

Approved 6-27-90
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

4:30 ~~xxx~~/p.m. on March 26, 1990 in room 254-E of the Capitol.

All members were present except: Senators Moran, Feleciano and Gaines who were excused.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Representative James Lowther
Chuck Simmons, Kansas Department of Corrections
Richrd Mason, Kansas Trial Lawyers Association
Jim Robertson, Kansas Department of Social and Rehabilitation Services

The Chairman opened the meeting by continuing the discussion of HB 3043 from the morning meeting.

HB 3043 - concerning civil procedure; relating to compensation for screening panel members.

SB 736 - amending and supplementing the Kansas tort claims act; providing that charitable health care providers and employees of the state for the purposes of such act.

The Chairman stated provisions of HB 3043 are in conflict with SB 736 that passed the Senate and currently resides in a House committee. He suggested this committee not take action on HB 3043 and let the House committee make their determinations of SB 736.

The Chairman opened the hearing for HB 2292.

HB 2292 - concerning certain alcohol and drug-related offenses; relating to suspension and revocation of drivers' licenses.

Representative James Lowther testified in support of HB 2292. (ATTACHMENTS I through IV) When questioned how he felt about amending SB 219 into HB 2292 and adding SB 701 work release provisions for third time DUI offenders, Representative Lowther stated he had no problems with the suggestions. He added, however, that the House committee on Federal and State Affairs had not been receptive to the more restrictive provisions of SB 219.

As no other conferees appeared on HB 2292, this concluded the hearing.

SB 219 - concerning juvenile offenders; relating to dispositional alternatives for alcohol and drug-related offenses.

SB 701 - concerning driving under the influence; relating to a work release program being part of imprisonment.

Senator Petty moved to amend HB 2292 to include SB 219. Senator Rock seconded the motion. The motion carried.

Senator Petty moved to amend SB 701 into HB 2292. Senator Rock seconded the motion. The motion carried.

Senator Petty moved to recommend HB 2292 favorable for passage as amended. Senator Rock seconded the motion. The motion carried.

The Chairman opened the hearing for HB 3042.

HB 3042 - amending the Kansas tort claims act; relating to persons covered thereby.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 254-E, Statehouse, at 4:30 ~~am~~ p.m. on March 26, 1990.

Chuck Simmons, Kansas Department of Corrections, testified in support of HB 3042. He stated that this bill, the same as SB 563, gives needed tort protection to individuals under contract to the Department of Corrections. During questioning by the committee Mr. Simmons stated that 98 percent of litigation is frivolous and therefore expensive to both the contractor and the Department.

Richard Mason, Kansas Trial Lawyers Association, testified in opposition of HB 3042.
(ATTACHMENT V)

This concluded the hearing for HB 3042.

Senator David Kerr presented the Criminal and Uniform Commercial Code Subcommittee report.
(ATTACHMENT VI)

SB 730 - concerning the uniform commercial code; prescribing certain fees for filings and information requests.

Senator Keer moved to adopt the subcommittee report to recommend SB 730 favorable for passage. Senator Morris seconded the motion. The motion carried.

SB 758 - concerning the Kansas bureau of investigation; relating to powers of members of the bureau.

Senator Kerr reported the subcommittee recommended SB 758 be reported adversely.

SB 764 - concerning the Kansas criminal code; defining and classifying the crimes of interference with the legislative process and possession of a loaded firearm within the state capitol building.

Senator Kerr moved to adopt the subcommittee report to recommend SB favorable for passage. Senator Bond seconded the motion. The motion and second was withdrawn.

Senator Bond moved to amend SB 764 by deleting section 1 (d) concerning picketing. Senator Petty seconded the motion. The motion carried.

Senator Bond moved to recommend SB 764 favorable for passage as amended. Senator Petty seconded the motion. The motion. The motion carried.

HB 2470 - concerning revivor of dormant judgments.

Senator Kerr reported the subcommittee recommended HB 2470 be recommended favorable for passage.

Senator Bond moved to amend HB 2470 to include SB 723 without its amendments and include technical amendments as suggested by staff. Senator Morris seconded the motion. The motion carried.

SB 723 - concerning domestic relations; relating to enforcement of support; relating to international reciprocity.

Senator Kerr moved to recommend HB 2740 favorable for passage as amended. Senator Bond seconded the motion. The motion carried.

Senator Rock continued his report of the Probate and Civil Procedure Subcommittee.

HB 2469 - concerning enforcement of support; relating to income withholding.

Senator Winter shared with the committee a letter received from J. Santford Duncan, Administrative Services Commissioner, Kansas Department of Social and Rehabilitation Services, addressing HB 2469. (ATTACHMENT VII)

Jim Robertson, Kansas Department of Social and Rehabilitation Services, presented the committee with a balloon of suggested amendments to HB 2469. (ATTACHMENT VIII)

Senator Rock moved to amend HB 2469 as presented in the balloon. Senator Bond seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 254-E, Statehouse, at 4:30 ~~xxx~~ p.m. on March 26, 1990.

Senator Rock moved to recommend HB 2469 favorable for passage as amended. Senator Martin seconded the motion. The motion carried. The committee consensus was that this action is taken on the reliance of the Kansas SRS Department to continue their functioning as per the statements of Mr. Duncan's letter.

Senator Kerr presented the Criminal and Uniform Commercial Code Subcommittee report on HB 2721 to technically amend the bill and recommend favorable for passage.

HB 2721 - concerning accountants; relating to a privilege against discovery or disclosure of certain proceedings and findings.

Senator Bond moved to adopt the technical amendments to HB 2721 and recommend the bill favorable for passage as amended. Senator Morris seconded the motion. The motion carried.

Written testimony supporting HB 2753 was presented to the committee from Nola Wright, The Atchison, Topeka and Santa Fe Railway Company. (ATTACHMENT IX)

The meeting was adjourned.

JAMES E. LOWTHER
 REPRESENTATIVE, SIXTEENTH DISTRICT
 LYON COUNTY
 1549 BERKELEY ROAD
 EMPORIA, KANSAS 66801



TOPEKA

HOUSE OF
 REPRESENTATIVES

Senate Judiciary Committee

Testimony in Support of HB 2292

March 26, 1990

COMMITTEE ASSIGNMENTS
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 TAXATION COMMITTEE
 LEGISLATIVE EDUCATIONAL PLANNING
 COMMITTEE

To those of you who served on this committee in the 1988 Session, HB 2292 will be familiar as it is the current version of 1988 HB 2819 which was passed by this committee and by the House as well.

This bill would allow the court to suspend the driving privileges of teenagers who violate alcohol and drug laws. I have correspondence from a judge stating that he has had several lengthy arguments in court with attorneys arguing that the court does not have the authority to suspend the minor's license under KSA 38-1663. The statute should be amended to provide the license suspension as a dispositional alternative for juvenile offenders involved in possession, use or abuse of alcoholic beverages or drugs.

This idea is not new. It was proposed by a school principal in Oregon in 1983, to the Oregon State Legislature and passed as the "Oregon Denial Law." The results in Oregon indicate the law caused a sharp decline in liquor and drug use. The reason is simple: The penalty hits the juvenile violator where it hurts the most -- the loss of driving privileges. Other states have enacted similar legislation, including Missouri with their "Abuse and Lose" law and California which suspends driving privileges of residents under 21 who are convicted of drug violations. (also Oklahoma)

Under provisions of HB 2292, if a juvenile has been found to be guilty of any alcohol or drug law, the juvenile may be required to surrender their driver's license to the court and have driving privileges revoked. Restoration can be sought if 90 days have elapsed since driving privileges were revoked, if it was a first offense. Also, the juvenile offender may petition the court to have driving privileges restored if they are actively enrolled in an alcohol or drug education program. If it was a second or subsequent offense, one year must elapse. The court may restore the driving privileges subject to the completion of a driver's license examination as required for original license.

The problem of teenage drinking is a real one. In my hometown the Alcohol and Drug services of the community Mental Health Center is working with several school districts in prevention, education and then also in treatment of teenage alcohol and drug abuse. I've not noticed any real improvement.

