JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE

Senator Richard Rock, Chairman

March 26, 1991
10:00 a.m.
Room 514-S

SB 370 - charitable trusts, amendments conforming to changes in IRS code.

Makes a technical correction, takes full advantage of what IRS code authorizes.

PROPONENTS

Theron E. Fry,Wichita attorney (ATTACHMENT 1)

OPPONENTS

none appeared.

Subcommittee recommendation: to recommend favorable for passage.

SB 379 - exemption from and assessment of court costs against the State of Kansas.

When there is no service of process and case is dismissed, there would be no court costs against the state.

PROPONENTS

Robert S. Wunsch, University of Kansas Medical Center (ATTACHMENT 2)

OPPONENTS

none appeared.

Subcommittee recommendation: to recommend favorable for passage.

HB 2376 - permissive joinder of parties.

Allows for permissive joinder when persons join in the original petition and have claims against the same defendants.

PROPONENTS

Elwaine F. Pomeroy, Kansas Collectors Association, Inc. (ATTACHMENT 3)

OPPONENTS

Chip Wheelen, Kansas Medical Society (ATTACHMENT 4)

---COMMENTS

Paul Shelby, Office of Judicial Administration (ATTACHMENT 5)

Subcommittee recommendation: amend so will apply only to Chapter 61, limited code of action; amend to strike House Committee amendment allowing claimants to "join in the original petition."; and to recommend favorable for passage as amended.

HB 2099 - limitations on amounts of disposable earnings subject to garnishment.

Updates garnishment statutes to reflect minimum wage increases from $3.80 to $4.25.

PROPONENTS

Paul Shelby, Office of Judicial Administration (ATTACHMENT 6)

OPPONENTS

none appeared.

Subcommittee recommendation: to recommend favorable for passage and to be placed on the Consent Calendar.

HB 2384 - court fees for foreign judgements.
Raises foreign judgement fee from $55 to $60. This was overlooked in last year's bill which raised docket fees by $5.00.

PROPONENTS
Paul Shelby, Office of Judicial Administration (ATTACHMENT 7)

OPPONENTS
none appeared.

Subcommittee recommendation: recommend favorable for passage and to be placed on the Consent Calendar.

HB 2056 - amending what is on court documents and the duties of the court clerks.
Eliminates duplicate paperwork for court clerks. Security copies of some papers not needed. Will save copying and storage costs.

PROPONENTS
Paul Shelby, Office of Judicial Administration (ATTACHMENT 8)
Al Singleton, District Court Administrator (ATTACHMENT 9)

OPPONENTS
none appeared.

Subcommittee recommendation: to amend so would be retroactive and courts could dispose of duplicate copies currently in storage; to recommend favorable for passage as amended.

HB 2470 - written contact with court evoking Soldiers and Sailors Relief Act not deemed an entry of appearance.
Defendants seeking protection under this act, who write the court, are not considered to have made an entry of appearance.

PROPONENTS
Colonel Jonathan Small, Judge Advocate General, Kansas National Guard

OPPONENTS
none appeared.

Subcommittee recommendation: to recommend favorable for passage.

HB 2053 - expanding the definition of qualified person in professional corporations.
Permits a trustee of a revocable living trust to hold professional corporation stock and avoid probate.

PROPONENTS
Ron Smith, Kansas Bar Association (ATTACHMENT 10)
John Wachter, Kansas Bar Association

OPPONENTS
none appeared.

Subcommittee recommendation: to recommend favorable for passage and to be placed on the Consent Calendar.

HB 2395 - SRS subrogation, attorney fees.
Court would fix attorney fees in medical assistance recovery instances unless otherwise agreed.

PROPONENTS
Richard Mason, Kansas Trial Lawyers Association (ATTACHMENT 11)

OPPONENTS
none appeared.

Subcommittee recommendation: to recommend favorable for passage.

