

Approved March 20, 1992
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley
Chairperson

9:04 a.m.~~p.m.~~ on March 5, 1992 in room 526-S of the Capitol

All members were present except:

Committee staff present:

Jim Wilson, Revisor of Statutes
Jerry Donaldson, Principal Analyst
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Terry Leatherman, Exec. Dir., Ks. Industrial Council, KCCI
Bob Stacks, Director, Div. of Employment Security, Ks. Dept. of Human Resources
Kay Farley, Child Support Coordinator, Kansas Office of Judicial Administration
Jamie Corkhill, representing the Child Support and Enforcement Program, Kansas Department of Social and Rehabilitation Services
Anne McDonald, District Court Trustee, 29th Judicial District
Audrey Magana, District Court Trustee, Geary County District Court
Denise Hearn

The meeting was called to order at 9:04 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley re-opened the public hearing on House Bill No. 3069, an act which would reduce employer unemployment taxes by ten-percent in calendar years 1993 and 1994, or reduction of \$10 the \$15 million each year. He introduced the next proponent of the bill:

Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry, distributed and read written testimony in support of the bill (attachment #1). Upon completion of his testimony, Mr. Leatherman answered questions from several members of the committee.

The next conferee on House Bill No. 3069 was Bob Stacks, Director, Division of Employment Security, Kansas Department of Human Resources, who said the Department was neither a proponent or opponent of the bill. He distributed and summarized written testimony (attachment #2), and then answered questions.

The chairman closed the public hearing on House Bill No. 3069, and then opened the hearing on House Bill No. 3058 by explaining that the bill had been requested for introduction by the Kansas Office of Judicial Administration and was intended to assign workers' compensation benefits to child support payments. He introduced proponents of the bill:

Kay Farley, Child Support Coordinator, Kansas Office of Judicial Administration, distributed and summarized written testimony in support of the bill (attachment #3), and then answered questions.

Jamie Corkhill, representing the Child Support and Enforcement Program, Kansas Department of Social and Rehabilitation Services, appeared and provided written testimony in support of the bill (attachment #4).

Anne McDonald, District Court Trustee, 29th Judicial District, also provided written testimony in favor of House Bill No. 3058 (attachment #5). She then answered questions from several members of the committee.

The next proponent was Audrey B. Magana, District Court Trustee, Geary County District Court, who presented written testimony (attachment #6), and then answered questions.

Denise Hearn gave testimony in support of the bill and described her personal experience in attempting to obtain child support payments from her ex-husband who was receiving workers' compensation benefits (attachment #7).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry

room 526-S, Statehouse, at 9:04 a.m./~~pm~~ on March 5, 1992

Chairman Hensley informed committee members that they had copies of written testimony in favor of the bill had been provided by Peggy A. Elliott, District Court Trustee, 10th Judicial District (attachment #8).

The chairman announced that House Bill No. 3058 would be referred for further consideration to the subcommittee he appointed to review the various bill on workers' compensation. He also announced that in its meeting tomorrow the committee would discuss and take final action on the following bills: House Bills no. 2076, 2781, 2783, 2956 and 3117. He urged that if any member desired to vote on any bill previously heard by the committee, they should bring it up in the committee meeting tomorrow.

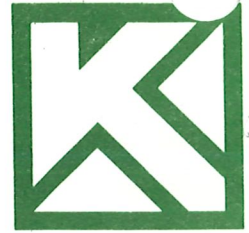
The chairman then entertained a motion to approve the minutes of previous committee meetings. Rep. Denise Everhart moved to approve the minutes of the February 17, 18, 19, 20, 24, 25, 26, 27 and 28, 1992 meetings. The motion was seconded by Rep. Jack Sluiter. Motion carried.

The meeting was adjourned at 10:00 a.m.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

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



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

HB 3069 & 2993

March 3, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to comment on HB 3069 and HB 2993. Both bills concern the Kansas unemployment compensation process and are supported by the Kansas Chamber.

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

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

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

In the simplest terms, if approved, HB 3069 would mean Kansas employers would pay less in unemployment compensation taxes in 1993 and 1994. Even with the appealing

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attachment #1*

prospect of reducing the taxes the members of KCCI have to pay, the Kansas Chamber would not support this proposal if it would jeopardize the benefits deserved by individuals who become unemployed through no fault of their own. However, KCCI feels there is ample evidence to show passage of HB 3069 will not lead the Kansas Employment Security Trust Fund towards insolvency.

1) PASSAGE OF HB 3069 WOULD STILL REQUIRE SIGNIFICANT UNEMPLOYMENT COMPENSATION BENEFIT RESERVES.

As of July 31, 1991, the total payroll of all Kansas employees totaled nearly \$16.9 billion. On the same day, the Kansas Employment Security Trust Fund contained nearly \$582 million to pay unemployment compensation benefits. The chart below shows what the Trust Fund balance would need to be to drive employer taxes to .5%, 1%, and 1.5% of total payroll under the current process and the process contained in HB 3069. Please note that HB 3069 would still require maintenance of a significant Trust Fund reserve.

	<u>Current System</u>	<u>HB 3069</u>
Balance needed for .5%	\$801.5 million	\$759.3 million
Balance needed for 1%	\$506.2 million	\$421.8 million
Balance needed for 1.5%	\$210.9 million	\$168.7 million

2) DURING TIMES OF HIGH UNEMPLOYMENT, THE PROPOSED TAX STRUCTURE IN HB 3069 WILL RESPOND TO PRESERVE THE TRUST FUND.

Over the past 15 years, the worst period of unemployment in Kansas occurred in fiscal year 1983, when the insurer unemployment rate was 4.1% and an all-time high of \$223.1 million in unemployment compensation benefits were paid. According to the Department of Human Resources, if that level of unemployment were translated into fiscal year 1990 dollars, the benefit payout would be \$328.3 million.

However, if you project this "worst case scenario" into the tax formula proposed in HB 3069, you will see the system will respond to protect the Trust Fund.

Worst Case Scenario" Projection.

