Approved 3/18/85
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative Joe Knopp at
Chairperson

3:30 ~~a.m.~~/p.m. on March 5, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Fuller and Luzzati were excused.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Larry Christ, Kansas Securities Commissioner's Office
Don Strole, State Board of Healing Arts
Jim Robertson, Attorney for the Kansas Child Support and Enforcement Unit
of Social and Rehabilitation Services

HB 2519 - Concerning administrative procedures of certain state agencies.

Larry Christ, Kansas Securities Commissioner's office, spoke in favor of this bill. However, he said they would like to put back the words "order" and "license" as they originally were, as they came out of the legislature last year. Then they would amend all of those statutes that would deal with their authority to issue cease and desist orders and orders related to securities and other orders that do not apply specifically with a license to do business or engage in a particular occupation or profession, to say "you are in the administrative procedures act but order shall not be defined by the definition that is contained in the definition section of the administrative procedures act".

Concerning HB 2519, Representative Duncan said they have limited the APA to licensing functions. He suggested they repeal a section or go into the generic statutes and specifically say in those cases where they are talking about cease and desist orders, by putting in language to the effect that "order in this case is not construed to be an order under Section 1 of Chapter 313 of the session laws" so they know it is a different kind of order. He said they would also need to make some technical changes in what they call temporary orders or orders which are of urgency.

Don Strole, State Board of Healing Arts, discussed the changes they suggested as shown in Attachment No. 1. He said they have review committees that are mandatory committees by statute which make a finding of "no probable cause" which is presently binding on the board and has created an enormous amount of problems. He said they would like to repeal all of that to bring everything under the APA and allow them to act the same way that other agencies are allowed to act in investigations. He said this would allow them more flexibility so they can discipline more.

Mr. Christ said there is a provision in Section 18, Chapter 338 of session laws, which deals with a final action an agency has taken and neither side wants to appeal it in the district court to see what the agency has done. He said there are provisions for trial and oath which is basically a trial from scratch. Any cease and desist order that is issued and they ask for an administrative hearing would require a very long and complicated procedure. They could then appeal this action and the court would have to go through the whole procedure from scratch. Mr. Christ said they would like to have this removed because of what they see as a duplication of efforts. He said this is in the act for judical review which is a separate act which has not been drafted or introduced.

MINUTES OF THE House COMMITTEE ON Judiciary,

room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 5, 1985

HB 2522 - Concerning civil procedure; providing certain exemptions from process.

Jim Robertson, an attorney for the Kansas Child Support and Enforcement Unit of the SRA, said they have concerns as follows: 1.) this conflicts with K.S.A. 44-718 which allows for the attachment of unemployment benefits; and 2.) in SB 51, the definition of "income" conflicts with HB 2522. See Attachment No. 2.

HB 2314 - Concerning crimes and punishments; relating to mandatory sentences for certain crimes.

Representative O'Neal spoke in favor of this bill as shown in Attachment No. 3.

HB 2215 - Concerning civil procedure; relating to comparative negligence.

HB 2381 - Amending the Kansas tort claims act; excluding certain persons from the definition of employee.

HB 2404 - Concerning crimes and punishments; relating to the crime of promoting obscenity harmful to minors.

The Chairman announced that these three bills would not be brought up for action unless requested.

HB 2272 - Amending the small claims procedure act; concerning information in aid to the enforcement of judgments.

The Chairman brought up the issues raised by the Judicial Administrator's office which are: 1.) what happens in the event of a default judgment where you don't have the defendant appear and how to cover the expense of sending out some kind of mail to these default judgments; and 2.) that some kind of brochure or check list be made available, published and handed out to the people telling them how to do this themselves rather than having the clerks hand-fill-it-out themselves.

Representative Teagarden made a motion to report HB 2272 favorably as it is. It was seconded by Representative Solbach.

Representative Cloud made a substitute motion that on line 34 the "30 days" be changed to "45 days" and insert after the word "entered", "if such judgment was not paid within 30 days from the day the judgment is entered, unless the judgment is paid,". Representative Solbach seconded it and it carried.

Representative Shriver made a motion to delete the words "verified statement" in line 33 and "nonexempt" in line 35. Representative Solbach seconded this. A divided vote was taken and the motion on "nonexempt" carried. The motion on "verified statement" did not carry.

Representative Bideau made a motion to insert "The court shall, in its order, provide to the prevailing party a copy of the order and the form to the judgment debtor." Representative Solbach seconded it and the motion carried.

Representative Teagarden made a motion to pass HB 2272 as amended and it was seconded by Representative Solbach. The motion carried.

HB 2216 - Concerning civil procedure; relating to depositions.

The Chairman said the issue in this bill is whether to follow the federal rules and make it unlimited or to limit it just to one or two employees. He also said the problem with the language is that it is not clear who is an employee and who is an independent contractor.

Representative O'Neal made a motion to report this bill favorably and it was seconded by Representative Buehler. The motion carried.

Representative Cloud made a motion to approve the minutes of February 18, 19, 20 and 21. It was seconded by Representative O'Neal and carried.

The meeting adjourned at 5:00 p.m.