GUEST LIST

COMMITTEE: Senate Judiciary Subcommittee on CIVIL PROCEDURE

DATE: March 26, 2011

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Chip Wheelen	Topeka	Ks Medical Soc.
Vijtrois Thomas	Lawrence	KUMC
Bob Wunsch	Lawrence	KUMC
Joe Weiler	Topeka	KUMC
Walt Stalt	Topeka	Cred. Bureau Topeka
Elwaine F Pomeroy	Topeka	KS Collectors Assn
Laurie Hartman	Topeka	Ks. Bar Assoc.
al Singleton	Manhattan	Riley Co. Dist Ct.
Paul Shelby	Topeka	OJA
[illegible]	Topeka	Shawnee Co. Clerk of the Dist Court
Kay Fatley	Topeka	Third Judicial Dist
LEE Ann Froelich	TOPEKA	THIRD Judicial Dist
Suzy Bond	Overland Park	
[illegible]	Topeka	KTLA

TESTIMONY OF THERON E. FRY

TRIPLETT, WOOLF & GARRETSON
Centre City Plaza - Suite 800
151 N. Main
Wichita, Kansas 67202-1409
316-265-5700

March 26, 1991

RE: Senate Bill 370

Good Morning:

My name is Terry Fry. Although I am president of the Real Estate, Probate and Trust Law Section of the Kansas Bar Association, I am not appearing on its behalf today. I practice predominantly in the tax area, and in that practice, as well as serving as president of the Real Estate, Probate and Trust Law Section, I come across statutes from time to time that are technically deficient. K.S.A. 59-22a01 is a statute which is technically deficient, and Senate Bill No. 370 is intended to a make technical correction.

The Internal Revenue Code permits tax deductions for the remainder value of contributions to charitable remainder unitrusts, annuity trusts, and pooled income funds, and life estates in residences and farms when the remainder goes to charity. However, the technical requirements of the Internal Revenue Code are so great that it is difficult to prepare the appropriate instruments of donation that satisfy all the requirements. Congress has therefore enacted a statute (Internal Revenue Code § 2055(e)) that allows defective instruments to be reformed under state law in order to preserve a charitable deduction.

K.S.A. 59-22a01 was enacted approximately three years ago to authorize state courts to reform defective instruments in accordance with §2055(e) of the Internal Revenue Code. However, the state statue only permits reformation of defective charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds; it does not permit the reformation of defective life estates in residences and farms where the remainder is to pass to charity. I believe that was an oversight which should be corrected.

K.S.A. 59-22a01, as proposed to be amended by Senate Bill No. 370, would permit reformations under state law to the full extent permitted by the Internal Revenue Code in order to preserve charitable deductions for federal tax purposes of various remainder interests which pass to charity.

I support the enactment of Senate Bill No. 370.

Thank you.

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#12631

Testimony before the Senate Judiciary Subcommittee
on Civil Procedure and Probate
on SB 379

March 26, 1991

Robert S. Wunsch
University of Kansas Medical Center

Senate Bill 379 was introduced by the Senate Ways and Means Committee at the request of the Board of Regents.

You may recall the legislation that was passed last session directing the Medical Center to advertise, negotiate, and contract with collection agencies and/or attorneys to collect our delinquent hospital accounts. This was accomplished last summer and it would appear, thanks to such legislation, that we certainly have much better control over our outside collections than in the past. SB 379 does not deal with the legislation of last session, but it does involve our outside collection activities.

K.S.A. 60-2005 provides that the state of Kansas, along with cities and counties, is exempt in any civil action from depositing court costs or paying docket fees, except that if costs are assessed against the state of Kansas or any city or county the costs shall include the amount of the docket fee prescribed by K.S.A. 60-2001 together with any additional court costs accrued. This statute was passed in 1969. Thus since 1969 all state, city, and county agencies have not been required to pay the docket fee when filing civil actions.

In May 1990 our collection attorneys received a letter from the clerk of the District Court of Wyandotte County, a copy of which is attached, which provided that docket fees were going to be billed in cases where costs were assessed against the state. Likewise, they were advised by the Honorable Dean J. Smith, Administrative Judge of the Wyandotte County District Court that in cases filed on and after June 1, 1990 when costs were assessed against the state the billings would include the otherwise exempted docket fee. We have no argument with these directives as they are in keeping with K.S.A. 60-2005. The question that arises, however, is when are court costs to be assessed? K.S.A. 60-2002 provides that, unless otherwise provided by statute, or order of the judge, court costs shall be allowed to the party in whose favor judgment is rendered. This means that court costs are assessed against the losing party. I would like to address what is happening in Wyandotte County as a result of these directives.