Trust Fund Balance (7/31/91)		\$581.7 million
Taxes Collected (as proposed in HB 3069)		\$138.5 million
	(total)	\$720.2 million
Unemployment benefits paid		\$328.3 million
	(total)	\$391.9 million
New Trust Fund Balance		2.322%
Trust Fund Balance % of total payroll		
Taxes Collected the next year		\$175.5 million

3) WHEN COMPARED TO OTHER STATES, THE KANSAS TRUST FUND IS EXTREMELY SOLVENT.

There are several methods which can be used to show how the Kansas Employment Security Trust Fund balance compares to other states. The table below shows how Kansas compares to the national average and neighboring states by three measures.

The first column is the "high cost multiple," which measures the state's reserve relative to the potential demand for benefits during recessionary times. A 1.0 high cost multiple means there is 12 months of benefits in the state's trust fund during "worst case scenario" unemployment. The second column measures trust fund adequacy by showing the number of months of benefits in a state's trust fund based on total benefit payments over the past year. The final column shows the state's reserve percentage, which is trust fund balance divided by total wages. The table reflects the condition of state trust funds, as of October 1991, and was compiled by the National Foundation for Unemployment Compensation and Workers' Compensation.

	High Cost Multiple	Months of Benefits	Trust Fund % to Wages
U.S. average	0.74	16.5	1.66
Kansas	1.52 (8)	38.5 (13)	3.00 (15)
Missouri	0.22 (49)	5.1 (49)	0.43 (50)
Colorado	0.91 (27)	22.9 (33)	1.15 (42)
Arkansas	0.34 (47)	8.5 (44)	0.90 (44)
Oklahoma	1.67 (5)	41.0 (9)	2.29 (21)
Iowa	1.27 (13)	39.6 (12)	3.33 (10)
Nebraska	0.98 (24)	40.5 (10)	1.47 (37)

HB 3069 represents a rare opportunity to lower taxes on a portion of your constituency without jeopardizing the services provided by a state program. The Kansas chamber would urge the committee approve HB 3069.

HB 2993 concerns the eligibility of certain individuals for unemployment compensation benefits. The Kansas Chamber feels most areas which would be changed through the passage of HB 2993 are beyond the employer's responsibility to provide unemployment compensation benefits to individuals who "become unemployed through no fault of their own" and should be disallowed from receiving unemployment compensation.

Three of the changes in HB 2993 involve the "voluntary quit" provision of the state's employment security law.

1) Individuals who voluntarily quit their job to accompany a spouse who has accepted employment in a different geographic location would no longer qualify for benefits. In fiscal year 1991, there were 759 individuals cleared to receive unemployment compensation benefits under this provision.

HB 2993 maintains the current provision permitting unemployment compensation in cases where the spouse's job transfer is involuntary.

2) HB 2993 would amend the voluntary quit provision concerning workplace harassment. KCCI feels the amended language would have little effect on the application of this provision.

In FY 1991, there were 201 cases filed under this provision. Thirty nine percent of the cases led to employees being cleared for benefits.

3) The voluntary quit provision concerning an employee quitting a job because the employee was asked to perform an illegal act would be amended by HB 2993 to require the employer have knowledge of the request on the employee.

This voluntary quit provision is seldom used. In 1991, there were 18 cases filed under this provision, with nine of the cases leading to an individual receiving unemployment compensation.

The other two provisions in HB 2993 concern dismissals for misconduct.

1) In the employee misconduct section concerning use of non-prescribed controlled substances, the term "while working" is struck. This would address an employer concern

when an employee's use of controlled substances away from work is substantially adverse to the employer's interest.

2) The final provision in HB 2993 concerns dismissals due to an employee's inefficiency or inability to deliver satisfactory performance. KCCI feels this change remains in the realm of an employee who is unemployed through no fault of their own, and do not encourage the Committee to approve this portion of HB 2993.

Thank you for this opportunity to comment on HB 3069 and HB 2993. I would be happy to attempt to answer any questions.

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House Labor and Industry Committee

HB 3069

The Effect of a Two-Year Revision of Schedule III

Mr Chairman and members of the committee:

The Department of Human Resources respectfully submits the following information with regard to what the Department considers a particular area of concern.

Our review of HB 3069 indicates that schedule III, K.S.A. 44-710(a) as it currently appears would re-center the taxing schedule for calendar 1993 and 1994. Schedule III, (The Fund Control Schedule) is used in annual employer tax rate calculations to determine a total amount of income to the Employment Security fund from Contributions. The reserved fund ratio referenced to in schedule III is the ratio of the trust fund balance to total wages of contributing employers. The current schedule is centered to yield 1.00 percent of total wages of contributing employers at the 3.000-3.050 percent reserved fund ratios. HB 3069 revises the schedule in 1993 and 1994 to yield 0.90 percent of total wages of contributing employers when the reserve fund ratio is 3.000 but less than 3.050 percent. This is basically a reduction of .10 percent of total wages of contributing employers.

By revising the Fund Control Schedule for 1993 and 1994 the fund itself would be reduced by an estimated 10.0-15.0 million per year, causing the fund balance to be lower than if the schedule had remained unaltered. When the current schedule is returned in 1995 the resultant lower fund balance would require a higher yield

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Attachment #2 2-1

(income) with corresponding increased tax rates for positive eligible employers.

The effect of HB 3069 is demonstrated on the attached graphs. The graphs show the effect on the reserve fund balance and the annual required yield if the revised Schedule III were in affect for rate years 1988 and 1989. The changes are compared to the actual figures for an expanded period of 1988 - 1992. The required yield would be lower in 1988 and 1989 and higher in 1990 and 1992. The fund balance used in annual rate computations would also be lower as indicated. The lower fund balances are due to an overall loss of contributions and interest. Please **note** that the three years of higher contributions and interest during 1990 and 1992 do not offset the loss of income to bring the reserve fund to the actual level in 1992.