Session of 1985

HOUSE BILL No. 2519

By Committee on Judiciary

2-26

AN ACT concerning administrative procedures of certain state agencies; amending K.S.A. 17-1254, 17-1260, 17-1266, 17-1266a ~~and~~ 17-1269, all as amended by chapter 313 of the 1984 Session Laws of Kansas, and section 21 of chapter 313 of the 1984 Session Laws of Kansas and repealing the existing sections.

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

Section 1. Section 2 of chapter 313 of the 1984 Session Laws of Kansas is hereby amended to read as follows: Sec. 2. As used in this act:

(a) "State agency" means any officer, department, bureau, division, board, authority, agency, commission or institution of this state, except the judicial and legislative branches of state government and political subdivisions of the state, which is authorized by law to administer, enforce or interpret any law of this state.

(b) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the state agency is vested by any provision of law.

(c) "License" means a franchise, permit, certification, approval, registration, charter or similar form of authorization required by law ~~for a person to engage in a profession or occupation~~.

(d) "Order" means a state agency action which pertains to ~~a license and is of particular applicability to a person~~ *the legal rights, duties, privileges, immunities or other legal interest of one or more specific persons.*

(e) "Party to state agency proceedings," or "party" in context so indicating, means:

(1) A person to whom an order is specifically directed; or

65-2840b & 65-2840d

& 156(a-c)

Attachment No. 1
House Judiciary
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follows: 17-1269. Any person aggrieved by a final order of the commissioner may ~~appeal~~ *obtain a review of* the order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 7. K.S.A. 17-1254, 17-1260, 17-1266, 17-1266a ~~and~~ 17-1269, ~~all~~ as amended by chapter 313 of the 1984 Session Laws of Kansas, and section 2 of chapter 313 of the 1984 Session Laws of Kansas are hereby repealed. 65-2840b, & 65-2840d & 156(a-c)

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

temporary suspension or temporary limitation order by the board shall take effect when served in person upon the licensee.

In no case shall a temporary suspension or temporary limitation of a license under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the board has revoked, suspended or limited the license of the licensee after notice and hearing as otherwise provided in the Kansas healing arts act.

History: L. 1957, ch. 343, § 38; L. 1976, ch. 273, § 16; L. 1978, ch. 250, § 1; L. 1979, ch. 198, § 5; L. 1984, ch. 238, § 12; July 1.

Revisor's Note:

This section was amended by L. 1984, ch. 313, § 118, effective July 1, 1985.

CASE ANNOTATIONS

2. "Suspension" and "revocation" differentiated, board may suspend, for temporary period, and later revoke license permanently. Kansas State Board of Healing Arts v. Seasholtz, 210 K. 694, 696, 504 P.2d 576 (1972).

65-2839.

History: L. 1957, ch. 343, § 39; L. 1976, ch. 273, § 17; Repealed, L. 1984, ch. 238, § 17; July 1.

Revisor's Note:

This section was also repealed by L. 1984, ch. 313, § 157, effective July 1, 1985.

65-2840.

History: L. 1957, ch. 343, § 40; L. 1976, ch. 273, § 18; Repealed, L. 1984, ch. 238, § 17; July 1.

65-2840a. Same; disciplinary counsel; appointment; qualifications; duties; application for subpoenas; staff; rules and regulations. The state board of healing arts shall appoint a disciplinary counsel, who shall not otherwise be an attorney for the board, with duties as set out in this act. The disciplinary counsel shall be an attorney admitted to practice law in the state of Kansas. The disciplinary counsel shall have the power and the duty to investigate or cause to be investigated all matters involving professional incompetency, unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto. In the performance of these duties, the disciplinary counsel may apply to any court having power to issue subpoenas for an order to require by subpoena the attendance of any person or by subpoena *duces tecum* the production of any records for the purpose of the production of any information pertinent to an investigation. Subject to approval by the state board of healing arts, the disciplinary counsel shall employ clerical and other staff necessary to carry out the duties of the disciplinary counsel. The state board of healing arts may adopt rules and regulations necessary to allow the disciplinary counsel to properly perform the functions of such position under this act.

History: L. 1984, ch. 238, § 8; July 1.

65-2840b. Same; disciplinary counsel presentation to review committee; powers of review committee; disposition of disciplinary matters. On the conclusion of an investigation, unless the disciplinary counsel determines the complaint to be unfounded, the disciplinary counsel shall present matters involving alleged professional incompetency or unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto, to a review committee appointed pursuant to K.S.A. 1984 Supp. 65-2840c. The disciplinary counsel shall recommend to the review committee informal admonition of the practitioner concerned or prosecution of formal charges at a hearing. If informal admonition is recommended by the review committee the same shall be forwarded to the state board of healing arts by the disciplinary counsel and the informal admonition shall be performed by the board without further proceedings. The review committee shall have the power to subpoena witnesses and information for appearance and presentation before the committee. Disposition of the matter shall be made by a majority vote of the review committee unless the committee directs further investigation. A complaint shall not be referred for hearing unless the review committee finds by majority vote that there is probable cause to believe there has been conduct which, pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto may result in revocation, suspension or limitation of a license. The members of the review committee shall not participate as a witness or otherwise in

any hearing regarding the matter. No person who presented any matter to the review committee shall be a hearing officer or otherwise advise the state board of healing arts in any hearing on that matter.

