is not fully assigned to collections activities, more often than not they are drawn away for other purposes.

III. SRS Position

SRS supports passage of this legislation.

Robert C. Harder, Secretary  
Office of the Secretary  
Social and Rehabilitation Services  
296-3271

March 23, 1984

This amendment to HB 2931 allows the following:

- (1) Orders of garnishment, other than those attaching earnings, attach funds due the defendant in an amount  $1\frac{1}{2}$  times the amount of the claim or judgment.
- (2) If funds due a defendant are over and above the amount attached ( $1\frac{1}{2}$  times) garnishee can withhold a service fee of \$5.
- (3) If two or more accounts are held, withholding may occur from one or more of the accounts.
- (4) When the garnishment answer is mailed to the clerk it is deemed to be filed when mailed.

Amend HB 2931 by inserting the following after line 91 and striking lines 92, 93 and 94:

New Sec. 2. All orders of garnishment issued in this state, other than those affecting the earnings of the defendant, shall specify the amount of property, funds, credits or indebtedness to be withheld by garnishee. A garnishee holding property, funds, credits or indebtedness belonging or owed to the defendant which is in excess of such amount stated in the order of garnishment may withhold a garnishee's service fee in the amount of \$5 and pay to the defendant the remaining portion of such property, funds, credits or indebtedness.

Sec. 3. K.S.A. 60-715 is hereby amended to read as follows:

60-715. Except as provided in K.S.A. 60-1607, an order of garnishment before judgment may be obtained only upon order of a judge of the district court pursuant to the procedure to obtain an order of attachment. No garnishment shall be commenced before judgment on plaintiff's claim in the principal action where such garnishment proceedings affect the earnings of the defendant, except as provided by K.S.A. 60-1607. An order of garnishment may be in lieu of, or in addition to, the order of attachment, as designated by the written direction of the party seeking the order. Such written direction shall state the amount of the plaintiff's claim.

Sec. 4. K.S.A. 60-716 is hereby amended to read as follows:

60-716. As an aid to the enforcement of the judgment, an order of garnishment may be obtained and shall be issued by the clerk of the court from which execution is issuable, either in connection with an execution or independently thereof as designated by the written direction of the party entitled to enforce the judgment. Such written direction shall state the amount of the judgment and shall designate whether the order of garnishment is to be issued for the purpose of attaching earnings or for the purpose of attaching other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor for the purpose of enforcing (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, ~~his or her~~ the written direction shall so indicate. No bond is required for an order of garnishment issued after judgment.

Sec. 5. K.S.A. 60-717 is hereby amended to read as follows:

60-717. (a) Form. (1) An order of garnishment, issued independently of an attachment, either prior to judgment or as an aid for the enforcement of a judgment, for the purpose of attaching any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings shall state the amount of property, funds, credits or indebtedness to be withheld by garnishee which shall be one and one-half times the amount of plaintiff's claim as stated in the affidavit or one and one-half times the amount of the judgment as stated in the written direction of the party entitled to enforce the judgment. The order is declared to be sufficient if substantially in the following form:

"In the District Court of \_\_\_\_\_ County, Kansas, A.B., Plaintiff, vs. C.D., Defendant, and E.F., Garnishee. The State of Kansas to the Garnishee: If you hold any property, funds, credits or indebtedness belonging to or owing the defendant, the amount to be withheld by you pursuant to this order or garnishment is not to exceed \$\_\_\_\_\_. You are hereby ordered as a garni-

§ \_\_\_\_\_. You are hereby ordered as a garnishee to file with the clerk of the above named court, within 10 days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you sign your answer, indebted to the defendant, or have in your possession or control any property, funds or credits belonging to the defendant, excluding earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such funds, credits or indebtedness and description of any such property. For the purpose of this order, if you are, at the time this order is served upon you, an executor or administrator of an estate containing property, credits, indebtedness or funds to which defendant is or may become entitled as a legatee or distributee of the estate upon its distribution, you are deemed to be indebted to the defendant to the extent of such property, credits, indebtedness or funds. You are further ordered to withhold the payment of any such indebtedness, credits or funds up to the amount stated above, or the delivery away from yourself of any such property, until the further order of the court. Your answer on the form served herewith shall constitute substantial compliance with this order.

