Approved 2-26-92
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Representative John Solbach at
Chairperson

3:30 ~~a~~.m./p.m. on February 13, 1992 in room 514-S of the Capitol.

All members were present except:

Reps. Allen, Gomez, Heinemann, Parkinson, Snowbarger & Vancrum who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Judy Goeden, Committee Secretary

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Bill Nichols, Commerce Bank & Trust
Ron Smith, Kansas Bar Association
Robert Eye, General Counsel, Kansas Dept. of Health & Environment
Shaun McGrath, Kansas Natural Resources Council
Dr. Ramon Powers, Kansas State Historical Society
Emil Lutz, Legislative Services

The Chairman called the committee meeting to order for the purpose of a hearing on SB 49, direction of garnishment to a financial institution considered a pleading.

Jim Maag, Kansas Bankers Association, testified in favor of SB 49. (Attachment #1)

Bill Nichols, Senior Vice-President & General Counsel, Commerce Bank & Trust, Topeka, testified in favor of SB 49. (Attachment #2) He told committee members why this legislation was needed by banks, and he answered their questions. He said there is no court cost currently on a garnishment.

Ron Smith, Kansas Bar Association, said the amendment to SB 49 was requested by the KBA last session. He said KSA 60-211 also applies to pro se collections.

Representative Douville moved to recommend SB 49 as amended favorably for passage. (Reference to 1990 supplements in bill needs to be updated to read "1991") Representative Everhart seconded the motion. Motion carried.

Hearing on HB 2824, intervention in legal actions relating to water pollution, was opened.

Robert Eye, General Counsel for Kansas Department of Health & Environmnet, testified in favor of HB 2824. (Attachment #3) He testified he had not talked with Farm Bureau about this bill.

Representative Hochhauser moved to recommend HB 2824 favorably for passage. Representative Garner seconded the motion. Motion carried.

Shaun McGrath, Kansas Natural Resources Council, submitted written testimony in favor of HB 2824. (Attachment #4)

The hearing on HB 2502, Supreme Court chambers in the State Capitol, was opened.

Dr. Ramon Powers, Executive Director, Kansas State Historical Society, testified in favor of HB 2502. (Attachment #5) In answer to a committee member's question, he said he is going to be checking on possible murals which have been covered by paint in the House chamber. He said the Capitol is currently listed on the National Historical Register.

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 3:30 ~~a~~m./p.m. on February 13, 1992.

Emil Lutz, Director, Legislative Services, said there is a plan to refurbish the Supreme Court chambers, but there is a lack of funds to implement the plan.

HB 2502 will be further studied by a sub-committee chaired by Representative Smith. Other sub-committee members are Representatives Rock and Lawrence. Ramon Powers and Emil Lutz will work on the language in the bill with the subcommittee.

Representative Lawrence moved to approve the committee meeting minutes of 2/6, 2/10, 2/11 and 2/12 noting that Representatives Hamilton & Snowbarger should have been listed as excused on 2/11. Representative Hamilton seconded the motion. Motion carried.

Meeting adjourned at 4:35 P.M.

GUEST LIST

COMMITTEE: House Judiciary DATE: 2-13-92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
Ron Smith	Topeka	Ks Bar Assn
Bob Eye	900 SW Jackson	KDHE
Jeri Canfield	Topeka	Washburn Univ
Kathleen Taylor	"	KS Bankers Assoc.
Bill Nichols	"	Commerce Bank and Trust
Jim Maag	"	KBA
Ramon Powers	Topeka	Kansas State Hist. Soc.
Vance Kelly	Topeka	Kansas State Hist Soc
Suzanne Pomeroy	Topeka	Kansas Co-Operative association Inc
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Shawn McGrath	"	Ks Natural Resource Council
JEFF SOMMER	TOPEKA	KNLSI

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 13, 1992

TO: House Judiciary Committee
RE: SB 49 - An act concerning garnishments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 49** which clarifies K.S.A. 60-726 as to who is responsible for making a "good faith" effort to find out if the institution being served with the garnishment order has any assets of the judgment debtor.