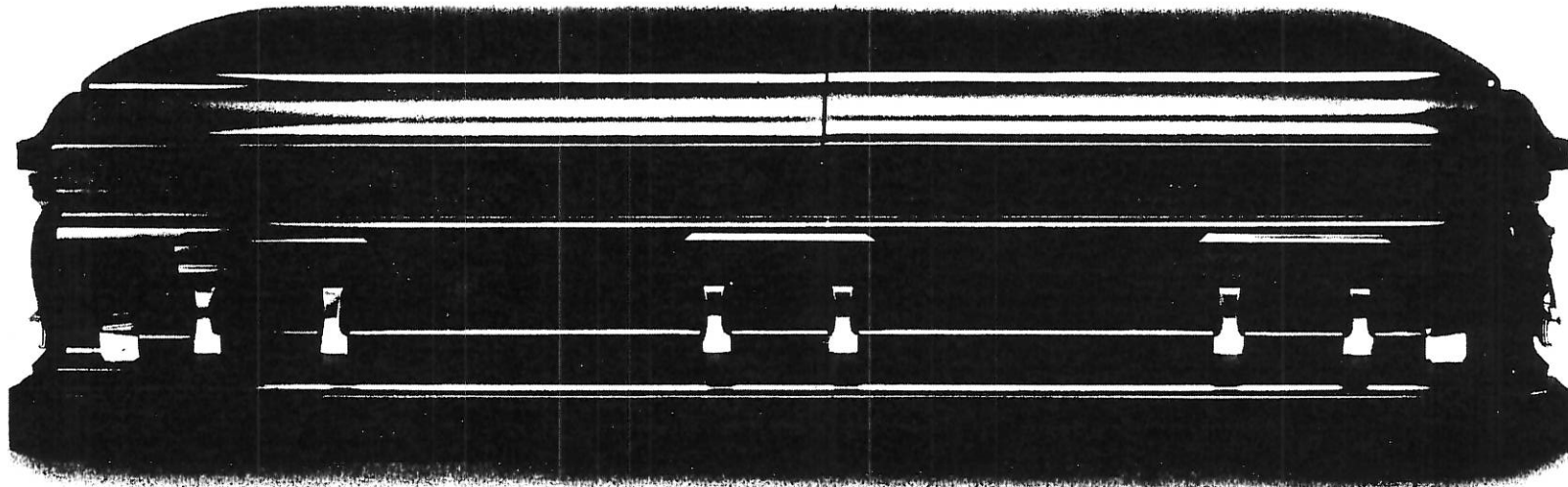
Where adults violate drug and alcohol laws the court can impose several sentences including jail. No such option exists for juvenile offenders in Kansas. I call your attention to two handouts, one a letter from the 5th District Magistrate Judge and the other, graphs showing the effect of the Oregon law.

Senate Judiciary Committee
 3-26-90
 Attachment I page 1 of 1

Grounded At Age 16.

*Senate Judiciary Committee
3-26-98
Attachment II page 1 of 2*

3-26-90
II 2/2



No sports. No parties. No dating. No phone calls. Like 12,000 other high school kids this year — get caught just once doing the wrong drug or the wrong combination and you're grounded. That's final.



Fifth Judicial District Court
State of Kansas

WILLIAM J. DICK
ADMINISTRATIVE DISTRICT JUDGE

LYON COUNTY COURTHOUSE
EMPORIA, KANSAS 66801-4095
(316) 342-4950, EXT. 293

March 22, 1990

Representative James Lowther
Room 112 South
State House
Topeka, KS 66612

Re: Substitute for House Bill No. 2292

Dear Jim:

This letter is written in support of Substitute for House Bill No. 2292, an act concerning certain alcohol and drug-related offenses of juveniles and relating to suspension and revocation of drivers' licenses.

I strongly support this addition to the Bill. I feel that there needs to be a greater impact on the juvenile at the time of disposition. Currently, if I assess a fine against the juvenile, the parents end up paying it. I can't put the juvenile in jail. In my opinion, there is no other punishment that would have a stronger effect on the juvenile other than suspending the driving privileges.

I have found that a number of parents condone the use of alcohol or drugs by their children. In some situations, the parents themselves are on drugs and use alcohol and allow their children to take them from home. Some parents don't care until their child gets into trouble.

If the Court had the authority to suspend or revoke driving privileges of the juvenile, this could also cause an affect on the parents if they then had to chauffeur their child to school, work, or other activities. Maybe there would be better supervision in the home.

I would also strongly support legislation to suspend or revoke driving privileges in some way to force children to stay in school. If the license was suspended or revoked for a child's behavior in school, this might make the child think twice about dropping out.

Senate Judiciary Committee
3-26-90
Attachment III page 1 of 2

Representative James Lowther
Page 2
March 22, 1990

Again, I support wholeheartly the Court being given authority to suspend or revoke the driving privileges of juveniles when they are involved in an alcohol or drug-related offense.

Sincerely,



Francis Towle
District Magistrate Judge

3-26-90

III 2/2

Oregon Says "No" To Driving By Minors Who Use Drugs

By H. Wesley Smith

When H. Wesley Smith was a school principal in Albany, Oregon, he led the movement to enact the 1983 Oregon law that suspended the driving privileges of teenagers who violated alcohol and drug laws.

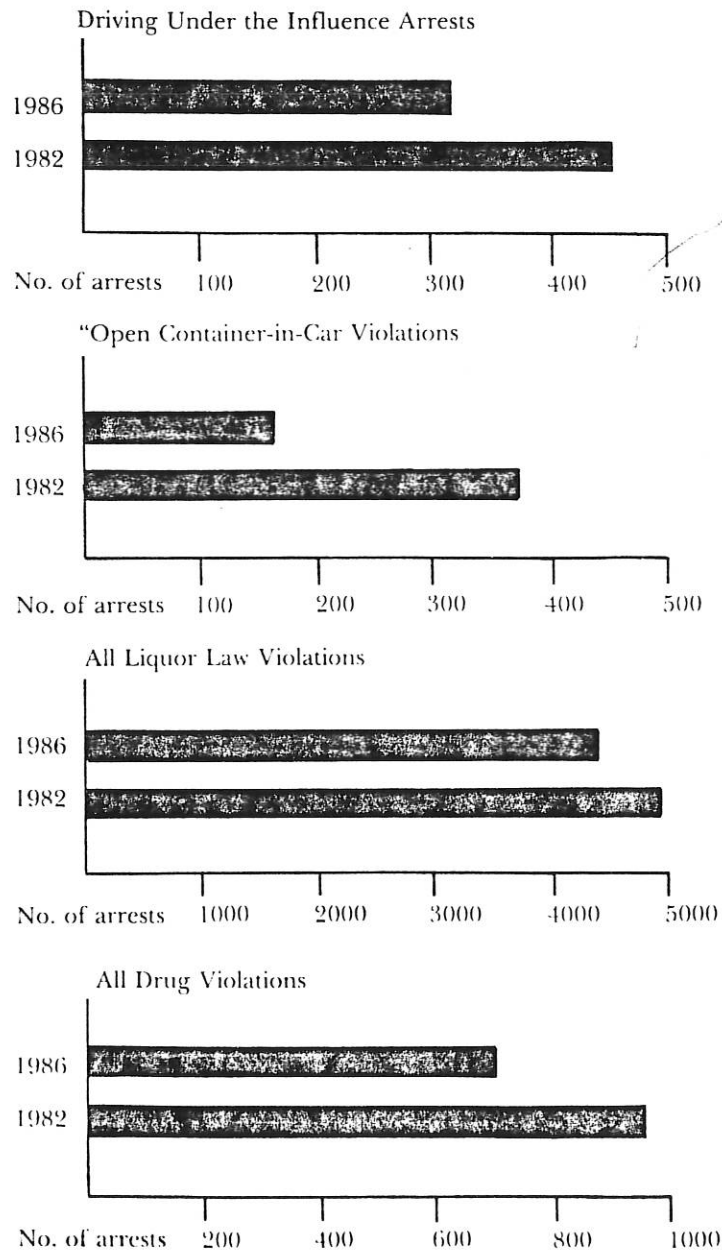
In 1983 I was principal of a school that was considered to have an outstanding drug education program. And yet, the students were still using drugs.

I felt there had to be a way to motivate young people to stop using drugs. I thought that students might be encouraged to stay away from drugs to protect their privilege of driving. Receiving a driver's license is important to a teenager.

With this in mind, I exercised my right as an Oregonian to submit a proposal to the state legislature. My proposal stipulated that 13- to 17-year-olds found in violation of any drug or alcohol laws would lose their driving privileges for 1 year or until age 17, whichever was longer. The violator would be unable to apply for a license during the penalty period. In the case of a 13-year-old violator, the youth would have to wait until age 17 to apply, invoking the 1-year penalty after the youth became eligible at the age of 16. This penalty would be imposed whether or not a motor vehicle was involved. A second violation would require the suspension of driving privileges for 2 years or until age 18, whichever was longer. The proposal also provided an appeals procedure.

