

Approved _____

Date

2/12/91

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at _____
Chairperson

9:00 a.m./~~pm~~ on MONDAY, FEBRUARY 11, 1991 in room 529-S of the Capitol.

~~All~~ members ~~xxxx~~ present ~~xxxxxx~~

Senators Francisco, Kerr, Parrish, Reilly, Salisbury, Strick and Yost.

Committee staff present:

Bill Wolff, Research Department
Fred Carman, Revisors Office
Louise Bobo, Secretary

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Bill Nichols, Commerce Bank & Trust Company
Jeffrey Sonnich, KS-NEBR League of Savings Institutions
Paul Shelby, Office of Judicial Administration
Sherlyn K. Sampson, Clerk of District Court, Douglas County
Ron Smith, Kansas Bar Association
Joe Huerter, Attorney

Chairman Bond called the meeting to order at 9:04 a.m.

SB 49 - An Act concerning garnishments.

Jim Maag, Kansas Bankers Association, opened the hearing by informing the committee that this bill had been requested by the State Affairs Committee of the Kansas Bankers Association in response to steadily increasing operational costs for the banks in responding to garnishment orders. (Attachment 1) Mr. Maag then introduced Bill Nichols, Commerce Bank and Trust Company, who addressed the committee in support of SB 49. Mr. Nichols stated that the number of non-wage garnishment orders had dramatically increased over the last three years and presented data to substantiate his contention. He further stated that each of these garnishment orders took from 10 to 30 minutes of a clerk's time and the banks needed reimbursement to cover the costs being incurred. (Attachment 2)

Discussion followed Mr. Nichols' testimony. The Chairman inquired whether SB 49 would strictly be a way to cover costs or is it to discourage "fishing expeditions" by creditors. Mr. Nichols replied that the benefit would be mainly financial, however, it would discourage filing of garnishments with no validity. He continued that the responsibility for filing valid garnishment orders should be on the attorney rather than on the Clerk's office. A committee member asked if any attorney had had a complaint filed against him for "fishing." Mr. Nichols replied that during his seven years tenure on the bar ethics committee, he was not aware of any such complaints. A member also wondered if a garnishment fee could be a deterrent to collecting small claims. Mr. Nichols observed that the garnishment process cost the bank the same regardless of the amount of the claim. A member asked Mr. Nichols if any thought had been given to charging a reasonable percentage. Mr. Nichols and Mr. Maag both agreed that they were not locked into a firm amount and would be amenable to a change. The question was also raised by a member as to whether there would be a fee on unsuccessful as well as successful garnishments. Mr. Nichols answered that the fee would be on all garnishments.

Jeffrey Sonnich, KS-Nebr League of Savings Institutions, appeared before the committee in support of SB 49. He stated that his organization favored a non-refundable fee to accompany the order for garnishment. He further stated that, while it might be difficult for the judgment debtor to locate assets, he did not think financial institutions should be used as an information center. (Attachment 3)

Paul Shelby, Office of Judicial Administration, appeared before the committee and presented three amendments to SB 49. The first would exempt public offices, collecting

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 a.m./p.m. on MONDAY, FEBRUARY 12, 1991.

child support and maintenance obligations, from the nonrefundable fee. The second change would establish a standardized fee, if a nonrefundable fee is required. Mr. Shelby also proposed changing the word "deposits", Page 2, line 12, to "pays" and also proposed clarification of language on page 2, line 15. (Attachment 4)

Sherlyn K. Sampson, Clerk of District Court, Douglas County, addressed the committee on behalf of Court Clerks and Administrators. She stated that clerks did not want to be bookkeepers for businesses; however, she understood why banks wanted the bill and, therefore, suggested several amendments to the bill including; (1) substituting the word "pay" for "deposit" on page 2, line 12; (2) establish a set nonrefundable fee; (3) if chapter 61 cases are included in SB 49, specify if Small Claims are to be included. (Attachment 5)

Ron Smith, Kansas Bar Association, informed the committee that his organization opposed this bill for several reasons. He stated that SB 49 seemed designed to deter lawyers from filing garnishments. Mr. Smith said that the lawyer's client would end up paying the garnishment fee and the end result would be that business simply would not sue on bad debts. Mr. Smith concluded that the loser would be the citizens who cannot collect overdue debts and the winner would be the person who incurs the debt and wont pay it. Mr. Smith also opined that the \$50.00 fee in this bill far exceeds the cost of processing garnishment. (Attachment 6)

Joe Huerter, Topeka Attorney, requested to speak before the committee. Mr. Huerter stated several reasons for being in opposition to this bill. He said that, according to the law, not more than two garnishments could be filed within a thirty day period. He also thought that the banks should not charge a fee but accept that cost as part of conducting business. Mr. Huerter concluded by stating that it would take an extremely large judgment to support garnishment fees.

