

JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE

Senator Richard Rock, Chairman

March 27, 1991
10:00 a.m.
Room 514-S

HB 2481 - attachment of KPERS for maintenance.
Benefit rights under KPERS subject to decrees for maintenance as well as support, or both.

PROPONENTS

Lois L. Peterson, Nebraska (ATTACHMENT 1)

OPPONENTS

none appeared.

--- COMMENTS

Jerry Sloan, Office of Judicial Administration (ATTACHMENT 2)
Marshall Crowthers, KPERS

Subcommittee recommendation: to recommend that Judiciary Committee Chairman write to the Family Law Advisory Committee and to PERS seeking input as to how the bill should be amended to clarify how the benefits are to be disbursed and by whom.

HB 2488 - concerning enforcement of child support orders.
First-class postage would be sufficient for past-due child support notices prior to reporting these obligations to credit bureau.

PROPONENTS

Jamie Corkhill, SRS attorney (ATTACHMENT 3)

OPPONENTS

none appeared.

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

HB 2515 - emergency divorce.
Emergency divorces would require 10-day waiting period after filing of petition or personal service upon respondent, whichever is later.

PROPONENTS

---written -- Representative Bob Vancrum, 29th District
(ATTACHMENT 4)

OPPONENTS

none appeared.

Subcommittee recommendation: to recommend favorable for passage.

HB 2054 - real property included in allowance to spouse and minor children in probate.

Allows inclusion of real property toward statutory living allowance for spouse and minors after death of an individual.

PROPONENTS

Ron Smith, Kansas Bar Association
John Kuether, Washburn University School of Law (ATTACHMENT 5)

OPPONENTS

none appeared.

Subcommittee recommendation: to amend to clarify language; to recommend favorable for passage as amended.

HB 2051 - including alternative dispute resolution (ADR) fees as allowable costs.

ADR fees could be included as court costs.

PROPONENTS

Ron Smith, Kansas Bar Association

Jerry Sloan, Office of Judicial Administration (ATTACHMENT 6)

OPPONENTS

none appeared.

Subcommittee recommendation: to amend to clarify language specifying fund from which costs will be paid; and to recommend favorable for passage as amended.

MAR 1 8 1991

5515 Canterbury Lane
Lincoln, NE 68512
March 14, 1991

Senator Sheila Frahm
State Capitol
Room # 143-N
Topeka, Kansas 66612

Dear Senator Frahm:

I understand that Bill Number 2481 regarding the Kansas Public Employees Retirement System and my plea to be allowed to garnish it is in the hands of the Senate Judiciary Committee.

I wish to state a few facts for you so that you might better know my needs:

I was married to my ex-husband for 34 years and he is a beneficiary of the KPERS.

He agreed and signed that in our divorce decree in 1981 I would be awarded $\frac{1}{2}$ of his KPERS at the time he began drawing on those funds for his retirement. He was forced to retire in 1986 but he took ALL of the KPERS for himself and left me out completely. I was 55 years old when he asked me for a divorce so he could marry an 18-year former part-time secretary. He fathered a child with her but for 6 years he would not admit it (he has never admitted it but there is no doubt in anyone's mind that the child is indeed his). After 6 years he asked me for a divorce and married her immediately. I moved to Lincoln to be nearer my family support system. But, I lived and worked in Dodge City and Salina, Kansas for 10 years. Since I was 55 years old when I had to start supporting myself, I am unable to accumulate any retirement monies. I have worked every day since I moved to Lincoln in November 1981 but have no retirement. I will need to live on what social security the both of us earned. I will receive only $\frac{1}{2}$ of his and that will be about \$460.00 a month. I had planned on the KPERS to supplement my income as I will be 65 this July, 1991 and am forced to retire. I surely need the portion of the KPERS to survive.

Because of a technicality in the Kansas Law as it now stands I cannot garnish the KPERS and I am asking that the amend the law to say that I can garnish the KPERS. Postal workers, the military, federal workers retirement funds can all be garnished. My ex husband knows that I cannot now garnish the KPERS unless you help me to accomplish that.

My ex-husband was Superintendent of the Dodge City Unified School District and after 7 years was fired because of his involvement with this former part-time secretary. Of course I did not know the reason he was terminated. He had already fathered this child and I never knew that at all. He would not move out of Dodge City for two years. I supported him by working full time during that two years. He could not get a job.

