

JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE

Senator Richard Rock, Chairman

February 28, 1991
10:00 a.m.
Room 514-S

SB 172 - construction and interpretation of trusts.
Would allow all trusts, whether created while one is alive or by the instructins of a will, to be governed by the same set of laws.

PROPOSERS

Nancy Goodall, Kansas Bankers Association (ATTACHMENT 1)
Ron Smith, Kansas Bar Association (ATTACHMENT 2)

OPPOSERS

Randy Hearrel, Kansas Judicial Council

Subcommittee recommendation: no action taken.

SB 295 - lease of space by county commissioners.
Allows long-term lease agreements with counties. Reduces the risk of nonpayment.

PROPOSERS

Chris McKenzie, Douglas County Administrator (ATTACHMENT 3)

OPPOSERS

none appeared.

Subcommittee recommendation: to recommend favorable for passagel

SB 335 - relating to definition of charitable health care provider.

Clarifies definition of charitable health care provider under the health care provider law.

PROPOSERS

Chip Wheelen, Kansas Medical Society (ATTACHMENT 4)
Richard Morrissey, Department of Health and Environment
(ATTACHMENT 5)

Harold Rhiem, Osteopathic Association (ATTACHMENT 6)

OPPOSERS

none appeared.

Subcommittee recommendation: to amend as suggested in balloon by Kansas Medical Society; to recommend favorable for passage as amended.

SB 351 - wage garnishment, amount to satisfy judgement and social security number required for order.

Orders of garnishment would include amount needed to satisfy judgement and the employees social security number; employer could charge a recovery fee.

PROPOSERS

Terry Leatherman, Kansas Chamber of Commerce and Industry
(ATTACHMENT 7)

Dave Kahn, General Motors - Fairfax Plant
Phillip Jarvis, Rubbermaid - Winfield (ATTACHMENT 8)

OPPOSERS

Ron Smith, Kansas Bar Association

Subcommittee recommendation: no action taken.

SB 328 - proper court security to be provided.
Wyandotte, Sedgwick, Johnson and Shawnee counties would be
required to provide adequate security for courts.

PROPOSERS

Judge William R. Carpenter, Shawnee County District Court
Bill Osman, Assistant D. A., Third District

OPPOSERS

none appeared.

Subcommittee recommendation: be recommended favorable for
passage.

Kansas Bankers Association
Testimony on Senate Bill 172
February 28, 1990

Mr. Chairman, Members of the Committee:

My name is Nancy Goodall. I am writing on behalf of the Kansas Banker's Association regarding Senate Bill 172. This bill provides that all trust actions, whether or not created by one's last will and testament, will fall under the laws set out in the Probate Code, Chapter 59 of the Kansas Statutes Annotated. This bill proposes amendment of K.S.A. 59-103, 59-2203, 59-2210, and 59-2214 and K.S.A. 1988 Supp. 59-212, 59-2401, and 59-2402a, while repealing existing sections.

This bill assures legal conformity. Our current system requires two sets of laws for legal determinations of trust actions. If a trust was created during one's lifetime, actions on said trust would be brought under Chapter 60 of the Kansas Statutes Annotated. If, however, a trust was set up in one's will and became effective at death, the trust action would have to be brought as a probate action under Chapter 59 of the Kansas Statutes Annotated. While two trusts may have exactly the same terms and while both may be irrevocable due to the maker's death, they will be treated differently. Pleadings and notices will be different, interested parties may differ, and even judicial interpretation itself may vary. This is an illogical result and all trusts should be governed under one set of laws.

The bill provides for more uniform judicial interpretation. There are few statutes and little case law currently existing interpreting non-testamentary trust matters. For instance, Chapter 59 permits judicial termination of testamentary trusts (those trusts set up in one's will) if the trust becomes economically unfeasible to continue. There is no such statute governing non-testamentary (living trusts which are or have become irrevocable) trusts. This proposed change would allow the application and amendment of existing testamentary trust provisions to apply to non-testamentary trusts.

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Attachment 1

KBA Testimony
Senate Bill 172
Page Two

Finally, the bill would result in judicial economy and expertise. While the case load may not decrease by transferring Chapter 60 trust actions to the Chapter 59 arena, judges will develop a heightened knowledge of all trusts as they have in the probate field. That specialty already exists in the testamentary trust area, but living trust actions are tried before a variety of judges who hear other Chapter 60 cases, including criminal, divorce, and general litigation actions.

The Kansas Banker's Association urges this body to support legislation transferring governance of all trust actions to Chapter 59 of the Kansas Statutes Annotated.

