Approved: 3-27-95
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on March 16, 1995 in Room 514-S of the Capitol.

All members were present except: Senator Vancrum (excused)
Senator Rock (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:
Representative Powell
Ron Hein, EVCO
Elwaine Pomeroy, Kansas Credit Attorney Association
Ruth Benien, Representing Kansas Trial Lawyers Association
Professor David Ryan, Judicial Council
Camille Nohe, Assistant Attorney General
Dean Hudgeon, Kansas Bankers Association
Professor John Kuether, Judicial Council
Written testimony: Department of Health and Environment
Written testimony: Jim Ludwig, Western Resources, Inc.
Written testimony: Bob Corkin, Kansas Chamber of Commerce and Industry

Others attending: See attached list

HB 2177--Venue for actions against corporations

Representative Powell spoke in support of **HB 2177**, and reference an identical Senate Bill, **SB 72.** Representative Powell described the purpose of **HB 2177** by stating that this bill basically makes a change to the venue statute, narrows the third forum of the venue requirements by limiting the place where businesses can be sued, from every county in which they do business to include a requirement that the plaintiff must have resided there at the time the cause of action arose. Representative Powell pointed out the house committee added other sections to the bill which changes it is some respects. New Section 2, makes a change to the ability of judges to transfer actions to give consideration to both the plaintiff and defendant in transferring actions. The third section does the same thing as Section 1 by applying change in venue statute to limited action cases as well. (Attachment 1)

The Chair asked for a description of new sections. Representative Powell explained that New Section 2 makes a change by calling for convenience of the parties. Section 3 does the same thing as originally proposed in this bill, but adds limited action cases to the change in venue statutes.

Ron Hein, Legislative Counsel for EVCO Food Corporation, testified in support of **HB 2177.** Mr. Hein explained that there would be no opposition from the organization he is representing to deletion of the House Amendments.(Attachment 2)

Elwaine Pomeroy, Kansas Credit Attorney Association, spoke in opposition to **HB 2177**, objecting to the restrictions which this bill would make upon the right of plaintiffs to file actions against corporations. Mr. Pomeroy expressed concerns with adding a residency requirement. Mr. Pomeroy stated that the main concern was Section 3 of the bill.(Attachment 3)

Ruth Benien, Representing Kansas Trial Lawyers Association, stated the position that there is no reason for this bill. Ms Benien explained that district court judges currently have authority under the statutes to transfer the venue of cases. Ms Benien recommended some changes if the Committee should pass this bill. Ms Benien offered the following proposed changes: SubSection one should be amended to read: 1.) "any county

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

wherein the defendant corporation has its registered office or principal place of business" ; and a new subSection two should be added which reads 2.) "any county in which the defendant, at the time of the filing of the petition,was generating at least ten (10) percent of its gross revenues"..... (Attachment 4)

The Chair concluded the hearing on **HB 2177** for consideration later, and noted written testimony from Bob Corkin, Kansas Chamber of Commerce and Industry in support of. **HB 2177** (Attachment 5)

HB 2263--District court judges positions created by K.S.A. 20-355 shall not be considered civil appointments to state office pursuant to K.S.A. 46-234.

Representative Carmody explained that the purpose of this bill is to remove the statute that prohibits legislatures from being appointed to public offices within a year after their legislative session created that public office. The issue arose in Johnson county when a former representative applied for a new district judge position, that was funded by the legislature last year. An opinion issued by Kansas Commission on Governmental Standards and Ethics that she was unable to apply to that position because she came under the statute. Representative Carmody stated that it is his belief that the opinion is a misreading of the letter of that statute and in opposition to the intent of the bill. The purpose of the law is a good one, however, in the judicial position is not created by the legislature. The legislature funds the judicial branch and under law the supreme court actually creates the judge positions. The governor does not have unfeathered option to appoint judges. The governor appoints from a list submitted by the nominating committee. The supreme court has no role in the appointment of judges. The intent of the statute is a good one, but simply does not apply to judicial appointments. An inequity exists when some judges are appointed and others are elected in applying this statute. Representative Carmody related the odd situation occurring in Johnson county where if the position of appointment were an existing one then the legislator could have been appointed. Representative Carmody concluded that he thinks it is a misreading of the statue and misreading of the intent of the legislature in this law.

Discussion followed.

Paul Shelby, Assistant Judicial Administrator, testified in favor of **HB 2263**, stating the changes permit appointment or consideration for appointment of a member of the legislature to the position, by expressly defining the judge position as one that is not a civil appointment to a state office as set out in K.S.A. 46-234. Mr. Shelby continued that K.S.A. 46-234 is also changed to define the judge position as one that is not contemplated by the requirement that legislators be out of office more than one year before being appointed to certain state positions. (Attachment 6)

Hearing on **HB 2263** were closed by the Chair. A motion was made by Senator Parkinson, second by Senator Bond to pass the bill out recommended favorably. Discussion followed. Motion carried with some Committee members voting no. This bill will be carried by Senator Parkinson.

HB 2180--Amendments to the administrative procedure act and judicial review act.

Professor David Ryan, Judicial Council explained that **HB 2180** contains the recommendations of the Administrative Procedure Advisor Committee of the Judicial Council. The Judicial Council authorized the advisory committee to develop recommendations to address any problems or ambiguities that have arisen during the 10 years of experience with the acts. Professor Ryan referred to the opinions in United Steelworkers of America v. Kansas Comm'n on Civil Rights, and State Bank Commissioner v. Emery. The committee's recommendations in this area are contained in the amendments to K.S.A. 77-612 and 613 in Sections 9 and 10 of the bill. The amendments are intended to make clear the time allowed for seeking judicial review of a state agency order where reconsideration is permissive. Before the ruling on the Steelworkers case the time was a straight 30 days, but after that opinion the when reconsideration is permitted, the tallying of the 30 days became difficult to determine. Section 10 of **HB 2180** amends 77-163 to provide a simple, 30-day computation. New Section 1 and the amendments to subSections (g) and (i) of 77-526 and 77-549 (Section 8) are aimed at agency delay. These are a few of the twenty or so changes to current law while there are just a few substantive changes. The substantive changes are found in three balloons added and in the elimination of some of the provisions in **HB 2180**. Major substantive changes concern time on appeal from the agency order to the court. The next substantive change is an amendment regarding servicing to the Secretary of the agency and makes a requirement when final order is issued, it is also stated who could be served. Changes dealing with multi-member agencies. The other matters in the bill are routine and Professor Ryan stated that he did not consider them of significance where there is any injustice or major change. Professor Ryan addressed the changes made in the House. The House added under New Section 1, (b) was deleted by the Judicial Council, and Professor Ryan suggested that issues addressed in that section would be considered next year. (Attachment 7)

Camille Nohe, Assistant Attorney General spoke on behalf of the Attorney General Carla J. Stovall in support of **HB 2180** with the addition of a balloon from the Attorney Generals Office. Ms Nohe addressed the licensing board issues, stating that there is a problem with the present administrative procedure act. Ms Nohe spoke in regard to the number of people issuing the original order. When an agency heads a body of individuals the agency head may issue a final order. Ms Nohe referred to the balloon attached addressing the licensing boards to get them out of a knot. (Attachment 8)

Written testimony was provided by Western Resources, Inc. supporting the balloon amendments attached to Professor Ryan's testimony dealing with amendments to K.S.A. 77-529. (Attachment 9)

Written testimony was presented to the Committee from the Kansas Corporation Commission(KCC) concurring with the proposed balloon amendments attached to the testimony of Professor Ryan submitted by the Kansas Judicial Council on **HB 2180**. The KCC offered support for the balloon language attached to the testimony of Camille Nohe, Assistant Attorney General.(Attachment 10)

Written testimony was provided by the Kansas Department of Health and Environment, (KDHE) William C. Rein, JD. The KDHE supports passage of **HB 2180** with the exception of New Section 1 dealing with interlocutory judicial review before final agency action. The written testimony explained that an agency's authority to decide individual cases has been an important aspect of administrative law. (Attachment 11)

Motion to amend the bill as requested by the Judicial Council and to amend the bill as requested by the Attorney General and to move out favorably as amended was made by Senator Parkinson, second by Senator Martin. Motion carried.

HB 2181--Exceptions to general rule of trustee's office not transferable.

Professor John Kuether, Judicial Council testified that **HB 2181** is a clean up bill that would conform the uniform trustee powers act, K.S.A. 58-1204 and conform it with several statutes passed in the 1993 session of legislature. Professor Kuether concluded that **HB 2181** is merely a clean-up bill. (Attachment 12)

Dean Hudgeon, Kansas Bankers Association requested consideration of an amendment to **HB 2181**. The amendment would effect the definition of "Security Account" as applies to Kansas Statute chapter 17-49a Uniform Transfer on Death Security Registration Act. This Act allows for individuals to register securities in Beneficiary form using a transfer on death arrangement. When the original principal dies that security would be transferred to the named beneficiary without the probate process. The amendment expands the definition of "Security account" to include investment agency accounts managed by banks and trust companies which function in very much the same was as securities accounts with brokers. (Attachment 13)

Motion by Senator Parkinson to amend the bill as requested by the Kansas Bankers Association and to move the bill favorably, second by Senator Feleciano. Motion carried.

HB 2183--Probate code reference update

Professor Kuether, Judicial Council stated that this bill is a clean-up bill. The only change is when the legislature adopted the simultaneous death act, the correct references were not picked up. This bill does nothing policy wise.(Attachment 14)

Moved by Senator Parkinson, that the bill is moved favorably and placed on the Consent Calendar, second by Senator Petty. Motion carried.

HB 2184--Classification of demands against an estate

Professor Kuether, Judicial Council testified as a proponent of **HB 2184**. Professor Kuether referred to K.S.A. 59-1301 explaining that statute in the probate codes sets the priority of payment of claims when the assets of an estate are insufficient to pay the full amount of the demands against the estate. Kansas enacted legislation to recover Medicaid expenditures in 1992 in response to federal mandate. The federal requirement that a recovery statute be enacted was not a requirement that such statute be enacted to make recovery a first class demand, but merely that such a statute be enacted. After the enactment of the 1992 legislation, the Medicaid recovery became a first class demand placing it ahead of expenses of administration and expenses of last illness. SRS set up the Kansas Estate Recovery Program which pursues the recovery of this money. The proposed amendment would move the SRS to make estate recovery a second class claim. Professor Kuether referred to other changes in the language on page 1, in lines 37, 38, and 39. Professor Kuether directed the Committee's attention to an attachment showing that other states make recovery a third class claim.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on March 16, 1995.

(Attachment 15)

Discussion followed regarding who would get paid. Professor Kuether stated that those in first class would get paid, and second class claims would be prorated, if there were insufficient funds. Further discussion regarding spend-down and qualifications for medicaid followed.