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Lois L. Peterson
KPERs Bill #2481

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I feel so deserving because I worked all day while he sat at home and when I returned home at 5:30 in the evening, I typed letters of application for him. This took several hours many evenings but he could not get a job and would not move out of town. Finally he got a job with the Ell-Saline School District as Supt. After he served his first year there, he was rehired in February of the first year for two more years. It was then that he asked me for a divorce and he did not admit involvement with anyone. He said he was a loner (after 34 years of marriage) and just wanted to be alone. I reared our four children almost single-handedly because every summer he left our home out of town to attend summer school. I helped him get three degrees and typed all of his undergraduate themes, his Master's Thesis and the first three drafts of his Doctoral Dissertation with footnotes etc. My ex-husband knew how to type but he always asked me to type because he didn't care to. I scrimped and saved all year long and budgeted our income to save enough so that he could attend summer school. He spent 18 years getting his three degrees! At the expense of my own education, I did this for him. At age 55 I could not have time to get any skills so I could have a job that would pay enough to support me. I went to Southeast Community College here in Lincoln for 12 weeks (I paid my own tuition because he said he did not owe me that) and took a course in Medical Terminology. I passed the course with an A+ and got a job the day I finished that course. I have a very interesting job with 5 surgeons but it does not have any retirement benefits and I was unable to save very much for my own retirement.

I am pleading with you to pass the bill #2481 to allow me to garnish my ex-husband's KPERs so that I can at least survive.

His new 18 year younger wife was married to a Federal Employee and she will be able to garnish his retirement if he refuses to pay. I am certain she will receive his retirement benefits because that was confirmed when I spoke to her ex-husband.

I will be grateful for your compassion and thank you from the bottom of my heart for any help you can be in this matter.

Thank you so very kindly,

Lois L. Peterson

Lois L. Peterson

House Bill No. 2481
Senate Judiciary Subcommittee
March 27, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear before you today to testify on 1991 House Bill 2481, an act which permits garnishment of payments due public employees or former public employees from the public employees retirement system.

The bill before you has been amended by the House Committee on Judiciary and the House Committee of the Whole; the original bill was intended to make payments due to certain categories of retired state employees subject to garnishment or withholding orders for both child support and maintenance (our new name for alimony).

The language directed to the Kansas public employees retirement system when taken literally would permit KPERS to send a monthly payment due to a member to a clerk of the court. The monthly payment may very well include the amount needed to satisfy a claim for support or maintenance, but might also include the retirement pay due a retiree.

There are no directions to clerks in this bill which would warn them when this is the case. In a normal garnishment situation, the garnishee (KPERS) would file an answer with the clerk and the clerk would notify the garnishee of the exact amount needed. The remainder of the retirement pay would then be paid to the retiree by KPERS.

Another situation could be that what is being attached is an accumulated contributions account of a former state employee; in this case if the garnishment is for less than the amount of the former employee's account, there still is no direction to the clerk as to what to do with the surplus. The only advantage that KPERS gains from this procedure is simplicity of administration. In effect, they wrap up whatever they have and send it to the clerk. This is faster, and requires less handling by KPERS than setting aside the money and then paying it out in two directions.

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While we sympathize with KPERS and its need for streamlined procedure, we note that the current "cumbersome" garnishment procedure was adopted by the Legislature, at least in part, to avoid mistakes, and to permit garnishees and the persons to whom they owe money to come to court and challenge the validity of the proceedings. This constitutional safeguard is missing from the procedure in this bill. The procedure in this bill can easily be attacked as a taking of property without due process, especially if a mistake is made and the wrong person's assets or too much money are forwarded by KPERS to the clerk.

We recommend that the state stay with the tried and true garnishment procedure. I have included a marked up copy of the bill which would accomplish that end with these comments.

Attachment:

HOUSE BILL No. 2481

By Committee on Judiciary

2-26

11 AN ACT concerning public employees retirement systems; relating
12 to attachment for maintenance; amending K.S.A. 1990 Supp. 12-
13 5005, 20-2618 and 74-4923 and repealing the existing ~~section~~
14 sections.