For a variety of reasons, many of the patients/debtors sued by the Medical Center in Wyandotte County are not found by the process server and thus no service of summons is made. Sometimes the address the hospital is given is incorrect and sometimes the patient/debtor has moved by the time the process server arrives without any forwarding address being available to the process server. Until there is service of process on a patient/debtor there really is no lawsuit. When there is no service of process, there are a number of legal alternatives available. Our attorney can ask that an

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alias summons be issued which is a request to the process server to go out and try again. Technically, these cases can be dismissed by court order for lack of prosecution as it is impossible of course to prosecute a case where there has been no service of summons. A third alternative is available to get these cases off the docket. K.S.A. 60-241 provides that plaintiff's attorney, without court order, may dismiss the action by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgement. As I understand it, attorneys for the Medical Center have been dismissing cases under K.S.A. 60-241 when there has been no service of process. Notwithstanding this statutorily authorized dismissal, which is done without court order, there has been an assessment of costs made against the state and as a result the Medical Center has been directed to pay the otherwise exempt docket fee.

It seems to the Medical Center that when there has been no service of process and a case is voluntarily dismissed under the provisions of K.S.A. 60-241 it is not appropriate to assess costs against the state in order to recover an otherwise exempt docket fee. There is no losing or prevailing party --- there is no judgment --- there is in fact no case.

This proposed legislation would provide that in situations where attorneys for state, city, and county agencies follow the provisions of K.S.A. 60-241, there would clearly be no authority for the assessment of court costs against the state, city, or county in order to collect the otherwise exempt docket fee.

This bill further resolves the potential argument that K.S.A. 60-2005 does not apply to Chapter 61 cases. New section 2 of this bill would make the same applicable to Chapter 61 cases. There is no statute in Chapter 61 like K.S.A. 60-2005 and there currently is no incorporation of K.S.A. 60-2005 by reference.

Thank you.

WILLIAM J. BURNS, JR.
COURT ADMINISTRATOR

HELEN ZAGAR
CLERK DISTRICT COURT

DEAN J. SMITH, DIVISION 3
ADMINISTRATIVE JUDGE

THE DISTRICT COURT

TWENTY-NINTH JUDICIAL DISTRICT, KANSAS
COURTHOUSE
710 NORTH 7TH STREET
KANSAS CITY, KANSAS 66101

May 1, 1990

Mr. Richard Haitbrink
2000 Johnson Drive, Ste. 10
Mission Woods, Kansas 66205

Mr. Wayne Hundley
412 West 5th
Topeka, Kansas 66603

Mr. Joseph Weiler
1610 S.W. Topeka, P.O. Box 237
Topeka, Kansas 66612

Mr. Larry Winn, III
5000 W 95th, Ste. 300
Prairie Village, Kansas 66207

Gentlemen:

It has come to our attention that court costs are not being paid by the state on cases filed in the Wyandotte County District Court by the Board of Regents.

KSA 60-2005 states that the State of Kansas is exempt from depositing a docket fee, but the docket fee shall be paid if costs are assessed against the state.

We are presently in the process of identifying these cases and the unpaid amounts. In the meantime I suggest you contact Dorothy Koska, Supervisor Limited Actions Department at your earliest convenience to work out a billing procedure acceptable to all concerned.

Your cooperation in this matter will be appreciated.

Sincerely yours,

Helen Zagar
Clerk of the District Court

2-3/3

March 26, 1991

TESTIMONY IN SUPPORT OF HOUSE BILL 2376
SENATE JUDICIARY COMMITTEE
CIVIL PROCEDURE AND PROBATE SUBCOMMITTEE

I am Elwaine F. Pomeroy, appearing on behalf of the Kansas Collectors Association, Inc., in support of House Bill 2376, as amended by House Committee. This bill would amend our permissive joinder of parties statute to make it clear that several plaintiffs may join in one action if they have claims against the same defendant or defendants. This is not a new concept, because it has been in practice in some judicial districts for several years. The subject has been discussed in other judicial districts.

I am not a collection lawyer, but I have visited with other lawyers who have practiced extensively in the field of collections. In the interest of time, I will summarize what I learned from those experienced collection attorneys.