After much deliberation, the "Oregon Denial Law" was passed in 1983. The law was credited with

Denial Law Causes Sharp Decline in Drug Use



*Senate Judiciary Committee
3-26-90
Attachment IV page 1 of 1*



KANSAS TRIAL LAWYERS ASSOCIATION

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RICHARD H. MASON
EXECUTIVE DIRECTOR

TESTIMONY of the KANSAS TRIAL LAWYERS ASSOCIATION before SENATE JUDICIARY COMMITTEE

HB 3042

House Bill 3042 would change the Kansas Tort Claims Act to provide that private, non-governmental contractors would be afforded the protection of limited immunity from tort actions. We oppose this bill, as we did SB 563, rejected earlier in the session by this Committee.

The concept of narrowly defined limited immunity remains a rational and viable approach to the treatment of tort claims against government agencies and its employees. The desired effect of limiting liability insurance costs to government has largely been met. The protection of government against unreasonable claims has been effective and the public generally has benefited in the trade-off of limited liability for efficient, cost effective government services which have been provided to the public.

If HB 3042 is adopted, it would go against the expressed policy of the State of Kansas to not provide limited immunity to independent contractors who contract with government to provide services. Independent contractors have the ability and the right to provide for the tort liability protection that they feel they may need by purchasing liability insurance or by self-insuring. The need for liability protection will vary substantially from contractor to contractor depending upon the function which they perform, but it is universally true that they can best determine what that cost will be and how that cost can be factored into their contracts.

If you grant immunity to these contractors through the Kansas Tort Claims Act, you will be making an unwarranted expansion of that Act into the private sector and extending a substantial benefit to the private companies, with no commensurate benefit being granted to the consuming public. It may be true that the consuming public in this case is prisoners to the Kansas prison system who would be deprived of their right to full compensation for damages which may be caused by the independent contractors, but that is no reason to take those rights away.

We are also concerned with the precedent setting nature of this proposal. Protection under the Tort Claims Act may be beneficial to those seeking the immunity, but its costs are borne by the the taxpayers of the State of Kansas.

Senate Judiciary Committee
3-26-90
Attachment V page 1 of 2

Testimony of the Kansas Trial Lawyers
HB 3042
Page 2

We see no compelling reason why this bill should be passed and that is especially so where, as in this case, the sole benefit of the change would be to grant private contractors immunity that heretofore has been intended for government operations only.

3-26-90
V 2/2

JUDICIARY SUBCOMMITTEE ON CRIMINAL AND UNIFORM COMMERCIAL CODE
Senator Jerry Moran, Chairman

March 16, 1990 - 8:00 A.M. - Room 423-S

Committee members present: Senators Moran, D. Kerr and Petty

HB 2752 - Court allowed 30 days to issue warrant for arrest of defendant who did not meet conditions of probations.

Judge James Buchele, Shawnee County District Court Judge

Margaret Lutes, Assistant Shawnee county District Attorney

Jim Clark, Kansas County and Distroct Attorneys Association

SB 669 - Determination of parentage; relating to blood tests used to determine paternity.

Subcommittee felt it needed study.

SB 730 - Uniform commercial code fees for filings and information requests.

Senator D. Kerr moved to recommend to the full committee to report the bill favorably. Senator Petty seconded the motion. The motion carried.

SB 744 - Compensation for victims of crimes against property.

HB 2644 - Recording of certain decrees of the court with the register of deeds.

HB 2920 - Expedited appeal of habeas corpus actions involving extradition.

Senator D. Kerr moved to recommend the full committee report the bill favorably. Senator Petty Seconded the motion. The motion carried.

HB 3045 - Reinserting prosecuting attorneys' training fund into court fees statute.

Senator Petty moved to recommend the full committee report the bill favorably. Senator D. Kerr seconded the motion. The motion carried.

SB 758 - Power of KBI members to administer oaths and acknowledge signatures

Senator D. Kerr moved to recommend to the full committee the bill be reported adversely. Senator Petty seconded the motion. The motion carried.

*Senate Judiciary Committee
3-26-90
Attachment VI page 1 of 2*

Page 2
March 16, 1990
8:00 A.M.

SB 764 - Crimes of interference with the legislative process and possession of a loaded firearm in the state capitol building.

Senator Petty moved to recommend the full committee report the bill favorably. Senator D. Kerr seconded the motion. The motion carried.

3-26-90
VI 2/2



STATE OF KANSAS

MIKE HAYDEN, Governor

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Docking State Office Building, 915 S.W. Harrison, Topeka, Kansas 66612

(913) 296-3271

March 20, 1990

WINSTON BARTON
Secretary

THELMA HUNTER GORDON
Special Assistant

TIM OWENS
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Public Information
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Administrative
Services

J. S. DUNCAN
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Adult Services
JAN ALLEN
Commissioner

Alcohol and Drug
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ANDREW O'DONOVAN
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Income Maintenance/
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JOHN ALQUEST
Commissioner

Mental Health/
Retardation Services
AL NEMEC
Commissioner

Rehabilitation
Services
GABRIEL FAIMON
Commissioner

Youth Services
ROBERT BARNUM
Commissioner

Child Support Enforcement Program
P.O. Box 497
300 Southwest Oakley Street
First Floor, Biddle Building
Topeka, Kansas 66601
(913) 296-2629

The Honorable Wint Winter, Jr.
Kansas Senator
P.O. Box 1200
Lawrence, Kansas 66044

RE: House Bill 2469
Mandatory Immediate Income Withholding

Dear Senator Winter:

At the Judiciary Subcommittee hearing on H.B. 2469 on March 15, 1990, it became apparent that several senators were uneasy about the impact of this bill on those who have historically complied with their court orders. I believe that limiting immediate income withholding to Title IV-D cases prevents this bill from affecting the majority of persons in compliance with their support orders, however, I would like to address a specific concern that was raised at the hearing.

The situation which seems to cause greatest concern is one in which an obligee applies for IV-D Non-AFDC services and asks for immediate income withholding even though no arrearages have accrued under the court order. As explained at the hearing, SRS cannot restrict the availability of IV-D Non-AFDC services generally, but the Family Support Act will permit us to adopt standards and procedures for starting income withholding upon request when there are no arrearages.

A draft policy directive is attached which would prevent harassment of paying obligors and waste of program resources, and it is our intention to adopt this policy in conjunction with legislative enactment. The specific terms of the policy would be subject to review by our federal regulators, of course, though we believe that the standards listed will be acceptable.

Senate Judiciary Committee
3-26-90

Attachment VII page 1 of 5

Senator Winter
March 20, 1990
Page 2

I hope that this information will be of use you and the Judiciary Committee. I would be more than happy to make myself, Jim Robertson, or Jamie Corkhill available if there are any questions or comments about H.B. 2469 or the draft policy.

Thank you for your continuing interest in this bill and the Child Support Enforcement Program.

Sincerely,



J. Sanford Duncan
Commissioner, Administrative Services

JSD:JLC:vr
Enclosure

3-26-90

VII 2/5

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Child Support Enforcement Program

M E M O R A N D U M

DRAFT

TO: CSE Chiefs
CSE Section Supervisors
CSE Collection Officers
CSE Attorneys
County/District Attorney Contractors
Office of Judicial Administration
CSE Central Office Management Staff
cc: Kansas Legal Services
O.C.S.E. Regional Office

DATE:

NOT FOR RELEASE UNTIL
AUTHORIZED

FROM: J.A. Robertson
CSE Administrator

SUBJECT: PROGRAM CLEARANCE #90- @:
Standards and Procedures
When Obligee Requests
Issuance of Income
Withholding Order

The Kansas Income Withholding Act now provides for issuance of an income withholding order in a Title IV-D case upon request of the obligee. Federal law provides that the State establish standards and procedures for handling such requests. This clearance is issued to prevent the use of income withholding in inappropriate cases and to clarify the procedure for determination of a satisfactory record of payments.

This clearance does not apply to cases in which CSE is required to initiate income withholding for other reasons, such as existence of one month's arrearage, mandatory withholding because there is a new or modified support order, or the obligor (absent parent) has requested income withholding.