15

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

17 Section 1. K.S.A. 1990 Supp. 12-5005 is hereby amended to
18 read as follows: 12-5005. (a) Every retired member of a local police
19 or fire pension plan and every active member of the plan who is
20 entitled to make an election to become a member of the Kansas
21 police and firemen's retirement system pursuant to K.S.A. 12-5003
22 or 74-4955 and amendments thereto and who does not so elect shall
23 become a special member of the Kansas police and firemen's re-
24 tirement system on the entry date of the city which is affiliating
25 with the Kansas police and firemen's retirement system with regard
26 to all active members and retired members of the local police or
27 fire pension plan under K.S.A. 74-4954 and amendments thereto.

28 (b) Beginning with the first payroll for services as a policeman
29 or fireman after an active member of a local police or fire pension
30 plan becomes a special member of the Kansas police and firemen's
31 retirement system under this section, the city shall deduct from
32 the compensation of each special member the greater of 7% or the
33 percentage rate of contribution which the active member was re-
34 quired to contribute to the local police or fire pension plan pre-
35 ceding the entry date of the city, as employee contributions. The
36 deductions shall be remitted quarterly, or as the board of trustees
37 otherwise provides, to the executive secretary of the Kansas public
38 employees retirement system for credit to the Kansas public em-
39 ployees retirement fund. All deductions shall be credited to the
40 special members' individual accounts beginning on July 1 of the
41 year following the entry date of the city for purposes of all active
42 and retired members of the local police and fire pension plan.

43 (c) Except as otherwise provided in this act, each active member

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1 of a local police or fire pension plan who becomes a special member
2 of the Kansas police and firemen's retirement system under this
3 section shall be subject to the provisions of and entitled to pensions
4 and other benefits, rights and privileges to the extent provided
5 under the local police and fire pension plan on the day immediately
6 preceding the entry date of the city which is affiliating with the
7 Kansas police and firemen's retirement system with regard to all
8 active members and retired members of the plan.

9 (d) Each retired member of a local police or fire pension plan
10 who becomes a special member of the Kansas police and firemen's
11 retirement system under this section shall be entitled to receive
12 from the Kansas police and firemen's retirement system a pension
13 or any other benefit to the same extent and subject to the same
14 conditions as existed under the local police or fire pension plan on
15 the day immediately preceding the entry date of the city which is
16 affiliating with the system with regard to all active members and
17 retired members of the plan under K.S.A. 74-4954 and amendments
18 thereto, except no retired special member shall be appointed in or
19 to a position or office for which compensation is paid for service
20 to the same state agency, or the same police or fire department
21 of a city, township, special district or county or the same sheriff's
22 office of a county. This subsection shall not apply to service rendered
23 by a retiree as a juror, as a witness in any legal proceeding
24 or action, as an election board judge or clerk or in any other office
25 or position of a similar nature. Any retiree employed by a participating
26 employer in the Kansas police and firemen's retirement
27 system shall not make contributions or receive additional credit
28 under the system for that service. This subsection, except as it
29 relates to contributions and additional credit, shall not apply to the
30 employment of any retiree by the state of Kansas, or any county,
31 city, township, special district, political subdivision or instrumentality
32 of any one or several of the aforementioned for a period of
33 not exceeding 30 days in any one calendar year.

34 (e) Every pension or other benefit received by any special member
35 pursuant to subsection (c) or (d) is hereby made and declared
36 exempt from any tax of the state of Kansas or any political subdivision
37 or taxing body of this state; shall not be subject to execution,
38 garnishment, attachment or any other process or claim whatsoever,
39 including decrees for maintenance except such pension or benefit
40 or any accumulated contributions due and owing from the system
41 to such special member are subject to decrees for support or maintenance,
42 or both. The Kansas public employees retirement system
43 shall not be a party to any action under article 16 of chapter 60

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1 of the Kansas Statutes Annotated and is subject only to orders from
2 such actions issued by the district court of Shawnee [the] county
3 [where such action was filed]. ~~The system shall satisfy its obligation~~
4 ~~by making payments otherwise due to such special member in care~~
5 ~~of the clerk of the Shawnee county district court [where such action~~
6 ~~was filed]. All distributions shall be made by the clerk and the~~
7 ~~system has no further liability upon delivery of the benefit or ben-~~
8 ~~efits to the clerk of the district court, and shall be unassignable.~~

DELETE

9 (f) (1) Each participating employer, pursuant to the provisions
10 of section 414(h)(2) of the United States internal revenue code, shall
11 pick up and pay the contributions which would otherwise be payable
12 by members as prescribed in subsection (a) commencing with the
13 third quarter of 1984. The contributions so picked up shall be
14 treated as employer contributions for purposes of determining the
15 amounts of federal income taxes to withhold from the member's
16 compensation.