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

"Witness my hand and seal of the court at \_\_\_\_\_ in this county, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_, Clerk of the court, \_\_\_\_\_ County."

(2) An order of garnishment, issued independently of an attachment as an aid for the enforcement of a judgment and for the purpose of attaching earnings of the defendant, is declared to be sufficient if substantially in the following form:

"In the District Court of \_\_\_\_\_, County, Kansas, A.B., Plaintiff, vs. C.D., Defendant, and E.F., Garnishee. The State of Kansas to the Garnishee: You are hereby ordered as a garnishee to file with the clerk of the above named court, within 30 days after service of this order upon you, your answer under oath stating whether you are indebted to the defendant by reason of earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such indebtedness. Computation of the amount of your indebtedness shall be made as prescribed by the answer form served herewith and shall be based upon defendant's earnings for the entire normal pay period in which this order is served upon you. You are further ordered to withhold the payment of that portion of defendant's earnings required to be withheld pursuant to the directions accompanying the



answer form until the further order of the court. Your answer on the form shall constitute substantial compliance with this order.

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

"Witness my hand seal of the court at \_\_\_\_\_ in this county, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, \_\_\_\_\_, Clerk of the court, \_\_\_\_\_ County."

If such order of garnishment is issued at the written direction of the party entitled to enforce the judgment, pursuant to K.S.A. 60-716, as amended, to enforce (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, the clerk of the district court shall cause such purpose to be clearly stated on the order of garnishment and the accompanying garnishee's answer form immediately below the caption. If the garnishment is to enforce a court order for the support of any person, the garnishment shall not exceed 50% of an individual's disposable earnings unless the person seeking the garnishment specifies to the garnishee a greater percent to be withheld, as authorized by subsection (g) of K.S.A. 60-2310 and amendments thereto.

(b) Service and return. The order of garnishment shall be served on the garnishee, together with two copies of the form for the garnishee's answer prescribed in K.S.A. 60-718 and amendments thereto and returned by the officer making service in the same manner as an order of attachment. If the order is served prior to a judgment on the plaintiff's claim, the order shall also be served on the defendant, if the defendant can be found, but failure to serve the defendant shall not relieve the garnishee from liability under the order.

(c) Effect. An order of garnishment issued to attach any property, funds, credits or other indebtedness belonging to or owing the defendant, other than earnings, shall attach (1) all such property of the defendant which is in the possession or under the control of the garnishee, and all such credits, funds, and indebtedness due from the garnishee to the defendant at the time of service of the order up to the amount stated in the order of garnishment, and (2) all such property coming into the possession or control of the garnishee and belonging to the defendant, and all such credits, funds and indebtedness becoming due to the defendant between the time of the serving of the order of garnishment and the time of the signing of the answer of garnishee, up to the amount stated in the order of garnishment, but if the garnishee is an executor or administrator of an estate and the defendant is or may become a legatee or distributee thereof, the order of garnishment shall attach and create a first and prior lien upon any property or funds of such estate to which the defendant is entitled upon distribution of the estate up to the amount stated in the order of garnishment, and the garnishee shall be prohibited from paying to the defendant any of such property or funds, except that which is in excess of the amount stated in the order, until so ordered by the court from which the order of garnishment was issued. Should the garnishee hold funds or credits or be indebted to defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

An order of garnishment issued for the purpose of attaching earnings of the defendant shall have the effect of attaching the nonexempt portion of the defendant's earnings for the entire normal pay period in which the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310 and amendments thereto, and computa-

tion thereof for a normal pay period shall be made in accordance with the directions accompanying the garnishee's answer form served with the order of garnishment.

Sec. 6. K.S.A. 60-718 is hereby amended to read as follows:

60-718. (a) Within 10 days after service upon a garnishee of an order of garnishment issued to attach any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings, the garnishee shall file a verified answer thereto with the clerk of the court, stating the facts with respect to the demands of the order. If the answer of the garnishee is mailed to the clerk of the court, it shall be deemed filed when mailed. The answer of the garnishee shall be sufficient if substantially in the following form, but the garnishee's answer shall contain no less than that prescribed in the form:

ANSWER OF GARNISHEE

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 I have not delivered to the defendant \_\_\_\_\_, any money, personal property, goods, chattels, stocks, rights, funds, credits nor evidence of indebtedness belonging to the defendant, other than earnings, except that which is in excess of the amount stated in the order of garnishment, since receiving the order of garnishment, and that the following is a true and correct statement:

(1) (Money or indebtedness due) I hold money or am indebted to the defendant, other than for earnings due and owing defendant, as of the date of this answer, in the following manner and amounts: \_\_\_\_\_.