History: L. 1984, ch. 238, § 9; July 1.

65-2840c. Same; review committees; establishment; composition; expenses. Review committees shall be established and appointed by the state board of healing arts for each branch of the healing arts as necessary to implement the provisions of this act. Each review committee shall be composed of three members. Two members and their designated alternates shall serve for a period of two years, all of whom shall be members of the same branch of the healing arts as the person whose conduct is being reviewed. The third member of the review committee shall be appointed on an *ad hoc* basis, and shall be of the same branch of the healing arts and specialty, if any, as the person whose conduct is being reviewed. Members of the state board of healing arts shall not be eligible to act as members of the review committee. Members of the review committee who are licensees of the state board of healing arts may be selected from names submitted by the state professional association for the branch of healing arts involved. The board of healing arts shall ensure that no conflict of interest exists by reason of geography, personal or professional relationship, or otherwise, between any of the review committee members and any person whose conduct is being reviewed. The members of such review committees attending meetings of such committees shall be paid compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

History: L. 1984, ch. 238, § 10; July 1.

65-2840d. Same; formal proceedings; confidential material; disciplinary counsel to prosecute complaints before state board of healing arts; special counsel; witnesses. If the review committee recommends the matter be referred for hearing, the disciplinary counsel shall institute formal proceedings by filing an action as set forth in K.S.A. 65-2841 and amendments thereto. Prior to the time the action is filed, all information in the possession of the disciplinary counsel or review committee regarding the matter shall be confidential and not subject to subpoena. The disciplinary counsel shall prepare and prosecute all complaints that proceed to hearing before the state board of healing arts. The disciplinary counsel may represent the board whenever a licensee appeals a decision of the board pursuant to K.S.A. 65-2848 and amendments thereto, unless the disciplinary counsel also appeals some aspect of the decision, in which case the board shall appoint special counsel to represent the board in the appeal. All witnesses at such hearing shall be sworn and all proceedings and testimony shall be reported, either by stenographic means or electronic recording.

History: L. 1984, ch. 238, § 11; July 1.

65-2841. Same; rules governing form of action. [See Revisor's Note] The following rules shall govern the form of the action in such cases: (a) The board shall be named as plaintiff and the licensee as defendant. (b) The charges against the licensee shall be stated with reasonable definiteness. (c) Amendments may be made as in ordinary actions in the district court. (d) All allegations shall be deemed denied, but the licensee may plead in response to the action if the licensee so desires.

History: L. 1957, ch. 343, § 41; L. 1984, ch. 238, § 13; July 1.

Revisor's Note:

This section was also repealed by L. 1984, ch. 313, § 157, effective July 1, 1985.

65-2842. Same; time and place of hearing; continuance. [See Revisor's Note] (a) Upon the filing of an action with the secretary of the board, the secretary shall make an order fixing the time and place for the hearing which shall not be less than 30 nor more than 45 days thereafter. Upon written request of the licensee, filed with the secretary of the board not less than 10 days after the licensee is served notice of the hearing, the secretary may grant, for good cause shown, a continuance of the hearing for a period not to exceed 30 days from the original time fixed for the hearing. The secretary of the board shall notify promptly the licensee of the grant or denial of any request for a continuance.

(b) Whenever the board directs, pursuant to subsection (k) of K.S.A. 65-2836 and

lows: 82a-1418. (a) The director shall suspend or revoke a permit ~~if he or she finds~~, *after proceedings in accordance with the Kansas administrative procedure act, upon finding* that the licensee no longer meets the qualifications or conditions of the original permit or has violated any provision of this act.

(b) At the direction of the board, the director may refuse to renew the license of, or to issue another permit to, any applicant who has failed to comply with any provision of this act.

Sec. 156. Section 9 of 1984 Senate Bill No. 507 is hereby amended to read as follows: Sec. 9. *(a)* On the conclusion of an investigation, unless the disciplinary counsel determines the complaint to be unfounded, the disciplinary counsel shall present matters involving alleged professional incompetency or unprofessional conduct or any other matter which may result in revocation, suspension or limitation of a license pursuant to K.S.A. 65-2836 to 65-2844, inclusive, and amendments thereto, to a review committee appointed pursuant to section 10 *of 1984 Senate Bill No. 507*. The disciplinary counsel shall recommend to the review committee informal admonition of the practitioner concerned or prosecution of formal charges at a hearing. If informal admonition is recommended by the review committee ~~the same~~, *it* shall be forwarded to the state board of healing arts by the disciplinary counsel and the informal admonition shall be performed by the board without further proceedings.

(b) The review committee shall have the power to subpoena witnesses and information for appearance and presentation before the committee. Disposition of the matter shall be made by a majority vote of the review committee unless the committee directs further investigation. A complaint shall not be referred for hearing unless the review committee finds by majority vote that there is probable cause to believe there has been conduct which, pursuant to K.S.A. 65-2836 ~~to 65-2844, inclusive~~ *through 65-2844*, and amendments thereto, may result in revocation, suspension or limitation of a license.