17 (2) Member contributions picked up by the employer shall be
18 paid from the same source of funds used for the payment of com-
19 pensation to a member. A deduction shall be made from each
20 member's compensation equal to the amount of the member's con-
21 tributions picked up by the employer, provided that such deduction
22 shall not reduce the member's compensation for purposes of com-
23 puting benefits under K.S.A. 12-5001 to 12-5007, inclusive, and
24 amendments thereto.

25 (3) Member contributions picked up by the employer shall be
26 remitted quarterly, or as the board may otherwise provide, to the
27 executive secretary for credit to the Kansas public employees re-
28 tirement fund. Such contributions shall be credited to a separate
29 account within the member's individual account so that amounts
30 contributed by the member commencing with the third quarter of
31 1984 may be distinguished from the member contributions picked
32 up by the employer. Interest shall be added annually to members'
33 individual accounts.

34 Sec. 2. K.S.A. 1990 Supp. 20-2618 is hereby amended to read
35 as follows: 20-2618. Every annuity or other benefit received by any
36 judge or other person pursuant to the retirement system for judges
37 under the acts contained in article 26 of chapter 20 of the Kansas
38 Statutes Annotated and acts amendatory thereof or supplemental
39 thereto is exempt from any tax of the state of Kansas or any political
40 subdivision or taxing body thereof; shall not be subject to execution,
41 garnishment, attachment or any other process or claim whatsoever,
42 including decrees for maintenance except such annuity or other
43 benefit or any accumulated contributions due and owing from the

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1 system to such judge are subject to decrees for support or main-
 2 tenance, or both. The Kansas public employees retirement system
 3 shall not be a party to any action under article 16 of chapter 60
 4 of the Kansas Statutes Annotated and is subject only to orders from
 5 such actions issued by the district court of Shawnee [the] county
 6 [where such action was filed]. ~~The system shall satisfy its obligation~~
 7 ~~by making payments otherwise due to such judge in care of the~~
 8 ~~clerk of the Shawnee county district court [where such action was~~
 9 ~~filed]. All distributions shall be made by the clerk and the system~~
 10 ~~has no further liability upon delivery of the benefit or benefits to~~
 11 ~~the clerk of the district court, and shall be unassignable.~~

DELETE

12 Sec. 13. K.S.A. 1990 Supp. 74-4923 is hereby amended to read
 13 as follows: 74-4923. (a) No alteration, amendment or repeal of this
 14 act shall affect the then existing rights of members and beneficiaries
 15 but shall be effective only as to rights which would otherwise accrue
 16 under this act as a result of services rendered by an employee after
 17 the alteration, amendment or repeal. This subsection shall not apply
 18 to any alteration or amendment of this act which provides greater
 19 benefits to members or beneficiaries, but any increase of benefits
 20 shall only be applicable to benefits payable on the first day of the
 21 month coinciding with or following the effective date of the alteration
 22 or amendment.

23 (b) Any annuity, benefits, funds, property or rights created by,
 24 or accruing to any person under the provisions of K.S.A. 74-4901
 25 *et seq.* or K.S.A. 74-4951 *et seq.*, and any acts amendatory thereof
 26 or supplemental thereto, shall be exempt from any tax of the state
 27 of Kansas or any political subdivision or taxing body of the state;
 28 shall not be subject to execution, garnishment or attachment, or any
 29 other process or claim whatsoever, ~~including decrees for support,~~
 30 except such annuity or benefit or any accumulated contributions due
 31 and owing from the system to such person are subject to decrees
 32 for support or maintenance, or both. The Kansas public employees
 33 retirement system shall not be a party to any action under article
 34 16 of chapter 60 of the Kansas Statutes Annotated and is subject
 35 only to orders from such actions issued by the district court of [the]
 36 Shawnee county [where such action was filed]. ~~The system shall~~
 37 ~~satisfy its obligation by making payments otherwise due to such~~
 38 ~~person in care of the clerk of the Shawnee county district court~~
 39 ~~[where such action was filed]. All distributions shall be made by~~
 40 ~~the clerk and the system has no further liability upon delivery of~~
 41 ~~the benefit or benefits to the clerk of the district court, and shall~~
 42 ~~be unassignable, except as specifically provided by this act.~~