When a custodial parent or caretaker relative who is the obligee of a Kansas support order requests in writing that an income withholding order be obtained and CSE is not otherwise required to initiate income withholding, the Collection Officer will assess the case according to the following standards to determine whether the request should be granted and a legal referral made for issuance of an income withholding order. If the case has already been referred, the Collection Officer and the CSE Attorney or Contractor will jointly determine whether the request should be granted. If the Collection Officer and the IV-D Attorney cannot agree, the CSE Chief will make the determination.

The obligee's request for immediate income withholding will NOT be granted in any of the following circumstances:

1. No employer or source of periodic income is identified.
2. The Absent Parent has no arrearages under the court order, the court found that good cause existed for not ordering immediate income withholding, and the obligee has not demonstrated that good cause no longer exists.

3-26-90

VII

3/5

3. The Absent Parent has no arrearages under the court order, immediate income withholding was not ordered because of an agreement to alternative arrangements, and the obligee has not demonstrated any of the following:

3-26-90

VII 4/5

- o That the agreement was not in writing;
 - o That the agreement was not approved by all interested parties (including the child but only if there was a guardian ad litem appointed); or
 - o That the terms of the agreement or alternative arrangement are not being substantially met.
4. The Absent Parent has no arrearages under the obligee's court order and has a history of making payments as ordered. Only voluntary payments, including payments under a voluntary income withholding order, should be considered. If the Absent Parent has made payments for the most recent six months on time and in full, (6, 10, 12, or 20 payments depending upon which line of which chart applies) the Absent Parent has established a satisfactory pattern of payments.

Whenever possible, only the pattern of payments under the obligee's order should be considered, using the following standards:

<u>Frequency of Payments</u>	<u>Number of Payments Made</u>
Monthly	6 payments
Twice a month	10 payments
Every other week	10 payments
Weekly	10 payments

If the support order in the obligee's case is too new for the Absent Parent to have developed a payment pattern, a satisfactory pattern of payments may be established by considering the pattern of voluntary payments in another court case using the standards below. Because payment patterns often depend upon the relationships between the people involved and because the pattern in a different case may not be repeated in the obligee's case, a longer history of compliance has to be shown.

If other cases are considered and not all of the patterns are acceptable, ALL the other cases should be ignored.

If none of the Absent Parent's orders has been in place long enough to show a pattern of compliance by itself, but the total of payments due and paid voluntarily during the most recent time period under all the orders would equal or exceed the number required below, then the Absent Parent is considered to have established a history of compliance.

<u>Frequency of Payments</u>	<u>Number of Payments Made</u>
Monthly	12 payments
Twice a month	20 payments
Every other week	20 payments
Weekly	20 payments

 Consult your supervisor if you have any questions. Please retain this Program Clearance for future reference.

3-26-90

VII 5/5

HOUSE BILL No. 2469

By Committee on Public Health and Welfare

2-21

10 AN ACT, concerning enforcement of support; relating to income
11 withholding; amending K.S.A. 23-4,106, 23-4,107, 23-4,110, 23-
12 4,113, 23-4,114 and 23-4,130 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 23-4,106 is hereby amended to read as follows:
16 23-4,106. As used in K.S.A. ~~1985 Supp.~~ 23-4,105 through 23-4,118:

17 (a) "Arrearage" means the total amount of unpaid support which
18 is due and unpaid under an order ~~of~~ *for* support, based upon the
19 due date specified in the order for support or, if no specific date is
20 stated in the order, the last day of the month in which the payment
21 is to be made. *If the order for support includes a judgment for*
22 *reimbursement or for an arrearage accrued under a previously*
23 *existing order, an arrearage equal to or greater than the amount*
24 *of support payable for one month exists on the date the order for*
25 *support is entered.*

26 (b) "Income" means any form of periodic payment to an indi-
27 vidual, regardless of source, including but not limited to wages,
28 salary, trust, royalty, commission, bonus, compensation as an in-
29 dependent contractor, annuity and retirement benefits and any other
30 periodic payments made by any person, private entity or federal,
31 state or local government or any agency or instrumentality thereof.
32 "Income" does not include: (1) Any amounts required by law to be
33 withheld, other than creditor claims, including but not limited to
34 federal and state taxes, social security tax and other retirement and
35 disability contributions; (2) any amounts exempted by federal law;
36 (3) public assistance payments; and (4) unemployment insurance ben-
37 efits except to the extent otherwise provided by law. Any other state
38 or local laws which limit or exempt income or the amount or per-
centage of income that can be withheld shall not apply.

39 (c) "Income withholding order" means an order issued under this
41 act which requires a payor to withhold income to satisfy an order
42 for support or to defray an arrearage.

43 (e) (d) "Obligee" means the person or entity to whom a duty of

Senate Judiciary Committee
3-26-90
Attachment VIII page 1 of 10

1 support is owed.

2 ~~(d)~~ (e) "Obligor" means any person who owes a duty to make
3 payments under an order for support.

4 ~~(e)~~ (f) "Order for support" means any order of a court, or of an
5 administrative agency of another jurisdiction, authorized by law to
6 issue such an order, which provides for payment of funds for the
7 support of a child, or for maintenance of a spouse or ex-spouse living
8 with a child for whom an order of support is also being enforced,
9 and includes such an order which provides for modification or re-
10 sumption of a previously existing order; payment of an arrearage
11 accrued under a previously existing order; a reimbursement order,
12 including but not limited to an order established pursuant to K.S.A.
13 39-718a or K.S.A. 1989 Supp. 39-718b, and amendments thereto;
14 or an order established pursuant to K.S.A. 23-451 *et seq.* and amend-
15 ments thereto.

16 ~~(f)~~ (g) "Payor" means any person or entity owing income to an
17 obligor or any self-employed obligor.

18 ~~(g)~~ (h) "Public office" means any elected or appointed official of
19 the state or any political subdivision or agency of the state, or any
20 subcontractor thereof, who is or may become responsible by law for
21 enforcement of, or who is or may become authorized to enforce, an
22 order for support, including but not limited to the department of
23 social and rehabilitation services, court trustees, county or district
24 attorneys and other subcontractors.

25 ~~(h)~~ (i) "Title IV-D cases" means those cases required by part D
26 of title IV of the federal social security act (42 U.S.C. §651 *et seq.*),
27 as amended, to be processed by the department of social and re-
28 habilitation services under the state's plan for support enforcement.

29 Sec. 2. K.S.A. 23-4,107 is hereby amended to read as follows:
30 23-4,107. ~~(a) Any new or modified order for support entered on~~
31 ~~or after January 1, 1986, shall include a provision for the with-~~
32 ~~holding of income to enforce the order of support. Unless the~~
33 ~~order provides that income withholding will take effect im-~~
34 ~~mediately, withholding shall take effect only if: (1) There is~~
35 ~~an arrearage in an amount equal to or greater than the amount~~
36 ~~of support payable for one month or, if a judgment is granted~~
37 ~~pursuant to K.S.A. 39-718a and amendments thereto, a lump~~
38 ~~sum due and owing; and (2) there is compliance with the re-~~
requirements of this section.

39 ~~(b) If the court has issued an order for support, with or~~
40 ~~without a conditional order requiring income withholding as~~
41 ~~provided by subsection (a), the obligee or a public office may~~
42 ~~apply for an order for withholding by filing with the court an~~
43

3-26-90
VIII 2/10

1 affidavit stating: (1) That an arrearage exists in an amount equal
 2 to or greater than the amount of support payable for one month;
 3 (2) that a notice of delinquency has been served on the obligor
 4 in accordance with subsection (f) and the date and type of
 5 service; (3) that the obligor has not filed a motion to stay service
 6 of the income withholding order; and (4) a specified amount
 7 which shall be withheld by the payor to satisfy the order of
 8 support and to defray any arrearage. Upon the filing of the
 9 affidavit, the court shall issue an order requiring the with-
 10 holding of income without the requirement of a hearing,
 11 amendment of the support order or further notice to the obligor.

12 For purposes of this subsection, an arrearage shall be com-
 13 puted on the basis of support payments due and unpaid on the
 14 date the notice of delinquency was served on the obligor. (a)
 15 Any new or modified order for support entered on or after January
 16 1, 1986, shall include a provision for the withholding of income to
 17 enforce the order for support. Except as otherwise provided in
 18 subsection (b) or (c), withholding shall take effect only if: (1) There
 19 is an arrearage in an amount equal to or greater than the amount
 20 of support payable for one month or, if a judgment is granted
 21 pursuant to K.S.A. 39-718a or K.S.A. 1989 Supp. 39-718b, and
 22 amendments thereto, a lump sum due and owing; and (2) there is
 23 compliance with the requirements of subsections (d) and (h).