KBA was disappointed that the Senate removed from this bill during the 1991 session what we considered to be the most important provision - a fee to be assessed on each garnishment order. Not only would such a fee have been beneficial to banks in helping them cover the costs of processing garnishment orders, but it have also served as a deterrent against "shotgun" or "blanket" filings. Since the Senate also rejected a floor amendment which would have established a $10 garnishment fee we are not going to ask this committee to revisit the fee issue, but we did want to make the committee aware that we continue to believe it is unfair to expect the banks to shoulder all of the costs of processing garnishment orders and we also believe such a fee would be a deterrent to "shotgun" and "blanket" filings.

I have attached to this testimony the comments of several bankers who have expressed concerns about the cost and time involved in handling these orders. We would hope the Legislature will give serious consideration to the implementation of a fee at some future date. In the meantime, we would believe there is merit in the new language provided in this bill and we would therefore respectfully request that the committee report **SB 49** favorably.

James S. Maag
Senior Vice President

HJC
2-13-92
Attach #1
185

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

Memorandum

BANK IV Topeka, N.A.
One Townsite Plaza
Post Office Box 88
Topeka, Kansas 66601-0088
Telephone 913-295-3400

Date: March 11, 1991

BANK IV

To: SKA

Re: Garnishments & SB 49

You asked me for background data on garnishments and for an update on SB 49 and other efforts to relieve the "garnishment problem."

SB 49. As you know, this bill was passed out of the Senate Committee after it was amended and now simply reinforces the existing law to specify the party responsible for filing is responsible for the good faith effort to believe accounts exist at the institution.

Comment. I seriously doubt if this amended bill (without the fee) would have much impact on current garnishment activity.

Problem. Handling a garnishment costs a financial institution many dollars. Each garnishment is handled by several people, for example:

1. Person served (officer).
2. Person forwarding to operations (secretary).
3. Person in Deposit Services (supervisor).
   a. Looks for accounts.
   b. Memo posts account if funds found.
   c. Contacts account officer.
   d. Makes entry in general ledger suspense account.
   e. Makes entry in customers' accounts.
   f. Memo to proof.
   g. Enters on log.
   h. Fills in letter for officer to sign.
   i. Sends to word processing.
4. Word processor prepares letter.
5. Deposit services forwards letter to account officer.
6. Officer signs and sends letter to customer.
7. Follow-up record (secretary of officer served).

Almost all of these five bank employees and the same 15 steps are involved again when the order from the court is received to release or pay in funds.

I don't know how much these 30 steps cost, but if each step averaged 4 minutes, it adds up to about 2 hours. Approximately one-third of this time is officer involvement. In addition, if there are any questions about ownership of accounts, attorneys are consulted which adds further to the expense.

BANK IV Topeka now has about 30 garnishments per month, which equals 60 hours of time. Roughly, this equals 1 week of a full time staff employee, plus ½ week of an officer's time. In addition, each month approximately 2 hours of an attorney's time is used.

HJC 3-13-92 Att #1 2-85

FIRST NATIONAL BANK OF WINFIELD

February 7, 1991

Senate Financial & Insurance Committee

Re: Senate Bill #49 and data concerning
Customer Garnishments

Dear Mr. Chairman and Members of the Committee:

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

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

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

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

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

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

H JC
Attach #1
2-13-92
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P.O. BOX 545 WINFIELD, KS 67156-0545 (316) 221-1650 FAX (316) 221-0867 MEMBER F.D.I.C.

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

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

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

Sincerely,

David M. Schaller
Sr. Vice Pres.

DMS:jlm

HJC
2-13-92
Attach #1
HB 5

Merchants
A MidAmerican Bank

Legal Department
David J. Dunlap, Counsel

January 29, 1991

Distinguished Members of the Senate
Financial Institutions and Insurance
Committee

Salutations:

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

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

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

Sincerely,

David J. Dunlap

cc: Senate Financial Institutions
and Insurance Committee Members

HJC 2-13-92 Attach #1 3 of 5

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

Commerce
Bank and Trust

February 13, 1992

MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

My name is Bill Nichols and I am Senior Vice -President and General Counsel to Commerce Bank and Trust, Topeka, Kansas. I submit this testimony in support of Senate Bill 49. During the four years I have been General Counsel, I have observed an increased number of non-wage garnishments served on Commerce Bank. At my direction, we gathered statistics during calendar year 1990 and learned that 508 non-wage garnishment orders were served on Commerce Bank. Of these 508 garnishment orders, we answered 195, or 38.4%, of the garnishments with an answer showing we had "no account". Four other institutions in Topeka, Bank IV, Capitol Federal, Merchants National Bank and Fidelity State Bank, also accumulated data during 1990. For these four financial institutions, the percentage of "no account" answers ranged from a low of 58.1% to a high of 66.4%.