Brian Vasquez, Administrator Estate Recovery Program spoke on behalf of Janet Schalansky, Acting Secretary, SRS. Mr. Vasquez explained that the way the State Recovery Program is set up that he proceeds with claims only if there is no surviving spouse, no minor child, no disabled child irrespective of age. Mr. Vasquez stated that there are usually between 500 and 600 deaths through the unit out of that 15% have some form of an asset out of those probably dealing with probate estate in 4% or 5%. **HB 2184** would decrease recovery funds of SRS, and increase costs to taxpayers. (Attachment 16)

The Chair proposed an amendment for consideration to the Judicial Council to address probate and the cost of probate. The amendment would say that in the cases where a conservator has been set up for the decedent and the assets of the conservatorship are less than $2,000 that the probate judge and the conservatorship can determine distribution of those funds based on the new classification of claims proposed by this bill, distribute all the money.

A recommendation was made to look at K.S.A. 59-3026 which deals with the payment of expenses on the closure of a conservatorship.

Meeting adjourned

The next meeting is scheduled for March 17, 1995.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-16-95

NAME	REPRESENTING
Margaret Bradshaw	ACLU
Mary Jane Stattelman	KS Farm Bureau
Kathy Taylor	Ks Bankers Assn.
Don Doesken	KDHR - Legal
Paul Davis	Senator Hensley
Jay VanderVelde	EVCO
Chip Evans	EVCO
Shannon Peterson	KBA
Rose Smith	KBA
Lee Wright	Farmers Ins. Group
Dennis Priest	SRS
[illegible]	SRS Estate Recovery
John F. Kuether	Jud. Council
Lori Fink	KCC
Matt Holt	KCC/Student
Tom Humphrey	KTLA
Keith R. Brown	KTLA
Jon Newman	Kansas Governmental consulting
Paul Shelby	OJA

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-16-95 cont.

NAME	REPRESENTING
R. Hearrell	Judicial Council
Jim Ludwig	Western Resources
John DeCoursey	Western Resources
Kevin Davis	Am Family Ins.

STATE OF KANSAS

TONY POWELL
REPRESENTATIVE, 85TH DISTRICT
SEDGWICK COUNTY
7313 WINTERBERRY
WICHITA, KANSAS 67226
(316) 634-0114

STATE CAPITOL, ROOM 182-W
TOPEKA, KANSAS 66612-1504
(913) 296-7694

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
JUDICIARY
RULES AND JOURNAL
TAXATION
TRANSPORTATION

TESTIMONY IN SUPPORT OF HB 2177
BEFORE THE SENATE JUDICIARY COMMITTEE
March 16, 1995

BY

REPRESENTATIVE TONY POWELL

Mr. Chairman and Members of the Committee:

I am testifying today in support of HB 2177 which would make modifications to K.S.A. 60-604 by making a small, but important, change to the venue statute. Under current law, lawsuits against corporations may be brought in any county where the corporation's registered office is located, where the cause of action arose, or where the corporation is transacting business at the time of the filing of the lawsuit. Unfortunately, this third option can cause many problems for companies, and create a disincentive to do business in some parts of the state.

My legislation, would require the plaintiff to be a resident of the county in which the corporation does business at the time the cause of action arose. In short, this legislation would limit forum shopping and would protect corporations who do business in every part of the state from being subject to lawsuits in every county.

I urge the Committee to support this legislation because of the problem a company in Emporia experienced under the current statute. A wholesale food corporation in Emporia terminated an employee and was sued for

Senate Judiciary
3-16-95
Attachment 1

wrongful discharge. This company's principal place of business is located in Emporia, the employee worked for the company in Emporia, and the employee lived in Emporia. However, this employee sued the company in Wyandotte County!

This company was forced to defend the lawsuit in Wyandotte County, considerably increasing the time and expense its defense, even though this company had no connection with Wyandotte County other than the fact that it operated a couple of trucks there. However, the plaintiff apparently believed he could get a more favorable jury in Wyandotte County, and won the case.

Who won or lost the lawsuit is not important. What is important is that a company was forced to defend itself in a place that had no connection to the cause of action. This is unfair and must be changed. My legislation merely eliminates the ability of plaintiff to engage in unfair forum shopping and gives all companies similar rights currently enjoyed by public utilities pursuant to K.S.A. 60-606.

Finally, I would note that the House Judiciary Committee approved amendments to this legislation which would apply these same venue changes to limited actions, and also made changes to K.S.A. 60-609 by giving Judges additional discretion when transferring venue by considering the convenience of both the plaintiff and defendant.

I thank the Committee for your time and attention and urge your support for HB 2177. I am happy to stand for questions.

Rep. Tony Powell

1-2

HEIN, EBERT AND WEIR, CHTD.
ATTORNEYS AT LAW
5845 S.W. 29th Street, Topeka, KS 66614-2462
Telephone: (913) 273-1441
Telefax: (913) 273-9243

Ronald R. Hein
William F. Ebert
Stephen P. Weir
Stacey R. Empson

SENATE JUDICIARY COMMITTEE
TESTIMONY RE: HB 2177
Presented by Ronald R. Hein
on behalf of
EVCO Wholesale Food Corporation
March 16, 1995

Mr. Chairman, Members of the Committee:

I am Ron Hein, legislative counsel for EVCO Wholesale Food Corporation, an institutional food distributor based in Emporia. EVCO distributes food by truck to numerous institutions such as jails, schools, etc. throughout the state of Kansas.

EVCO strongly urges the Committee to approve HB 2177. This bill is essentially the same bill as SB 72, which has been heard previously by this committee.

Historically, venue has been permissible where the defendant can be summoned or where the cause of action arose. When the code of civil procedure was adopted in 1963, K.S.A. 60-603 provided for individuals who were defendants to be sued in the county 1) where the defendant resides, 2) in which the plaintiff resides if the defendant is served therein, 3) in which the cause of action arose, 4) in the county where the plaintiff had a place of business if the defendant was served therein, and 5) two additional sections relating specifically to probate and the location of tangible personal property. This section preserved all of the requirements existing at common law, namely that the action be brought where the cause of action arose or where the defendant could be summoned.

However, K.S.A. 60-604 with regards to corporations was handled slightly differently. It provided for service in the county where the registered office of the corporation is located, in which the cause of action arose, or in which the defendant is transacting business at the time of the filing of the petition. The first two subsections still conformed to the common law, but subsection 3 deviated by permitting the action to be brought in a county in which the cause of action may not have arisen or in which the defendant may not have been subject to summons. There was no requirement when suing corporations that there be a place of business as with an individual doing business.

Senate Judiciary
3-16-95
Attachment 2

In light of national and even international corporations, where the registered office may be in Topeka or Kansas City or in Wichita, but which might have businesses located all over the state, the "transacting business" subsection seemed to make sense. An individual who resided in that location should be able to sue the business in his or her home county without having to travel at great cost or expense to the plaintiff to the urban area where the corporation has its registered office (legal residence).

Some lawyers have figured out a loop-hole in this language, and a few judges have permitted the venue to be proper utilizing this loop-hole. A corporation such as EVCO, which is based primarily in one city, but which "touches" numerous locations throughout the state simply by driving a truck up to a loading dock and unloading food, under current law, may be sued in virtually any county in the state. It is not necessary that the cause of action arose there, that there be a place of business there, nor that the defendant be served there. The common law rules have been cast to the wind, and forum shopping is permitted.

The law does not encourage forum shopping, but does encourage the forum most appropriate to the convenience of the parties.

A plaintiff who is forced to sue an out of state corporation which simply transacts business in this state, should be permitted to sue where the plaintiff resides so that the plaintiff will not be inconvenienced nor be forced to incur additional costs to go across the state to bring his or her action.

However, by the same token, the plaintiff should not be able to forum shop simply to have leverage against the defendant. Under current law, a business located in Liberal could be sued by a resident of Liberal with a cause of action which arose in Liberal, in Doniphan County, 500 miles away. If the suit is for a small amount of money, it gives the plaintiff considerable leverage on negotiating a nuisance settlement, even if there is no liability, simply because of the cost of the defendant transporting its lawyer, witnesses, and records to the county where the matter will be tried. This is inefficient and costly to the defendant, and serves no purpose other than to give the plaintiff an undue advantage.

HB 2177 helps solve this problem for defendants, while still protecting plaintiffs. This bill will insure the proper balance is maintained between the plaintiff and the defendant, and yet permit the judicial system to operate as efficiently and expeditiously as possible for the mutual convenience of the parties.

EVCO strongly urges your approval of HB 2177.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

REMARKS CONCERNING HOUSE BILL 2177
SENATE JUDICIARY COMMITTEE
MARCH 16, 1995

I am speaking on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work.

We object to the restrictions which this bill would make upon the right of plaintiffs to file actions against corporations. We feel that corporations should be available to respond in any county where they choose to do business. The restrictions on the rights of plaintiffs to sue corporations would make it more difficult for small businesses to collect debts rightfully owing them.

The changes in section 1 and section 3 of the bill limit venue under clause (3) to where the plaintiff is a resident of such county at the time the cause of action arose. What if the plaintiff is not an individual, and therefore does not have a county of residence? Or what if the plaintiff is an individual, but resides in another state?

Section 2 of the bill, dealing with transfer of an action from one county to another, eliminates the time-honored right of the plaintiff to choose the place of action. We do not feel that as a matter of public policy, the rights of individuals and small businesses should be disregarded.

The combination of the changes proposed in this bill would make it more difficult for individuals and businesses to collect amounts properly due them.

Elwaine F. Pomeroy
For Kansas Credit Attorneys Association

Senate Judiciary
3-16-95
Attachment 3

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
ON
H.B. 2177

Presented by Ruth M. Benien on behalf of the Kansas Trial Lawyers Association

March 16, 1995

House Bill 2177 seeks to revise or change the Kansas venue statutes by limiting the availability of certain district courts within the State of Kansas. There is no reason or need for such a change or limitation.

The current statute, as written, and as it has been applied by the Kansas District Courts, adequately addresses and allows for the proper handling of any and all venue concerns. Current Section 2 of the statute allows any party who thinks venue is improper to petition the district court judge in the county where the action has been filed for the transfer of the matter.

The current grounds upon which the district court judge may grant the transfer are not difficult ones for a party to meet. The matter may be transferred to serve the convenience of the parties and witnesses and in the interests of justice. Case law and precedent support the right of the party filing the action, the plaintiff, whether an individual or a corporation, to choose the venue absent the above stated reasons. Establishing that some other district is more convenient, or that the interests of justice will be served by the transfer, are not unrealistic, improper or onerous demands to place upon a party. Neither statistics nor experience establish any widespread abuse of the current venue provisions by either party. An improper denial of transfer could be claimed an abuse of discretion and appealed.

Irrespective of the above statements, should this Committee decide to adopt the proposed limitations, certain

Senate Judiciary
3-16-95
Attachment 4

changes in the current wording of the statute should be made in order to avoid manifest injustice and hardship on the part of litigants.

The limitations created by Section 1 should be broadened to allow a defendant corporation to be sued not only in the locations currently identified, but in two additional counties which may or may not be the same. Subsection one should be amended to read: 1) "any county wherein the defendant corporation has its registered office or **principal place of business"**; and a new subsection two should be added which reads...2) "**any county in which the defendant, at the time of the filing of the petition, was generating at least ten (10) percent of its gross revenues**".....