(c) The members of the review committee shall not participate as a witness or otherwise in any hearing regarding the matter. No person who presented any matter to the review committee shall be a hearing officer or otherwise advise the state board of healing arts in any hearing on that matter.

(d) Any action by the review committee pursuant to this section shall be subject to the provisions of the Kansas administrative procedure act except to the extent that the provisions of that act conflict with the provisions of section 7 of 1984 Senate Bill No. 507.

State Department of Social and Rehabilitation Services

Testimony Regarding H.B. 2522

The provisions of H.B. 2522 which would establish an exemption for unemployment compensation (lines 43 and 46) would conflict with an existing federally mandated law which is found at K.S.A. 44-718. This Chapter 44 statute allows for the garnishment or setoff of unemployment benefits only for the purpose of enforcing a support order. Pursuant to 45 CFR 302.65 (federal Social Security Act, section 454(20); and P.L. 97-35) the state of Kansas must have a law which allows for the collection of support obligations from unemployment compensation. The Department of SRS, the Department of Administration, and the Department of Human Services have devoted much time and effort as well as many state dollars to establish a system which not only satisfies federal mandates but also reimburses the state for ADC assistance provided children and supplies support to dependent children who are not receiving ADC. Under the current system, every obligor who receives unemployment has the option of voluntarily contributing 25% of his/her compensation as child support. If the obligor refuses to cooperate, a garnishment or setoff may then attach 50% of his/her unemployment compensation.

House Bill 2522 also has the potential for conflicting with S.B. 51 which was drafted this year to comply with the numerous federal mandates found in the Federal Child Support Enforcement Amendments of 1984. As required by federal law, Senate Bill 51 would establish an income withholding mechanism which would be used to collect current and past due support once a 30-day arrearage develops in a case. This bill defines "income" as follows:

> "(b) 'Income' means any form of periodic payment to an individual, regardless of source, including but not limited to wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, and any other payments made by any person, private entity, or federal, state, or local government or any instrumentality thereof. 'Income' does not include: (1) any amounts required by law to be withheld, other than creditor claims, including but not limited to federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply."
> (emphasis added)

The definition of "income" in S.B. 51 would seemingly conflict with H.B. 2522(e) at lines 50-62. To ensure compliance with federal law and to ensure that support obligations are satisfied as a matter of top priority from available income, we urge that exceptions be added to H.B. 2522, subsections (a) and (c), which would allow for the collection of support from unemployment compensation as provided for in K.S.A. 44-718 and that orders for the support of a person may be enforced by attachment of the income considered in subsection (e) of H.B. 2522.

Attachment No. 2
House Judiciary
March 5, 1985

B. Hummel

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall (202) 382–7126.

SUPPLEMENTARY INFORMATION: On November 10, 1982, EPA proposed a regulation to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in battery manufacturing operations (47 FR 51052). The November 10, 1982, notice stated that comments on the proposal were to be submitted on or before January 10, 1983.

The Agency has received numerous comments from the battery manufacturing industry, and from lead battery manufacturers in particular, that additional comment time is needed to allow them to comment fully and to supply data to support their comments. Given the size and diversity of the industry and the complexity of issues raised by this rulemaking, EPA has determined that it is necessary to extend the comment period fourteen (14) days to allow the public adequate time to review and comment on this proposed regulation. Due to specific issues raised by the lead battery manufacturers with respect to their ability to modify water use practices and to retreat their wastewaters to proposed levels, a longer extension of twenty-eight (28) days is appropriate for the lead subcategory.

EPA believes that the comment period, as extended provides sufficient time (74 days in general, and 88 days for the lead subcategory) for diligent commenters to review and comment upon the proposed rule. Much of the background information for the proposed rule was made publicly available in a draft background document in September 1980.

The extension of time should be sufficient for commenters to complete their analyses of new information and concepts contained in the proposed rule.

Dated: January 10, 1983.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR Doc. 83–1434 Filed 1–18–83, 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 302

Withholding of Unemployment Benefits for Support Purposes

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rule making.

SUMMARY: These proposed regulations would implement section 454(20) of the Social Security Act as required by section 2335 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1081. Section 2335 requires child support enforcement (IV–D) agencies to determine on a periodic basis whether individuals receiving unemployment compensation owe support obligations that are not being met. It further requires IV–D agencies to enforce unmet support obligations in accordance with State developed guidelines for obtaining an agreement with the individual to have a specified amount of support withheld from unemployment compensation otherwise due the individual or, in the absence of an agreement, by bringing legal process to require the withholding. The IV–D agency must reimburse the State employment security agency (SESA) for the administrative costs attributable to enforcing support obligations by withholding, unemployment compenastion.

DATE: Consideration will be given to comments received by March 21, 1983.

ADDRESSES: Address comments to Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Boulevard, Rockville, Maryland 20852. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 P.M., in Room 1010 of the Department's office at the address above.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 2335 of Pub. L. 97–35, which provides for withholding of unemployment compensation for support purposes, contains provisions affecting both IV–D agencies and SEASs. These proposed regulations would implement only those provisions of section 2335 that affect IV–D agencies. The remaining provisions have been implemented under instructions issued by the Department of Labor. (See Unemployment Insurance Program Letter No. 15–82, dated April 8, 1982.) Although these proposed regulations affect only the Child Support Enforcement Program under title IV–D of the Social Security Act (the Act), all of the provisions of the statute are discussed here to provide a complete picture of the roles of the IV–D agency and the SESA in relation to the withholding of unemployment compensation for the purpose of paying unmet support obligations.