(2) (Personal property in possession) I have possession of personal property, goods, chattels, stocks, rights, credits, or effects of the defendant, as of the date of this answer, described and having an estimated value as follows: \_\_\_\_\_.

(3) (To be answered by garnishee who is an executor or administrator of an estate) I am an \_\_\_\_\_  
(executor or administrator)  
of the estate of \_\_\_\_\_ containing funds, credits, indebtedness or property to which defendant is or may become entitled as a \_\_\_\_\_, and I understand that the  
(legatee or distributee)

order of garnishment shall attach and create a first and prior lien on all such property or funds to which defendant becomes entitled upon distribution of the estate up to the amount stated in the order of garnishment, and that I am prohibited from delivering to defendant any such property, credits, indebtedness or funds except that which is in excess of the amount stated in the order of garnishment until further order of the court from which the order of garnishment was issued. The approximate date for distributing the assets of the estate is \_\_\_\_\_, 19\_\_\_\_.

I will hold the above described monies, funds, property, credits and indebtedness up to the amount stated in the order of garnishment, or other items in my possession, until the further order of the court.

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

#

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

INSTRUCTIONS TO GARNISHEE

This form is provided for your convenience in furnishing the answer required of you in the order of garnishment. If you do not choose to use this form, your answer, under oath, shall not contain less than that prescribed herein. Your answer must be filed with the clerk of the above-named court within the time 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 an answer thereto with the clerk of the court, stating the facts with respect to the demands of the order. If the answer of the garnishee is mailed to the clerk of the court, it shall be deemed filed when mailed. 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 \_\_\_\_\_ / / (check  
(date) (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 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 the 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 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, salary, commission, bonus or otherwise) which is not exempt from wage garnishment. This form is provided for your convenience in furnishing the answer required of you in the order. It is designed so that you may prepare your answer in conjunction with the preparation of your payroll. Wait until the end of the normal pay period in which this order has been served upon you and apply the tests set forth in these instructions to the entire earnings of the defendant-employee during the pay period, completing your answer in accordance with these instructions. If you do not choose to use this form, your answer, under oath,

#

shall not contain less than that prescribed herein. Your answer must be filed with the clerk of the above-named court within the time prescribed in the order of garnishment.

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

I. If the defendant-employee's disposable earnings are less than

\$100.50 for a Weekly pay period  
\$201.00 for a Bi-Weekly pay period  
\$217.75 for a Semi-Monthly pay period  
\$433.50 for a Monthly pay period

Pay the employee as if the employee's pay check were not garnished.

II. If the defendant-employee's disposable earnings are

\$100.50 to \$134.00 for a Weekly pay period  
pay the defendant-employee \$100.50  
\$201.00 to \$268.00 for a Bi-Weekly pay period  
pay the defendant-employee \$201.00  
\$217.75. to \$290.33 for a Semi-Monthly pay period  
pay the defendant employee \$217.75  
\$433.50 to \$580.67 for a Monthly pay period  
pay the defendant-employee \$435.50

Any disposable earnings remaining after payment of the above amounts shall be retained until further order of the court.

III. If the defendant-employee's disposable earnings are more than

\$134.00 for a Weekly pay period  
pay the defendant-employee 75% of  
the defendant-employee's disposable earnings  
\$268.00 for a Bi-Weekly pay period  
pay the defendant-employee 75% of  
the defendant-employee's disposable earnings  
\$290.33 for a Semi-Monthly pay period  
pay the defendant-employee 75% of  
the defendant-employee's disposable earnings  
\$580.67 for a Monthly pay period  
pay the defendant-employee 75% of  
the defendant-employee's disposable earnings

Any disposable earnings remaining after payment of the above amounts shall be retained until further order of the court.

IV. SUPPORT ORDERS. If the person seeking the garnishment for the court ordered support desires to garnish more than 50% of disposable earnings, that person may request in writing to the clerk of the court to check one of the below applicable percentages:

# / 6

55% Employee also supports a spouse or dependent child not covered by this support order and payments are 12 weeks overdue.