Many corporations, particularly foreign corporations qualified to do business in the State of Kansas use an outside corporation or agency for service of process purposes, normally located in Topeka, Kansas. Many times they do not, in fact, have any place of business in the county where their "registered office" is located. Allowing a corporation to be sued in a county wherein its corporate headquarters are located or wherein it is substantially operating and profiting in the State of Kansas will not place any undue burden upon the corporation. Use of the percentage limitation will avoid or prevent "forum" shopping and filing in some tangential location which has no connection to either of the parties.

Inclusion of the proposed provision which allows a corporation to be sued in counties wherein it is conducting a substantial portion of its business "at the time of "filing" versus the "time the cause of action arose" would be of benefit to litigants on both sides. It would make allowance for and account for changed circumstances between the date a cause of action arose and when the case is actually filed. In some circumstances that time period could be in excess of eight (8) years.

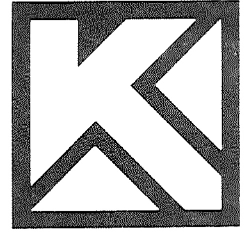
On behalf of litigants, both plaintiffs and defendants, and both corporations and individuals, consideration of the following points by this Committee are respectfully requested.

Respectfully submitted,

Ruth M. Benien
206 Brotherhood Building
Kansas City, Kansas
(913) 621-7100

4-3

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2177 March 16, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Committee

by
Bob Corkins
Director of Taxation

Honorable Chair and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to again express our members support for HB 2177 regarding reforms to Kansas venue statutes for bringing civil claims.

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.

The business community's concern with this area of law should be apparent to everyone. For many decades, our oranization has been an active force in working to restrain business costs through fair judicial reforms, thereby protecting jobs, creating jobs, curbing inflation, and developing the earning power of Kansans at large.

We view these proposals as embracing those efforts -- goals which are as important to our small businesses as they are to large. In fact, small businesses can be particularly disadvantaged by plaintiffs

Senate Judiciary
3-16-95
Attachment 5

seeking to file suit against them in distant counties. The cost of legal representation significantly increases to a small defendant business with limited resources when it is forced to pay the travel expenses of counsel. Even larger enterprises, or those small firms with a greater ability to absorb litigation costs, are nevertheless harmed by overly broad venue guidelines.

The most important policy to consider in evaluating our forum rules is the merit of avoiding bias. We believe that the current provisions of KSA 60-604 and 60-609 allow for a plaintiff bias that distorts the equitable application of judicial procedures. Just as alleged violators are presumed innocent in criminal actions and the state must first present its case that the defendant is not innocent, so too does a civil plaintiff have the initial burden of persuasion in alleging the defendant has breached a duty. We contend that excessive latitude which favors the plaintiff's choice of venue is similar to a presumption of defendant liability.

The current language of KSA 60-609, which HB 2177 proposes to modify, is even-handed as it is literally presented. However, KCCI believes that it provides an open invitation to plaintiff favorable bias. The language which this bill attempts to strike is superfluous. The striken clause states nothing which is not encompassed in the balance of the sentence: "...*upon* a finding that a transfer [of venue] will serve the convenience of the parties and witnesses and the interests of justice." Therefore, the only purpose served by retaining the clause in question is to imply a degree of extra weight to which the plaintiff's choice may be accorded.

HB 2177 also addresses plaintiff bias of a different sort. Current law in KSA 60-604 gives an added advantage to plaintiffs by greatly expanding the forums in which a plaintiff may choose to sue a defendant corporation. KCCI contends that the phrase "transacting business" is far too broad to serve equity in this context. A defendant manufacturer, for example, could be sued in any district court jurisdiction in which its product is sold...perhaps in all 105 counties. This language permits suit in a county which has no connection to the litigation other than a fortuitous, unrelated and isolated sale within its boundaries. Again we find an open invitation for forum shopping in order to garner the most plaintiff favorable court or jury pool.

An analogous situation appears in the Bellas Hess and Quill line of cases which have received a great deal of notoriety. The issue there is whether an out-of-state retailer has sufficient "contacts" or "nexus" with *State X* in order for *State X* to require the retailer to collect its sales tax. Kansas addressed this issue in 1990 when it redefined the meaning of "retailer doing business in this state" for purposes of Kansas compensating use tax. The 1990 legislature, in an attempt to get non-Kansas retailers to collect tax on their sales within Kansas, elaborated on what constitutes "doing business".

The statute in question, KSA 79-3702(h), now considers an entity to be doing business in Kansas if it maintains here some type of real estate facility, if it employs here an agent or other representative, or if it engages in a regular or systematic solicitation of sales. This definition was crafted to be very broad

order to impose tax collection duties upon the greatest number of retailers. As expansive as this definition is, our corporate venue statute is even broader by comparison.

HB 2177 offers a resolution to the venue problem while avoiding the Pandora's box scenario of defining "transacting business". Although a clarification of that phrase is desirable, the venue inequities which it creates can be substantially removed -- and with a test which is infinitely easer to administer -- by doing just what HB 2177 proposes. Clarity would be achieved, forum shopping would be greatly reduced, and plaintiffs would still have venue options from which to choose.

KCCI views the proposals embodied in today's bill as measured and reasonable litigation reforms. Each provision would be an improvement over the status quo, but a more meaningful impact on the problem would be accomplished by approving HB 2177 in toto. You will notice that the House chose to incorporate this concept into Chapter 61 regarding civil procedure for limited actions, and KCCI has no objection to such an expansion. We therefore urge you to recommend HB 2177 favorably for passage. Thank you for your time and consideration.

House Bill No. 2263
Senate Judiciary Committee
March 16, 1995

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman and members of the committee we appreciate the opportunity to appear in support of House Bill No. 2263.

This bill amends two statutes concerning appointments of persons to the position of district judge. The changes permit appointment or consideration for appointment of a member of the legislature to the position, by expressly defining the judge position as one that is not a civil appointment to a state office as set out in K.S.A. 46-234, which is also changed to define the judge position as one that is not contemplated by the requirement that legislators be out of office more than one year before being appointed to certain state positions.

The process for certification, as many of you know, is that following an examination for the need for additional judicial positions or for a new division of such court, the Supreme Court requests funding for the new positions from the legislature through the budget process Once the funding is approved the court creates the position and follows the provisions of K.S.A. 20-355 for certification.

We support this bill and request favorable passage from this committee.

Senate Judiciary
3-16-95
Attachment 6

Judicial Council Testimony
on
1995 HB 2180
Senate Judiciary Committee
March 16, 1995

House Bill 2180 contains the recommendations of the Administrative Procedure Advisory Committee of the Judicial Council. The Administrative Procedure Advisory Committee was principally responsible for the drafting of the Kansas administrative procedure act (KAPA; K.S.A. 77-501 et seq.) and the act for judicial review and civil enforcement of agency actions (KJRA; K.S.A. 77-601 et seq.). Both acts were adopted by the legislature in 1984. The Judicial Council authorized the advisory committee to develop recommendations to address any problems or ambiguities that have arisen during the 10 years of experience with the acts.

Foremost among the recommendations of the advisory committee are those relating to the opinions in United Steelworkers of America v. Kansas Comm'n on Civil Rights, 17 Kan.App. 2d 863, rev'd 253 Kan. 327 (1993) and State Bank Commissioner v. Emery, 19 Kan.App. 2d 1063 (1994). The committee's recommendations in this area are contained in the amendments to K.S.A. 77-612 and 613 in sections 9 and 10 of the bill. The amendments are intended to make clear the time allowed for seeking judicial review of a state agency order.

Generally, when a person receives a final order from a state agency the person is not required to ask the agency to reconsider the order before seeking judicial review of the order. There are exceptions to this rule for orders of the Human Rights Commission, the Corporation Commission and the Board of Tax Appeals. A person must seek reconsideration of orders of these agencies before seeking judicial review. For those agencies where reconsideration is mandatory, the time for seeking judicial review is clear. The 30 days for seeking judicial review is measured from the agency action on the mandatory petition for reconsideration. However, where seeking reconsideration is permissive, as it is with most agencies, the computation of the time for seeking judicial review is not so simple. In such situations, once the order is served, the 30 days to seek judicial review begins to run. However, if a party then seeks reconsideration, which the party has the option to do, the 30 days stops running during the pendency of the request for reconsideration. The remainder of the 30 days resumes running once the agency has acted on the petition for reconsideration.

Section 10 of HB 2180 amends 77-613 to provide a simple, 30-day computation for seeking judicial review of an order. If reconsideration is mandatory or if it is requested (where permissive), the 30 days runs from the agency order on reconsideration. If reconsideration is not mandatory and is not requested, the 30 days runs from service of the order. Section 9 amends K.S.A. 77-612 to explicitly state that reconsideration is not a prerequisite for seeking judicial review unless a statute so states (as is the case for orders of the Human Rights Commission, the Corporation Commission and the Board of Tax Appeals).

Senate Judiciary
3-16-95
Attachment 7

In regard to reconsideration, the advisory committee recommends amendments (a balloon of which is attached) dealing with "deemed denials" in the context of petitions for reconsideration. Currently under K.S.A. 77-529 (which is contained in section 7 of the bill, pages 5 and 6), an agency has 20 days from the timely filing of a petition for reconsideration to grant or deny the petition. If the agency does not act within the 20 days, the petition for reconsideration is deemed denied. The "deemed denial" is intended to provide a timeline for resolution of cases before an agency. Once the petition for reconsideration is deemed denied, the party can seek judicial review of the underlying agency order. Concerns were raised before the advisory committee regarding the impact of deemed denial on appeals. Although it is clear that parties have 30 days to appeal from a deemed denial, there was concern that such appeal time begins to run from a non-written denial. Based on comments received since the introduction of HB 2180, the concerns with deemed denial appear to be outweighed by the delay and uncertainty created by the provisions in the bill. Deemed denial does provide clarity as to when matters are completed before an agency such as the KCC and when appeal time begins to run. In summary, the attempt to eliminate "deemed denials" may cause more problems than it cures and the advisory committee recommends amending HB 2180 to return to the existing provisions in this area. Further amendments to K.S.A. 77-613(c) (sec. 10, p. 7) address the time for seeking judicial review when a petition for reconsideration is deemed denied and recognize the reconsideration provisions of K.S.A. 66-118b.

New section 1 and the amendments to subsections (g) and (i) of 77-526 and 77-549 (section 8) are aimed at agency delay. K.S.A. 77-526 and 549 direct agencies to render orders within certain time periods following a hearing. These times may be extended by the agency for good cause. The amendments would require the agency to set forth such good cause in writing prior to expiration of the original time period for rendering an order. K.S.A. 77-622 of KJRA gives the court authority to provide appropriate relief in cases of agency delay. However, standing to obtain such relief is arguably unclear. New section 1 is intended to be a clear statement of standing to seek judicial relief for persons aggrieved by agency delay.