With respect to the Child Support Enforcement program, section 2335 amends section 454 of the Act by adding a new paragraph (20). The new subparagraph 454(20)(A) provides that, under the IV–D State plan, the IV–D agency must determine on a periodic basis whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable under any agreement under a Federal unemployment compensation law) owe support obligations that are being enforced by the IV–D agency. This periodic determination is to be made from information supplies by the SESA under section 508 of the Unemployment Compensation Amendments of 1976. The information available to the IV–D agency under section 508 is discussed later in this preamble under the heading "Regulatory Provisions". Also discussed below is the related requirement in section 2335 that the SESA notify the IV–D agency if an individual discloses to the SESA that he or she owes child support.

The new subparagraph 454(20)(B) provides that, under the IV–D State plan, the IV–D agency must enforce support obligations that are not being met by individuals identified as described above. In enforcing an obligation under this process, the IV–D agency must first attempt to obtain an agreement with the individual to have a specified amount withheld from the unemployment compensation otherwise due the individual. If an agreement is obtained, the SESA is entitled to receive a copy of it. In the absence of an agreement, the IV–D agency must bring legal process in appropriate cases, pursuant to State or local law, to require the withholding of unemployment compensation, The applicable legal process is defined in paragraph 462(e) of the Act as a a writ, order, summons, or other similar process in the nature of a garnishment.

With respect to the Department of Labor's unemployment insurance program under title III of the Act, section 2335 amends paragraph 303(e) of the Act to impose several requirements on SESAs. Subparagraph 303(e)(1) is amended to specify that the provisions for withholding unemployment compensation for support purposes are applicable only to "child support obligations" being enforced pursuant to the IV–D State plan described in section 454 of the Act. Because section 454 now permits collection of certain spousal support obligations, the withholding of

unemployment compensation is permissible for child support and for spousal support that has been included in the same support obligation, if the State IV–D agency elects to collect spousal support. However, section 2335 does not require the SESA to collect spousal support or to inquire whether the individual owes spousal support.

A new subparagraph 303(e)(2) specifies that the SESA will (i) ask each new applicant for unemployment compensation whether he or she owes a child support obligation being enforced under the IV–D State plan; (ii) notify the State of local IV–D agency when an eligible applicant discloses that he or she owes support being enforced under the IV–D State plan; (iii) withhold an amount from unemployment compensation when asked to do so by the applicant, or when notified to do so by the IV–D agency as a result of an agreement the IV–D agency has obtained from the individual or as a result of legal process; and (iv) pay any amount withheld to the appropriate State or local IV–D agency. Subparagraph 303(e)(2) also defines unemployment compensation as any compensation payable under State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law). Finally, subparagraph 303(e)(2) requires the IV–D agency to reimburse the SESA for the administrative costs incurred in the withholding process which are attributable to support obligations being enforced by the IV–D agency.

Under the new subparagraph 303(e)(3), the Secretary of Labor, after giving the SESA reasonable notice and opportunity for hearing, may cease to certify payments to the States under section 302 of the Act if the State fails to comply with subparagraphs 303(e)(1) and (2).

Section 2335 requires both IV–D agencies and SESAs to engage in activities resulting in the withholding of unemployment compensation for support purposes beginning October 1, 1982. Between August 13, 1981 and the required implementation date, it is optional for a State to engage in the withholding process.

Regulatory Provisions

OCSE believes that care must be taken to ensure that this new program activity is implemented in a cost-effective manner in order to avoid situations in which administrative costs outweigh collections made. We have developed proposed regulations specifying that IV–D agencies shall agree to pay only for SESA activities they believe will be cost-effective (i.e., cost-effective in relation to the collections that will result from the process) and to periodically review overall program operations and costs in relation to collections for the purpose of identifying modifications to improve program and cost effectiveness.

These proposed regulations at 45 CFR 302.65 begin at paragraph (a) with three definitions that are applicable to this regulation section. The first, legal process, is based on the definition in paragraph 462(e) of the Act. Legal process is defined as a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law. We believe this definition is broad enough to encompass the pertinent legal processes in all States, since it does not require garnishment action per se, but permits legal action by "similar process." We are interested in receiving comments on this point from any States that consider the definition too limiting. The second term, State employment security agency or SESA, is defined as the agency charged with the administration of State unemployment compensation laws in accordance with title III of the Act. The third and final definition characterizes unemployment compensation as any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law) and then lists, by name, the specific categories of benefits that qualify as unemployment compensation.