Walter N. Scott, Jr., of Topeka, is present to respond to any questions the Committee may have. Walter has discussed this procedure with the Shawnee County officials, and they are supportive of it. He has also discussed it with Brian Moline, the former head of the Shawnee County Legal Aid Society, and Mr. Moline also endorsed the concept.

Jay W. Vander Velde, of Emporia, testified before the House Judiciary Committee that he has been utilizing this procedure in Lyon County since about 1979, and he also has been using it in his proceedings in Montgomery County since December 1989. Mr. Vander Velde states that the procedure has recently been utilized in Finney County and he believes also in Ford County.

This procedure benefits everyone involved. Passage of this legislation would insure that this procedure was available throughout the state. Permissive joinder of several plaintiffs has these advantages:

A. It reduces the number of law suits that have to be filed.

B. It saves the time of judges, because several matters can be concluded at one time.

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C. It reduces the burden on the clerks of the court.

D. It reduces the burden on the process servers.

E. It permits the recovery of smaller debts.

F. It reduces cost to the plaintiffs.

G. Dependants can dispose of their obligations to several plaintiffs in one action.

H. Defendants have fewer lawsuits filed against them.

I. Defendants end up paying a smaller amount of court costs because fewer cases are filed against them.

J. Defendants are spared some embarrassment by the reduction in the number of suits filed against them.

Section 1 of the bill makes the change with regard to Chapter 60 cases, the general Code of Civil Procedure. Section 2 of the bill makes those changes also applicable to Chapter 61 cases, for Limited Actions procedures.

When I talked with Jay Vander Velde last Friday, he asked me to be sure to relate to you that this is especially timely, in view of the budget restrictions facing all levels of government, and particularly the judicial system. He stated that the Clerk of the Lyon County District Court had informed him that if this procedure would be discontinued in Lyon County, the clerk was sure that going back to the old method would cause the necessary addition of one person to the clerk's staff and one person to the staff of the Sheriff, in order to handle the additional paperwork that would be generated if this procedure was not used.

I see no controversy whatsoever concerning this legislation; it will be beneficial to everyone concerned. I urge favorable passage of House Bill 2376 as promptly as possible in order to avoid the upcoming deadline on action on non-exempt legislation.

Elwaine F. Pomeroy
On Behalf of Kansas Collectors Association, Inc.

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

March 26, 1991

TO: Senate Judiciary Subcommittee on Civil Procedure and Probate

FROM: Kansas Medical Society Chip Wheeler

SUBJECT: House Bill 2376; Permissive Joinder of Parties

Thank you for this opportunity to express our concerns about HB 2376. At first glance, this bill did not appear to constitute a substantive procedural change. In fact, the ability of physicians and hospitals to collaborate for purposes of collecting amounts owed to them would be advantageous at times.

Upon further analysis, the amendatory wording of HB 2376 would appear to allow an attorney to file multiple, unrelated allegations of medical malpractice against a physician in the same petition. If this were to occur, it could be extremely prejudicial against a defendant. Furthermore, this opportunity could perhaps be abused by plaintiffs' counsel to leverage a settlement in one case by including a number of other non-meritorious allegations in the original petition.

Perhaps the scope of the amendatory language could be made applicable in collections cases only or could exclude professional liability actions. Thank you for considering our concerns.

CW/cb

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House Bill No. 2376
Senate Judiciary Subcommittee
March 26, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2376.

This bill as originally drafted had no impact on revenue because suits are normally joined after they are filed. That means that the docket fee in civil cases has been paid; however as the bill now stands, "as amended by the House Committee" there will be a severe impact on the State General Fund, county general funds and local law library funds if there is one in the county.

The added language permits joining the original petition without paying a docket fee. This means that one-third or more of limited action cases filed to collect debts will no longer pay a docket fee of $35. By paying a single docket fee of $60.00 several creditors could bring suit for an unlimited dollar amount.

We estimate that at least $800,000 of docket fee collections will be lost; and depending on how well collection attorneys cooperate, the loss could be double that. Assuming that only $800,000 is lost, about $30,000 would have gone to Juvenile Detention Facilities, 530,000 to the State General Fund, $230,000 to county general funds and the remainder to local law libraries.

Additionally, the number of plaintiffs per limited action case would increase geometrically. Our present computerized system of indexing could very well be overloaded, which would cause reprogramming costs in the larger districts, which we estimate would cost county general funds about $180,000.