Section 2 adds a new subsection (g) to K.S.A. 77-514. The new subsection would allow agencies headed by multimember boards to designate one or more board members to hear a matter and render a final order. The advisory committee was informed that it is not uncommon in a number of the smaller agencies headed by multimember boards for some of the board members to perform investigatory functions. The view was expressed that a separation of functions should be maintained and board members who are involved in the investigation should not be involved in deciding the matter, either directly at a hearing or in reviewing an order rendered at a hearing. Conforming amendments to K.S.A. 77-526 and 77-529(d) are contained in sections 5 and 7 of the bill and include a requirement in 77-526(c) that the final order must state if the presiding officer has been designated in accordance with 77-514(g).

Section 3 amends K.S.A. 77-519 to recognize that the motions available in a hearing under KAPA include motions to dismiss and motions for summary judgment.

Section 4 amends K.S.A. 77-522 to allow subpoenas in hearings under KAPA to be served by certified mail. This is currently allowed in civil actions under the civil code.

A number of amendments in the bill require an agency to identify in its order the agency officer who should receive service of a petition for judicial review. These amendments are made in 77-526(c) (section 5, page 3, lines 7-10), 77-527(j) (section 6, page 5, lines 3-6), 77-529(c) (section 7, page 5, lines 30-32) and 77-613(e) (section 10, page 7, lines 24-27). Under Claus v. Kansas Dept. of Revenue, 16 Kan.App. 2d 12 (1991), service of a petition for judicial review on the appropriate person within the agency is jurisdictional. The heading at the top of the order notifying Claus of the suspension of his driver's license indicated the order was issued by "Kansas Department of Revenue, Division of Vehicles - Driver Control Bureau . . ." Claus served his petition for judicial review on "Kansas Department of Revenue, Division of Vehicles - Driver Control Bureau." Service should have been on the Secretary of Revenue, the agency head. Consequently, Claus' petition was dismissed. The previously mentioned amendments require the agency order to identify the appropriate person for service of the petition for judicial review. In addition, section 12 amends 77-615 to allow service on the agency head, any person designated by the agency head, any agency officer designated to receive service in an order or on the agency officer who signs an order. Service on any of such persons would be sufficient to meet the jurisdictional requirement.

Another amendment relating to service on the agency is contained in section 11 [K.S.A. 77-614(c)]. The agency or another party may file an answer in a judicial review proceeding. The amendment would measure the answer time from service on the agency or notice to the party rather than from the filing of the petition.

ADMINISTRATIVE PROCEDURE ADVISORY COMMITTEE

Professor David L. Ryan
(Acting Chair)
Washburn Law School
Topeka, KS 66621
(913) 231-1660

Alan F. Alderson
P.O. Box 237
Topeka, KS 66601
(913) 232-0753

Richard C. Byrd
P.O. Box 7
Ottawa, KS 66067
(913) 242-1234

L. Patricia Casey
BUILDING MAIL
LSOB Rm. 904
Topeka, KS 66612
(913) 296-6053

Jack Glaves
120 S. Market St., Ste. 600
Wichita, KS 67202
(316) 262-5181

Eugene T. Hackler
P.O. Box 1
Olathe, KS 66061
(913) 764-8000

Brian J. Moline
KS Insurance Dept.
BUILDING MAIL
420 S.W. 9th
Topeka, KS 66612
(913) 296-7806

John S. Seeber
P.O. Box 1034
Wichita, KS 67201
(316) 265-8591

Kenneth M. Wilke
Board of Agriculture
BUILDING MAIL
901 S. Kansas Ave.
Topeka, KS 66612
(913) 296-3848

(Revised 01/95)

Judicial Council Amendments
Senate Judiciary Committee
March 16, 1995
[ ] indicate proposed deletions

As Amended by House Committee

Session of 1995

HOUSE BILL No. 2180

By Committee on Judiciary

1-25

AN ACT concerning administrative procedure and judicial review; amending K.S.A. 77-514, 77-519, 77-522, 77-526, 77-527, 77-549, 77-612, 77-613, 77-614 and 77-615 and K.S.A. 1994 Supp. 77-529 and repealing the existing sections.

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

New Section 1. [~~(a)~~] A person aggrieved by the failure of an agency to act in a timely manner as required by K.S.A. 77-526~~, 77-529~~ or 77-549, and amendments thereto, or as otherwise required by law, is entitled to interlocutory review of the agency's failure to act.

[~~(b) If an agency does not act on a petition for reconsideration within the time prescribed by K.S.A. 77-529, and amendments thereto, a party may petition for judicial review of the final order at any time within one year of service of such final order. If prior to the filing of a petition for judicial review under this subsection, the agency grants the petition for reconsideration, the time for seeking judicial review of an order rendered upon such reconsideration shall be governed by subsection (c) of K.S.A. 77-613, and amendments thereto.~~]

Sec. 2. K.S.A. 77-514 is hereby amended to read as follows: 77-514. (a) The agency head or one or more other persons designated by the agency head may be the presiding officer.

(b) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(c) Any party may petition for the disqualification of a person promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(d) A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(e) If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, any action taken by a duly ap-

7-6

1 (g) A final order or an order remanding the matter for further pro-
2 ceedings shall be rendered in writing and served within 30 days after
3 receipt of briefs and oral argument unless that period is waived or ex-
4 tended with the written consent of all parties or for good cause shown.
5 (h) A final order or an order remanding the matter for further pro-
6 ceedings under this section shall identify any difference between this
7 order and the initial order and shall include, or incorporate by express
8 reference to the initial order, all the matters required by subsection (c)
9 of K.S.A. 77-526, and amendments thereto.
10 (i) The agency head shall cause copies of the final order or order
11 remanding the matter for further proceedings to be served on each party
12 in the manner prescribed by K.S.A. 77-531, and amendments thereto.
13 *(j) Unless a petition for reconsideration is a prerequisite for seeking*
14 *judicial review, a final order under this section shall state the agency*
15 *officer to receive service of a petition for judicial review on behalf of the*
16 *agency.*
17 Sec. 7. K.S.A. 1994 Supp. 77-529 is hereby amended to read as fol-
18 lows: 77-529. (a) Any party, within 15 days after service of a final order,
19 may file a petition for reconsideration with the agency head, stating the
20 specific grounds upon which relief is requested. The filing of the petition
21 is not a prerequisite for seeking administrative or judicial review except
22 as provided in K.S.A. 44-1010 and 44-1115, and amendments thereto,
23 concerning orders of the Kansas human rights commission, K.S.A. 55-
24 606 and 66-118b, and amendments thereto, concerning orders of the
25 corporation commission and K.S.A. 74-2426, and amendments thereto,
26 concerning orders of the board of tax appeals.
27 (b) ~~*Within 30 days after the filing of the petition,*~~ the agency head
28 shall render a written order denying the petition, granting the petition
29 and dissolving or modifying the final order, or granting the petition and
30 setting the matter for further proceedings ~~*or without denying or granting*~~
31 ~~*the petition, giving notice that the petition for reconsideration has been*~~
32 ~~*scheduled for further consideration*~~. The petition may be granted, in
33 whole or in part, only if the agency head states, in the written order,
34 findings of fact, conclusions of law and policy reasons for the decision if
35 it is an exercise of the state agency's discretion, to justify the order. ~~The~~
36 ~~petition is deemed to have been denied if the agency head does not~~
37 ~~dispose of it within 20 days after the filing of the petition.~~

<u>The petition is deemed to have been denied if the agency head does not dispose of it within 20 days after the filing of the petition.</u>

38 An order under this section shall be served on the parties in the manner
39 prescribed by K.S.A. 77-531 and amendments thereto.
40 *(c) Any order rendered upon reconsideration or any order denying a*
41 *petition for reconsideration shall state the agency officer to receive service*
42 *of a petition for judicial review on behalf of the agency.*
43 *(d) For the purposes of this section, "agency head" shall include a*

1 *presiding officer designated in accordance with subsection (g) of K.S.A.*
2 *77-514, and amendments thereto.*
3 Sec. 8. K.S.A. 77-549 is hereby amended to read as follows: 77-549.
4 (a) The filing of a return with the director of taxation under article 15,
5 32, 33, 34, 36, 37, 41 or 47 of chapter 79 of the Kansas Statutes Annotated,
6 and amendments thereto, shall not be deemed an application for an order
7 under the Kansas administrative procedure act.
8 (b) A determination by the division of taxation or the audit services
9 bureau of the department of revenue concerning tax liability under article
10 15, 32, 33, 34, 36, 37, 41 or 47 of chapter 79 of the Kansas Statutes
11 Annotated, and amendments thereto, which is made prior to the oppor-
12 tunity for a hearing before the director of taxation on such tax liability,
13 shall not require an adjudicative proceeding under the Kansas adminis-
14 trative procedure act.
15 (c) For purposes of the Kansas administrative procedure act, the di-
16 rector of taxation shall be deemed the agency head in regard to orders
17 rendered by the director under chapter 79 of the Kansas Statutes An-
18 notated, and amendments thereto.
19 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,
20 and amendments thereto, shall be rendered in writing and served within
21 120 days after conclusion of the hearing or after submission of proposed
22 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-
23 ments thereto, unless this period is waived or extended with the written
24 consent of all parties or for good cause shown. *If extended for good cause,*
25 *such good cause shall be set forth in writing on or before the expiration*
26 *of the 120 days.*
27 Sec. 9. K.S.A. 77-612 is hereby amended to read as follows: 77-612.
28 A person may file a petition for judicial review under this act only after
29 exhausting all administrative remedies available within the agency whose
30 action is being challenged and within any other agency authorized to
31 exercise administrative review, but:
32 (a) A petitioner for judicial review of a rule or regulation need not
33 have participated in the rulemaking proceeding upon which that rule and
34 regulation is based, or have petitioned for its amendment or repeal; ~~and~~
35 (b) a petitioner for judicial review need not exhaust administrative
36 remedies to the extent that this act or any other statute states that ex-
37 haustion is not required~~.~~*; and*
38 *(c) a petitioner for judicial review need not seek reconsideration un-*
39 *less a statute makes the filing of a petition for reconsideration a prereq-*
40 *uisite for seeking judicial review.*
41 Sec. 10. K.S.A. 77-613 is hereby amended to read as follows: 77-613.
42 Subject to other requirements of this act or of another statute:
43 (a) A petition for judicial review of a rule and regulation may be filed

at any time, except as otherwise provided by law.

(b) *If reconsideration has not been requested and is not a prerequisite for seeking judicial review,* a petition for judicial review of ~~an~~ *a final* order ~~is not timely unless~~ *shall be* filed within 30 days after service of the order~~, but the time is extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies~~.

(c) *If reconsideration has been requested or is a prerequisite for seeking judicial review, a petition for judicial review of a final order shall be filed within 30 days after service of the order rendered upon reconsideration or within 30 days after service of an order denying the request for reconsideration.*

~~(c)~~ *(d)* A petition for judicial review of agency action other than a rule and regulation or *final* order ~~is not timely unless~~ *shall be* filed within 30 days after the agency action, but the time is extended:

(1) During the pendency of the petitioner's timely attempts to exhaust administrative remedies; and

(2) during any period that the petitioner did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this act.