24 ~~(b)~~ (b) Except as otherwise provided in subsection ~~(h)~~ or ~~(i)~~ (j) or
 25 (k), all new or modified orders for support entered on or after
 26 ~~January~~ October 1, 1990, in title IV-D cases shall include a pro-
 27 vision for the withholding of income to enforce the order of support,
 28 and an income withholding order shall be issued without further
 29 notice to the obligor specifying an amount sufficient to satisfy the
 30 order for support and to defray any arrearage. The income with-
 31 holding order shall be issued regardless of whether a payor subject
 32 to the jurisdiction of this state can be identified at the time the
 33 order for support is entered.

34 (c) If the provisions of subsection (b) do not apply, the obligee
 35 or public office may file a motion requesting that an income with-
 36 holding order be issued ~~at the same time a new or modified order~~
 37 ~~for support is entered, regardless of whether an arrearage exists.~~
 38 If the motion is granted, an income withholding order shall be
 39 issued without further notice to the obligor specifying an amount
 40 sufficient to satisfy the order for support and to defray any ar-
 41 rearage. The income withholding order may be issued regardless
 42 of whether a payor subject to the jurisdiction of this state can be
 43 identified at the time the order for support is entered.

. If no arrearage existed as of the date the notice pursuant
 to subsection (h) was served upon the obligor, the motion
 shall only be granted if the court finds that good cause
 exists for issuing the income withholding order or if the
 obligor consents to issuance of an income withholding order.

in a title IV-D case

Delete

the amount of the

income withholding
 is issued.

3-26-90
 VIII 3/10

1 ~~(b)~~ (d) (1) Not less than seven days after the obligee or public
 2 office has served a notice of intent to apply for an income withholding
 3 order pursuant to subsection ~~(f)~~ (h), the obligee or public office may
 4 apply for an income withholding order by filing with the court an
 5 affidavit stating: (1) The date that the notice was served on the
 6 obligor and the manner of service; (2) that the obligor has not filed
 7 a motion and to stay issuance of the income withholding order or,
 8 if a motion to stay has been filed, the reason an income withholding
 9 order must be issued immediately; (3) a specified amount to be
 10 withheld by the payor to satisfy the order of support and to defray
 11 any arrearage; and (4) ~~if subsection (h)(2) applies~~ except in title
 12 IV-D cases, that the amount of the arrearage as of the date the
 13 notice to the obligor was prepared was equal to or greater than the
 14 amount of support payable for one month. In addition to any other
 15 penalty provided by law, the filing of such an affidavit with knowl-
 16 edge of the falsity of a material declaration is punishable as a
 17 contempt.

18 (2) Upon the filing of an affidavit pursuant to subsection ~~(b)(1)~~
 19 ~~(d)~~(1), the income withholding order shall be issued without further
 20 notice to the obligor, hearing or amendments of the support order.
 21 Payment of all or part of the arrearage before issuance of the income
 22 withholding order shall not prevent issuance of the income with-
 23 holding order, unless the arrearage is paid in full and the order for
 24 support does not include an amount for the current support of a
 25 person. No affidavit is required if the court, upon hearing a motion
 26 to stay issuance of the income withholding order or otherwise, issues
 27 an income withholding order.

28 ~~(e)~~ (c) An income withholding order issued under this section
 29 shall be directed to any payor of the obligor and shall require the
 30 payor to withhold from any income due, or to become due, to the
 31 obligor a specified amount sufficient to satisfy the order of support
 32 and to defray any arrearage, subject to the limitations set forth in
 33 K.S.A. 1986 Supp. 23-4,109 and amendments thereto. The order
 34 shall include notice of and direction to comply with the provisions
 35 of K.S.A. 1986 Supp. 23-4,108 and 23-4,109, and amendments
 36 thereto.

37 ~~(d)~~ (f) An order issued under this section shall Upon written
 38 request and without the requirement of further notice to the obligor,
 39 the clerk of the district court shall cause a copy of the income
 40 withholding order to be served on the payor and returned by the
 41 officer making service in the same manner as an order of at-
 42 tachment in any manner permitted for service of summons and
 43 petition by article 3 of chapter 60 of the Kansas Statutes Annotated

1 and amendments thereto.

2 (e) (g) An income withholding order issued under this section
3 shall be binding on any existing or future payor on whom a copy
4 of the order is served and shall require the continued withholding
5 of income from each periodic payment of income until further order
6 of the court. If the obligor changes employment or has a new
7 source of income after an income withholding order is issued
8 by the court, the new employer or income source, if known,
9 must be served a copy of the income withholding order. At any
10 time following issuance of an income withholding order, the obligee,
11 obligor or public office may request service of a copy of the income
12 withholding order on any payor without the requirement of prior
13 further notice to the obligor.

14 (f) (h) No sworn affidavit shall be filed with the court issuing
15 the support order pursuant to subsection (b) unless it contains
16 a declaration that *Except as provided in subsection (i) (k), at any*
17 *time following entry of an order for support the obligee or public*
18 *office has served may serve upon the obligor a written notice of*
19 *delinquency because an arrearage exists in an amount equal*
20 *to or greater than the amount of support payable for one month*
21 *and that intent to apply for issuance of an income withholding order,*
22 *provided that the case is a title IV-D case or that the requirement*
23 *of subsection (a)(1) has been met. The notice shall be served*
24 *on the obligor by certified mail, return receipt requested, or in the*
25 *manner for service of a summons pursuant to article 3 of chapter*
26 *60 of the Kansas Statutes Annotated at least seven days before the*
27 *date the affidavit is filed. If service is by certified mail, a copy of*
28 *the return receipt shall be attached to the affidavit. The notice of*
29 *delinquency served on the obligor must state: (1) The terms of the*
30 *support order and the total arrearage as of the date the notice of*
31 *delinquency was prepared; (2) the amount of income that will be*
32 *withheld; (3) that the provision for withholding applies to any current*
33 *or subsequent payors payor; (4) the procedures available for con-*
34 *testing the withholding and that the only basis for contesting the*
35 *withholding is a mistake of fact concerning the amount of the support*
36 *order, the amount of the arrearage, the amount of income to be*
37 *withheld or the proper identity of the obligor; (5) the period within*
38 *which the obligor must file a motion to stay service issuance of the*
41 *income withholding order and that failure to take such action within*
42 *the specified time will result in payors' being ordered to begin*
43 *withholding; and (6) the action which will be taken if the obligor*
contests the withholding.

In addition to any other penalty provided by law, the filing

3-26-90
VIII 5/10

1 of an affidavit with knowledge of falsity of the declaration of
 2 notice is punishable as a contempt. The obligor may, at any time,
 3 waive in writing the notice required by this subsection.

4 ~~(g)~~ (i) On request of an obligor, the court shall issue a withholding
 5 order which shall be honored by a payor regardless of whether there
 6 is an arrearage. *Nothing in this subsection shall limit the right of*
 7 *the obligee to request modification of the income withholding order.*

8 ~~(h)~~ (j) The provisions of this subsection apply only in title IV-D
 9 cases. (1) *Before entry of a new or modified order for support, a*
 10 *party may request that no income withholding order be issued pur-*
 11 *suant to subsection ~~(a)~~ (b) if notice of the request has been served*
 12 *on all interested parties and: (A) The party demonstrates, and the*
 13 *court finds, that there is good cause not to require immediate income*
 14 *withholding, or (B) a written agreement among all interested parties*
 15 *provides for an alternative arrangement.*

16 (2) *Notwithstanding the provisions of subsection ~~(h)~~(I) (j)(1), the*
 17 *court shall issue an income withholding order when an affidavit*
 18 *pursuant to subsection ~~(b)~~ (d) is filed, if the obligor does not file*
 19 *a motion to stay issuance of the income withholding order if*
 20 *an arrearage exists in an amount equal to or greater than the*
 21 *amount of support payable for one month.*

22 (3) *If an affidavit pursuant to subsection ~~(b)~~ (d) is filed, there*
 23 *is no arrearage or the arrearage is less than the amount of support*
 24 *payable for one month, and the obligor files a motion to stay issuance*
 25 *of the income withholding order based upon the court's previous*
 26 *finding of good cause not to require immediate income withholding*
 27 *pursuant to subsection ~~(h)~~(I) (j)(1), the obligor must demonstrate the*
 28 *continued existence of good cause. Unless the court again finds that*
 29 *good cause not to require immediate income withholding exists, the*
 30 *court shall issue the income withholding order.*

31 (4) *If an affidavit pursuant to subsection ~~(b)~~ (d) is filed, there*
 32 *is no arrearage or the arrearage is less than the amount of support*
 33 *payable for one month, and the obligor files a motion to stay issuance*
 34 *of an income withholding order based upon a previous agreement*
 35 *of the interested parties for an alternative arrangement pursuant to*
 36 *subsection ~~(h)~~(I) (j)(1), the court shall issue an income withholding*
 37 *order, notwithstanding any previous agreement, if the court finds*
 38 *that:*

39 (A) *The agreement was not in writing;*

40 (B) *the agreement was not approved by all interested parties;*

41 (C) *the terms of the agreement or alternative arrangement are*
 42 *not being met;*

43 (D) *the agreement or alternative arrangement is not in the best*

1 interests of the child; or

2 (E) the agreement or alternative arrangement places an unnec-
3 essary burden upon the obligor, obligee or a public office.