The current statute states that no order of garnishment attaching funds held by a bank, savings and loan association, savings bank, credit union or finance company shall be issued except upon good faith belief of the party seeking garnishment that the party to be served with the garnishment has, or will have, assets of the judgment debtor. In other words, if Commerce Bank is served with a garnishment order, we reasonably should expect the garnishing party has some reason to think we hold money belonging to the judgment debtor. During 1990, more than one-third of the time, the judgment debtor named in a garnishment order did not have an account at Commerce Bank. The percentage of "no account" garnishment answers was even higher for the four other financial institutions mentioned above.

The primary reason we support Senate Bill 49 is that the amendment helps clarify who has the responsibility of meeting the "good faith belief" standard. The amendment provides no party shall seek an order of garnishment except upon that parties "good faith belief" the financial institution holds funds belonging to the judgment debtor. This change will hopefully assist us in seeking recovery of our costs in answering garnishments if we feel the party seeking the garnishment order did not have the required "good faith belief" before seeking the garnishment order. The last sentence of Section 1, subparagraph (f) is new and is also clarifying in the sense it clearly provides that the request for a garnishment order is considered a pleading under the provisions of KSA 60-211. Certain of the provisions of KSA 60-211 deal with frivolous filing of pleadings and the possible recovery of costs, including attorney fees, from the party or attorney for the party seeking the garnishment order. I feel these amendments will provide a vehicle to seek recovery, in appropriate situations, of costs from either the party or the party's attorney.

HJC 2-13-92 Attach #2 1 of 2

3035 South Topeka Avenue · Topeka, Kansas 66611 · Telephone: 913·267·0123 · Member FDIC

I and attorneys representing other financial institutions in Topeka have felt and still feel that a certain number of garnishment orders are sought in situations in which the "good faith belief" standard is not met by the party seeking the garnishment order. Within the last few days, Commerce Bank was served with a garnishment order for which we answered we had "no account" for the judgment debtor. Because of the parties involved in the lawsuit and being certain the judgment debtor had never had money on deposit at Commerce Bank, I checked the situation further. First, I determined we had been served with five garnishment orders in different cases, but requested by the same attorney, and in four instances we answered "no account" for the judgment debtors. It was difficult for me to believe the attorney had met the "good faith belief" standard in these four cases. Second, I checked further regarding the one lawsuit which especially caught my attention. I found that this attorney, in this one case, had on the same date filed thirty-six separate requests for garnishment orders to be served on thirty-six financial institutions in an attempt to collect on the judgment in the case. I fully intend to monitor and check all the answers filed by these thirty-six financial institutions to see how many of the answers are "no account" for the judgment debtor.

I was told by the Clerk's office that it took one employee over one-half day to prepare the thirty-six garnishment orders. I feel it is extremely important to mention the level of effort required by the Clerk's office in the garnishment process. In Shawnee County, for Chapter 61 cases, the number of garnishment orders issued has increased as follows:

1988 --- 11,691 1989 --- 13,497 1990 --- 14,978 1991 --- 14,568

The Clerk's office feels approximately 30% of all garnishment orders issued are non-wage garnishments and a very high percentage of that 30% total would be served on financial institutions. The Clerk's office does not handle a garnishment just once. The minimum amount of processing is twice - first, when the garnishment order is prepared and second when the garnishment answer is received back from the party served with the garnishment order. If the garnishment answer indicates money is being held by the party served with the garnishment order, then the Clerk's office continues to have processing time invested. The party which sought the garnishment will file an order to pay the funds held, which the Clerk's office must cause to be served on the party holding the funds. The funds are then sent to the Clerk's office and the Clerk's office must then handle the payment and forward the same to the party which sought the garnishment order.