Paragraph (b) of the proposed §302.65 specifies that the State IV–D agency shall enter into a written agreement with the SESA in its State to carry out the process of withholding unemployment compensation from individuals with unmet support obligations that are being enforced by the IV–D agency. The agreement may specify direct contacts between the SESA and local IV–D agencies, as permitted by the statute. To keep requirements at the absolute minimum, we have not specified what the agreement must contain, although we suggest that States include the functions to be performed by each agency, the SESA's charges as agreed upon, and the duration of the agreement. We would expect agencies to expand their agreements to cover other important points as necessary. For a comprehensive treatment of the provisions that might be addressed in a IV–D/SESA agreement for the process of withholding unemployment compensation, the State IV–D agency may wish to review the guidelines issued as an attachment to OCSE–AT–82–2, dated March 30, 1982. Because we believe it is important to establish a withholding program that is expected to be cost-effective, we have specified cost-effectiveness as a key consideration in negotiation IV–D/SESA agreements under paragraph (b) of the proposed regulations.

Section 1102 of the Social Security Act authorizes the Secretary of HHS to publish regulations necessary to efficiently administer his functions under the Act. We believe that paragraph (b) of the proposed § 302.65 is necessary to administer the process of withholding unemployment compensation efficiently and effectively. Also, section 454 of the Act provides the Secretary with the authority to prescribe requirements and standards necessary to establish an effective title IV–D program.

Paragraph (c) of the proposed § 302.65 contains the functions that the IV–D agency must perform with respect to the process of withholding unemployment compensation. Three of these functions are set forth in section 2335 of Pub. L. 97–35 and four are being proposed by OCSE to improve the administration and management of the withholding process.

The statutorily imposed functions are the following. First, under paragraph (c) the IV–D agency must periodically determine whether individuals applying for, or receiving unemployment compensation owe support obligations which are being enforced by the IV–D agency. This determination is to be made from information available from the SESA under section 508 of Pub. L. 94–566, the Unemployment Compensation Amendments of 1976. Under section 508, the IV–D agency may obtain (1) information about whether an individual is receiving, has received, or has made application for, unemployment compensation and the amount of any compensation being received; (2) the individual's current or most recent home address; and (3) information about whether an individual has refused an offer of employment and, if so, a description of the employment offered, including terms, conditions and rate of pay.

The second statutory requirement incorporated in paragraph (c) is that the IV–D agency must enforce *unmet* support obligations via the process of withholding unemployment compensation through a voluntary agreement with the individual who owes the support, or if an agreement cannot be obtained, through legal process. The IV–D agency should pursue cases which meet the specific case selection criteria

established under paragraph (c)(3) and discussed below. Under section 2335, the IV–D agency must give the SESA a copy of the voluntary agreement.

The third statutory requirement in paragraph (c) is that the IV–D agency reimburse the SESA for the administrative costs that are attributable to the process of withholding unemployment compensation for support purposes. We have added the provision that reimbursement must be made only insofar as the actual, incremental costs have been agreed upon by the SESA and the IV–D agency. The purpose of this stipulation is to ensure that the IV–D agency maintains control over expenditures related to the withholding process. In practice, we believe this provision will be protective of both parties to the agreement by precluding unnecessary and/or unauthorized expenditures for which the SESA will not be reimbursed.

To complement the IV–D functions specified by the statute, we are proposing four additional functions in paragraph (c) of § 302.65 that we believe are necessary for proper implementation of the withholding process. First, we are proposing that the IV–D agency provide a receipt at least annually to an individual who requests a receipt for the amount of unemployment compensation withheld for purposes of support. The intent of this measure is to guarantee that the individual can verify to appropriate authorities, such as a court or the Internal Revenue Service, that support has been paid in the amount of the unemployment compensation withheld.

Second, we are proposing that the IV–D agency must process its withholding cases through the SESA in its own State or through the IV–D agencies in other States. The SESA will forward all amounts it withholds to the appropriate State of local child support enforcement agency in its own State. Therefore, we are also proposing that, if a IV–D agency receives a payment on behalf of a IV–D agency in another State, it must forward that payment to the appropriate IV–D agency. The purpose of these provisions is to place primary reliance for withholding activity on the IV–D agency and the SESA in the same State, thus precluding the need for interstate IV–D/SESA agreements and costly variations in procedures.

Third, we are proposing that States must establish and use written criteria for the selection of cases for withholding. We do not plan to impose specific requirements concerning cases the IV–D agency must refer to the SESA under this paragraph, nor do we wish to specify how often the IV–D agency must make the referrals. However, the IV–D agency must design and implement case selection criteria to insure maximum referral of cases and to avoid uncertainty and excessive discretion on the part of the selecting case worker because of the lack of clear guidance. Case selection criteria might include, for example, that the individual whose unemployment compensation will be withheld will be eligible for continued receipt of benefits for a specified period of time, or, that withholding of any amount of unemployment compensation should not reduce the amount of benefits below a spedified amount per week. Case selection criteria should also address cases which may *not* be excluded solely on the basis of one particular circumstance, for example, the fact that the individual has a current responsibility to a spouse and additional children. The purpose of this requirement is to insure that States establish and implement specific case selction criteria to maximize case selection and to provide clear, complete instructions to be used in the selection process.