Minutes of Wednesday, February 6 and Thursday, February 7, were approved on a motion by Senator Reilly with Senator Yost seconding the motion. The motion carried.

The meeting adjourned at 10:00 a.m.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 11, 1991

TO: Senate Committee on Financial Institutions and Insurance
RE: **SB 49** - Allowing a nonrefundable fee for garnishment orders

Mr. Chairman and Members of the Committee:

SB 49 addresses a continuing and growing problem for the banking industry in Kansas. The amount of time which banks must spend responding to garnishment orders has steadily increased and has thus added significant operational costs for the banks. Therefore, the State Affairs Committee of the Kansas Bankers Association has requested the introduction of **SB 49** as one possible solution to this problem.

In addition to the testimony which will be presented by Bill Nichols, Senior Vice President and General Counsel for Commerce Bank of Topeka, I have also attached copies of two letters from Kansas bankers which speak to the garnishment problem. The KBA and its member banks throughout the state respectfully request that the committee give favorable consideration to **SB 49**.


James S. Maag
Senior Vice President

*Attachment 1
FI + I
2/11/91*



FIRST NATIONAL BANK OF WINFIELD

February 7, 1991

Senate Financial & Insurance Committee

Re: Senate Bill #49 and data concerning
Customer Garnishments

Dear Mr. Chairman and Members of the Committee:

I am pleased to see that there is a Senate Bill that is to be introduced concerning garnishments and the allowance for assessment of fees for the handling of garnishments.

I am submitting to the Committee written testimony, because I feel the hours spent researching garnishments should be reimbursed by the garnishor. As you are aware on a garnishment, we have the responsibility to withhold from any appropriate account any funds on deposit and if we inadvertently miss an account or don't hold the funds we will be held liable for the amount of the garnishment.

It would appear, that 30-40% of all garnishments received by this Bank are non-customer related garnishments, merely a garnishor wishing to get lucky and find an account with a positive balance.

Upon receipt of the garnishment, it will normally take 30 minutes to determine customer status, account balances, and determine if customer has accounts that can be levied. As you know joint accounts and child custodian accounts all have different regulation for garnishments and they take additional time. However, it takes generally around 30 minutes to check this information, verify and put the holds on. For Bookkeeping to initiate the holds and check for any holds as further checks come in on the account those checks are generally rejected as exceptions because of the hold and that necessitates 10-15 minutes each time that happens and if the hold is on for a 2 or 3 week period, it can generate any where from 30 minutes to an hour for one account.

On the pay out of the garnishments, it will normally take an additional 15 to 20 minutes to do the paper work, release the hold and issue the checks.

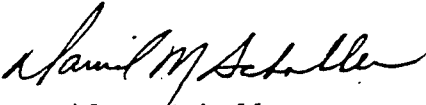
It would appear that the total garnishment can take any where from one hour to 1½ hours depending upon the number of accounts involved, size

of the garnishment and the number of accounts that had to be reviewed.

I've researched the garnishments received by the bank for the following years, 1988-32 garnishments, 1989-24 garnishments and 1990-38 garnishments. So as you can see it would take one person approximately one week a year just to handle garnishments.

As you see, garnishments are a complex legal matter, and I think you now agree that banks and other deposit institutions need to be reimbursed for services rendered.

Sincerely,



David M. Schaller
Sr. Vice Pres.