DELETE

43 (c) In any case where a state agency is owed a debt or where a

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1 participating employer under the Kansas public employees retire-
2 ment system or under the Kansas police and firemen's retirement
3 system has been required to pay and has paid an arrearage obligation
4 of the amount of contributions of a member which were not paid
5 at the time required and where the employment of the member by
6 the state agency or participating employer has been terminated and
7 the member is eligible to withdraw accumulated contributions in
8 accordance with K.S.A. 74-4917 and 74-4963, and amendments
9 thereto, the state agency or participating employer shall be paid
10 from the member's account in the fund an amount equal to the debt
11 or the amount of contributions of the member paid by the partici-
12 pating employer pursuant to an arrearage obligation, upon application
13 to the board therefor accompanied by certification of the amount to
14 be paid to the state agency or participating employer. If any appli-
15 cation and certification under this subsection are not received by
16 the board prior to the withdrawal of accumulated contributions by
17 the member, the board shall not be liable to pay and shall not pay
18 any amount from the fund pursuant to any such application and
19 certification.

20 Sec. 2 4. K.S.A. 1990 Supp. 12-5005, 20-2618 and 74-4923 is
21 are hereby repealed.

22 Sec. 3 5. This act shall take effect and be in force from and after
23 its publication in the statute book.

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Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

House Bill 2488

Before the Senate Judiciary Committee
March 27, 1991

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

House Bill 2488 would amend K.S.A. 23-4,145, concerning the notice that is sent before SRS reports a support debt to credit reporting agencies (credit bureaus). The amendment would clarify that first class postage is sufficient.

Background. With the Child Support Enforcement Amendments of 1984, the Congress required states to adopt procedures for sharing information about support debts with credit reporting agencies, but only after sending notice to the support debtor. A particular method of sending notice was not specified in the law, so first class mail meets the mandate. Also, federal law only requires that the notice be sent before debt information is shared; states are not required to verify delivery.

Other creditors, such as retail stores, are not required to give the debtor any advance notice before reporting debts to credit reporting agencies. It does not matter whether the debt is large or small, whether the debt has been reduced to judgment, or whether the first payment is even due. In comparison, the advance notice for a child support debt is an extraordinary protection, no matter how it is sent.

The extraordinary nature of the credit reporting notice is reinforced when it is considered that debts for unpaid support are final judgments under Kansas law -- the debtor has had a day in court and a continuing opportunity to seek modification as circumstances warranted. Furthermore, most post-judgment remedies that immediately attach property, such as wage garnishments and bank garnishments, require no advance notice at all to the debtor. Again, the advance notice for a child support debt is an extraordinary protection, no matter how it is sent.

In practice CSE has found that a significant number of debtors will not pick up or accept certified mail, defeating the notice's purpose of stimulating early resolution of disputes.

Fiscal Impact. KAECSES, the SRS computer system, was programmed to generate these notices and prepare them for first class mailing. Because of the volume, a significant savings could be realized if K.S.A. 23-4,145 were amended to authorize use of first class mail and avoid the extra postage and manual handling needed for certified mail.

CSE expects to send 5,200 notices before the end of the current fiscal year. Thereafter, approximately 15,000 additional cases per year are expected to meet

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House Bill 2488
Jamie L. Corkhill

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minimum criteria for submission. First class postage is now \$.29 per notice, while certified mail with a return receipt costs \$2.29 per notice.

If K.S.A. 23-4,145 were amended upon publication in the Kansas Register, expenditures could be reduced during the current fiscal year, with the exact savings depending upon the enactment date. If 5,200 notices were sent in FY91 by first class mail, the total savings in postage would be \$10,400. First class mail would also require less labor, at a savings of approximately \$2,387. **Total (potential) FY91 savings: \$12,387.**

CSE anticipates 15,000 notices per year beginning in FY92. With first class mail, postage would be reduced by \$30,000 per year. Reduced labor costs would be approximately \$7,065. **Total savings for FY92 and subsequent years: \$37,065 per year.**

Federal performance standards for the Child Support Enforcement Program require that IV-D support debts in excess of \$1,000 be reported to credit reporting agencies. The CSE budget for FY92 includes \$5,444 postage for credit reporting notices, enough to cover first class postage for all the notices needed to meet those federal standards. Using certified mail, however, the budgeted amount would only permit 2,377 notices to be mailed, not enough to meet federal performance requirements. If the CSE Program were audited and found deficient in this area, escalating penalties could be assessed. Over time, federal penalties could range from \$670,000 per year to \$78,000,000 (complete withdrawal of all CSE and AFDC federal funding).