4 (5) The procedures and requirements of K.S.A. 23-4,110 and
5 amendments thereto apply to any motion pursuant to subsection
6 ~~(h)(3)~~ or ~~(h)(4)~~ (j)(3) or (j)(4).

7 ~~(i)~~ (k) (1) An ex parte interlocutory order for support may be
8 enforced pursuant to subsection ~~(e)~~ (b) or (c) only if the obligor has
9 consented to the income withholding in writing.

10 (2) An ex parte interlocutory order for support may be enforced
11 pursuant to subsection ~~(b)~~ (d) only if 10 or more days have elapsed
12 since the order for support was served on the obligor.

13 (3) Any other interlocutory order for support may be enforced
14 by income withholding pursuant to this act in the same manner as
15 a final order for support.

16 (4) No bond shall be required for the issuance of an income
17 withholding order to enforce an interlocutory order pursuant to this
18 act.

19 Sec. 3. K.S.A. 23-4,110 is hereby amended to read as follows:
20 23-4,110. (a) ~~An obligor may prevent an income withholding~~
21 ~~order issued under this section from being served on the payor~~
22 ~~by filing with the court a motion to stay service of the with-~~
23 ~~holding order and serving a copy of the motion on the obligee~~
24 ~~or public office filing the notice of delinquency within seven~~
25 ~~days after being served with the notice of delinquency. The A~~
26 ~~motion to stay issuance of the income withholding order must be~~
27 ~~filed with the court and a copy served on the obligee or public office~~
28 ~~within seven days after service on the obligor of a notice pursuant~~
29 ~~to subsection ~~(f)~~ (h) of K.S.A. 23-4,107 and amendments thereto.~~
30 ~~Except as provided in subsection ~~(f)~~ (j) of K.S.A. 23-4,107 and~~
31 ~~amendments thereto, the grounds for obtaining the stay shall be~~
32 ~~limited to a showing of a mistake of fact in the notice of delin-~~
33 ~~quency concerning the amount of the order for support, the amount~~
34 ~~of the arrearage, the amount of income to be withheld or the proper~~
35 ~~identity of the obligor. If the obligor files a motion to stay service~~
36 ~~of the income withholding order, the obligor The motion shall~~
37 ~~specify the mistake of fact alleged to be the basis for the motion.~~
38 ~~If the amount of the order for support or the amount of the arrearage~~
39 ~~is challenged, the obligor motion shall specify the amount of the~~
40 ~~order for support or the arrearage which is uncontested. In addition~~
41 ~~to any other penalty provided by law, filing a motion to stay with~~
42 ~~knowledge of the falsity of any material declaration or without spec-~~
43 ~~ifying the uncontested amount of the order for support or the ar-~~

1 rearage, when required, is punishable as a contempt.

2 (b) If the obligor files a motion to stay service of the with-
 3 holding order, the court, upon notice of the date, time and
 4 place of hearing to the obligor and the obligee or public office that
 5 filed the affidavit, shall hear the matter within 14 days after the
 6 obligor's motion to stay issuance of the income withholding order
 7 is filed with the court. The court shall enter an order granting
 8 or denying relief, amending the notice of delinquency or oth-
 9 erwise resolving the matter. If the court finds that an arrearage
 10 existed when the notice of delinquency was served in an
 11 amount at least equal to one month's support obligation, the
 12 court shall order immediate service of the order for withhold-
 13 ing. If the court cannot promptly resolve any dispute over the
 14 total amount of the arrearage, the court shall order immediate
 15 service of the order for withholding if the undisputed arrearage
 16 is at least equal to the amount of one month's support obligation
 17 and may continue the hearing on the disputed arrearage. In
 18 any case, the court must notify

19 (c) (1) If a motion to stay has been filed and the identity of the
 20 obligor is not contested, the obligee, obligor or public office may
 21 apply for immediate issuance of an income withholding order pur-
 22 suant to subsection (b) (d) of K.S.A. 23-4,107 and amendments
 23 thereto pending resolution of the contested issues. The affidavit shall
 24 specify an amount sufficient to satisfy the order for support or the
 25 arrearage only to the extent that the amount of the order for support
 26 or the arrearage is not contested. A copy of the affidavit shall be
 27 served on the obligor.

28 (2) Whenever an affidavit has been filed as provided in this
 29 subsection, the court shall immediately issue the income withholding
 30 order.

31 (d) If the court cannot promptly resolve all issues, the court may
 32 continue the hearing on the unresolved issues, provided that within
 33 45 days of the date the notice was served on the obligor the court
 34 notifies the obligor and the obligee or public office of whether or
 35 not the withholding is to occur within 45 days of the date the
 36 obligor was served the notice of delinquency. If the court up-
 37 holds the issuance of a withholding order in a contested case, the
 38 court must include in its order notice of the time within which the
 39 withholding will begin and the information given to the payor as
 40 required in K.S.A. 1985 Supp. 23-4,108 and 23-4,109, and amend-
 41 ments thereto.

42 Sec. 4. K.S.A. 23-4,113 is hereby amended to read as follows:
 43 23-4,113. (a) If an obligee is receiving income withholding payments

3-26-90
 VIII 8/10

1 under this act, the obligee shall give written notice of any change
2 of address, within seven days after the change to the public office,
3 clerk of the district court or court trustee through which the obligee
4 receives the payments.

5 (b) If support rights are assigned to the secretary of social and
6 rehabilitation services pursuant to K.S.A. 39-709 and amendments
7 thereto, the obligee shall serve a ~~copy of any notice of delin-~~
8 ~~quency filed pursuant to this act~~ on the secretary of social and
9 rehabilitation services *a copy of any order for support providing for*
10 *immediate income withholding or any notice of intent to apply for*
11 *issuance of an income withholding order*. If current support or all
12 or a part of the arrearage remains assigned to the secretary of social
13 and rehabilitation services pursuant to K.S.A. 39-709 and amend-
14 ments thereto and subject to K.S.A. 60-2403 and amendments
15 thereto and the secretary has on file with the court a notice of
16 assignment as provided for in K.S.A. 39-754 and amendments
17 thereto, payments from the payor shall be disbursed as the notice
18 of assignment directs. When the secretary of social and rehabilitation
19 services is no longer authorized to receive payments for the obligee,
20 the secretary shall provide written notice to the court trustee or
21 clerk of the court disbursing the payments to redirect all or part of
22 the payments to the obligee.

23 (c) The obligee or public office shall provide written notice to
24 the court trustee or clerk of the court of any other support payments
25 made, including but not limited to a setoff under federal or state
26 law, a collection of unemployment compensation pursuant to K.S.A.
27 44-718 and amendments thereto or a direct payment from the ob-
28 ligor. The clerk of the court issuing the support order or other
29 designated person shall record the amounts reported in such notices.

30 (d) Any public office and clerk of court which collects, disburses
31 or receives payments pursuant to orders for withholding shall main-
32 tain complete, accurate and clear records of all payments and their
33 disbursement. Certified copies of payment records maintained by a
34 public office or clerk of court shall, without further proof, be admitted
35 into evidence in any legal proceedings which concern the issue of
36 support.