DMS:jlm



Merchants
A MidAmerican Bank

January 29, 1991

Legal Department
David J. Dunlap, Counsel

Distinguished Members of the Senate
Financial Institutions and Insurance
Committee

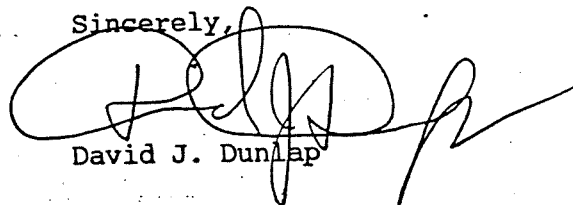
Salutations:

I have just received a letter from Ron Smith, Legislative Counsel for the Kansas Bar Association regarding Senate Bill 49. This bill proposes to allow a \$50 fee payable to the financial institution who is a garnishee for non-wage funds. I would like to state that I support such a bill and disagree with the official KBA position.

As a banker and a member of the Bar, I can see both sides of the story. The Bar seems to be worried that a non-refundable fee would hamper the collection of judgments and would hinder service to those clients who may need the enforcement of these judgments the most. However, I see this bill not as a bankers bill or as a detriment to collection attorneys and their clients, but as a way of slowing what is rapidly becoming a costly problem for banks and other financial institutions. I refer to those attorneys, especially those who specialize in collections, who "fish" for funds as quickly and easily as possible after judgement. With the emergence of computers, it is very easy to request several garnishments and send them all over town in order to maximize coverage for possible funds. This results in an overload at the District Clerk's office of unnecessary garnishment preparations, numerous garnishments needed to be served by the Sheriff's Office, and the financial institutions having to dedicate an employee to answer garnishments for accounts that are non-existent. While some of the local banks have not experienced a large increase of these type of "fishing" garnishments, others have had to deal with an explosion of these within the last year. Such actions are already restricted as per statute, however, we have several attorneys who find this method much easier than to examine the debtor and find out where he deposits his funds.

I speak of this subject from first hand knowledge, as some attorneys who work as in-house counsel in Topeka have developed a financial counsel group which meets monthly to discuss such problems. We have analyzed data from all of our banks and have basically felt that just such legislation is needed. If I or my fellow counsel can be of any help, please let me know.

Sincerely,



David J. Dunlap

cc: Senate Financial Institutions
and Insurance Committee Members

Main Bank, 8th & Jackson • 5th & Jackson • White Lakes, 3600 Topeka Boulevard • West Ridge, 6100 S.W. 21st
Mailing Address: P.O. Box 178 • Topeka, Kansas 66601-0178 • (913) 291-1000 • Member FDIC

1-4

Commerce Bank and Trust

February 11, 1991

Members of the Senate Committee on Financial Institution and Insurance

I am Senior Vice-President and General Counsel to Commerce Bank and Trust, Topeka, Kansas. I submit this written testimony in support of Senate Bill No. 49. During the three years I have been General Counsel, I have observed a dramatic increase in the number of non-wage garnishments served on Commerce Bank. In early 1990 at my direction, Commerce Bank began compiling data to substantiate the number of garnishments being served on us, as well as data to substantiate the number of garnishment answers we made showing no account. A group of attorneys representing financial institutions (most in-house counsel) meet monthly. I asked the members of this group to begin gathering the same data concerning the extent of garnishments served on their clients. Each of the financial institutions represented, these being, Bank IV Topeka, Merchants National Bank, Fidelity State Bank, and Capital Federal Savings, joined Commerce Bank in compiling data concerning garnishments. The remaining banks, savings associations, and the credit unions in Topeka are not represented by a member of our group and did not gather data.

Certain of the statistics mentioned below are annualized figures as some financial institutions did not gather data for the entire calendar year. I feel, however, these statistics, as set forth below, are reasonably close to the actual figures for each institution during the calendar year 1990.

NAME OF INSTITUTION	# GARNISHMENTS (NON-WAGE)	# ANSWERED "NO ACCOUNT"	PERCENT
Commerce Bank and Trust	508	195	38.4%
Bank IV Topeka	236	152	64.4%
Merchants National Bank	125	83	66.4%
Fidelity State Bank	31	18	58.1%
Capital Federal Savings	351	214	60.1%

Each financial institution anticipates being served with even greater numbers of garnishment orders during 1991.