For the reasons outlined above, SRS respectfully requests that House Bill 2488 be recommended for passage.

Jamie L. Corkhill
Child Support Enforcement
296-3237

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BOB VANCURUM
REPRESENTATIVE, TWENTY-NINTH DISTRICT
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609
STATE CAPITOL, ROOM 112-S
TOPEKA, KANSAS 66612
(913) 296-7698



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: APPROPRIATIONS
JUDICIARY
TAXATION

HB 2515

March 5, 1991

TESTIMONY ON HB 2515
BEFORE THE HOUSE JUDICIARY COMMITTEE
BY
REPRESENTATIVE ROBERT J. VANCURUM

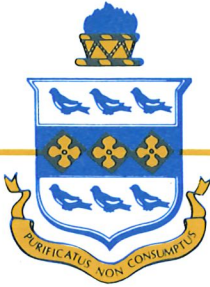
I ask for the introduction of HB 2515, relating to emergency divorces. This is identical to the bill I had introduced last year on the same subject. I know of no other people who will be testifying in favor or against the present bill. I view the matter as a matter of simple fairness and will continue to push forth until change is made.

Under existing law, emergency divorces may be granted without any prior notice having been served upon the spouse. The spouse should have at least some period of time to prepare for the matter rather than finding out through the mail that a divorce has been granted.

I think the issue of emergency divorces for public officials is a carryover from the middle ages if not in fact the Middle East, where men may still divorce their spouses by reciting three times that they are divorced. I can't imagine why we want to continue such practices in this state. The problem of course is that the spouse has no opportunity to hire counsel, no opportunity to be adequately apprised of their rights and may make ill-advised decisions as to property settlement and other matters growing out of the divorce.

I'll of course be available for questions at a later time.

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Attachment 4



WASHBURN UNIVERSITY OF TOPEKA

School of Law
Topeka, Kansas 66621
Phone 913-295-6660

MEMORANDUM

To: House Judiciary Committee
Fr: Professor John Kuether
Re: HB 2054
Da: February 7, 1991

Overview

House Bill 2054 is a modest amendment of the Probate Code to make it possible for the court to award real property (Line 18), as well as personalty, in satisfaction of the court approved statutory allowances.

Background

When a decedent dies, the spouse and minor children are entitled to statutory allowances to tide them over while the estate is undergoing probate. These allowances entitle them to exempt items, and supplies, and funds on hand to allow them to live modestly for approximately a year, the period probate is expected to last.

The statutory allowances include wearing apparel, furnishings, one automobile, fuel and provisions which are on hand to the extent needed for a year, and a monetary allowance.

The monetary allowance is between \$1,500 and \$25,000, in the discretion of the judge. The discretion is usually based on the need of the family, the amount and nature of any debt and the apparent size of the estate. In small estates there is often not a enough money to fund the monetary allowance in the needed amount.

The Problem

The current statute authorizes only the use of personal property to satisfy the statutory allowance. This can cause hardship, delay and expense in an estate which has little personal property, but does have sufficient realty to satisfy the monetary allowance. Under current law the needy spouse must either forego part of all of the monetary amount, or have the estate sell realty to raise the funds for the allowance. At best the need to sell the realty will cause a delay and some additional expense. A small estate which can ill afford the expense. The loss can be considerable if the property must be sold for less than its full potential value because of the lack of a willing buyer, or poor market conditions at the time.

The Remedial Amendment

The amendment allows the court to satisfy the allowance with

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personal or real property, doing away with the expense and delay of a sale. It should simplify and speed the probate process, and reduce the costs. This is especially valuable in the small estate, where the need can be greatest. It will also be very valuable in the type of estate where most of the property has passed by joint tenancy or trust, but a little realty remains, which would otherwise require probate.

I do not foresee any chance for abuse. The property can be appraised to determine its value and to protect the interests of other persons. Creditors and other heirs are entitled to be heard regarding the amount of the monetary allowance, and the court decides the amount, within a value of \$1,500 to \$25,000, after learning of the other claims to the property.