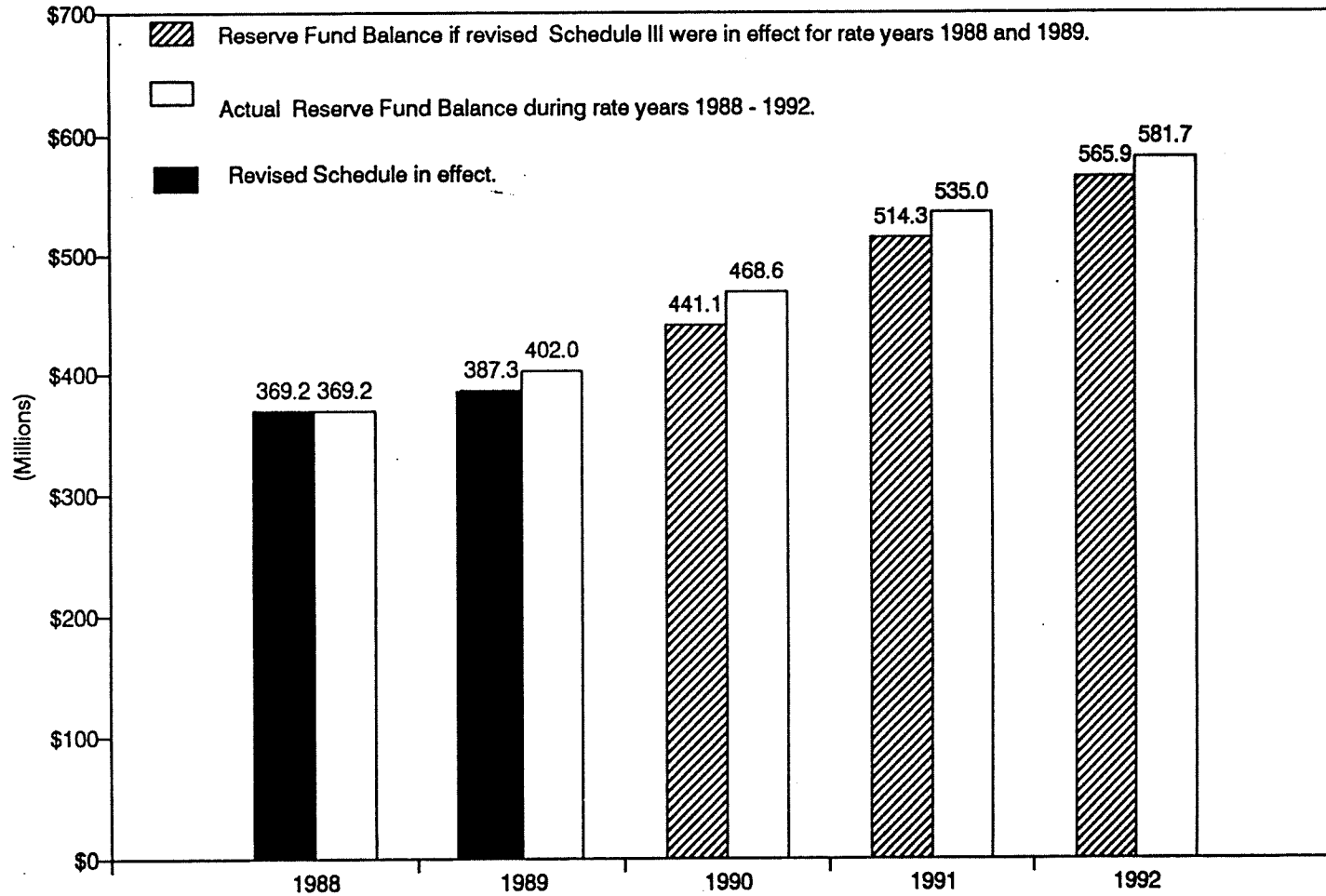
The Employment Security Advisory Council is on record as being opposed to any reduction of employer tax rates given the current status of the national economy. Although the Employment Security Advisory Council would not dismiss any proposals out of hand, their concerns as well as ours, revolve around the current instability with regard to jobs and long term unemployment. The department's concern with regard to HB 3069 is simply that while the first two proposed years of tax relief for employers would be welcomed by the private business sector, the impact in the third year once the schedule reverts to its original formula would cancel any benefits experienced in the previous two years. Because it is difficult to predict the future of the economy and its effect on the fund, the agency does not take any formal position on HB 3069. However, it

is the agency's responsibility to the State and citizens of Kansas to be fiscally prudent during times of economic instability.

This concludes our testimony, we would be willing to answer any questions or provide any addition information to the committee that they may require.

