Approved February 13, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Michael R. O'Neal at
Chairperson

3:30 ~~a~~x~~x~~p.m. on ~~February 5,~~, 19~~90~~in room ~~313-S~~ of the Capitol.

All members were present except:
Representatives Everhart, Peterson and Whiteman, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

J. Santford Duncan, Commissioner , Administrative Services, Social and Rehabilitation Services
Jamie Corkhill, Attorney, Child Support Enforcement, Social and Rehabilitation Services
Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry.

HEARING ON HB 2469 Income withholding for enforcement of support

J. Santford Duncan, Commissioner, Administrative Services, Social and Rehabilitation Services, testified the primary responsibility of the S.R.S. Child Support Enforcement program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. The current Kansas Income Withholding Act, K.S.A. 23-4, 105 et seq. requires the courts to issue an income withholding order only if the obligator fails to pay the equivalent of one month's support. HB 2469 requires the issuance of an income withholding order at the time a support order is established or modified by the court. There need not be any failure to pay on the part of the obligator before income withholding is established. Exceptions to immediate issuance of an income withholding order are cases in which the court has found that there is good cause not to order immediate withholding and cases in which the parties have agreed in writing to an alternative arrangement.

The federal mandate in the Family Support Act of 1988 is that all states enact immediate income withholding provisions by October 1, 1990. Continued failure to do so could cause the federal government to withdraw their financial support to S.R.S. programs.

Federal law does not require immediate income withholding in Non-IV-D cases until January 1994, so the Legislature does have the option to limit application of the bill to Title IV-D cases for the time being. Mr. Duncan stated the agency would be agreeable to limiting the bill to Title IV-D cases.

Mr. Duncan said HB 2469 assures support payments and a tax saving due to reduced AFDC expenditures. He encouraged the Committee to take favorable action on HB 2469, see Attachment I.

Mr. Duncan submitted some changes to HB 2469, see Attachment II.

In response to a request by a Committee member, Mr. Duncan said he would submit a balloon to the Committee on the amendment beginning with line 26 on page 1.

Copies of Title I - Child Support and Establishment of Paternity, Statutory Language was distributed to the Committee, see Attachment III.

Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry, urged the Committee to restrict income withholding mandates in Kansas to Title IV-D child support cases, see Attachment IV.

There being no other conferees, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry, urged the Committee to restrict income withholding mandates in Kansas to Title IV-D child support cases, see Attachment IV.

There being no other conferees, the hearing on HB 2469 was closed.

The Chairman announced this bill would be referred to the subcommittee on Child Support Guidelines. He informed the Committee the subcommittee on Child Support Guidelines would meet Wednesday, February 7, 1990 at 2:30 p.m. in room 529-S.

HEARING ON HB 2470 Revivor of Dormant Judgments in child support cases

Jamie Corkhill, Attorney, Child Support Enforcement, testified the purpose of HB 2470 is to clarify that a child support judgment which has become dormant may be revived at any time throughout the dormancy period, not merely during the first two years of dormancy. She said in 1988, the positive impact of preserving child support judgments was estimated to be $5 million through 1992 for Title IV-D cases alone, primarily because custodial parents unable or unwilling to preserve unpaid support debts would not cause them to be wiped out simply through the passage of time. This projected benefit is now in jeopardy. S.R.S. urges passage of this legislation, see Attachment V.

The Chairman referred HB 2470 to the Child Support Guiidelines subcommittee for study.

There being no other conferees, the hearing on HB 2470 was closed.

COMMITTEE ACTION ON BILLS PREVIOUSLY HEARD

HB 2643 Rules of Pleadings, damages in excess of $50,000

A motion was made and seconded to report HB 2643 favorably for passage. The motion passed.

HB 2644 Recording of certain decrees of the court with the Register of Deeds

Representative Walker moved to report HB 2644 favorably for passage. Representative Jenkins advised the Committee that the Register of Deeds Association was working on amendatory language so no further committee action was taken.

HB 2059 Criminal prosecution, statute of limitation, 5 years

Representative Jenkins moved and Representative Fuller seconded to remove the bill from the table. The motion passed.

Representative Walker moved to report HB 2059 favorably for passage. Representative Snowbarger seconded the motion.

Representative Roy made a motion to table HB 2059. The motion was seconded. The motion failed.

A vote was taken on the motion to report HB 2059 favorably for passage. The motion failed. Representatives Scott, Walker, Douville, Snowbarger, Lawrence, Fuller, Jenkins and O'Neal voted in favor of reporting HB 2059 favorably for passage.

Representative Snowbarger moved to table HB 2059. Representative Jenkins seconded the motion. The motion passed.