Sincerely,



Nancy Goodall
Trust Division, Legislative Chair
Kansas Banker's Association

NG/bhd



Robert W. Wise, President
Thomas A. Hamill, President-elect
William B. Swearer, Vice President
James L. Bush, Secretary-treasurer
Jack Focht, Past President

Marcia Poell, CAE, Executive Director
Karla Beam, Director of Marketing-Media Relations
Ginger Brinker, Director of Administration
Elsie Lesser, Continuing Legal Education Director
Patti Slider, Communications Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services — IOLTA Director

POSITION STATEMENT

TO: Hon. Wint Winter, Jr., Chair;
Members, Senate Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: SB 172; living trusts and Chapter 59 jurisdiction

DATE: February 26, 1991

Mr. Chairman, and members of the Senate Judiciary committee. KBA's membership includes 5,300 attorneys and judges in Kansas and literally throughout the world. Our role in this legislature spans 109 years of service to Kansas.

KBA supports this legislation. Testamentary trusts now are construed under Chapter 59. Nontestamentary trusts such as living trusts are quite popular now, but often require judicial determination of a provision of the trust. Under current law, this requires filing the living trust as a Chapter 60 proceeding. Such filing, however, prevents use of district magistrates where they exist.

Magistrates currently construe testamentary trust provisions. The same procedure should be used to allow construction of nontestamentary trusts such as living trusts.

We point out the amendment in Section 7 on page 6. Only certain matters can be transferred directly from district magistrates to district judges if someone feels they need a law-trained judge for such construction.^{1/} This amendment, we think, provides the option to use or not use a district magistrate judge. This is in accord with preferred KBA policy.

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Attachment 2

¹K.S.A. 1990 Supp. 59-2402a.

Douglas County

TO: Subcommittee on Civil Procedure, Senate Judiciary
Committee

FROM: *CM* Chris McKenzie, County Administrator

DATE: March 5, 1991

SUBJECT: Support of Senate Bill 295

I appreciate the opportunity to appear today on behalf of the Board of County Commissioners of Douglas County, Kansas in support of Senate Bill 295. Douglas County is one of four counties that has been selected by the Advisory Commission on Juvenile Offender Programs (ACJOP) as a host county for a regional juvenile detention facility. The Northeast Kansas Juvenile Detention Facility would serve seventeen (17) counties in providing a facility to house juvenile offenders in compliance with the provisions of 1990 House Bill 3041. At this time, ACJOP has tentatively indicated its willingness to provide funding sufficient to cover one-half (or up to \$76,270) of the estimated annual debt service cost on bonds for a 14 bed juvenile facility. The balance of the debt service payments would be funded by the participating counties.

In sponsoring this important regional facility, Douglas County and other host counties are being asked to enter into annual agreements with the state (through the ACJOP) and the participating counties to finance most of the cost of the debt service. These "annual" agreements will provide a financial commitment on no more than a year-to-year basis. Douglas County will bear all of the risk of having sufficient funds on hand to make the principal and interest payments on the bonds each year. In the event an agreement is not renewed by the state or a participating county, the host counties will be required to levy the taxes to make the bond payments.

Senate Bill 295 presents an opportunity to reduce the risk of nonpayment by counties in each region by authorizing participating counties to enter into multi-year lease agreements with county public building commissions in the host counties. Multi-year lease agreements would be possible under SB 295 since it (and the existing law which it amends) contains an explicit authorization of such leases and a separate exemption from the cash basis law (K.S.A. 10-1001 to 10-1122).

For example, if the cost of construction of the Northeast Kansas Regional Juvenile Detention Facility is amortized over a 15 year period, the participating counties in the region would have the ability to lease space in the facility from the Douglas County Public Building Commission (PBC) for a 15 year period. Based on those multi-year leases, the PBC could issue revenue bonds to finance the facility and attract a favorable interest rate because of the security afforded by the multi-year lease agreements. Further-

Courthouse

Eleventh & Massachusetts / Lawrence, Kansas 66044 / (913) 841-7700

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Judiciary
2-28-91
Attachment 3*

more, the existence of the multi-year lease would discourage participating counties from using any other facility but the host county's facility--providing a continuing assurance that the facility's operating budget also would be financed on a multi-county basis.

Senate Bill 295 amends K.S.A. 12-1765 which already provides that the multi-year leases of public building commissions may be entered into without an election. Please note, however, that any bonds issued by a county public building commission are subject a 5% petition for a referendum. If the voters desire to vote on a project, a sufficient petition can trigger an election before an funds are expended on construction.