Graph 1

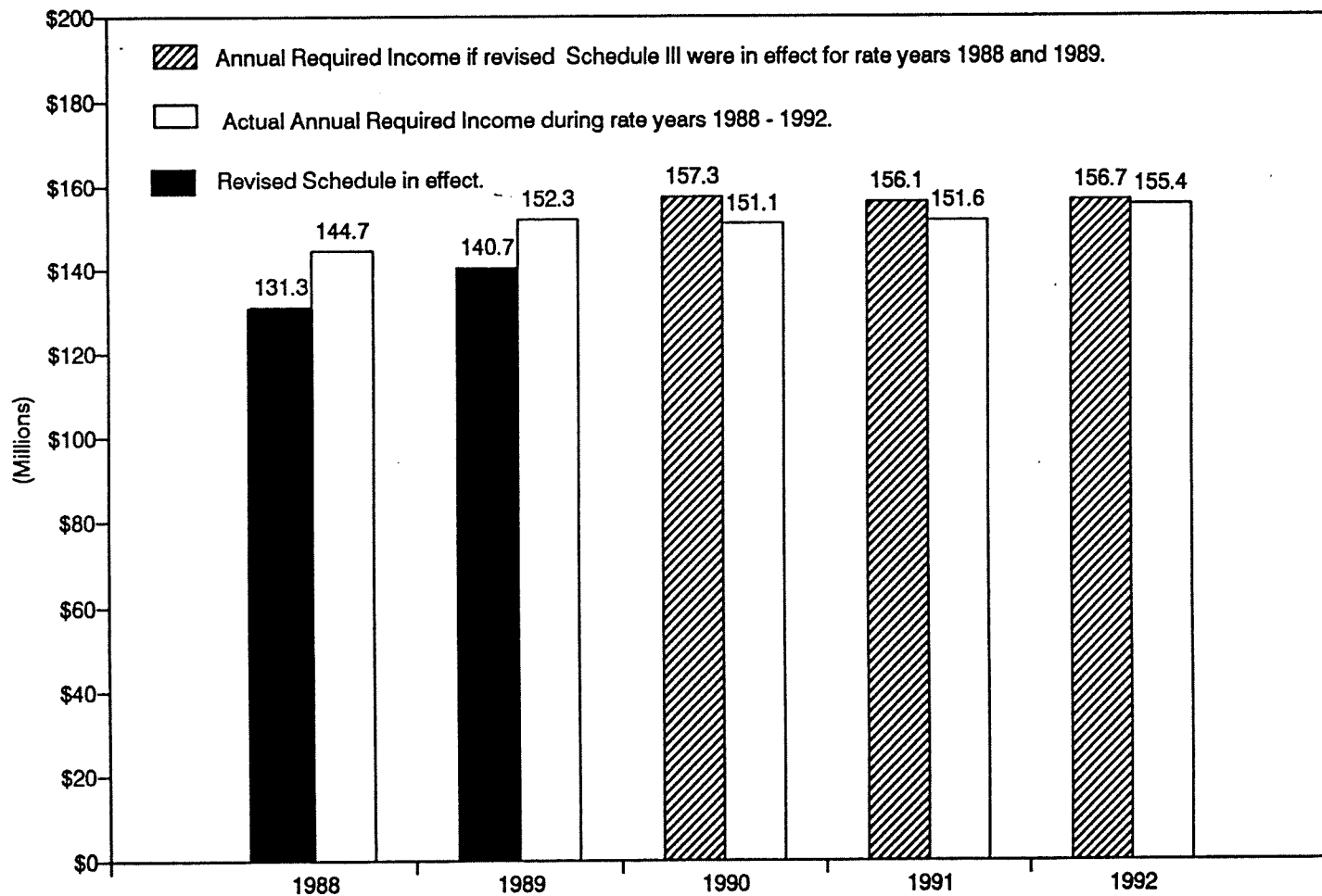
Reserve Fund Balance With Revised and Actual Schedule



2-4

Graph 2

Annual Required Income to Fund With Revised and Actual Schedule



2-5

HOUSE BILL No. 3058
House Labor & Industry Committee
March 5, 1992

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Representative Hensley and members of the committee:

I am pleased to be here today to discuss 1992 House Bill 3058 with you.

This bill amends the workers compensation statute to allow the assignment of compensation payments for child support. Kansas is currently only one of two states that does not allow this.

The intent of the Workers Compensation Act is to provide income to an injured employee and the employee's family during the employee's recovery. As such, children in an intact family benefit from the Workers Compensation Act. However, because the act does not allow for debt collection, even for child support enforcement purposes, children of divorce are denied support during the time the obligor is receiving workers compensation payments.

During the 1991 legislative session, the Office of Judicial Administration and the District Court Trustees requested the introduction of HB 2050 which would have allowed for claims for compensation to be subject to enforcement of an order for support. This bill was heard before the House Judiciary Committee. Five general concerns were raised about the bill. 1) Should compensation payments be considered as an alternative to wages, particularly at a time when the employee has reduced income? 2) Was a limit needed on the amount of compensation that could be taken for support and how would such limitation impact the attorney lien? 3) What impact would the law have on settlement negotiations? 4) How would multiple payors involved in a single claim would be handled? 5) Was the definition of support too broad?

In requesting the introduction of HB 3058 this year, we tried to address all of the concerns that were raised last year. We surveyed the other 49 states and the District of Columbia regarding the access to workers compensation payments

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for the purpose of collecting child support. Attached to my testimony are copies of summary information from that survey.

I would like to briefly touch on a few highlights of the survey data. We found that Kansas and Nebraska are the only two states that do not allow access in some manner. Of those states that allow access, both current support and arrearages can be collected. Of the 48 states allowing access, only three states limit the access to the temporary compensation payments. We were also interested in determining the authority by which the other states were allowed access. Twenty seven states allow access through their income withholding statutes, 11 states allow access through another statute, 9 states allow access through both their income withholding statutes and other statutes as well, and Iowa established its authority through case law.

House Bill 3058 would establish a procedure whereby a motion could be filed with the court requesting an assignment of a portion of the workers compensation payments to enforce a support order of the court. The motion would contain the amount of the current support, the amount of any arrearage owed, the name of the payor of compensation, and whether enforcement is sought for current support, arrearage, or both. The bill limits the percentage of the compensation payment that could be assigned to 25% for temporary payments and 40% for lump sum payments. The bill further provides the support obligor with an opportunity to request that the court consider a modification to the current support order. If the court issues an assignment order, the assignment order is then served on the known payors of compensation.

As mentioned previously, in drafting language for this bill we tried to address the issues that were raised as concerns last year.

1) Should workers compensation payments be considered as an alternative to wages, particularly at a time when the injured employee has reduced income? Forty-eight states and the District of Columbia consider compensation payments as an alternative to wages. Also, we see a relationship between unemployment benefits and workers compensation payments. Unemployment benefits in Kansas may be attached for enforcing child support. It seems inequitable to children of divorce that access is allowed to the income of unemployed parents, while access is denied to the income of injured parents. As mentioned, if the employee's income has been reduced because of the injury, the proposed procedure allows for the court to consider a downward modification of the current support order as part of the procedure.

2) Should there be a limitation on the amount of the compensation that could be taken for support and how should the limitation impact the attorney lien? The bill establishes a limitation of 25% on temporary payments and 40% on lump sum payments. As you can see from the survey data attached to my testimony, the vast majority of the states allow access to 50% or the Consumer Credit Protection Act (CCPA) percentage for temporary payments and the majority of states place no limit on the lump sum settlement payments. By asking for only 25% of the temporary payment and 40% of the lump sum payments, we are attempting to avoid a conflict with attorney lien.

3) Will such law impact on settlement negotiations? In conducting our survey, we asked other states whether access for the purposes of child support enforcement had an impact on the settlement process. Twenty-nine states responded that they did not know whether the settlement process was impacted or not. Eighteen states reported that there had been no impact. Representatives in Arkansas and Ohio reported that it was their impression that the negotiation process had been slowed.