The Committee meeting was adjourned at 5:00 p.m. The next meeting will be Tuesday, February 6, 1990, at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: Feb. 5, 1990

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Barbara Joseph	#	AP
J. S DUNCAN	TOPEKA	SRS
PATRICIA HENSHALL	TOPEKA	OJA
Jamie Corkhill	Topeka	SRS
~~Tom Brungardt~~		
Tom BRUNGARDT	Junction City	Close Up Kansas
Suzanne C. Clarke	Ft. Riley	Close Up Kansas
Carmen J. Neely	Ft. Riley	Close-Up Kansas
Christen Bourgeois	Junction City	Close-Up Kansas
Cathy Hill	Junctioncity	Close-up Kansas
Jason Buckley	Eudora	Close Up Kansas
Chad Runsaker	Eudora	Close Up Kansas
Jeremy Hoffer	Junction City	Close-Up
Dan Merson	Junction City	Close-up.
Steve Schic	Topeka	Kansas Peace Of
Eloise Lynch	Salina Legislature	Legislature
Terry Leatherman	Topeka	KCCI

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony before the

House Judiciary Committee

regarding

House Bill 2469

on

February 5, 1990

J.A. Robertson
Administrator, Child Support Enforcement
296-3409

2/5/90
H. Jud Com

Attachment I
1

Department of Social and Rehabilitation Services

Winston Barton, Secretary

Statement regarding H.B. 2469

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS strongly favors passage of this bill.

Title:

An act concerning enforcement of support; relating to income withholding.

Purpose:

To protect the rights and interests of children and to comply with federal mandates in the Family Support Act of 1988 that all states enact immediate income withholding provisions by October 1, 1990.

Background:

House Bill 2469 proposes an amendment to the Kansas Income Withholding Act to enhance the effectiveness of income withholding as a child support enforcement remedy, to better protect the rights and interests of children, and to satisfy a federal mandate that Kansas have immediate income withholding in place to avoid federal financial penalties.

If Kansas does not have the required legislation in place by October 1, 1990, the state would be subject to penalties ranging from $558,000 to $2,790,000 the first year. Continued failure to enact compliance legislation could ultimately result in the withdrawal of the entire federal contribution to the Kansas AFDC Program. Based upon FY 1989 totals, this amount would exceed $55,800,000 per year.

Effect of Passage:

Simply stated, the current Kansas Income Withholding Act (K.S.A. 23-4,105 et seq.) requires the courts to issue an income withholding order only if the obligor fails to pay the equivalent of one month's support. The proposed amendment would require the issuance of an income withholding order at the time a support order is established or modified by the court. In other words, there need not be any failure to pay on the part of the obligor before income withholding is established.

One benefit of immediate issuance of the income withholding order is that any stigma now associated with having an income withholding order is diminished, since income withholding would no longer be triggered by the accumulation of a delinquency.

Federal law and House Bill 2469 do provide for two exceptions to immediate issuance of an income withholding order: 1) Cases in which the court has found that there is good cause not to order immediate withholding, and 2) cases in which the parties have agreed in writing to an alternative arrangement.

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H. Jud Com
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H.B. 2469, at line 104 on page 3, would require immediate income withholding for all child support orders -- whether administered by SRS under Title IV-D or established or modified by a private attorney. Federal law requires that immediate income withholding be implemented for all Title IV-D cases by October 1, 1990. Title IV-D cases include both AFDC (Aid to Families with Dependent Children) cases, in which the family receives Child Support Enforcement services automatically, and Non-AFDC cases, in which the family applies for Child Support Enforcement services but is not otherwise receiving public assistance.

Federal law will not require immediate income withholding in Non-IV-D cases (those handled by private attorneys) until January 1994, so the Legislature does have the option to limit application of the bill to Title IV-D cases for the time being. We are urging that immediate income withholding be put in place now because **all** children deserve and need the protection that immediate income withholding can provide. The nonsupport of children in America remains a national disgrace -- less than half of the children who are entitled to receive support payments receive any money at all. This statistic is not limited to welfare children, it encompasses **all** children with support orders.

We believe that immediate income withholding can be an effective means for preventing many children from being the victims of poverty by insuring that reliable support payments are received. In the event nonpayment occurs, enforcement may proceed more quickly and effectively when immediate income withholding is in place. Procedural delays of as much as 45 days may be avoided.

The implementation of immediate income withholding in all cases can prevent dependence upon public assistance from ever occurring in hundreds of cases every year. Following a divorce, for example, as the family makes the transition to a single-parent household, it is most vulnerable to economic misfortunes and most likely to require public assistance in the form of AFDC benefits. Immediate income withholding would provide an invaluable protection at that critical stage, thereby reducing the tax burden on Kansas citizens and businesses.