House Bill No. 2051
Senate Judiciary Subcommittee
March 27, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear before you today to testify on 1991 House Bill 2051, an act concerning civil procedure and alternative dispute resolution fees.

The bill before you was amended by the House Committee on Judiciary and by the committee of the Whole. Section 1 of the bill as amended adds alternative dispute resolution fees to the list of additional court costs which may be assessed in a case. Section 2 gives a court discretion to order alternative dispute resolution fees to be paid from various sources.

Included in section 2, beginning at line 8, page 2, as a possible source of fees is the following phrase, "...from any alternative dispute resolution fund established in the judicial district where any part of the matter may be pending," We believe that this authorization is intended to be a catchall authorization, and may very well be anticipation events which may occur. However, we believe the authorization couched in its present language may cause problems similar to those caused by the phrase in K.S.A. 22-2909.

That statute authorizes a diversion agreement to provide for payment of "diversion costs." Diversion costs are not defined; there is no direction in any statutes as to what they are or how a recovered cost should be handled. As could easily be predicted, a new county attorney supplied all the missing details, setting up a fund, setting the amount, collecting the costs, and expending the resulting fund. The only problem with the attorney's actions, was that while necessity may have been the mother of invention, the resulting invention only served to cause problems, including charges of wrongdoing (for example, K.S.A. 28-175 says that fees collected by a county officer must be paid into the county general fund, not the county attorney's own little fund).

OJA feels that this phrase in section 2 could easily lead others astray. Until such funds are legally established, a reference to them can only serve to confuse and perhaps mislead. We therefore recommend changing the "catchall" phrase to something somewhat broader, but less misleading.

Paul Shelby also testified yesterday before this subcommittee on HB 2384, the increase of Foreign Judgment docket fees from \$55.00 to \$60.00. Since you have voted favorably upon that bill, I would request that you delete Section 4, Page 3 of this bill which I have included in my amendments.

I have attached a markup to accomplish this purpose. Thank you for your attention.

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Attachment 6

HOUSE BILL No. 2051

By Committee on Judiciary

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11 AN ACT concerning civil procedure; relating to fees; amending
12 K.S.A. 60-2002 [~~and 60-3005~~] and K.S.A. 1990 Supp. 60-2001 and
13 60-2003 and repealing the existing sections.

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

16 Section 1. K.S.A. 1990 Supp. 60-2001 is hereby amended to read
17 as follows: 60-2001. (a) *Docket fee.* Except as otherwise provided by
18 law, no case shall be filed or docketed in the district court, whether
19 original or appealed, without payment of a docket fee in the amount
20 of \$60 to the clerk of the district court.

21 (b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case
22 where a plaintiff by reason of poverty is unable to pay a docket fee,
23 and an affidavit so stating is filed, no fee will be required.

24 (2) *Form of affidavit.* The affidavit provided for in this subsection
25 shall be in the following form and attached to the petition:
26 State of Kansas, _____ County.

27 In the district court of the county: I do solemnly swear that the
28 claim set forth in the petition herein is just, and I do further swear
29 that, by reason of my poverty, I am unable to pay a docket fee.

30 (c) *Disposition of docket fee.* The docket fee shall be the only
31 costs assessed in each case for services of the clerk of the district
32 court and the sheriff. The docket fee shall be disbursed in accordance
33 with K.S.A. 20-362 and amendments thereto.

34 (d) *Additional court costs.* Other fees and expenses to be assessed
35 as additional court costs shall be approved by the court, unless
36 specifically fixed by statute. Other fees shall include, but not be
37 limited to, witness fees, appraisers' fees, fees for service of process
38 outside the state, fees for depositions, *alternative dispute resolution*
39 *fees*, transcripts and publication, attorneys' fees, court costs from
40 other courts and any other fees and expenses required by statute.
41 All additional court costs shall be taxed and billed against the parties
42 as directed by the court. No sheriff in this state shall charge any
43 district court in this state a fee or mileage for serving any paper or

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1 process.