If the proposed amendments in Senate Bill 49 result in a higher degree of adherence to the "good faith belief" standard, then we feel the number of garnishment orders being sought will not increase at the previous rate of increase. All parties involved in the garnishment process, that being the Clerk's office, the Sheriff's Department and the financial institutions, will then hopefully benefit from a slower rise in their costs of handling garnishment pleadings.

Respectfully submitted,

William T. Nichols

William T. Nichols
Senior Vice President and General Counsel

HJC 2-13-92 2 of 2

State of Kansas
Joan Finney, *Governor*

Department of Health and Environment
Azzie Young, Ph.D., *Secretary*

Testimony presented to

House Judiciary Committee

by

The Kansas Department of Health and Environment

House Bill 2824

KDHE supports and urges passage of House Bill 2824. KDHE believes public involvement in enforcement proceedings involving wastewater issues is a constructive element in the state regulatory program. Absent public access, regulatory actions may lack important input from concerned citizens and be subject to needless conjecture about a process perceived as closed. The bill would allow intervention in National Pollution Discharge Elimination System (NPDES) administrative enforcement activities with adequate safeguards to prevent public participation from becoming an impediment to the enforcement process.

This bill would also remedy an ongoing deficiency regarding KDHE's authority to fully implement the Federal Clean Water Act. The Kansas water pollution control program is expected to implement the Clean Water Act in Kansas. A review by EPA several years ago noted a deficiency in Kansas statutes regarding public involvement. EPA has notified our agency of this deficiency and requested it be corrected for Kansas to retain primacy. This issue has been forced by the Kansas Natural Resource Council. KNRC has petitioned EPA Administrator Reilly to return program delegation to EPA unless the public intervention language in KSA 1990 Supp. 65-170e(b) is consistent with federal standards.

This issue has also been addressed by the Attorney General. In Attorney General Opinion No. 91-68, the conclusion was reached that KSA 1990 Supp. 65-170e does not comply with the minimum federal standards for public intervention as specified by 40 CFR Sec. 123.27(d). The reasoning for the Attorney General's opinion focused on the fact that the federal standard requires the state to permit intervention in cases which may, but have not yet, adversely affected a citizen. Hence, intervention under the current statutory language is not allowed until an identifiable interest is actually adversely affected. Under the proposed amendment, intervention rights are triggered when an identifiable interest may be affected by a decision in the context of an NPDES matter. This would allow citizens to anticipate adverse impacts and respond accordingly.

HJC
2-13-92
Attach #3
1 of 2

My previous legal experiences have included the opportunity to represent numerous public interest organizations as intervenors in regulatory proceedings. This experience has taught me and others that the contributions to the decision making process made by interested citizens should be encouraged and facilitated. Some may argue that citizen intervention should be limited to situations where an interest has already been adversely affected. However, this overlooks the rights of citizens to protect their interests by taking preventative actions.

In conclusion, KDHE supports House Bill 2824 because it is required in order to bring our law into compliance with the federal Clean Water Act and because it is consistent with encouraging public participation.

For these reasons, we respectfully request that House Bill 2824 be reported favorably.

Testimony Presented By:

Robert V. Eye
General Counsel
February 13, 1992

HJC
2-13-92
Attach #3
2 of 2

Kansas Natural Resource Council

Testimony before the House Judiciary Committee

Re: HB2824 - Intervention in legal actions relating to water pollution

From: Shaun McGrath, Executive Director

Date: February 13, 1992

My name is Shaun McGrath, and I represent the Kansas Natural Resource Council, a private, non-profit, organization which advocates sustainable resource policies for the state. Our membership is over 850 statewide.

HB2824 amends current Kansas laws regarding the public's right to intervene in legal actions involving the National Pollution Discharge Elimination System program administered by KDHE. The EPA has said that the Kansas law is more restrictive than the federal law, and thus in conflict. The Kansas Attorney General has also said that the Kansas law is more restrictive, and conflicting with the federal law.

KNRC supports passage of HB2824 in order that the Kansas program meet the federal requirements for public intervention in the NPDES program.

Thank you for the opportunity to testify before you today.

HJC
2-13-92
Attach #4

1516 Topeka Avenue • Topeka, Kansas 66612 • (913) 233-6707