~~(d)~~ *(e)* Service of an order, pleading or other matter shall be made upon the parties to the agency proceeding and their attorneys of record, if any, by delivering a copy of it to them or by mailing a copy of it to them at their last known addresses. Delivery of a copy of an order, pleading or other matter means handing it to the person being served or leaving it at that person's principal place of business or residence with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of an order, pleading or other matter and it is served by mail, three days shall be added to the prescribed period. *Unless reconsideration is a prerequisite for seeking judicial review, a final order shall state the agency officer to receive service of a petition for judicial review on behalf of the agency.*

Sec. 11. K.S.A. 77-614 is hereby amended to read as follows: 77-614. (a) A petition for judicial review shall be filed with the clerk of the court.

(b) A petition for judicial review shall set forth:

(1) The name and mailing address of the petitioner;

(2) the name and mailing address of the agency whose action is at issue;

(1)

(2)

, unless a further petition for reconsideration is required under K.S.A. 66-118b and amendments thereto,

or (3) within 30 days of the date of the request for reconsideration is deemed to have been denied

State of Kansas

Office of the Attorney General

301 S.W. 10th Avenue, Topeka 66612-1597

Carla J. Stovall
Attorney General

Main Phone: (913) 296-2215
Consumer Protection: 296-3751
Fax: 296-6296

March 16, 1995
Before the Senate Committee on Judiciary
Re: House Bill No. 2180

Testimony by Camille Nohe, Assistant Attorney General
on behalf of Attorney General Carla J. Stovall

As general counsel to a number of state professional licensing agencies, I have become aware of a problematic area relating to the issuance of orders in disciplinary proceedings.

Generally a professional licensening board is composed of five to thirteen members. The "agency head" as that term in used in the administrative procedures act is the full board. Often a disciplinary proceeding for alleged violation of laws pertaining to the profession are heard by a panel comprised of three members of the board. In this event, under the current administrative procedures act, such a panel issues an initial order, K.S.A. 77-526(b), which is subject to review by the agency head which may then issue a final order. However, under this typical scenario, the agency head includes the panel which issued the initial order. That panel is then placed in the position of either (1) participating in reviewing its own order

Senate Judiciary
3-16-95
Attachment 8

and thus defeating the point of review, or (2) recusing itself, leaving the agency head (the full board) in the position of not being available to exercise review. In addition, typically one or more board members have been involved in the investigation of the case and probably should not be involved in adjudication of the case.

Section 2(g) of House bill No. 2180, coupled with Section 5(a) and (b) and Section 7(d), would resolve these dilemmas by permitting a panel comprised of board members to hear a case and issue a final order instead of an initial order.

The Attorney General urges your support of these amendment.

 8-2

8-3

1 pointed substitute for a disqualified or unavailable person is as effective
2 as if taken by the latter.
3 (f) A state agency may enter into agreements with another state
4 agency to provide hearing officers to conduct proceedings under this act
5 or for other agency proceedings.
6 *(g) Notwithstanding any quorum requirements, if the agency head is*
7 *a body of individuals, the agency head, unless prohibited by law, may*
8 *designate one or more members of the agency head to serve as presiding*
9 *officer and to render a final order in the proceeding.*
10 Sec. 3. K.S.A. 77-519 is hereby amended to read as follows: 77-519.
11 (a) The presiding officer, at appropriate stages of the proceedings, shall
12 give all parties full opportunity to file pleadings, *objections and* motions
13 ~~and objections~~, *including, but not limited to, motions to dismiss and mo-*
14 *tions for summary judgment.*
15 (b) The presiding officer, at appropriate stages of the proceedings,
16 may give all parties full opportunity to file briefs, proposed findings of
17 fact and conclusions of law and proposed initial or final orders.
18 (c) A party shall serve copies of any filed item on all parties, by mail
19 or any other means prescribed by state agency rule and regulation.
20 Sec. 4. K.S.A. 77-522 is hereby amended to read as follows: 77-522.
21 (a) Discovery shall be permitted to the extent allowed by the presiding
22 officer or as agreed to by the parties. Requests for discovery shall be made
23 in writing to the presiding officer and a copy of each request for discovery
24 shall be served on the party or person against whom discovery is sought.
25 The presiding officer may specify the times during which the parties may
26 pursue discovery and respond to discovery requests. The presiding officer
27 may issue subpoenas, discovery orders and protective orders in accor-
28 dance with the rules of civil procedure.
29 (b) Subpoenas issued by the presiding officer ~~shall~~ *may* be served by
30 a person designated by the presiding officer or any other person who is
31 not a party and is not less than 18 years of age *or may be served by certified*
32 *mail, return receipt requested.* Service shall be ~~in person and~~ at the ex-
33 pense of the requesting party. Proof of service shall be shown by affidavit.
34 (c) Subpoenas and orders issued by the presiding officer may be en-
35 forced pursuant to the provisions of the act for judicial review and civil
36 enforcement of agency actions.
37 Sec. 5. K.S.A. 77-526 is hereby amended to read as follows: 77-526.
38 (a) If the presiding officer is the agency head *or designated in accordance*
39 *with subsection (g) of K.S.A. 77-514, and amendments thereto*, the pre-
40 siding officer shall render a final order.
41 (b) If the presiding officer is ~~not~~ *neither* the agency head *nor desig-*
42 *nated in accordance with subsection (g) of K.S.A. 77-514, and amend-*
43 *ments thereto*, the presiding officer shall render an initial order, which

[Margin note at line 6, after "agency head":] of a professional or occupational licensing agency

House Bill No. 2180
As Amended by House Committee

Senate Judiciary Committee
3-16-95

Comments of Western Resources, Inc.

Western Resources, Inc. supports the balloon amendments attached to Professor Ryan's testimony dealing with amendments to K.S.A. 77-529. The changes which Western Resources supports are set out at page 1 lines 16, 17, 20-28; page 5 lines 27, 30-32, and the addition at line 37; page 7 lines 9, 10 and 11.

The bill as amended by the House Committee causes unnecessary delays and confusion for appeals from agencies such as the Kansas Corporation Commission where petitions for reconsideration are mandatory, not permissive, prior to filing an appeal. The current statutes clearly provide that appeals from agencies such as the KCC shall be filed within 30 days following the issuance of a Commission Order denying a petition for reconsideration or a deemed denial of the petition for reconsideration. A deemed denial occurs if the Commission does not issue an order on a petition for reconsideration within 20 days following the filing of a petition for reconsideration. Upon a deemed denial, the 30 day time for appeal begins to run.

The House Bill as amended would delay and cause confusion in filings. With the bill as amended, it is possible that a party would not know for over a year as to whether the matter was closed for purposes of filing an appeal. The legislature has placed a priority in setting matters for appeal from agencies such as the KCC, for example K.S.A. 66-118d provides that appeals from the KCC

Senate Judiciary
3-16-95
Attachment 9

shall be given priority before appellate courts. The result of the proposed legislation will run contrary to the legislature's intent in having matters before the KCC decided quickly.

Western Resources and the KCC brought these concerns to the Advisory Committee and through discussions with representatives of the Advisory Committee, developed the balloons attached to Professor Ryan's testimony.

Western Resources supports the changes attached to Professor Ryan's testimony and urges the Committee to adopt them.

BEFORE THE SENATE JUDICIARY COMMITTEE

STATEMENT OF THE
KANSAS CORPORATION COMMISSION
MARCH 16, 1995
HOUSE BILL 2180 AS AMENDED BY HOUSE COMMITTEE

The Kansas Corporation Commission [Commission] concurs with the proposed balloon amendments attached to the testimony of Professor Ryan submitted by the Kansas Judicial Council on HB 2180.

The Commission has expressed concerns to the Advisory Committee of the Kansas Judicial Council regarding the elimination of the "deemed denied" language contained in Section 7 (b). Currently, the "deemed denied" language enables parties to seek judicial review after the passing of twenty (20) days from the date a petition for reconsideration is filed notwithstanding an agency's failure to render an order on reconsideration. Generally, the Commission acts on reconsideration and issues an order within the twenty (20) day period of time. In some instances, however, the Commission may choose to let the twenty (20) days pass without action and currently such inaction does not delay the petitioner's ability to seek judicial review.

If the "deemed denied" language is not inserted into this provision, a petition for judicial review may be filed up to one year from service of a final order under the new Section 1(b) should the agency fail to act on reconsideration. In cases where multiple petitions for reconsideration are filed on final orders involving final agency action (K.S.A. 77-607) or nonfinal agency action (K.S.A. 77-608), the potential exists for wide variances in the time during which a party may seek judicial review under

Senate Judiciary
3-16-95
Attachment 10

amendment HB 2180 depending on whether the Commission rules on reconsideration.

Under the accelerated time frames mandated for certain actions before the Commission and on judicial review of Commission orders, this provision may frustrate the accelerated nature intended for these actions. Western Resources, Inc., an entity which is regulated by the Commission, has also filed comments and concurs with the balloon amendments. The balloon language submitted by the Kansas Judicial Council addresses the Commission's concerns and the Commission recommends the adoption of such proposal. The Commission does not deem the change from twenty (20) days to (30) days in Section (g) during which an agency may issue a ruling on petitions for reconsideration to be a concern.

The Commission also supports the balloon language attached to the testimony of Camille Nohe, Assistant Attorney General. The additional language added to Section 2(g) limiting the scope of this section to the agency head of a professional or occupational licensing agency would sufficiently exempt the Commission from its coverage. While the Commission recognizes that there are situations unique to state professional and occupational licensing agencies as described by Ms. Nohe, such concerns do not exist for the Commission. All three Commissioners participate in the rendering of nearly all final orders. To attempt to alter this procedure would seem inconsistent with the partisan balance of members required for the Corporation Commission and the judgment

obtained from having a three-member Commission. We also recommend the adoption of the language contained in the Attorney General's balloon amendment.

State of Kansas

Bill Graves Governor

Department of Health and Environment
James J. O'Connell, Secretary

Written Testimony Presented To

Senate Judiciary Committee

by

The Kansas Department of Health and Environment

House Bill 2180

House Bill 2180 would amend the Kansas Administrative Procedure Act, KSA 77-501, et seq., in three primary ways. Some minor amendments are also proposed.

Proposed Amendments

In New Section 1, the bill would allow private appellants (usually members of a regulated community) to seek interlocutory judicial review when an agency did not meet the time limitations for issuing initial and final orders pursuant to KSA 77-526 and 77-549. Currently, an agency has thirty days to issue written orders after the conclusion of a hearing unless the parties have consented to a longer period of time or the presiding officer has found good cause to make such an extension. New Section 1 would also allow appellants to seek judicial review within one year of a final order when an agency did not act upon a petition for reconsideration.

Section 3 would amend KSA 77-519 to specifically authorize motions to dismiss and motions for summary judgment.

Section 4 would amend KSA 77-522(b) so that administrative subpoenas may be served by certified mail in addition to personal service.