Assuming the legislature does not enact a tax lid law (similar to that under consideration in the House today) that eliminates the flexibility of counties in meeting the state's own mandate to remove juveniles from adult jails, Douglas County welcomes the opportunity to work with the ACJOP in planning one of the regional juvenile detention facilities in the state. The passage of SB 295 would go a long way in increasing the financing options open to host counties and in providing stronger assurances that the participating counties in our region will help us bear the financial risk of this undertaking.

Thank you for your attention. We would appreciate your favorable consideration of this legislation.



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

March 5, 1991

TO: Senate Judiciary Subcommittee on Civil Procedure
FROM: Kansas Medical Society *Chip Weelen*
SUBJECT: Senate Bill 335; Charitable Health Care Providers

Thank you for this opportunity to support SB 335 and to request further amendments to the charitable health care provider law that was enacted by the 1990 Legislature. You will probably recall the unanimous passage of Senate Bill 736 last year.

During the eight months that have elapsed since that new law went into effect, a few questions have been raised about the provisions of that act. In one instance, a member of the Legislative Research Department pointed out that because of the unique characteristic of the exempt licensee under the Healing Arts Act, the so-called exempt licensee may not be defined as a health care provider pursuant to KSA 65-4921. It is for this reason that we originally requested SB 335 with the amendment contained at lines 10 and 11 of page 2. More recently, Senator Winter has received correspondence from Mr. John Campbell, Deputy Attorney General, expressing concerns about liability exposure. It is for this reason that we respectfully request additional amendments to the law as outlined in the balloon-style format attached to this statement. A copy of Mr. Campbell's letter is attached as well.

We believe that these are important amendments to current law which should be enacted prior to implementation on the April 1 effective date of the administrative regulations. For this reason, SB 335 is to become effective on publication in the Kansas Register. We urge your adoption of our requested amendments and also your immediate recommendation for passage of SB 335. Thank you for considering our concerns.

/cb

Attachments

Subcommittee - Senate Judiciary
2-28-91
Attachment 4

1 former employment with the governmental entity.

2 (e) "Community service work" means public or community serv-
3 ice performed by a person (1) as a result of a contract of diversion
4 entered into by such person as authorized by law, (2) pursuant to
5 the assignment of such person by a court to a community corrections
6 program, (3) as a result of suspension of sentence or as a condition
7 of probation pursuant to court order, (4) in lieu of a fine imposed
8 by court order or (5) as a condition of placement ordered by a court
9 pursuant to K.S.A. 38-1663 and amendments thereto.

10 (f) "Charitable health care provider" means *a person licensed by*
11 *the state board of healing arts as an exempt licensee or a health*
12 *care provider as the term "health care provider" is defined under*
13 *K.S.A. 65-4921, and amendments thereto, who has entered into an*
14 *agreement with the secretary of health and environment under*
15 *K.S.A. 1990 Supp. 75-6120, and amendments thereto, who, pursuant*
16 *to such agreement, renders professional services to medically indi-*
17 *gent persons* gratuitously and who is considered an employee of the
18 state of Kansas under K.S.A. 1990 supp. 75-6120, and amendments
19 thereto.

← a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section and who renders such professional services

20 (g) "Medically indigent person" means a person who lacks re-
21 sources to pay for medically necessary health care services and who
22 meets the eligibility criteria for qualification as a medically indigent
23 person established by the secretary of health and environment under
24 K.S.A. 1990 Supp. 75-6120, and amendments thereto.

25 Sec. ~~23~~ K.S.A. 1990 Supp. 75-6102 is hereby repealed. ← (insert attached

26 Sec. ~~24~~ This act shall take effect and be in force from and after
27 its publication in the Kansas register.



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

Chip Wheelen
Director of Public Affairs

8/16-17

75-6117. Tort claims fund for payment of claims and defense expenses. (a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b) Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any actions or proceedings on those claims. Except for claims against the state arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106 and amendments thereto. Except for claims against the state arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

or an employee of the state in any actions or proceedings

(c) Upon certification by the attorney general to the director of accounts and reports that the unencumbered balance in the tort claims fund is insufficient to pay an amount for which the fund is liable, the director of accounts and reports shall transfer an amount equal to the insufficiency from the state general fund to the tort claims fund.