4) How will multiple payors involved in a single claim would be handled? The bill requires the child support attorney to serve the assignment order on any known payors of compensation.

5) What should be the definition of support for the purposes of this bill? The bill limits the application of this procedure to Kansas support orders.

This bill will greatly assist District Court Trustees in their support enforcement efforts. I recommend that this bill be approved.

Thank you for the opportunity to discuss this matter with you.

**States With Limited or No Access to Workers Compensation
Benefits for the Collection of Child Support**

<u>No Access</u>	<u>Access to Temporary Only</u>	<u>Access to Permanent Only</u>
Kansas	Illinois	None
Nebraska	Nevada	
	Texas	

2 states

3 states

0 states

NOTE: All states that allow access to workers compensation payments for the purpose of collecting child support allow access for both the collection of current and arrearage payments.

**Authority for Access to Workers Compensation Benefits
for Collection of Child Support**

<u>Statutory for Income Withholding</u>	<u>Statutory for Other Process*</u>	<u>Case Law</u>
Alabama	Arkansas	Iowa
Alaska	California	
Arizona	Colorado	
Connecticut	District of Columbia*	
Delaware	Georgia*	
Florida	Indiana*	
Hawaii	Maine*	
Idaho	Massachusetts*	
Illinois	Michigan*	
Kentucky	Missouri	
Louisiana	Montana*	
Maryland	New Hampshire*	
Minnesota	New Mexico*	
Mississippi	North Dakota	
Nevada	Oklahoma	
New Jersey	Oregon	
New York	Tennessee	
North Carolina	Utah*	
Ohio	Washington	
Pennsylvania	Wisconsin	
Rhode Island	Wyoming	
South Carolina		
South Dakota		
Texas		
Vermont		
Virginia		
West Virginia		
 27 states	 20 states and the District of Columbia	 1 state

* There is statutory authority in both the income withholding statute and in other statutes, as well.

**Limits on the Amount of the Worker Compensation Benefits
or the Collection of Child Support**

<u>State</u>	<u>Limits on Temporary Benefits</u>	<u>Limits on Permanent Settlements</u>
Alabama	CCPA	25%
Alaska	50%	No limit
Arizona	50%	No limit
Arkansas	25%	50%
California	30%	No limit
Colorado	CCPA	No limit
Connecticut	CCPA	No limit
Delaware	No limit	No limit
District of Columbia	CCPA	No limit
Florida	CCPA	CCPA
Georgia	CCPA	No limit
Hawaii	No limit	No limit
Idaho	CCPA	No limit
Illinois	55%	No access
Indiana	50%	50%
Iowa	50%	50%
Kentucky	25%	No limit
Louisiana	50%	No limit
Maine	Anything in excess of \$127/week	Anything in excess of \$200/week
Maryland	CCPA	No limit
Massachusetts	50%	No limit
Michigan	CCPA	No limit
Minnesota	CCPA	No limit
Mississippi	CCPA	CCPA
Missouri	25%	50%
Montana	Child support guideline amount for current support	No limit
Nevada	50%	No access
New Hampshire	CCPA	No limit
New Jersey	CCPA	No limit
New Mexico	Anything in excess of \$100/week	No limit
New York	CCPA	No limit
North Carolina	40%	40%
North Dakota	50%	No limit
Ohio	CCPA	No limit
Oklahoma	50%	No limit
Oregon	25%	25%
Pennsylvania	CCPA	CCPA
Rhode Island	No limit	No limit
South Carolina	CCPA	No limit
South Dakota	50%	No limit
Tennessee	33.3%	33.3%
Texas	50%	No access
Utah	CCPA	25%
Vermont	CCPA	No limit
Virginia	CCPA	CCPA
Washington	50%	50%
West Virginia	CCPA	CCPA
Wisconsin	CCPA	CCPA
Wyoming	35%	35%

Relationship to Attorney Fees

<u>Attorney Fees Allowed*</u>	<u>Percentage Allowed</u>	<u>First Priority</u>
Louisiana	20% of first \$10,000 10% thereafter	Attorney lien
Massachusetts	15%, if liability 20%, if no liability	Attorney lien
Minnesota	25% of first \$4,000 20% of next \$27,500 with a cap of \$6,500	Attorney lien
Missouri	25%	Child support debt
Montana	20%	Attorney lien
New Jersey	20%	Attorney lien
New Mexico	\$12,500 cap	No priority
North Carolina	25-33%	Attorney lien
North Dakota	Fee schedule	No priority
Ohio	33.3%	Child support debt
Oklahoma	10% on temporary 20% on permanent	Attorney lien
Pennsylvania	20%	Child support debt
Rhode Island	15%	Attorney lien
South Carolina	33.3%	Attorney lien
South Dakota	25%, if not litigated 33.3%, if litigated	Child support debt
Texas	25%	Attorney lien
Vermont	\$3,000 cap	Child support debt
Virginia	None	Child support debt
Washington	None	Attorney lien

No Attorney Fees Allowed

Kentucky
Maine
Nevada
Utah
Wisconsin

* Most states responded that they did not know whether attorney fees were allowed or not.

Department of Social and Rehabilitation Services
Donna L. Whiteman, Secretary

House Bill 3058

Before the House Labor and Industry Committee
March 5, 1992

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 strongly favors passage of House Bill 3058.

This measure would allow workers compensation benefits to be applied directly to payment of child support orders. A voluntary or involuntary assignment of benefits would allow current support to be deducted from any weekly benefits (up to 25% of net benefits) and past due support to be deducted from any lump-sum settlements or awards (up to 40% of net benefits).

Under current Kansas law, workers compensation benefits cannot be assigned or attached, even for payment of child support. Part of the purpose of the exemption is to protect the injured person's dependents, however, children not living with the injured parent are not protected by the exemption if their support orders cannot be enforced effectively.

Parents receiving workers compensation rarely have other non-exempt resources as avenues for enforcement, so the only remedy that remains is a citation in contempt. Judges are most reluctant to jail a sick or injured parent, even when the parent willfully refuses to support the child.

This bill would be very beneficial to the families and taxpayers served by Child Support Enforcement Program. Support collections would increase, with the increase benefiting cases that presently have no effective collection remedy at all.