In addition to the above major amendments, Section 5 would amend KSA 77-526 by requiring final orders and initial orders to specifically identify an agency officer who may receive service of a petition for judicial review. Moreover, the same section would require agency heads and presiding officers to find good cause for extending the time for issuing final and initial orders prior to the expiration of thirty days. Finally, Section 10 would amend KSA 77-613 by giving appellants thirty days after service of an order rendered upon reconsideration, or denying a request for reconsideration, to seek judicial review.

Senate Judiciary
3-16-95
Attachment 11

900 SW Jackson, Suite 620
Topeka, KS 66612-1290

Telephone: (316) 231-6917
FAX: (316) 231-1231

Printed on Recycled Paper

Discussion

Overall, KDHE supports the amendments proposed in House Bill 2180, with the possible exception of New Section 1. The problem with that section from the agency' perspective is that it does not indicate what actions a court may take upon exercising interlocutory review of an agency's failure to meet statutory periods of time in issuing initial or final orders. The requirement for exhausting administrative remedies prior to seeking judicial review has been clearly established by both statute, KSA 77-612, and case law, W.S. Dickey Clay Mgf. Co. v. Kansas Corp. Comm'n, 241 Kan 744, 740 P 2d 585 (1987). Moreover, the statutory time periods have been viewed by Kansas courts as directory and not mandatory so that a failure to meet those periods does not deprive an agency of jurisdiction. Expert Environmental Control, Inc. v. Walker, 13 Kan App 2d 56, 761 P 2d 320 (1988). Whether New Section 1 is intended to change these precedents, and the sanctions which courts may apply when finding that an agency has failed to meet its statutory period of time, is unclear.

As New Section 1 is currently worded, only persons who are "aggrieved" by the failure of an agency to act within statutory time periods could file for judicial review prior to final agency action.

In most cases where an agency has taken longer than thirty days to issue an initial or final order, the only harm has been delay and the party's substantive rights have not be effected. The term "aggrieved" is defined by Black's Law Dictionary, Fifth Edition, as "having suffered loss or injury." When actual prejudice to a party's substantive rights cannot be shown from a delay in time, early access to the courts would seem to create an unnecessary judicial burden.

It would be extremely helpful to clarify what actions a court is expected to take upon receiving an interlocutory appeal, and the degree of prejudice which must be shown before early access to the courts is authorized. Since administrative agencies are created by the Legislature to deal with often complex areas of regulation, depriving an agency of jurisdiction might defeat that intent.

Since creation of a separate Administrative Appeals Section within KDHE on July 1, 1993, most initial orders have been issued within thirty days. When a longer period of time was needed for some reason, presiding officers have attempted to issue written orders explaining the need for additional time.

Specific authorization for presiding officers to rule on motions to dismiss and motions for summary judgment is a welcome clarification. (However, presiding officers within KDHE have always interpreted KSA 77-519 to authorize such rulings under current language.) Moreover, the authority of parties to serve subpoenas by mail is also a good amendment, since administrative proceedings are designed to be as economical as possible. Finally, authorizing parties to request judicial review thirty days after service of a reconsideration order, or after receiving an order denying reconsideration, should help to clarify this issue.

Summary and Recommendations

KDHE supports passage of House Bill 2180 with the exception of New Section 1 dealing with interlocutory judicial review before final agency action. As stated earlier in this testimony, it would help to clarify what action the court is expected to take once an interlocutory appeal is filed. Unless the agency's lateness is extreme or prejudicial, early access to the courts might create an unnecessary judicial burden. Moreover, an agency's authority to decide individual cases has been an important aspect of administrative law. This is because agencies were initially created to provide the technical knowledge and expertise necessary for the proper regulation of complex areas of modern society. Access to the courts should usually occur after the agency has made its final decision.

Written testimony prepared by:

William C. Rein, JD
Director and Chief Presiding Officer
Administrative Appeals Section
Kansas Department of Health and Environment
March 16, 1995

Judicial Council Testimony
on
1995 HB 2181

The proposed change in K.S.A. 58-1204 cleans up a conflict in that statute.

K.S.A. 58-1204 (a part of the Uniform Trustees' Powers Act) provides:

"**Trustee's office not transferable.** The trustee shall not transfer his or her office to another or delegate the entire administration of the trust to a cotrustee or another."

K.S.A. 9-2107(a)(1) defines "contracting trustees" to include banks having trust authority under the state bank commissioner or under the comptroller of the currency. K.S.A. 9-2107(a)(2) defines "originating trustee" as banks having their principal place of business in this state which have trust powers. (See attached statute.)

It is our opinion that even though the banking statute [9-2107(b)] uses the phrase "succeeds to and is substituted for" rather than the word "transfer" it is still in conflict and a reference to K.S.A. 9-2107 should be substituted.

In addition, K.S.A. 17-5004, which sets out the standards for investments by fiduciaries, conservators and trustees following written directions regarding trust property states that a trustee is obligated to follow certain written directions. Presumably, if these written directions refer to transfer of the trustee's office or delegation of the entire administration of the trust to a cotrustee or another, they must also be followed. Thus, a reference to K.S.A. 17-5004 should be inserted in K.S.A. 58-1204. (See attached statute.)

Senate Judiciary
3-16-95
Attachment 12

07. Allowing for the contracting for trust services; definitions; notice filing; authority of commissioner; fees; examination; branches. (a) As used in this section:

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the state bank commissioner under K.S.A. 9-1602, and amendments thereto, or any national bank chartered to do business in Kansas that has been granted trust authority by the comptroller of the currency under 12 USC 92a, or any bank, regardless of where located, that has been granted trust authority and which is controlled, as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, which accepts or succeeds to any fiduciary responsibility as provided in this section;

(2) "originating trustee" means any trust company, bank, national banking association, savings and loan association or savings bank which has trust powers and its principal place of business is in this state and which places or transfers any fiduciary responsibility to a contracting trustee as provided in this section;

(3) "financial institution" means any bank, national banking association, savings and loan association or savings bank which has its principal place of business in this state but which does not have trust powers.

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, no contracting trustee as defined in K.S.A. 9-2107(a)(1) and amendments thereto, having its home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612 and amendments thereto by the same bank holding company.

(c) Unless the agreement expressly provides otherwise, upon the effective date of the substitution:

(1) The contracting trustee shall be deemed to be named as the fiduciary in all writings, including, without limitation, trust agreements, wills and court orders, which pertain to the affected fiduciary accounts;

(2) the originating trustee is absolved from all fiduciary duties and obligations arising under such writings and shall discontinue the exercise of any fiduciary duties with respect to such writings, except that the originating trustee is not absolved or discharged from any duty to account required by K.S.A. 59-1709, and amendments thereto, or any other applicable statute, rule of law, rules and regulations or court order, nor shall the originating trustee be absolved from any breach of fiduciary duty or obligation occurring prior to the effective date of the agreement.

(d) The agreement may authorize the contracting trustee:

(1) To establish a trust service desk at any office of the originating trustee at which the contracting trustee may conduct any trust business and any business incidental thereto and which the contracting trustee may otherwise conduct at its principal place of business; and

(2) to engage the originating trustee as the agent of the contracting trustee, on a disclosed basis to customers, for the purposes of providing administrative, advertising and safekeeping services incident to the fiduciary services provided by the contracting trustee.

(e) Any contracting trustee may enter into an agreement with a financial institution providing that the contracting trustee may establish a trust service desk as authorized by subsection (d) in the offices of such financial institution and which provides such financial institution, on a disclosed basis to customers, may act as the agent of contracting trustee for purposes of providing administrative services and advertising incident to the fiduciary services to be performed by the contracting trustee.

(f) No activity authorized by subsections (b) through (e) shall be conducted by any contracting trustee, originating trustee or financial institution until an application for such authority has been submitted to and approved by the commissioner. The application shall be in the form and contain the information required by the commissioner, which shall at a minimum include certified copies of the following documents:

(1) The agreement;

(2) the written action taken by the board of directors of the originating trustee or financial institution approving the agreement;

(3) all other required regulatory approvals;

(4) an affidavit of publication of notice of intent to file the application with the commissioner. Publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city or county where the principal office of the originating trustee or financial institution is located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant contracting trustee, the originating trustee or financial institution, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application, and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed agreement. All comments and requests for public hearing shall be filed with the commissioner on or before the 30th day after the date the application is filed; and

(5) a certification by the parties to the agreement that written notice of the proposed substitution was sent by first-class mail to each cofiduciary, each surviving settlor of a trust, each

ward of a guardianship, each person who has sole or shared power to remove the originating trustee as fiduciary and each adult beneficiary currently receiving or entitled to receive a distribution of principle or income from a fiduciary account affected by the agreement, and that such notice was sent to each such person's address as shown in the originating trustee's records. An unintentional failure to give such notice shall not impair the validity or effect of any such agreement, except an intentional failure to give such notice shall render the agreement null and void as to the party not receiving the notice of substitution.

(g) A contracting trustee making application to the commissioner for approval of any agreement pursuant to this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner adopted pursuant to K.S.A. 9-1713 and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate account in the state treasury for each application. The money in each such account shall be used to pay the expenses of the commissioner, or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(h) Upon the filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

(1) The reasonable probability of usefulness and success of the contracting trustee;

(2) the financial history and condition of the contracting trustee including the character, qualifications and experience of the officers employed by the contracting trustee; and

(3) whether the contracting agreement will result in any undue injury to properly conducted existing banks, national banks and trust companies.

If the commissioner shall determine any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, then the application shall be approved.

(i) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days of the date upon which the application was filed.

(j) If a written request for public hearing is filed, the commissioner shall hold within 30 days of the close of the comment period, a public hearing in a location determined by the commissioner. Notice of the time, date and place of such hearing shall be published by the applicant in a newspaper of general circulation in the county where the originating trustee or financial institution is located, not less than 10 nor more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons may present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(k) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period provided for by this section, shall give written notice to each party to the agreement of the commissioner's intent to extend the period which shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(l) Within 15 days of the date of the commissioner's approval or denial, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance

vith the act for judicial review and civil enforcement of agency actions. Any party which files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713 and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(m) When the commissioner determines that any contracting trustee domiciled in this state has entered into a contracting agreement in violation of the laws governing the operation of such contracting trustee, the commissioner shall give written notice to the contracting trustee and the originating trustee or financial institution of such determination. Within 15 days after receipt of such notification, the contracting trustee and originating trustee or financial institution shall have the right to appeal in writing to the state banking board the commissioner's determination. The board shall fix a date for hearing, which shall be held within 45 days after the date of the appeal and shall be conducted in accordance with the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination. The decision of the board shall be final and conclusive. If the contracting trustee does not appeal to the board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714 and amendments thereto, until such time as the commissioner determines the contracting trustee, originating trustee and financial institution are in full compliance with the laws governing the operation of a contracting trustee and originating trustee or financial institution.