(d) This section shall be part of and supplemental to the Kansas tort claims act.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 18, 1991

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The Honorable Wint Winter, Jr.
Chairman
Senate Judiciary Committee
State Capitol
Topeka, Kansas 66612

Charles Konigsberg, Jr., M.D., MPH
Director, Division of Health
State of Kansas
Department of Health & Environment
Landon State Office Building
Topeka, Kansas 66612-1290

Re: Tort Claims Act Protection For Charitable
Health Care Providers, 1990 Kansas Session
Laws Chapter 329

Gentlemen:

In December of last year Dr. Konigsberg wrote the Attorney General requesting his comments concerning the above-referenced legislation. See Attachment 1. One of the issues raised in the letter dealt with the use of a charitable health care provider's malpractice insurance to pay for the defense, settlement or judgment necessitated by a suit brought by a medically indigent person.

On January 15, 1991, the Attorney General responded to Dr. Konigsberg's letter. His response was not an official Attorney General opinion. See Attachment 2.

On February 11, 1991, Senator Winter wrote asking for such an opinion. Work on that request is in progress.

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However, in order to expedite a response to Senator Winter's concerns, I have written this letter.

An examination of 1990 Kansas Session Law Chapter 329 as now codified in the 1991 supplement provides the following:

1. K.S.A. 1991 Supp. 75-6102(d) defines the term "Employee" to include, ". . . a charitable health care provider."

2. K.S.A. 1991 Supp. 75-6102(f) defines the term "charitable health care provider." Said definition specifically provides that a charitable health care provider is to be, ". . . considered an employee of the state of Kansas. . ." when rendering professional services to medically indigent persons.

3. K.S.A. 1991 Supp. 75-6115 specifically exempts charitable health care providers from that provision of the tort claims act which removes most of the other health care providers from coverage of the act.

4. K.S.A. 1991 Supp. 75-6117 is that portion of the tort claims act which regulates the tort claims fund. Under this portion of the act, the general policy of the state is established by which the proceeds of insurance policies for defense, settlement and satisfaction of judgment are look to for funding prior to the expediture of public monies.

Subsection b of K.S.A. 1991 Supp. 75-6117 is the area of critical concern. It provides,

Moneys in the tort claims fund shall be used only for the purpose of paying (1) compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas and (2) costs of defending the state or an employee of the state in any action or proceedings on those claims. Except for claims against the state arising from rendering or failure to

render professional services by a charitable health care provider to a medically indigent person, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a compromise or settlement shall be made from the fund if the compromise or settlement has been approved by the state finance council as provided in K.S.A. 75-6106 and amendments thereof. Except for claims against the state arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person, to the extent that payment cannot be made from insurance coverage obtained therefor, payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

It is noted that twice subsection b contains the phrase "Except for claims against the state arising from rendering or failure to render professional services by a charitable health care provider to a medically indigent person," Based on that addition to K.S.A. 75-6117(b) there is no doubt that if the state, as defined in K.S.A. 1991 Supp. 75-6102(a), were sued insurance coverage would not preempt the obligation of the tort claims fund to pay for the costs of defense, settlement or satisfaction of judgment. However, in so much as a charitable health care provider is not the state, but an employee of the state, the question remains as to whether this exception applies to charitable health care providers.

In answering this question one must look for the intent of the legislature by several means including an examination of the tort claims act as a whole. Pending completion of that research, I am suggesting the following:

1. Consideration of amending that portion of K.S.A. 1991 Supp. 75-6117(b), which provides the exception to the general policy of insurance proceeds first, to provide,

4-6/8

"Except for claims against the state or an employee of the state in any actions or proceedings arising from the rendering or failure to render professional services by a charitable health care provider to a medically indigent person,"

Such an amendment would remove any doubt whatsoever that the tort claims fund provides protection in the first instance for charitable health care providers. It would bring this exception into full accord with the other provisions of the tort claims act.

2. Consider amending K.S.A. 1991 Supp. 75-6102(f) which currently provides:

"Charitable health care provider" means a health care provider as the term "health care provider" is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with the secretary of health and environment under K.S.A. 1990 Supp. 75-6120, and amendments thereto, who pursuant to such agreement, renders professional services to medically indigent persons gratuitously and who is considered an employee of the state of Kansas under K.S.A. 1990 Supp. 75-6120, and amendments thereto.

by adding the following,

"Any health care provider, as defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with the secretary of health and environment under K.S.A. 1990 Supp. 75-6120 and amendments thereto, who pursuant to such agreement render professional services gratuitously to a person who provides information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person

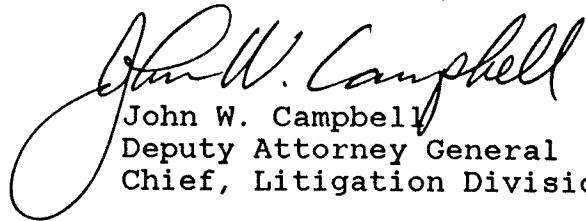
shall be considered a health care provider for purposes of this act."