Attachment 2
FI & I
2/11/91

I feel this expectation of these financial institutions is valid and is supported by the statistics contained in the reports attached to these written comments. The attached sheets are copies of computer generated reports from the Limited Actions Division of the Shawnee County District Court. These reports contained yearly figures for 1988, 1989, and 1990, and for January, 1991. These reports show the total number of civil cases filed and total number of garnishments issued during these three calendar years and for the month of January, 1991. The number of civil cases for these three years has progressively increased as follows:

1988 - 7,177 1989 - 9,625 1990 - 11,758

In January, 1991, the number of civil cases filed was 1,084, which on an annualized basis would be 13,000 filed in 1991. The number of garnishments filed for these same three years has progressively increased as follows:

1988 - 11,691 1989 - 13,497 1990 - 14,978

In January, 1991, the number of garnishments filed was 1,578, which on an annualized basis would be 18,936 garnishments filed in 1991.

The Clerk's office feels that approximately 30% of all garnishments filed are non-wage garnishments. This being the case, approximately 5,600 non-wage garnishments will be issued by the Limited Actions Division in 1991. Each of these garnishment orders has to be handled and processed by a person at the financial institution at least once, and when funds are held by the institution, at least twice.

I believe the amount of time spent in handling and processing a garnishment at Commerce Bank will range from 10 minutes to 30 minutes, depending upon the following factors:

- (1) if we withhold funds or do not withhold,
- (2) number of defendants in the lawsuit,
- (3) number of names on accounts at bank,
- (4) number of accounts at bank in name of defendant(s),
- (5) clarity of information concerning defendant as shown on garnishment order, and
- (6) extent on contact from our customer or garnishing attorney about the garnishment order.

Respectfully submitted,

William T. Nichols
Senior Vice President and
General Counsel
Commerce Bank and Trust

1988 Limited Actions, Traffic Caseload Statistics

	Civil	SC	Traffic	F & G	DWI	HV	YTD
Jan	542	70	485	1	30	3	1131
Feb	578	80	678	1	30	18	1385
March	665	99	821	3	24	28	1640
April	539	88	955	5	37	19	1643
May	621	77	784	6	31	9	1528
June	600	83	743	2	21	0	1449
July	588	69	832	8	43	24	1564
Aug	567	109	728	0	28	12	1444
Sept	648	91	682	8	5	1	1435
Oct	616	104	866	7	30	0	1623
Nov	740	85	687	0	7	0	1519
Dec	473	92	946	9	20	0	1540
Totals	7177	1047	9207	50	306	114	
Total	17901						

1988 Limited Actions Document Caseload

	Citations	Garn	Aids	Warrants	Summons	Alias	Sum	YTD
Jan	161	830	705	47				1743
Feb	247	726	630	40				1643
March	275	836	552	53				1716
April	259	820	557	72				1708
May	197	876	440	77				1590
June	264	856	519	66				1705
July	183	840	648	83	684		170	2608
Aug	256	1198	745	82	883		232	3396
Sept	220	1155	429	91	996		230	3121
Oct	205	1241	735	72	888		242	3383
Nov	179	1078	513	65	887		181	2903
Dec	236	1235	527	50	913		208	3169
Totals	2682	11691	7000	798	5251		1263	
Total	28685							

1989 Limited Actions Document Caseload

	Citations	Garn	Aids	Warrants	Summons	Alias	Sum	YTD
Jan	242	1273	478	131	759	231	3114	
Feb	179	1067	662	66	926	218	3118	
March	237	1313	632	85	1203	199	3669	
April	235	1114	592	52	664	248	2905	
May	321	1185	480	61	868	244	3159	
June	308	1241	737	70	1473	240	4069	
July	372	1140	488	53	888	264	3205	
Aug	436	1242	864	46	1446	489	4523	
Sept	477	895	658	48	1273	355	3706	
Oct	502	1079	677	48	945	366	3617	
Nov	505	903	698	73	1237	377	3793	
Dec	501	1045	790	34	928	697	3995	
Totals	4315	13497	7756	767	12610	3928		
Total	42873							

1989 Limited Actions, Traffic Caseload Statistics

	LA	SC	Traffic	F & G	DWI	HV	YTD
Jan	688	78	944	3	42	0	1755
Feb	599	66	524	0	27	0	1216
March	819	80	1031	4	25	0	1959
April	509	74	724	1	15	0	1323
May	798	116	1114	11	41	0	2080
June	994	85	893	7	39	0	2018
July	932	79	872	8	33	0	1924
Aug	831	114	867	6	26	91	1935
Sept	853	86	737	5	14	9	1704
Oct	963	106	981	1	54	22	2127
Nov	855	84	915	2	23	11	1890
Dec	844	91	481	5	20	0	1441
Total	9685	1059	10083	53	359	133	