We respectfully urge the committee to consider our concerns.

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House Bill No. 2099
Senate Judiciary Subcommittee
March 26, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2099 which is a proposal from our office.

This bill would update the wage garnishment statutes in both Chapter 60 and Chapter 61 to reflect the needed changes in calculations and forms due to the change in the federal minimum wage law that will be effective April 1, 1991.

K.S.A. 60-725 requires the Clerks of the District Court to keep garnishee answer forms current with the minimum hourly wage as established by the U.S. Secretary of Labor.

The present federal minimum wage is $3.80 per hour which was effective last year on April 1, 1990 and our present calculations and forms reflect this wage. We were aware of this change last year when the present law was enacted, but to avoid confusion, only one year was passed.

On April 1, 1991 the minimum wage will increase to $4.25 per hour and this bill was introduced so that the Kansas Statutes Annotated will reflect the same information as the garnishee answer forms used by the Clerks of the District Court.

We are also requesting that this act shall take effect and be in force from and after its publication in the Kansas register to make it a timely enactment.

We respectfully urge the committee to consider our proposal and pass it favorably.

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House Bill No. 2384
Seante Judiciary Subcommittee
March 26, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss with you House Bill No. 2384. This bill amends K.S.A. 60-3005, relating to court fees for foreign judgments.

Last year House Bill No. 3021 raised civil docket fees by $5 which was effective January 1, 1991. However, K.S.A. 60-3005 relating to court fees for foreign judgments was overlooked, and that docket fee remains at $55 instead of $60.

This proposal will make the foreign judgment docket fee the same as regular civil which historically it has been. Our amendment would place this docket fee into K.S.A. 60-2001, and amendments thereto in order that it will not be overlooked in the future if docket fees are ever increased.

This proposal was amended into House Bill No. 2051 which addresses alternative dispute resolution fees and passed the House 122 to 1. We appreciate the actions of the House in making this amendment and passing the bill but this is a clean bill and the one we certainly support. I know that this committee will take testimony on House Bill No. 2051 tomorrow and if this committee would look upon this bill favorably, I will recommend that we delete that language out of HB 2051.

Therefore we request that this proposal be recommended favorably by this committee.

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House Bill No. 2056
Senate Judiciary Subcommittee
March 26, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

This is a proposal from the Kansas Association of District Court Clerks and Administrators and supported by our office.

If enacted, this bill would save costs and work time at the district court level by repealing a requirement to keep "security" copies of certain documents. The statutory requirement for copies is no longer necessary in that many district courts now use microfilming to maintain security files and there are statutory provisions for reconstituting files which will provide ample security in the other courts.

Other changes in the bill are to conform the statutes to current filing practices of the district courts. The savings of paper and copier costs contemplated by this bill would accrue to county general funds.

We respectfully urge the committee to consider this proposal and pass the bill favorably.

Mr. Al Singleton, District Court Administrator from Manhattan will testify in more detail on this proposal and we would be glad to answer any questions following his presentation.

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HOUSE BILL NO. 2056
SENATE JUDICIARY COMMITTEE

Testimony of Al Singleton
Court Administrator, 21st Judicial District
Legislative Chairperson KADCCA

Mr. Chairman and Committee Members:

I appreciate the opportunity to appear today on behalf of our association to discuss House Bill 2056. This bill will repeal K.S.A. 59-212(4), amend other sections of K.S.A. 59-212 and amend K.S.A. 60-2601.

This bill eliminates the requirement that the Clerk of the District Court maintain a security copy of certain papers filed in probate matters pursuant to K.S.A. 59-212(4) and journal entries of judgment pursuant to K.S.A. 60-2601(2)(d). It also clarifies language in both statutes to reflect current methods of maintaining records in the court system.

These statutes do not require making security copies of the entire court file, therefore, it would be impossible to restore a file using them. If a court file is lost or destroyed, clerks can rely on K.S.A. 60-2501 which authorizes the restoration of records by allowing a copy to be substituted. Copies can be obtained from the attorney of record, which is the practice of courts when restoring files. Also, Supreme Court Rule 108 requires microfilming the entire court file, for the purpose of preservation, prior to the destruction of the file. This rule also requires that a backup of the microfilm be made in case of destruction or loss of the court's film.