Finally, we are proposing that the IV–D agency review and document at least annually program operations, including case selection criteria established under paragraph (c)(3), and costs of the withholding process versus amounts collected. Based on this review, the IV–D agency must modify its procedures and renegotiate the services provided by the SESA, as necessary, to improve program and cost effectiveness. The purpose of this provision is self-evident. It is our contention that such a review is necessary to assure that the IV–D agency takes advantage of any obvious modifications that will, as a result of new conditions or cost considerations, result in a more efficient withholding process.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the State plan amendment that is required by this regulation has been approved by the Office of Management and Budget (OMB) under existing OMB number 0960–0253.

List of Subjects in 45 CFR Part 302

Child welfare, Grant programs/social programs.

PART 302—[AMENDED]

45 CFR Part 302 is amended by adding a new § 302.65 to read as follows:

§ 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in this section:

"Legal process" means a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law.

"State employment security agency" or "SESA" means the State agency charged with the administration of the State unemployment compensation laws in accordance with title III of the Act.

"Unemployment compensation" means any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law). It includes extended benefits, unemployment compensation for Federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Redwood National Park Expansion Act.

(b) *Agreement.* The State IV–D agency shall enter into a written agreement with the SESA in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the IV–D agency. The IV–D agency shall agree only to a withholding program that it expects to be cost-effective and to reimbursement for the SESA's actual, incremental costs of providing services to the IV–D agency.

(c) *Functions to be performed by the IV–D agency.* The IV–D agency shall:

(1) Determine periodically from information provided by the SESA under section 508 of the Unemployment Compensation Amendments of 1976 whether individuals applying for or receiving unemployment compensation owe support obligations that are being enforced by the IV–D agency.

(2) Enforce unmet support obligations by arranging for the withholding of unemployment compensation based on a voluntary agreement with the individual who owes the support, or in appropriate cases which meet the case selection criteria established under paragraph (c)(3), through legal process pursuant to State or local law, if a voluntary agreement cannot be obtained. The IV–D agency must give the SESA a copy of the voluntary agreement.

(3) Establish and use written criteria for selecting cases to pursue via the withholding of unemployment compensation for support purposes. These criteria must be designed to insure maximum, case selection and minimal discretion in the selection process.

(4) Provide a receipt at least annually to an individual who requests a receipt for the support paid via the withholding of unemployment compensation, if receipts are not provided through other means.

(5) Maintain direct contact with the SESA in its State:

(i) By processing cases through the SESA in its own State or through IV–D agencies in other States; and

(ii) By receiving all amounts withheld by the SESA in its own State and forwarding any amounts withheld on behalf of IV–D agencies in other States to those agencies.

(6) Reimburse the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV–D agency.

(7) Review and document, at least annually, program operations, including case selection criteria established under paragraph (c)(3), and costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness.

Note.—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order. The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act of 1980.

(Section 1102 of the Social Security Act (42 U.S.C. 1302) and Section 454(20) of the Social Security Act (42 U.S.C. 654(20))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: September 29, 1982.

John A. Svahn,

Director, Office of Child Support Enforcement.

Approved: December 3, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 83–1497 Filed 1–18–83; 8:45 am]

BILLING CODE 4190–11–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 387 (Sub-200)]

Contract Implementation Date

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The question of whether a rail contract under 49 U.S.C. 10713 may be implemented prior to Commission approval pursuant to section 10713(e) is of substantial interest to contracting parties. In the past we have interpreted section 10713(e) as a requirement for a 30-day public notice before transportation under the contract may begin. However, numerous parties have questioned the propriety of this view and point to the delay it causes. This notice proposes rules at 49 CFR 1039.2 to implement, upon filing, rail contracts made under 49 U.S.C. 10713. Transportation could begin if compliance is made with the rules. The contracts would remain under Commission jurisdiction and subject to Commission approval or disapproval.

DATES: Comments are due by February 18, 1983.

ADDRESS: Send original and 15 copies of any comments to: Ex Parte No. 387 (Sub-No. 200), Room 5340, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278,

or

Thomas Smerdon, (202) 275–7277

SUPPLEMENTARY INFORMATION: The question of whether a rail contract under 49 U.S.C. 10713 may be implemented prior to Commission approval pursuant to section 10713(e) is of substantial interest to contracting parties.

In the past we have interpreted section 10713(e) as a requirement for a 30-day public notice before transportation under the contract may begin. However, numerous parties have questioned the propriety of this view and point to the delay it causes. In light of our experience with section 10713 and the needs of the contracting parties, we are instituting this proceeding on our own motion to propose rules allowing the contracting parties to implement the rail contract provisions before formal Commission approval provided certain conditions are met.

The proposed rules would eliminate delayed implementation without affecting the 30-day statutory notice period, and are designed to accommodate legitimate shipper-requirements for prompt contract performance.

Whether transportation may begin under a contract before Commission approval is not apparent on the face of the statute.[1] Section 10713(e) discusses only the date when approval of the contract is effective,[2] but the statute does not refer to the effective date of the contract itself. Pursuant to section 10713(i), the result of Commission approval is that the transportation performed under the contract is removed from Commission jurisdiction and is not subject to Subtitle IV of 49 U.S.C. However, the legislation does not address the status of the contract during the time between the date of filing and the date of Commission approval.

The document which is filed constitutes a contract, since section 10713(b) states that each "contract entered into under this section shall be filed * * *" The only remaining element is to obtain Commission approval under the limited review standards of section 10713.