Eight states have already taken the initiative in implementing immediate income withholding laws, some over ten years ago. Those states are Florida, Illinois, Massachusetts, Minnesota, Ohio, Texas, Virginia, and Wisconsin. Their experience shows that immediate income withholding carries substantial benefits for children.

Any law which requires wage deductions to satisfy debts or taxes places a burden on employers. However, the paperwork associated with income withholding is far less burdensome than that required by garnishments. Under a garnishment, the amount withheld from each paycheck changes every time the net pay changes, whereas under income withholding a uniform installment is deducted in nearly all cases. Under garnishment, a new answer form must be completed and notarized every month, but under an income withholding order a new answer is needed only if the terms of the withholding order change. Typically, that happens only when the underlying support order is modified or when past due support is paid off.

To further minimize the costs to employers, federal and state law permit the employer to combine amounts payable to one court clerk on more than one order into a single check, so long as the amounts for each court order are clearly identified. Also, employers have ten days from the payroll date to get the money into court, so that employers with weekly payrolls may combine two weeks'

worth of deductions into one check. Large employers and those which utilize payroll services are able to take advantage of computer programming to implement regular, uniform payroll deductions for income withholding.

Employers are entitled to deduct a fee for every income withholding order they handle, to help cover costs -- this is something that is not available under the garnishment laws. The fee currently authorized by the Income Withholding Act is five dollars per withholding, up to a maximum of ten dollars per month. In addition, SRS has had a toll-free income withholding hotline available since 1986 to assist employers, especially small businesses, to implement income withholding and to answer questions. Several hundred employers each year take advantage of this service and have expressed their appreciation for it. We all recognize that the cooperation of the business community is crucial to the effectiveness of income withholding, and the fee option and hotline are just two ways Kansas tries to minimize the inconvenience and expense of income withholding for employers.

As legislators, we are asking you to balance the interests of children, the real victims of nonsupport, against the undeniable burden immediate income withholding in all cases would place upon employers. From our perspective, the tremendous benefit to children of assured support payments and the anticipated tax savings due to reduced AFDC expenditures tip the scale in favor of enacting immediate income withholding for all children.

For these reasons, SRS urges passage of this legislation.

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House Bill 2469

Recommended Changes

1. **Page 2, line 60:**

   After "thereto," insert "or K.S.A. 39-718b and amendments thereto".

2. **Page 3, line 104:**

   Replace "January 1, 1990" with "October 1, 1990".

3. **Page 4, line 121:**

   Before "(3)," insert "and".

4. **Page 4, line 123:**

   Beginning after "arrearage," strike the comma and the remainder of the sentence.

5. **Page 6, line 208:**

   After "filed," strike the comma and insert "if an arrearage exists in an amount equal to or greater than the amount of support payable for one month or".

6. **Page 6, line 210:**

   After "filed," insert ", there is no arrearage or the arrearage is less than the amount of support payable for one month,".

7. **Page 6, line 218:**

   After "filed," insert ", there is no arrearage or the arrearage is less than the amount of support payable for one month,".

8. **Page 11, line 379:**

   Replace "January 1, 1990" with "October 1, 1990".

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H. Jud. Com.
Attachment II

STATUTORY LANGUAGE

TITLE I—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

Subtitle A—Child Support

SEC. 101. IMMEDIATE INCOME WITHHOLDING.

(a) IN GENERAL.—Section 466(b)(3) of the Social Security Act is amended to read as follows:

"(3)(A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after the date of the enactment of this paragraph, on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

"(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

"(i) the date as of which the absent parent requests that such withholding begin,

"(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

"(iii) such earlier date as the State may select.".

(b) APPLICATION TO ALL CHILD SUPPORT ORDERS.—Section 466(a)(8) of such Act is amended—

(1) by inserting "(A)" before "Procedures";

(2) by striking "which are issued or modified in the State" and inserting in lieu thereof "not described in subparagraph (B)"; and

(3) by adding at the end the following new subparagraph:

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Attachment III

STATUTORY LANGUAGE

"(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

"(i) The requirements of subsection (b)(1) (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

"(ii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

"(iii) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.".

(c) STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

(d) EFFECTIVE DATE.—(1) The amendment made by subsection (a) shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall become effective on January 1, 1994.

(3) Subsection (c) shall become effective on the date of the enactment of this Act.