Such an addition would close another potential loop hole in the protection given to charitable health care providers. Under the current law, it is questionable as to whether a health care provider, who rendered professional services to a person who is not in fact a "medically indigent person," would be covered under the tort claims act, even if such services were rendered in good faith.

We will continue to work on Senator Winter's opinion request. I hope in the meantime, this letter will be of assistance.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN



John W. Campbell
Deputy Attorney General
Chief, Litigation Division

JWC/mb

Enclosures

cc: The Honorable Robert T. Stephan
Chip Wheeler



State of Kansas

Joan Finney, Governor

Department of Health and Environment

Division of Health

Landon State Office Bldg., Topeka, KS 66612-1290

Reply to: _____

FAX (913) 296-6231

Acting
Stanley C. Grant, Ph.D., Secretary

Testimony presented to
Senate Judiciary Subcommittee on Civil Procedure
by
The Kansas Department of Health and Environment
Senate Bill 335

Senate Bill 335 amends the Kansas Tort claim act to include physicians who hold an exempt license as Charitable Health Providers. The Charitable Health Provider Act was initially proposed as a means to allow retired physicians with an exempt license to volunteer in indigent care clinics and be covered under the Tort Claims Act. Recently a review of the Act establishing the Charitable Health Provider Program discovered that it would not include exempt licensed physicians because they are currently not included in the definition of a health care provider under Kansas Law. This bill will include exempt licensed physicians as Charitable Health Providers.

The Department of Health and Environment supports the passage of this bill to assure that the greatest number of physicians possible will be able to participate in the Charitable Health Provider program.

Testimony presented by: Richard Morrissey
Deputy Director
Division of Health
March 5, 1991

Subcommittee - Senate Judiciary

2-28-91

Attachment 5

Charles Konigsberg, Jr., M.D., M.P.H.
Director of Health
(913) 296-1343

Director of Environment
(913) 296-1535

Lorne Phillips, Ph.D.
Director of Information
Systems
(913) 296-1415

Roger Carlson, Ph.D.
Director of the Kansas Health
and Environment Laboratory
(913) 296-1619

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

1260 S.W. Topeka
Topeka, Kansas 66612
(913) 234-5563

March 5, 1991

To: Chairman Winter, Members, Senate Judiciary Committee
From: Harold Riehm, Executive Director, Ks. Assn. of Osteopathic Medicine
Subject: Support of S.B. 335

KAOM was involved in the planning of the Charitable Health Care Provider program from its inception. We think the program offers a valuable quid pro quo approach to providing health care services to a selected group of Kansas citizens.

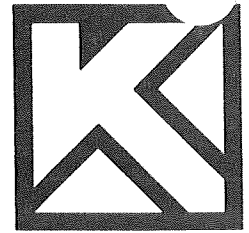
It was our understanding, and, in fact, an important part of our support for the program, that "inactive physician licensees" of the Board of Healing Arts would be eligible for participation in the program, as charitable health care providers.

To the extent that S.B. 335 clarifies this, and removes any conflict with existing law, we support its passage. We think inactive licensees will be valued and frequent participants in this program.

Thank you for this opportunity to testify and present our views.

Subcommittee - Senate Judiciary
2-28-91
Attachment 6

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

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

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

SB 351

March 5, 1991

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Subcommittee on Civil Procedure

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Subcommittee:

I am Terry Leatherman with the Kansas Chamber of Commerce and Industry.

Thank you for the opportunity to appear before you today in support of SB 351, legislation which addresses several concerns Kansas employers have regarding wage garnishment.

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

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

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

*Subcommittee - Senate Judiciary
2-28-91
Attachment 7*

The members of the Kansas Chamber have no quarrel with being responsible for insuring that a debt incurred by an employee is paid, when served with an order of garnishment. However, for serving as the middle-man in resolving a dispute between their employee and a plaintiff in a wage garnishment action, KCCI feels the role of the employer in the garnishment process should be streamlined. SB 351 accomplishes that in three ways.