The proposed rules are compatible with section 10713. They allow the contract to become effective on the date of filing and the transportation or services thereunder to begin immediately; however, the effective date for Commission approval will not change. Potential complainants are still afforded the 30-day notice period. The contract summary provides notice to others who may be affected by the contract so that they may have the opportunity to complain. Under the proposed rules, the potential complainant still retains the right to file a petition and to obtain any remedies which are warranted. All interests remain protected.

The proposed rules are consistent with congressional intent. Congressional authorization of rail contracts was "a significant aspect of the new freedom allowed carriers to market transportation more effectively," H.R. Rep. No. 1430, 96th Cong., 2d Sess. 100 (1980). Section 10713 is intended to encourage contracting parties to make widespread use of such agreements. H. Rep. No. 1430, *supra*, at 98–99.

[1] The common carrier regulatory concepts used in exigent circumstances are not appropriate as governing principles, because contract carrier service is a separate and fundamentally distinct class of service [Section 10713(1)]. Common carrier tariff rules, such as special permission regulations and the 10-day notice period for rate reductions, do not apply to contracts.

[2] Under 49 U.S.C. 10713(e), not earlier than 30 days after the contract is filed, nor later than 60 days.

STATE OF KANSAS

MICHAEL R. (MIKE) O'NEAL
REPRESENTATIVE, 104TH DISTRICT—HUTCHINSON
RENO COUNTY
P.O. BOX 1868
HUTCHINSON, KANSAS 67504

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
LABOR AND INDUSTRY
PUBLIC HEALTH AND WELFARE

MEMORANDUM

TO: House Judiciary Committee

DATE: March 5, 1985

RE: House Bill 2314

House Bill 2314 does two things. It closes a loophole in the current law and creates an exception where one is needed.

Several years ago the Legislature took a tough stand on crimes involving firearms and passed a mandatory sentencing law aimed at (1) deferring criminals from using firearms to commit crimes and (2) reducing crimes committed by firearms and the death and injury caused thereby (State v. Pelzer, 230 Kan. 780).

The law was made applicable to convictions for rape, aggravated sodomy or any Chapter 34 crime (crimes against persons). Probation and suspension of sentence was prohibited on these convictions.

Then came the case of Sutton v. State, 6 Kan. App. 2d 831. There Sutton was convicted of attempted first degree murder. The judge's sentencing pursuant to the mandatory sentencing provisions of K.S.A. 21-4168 was reversed by the appellate court because attempted murder is a Chapter 33 crime, not a Chapter 34. (Anticipatory crimes are covered under Chapter 33.)

Thus, we have a law that sends to prison those who are convicted of such crimes as involuntary manslaughter, but which does not require that we send would-be 1st degree murderers to prison. House Bill 2314 closes this loophole by including attempts to commit the listed crimes.

House Bill 2314 creates an exception to the mandatory sentencing law insofar as it applies to the crime of involuntary manslaughter (K.S.A. 21-3404). By definition it is an unintentional crime and as such is strikingly different from its counterparts in the mandatory sentencing law. Imposition of the penalty has brought about great hardship and has done little to advance the cause of just sentencing.

Consider the circumstances where involuntary manslaughter is committed. Often it is the person who in defending himself takes the life of another under circumstances where such force is later found to be unjustified. Often it is the tragic loss of life in hunting accidents or negligent discharges where the defendant and victim were close friends or relation. When negligence is excessive it becomes criminal. But in Kansas, it also is an automatic ticket to prison without regard for the tragic and unintentional circumstances.

Attachment #3
House Judiciary Committee
March 5, 1985

Take the recent case of Willie L. Robinson (State v. Robinson, docket #56,971). In attempting to unload his gun in his bedroom, he handed it to his common law wife. The gun discharged, killing her. The unintentional act was done in such a careless manner that it constituted involuntary manslaughter, a Class D felony. The Court of Appeals has recently held that there is nothing in the statute to suggest that involuntary manslaughter was to be excluded so Willie is off to prison to contemplate the tragic loss of his wife, while others who intentionally committed worse crimes are out on probation in many cases.

Consider also the case of Montie Brown (State v. Brown, docket #84-57182-A) convicted last year of involuntary manslaughter when a warning shot fired in the direction of two individuals stealing from his property, hit one and killed him. The statute gave the judge no authority to consider Montie's circumstances which were as follows:

1) criminals were stealing from his property
2) his act was found to have been unintentional
3) he had no previous criminal record
4) he hadn't fired his gun in over 10 years
5) he is a 54 year old triple-by-pass patient with severe heart problems
6) the crime demonstrated an isolated event with no evidence that he poses a threat to society
7) public-opinion was overwhelmingly in his favor
8) his pre-sentence report indicated he shouldn't be incarcerated notwithstanding the statute
9) in a negligence action filed by the family of the deceased, a settlement satisfactory to the family was quickly reached.

The bill would not prevent a judge from sending one convicted of involuntary manslaughter to prison under proper circumstances. It would, however, grant the judge discretion to take factors such as those set forth above into consideration in determining a just sentence.

With the prison population at its current numbers, would we rather see those like Montie go to prison - or the would-be 1st degree murderer, instead?