60% Employee does not support a spouse or dependent child and payments are not 12 weeks overdue.

65% Employee does not support a spouse or dependent child and payments are 12 weeks overdue.

STATEMENT OF GARNISHEE

(a) The normal pay period for defendant is weekly \_\_\_\_\_ every two weeks \_\_\_\_\_ semi-monthly \_\_\_\_\_ monthly \_\_\_\_\_ (designate one).

(b) This answer covers earnings for the normal pay period beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, which normal pay period includes the day on which the order of garnishment was served upon me.

(c) Total gross earnings due for the normal pay period covered by (b) above are .....\$\_\_\_\_\_

(d) Average gross earnings for normal pay period as designated in (a) above .....\$\_\_\_\_\_

(e) Amounts required by law to be withheld for the normal pay period covered by (b) above are:

- (1) Federal social security tax .....\$\_\_\_\_\_
- (2) Federal income tax .....\$\_\_\_\_\_
- (3) State income tax .....\$\_\_\_\_\_
- (4) Railroad retirement tax .....\$\_\_\_\_\_
- Total .....\$\_\_\_\_\_

(Deduct only those items listed above)

(f) Disposable earnings for the normal pay period covered by (b) above are (subtract (e) from (c) above).....\$\_\_\_\_\_

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

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

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

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

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

# 2

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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

(c) The clerk shall cause a copy of the answer to be mailed promptly to the plaintiff and the defendant. Within 10 days after the filing of the answer by the clerk the plaintiff or the defendant or both of them . . . .

Sec. 7. K.S.A. 60-721 is hereby amended to read as follows:

60-721. (a) Upon determination of the issues, either by admissions in the answer or reply, or by default, or by findings of the court on controverted issues, judgment shall be entered fixing the rights and liabilities of all the parties in the garnishment proceedings (1) by determining the liability of garnishee upon default, or (2) discharging the garnishee, or (3) making available to the satisfaction of the claim of the plaintiff any indebtedness due from the garnishee to the defendant which has been attached or any property in the hands of the garnishee belonging to the defendant which has been attached, including ordering the payment of money by the garnishee into court, or the impoundment, preservation and sale of property as provided for the disposition of attached property, or (4) rendering judgment against the garnishee for the amount of his or her the garnishee's indebtedness to the defendant which has been attached or for the value of any property of the defendant held by the garnishee which has been attached, and (5) if the answer of garnishee is controverted without good cause, the court may award the garnishee judgment against the party controverting such answer damages for his or her the garnishee's expenses, including reasonable attorneys' fees, necessarily incurred in substantiating the same.

(b) When judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and the court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the court may issue a continuing order of garnishment to allow any indebtedness that will become due from the garnishee to the defendant because of an employer-employee relationship to be made available to the plaintiff on a periodic and continuing basis for so long as the court issuing the order may determine or until otherwise ordered by such court in a further proceeding. No order may be made pursuant to this subsection ~~(b)~~ unless the court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one year of support as ordered and the defendant receives compensation from his or her the employer on a regular basis in substantially equal periodic payments. On motion of a defendant who is subject to a garnishment order pursuant to this subsection ~~(b)~~, the court for good cause shown may modify or revoke any such order.

Sec. 8. K.S.A. 61-2003 is hereby amended to read as follows:

61-2003. An order of garnishment before judgment may be obtained only upon order of a judge of the district court pursuant to the procedure to obtain an order of attachment. No garnishment proceedings shall be commenced before judgment on plaintiff's claim in the principal action where such garnishment proceedings affect the earnings of the defendant.

The order of garnishment may be in lieu of, or in addition to, the order of attachment, as designated by the written direction of the party seeking the order. Such written direction shall state the amount of the plaintiff's claim.

Sec. 9. K.S.A. 61-2004 is hereby amended to read as follows:

61-2004. As an aid to the enforcement of the judgment, an order of garnishment may be obtained 10 days after judgment and shall be issued by the clerk of the court from which execution is issuable, either with an execution or independently thereof and without the requirement that an execution be returned unsatisfied, as designated by the written direction of the party entitled to enforce the judgment. Such written direction shall state the amount of the judgment and designate whether the order of garnishment is to be issued to attach earnings or to attach other property of the judgment debtor. If such party seeks to attach earnings of the judgment debtor to enforce (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, the written direction of the party shall so indicate. No bond is required for an order of garnishment issued after judgment.