(n) Any party entitled to receive a notice under subsection (f)(5) may file a petition in the court having jurisdiction over the fiduciary relationship, or if none, in the district court in the county where the originating trustee has its principal office, seeking to remove any contracting trustee substituted or about to be substituted as fiduciary pursuant to this section. Unless the contracting trustee files a written consent to its removal or a written declination to act subsequent to the filing of the petition, the court, upon notice and hearing, shall determine the best interest of the petitioner and all other parties concerned and shall fashion such relief as it deems appropriate in the circumstances, including the awarding of reasonable attorney fees. The right to file a petition under this subsection shall be in addition to any other rights to remove fiduciary provided by any other statute or regulation or by the writing creating the fiduciary relationship. If the removal of the fiduciary is prompted solely as a result of the contracting agreement, any reasonable cost associated with such removal and transfer, not to exceed $200 per account, shall be paid by the originating trustee or financial institution entering into the agreement.

History: L. 1989, ch. 48, § 7; L. 1990, c 60, § 3; L. 1993, ch. 30, § 2; L. 1994, ch. 51, § 1; L. 1994, ch. 294, § 1; May 5.

1994 Supp.

§5004. Standards for investments by fiduciaries; prudent investor rule; conservators; trustees following written directions regarding trust property. (a) *Prudent Investor Rule.* (1) A fiduciary has a duty to invest and manage the trust assets as follows: (A) The fiduciary has a duty to invest and manage assets as a prudent investor would considering the purposes, terms, distribution requirements and other circumstances of the trust or conservatorship. This standard requires the exercise of reasonable care, skill and caution and is to be applied to investments not in isolation, but in the context of the portfolio under the fiduciary's control as a whole and as a part of an overall investment strategy that should incorporate risk and return objectives reasonably suitable to such assets.

(B) No specific investment or course of action is, taken alone, prudent or imprudent. Except as provided in this section, the fiduciary may invest in every kind of property and type of investment. The fiduciary's investment decisions and actions are to be judged in terms of the fiduciary's reasonable business judgment regarding the anticipated effect on the portfolio under the fiduciary's control as a whole given the facts and circumstances prevailing at the time of the decision or action. The prudent investor rule is a test of conduct and not of resulting performance.

(C) The fiduciary has a duty to diversify the investments of the portfolio except, under the circumstances, when the fiduciary reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the portfolio not to diversify.

(D) The fiduciary has a duty, within a reasonable time after the acceptance of the portfolio, to review portfolio assets and to make and implement decisions concerning the retention and disposition of original preexisting investments in order to conform to the provisions of this section. The fiduciary's decision to retain or dispose of an asset may properly be influenced by the asset's special relationship or value to the purposes of the trust or conservatorship, or to some or all of the beneficiaries, consistent with the fiduciary's duty of impartiality.

(E) The fiduciary has a duty to pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the fiduciary's duty of impartiality and the purposes of the trust or conservatorship. Whether investments are underproductive or overproductive of income shall be judged by the portfolio as a whole and not as to any particular asset.

(F) The circumstances that the fiduciary may consider in making investment decisions include, but shall not be limited to, the following: The general economic conditions; the possible effect of inflation; the expected tax consequences of investment decisions or strategies; the role each investment or course of action plays within the overall portfolio; the expected total return, including both income yield and appreciation of capital; and the duty to incur only reasonable and appropriate costs. The fiduciary may but need not consider related trusts and the assets of beneficiaries when making investment decisions.

(2) If a trust, the provisions of this section may be expanded, restricted, eliminated or otherwise altered by express provisions of the trust instrument. The fiduciary is not liable to a beneficiary for the fiduciary's reasonable and good faith reliance on those express provisions.

(3) Nothing in this section abrogates or restricts the power of an appropriate court in proper cases to: (A) Direct or permit the fiduciary to deviate from the terms of a trust or similar instrument; or

(B) direct or permit the fiduciary to take, or to restrain the fiduciary from taking, any action regarding the making or retention of investments.

(4) The following terms or comparable language in the investment powers and related provisions of a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as authorizing any investment or strategy permitted under this section: "Investments permissible by law for investment of trust funds;" "legal investments;" "authorized investments;" "using the judgment and care under the circumstances then prevailing that men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital;" "prudent man rule;" and "prudent person rule."

(5) On and after the effective date of this act, the provisions of this section shall apply to all existing and future trusts or conservatorships, but only as to actions or inactions occurring after the effective date of this act.

(b) *Duty Not to Delegate.* (1) The fiduciary has a duty not to delegate to others the performance of any acts involving the exercise of judgment and discretion, except acts constituting investment functions that a prudent investor of comparable skills might delegate under the circumstances. The fiduciary may delegate those investment functions to an investment agent as provided in subsection (b)(2).

(2) For a fiduciary to properly delegate investment functions under subsection (b)(1), all of the following requirements shall apply: (A) The fiduciary must exercise reasonable care, skill and caution in selection of the investment agent, in establishing the scope and specific terms of any delegation and in periodically reviewing the agent's actions in order to monitor overall performance and compliance with the scope and specific terms of the delegation.

(B) The fiduciary must conduct an inquiry into the experience, performance history, professional licensing or registration, if any, and financial stability of the investment agent.

(C) The investment agent shall be subject to the jurisdiction of the courts of this state.

(D) The investment agent shall be subject to the same standards that are applicable to the fiduciary.

(E) The investment agent shall be liable to the beneficiaries of the trust and to the designated fiduciary to the same extent as if the investment agent were a designated fiduciary in relation to the exercise or nonexercise of the investment function.

(F) If a trust, the trustee shall send written notice of its intention to begin delegating investment functions under this section to the beneficiaries eligible to receive income from the trust on the date of initial delegation at least 30 days before the delegation. This notice shall thereafter, until or unless the beneficiaries eligible to receive income from the trust at the time are notified to the contrary, authorize the fiduciary to delegate investment functions pursuant to this section.

(3) If all requirements of subsection (b) are satisfied, the fiduciary shall not otherwise be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated.

(4) On and after the effective date of this act, the provisions of this section shall apply to all existing and future trusts or conservatorships, but only as to actions or inactions occurring after the effective date of this act.

(c) Notwithstanding the provisions of subsection (a), conservators shall not invest funds under their control and management in investments other than those specifically permitted by K.S.A. 59-3019 and amendments thereto, except upon the entry of an order of a court of competent jurisdiction, after a hearing on a verified petition. Before authorizing any such investment, the court shall require evidence of value and advisability of such purchase.

(d) In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property of a trust which is revocable or amendable, a trustee following written directions regarding the property of the trust that are received by the trustee from the person or persons then having the power to revoke or amend the trust or from the person or persons, other than the trustee, to whom the grantor delegates the right to give such written directions to the trustee shall be deemed to have complied with the foregoing standards provided in subsection (a). The trustee is authorized to follow such written directions regardless of any fiduciary obligations to which the directing party may also be subject.

History: L. 1949, ch. 319, § 1; L. 1951, ch. 209, § 1; L. 1961, ch. 124, § 1; L. 1965, ch. 150, § 9; L. 1978, ch. 82, § 1; L. 1987, ch. 87, § 1; L. 1993, ch. 238, § 1; July 1.

TESTIMONY OF B. DEAN HUDGEONS
Legislative Chair

THE KANSAS BANKER'S ASSOCIATION TRUST DIVISION
800 S.W. Jackson
Topeka, KS 66612

March 16, 1995

To: Senate Judiciary Committee
Tim Emert, Chair

Re: House Bill No. 2181

My name is Dean Hudgeons. I am currently a Trust Officer for BANK IV Kansas, Topeka, Kansas. I am appearing today on behalf of The Kansas Banker's Association Trust Division in the position of Legislative Chair.

We request that you consider amending the proposed legislation of House Bill No. 2181 as shown on the attachment to my written testimony. The amendment would effect the definition of "Security Account" as it applies to Kansas Statute chapter 17-49a-Uniform Transfer on Death Security Registration Act.

Uniform Transfer on Death Security Registration Act

This Act allows for individuals to register securities in Beneficiary form. This is accomplished by entering into a "transfer on death" (TOD) or "pay on death" (POD) arrangement with the issuer of the security. When a beneficiary registration is made the security may be transferred to the beneficiary named in the TOD arrangement upon the death of the sole owner or last surviving owner of that security without probate proceedings.

When enacted the statute allowed for these TOD arrangements in securities accounts held with brokers to assist customers in simplifying the asset transfer process upon death. We are simply requesting that you consider this amendment to the definition of "Security account" to include investment agency accounts managed by banks and trust companies which function in very much the same way as securities accounts with brokers.

Benefits of the Amendment

The real benefit would be to those individuals who have rather simple estate plans and have asset holdings which do not necessarily make entering into a trust feasible. By allowing this provision these customers could name beneficiaries of each individual security and avoid the cost and delays of probate proceedings. This would be of particular benefit to the individual who has no assets other than their investment agency account that would require probate. Therefore, this legislative change would in reality not effect a large number of people.

Senate Judiciary
3-16-95
Attachment 13

Banks can currently make similar arrangements with a customer for their checking accounts and certificates of deposit. This provision would add agency accounts to that list and further simplify some customers' planning.

On behalf of the Kansas Bankers Association Trust Division I would appreciate your support for this amendment to House Bill No. 2181. If their are any questions I will be glad to address them.

Thank you.

Dean Hudgeons

PROPOSED AMENDMENT TO H.B. 2181

13-3

Article 49a.—UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

17-49a01. Definitions. As used in this act:

(a) "Beneficiary form" means a registration of a security which identifies the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(b) "Register" including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(c) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(d) "Security" means a certificated or uncertificated security as defined in K.S.A. 84-8-102 and amendments thereto or as defined in K.S.A. 17-1252 and amendments thereto.

(e) "Security account" means (1) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death, or (2) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

an agency account with a bank or trust company,

(f) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

History: L. 1994, ch. 44, § 1; July 1.

Judicial Council Testimony
on
1995 HB 2183

The proposed change occurs in lines 22 and 23 of the bill. This is a "clean-up" amendment. L. 1992, ch. 97 repealed the "Uniform Simultaneous Death Law" (K.S.A. 58-701 to 58-707) and enacted the "Uniform Simultaneous Death Act" (K.S.A. 58-708 to 58-718). K.S.A. 59-513 was not amended to update the citation. The other amendments are language changes made by the Revisor of Statutes Office consistent with their style of drafting.

Senate Judiciary
3-16-95
Attachment 14

Judicial Council Testimony
on
1995 HB 2184

The 1992 Legislature passed SB 607 which became L. 1992, ch. 150, sec. 8, and amended K.S.A. 59-1301, a statute in the probate code, and sets the priority of payment of claims when the assets of an estate are insufficient to pay the full amount of the demands against the estate.

Prior to 1992, the U.S. Congress passed legislation which required the enactment of state legislation to recover Medicaid expenditures and the 1992 Kansas enactment was in response to that federal mandate. What was not understood in 1992 was that the federal requirement that a recovery statute be enacted was not a requirement that such statute be enacted to make recovery a first class demand, but merely that such a statute be enacted.

Prior to 1992, the demands were classified as follows:

- First class - Funeral expenses
- Second class - Costs of administration and expenses of last illness
- Third class - Judgments and liens
- Fourth class - All other demands

After the enactment of the 1992 legislation, the Medicaid recovery became a first class demand placing it ahead of expenses of administration and expenses of last illness. Shortly thereafter, SRS set up the Kansas Estate Recovery Program which pursues the recovery of this money.