1. INFORMING THE EMPLOYER OF THE AMOUNT NEEDED TO SATISFY A JUDGMENT AGAINST THEIR EMPLOYEE.

Currently, an order of garnishment delivered to an employer does not include a dollar amount which is needed to satisfy the judgement against their employee. As a result, an employer will comply with the withholding of a percentage of the employee's pay and perhaps withhold more money than is required to satisfy the judgement. By informing the employer of the judgement amount, the withholding can be halted when the judgement is met.

2. IDENTIFYING THE EMPLOYEE BY THEIR SOCIAL SECURITY NUMBER.

When an employer receives an order for garnishment, the defendant in the action is identified only by name. For an employer of individuals with the same common name, complying with the garnishment order becomes impossible without further identification. By including the social security number of an individual having wages garnished would assist the employer in complying with the garnishment order.

While KCCI feels the current identification process does create a compliance problem, especially for a large employer, it is not the Kansas Chamber's intent to create new wage garnishment problems. If a garnishment order cannot proceed without a defendant's social security number, and if a social security number is not readily available, it would be the Kansas Chamber's recommendation to pursue alternative identification options or forego this provision in SB 351. Once again I should point out

KCCI hopes to support legislation to streamline the employer's role in satisfying a wage garnishment, not to complicate the efforts to pursue a wage garnishment.

3. PERMIT AN EMPLOYER TO RETAIN A COST RECOVERY FEE FOR PERFORMING A WAGE GARNISHMENT.

As I stated earlier, the employer is the middle-man in the wage garnishment. The employer had no role in the debt incurred by their employee or in the garnishment action taken by the plaintiff. However, the employer is responsible to comply with the garnishment order, and meeting that responsibility cost the employer. Kansas law recognizes that fact by permitting an employer to withhold a cost recovery fee for complying with income withholding orders to satisfy an employee's child support payments. SB 351 extends the same opportunity to recover employer costs in complying with wage garnishment orders.

KCCI became interested in this issue last summer, when several KCCI members echoed the same problems with complying with wage garnishment orders. In November, KCCI's Human Resources Committee developed a policy for our organization that KCCI pursue the three changes in the Kansas wage garnishment law I have outlined today. In December, KCCI's Board of Directors ratified the committee's decision.

One of the first KCCI members to express concerns over wage garnishment was Rubbermaid-Winfield. The corporation's Manager of Payroll and Administrative Services, Mr. Phil Jarvis, was unable to appear before the committee today. However, Mr. Jarvis requested I supply the subcommittee with a copy of his comments on SB 351, which is included with my testimony.

A second KCCI member who has been concerned with this issue from the start is the General Motors Corporation, in Kansas City. The corporation's General Supervisor of Payroll for their Kansas City operation, Mr. Dave Kahn, was able to join me today to speak in favor of SB 351.

Since Mr. Kahn is much more of an expert in this area than I, I would suggest that he answer any questions about the practical aspects of SB 351. However, I would be happy to attempt to answer any questions now, or following Mr. Kahn's appearance before the Committee.



Rubbermaid - Winfield Inc.

1616 WHEAT ROAD • P.O. BOX 652 • WINFIELD, KANSAS 67156 • (316) 221-2230 • Fax (316) 221-0092

March 4, 1991

Honorable Wint Winter, Jr.
Chairman, Senate Judiciary Committee
Topeka, KS

Dear Senator Winter:

I regret that my schedule does not permit me to address your committee in person, but I wanted to at least direct my comments to you in writing regarding SB 351 - amendment of the current statute on wage garnishment.

Rubbermaid-Winfield Inc. has long sought passage of this bill which will provide relief to several problem areas. First, with over 900 employees at our location we process nearly 300 garnishments a year - a significant number being "continuing" for certain persons. With these numbers it is entirely possible to have several employees with like names thereby increasing the likelihood of garnishing the wrong person. Addition of the defendant's Social Security number would eliminate this happening.

Second, because present law provides for an employees wages to be garnished for as many checks as occur in a 30-day period, we have on occasion actually over-withheld from the check because we were unaware of the amount of the judgment. Addition of this amount to the order would eliminate the necessity of us writing another check to refund the over-withholding or the employee needing to seek a refund from the court.

Lastly, the large numbers of garnishments we are processing require a significant amount of time by our payroll department. We feel that being able to charge a cost recovery fee of \$5.00 per pay period (maximum of \$10.00 per month) will help to partially offset our expenses.

We encourage your committee to aid Kansas businesses such as ours and recommend passage of SB 351.

Thank you for your consideration.

Yours very truly,

Phillip R. Jarvis
Manager of Administrative Services

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Subcommittee - Senate Judiciary
2-28-91
Attachment 8