Sec. 10. K.S.A. 61-2005 is hereby amended to read as follows:

61-2205. An order of garnishment, issued independently of an attachment for the purpose of attaching earnings or for the purpose of attaching other property of the defendant, and the answer of the garnishee are declared to be sufficient if substantially in compliance with the appropriate form prescribed in the appendix to this act. If an order of garnishment is issued at the written direction of the party entitled to enforce the judgment pursuant to K.S.A. 61-2004 and amendments thereto, for the purpose of enforcing (1) an order of any court for the support of any person, (2) an order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or (3) a debt due for any state or federal tax, the clerk of the court shall cause such purpose to be clearly stated on the order of garnishment and the accompanying garnishee's answer form immediately below the caption thereof. If the garnishment is to enforce a court order for the support of any person, the garnishment shall not exceed 50% of an individual's disposable earnings unless the person seeking the garnishment specifies to the garnishee a greater percent to be withheld, as authorized by subsection (g) of K.S.A. 60-2310 and amendments thereto.

(b) Service and return. The order of garnishment shall be served on the garnishee, together with two copies of the appropriate form for the garnishee's answer prescribed in the appendix to this act, and returned by the officer making service in the same manner as an order of attachment. If the order is served prior to a judgment on the plaintiff's claim, the order shall also be served on the defendant, if the defendant can be found, except that the order shall not be served on the defendant until after service has been made on the garnishee. Failure to serve the defendant shall not relieve the garnishee from liability under the order.

(c) Effect. An order of garnishment issued for the purpose of attaching any property, funds, credits or other indebtedness belonging to or owing the judgment debtor, other than earnings, shall have the effect of attaching (1) all such personal property of the defendant which is in the possession or under the control of the garnishee, and all such funds, credits and indebtedness due from the garnishee to the defendant at the time of service of the order up to the amount stated in the order of garnishment, which shall be one and one-half times the amount of plaintiff's claim or the judgment, and (2) all such personal property coming into the possession or control of the garnishee and belonging to the defendant, and all such funds, credits and indebtedness becoming due to the defendant between the time of the serving of the order of garnishment and the time of the signing of the answer of the garnishee up to the amount stated in the order of garnishment, which shall be one and one-half times the amount of plaintiff's claim or the judgment except that where where the garnishee is an executor or administrator of an estate where the defendant is or may become a legatee or distributee thereof, the order of garnishment shall have the effect of attaching and creating a first and prior lien upon any property or funds of such estate to which the defendant is entitled upon distribution of the estate up to the amount stated in the order of garnishment, which shall be one and one-half times the amount of plaintiff's claim or the judgment, and such garnishee shall be prohibited from paying over to the defendant any of such property or funds except that which is in excess of the amount stated in the order of garnishment until so ordered by the court from which the order of garnishment was issued. Should the garnishee hold funds or credits or be indebted to defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

An order of garnishment issued for the purpose of attaching earnings of the defendant shall have the effect of attaching the nonexempt portion of the defendant's earnings for the entire normal pay period in which the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310 and amendments thereto, and computation thereof for a normal pay period shall be made in accordance with the directions accompanying the garnishee's answer form served with the order of garnishment.

Sec. 11. K.S.A. 61-2006 is hereby amended to read as follows:

61-2006. Within 10 days after service upon 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 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 an answer thereto with the clerk of the court stating the facts with respect to the demands of the order. If the answer of the garnishee is mailed to the clerk of the court it shall be deemed filed when mailed. 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 the court is situated, the garnishee shall have 30 days to file an answer 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 prescribed in the form.

The clerk shall cause a copy of the answer to be mailed promptly to the plaintiff and to the defendant at the address to which summons was directed. Within 10 days after the filing of the answer by the clerk, 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, ~~but the~~ Such 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.

Sec. 12. K.S.A. 61-2009 is hereby amended to read as follows:

61-2009. The provisions of K.S.A. 60-721, and amendments thereto, shall be applicable to actions pursuant to this chapter.

Sec. 13. Form No. 7 in the appendix of forms following K.S.A. 61-2605 is hereby amended to read as follows:

Form No. 7: ORDER OF GARNISHMENT AND RETURN WHERE ORDER ISSUED TO ATTACH PROPERTY OTHER THAN EARNINGS OF DEFENDANT

In the \_\_\_\_\_ Court of \_\_\_\_\_ County, Kansas.