Fiscal Impact. This measure would be expected to increase support collections and federal incentive payments, allow existing staff to devote more time to tasks needed to meet federal performance standards, and allow moderate cost-avoidance for the AFDC (aid to families with dependent children) program.

o Annual increase in support collections (gross amount):		\$ 945,080
State share retained.....	\$ 128,605	
Federal incentives.....	17,691	
Total added to fee fund.....	\$ 146,296	
o Value (per year) of staff time freed for other tasks:		\$ 8,436
State funded share.....	\$ 3,439	
o AFDC cost-avoidance:		
	FY93	FY94+
Gross amount.....	\$ 88,400	\$ 158,600
State funded share.....	36,040	64,661

For these reasons, SRS urges that House Bill 3058 be recommended for passage.

For more information, please contact:

Jamie L. Corkhill
Child Support Enforcement
296-3237

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3-5-92
Attachment #4

HOUSE BILL No. 3058
House Labor & Industry Committee
March 5, 1992

Testimony of Anne McDonald
Court Trustee
29th Judicial District

Representative Hensley and members of the committee:

Thank you for the opportunity to speak in support of H.B. 3058, which makes it clear that Workman's Compensation benefits may be attached to satisfy an obligation for support.

Both as a Court Trustee and as President of the Kansas Child Support Enforcement Association (KCSEA) I have long desired this particular piece of legislation. KCSEA's Board of Directors passed a Resolution in November, 1991, supporting this bill.

I believe that H.B. 3058 is not only on track with other states but also with the public policy expressed by the Kansas Supreme Court in Mahone v. Mahone, 213 Kan. 346, 517 P.2d 131 (1973) and cited in Mariche v. Mariche, 243 Kan. 547, 758 P.2d 745 (1988) at 551:

The Mahone court then ruled that a father's duty to support his children took precedence over the statutory exemption [of KPERS funds]. The court concluded:

This court as a matter of public policy has always vigorously protected the right of a dependent child to receive support from his father. The denial of relief to the minor children in cases such as this might well cast upon the public the burden of supporting a pensioner's children and relieve him and his property of that obligation. Such a holding in our judgment would be perversive of the true purpose and policy of our exemption laws and the intent of the legislature in providing the exemption . . . 213 Kan. at 352.

The same reasoning applies to situations in which the parent is receiving Workman's Compensation benefits.

When I testified last year in support of the prior bill (H.B. 2050) I gave some examples of real life cases where this bill would make a marked difference. We had a case in 1990 in which the Workman's Compensation carrier accepted an Income Withholding

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Attachment #5*

Order, the obligor agreed and regular child support payments were continued while he was off work. It made an enormous difference to the children.

Another case we have demonstrates what is more often the norm however. The father received \$1,174.00 per month Workmen's Compensation benefits beginning in late 1989. In 1990 he owed \$3,162.00 in child support for two sons, based on an order of \$50.00 per week; he paid \$1,247.08, leaving a balance of \$1,915.00. In 1991 he paid a total of \$863.00 so that for those two years, he paid only 33% of the court ordered support. Our office has had an ongoing contempt proceeding for the last several months because he still is not paying, we were told he received a lump sum payment but he did not use any of it to pay arrears, and now he has lost his job and access to insurance coverage for the children so the mother has to try to squeeze out a monthly premium of \$178.00 for that as well.

Fortunately, the majority of child support enforcement cases do not involve a Workman's Compensation claim. But in those that do, the Workman's Compensation benefits are usually the only income and when the obligor does not pay voluntarily, the children are left with nothing.

As Ms. Farley has pointed out in her testimony, practically every other state in our country has some mechanism for attaching at least a portion of Workman's Compensation benefits for child support. Kansas is frequently considered as very enlightened and progressive on a number of issues. I'd like to see us maintain that designation with regard to child support and Workman's Compensation.

We need a productive work force for the future for our state and our country. Our children are the source of that work force. If one in five is presently living in poverty and over half will spend part of their childhood in a single parent home, the prospects for the future are not encouraging. H.B. 3058 is one step in the right direction to counter these trends and I urge you to approve it. Thank you.



COURT TRUSTEE

Geary County Courthouse
P.O. Box 1147
Junction City, Kansas 66441
(913) 762-2583
Facsimile (913) 762-3903

Testimony of Audrey B. Magana, Geary Co. Dist. Ct. Trustee
HOUSE BILL No.3058, House Labor & Industry Committee
March 6, 1992

Representative Hensley and members of the committee:

Thank you for the opportunity to address you in support of 1992 House Bill 3058.

I will not repeat what Ms Farley has commented upon in her presentation. I do add that myself and others were called upon to try to develop responses to the questions and concerns expressed during the 1991 legislative session when the House Judiciary Committee considered HB 2050. House Bill 3058 is the product developed to respond to the many valid concerns expressed by members of that committee and conferees. Many of the concerns were of a procedural nature. Other concerns were for the protection of the injured worker.

A question not addressed by Ms. Farley's testimony is whether this procedure will be unmanagable for insurance carriers, the state fund or the self insured employer. I respond to this question by asking you to consider that the insurance carriers must be performing withholding functions in at least forty-eight states if Ms Farley's survey is accurate. The state funds of those states are able to manage similar withholding functions. I think the insurance industry could do for Kansas without much of a problem what it does for almost all states. I am also confident the Kansas officials managing the state fund can do what their counterparts in other states have been doing. Employers are very familiar with income withholding procedures. Self-insured employers would have neither more or less difficulty in complying with the assignment process contemplated by HB 3058 than they encounter in processing a garnishment or an income withholding order.

You may be surprised to hear that my colleagues and I disagree on the question of whether existing Kansas law allows the collection of support from workmens compensation benefits by involuntary means. Attached to my testimony are five pages of a winning trial brief that present the arguments in support of issuing income withholding orders to payors of income who are paying weekly workmens compensation benefits to support obligors. Some have suggested that I not address

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these arguments with you so that I may have something to fall back on if you don't act favorably with this bill. After much thought I conclude that you need to know about the Income Withholding Act and the arguments that are being made successfully to allow workmens compensation benefits to be attached under the provisions of it.