Our committee surveyed clerks across the State and found that the security copies made under K.S.A. 59-212(4) and K.S.A. 60-2601 are rarely used for any purpose. It was also determined that the cost of making and maintaining the security copies of approximately $200.00 to $2,000.00 per year, depending upon the size of the court. The staff time for doing this ranged from 3 to 20 hours per month, again depending upon the size of the court. We further

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learned, that due to space limitations, most courts store the security copy in the same area as the file. If the file were destroyed, in all probability the security copy would also be destroyed.

Language in both statutes refer to dockets and journals. Historically the courts kept their records in large bound books called "dockets" or "journals." These very difficult to manage and very expensive books have been replaced by individual case docket sheets. These docket sheets are far more simple to use, are less costly and do not create a storage problem. The new docket sheets and a new case numbering system incorporates the information required on lines 33, 34 and 35 of page 1 all on the docket sheet. The last sentence of K.S.A. 60-2601(2)(d), page 3, lines 1 thru 4, is redundant as the previous sentence covers all other papers filed which had not been specifically identified to be file stamped and initialed.

With the ever increasing workloads, staffing limitations, unfilled positions due to budget constraints and the cost to the state and counties, of operation of the courts, we must wherever possible, reduce duplication and costs. This bill is a positive step in that direction.

Based on the above factors, the requirement of keeping security copies should be repealed. Additionally, the other changes in the bill should be made to reflect the current policies and procedures for the maintenance of records within the court system.

I respectfully request that you take favorable action on this bill. Thank you.

9-2/2

POSITION STATEMENT
From the Kansas Bar Association

March 26, 1991

TO: Members, Senate Judiciary Subcommittee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2053

KBA supports this legislation. Lawyers have suggested living trusts as estate planning tools for years. Yet because of the definition of "qualified person" in the Professional Corporation Code, living trusts were unable to hold stock in the P.C. Thus, the same estate planning tool available to the general public was unavailable to professionals practicing in a professional corporation.

HB 2053 changes the definition to allow professional corporation stock to be held by living trusts.

John Wachter, a Topeka attorney who specializes in this area, is available to answer questions. Thank you.

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KANSAS
TRIAL LAWYERS ASSOCIATION
Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
SENATE JUDICIARY COMMITTEE

March 26, 1991

HB 2395 - SRS Attorney Fees

Thank you for the opportunity to speak on behalf of the Kansas Trial Lawyers Association in support of HB 2395.

HB 2395 would require the Secretary of Social and Rehabilitation Services to pay attorney fees proportionately with the injured person when the Department has a subrogation lien for medical expenses arising out of a personal injury or wrongful death action. Furthermore, it provides for the reduction of the Department subrogation lien proportionately with any finding of fault on behalf of the injured party.

HB 2395 essentially makes K.S.A. 39-719 consistent with other legislative enactments requiring the payment of attorney fees on subrogation liens and the sharing of fault thereon. The Automobile Injury Reparations Act has a similar provision under K.S.A. 40-3113(a) which requires an injured party's insurance company to pay a proportionate amount of attorney fees for all subrogation interests collected pursuant to a personal injury claim. Furthermore, the insurer's right of subrogation is reduced by the percentage of negligence attributable to the injured person.

The same provision is allowed under the Kansas Worker's Compensation Act statutes. K.S.A. 44-504(d) and (g) allow for the same payment of attorney fees and reduction in lien according to fault.

Under its current provisions, K.S.A. 39-719(a) places a burden not only upon the attorney representing the injured party, but also the injured party as well. The majority of cases wherein the Department claims a subrogation interest involve motor vehicle accidents. If the injured party has substantial injuries requiring state assistance in paying the medical expenses, any recovery on behalf of the injured party is greatly reduced if the liability insurance coverage is limited. The effect becomes even more harsh when a percentage of fault is attributed to the injured party, thus reducing his or her overall recovery from the tortfeasor.