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

HB 2469

February 5, 1990

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Judiciary

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to comment on some of the aspects of HB 2469.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

This might be a little unusual, but imagine for a moment that HB 2469 is a train. Quite frankly, if this train were still at the station, I might be standing here today trying to stop it from taking off. After all, one party not responsible for the

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Attachment IV

unfortunate chain of events which lead to child support payments being ordered is the employer. To shoulder the employer with the social obligation of making sure child support is paid is unfortunate.

However, this locomotive left the station long ago, and is barreling down the tracks. Employers have already become acquainted with income withholding orders in child support cases where an arrearage has developed. Also congressional legislation is tying federal Aid for Dependent Children funds to state adoption of legislation to beef up child support enforcement. With federal funds for needy children on board the train, KCCI does not intend to stand on the tracks and try to stop it.

However, it is important to point out that HB 2469 steps beyond the boundaries needed to comply with federal requirements. To maintain compliance, immediate income withholding needs to be applied in 'Title IV-D' cases. For several reasons, KCCI urges this committee to restrict income withholding mandates in Kansas to 'Title IV-D' child support cases.

For one, there is an inherent distinction between 'Title IV-D' and other child support cases. 'Title IV-D' involves cases where families receive AFDC funds or have requested child support enforcement services. In other words, 'Title IV-D' cases involve the poorest of families where child support payment is needed most, or where problems in the payment of child support have already developed. Conversely, non-Title IV-D cases do not demonstrate the same level of need or the same history of payment abuse.

Secondly, immediate income withholding in all cases suggests the person responsible for paying child support cannot meet their obligation, on their own. In essence, the child support provider is being sentenced for committing the crime, before the crime is committed. While it might simplify SRS administration to assume all child support providers are not able to handle payment responsibilities, it seems the parent should be given the opportunity to manage the paying of child support. If the parent fails to meet his or her responsibility, then income withholding should be initiated. However, why involve the employer in the child support loop, until the need for employer involvement is demonstrated.

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Att IV

Income withholding in all child support cases will not be mandated until 1994. In the four years until then, this issue will no doubt be studied at the federal and state level. KCCI doesn't suggest this committee stop the train, but we do suggest you slow the train down, and travel the speed limit Washington has set.

Thank you for the opportunity to present KCCI's views on HB 2469. I would be happy to attempt to answer any questions.

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DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony before the

House Judiciary Committee

regarding

House Bill 2470

on

February 5, 1990

Jamie L. Corkhill
Attorney, Child Support Enforcement

presented on behalf of:

J. Santford Duncan, Commissioner
Administrative Services
Department of Social and Rehabilitation Services

2/5/90
H. Jud Com.
Attachment V

Department of Social and Rehabilitation Services

Winston Barton, Secretary

Statement regarding H.B. 2470

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS strongly favors passage of this bill.

Purpose:

The purpose of this amendment is to clarify that a child support judgment which has become dormant may be revived at any time throughout the dormancy period, not merely during the first two years of dormancy.

Background:

The 1988 Legislature amended K.S.A. 60-2403 to extend the dormancy period for child support judgments until two years after the child's emancipation, normally age 18. Unfortunately, the corresponding revivor language in K.S.A. 60-2404, which requires that a motion to revive a dormant judgment be filed within two years of the date the judgment became dormant, was not also amended. To illustrate the dilemma this ambiguity creates: A judgment for child support becomes dormant when the child is ten years old and, under the 1988 amendment, remains dormant for eight years. Because of the present wording of K.S.A. 60-2404, a motion to revive that dormant judgment could not be filed at that point because more than two years had passed since the date the judgment became dormant.

Historically, Kansas appellate courts have strictly construed the dormancy and revivor statutes. Strict construction of the existing statutes controlling dormancy and revivor of child support judgments, however, would render the 1988 legislation meaningless because dormant judgments which are not revived cannot be enforced. Consequently, so long as the ambiguity exists there is a risk that children will be deprived of the child support they both need and deserve.

It should be noted that the 1988 Legislature also safeguarded the rights of debtors, giving the debtor an opportunity to show good cause why the judgment should not be revived and authorizing the judge to enter an order preventing unjust enrichment of any party.

Effect of Passage:

The fiscal impact of this bill is potentially significant. If the ambiguity is allowed to remain and the dormancy and revivor statutes are strictly construed, the amount of enforceable judgments owed on behalf of children will be greatly reduced over time. In 1988, the positive impact of preserving child support judgments was estimated to be $5,000,000 through 1992 for Title IV-D cases alone, primarily because custodial parents unable or unwilling to preserve unpaid support debts would not cause them to be wiped out simply through the passage of time. This projected benefit is now in jeopardy.

For these reasons, SRS urges passage of this legislation.

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