37 Sec. 5. K.S.A. 23-4,114 is hereby amended to read as follows:
38 23-4,114. An obligor whose income is being withheld or who has
39 been served with a notice of ~~delinquency under this act~~ *of intent*
40 *to apply for issuance of an income withholding order* shall provide
41 written notice to the obligee, the public office, or the clerk of court
42 of any new payor or change of address, within seven days of the
43 change.

3-26-90
VIII 9/10

1 Sec. 6. K.S.A. 23-4,130 is hereby amended to read as follows:
2 23-4,130. (a) No later than 10 days after the date a support order
3 is entered pursuant to K.S.A. ~~1985 Supp.~~ 23-4,129 and amendments
4 thereto, the agency shall serve upon the obligor, a ~~notice of de-~~
5 ~~linquency notice~~ as provided for in subsection ~~(f)~~ (h) of K.S.A. ~~1985~~
6 ~~Supp.~~ 23-4,107 and amendments thereto. The notice shall also advise
7 the obligor that income withholding was requested on the basis of
8 a support order of another jurisdiction. As appropriate, the agency
9 shall then file the affidavit provided for in subsection ~~(b)~~ (d) of K.S.A.
10 ~~1985 Supp.~~ 23-4,107 and amendments thereto ~~to establish an in-~~
11 ~~come withholding order.~~ If, in accordance with subsection (b) of
12 K.S.A. ~~1985 Supp.~~ 23-4,110 and amendments thereto, the obligor
13 contests the ~~establishment~~ *issuance* of an income withholding order,
14 the court must hold a hearing and render a decision within 45 days
15 of the date of service of the notice of ~~delinquency~~ on the obligor.

16 (b) If the obligor seeks a hearing to contest the proposed income
17 withholding, the agency shall immediately notify the requesting
18 agency of the date, time and place of the hearing.

19 Sec. 7. K.S.A. 23-4,106, 23-4,107, 23-4,110, 23-4,113, 23-4,114
20 and 23-4,130 are hereby repealed.

21 Sec. 8. This act shall take effect and be in force from and after
22 ~~January~~ October 1, 1990, and its publication in the statute book.

3-26-90
VIII 10/10

The Atchison, Topeka and Santa Fe Railway Company



ONE SANTA FE PLAZA

920 Southeast Quincy Street
Topeka, Kansas 66612-1116

P. O. Box 1738
Topeka, Kansas 66601-1738
913/357-3721

MEMORANDUM

TO: Senate Judiciary Committee

4

FROM: Nola F. Wright, Attorney, The A.T. & S.F. Ry. Co.
Patrick R. Hubbell, Director of Public Affairs,
Kansas Railroad Association

RE: Amendment of Attorney Fees Statute, K.S.A. 66-233

HB 2753

DATE: March 26, 1990

1. On September 7, 1984 at approximately 11:00 a.m., a fire began near Chelsea, Kansas. No one saw the fire start. At the same place where the fire began, Gilbert Corporation was hired to do dirt work for the movement of the track and was doing some clean-up work in that area. Ron Lair, an employee of Gilbert Corporation, was operating a front end loader at the proximate area where the fire began. He gave a statement to the Santa Fe on September 13, 1984 that fire started after a Santa Fe train went by, but he did not see how the fire started. The train crew did not see a fire start, and the engineer of the train that passed Mr. Lair gave a statement that there had been no trouble with the engines or the train on the day of the fire.
2. Approximately 13,444 acres of pastureland, houses, buildings, and fences were burned between El Dorado and Chelsea, Kansas. The fire burned for approximately 10-1/2 miles, proceeding north. The Santa Fe received 41 claims for damages as a result of this fire, and all of them, with the exception of those parties represented by the Connell Law Firm, were expeditiously settled. Those parties were Frank Strait, John Cameron, Mary K. Vestring, and Walnut Valley State Bank.
3. Santa Fe Claim Agent, Sam Peacock, within one week of the fire sent claim forms to the above-listed individuals. Investigation by the Santa Fe Claim Department as to the cause of the fire and the damages to property was immediately commenced by Claim Agents Sam Peacock and Mike P. Smith. They called in Clinton Owensby, a pastureland and fire damage expert from Kansas State University, who viewed the area in November of 1984. He again viewed the area in March of 1985, with Mr. Strait's permission. Mr. Strait also accompanied Dr. Owensby on the property to point out particular damage issues. Dr. Owensby recommended Dr. Wayne Geyer, Forestry Consultant from K.S.U., to use as an expert on a destruction of a planted shelterbelt. Three quarters of the shelterbelt was involved in the fire with varying degrees of destruction. It was approximately one mile long and was about 30-40 years old. Dr. Geyer viewed the shelterbelt on December 22, 1984, Christmas weekend, and spent eight hours walking the tree line and examining the

Senate Judiciary Committee
3-26-90
Attachment IX
page 1 of 7

destruction. Even Strait had not completed an itemized claim form, he was demanding that the shelterbelt in and of itself, excluding all other damages, was worth \$1,000,000. Dr. Geyer told Santa Fe that the total damage to the shelterbelt could not be evaluated until that fall when the trees had a chance to go through another growth in order to determine the extent of the damage.

4. On July 29, 1985, Mr. Strait called Santa Fe Claim Agent Mike P. Smith and said he was ready to discuss settlement of the claim, stating that he had \$225,000 of out-of-pocket expenses, and that he wanted \$1,102,964.60 for the shelterbelt damage alone. This date, July 29, 1985, was the first demand that we had gotten from Mr. Strait.
5. Mr. Smith continued to maintain open communication with Mr. Strait about settlement.
6. The last week of September, 1985 Dr. Wayne Geyer, Forestry Consultant, came back to look at the tree damage after it had gone through a spring growth. Dr. Geyer took photographs, and they were all sent to Mr. Strait. However, before Mr. Geyer was able to prepare his report, Strait filed his lawsuit without further notice to the Santa Fe and without constructive negotiations as to settlement on October 2, 1985. He was represented by the Connells.
7. On November 20, 1985, the plaintiff then amended his Petition to name the individual crew members as party defendants as well.
8. On November 20, 1985, John Cameron filed suit against the Santa Fe and individual train members.
9. September 3, 1986 two important things happened: (1) Santa Fe Attorney Tom Conklin (who is now a District Judge), Jim McKay, and Claim Agent J. H. Wellman traveled to El Dorado and met with Mr. Strait and Mr. Connell. Mr. Strait was offered \$380,000 for settlement. Strait refused it, stating that he would take nothing less \$1,000,000.
10. Mr. Conklin and Mr. Wellman also met with John Cameron and Attorney Connell. Cameron was offered \$60,000, and Cameron demanded \$80,800.
11. On the same day of September 3, 1986, Strait and Cameron both filed a second Amended Petition bringing in Gilbert Central Corporation and Ronald Lair as named defendant, claiming that Gilbert Central Corporation and its employee Ronald Lair were guilty of negligence and were reckless and

3-26-90

IX 2/7

wanton in the operation of construction machinery which set the fire and caused destruction to the plaintiff's land and personal property.

12. In answering Interrogatories propounded by Gilbert Central Corporation and Ronald Lair, the plaintiffs stated again that he was claiming that Gilbert Central Corporation and Ron Lair started the fire.
13. Shortly thereafter, approximately in April of 1987, Hartford Insurance Company intervened seeking a subrogation claim against the defendant Santa Fe and Gilbert Central Corporation and Ron Lair because they had paid over \$12,000 to Frank Strait for damage to his buildings as a result of the fire. That claim was settled and Santa Fe reimbursed Hartford \$10,750.
14. Mr. Ronald Lair moved from the State of Kansas after this fire, and he was not located until the latter part of 1986. He was deposed on December 30, 1986, and his deposition testimony substantiated plaintiff's claim that Santa Fe started the fire. The Santa Fe then amended its Answer in April of 1987 to admit liability.
15. In February of 1987 a settlement proposal of \$430,000 was submitted to the plaintiff and his counsel, and again was rejected with the counter demand of \$1,000,000 and no less. This makes the third good faith offer that the Santa Fe made wherein the plaintiff would not come down from \$1,000,000.
16. It became clear to the Santa Fe attorneys that Mr. Strait would settle for nothing less than \$1,000,000, and that no compromise could be reached between the \$430,000 and \$1,000,000, even though the Santa Fe attorneys had settlement authority for \$650,000 and was willing to go up to that amount if Mr. Strait had indicated any movement off of his \$1,000,000. The attorney who was primarily responsible for the case when suit was filed was Tom Conklin, who is now a District Court Judge for the Third Judicial District. Mr. Conklin had received authority from the railroad to settle this matter up to the amount of \$650,000. He will testify that he was prepared to offer that amount. However, Strait never gave any indication that he would be willing to come off of the \$1,000,000 settlement demand, and Mr. Conklin determined that it was futile to keep upping the settlement offer if Mr. Strait gave no indication whatsoever of reaching a compromise.
17. The Santa Fe attorneys were ethically obligated to the railroad to explore every avenue in order to determine whether or not the railroad was, in fact, responsible for the start of the fire. Up until the deposition of Mr. Lair was taken, there was a viable dispute as to whether or not the Santa Fe or Gilbert Corporation started the fire. Additionally, Strait and the other plaintiffs were all claiming punitive damages.