1990 Limited Actions Document Caseload

	Cit	Garn	Aids	Warnt	Sumn	A/S	G/E	W/R	Subp	YTD
Jan	315	1,051	839	63	1,465	809	43	20	15	4,620
Feb	899	1,166	737	63	1,258	603	13	35	5	4,779
March	690	1,164	910	121	1,432	547	21	53	10	4,948
April	676	1,171	917	98	1,242	438	17	27	12	4,598
May	723	1,312	908	142	1,355	431	9	38	15	4,933
June	708	1,096	942	92	1,540	405	14	12	16	4,825
July	588	1,292	890	97	1,086	409	14	41	38	4,455
Aug	1,088	1,559	829	79	1,751	456	11	31	32	5,836
Sept	791	1,223	863	101	894	377	6	28	9	4,292
Oct	883	1,462	983	87	1,914	432	19	28	22	5,830
Nov	593	1,234	803	47	1,242	458	37	24	15	4,453
Dec	701	1,248	842	74	1,294	448	29	20	11	4,667
Total	8,655	14,978	10,463	1,064	16,473	5,813	233	357	200	58,236

1990 Limited Actions, Traffic Caseload Statistics

	LA	SC	TR	F&G	DU	HV	YTD
Jan	840	106	934	0	37	27	1,944
Feb	631	81	1,108	4	37	14	1,875
March	1,082	82	998	9	25	31	2,227
April	1,067	79	964	17	26	25	2,178
May	898	104	752	10	38	6	1,808
June	1,198	74	882	5	39	21	2,219
July	962	93	1,022	2	22	8	2,109
Aug	1,091	121	1,136	0	26	10	2,384
Sept	815	92	872	1	32	13	1,825
Oct	1,242	106	1,072	0	30	12	2,462
Nov	1,121	107	1,083	2	25	2	2,340
Dec	811	89	805	2	23	46	1,776
Total	11,758	1,134	11,628	52	360	215	25,147

1990 Traffic Document Caseload

	Exec	Subp	Sumn	Susp	Wrnts	Total
Jan	30	133	75	247	87	572
Feb	24	58	118	187	61	448
March	16	216	75	208	56	571
April	21	29	65	104	100	319
May	46	200	42	343	150	781
June	7	129	142	232	44	554
July	35	135	35	345	108	658
Aug	36	166	73	394	114	783
Sept	24	123	77	203	77	504
Oct	50	118	70	279	105	622
Nov	22	178	56	63	71	390
Dec						0
Total	311	1,485	828	2,605	973	6,202

1991 Limited Actions Document Caseload										
	Cit	Garn	Aids	Warnt	Sumn	A/S	G/E	W/R	Subp	YTD
Jan	1,003	1,578	1,103	103	1,634	684	86	28	20	6,239
Feb										0
March										0
April										0
May										0
June										0
July										0
Aug										0
Sept										0
Oct										0
Nov										0
Dec										0
Total	1,003	1,578	1,103	103	1,634	684	86	28	20	6,239

1991 Limited Actions, Traffic Caseload Statistics

	LA	SC	TR	F&G	DU	HV	YTD
Jan	1,084	83	849	4	25	21	2,066
Feb							0
March							0
April							0
May							0
June							0
July							0
Aug							0
Sept							0
Oct							0
Nov							0
Dec							0
Total	1,084	83	849	4	25	21	2,066

1991 Traffic Document Caseload

	Exec	Subp	Sumn	Susp	Wrnts	Total
Jan	42	154	115	162	65	538
Feb						0
March						0
April						0
May						0
June						0
July						0
Aug						0
Sept						0
Oct						0
Nov						0
Dec						0
Total	42	154	115	162	65	538

**Kansas-Nebraska
League of
Savings
Institutions**

Jeffrey D. Sonnich, Vice-President

Suite 512
700 Kansas Avenue
Topeka, Kansas 66603
(913) 232-8215

February 11, 1991

TO: Senate Financial Institutions and Insurance Committee
FROM: Jeffrey Sonnich
RE: S.B. 49 (Fee for garnishment for financial institutions)

Mr. Chairman. Members of the committee. The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear in favor of S.B. 49 which would require any party seeking to garnish deposits with financial institutions to pay a non-refundable fee not to exceed fifty dollars to the institution.