Although I adamantly support the principle that workmens' compensation benefits may now be reached involuntarily for payment of child support I sincerely believe that the procedure created in HB 3058 is superior to the relief allowed by the Income Withholding Act when the income contemplated to be attached is workmens compensation benefits. Two reasons for this statement are as follows. 1) The amount of the Weekly benefits subject to assignment is capped out at the amount of the current support order or twenty five percent of the weekly benefit whichever sum is less rather than the consumer credit protection act limitations applicable to the collection of child support under the Income Withholding Act. 2) The Income Withholding Act does not define income in such a manner that a lump sum settlement can be considered a periodic payment that can be reached in whole or in part to satisfy an arrearage. 3058 allows up to forty percent of a lump sum to be attached to satisfy arrearage claims.

I believe that the insurance industry, the officials managing the state fund and self-insured employers deserve as much help as can be provided to them to understand what is expected of them when they receive an assignment of benefits. I wonder if it would not be prudent to amend the bill to direct the Workmens Compensation Director and Judicial administrator to cooperate to design suggested legal forms and informational materials to promote uniformity and clarity.

Those of us who helped develop HB 3058 have attempted to balance an injured workmans need for protection with his duty to provide support for those who are his responsibility. We bore in mind that the intent of the Workmens Compensation Act is also to benefit the family of the injured workman as well as the workman. I request that you approve this bill.

Thank You.

ABM

[REDACTED]

to determine if a retroactive modification is proper in a given case and the extent of the relief granted. On this point, it is argued that respondent's motion was filed in late December of 1990, but was not presented for hearing until May 8, 1991 and probably would not have been heard then had support enforcement activity not been initiated. Respondent has not exhibited due diligence in prosecuting his motion. Had the motion been prosecuted diligently, it would have been heard in the late Spring and the Court's decision made long before July 1, 1991. Respondent's delay should not be rewarded and the Court should, after applying the statute, find that a retroactive modification of the support order is not appropriate in this proceeding and set August 1, 1991 as the effective date of any modified support order granted herein.

IV.

To resolve issue IV, the Court must review K.S.A. 44-514, K.S.A. 23-4,105(b), K.S.A. 23-4,106(b), K.S.A. 23-4,108(g), K.S.A. 4, 109(b), as well as K.S.A. 1990 Supp. 60-2313. After the review, the Court should rule that an Income Withholding Order can lawfully be issued to a support obligor's payor of workmens' compensation benefits because the enactment of the Income Withholding Act has created an exception to the longstanding general rule prohibiting the issuance of legal process or other remedies for the recovery or collection of a debt from workmens' compensation benefits.

K.S.A. 44-514 has been in the following form since it was last

[REDACTED]

amended in 1927.

"No claim for compensation, or compensation agreed upon, awarded adjudged, or paid, shall be assignable or subject to levy, execution, attachment, garnishment, or any other remedy or procedure for the recovery of collection of a debt, and this exemption cannot be waived."

It is this statute which respondent contends prohibits the issuance of an income withholding order for attachment of workmens' compensation benefits. This statute does not specify that an income withholding order is prohibited from being issued to collect child support from workmens' compensation benefits.

The Income Withholding Act was enacted in July of 1985. The purpose of the act as setforth in K.S.A. 23-4, 105(b) is "to enhance the enforcement of all support obligation by providing a quick and effective procedure for withholding income to enforce support orders". Types of income subject to withholding pursuant to this act, or prohibited from being withheld pursuant to the act, are identified in the definition of income setout below in K.S.A. 1990 Supp. 23-4, 106(b).

"Income' means any form of periodic payment to an individual regardless of source including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof.

"Income" does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including but not limited to federal and state taxes, social security tax

[REDACTED]

and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply". (Emphasis added. See also attachment g.).

Although K.S.A. 1990 Supp. 23-4, 106(b) does not specifically list workmens' compensation benefits in the list of types of income subject to the withholding act, such benefits do fall within the general definition of income because they are a form of periodic payment received from a person or private entity. The statute affirmatively states that its list of incomes is not all inclusive. It does specify four exceptions to the definitions of income. Workmens' compensation is not one of those types of income excepted from the statutes definition of income. The last sentence of the section which provides that no state laws that exempt income are applicable is the part of the Income Withholding Act clarifying that K.S.A. 44-514 and other exemption statutes are superseded by it. No other construction of the statutes can be reached after reviewing K.S.A. 1990 Supp. 23-4,106(b) (attachment g.), K.S.A. 44-514, as well as K.S.A. 23-4,109(b), of the Income Withholding Act which provides as follows:

"(b) Except as provided by this act, any state law which limits or exempts income from legal process or the amount or percentage of income that can be withheld shall not apply to withholding income under this act."

Could the legislature have made its position clearer regarding the non-application of exemption statutes to income withholding

[REDACTED]

proceedings? No. Respondent denies that there is an exception to K.S.A. 44-514; however, the introductory text of K.S.A. 1990 Supp. 60-2313(a) (attachment h.), last amended in 1989, provides that:

"Except to the extent otherwise provided by law, every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state: (Emphasis added.)....."

"(3) Any worker's compensation exempt from process pursuant to K.S.A. 44-514 and amendments thereto...."

and shows clearly that exceptions to exemption statutes have been clearly contemplated by the legislature.

Although respondent may raise issues questioning legislative intent, the court should review the Income Withholding Act and Workmens' Compensation exemption statute using the following rules of statutory construction.

It must first determine whether the statutes are clear and unambiguous. If they are not ambiguous, the court should glean their intent from the statutes themselves giving effect to the intention of the legislature as expressed rather than determine what the law should or should not be. Randall v Seeman, 228 Kan. 395, 397 (1980) (attachment l.). And, where there is a conflict between two statutes that cannot be harmonized, the later legislative expression controls. Asay v American Drywall, 11, Kan.Ap.2nd 122, 126 (1986) (attachment m.). If these rules of construction are followed, respondent's legislative intent arguments must fail because the Income Withholding Act was inacted after the workmens' compensation exemption statute and

[REDACTED]

the Income Withholding Act expressly states that except as defined within it, no state exemptions are applicable to limit the withholding of income under the act.

V.