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An example of the harsh effects may be illustrated as follows:

> Assume the injured party is involved in a motor vehicle accident and has sustained, pursuant to a jury verdict, $250,000 worth of damages. Further assume the tortfeasor has $100,000 in liability insurance and the Department of Social and Rehabilitation Services has asserted a lien for medical expenses in the amount of $50,000. Although the injured party has sustained $250,000 in damages, he or she can only collect $100,000 from the insurance carrier. Furthermore, the recovery is reduced by the $50,000 lien payable to SRS. Out of the remaining $50,000, the injured party must then pay for litigation expenses and attorney fees. This rule becomes even more burdensome if it is assumed the jury allocates 25 percent of the fault to the injured party. In that case, the injured party is allowed to recover from the insurance carrier $75,000, which is further reduced by the $50,000 lien, allowing for a net recovery of $25,000. Of that $25,000, again, the injured party must pay expenses and attorney fees.

Under HB 2395, the Department of Social and Rehabilitation Services would be required to participate in paying a proportionate share of attorney fees and reduce its lien in accordance with any fault attributable to the injured party. This change in the law benefits the injured party in a realistic manner and provides incentive for attorneys to handle such cases on behalf of the Department of Social and Rehabilitation Services and the injured party. Many times attorneys decline to take these cases if the subrogation lien is large and the insurance coverage is minimal. In essence, the attorney may be working for the Department of Social and Rehabilitation Services exclusively, without being adequately compensated therefor.

SRS has reviewed HB 2395 and copies of their correspondence to Rep. John Solbach are attached. At their request, a floor amendment was added to the bill to place a cap on the amount of attorney fees a court could award. While KTLA has consistently opposed arbitrary limitations on contingency fees, we believe the caps suggested by SRS and incorporated in HB 2395 are consistent with current practices.

There was no opposition to this bill when it came before the House Judiciary Committee. Your favorable consideration of HB 2395 is encouraged.

STATE OF KANSAS
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
915 S.W. Harrison, Docking State Office Building, Topeka, Kansas 66612-1570
JOAN FINNEY, Governor

March 5, 1991

Representative John Solbach
Room 115-S, Statehouse
Topeka, KS 66612

Re: House Bill 2395

Dear Rep. Solbach:

This is to clarify the position that SRS is taking with regard to House Bill 2395. SRS is not opposed to paying a reasonable amount for attorney fees in cases where a private attorney has assisted in recovering medical expenses for the department. In fact the current medical subrogation program practice is to discount the SRS claim in order to allow for reasonable attorney fees and percentage of negligence in most cases.

However, the department does have two specific concerns with the proposed language. The first concern is that there is no upper limit on the amount of attorney fees that can be fixed by the Court.

The second concern is that many of the medical subrogation cases do not involve court actions or attorneys since often they are resolved directly with insurance companies or other third parties with a duty to pay.

If there is some way that these concerns could be satisfactorily addressed, SRS would not be opposed to H.B. 2395.

Sincerely,

Robert C. Harder
Acting Secretary

RCH:JB:kp

11-3/4

filed

STATE OF KANSAS

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

915 S.W. Harrison, Docking State Office Building, Topeka, Kansas 66612-1570

JOAN FINNEY, *Governor*

March 8, 1991

Representative John Solbach
Room 115-S, Statehouse
Topeka, KS 66612

Re: House Bill 2395

Dear Rep. Solbach:

As indicated in the March 5, 1991 letter from Acting Secretary Harder, SRS is not opposed to paying reasonable attorney fees to private attorneys who assist the department in recovering medical expenses pursuant to K.S.A. 1990 Supp. 39-719a. However, there was a concern that the language proposed in H.B. 2395 did not contain an upper limit on the amount that a court might fix for such fees.

The suggested language that we discussed yesterday afternoon appears to satisfy this concern, and the 33 1/3% for settlements and 40% if a trial is necessary would seem to be reasonable. This change should have a negligible impact on the amount of recoveries since these are the same percentages that we currently use as guidelines when a claim is discounted to allow for reasonable attorney fees. Although SRS is not supporting H.B. 2395 for the reasons previously discussed, if the suggested language is included it does not intend to oppose the bill. If you have questions or would like to discuss this further please contact me at any time.

Thank you for your cooperation and assistance in this matter.

Sincerely,

John Badger
Acting General Counsel
Department of Social and
Rehabilitation Services
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Topeka, KS 66612
(913) 296-3967

JB:kp
cc: Robert C. Harder

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