We feel that S.B. 49 attempts to address the problem that financial institutions face in dealing with "blanket" garnishment orders. In some cases, individuals will file for garnishment orders for all financial institutions in a given area in an attempt to locate any funds held by the defendant. While this is effective for those seeking collection, it is time consuming and costly for the financial institution. Current law holds that no garnishment attaching funds held by financial institutions be issued except on good faith belief of the party seeking the garnishment that funds will or are held by the financial institution. We submit that this provision is easily avoided. The amending language requiring a non-refundable fee to accompany the order for garnishment gives this provision some validity. We feel that this amendment will reduce the practice of indiscriminately blanketing all financial institutions and help defray the associated administrative costs financial institutions incur.

Although we recognize that locating funds and assets held by the judgement debtor may be difficult, we're not sure that using financial institutions as an information feedback system is the appropriate manner.

Accordingly we request that the Committee on Financial Institutions and Insurance report S.B. 49 favorably for passage.

Jeffrey Sonnich
Vice President

*Attachment 3
FI + I
2/11/91*

Senate Bill No. 49
Senate Financial Institutions and Insurance
February 11, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss Senate Bill No. 49 concerning garnishment fees for financial institutions which amends K.S.A. 60-726.

DISTRICT COURT TRUSTEE CONCERNS:

The requirement of a nonrefundable fee for each garnishment order will place a financial burden on District Court Trustees that are charged with the responsibility of enforcing child support and maintenance obligations.

The counties are responsible for funding the court trustee programs. If this proposal is approved, the court trustee programs will have only two alternatives for paying the nonrefundable fee.

1. A budget request will have to be made to the counties to provide for these fees, or
2. The cost will be passed on to the obligee or for the IV-D cases Social and Rehabilitation Services (SRS).

District Court Trustees usually do not garnish financial institutions unless they know that the support obligor has recently received a substantial sum of money, such as an inheritance, judgment, etc. The nonrefundable fee will be a detriment to this means of collecting support obligations. Usually, timing is of the essence in filing these garnishments. If the garnishment is delayed while the District Court Trustee is trying to secure the unrefundable fee from the obligee or SRS, the window of opportunity for obtaining a portion of the deposit may have passed.

We would ask that consideration be given to exempting public offices, as defined in 1990 Supp. K.S.A. 23-4,106 (h), from the nonrefundable fee if the public office is filing the garnishments for the purpose of collecting child support and maintenance obligations.

If an exemption is not possible we would ask that the amount of the nonrefundable fee be substantially reduced.

Attachment 4
7 I & I
2/11/91

Lastly, from an administrative point of view, if a nonrefundable fee is required we would recommend that the fee be standardized to simplify the garnishment process. If each financial institution is allowed to establish or change individual fees as it feels necessary, the District Court Trustee will have to verify a financial institution's garnishment fee before seeking an order of garnishment.

OTHER CONCERNS:

This bill will cause additional expense to litigants. Post judgment remedies to enforce a judgment of the court are part and parcel of the civil justice scheme. This cost will be just as much as that required to file most limited actions and small claims cases in the first place, and greater than judgments awarded in some small claims cases.

In our proposed amendments we are requesting that "deposits" be replaced by the word "pays". This change and the insertion of our proposed language on page 2, line 13, clarify the procedure for handling the fee.

Our additional amendment would exempt both indigent persons and those public offices enforcing child support and maintenance from paying the nonrefundable garnishment fee.

We respectfully request the committee to consider our recommendations and amendments favorably.

SENATE BILL No. 49

By Committee on Financial Institutions and Insurance

1-24

8 AN ACT concerning garnishments; fees for financial institutions;
9 amending K.S.A. 1990 Supp. 60-726 and repealing the existing
10 section.

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

12 Section 1. K.S.A. 1990 Supp. 60-726 is hereby amended to read
13 as follows: 60-726. (a) The written direction of a party seeking an
14 order of garnishment attaching funds, credits or indebtedness held
15 by a bank, savings and loan association, credit union or finance
16 company shall state the amount to be withheld, which shall be
17 1½ times the amount of the plaintiff's claim, in the case of pre-
18 judgment garnishment, or 1½ times the amount of the judgment,
19 in the case of postjudgment garnishment.