18. The case proceeded to trial in June of 1987. The plaintiff, Frank Strait, claimed specific items of damage in the amount of 1.6 million dollars. His primary damage being the destruction of the shelterbelt, in claimed amount of 1.1 million dollars. The defendant Santa Fe put on through its experts that Strait was damaged in the amount of \$250,000. The jury was instructed that they could not return a verdict of more than 1.6 million dollars, nor less than \$250,000. They returned a verdict of \$646,561.73 on June 19, 1987, 45% of what Strait asked. The Judge presiding over this trial was Page W. Benson. His brother, George Benson, was also a claimant in the 1984 fire and was paid money for damages.
19. On his last day of the bench, Judge Page Benson heard plaintiff Strait's Motion for attorney fees. The Connells had Bud Fanning, a Wichita attorney, testify and it was his opinion that the Connells should be awarded a minimum of \$160,000, stating that these cases are usually done on a contingency basis. Judge Benson agreed with Mr. Fanning and awarded the plaintiff attorneys fees in the amount of \$160,000.
20. Because of the short notice of the hearing, defendant Santa Fe filed a Motion for Rehearing, and it was granted. The Court also ordered the Connells to produce an itemized statement which showed O. J. Connell as having 405.4 hours and Tim Connell with 122.1 hours in the case for a total of 527.5 total hours, and 15% unrecorded time. Two local El Dorado attorneys testified that based upon their timesheets that the Connells should receive approximately \$50,000 in fees. This was based upon local hourly rates in El Dorado.
21. After hearing this evidence, Judge Benson did reduce the original award of attorney fees from \$160,000 to \$153,539.32. This averages out that the Connells each received \$291.00 for every hour they spent on the case. The Connells also testified that approximately 15% of their time was "unrecorded" which the local El Dorado attorneys testified was not common. However, if you make the calculations that Attorney O. J. Connell received \$150.00 an hour, and he spent 405.4 hours, plus 60.8 hours (which would be 15% of unrecorded time), for a total of 466.2 hours, he would have received \$69,930. Attorney Tim Connell testified he spent 122.1 hours at \$100.00 per hour for \$12,210. Plus they had trial expenses of \$8,839, for a total attorney fee and expense award of \$90,979. However, the Court awarded them \$153,539.92, giving them an unexplained windfall of \$35,180.32. Under Kansas case law, an attorney is not supposed to get an unexpected windfall. However, the Court of Appeals held that even though they didn't necessarily agree with the trial court's calculation, they did not find it to be an abuse of discretion and the attorney fees of \$153,539.92 was upheld.

22. It is also important to remember that at the same time Strait was being litigated, three other lawsuits were pending. Much of the work done in the Strait case was applied to Cameron, Vestring, and Walnut Valley. First of all, Mr. Cameron was offered \$60,000 on September 3, 1986 which was rejected. Cameron claimed damages of \$180,000, plus \$50,000 in punitive damages and attorney fees.
23. The case was settled for a total of \$106,400, and over \$20,000 of that was for payment of attorney fees.
24. Walnut Valley State Bank, represented by the Connell Firm, filed suit on 8-29-86. Walnut Valley State Bank owned land which had been repossessed from Fred and Jesse Silver. The settlement for property damages was for \$25,000. The Court awarded \$10,263.89 to the Connells for fees and expenses.
25. The Connells also represented Mary K. Vestring for property damages arising out of the September 7, 1984 fire. Her claim was settled for \$33,597. However, the Court awarded Connells \$13,760.40. Therefore, out of this one fire of September 7, 1984 the Connells received a total of \$199,563.29 from the Santa Fe in fees and expenses.
26. On February 28, 1988 another fire was started near Cassoday, Kansas. Since the Connells had appeared to effectively argue before the trial court and the court of appeals that they should be awarded over \$150,000 fees in the Strait case because the Santa Fe "failed to admit liability right off the bat", the Santa Fe did admit liability right away and settlement negotiations were entered into in earnest. However admission of liability made no difference. The fire started on or near the property of Stanley Greene in Cassoday, Kansas. The Connells were retained by Mr. Greene almost immediately, and the Connells controlled the settlement negotiations from that point. Santa Fe Claim Agent Barrett Hatches made several attempts to contact the Connells to talk about settlement negotiations, but his phone calls were unreturned. Suit was then filed on January 18, 1989 even though Santa Fe admitted liability and had made many efforts to talk settlement. The plaintiff demanded \$447,836 to settle his property damage claim. Once suit was filed, Mr. Greene on two occasions attempted to speak with Santa Fe Claim Agent Sam Peacock, without his attorneys present, to try and settle the suit directly with Mr. Peacock expressing his dissatisfaction with the attorneys involvement. He was informed that Mr. Peacock could not talk with him because he had retained counsel. Additionally, during discovery, Mr. Greene again spoke with the Santa Fe attorney, Nola Wright, and expressed his dissatisfaction and wanted to know if he could settle the suit with her.

3-26-90
IX 5/1

27. The suit was eventually settled for \$200,000 to pay for Mr. Greene's property damage claim, and \$50,000 went to the attorneys for their fees and expenses.
28. The Greene case illustrates that even though the railroad attempted to negotiate a claim immediately by admitting liability, with interference of attorneys and the onset of litigation, the settlement of the claim was delayed for more than a year and half, to the frustration of the defendant and of the plaintiff himself. The railroad should not be required to pay fees for attorneys that produced only delay and frustration of the landowner.
29. The above scenario represents why all of the other 20 states have repealed similar attorney fee statutes.

3-26-90
TX 6/7

Claims Paid Arising Out of Fire of 9-7-84

<u>Name</u>	<u>Date Paid</u>	<u>Amount</u>
A. Joseph & Potwin Land Co.	10-01-85	\$ 7,145.50
*F. Strait	06-24-87	817,611.59
	(includes attorney fees)	
*R. Vestring	12-28-84	30,505.00
*M. Vestring	05-18-89	33,597.00
*V. Auer & Walnut Valley State Bank	12-07-88	25,000.00
G. Lucas	06-17-85	22,065.00
G. S. Benson	10-01-85	12,970.98
J. W. Augustine	06-27-88	18,000.00
H. Helmer & R. L. Wyss	12-20-84	8,100.00
H. A. Milbourn	05-02-85	9,300.00
R. Martin	05-03-85	16,710.00
T. Hinnen	04-12-85	10,901.55
C. Heibert	12-09-85	10,982.39
E. E. Grant	05-31-85	9,145.00
M. Johnson	04-22-85	4,817.50
G. Seiver	05-15-85	14,050.57
J. Whitmore	04-23-85	3,190.00
M. A. Whitmore	04-22-85	5,719.97
L. A. Janzen	05-03-84	9,480.00
H. E. Taylor	04-09-85	3,500.00
B. A. Greene	04-03-85	11,208.00
R. E. Vogelman	05-08-85	24,080.00
E. Teter	06-29-85	19,733.00
E. Teter	07-19-85	15,543.40
Silver Plumbing & Heating	04-30-85	2,617.50
F. Silver	03-13-86	35,000.00
E. Wiebe	10-02-85	600.00
A. Busehitz	10-02-85	15,566.20
A. Busehitz & G. Theissen	05-13-85	3,393.00
E. Thierstein	05-07-85	1,859.40
Langenegger Bros.	07-19-85	16,120.00
S. Braman	05-31-85	377.50
C. A. Doile	05-31-85	100.00
J. S. Cunningham	06-04-86	16,500.00
C. D. Pence	02-13-86	300.00
M. Alfonso	02-20-86	300.00
F. Wettman	03-12-86	300.00
* J. Cameron		106,400.00
	(includes attorney fees)	

*Represented by Connell Law Firm.

3-26-90
IX 7/7