The fifth and final issue addressed in this brief is whether the respondent can be found in indirect contempt of court as a consequence of his neglect to pay support as previously ordered by the court. The court should find that the K.S.A. 44-514 does not prohibit the court from exercising its powers to punish a person who has willfully and intentionally failed to obey the orders of the court. The court's objective in a contempt proceeding is to determine if a failure to comply with an order was willful and intentional. If such a finding is made, the court can punish the contemnor. Contempt proceedings are not intended to be debt collection proceedings, but rather proceedings to secure a compliance with the court's order. Granted, this is a fine line; however, contemnor's are not confined or incarcerated because of debt, such a rationale is unconstitutional. Because a contempt proceeding is not a debt collection proceeding, the provisions of K.S.A. 44-514 do not preclude the court from finding respondent in indirect contempt of the court's orders which have required him to pay child support.

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Ladies and Gentlemen of the House, my name is Denise Hearn

In 1979 I was divorced. Since then I have struggled to get my ex-husband, Bryan Spradling to pay Child-Support. At our Divorce he was on workmen's Comp for cutting off the tip of his finger, shortly there-after he broke his angle and again was on workmen's comp, shortly after his release from that case- he broke his arm. Shortly after that case he broke his leg. Shortly after that he hurt his back. Then Mr Spradling went to prison for violence towards myself and my current husband. Shortly before his release, he was put on a work release program and hurt his back again. Upon leaving prison, he again was on workmen's comp. In 1990 he again went on workmen's comp for his back and is currently still on workmen's comp.

After my divorce, Mr Spradling made me a promise, he said "I'll stay on workmen's comp for life -- because you can't touch it! and I'll never have to pay you a dime!

Over the past 13 years I have spent 100's of hours in court, listening to excuses why he CAN'T pay child support. Our DA's office was given my case for felony non-support but after review they said "He knows we can't do a thing to him as long as he's on workmen's comp." and they gave the case back to the trustee's office.

I have fought along with the system and lost. Peggy Elliott and her staff, Paul Morrison and his staff have been wonderful, they know the legal games he's playing but their hands are tied. Tied by the LAWS in Kansas.

I do understand that there are honest people receiving workmen's comp for serious ailments. I to understand my ex-husband has needs -- But so do my children.

Mr Spradling has brought home more money weekly on workmen's comp than I have working 2-3 jobs. Yet, I have raised 2 children single-handedly and it's not been easy. I'm not trying to drain him or punish him - I just want what the law granted me 13 years ago -- 200.00 a month in child support.

My plea to you today is this:

The Federal government REQUIRES absent parents to pay Child Support. Almost all the states require absent parent's to pay Child Support - regardless of where their income is coming from. Please pass this bill and allow all the loop holes to be closed for people like my ex-husband. Please send a strong message to all absent parents that says Kansas will REQUIRE you to pay child support regardless.

Thank you for your time and considerations.

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Testimony in Support of Child Support Legislation
Labor and Industry Committee
March 5, 1992

Peggy A. Elliott
District Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

As the District Court Trustee for the Tenth Judicial District, our office is charged with the responsibility of collection, disbursement and enforcement of child support and maintenance in approximately 9,000 open cases. In 1991 our office collected over \$33 million dollars and appeared in over 5,000 court hearings.

Background

It is no secret that the divorce rate has risen significantly in the last few years and that at the present time approximately one-half of all marriages fail. Add to this the number of out-of-wedlock births and it is not difficult to understand why the family structure is changing and why child support and maintenance has become such an important issue. In Kansas, as across the nation, these single-parent households (usually headed by mothers) are becoming the newest group living below the poverty line.

It has been estimated by the Office of Child Support Enforcement that in 1987 approximately 9.6 million women were entitled to child support but that only 5.6 million had orders requiring that child support be paid. It is even more depressing

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to find that only 50% of these received support and the remainder either received no support at all or received only partial support. The Kansas Special Committee on Children's Initiatives has set a goal of increasing child support collections in Kansas by 30% each year.

To reach this goal will require that the legislature enact laws which give child support enforcement agencies new and creative methods of enforcing court orders. These laws should provide for several alternative methods since no one enforcement procedure will work in every case.

H.B. 3058

It is very important to the child support agencies that this bill be enacted. Kansas has usually been on the cutting edge of passing child support legislation but we have failed miserably in this area. Kansas is one of only five states in the nation that does not allow any assignment of workers compensation claims. Those states are Nebraska, Illinois, Nevada, Texas and, of course, Kansas. Furthermore, several states allow the Consumer Credit Protection Act limits of from 50% to 65% on temporary benefits and 28 of those states have no limit as to the amount allowed on permanent settlements. We feel that the bill we are supporting is very conservative in that we are only asking for 25% of the gross weekly compensation and an amount not to exceed 40% from lump sum

settlements, judgments or awards.

When the federal government has allowed retirement benefits to be used to support the claimant's children and the IV-D agency can intercept up to 50% of an obligor's unemployment compensation, it seems out of context that at least some of an obligor's workers compensation benefits cannot be assigned. The argument can also be made that if this were an intact family, some of the claimant's benefits would be used to feed, clothe and shelter his/her children so why not make some of these funds available to his children of a failed marriage?

There is also the occasional obligor who makes a career out of workers compensation claims and uses this as a shelter so he cannot be forced to support his children. We have at least one such individual who has been ordered to pay through our office. If my recollection serves me right, I believe this individual has a total of either seven or eight workers compensation claims. He has not paid as ordered by the court and has arrears of several thousand dollars. When we requested that our District Attorney take the case to be prosecuted as criminal non-support they declined to file suit on him since they did not feel a jury would convict him with his record of workers compensation claims. In the meantime, his former wife and children do without any aid from him.

Conclusion

Thank you for taking the time to consider this important bill. I hope you feel as I do that it is only when laws are strengthened and when public opinion is changed to reflect the seriousness of not being financially responsible for one's own children, will the taxpayers get any significant relief from the ever increasing welfare problem. We must devise ways to ensure that these children get the support which has been ordered for their well-being. I agree with Peter Jennings of ABC News when he made the comment on the evening news one day last week that the non-payment of child support is a national disgrace.