20
21 (b) All orders of garnishment issued in this state for the purpose
22 of attaching funds, credits or indebtedness held by a bank, savings
23 and loan association, credit union or finance company shall specify
24 the amount of funds, credits or indebtedness to be withheld by the
25 garnishee, which shall be 1½ times the amount of the plaintiff's
26 claim or 1½ times the amount of the judgment, as stated in the
27 written direction of the party seeking the order.

28 (c) The forms provided by law for an order of garnishment at-
29 taching funds, credits or indebtedness held by a bank, savings and
30 loan association, credit union or finance company shall include the
31 following statement:

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

(amount stated in direction)

35
36 (d) The forms provided by law for the answer to an order of
37 garnishment attaching funds, credits or indebtedness held by a bank,
38 savings and loan association, credit union or finance company shall
39 include the following statement:

40 "The amount of the funds, credits or indebtedness belonging
41 to or owing the defendant which I shall hold shall not exceed
42 \$_____."

(amount stated in order)

4-3

4-3

1 (e) If an order of garnishment attaches funds, credits or indebt-
2 edness held by a bank, savings and loan association, credit union or
3 finance company and the garnishee holds funds or credits or is
4 indebted to the defendant in two or more accounts, the garnishee
5 may withhold payment of the amount attached from any one or more
6 of such accounts.

7 (f) No order of garnishment attaching funds, credits or indebt-
8 edness held by a bank, savings and loan association, savings bank,
9 credit union or finance company shall be issued except on good faith
10 belief of the party seeking garnishment that the party to be served
11 with the garnishment order has, or will have, assets of the judgment
12 debtor, *and unless the party seeking the order deposits a nonre-*
13 *fundable fee, not to exceed \$50, for each order of garnishment which*
14 *shall be forwarded to the financial institution with each order of*
15 *garnishment.*

16 (g) This section shall be part of and supplemental to the Kansas
17 code of civil procedure.

18 Sec. 2. K.S.A. 1990 Supp. 60-726 is hereby repealed.

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

pays

by check or money order made payable to the bank, savings and loan association, credit union or finance company

In any case where a person by reason of poverty is unable to pay such a nonrefundable fee, and an affidavit so stating is filed or the party seeking the order is a public office, as defined in 1990 Supp.KSA 23-4,106 (h), with responsibility for enforcing child support and maintenance obligations, no fee will be required.

44

44

I am addressing you on behalf of the Kansas Association of District Court Clerks and Administrators (KADCCA). Clerks are not bookkeeping agents for businesses and other agencies, and would prefer to keep it that way. We would prefer to not have a fee per garnishment, but understand why the banks want this bill and the purpose of it. If you decide to pass this bill, we would ask the bill be amended as we have some concerns in regard to the language, specifically section (f), lines 12-15.

We feel the word "deposits" on line 12 could be misinterpreted in regard to the handling of the "deposit". The statement that the fee will be for each order and shall be forwarded to the financial institution basically states there is a fee per garnishment, therefore, there really is nothing to "deposit". If the wording were changed or deleted, there would be no chance of confusion or misinterpretation in regard to the handling of the "deposit".

We also have concerns with the phrase "not to exceed \$50.00", and would prefer a set fee be established. This could be a bookkeeping nightmare for attorneys that do a lot of garnishments. It would be hard to know your bank balance if you had numerous checks outstanding for "not to exceed \$50.00". You would not know the amount the check was actually written for until you received your bank statement.

Letting each bank set its own fee could also be a problem. Irregardless of the good faith effort on the part of the banks and the attorneys, there undoubtedly would be a lack of communication and the person doing the garnishment would not know how much the fee for a particular bank would be and would look to the clerk's office for that information. We don't want to be responsible for keeping that information on the chance we were not notified of fee changes and would in turn give out inaccurate information. Also, pro se parties doing garnishments would probably not know the fees each bank charged.

I did not interpret this bill to include Chapter 61 cases. In Douglas County, the majority of our garnishments are in Chapter 61. Should you decide to include Chapter 61, please specify if Small Claims is to be included. It would seem to take away from the purpose of Small Claims if a person paying only \$15 or \$35 to file a lawsuit has to pay \$50.00 to garnish a bank to collect the judgment.