\_\_\_\_\_  
Plaintiff  
vs.  
\_\_\_\_\_  
Defendant  
No. \_\_\_\_\_  
and  
\_\_\_\_\_  
Garnishee,

ORDER OF GARNISHMENT

To the above-named garnishee:

If you hold any property, funds, credits, or indebtedness belonging to or owing the defendant, the amount to be withheld by you pursuant to this order of garnishment is not to exceed \$ \_\_\_\_\_.

You are hereby ordered as a garnishee to file with the clerk of the above-named court, within \_\_\_\_\_ days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you file sign your answer, indebted to or have in your possession or control any personal property, funds or credits belonging to the defendant, excluding earnings (compensation for personal services, whether denominated as wages, salary commission, bonus or otherwise) due and owing defendant, and stating the amount of any such funds, credits or indebtedness and description of any such property. For the purpose of this order, if you are, at the time this order is served upon you, an executor or administrator of an

estate containing property, credits, indebtedness or funds to which defendant is or may become entitled as a legatee or distributee of the estate upon its distribution, you are deemed to be indebted to the defendant to the extent of such property, credits, indebtedness or funds. You are further ordered to withhold the payment of any such indebtedness, up to the amount stated above, or the delivery away from yourself of any such property, until the further order of the court. You answer on the form served herewith shall constitute substantial compliance with this order.

Failure to file your answer as aforesaid may entitle the plaintiff to judgment against you for the full amount of ~~his or her~~ the plaintiff's claim and costs.

(Signature), Clerk

Dated \_\_\_\_\_

[Seal of the Court]

\*(The defendant's address should be shown following his or her name if the case is not yet in judgment and service on the defendant is also desired.) . . . .

Sec. 14. Form No. 8 in the appendix of forms following K.S.A. 61-2605 is hereby amended to read as follows:

Form No. 8: GARNISHEE'S ANSWER TO ACCOMPANY ORDER OF GARNISHMENT IN FORM NO. 7

(Caption of Case)

ANSWER OF GARNISHEE

STATE OF KANSAS )  
 ) SS.  
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 I have not delivered to the defendant, \_\_\_\_\_, any money, ~~personal property, goods, chattels, stocks, rights, funds,~~ credits nor evidence of indebtedness belonging to the defendant, other than earnings, except that which is in excess of the amount stated in the order of garnishment, since receiving said order of garnishment, and that the following is a true and correct statement:

(1) (Money or Indebtedness Due) I hold ~~money funds~~ or credits or am indebted to the defendant, other than for earnings due and owing defendant, as of the date of this answer, in the following manner and amounts:

\_\_\_\_\_.

(2) (Personal Property in Possession) I have possession of ~~personal property, goods, chattels, stocks, rights credits or effects~~ of the defendant, as of the date of this answer, described in having an estimated value as follows:

\_\_\_\_\_.

(3) (To be answered by garnishee who is an executor or administrator of an estate) I am an \_\_\_\_\_ (executor or administrator) of the estate of \_\_\_\_\_, containing funds, credits, indebtedness, or property to which defendant is or may become

entitled as a \_\_\_\_\_, and I  
(legatee or distributee)  
understand that the order of garnishment has the effect of attaching and creating a first and prior lien on all such property or funds to which defendant becomes entitled upon distribution of the estate up to the amount stated in the order of garnishment and that that I am prohibited from delivering to defendant any such property, credits, indebtedness or funds except that which is in excess of the amount stated in the order of garnishment until further order of the court from which the order of garnishment was issued. The approximate date for distributing the assets of the estate is \_\_\_\_\_, 19\_\_.

I will hold the above described ~~monneys~~ funds, property, credits and indebtedness up to the amount stated in the order of garnishment or other items in my possession, until the further order of the court. . . .

Sec. ~~2~~ 15. K.S.A. 60-2419, 60-715, 60-716, 60-717, 60-718, 60-721, 61-2003, 61-2004, 61-2005, 61-2006 and 61-2009 are hereby repealed.

Sec. ~~3~~ 16. This act shall take effect and be in force from and after its publication in the statute book.

Further amend HB 2931 by appropriate amendment of the title.