2 Sec. 2. K.S.A. 60-2002 is hereby amended to read as follows:
3 60-2002. (a) *As of course*. Unless otherwise provided by statute, or
4 by order of the judge, the costs shall be allowed to the party in
5 whose favor judgment is rendered. *The court shall have the dis-*
6 *cretion to order that the alternative dispute resolution fees be, in*
7 *whole or in part, paid by or from any combination of any party or*
8 *parties, from any alternative dispute resolution fund established in*
9 *the judicial district where any part of the matter may be pending,*
10 *or from the proceeds of any settlement or judgment.*

authorized to pay such fees

11 (b) *Offer of judgment*. At any time more than fifteen ~~(15)~~ 15
12 days before the trial begins, a party defending against a claim may
13 serve upon the adverse party an offer to allow judgment to be
14 taken against ~~him or her~~ *such party* for the money or property or
15 to the effect specified in ~~his~~ *such party's* offer, with costs then
16 accrued. If within ~~ten (10)~~ 10 days after the service of the offer
17 the adverse party serves written notice that the offer is accepted,
18 either party may then file the offer and notice of acceptance to-
19 gether with proof of service thereof and thereupon the clerk shall
20 enter judgment. An offer not accepted shall be deemed withdrawn
21 and evidence thereof is not admissible except in a proceeding to
22 determine costs. If the judgment finally obtained by the offeree is
23 not more favorable than the offer, the offeree must pay the costs
24 incurred after the making of the offer. The fact that an offer is
25 made but not accepted does not preclude a subsequent offer. When
26 the liability of one party to another has been determined by verdict
27 or order or judgment, but the amount or extent of the liability
28 remains to be determined by further proceedings, the party ad-
29 judged liable may make an offer of judgment, which shall have the
30 same effect as an offer made before trial if it is served within a
31 reasonable time prior to the commencement of proceedings to de-
32 termine the amount or extent of liability.

33 (c) *Duty of clerk*. The clerk of the court shall tax the costs and,
34 upon request, shall furnish a cost statement to counsel of record
35 for the party ordered by the court to pay costs. The taxation of
36 the costs by the clerk shall be subject to review by the judge on
37 timely motion by any interested party.

38 Sec. 2 3. K.S.A. 1990 Supp. 60-2003 is hereby amended to read
39 as follows: 60-2003. Items which may be included in the taxation of
40 costs are:

- 41 (1) The docket fee as provided for by K.S.A. 60-2001, and amend-
42 ments thereto.
- 43 (2) The mileage, fees, and other allowable expenses of the sheriff

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1 or other officer incurred in the service of process outside of this
2 state or in effecting any of the provisional remedies authorized by
3 this chapter.

4 (3) Publisher's charges in effecting any publication of notices au-
5 thorized by law.

6 (4) Statutory fees and mileage of witnesses attending court or the
7 taking of depositions used as evidence.

8 (5) Reporter's or stenographic charges for the taking of deposi-
9 tions used as evidence.

0 (6) The postage fees incurred pursuant to K.S.A. 60-303 or sub-
1 section (e) of K.S.A. 60-308, and amendments thereto.

2 (7) *Alternative dispute resolution fees shall include fees, expenses*
3 *and other costs arising from mediation, conciliation, arbitration,*
4 *settlement conferences or other alternative dispute resolution means,*
5 *whether or not such means were successful in resolving the matter*
6 *or matters in dispute, which the court shall have ordered or to*
7 *which the parties have agreed. The court shall have the discretion*
8 *to order that the alternative dispute resolution fees be, in*
9 *whole or in part, paid by or from any combination of any*
10 *party or parties, from any alternative dispute resolution fund*
11 *established in the judicial district where any part of the matter*
12 *may be pending, or from the proceeds of any settlement or*
13 *judgment.*

14 (7) (8) Such other charges as are by statute authorized to be
15 taxed as costs.

16 [~~Sec. 4. K.S.A. 60-3005 is hereby amended to read as follows:~~
17 ~~60-3005. Any person filing a foreign judgment shall pay to the clerk~~
18 ~~of the district court a docket fee of \$55 as prescribed by K.S.A.~~
19 ~~60-2001, and amendments thereto. Any additional fees or charges~~
20 ~~not specifically covered by the docket fee shall be assessed as ad-~~
21 ~~ditional court costs in the same manner and to the same extent as~~
22 ~~if the action had been originally commenced in the court where~~
23 ~~the foreign judgment is filed.]~~

24 Sec. 3 4 [5]. K.S.A. 60-2002 [~~and 60-3005~~] and K.S.A. 1990
25 Supp. 60-2001 and 60-2003 are hereby repealed.

26 Sec. 4 5 [6]. This act shall take effect and be in force from and
27 after its publication in the statute book.

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