We would also ask that you consider the precedent this law will set. When the earnings garnishment law changed to allow 30 day periods for garnishment, the employer felt the impact. It created a lot more paper work and record keeping for them. They undoubtedly would like to collect a fee also.

For all of the above reasons, we would ask that if the bill is passed, that section (f) be amended to read as follows: "...and unless the party seeking the order submits a nonrefundable fee of \$_____ for each order of garnishment by submitting a check payable to the garnishee which shall be forwarded to the financial institution with each order of garnishment".

If a request for garnishment to a financial institution was received without a fee attached, we could then interpret the above wording to allow us to return the request, unissued, to the party seeking the order of garnishment.

Sherlyn K. Sampson
Clerk of District Court, Douglas County
President-Elect, KADCCA

Attachment 5
7I + I
2/11/91



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Patti Slider, Communications Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services — IOLTA Director

SB 49
Service Fees on Garnishments

TO: Hon. Richard Bond, Chair;
Members, Senate Financial Institutions & Insurance
Committee.

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: SB 49; nonrefundable excise tax on debt collection

DATE: February 11, 1991

Mr. Chairman, and members. KBA opposes this bill for a variety of reasons.

1. Obviously the fee is aimed at deterring lawyers from filing garnishments. As with service taxes, it is not the lawyer that pays this \$50.00. It is the client of the lawyer. Generally, it is the business community, hospitals -- even other financial institutions -- which hire lawyers to collect bills. The result in many instances will be to deny other businesses and taxpayers the right to obtain funds of the debtor the judgment creditor has a lawful right to receive. Eventually, the business simply won't sue on bad debts. **The person who wins under this bill is the person who incurs the debt and won't pay it. The loser is the Kansas business community and citizens who pay taxes to fund courts and expect those court systems to provide a forum to collect overdue debts, yet the banks deny them access to the funds.**

2. The fee far exceeds the cost of processing a garnishment. Previous efforts at this sort of thing were \$5.00.¹ I realize banks must pay higher deposit insurance due to FDIC problems, but this \$50.00 fee is the wrong way to finance it.

¹Employers can withhold from a bank employee's wages for overdue child support no more than a \$5.00 per check "fee." Is the expense of a bank secretary filling out a garnishment ten times more important than a single-head of household mom and her brood?

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Attachment 6
FI + I
2/11/91

3. The fee is collected regardless whether the attorney went to extreme pains to find out from other sources the debtor indeed has a bank account. For example, the attorney could have held an aid in execution and found the bank holds an account. Yet the client still pays \$50.00?

4. By paying this fee, what new cooperation do lawyers get from financial institutions? If the lawyer asks a bank over the phone, or by letter, whether Ron Smith, deadbeat, has a bank account there, how will the bank personnel respond? Nothing? Then the fee is punitive.

5. What's good for banks should be good for others, too. Currently, if a bank unilaterally feels threatened on its loan security, it can use statutory setoff. Now the banks want to be paid to allow access to funds which, by law are now owed to a judgment creditor?

When businesses send in checks to a bank for clearance, why not collect the processing fee from the business rather than the checking account? The point is this bill is not only horrible anti-business precedent, but it isn't even consistent with the way banks do their own business.

Every time a bank makes an ambiguous response to a garnishment issued under court order, the garnishing party ought to be able to collect \$50.00 from the bank to have to reissue the garnishment, or cover the processing cost in the courthouse. What's fair for banks ought to be fair for all other businesses and governmental entities.

6. Obviously, some banks don't like filling out garnishment answers. We realize there are special problems banks have with multiple or joint accounts where the debtor may be on the account with a non-debtor cosigner. Some banks are concerned with shotgun filing of non-wage garnishments. We are unsure how widespread the problem is. To the extent the problem exists, K.S.A. 60-211 says that any "party" to litigation who is harassed or intimidated by another party through the use of pleadings or papers may seek attorney fees and sanctions. Banks become parties to litigation when they are garnished. However, this \$50.00 fee is a sanction which is incurred regardless of bad faith or diligence.

This bill falls under the "good idea, wrong approach" school of legislation.