Mr. Brian Vazquez, Attorney for Estate Recovery program, has done an excellent job of administering the program and our discussions with him concerning this bill have been open and frank. While we expect he may oppose this legislation, we also want to acknowledge the professional manner in which he conducts the program and has treated the Judicial Council in its study of this matter. In our conversations with Mr. Vazquez, it became clear that his policies in dealing with these estates will somewhat lessen the fiscal impact of such change.

Attached is research entitled "Estate Recovery and Claim Classification Statutes of the Various States" provided by Randy Hearrell, Research Director for the Judicial Council. He located the recovery statutes in other states and in the shaded area, made a judgment as to where the respective state's recovery statutes would be classified in Kansas. Mr. Hearrell states his classifications are subjective but it is clear that no other state has a first class classification for Medicaid claims and it appears most are third class claims.

As to other changes in HB 2184, the language on page 1, in lines 37, 38 and 39 was moved to the end of page one and the top of page two because it should be in the concluding paragraph which applies to the entire section and not in the paragraph relating to fourth class claims. On page one, in line 40, the phrase "for the first class of demands" was stricken because when the Medicaid language is removed, it will no longer be required.

It is the opinion of the Probate Law Advisory Committee and the Judicial Council that K.S.A. 59-1301 should be amended to make estate recovery a second class claim.

Senate Judiciary
3-16-95
Attachment 15

ESTATE RECOVERY AND CLAIM CLASSIFICATION STATUTES OF THE VARIOUS STATES

ALABAMA	
None	As of 1994
ALASKA	
47.07.055 CH. 102 § 21 of 1994 Session Laws	Recovery of medical assistance from estates
13.16.470 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, medical expenses of last illness, and before all other claims.
ARIZONA	
36-2935	Estate recovery program; liens
14-3805 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, expenses of last illness, and before all other claims.
ARKANSAS	
20-76-436	Recovery of benefits from recipients' estates
28-50-106 4th Class	The claim is classified last, as all other claims, and is payable after costs of administration, and funeral last illness expenses.
CALIFORNIA	
14009.5 (Welfare and Institutions Code)	Liability to repay cost of health care; decedents' estates; distributees; exceptions; waiver of claim
9201, 9204, 11420 (Probate Code) 4th Class	The claim is classified last, as general debt, and is payable after expenses of administration, funeral expenses, expenses of last illness, family allowances, wage claims, and liens.

COLORADO	
26-4-403.3	Recovery of assets
15-12-805 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, expenses of last illness, and before all other claims.
CONNECTICUT	
17-83g	State's claim on death of beneficiary or parent of beneficiary
45a-365 3rd Class	The claim is classified as debt to the state, and is payable after funeral expenses, administration costs, last illness expenses, and before wage claims, other preferred claims, and all other claims.
DELAWARE	
None	As of 1993
FLORIDA	
None	As of 1994
GEORGIA	
49-4-147.1	Claims by department against estate of Medicaid recipients
53-7-91 3rd Class	The claim is classified as debt to the state, and is payable after funeral and last illness expenses, administration costs, and before liens, rent, liquidated demands, and open accounts.
HAWAII	
346-37	Recovery of payments
560:3-805 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, family allowances, exempt property, last illness expenses, and before all other claims.
IDAHO	
56-218	recovery of certain medical assistance
15-3-805 3rd Class	The claim is classified as debt to the state, and is payable after costs of administration, funeral expenses, debts and taxes under federal law, expenses of last illness, and before all other claims.

ILLINOIS	
305 ILCS 5/3-9	Claims against the estate of a deceased recipient
755 ILCS 5/18-10 3rd Class	The claim is classified as debt to the state, and is payable after administration costs and funeral expenses, family allowances, debts due the U.S., wage claims and last illness expenses, and before all other claims.
INDIANA	
12-14-21-1	Claim filed against estate
29-1-14-9 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, family allowances, debts due the U.S., last illness expenses, and before all other claims.
IOWA	
249A.5	Recovery of payment
633.425 3rd Class	The claim is classified as debt for medical assistance, and is payable after court costs, administration costs, funeral expenses, debts due the U.S., last illness expenses, taxes due the state, and before wage claims, unpaid support payments, and all other claims.
KENTUCKY	
None	As of 1992
LOUISIANA	
None	As of 1994
MAINE	
22 § 14(2-I)	Claims against estates of Medicaid recipients
18A § 3-805 2nd Class	The claim is classified with last illness expenses, and is payable after administration costs, funeral expenses, debts due the U.S., and before taxes due the state, and all other claims.

MARYLAND	
Art. 88A § 77	Recovery from estate
8-105 (Estates and Trusts) 3rd Class	The claim is classified as old age assistance, and is payable after court costs, administration costs, funeral expenses, attorney fees, family allowances, taxes due, last illness expenses, rent, wage claims, and before all other claims.
MASSACHUSETTS	
195:16	Informal administration of certain small estates
198:1 3rd Class	The claim is classified as medical assistance, and is payable after administration costs and funeral expenses and last illness expenses, debts due the U.S., taxes, and before wage claims, debt for necessaries, all other claims.
MICHIGAN	
None	As of 1993
MINNESOTA	
256B.15	Claims against estates
524.3-805 2nd Class	The claim is classified as last illness expense, and is payable after administration costs, funeral expenses, debts due the U.S., and before debts due the state, and all other claims.
MISSISSIPPI	
None	As of 1993
MISSOURI	
473.398	Recovery of public assistance funds from recipient's estate
473.397 3rd Class	The claim is classified as debt to the state, and is payable after court costs, administration costs, family allowances, funeral expenses, debts due the U.S., last illness expenses, and before past judgments, and all other claims.

MONTANA	
53-2-611	Recovery from recipient's estate
72-3-807 3rd Class	The claim is classified as debt to the state and the U.S., and is payable after administration costs, funeral expenses and last illness expenses, estate taxes due the U.S. and the state, and before taxes due the state and U.S., all other claims.
NEBRASKA	
LB 1224 § 39 of 1994 Session Laws	(estate recovery program)
30-2487 (LB § 40) 2nd Class	The claim is classified with last illness expenses, and is payable after administration costs, funeral expenses, debts and taxes due the U.S., and before debts and taxes due the state, and all other claims.
NEVADA	
422.2935	Recovery of benefits paid for assistance to medically indigent; claim against estate of recipient or spouse
150.220 3rd Class	The claim is classified as payment of benefits, and is payable after funeral expenses, last illness expenses, family allowances, debts due the U.S., and before wage claims, past judgments, and all other claims.
NEW HAMPSHIRE	
167:13 to 167:16a	Recovery for assistance furnished
554:19 3rd Class	The claim is classified as old age assistance, and is payable after administration costs, funeral expenses, last illness expenses, and before all other claims.
NEW JERSEY	
30:4D-7.2	Lien against estate of recipient
3B:22-2 2nd Class	The claim is classified as debt to the state and the U.S., and is payable after funeral expenses, administration costs, and before last illness expenses, past judgments, and all other claims.

NEW MEXICO	
27-2A-1 et seq.	Medicaid Estate Recovery Act
45-3-805 3rd Class	The claim is classified as debt to the state, and is payable after administration costs and attorney fees, last illness expenses, funeral expenses, debts due the U.S., and before all other claims.
NEW YORK	
Soc S § 369 CH. 170 §§ 451, 452 of 1994 Sess. Laws	Application of other provisions
SCPA § 1811 2nd Class	The claim is classified as debt to the state and the U.S., and is payable after administration costs and funeral expenses, and before taxes, past judgments, and all other claims.
NORTH CAROLINA	
None	As of 1994
NORTH DAKOTA	
50-24.1-07	Recovery from estate of medical assistance recipient
30.1-19-05 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, debts due the U.S., last illness expenses, and before all other claims.
OHIO	
5111.11	Recovery program against property and estates of recipients; liens
2117.25 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, family allowances, debts due the U.S., last illness expenses, and before wage claims, and all other claims.
OKLAHOMA	
None	As of 1994

OREGON	
411.795	Claim against estate of deceased recipient
115.125 3rd Class	The claim is classified as amount of public assistance and is payable after family allowances, administration costs, funeral expenses, debts due the U.S., last illness expenses, taxes due the state, wage claims, and before all other claims.
PENNSYLVANIA	
None	As of 1994
RHODE ISLAND	
40-8-15	Lien on deceased recipient's estate for assistance
33-12-11 3rd Class	The claim is classified as debt to the state, and is payable after administration costs and family allowances, funeral expenses, last illness expenses, debts due the U.S., and before wage claims, state lottery claims, and all other claims.
SOUTH CAROLINA	
None	As of 1993
SOUTH DAKOTA	
28-6-23	Medical assistance as debt to department - recovery of debt
30-21-1 4th Class	The claim is classified last with all other demands, and is payable after administration costs, funeral expenses, last illness expenses, wage claims, and debts due the U.S..
TENNESSEE	
71-5-116	Lien on real estate - Claim against estate
30-2-317 ?	The claim is classified as debt to the state and the U.S., and is payable after administration costs and attorney fees, and before funeral expenses, and all other demands.

TEXAS	
None	no estate recovery statute, but Probate Code includes recovery provision
Probate Code §§ 320, 322 3rd Class	The claim is classified as medical assistance payments, and is payable after funeral and last illness expenses, family allowances, administration costs, liens, taxes due the state, cost of confinement, and before and all other claims.
UTAH	
26-19-13	Recovery of medical assistance payments from recipient - lien against estate
75-3-805 2nd Class	The claim is classified as last illness expenses, and is payable after funeral expenses, administration costs, debts due the U.S., and before debts due the state, and all other claims.
VERMONT	
33 §§ 122, 2113	Recovery of payments, Action for recovery of expenditures
14 § 1205 4th Class	The claim is classified last as all other claims, and is payable after administration costs, funeral and last illness expenses, and wage claims.
VIRGINIA	
32.1-326.1, 32.1-327	Department to operate program of estate recovery, Claim against indigent's estate for payment made
64.1-157 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, family allowances, funeral expenses, debts due the U.S., last illness expenses, and before all other claims.
WASHINGTON	
CH. 21 §§ 2, 3 of 1994 Sess. Laws	(estate recovery)
11.76.110 3rd Class	The claim is classified as debt to the state, and is payable after administration costs, funeral expenses, last illness expenses, wage claims, debts due the U.S., and before liens, and all other claims.

WEST VIRGINIA	
None	As of 1994
WISCONSIN	
49.496	Recovery of correct medical assistance payments
859.25 3rd Class	The claim is classified as debt to the state and the U.S., and is payable after administration costs, funeral expenses, family allowances, last illness expenses, and before wage claims, and all other claims.
WYOMING	
42-4-206	Claims against estates
2-7-701 3rd Class	The claim is classified as last illness expenses, and is payable after court costs, administration costs, funeral expenses, family allowances, debts due the U.S., and before debts due the state, wage claims, and all other claims.

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Janet Schalansky, Acting Secretary
Senate Committee on Judiciary
Testimony on H.B. 2184 Pertaining to Probate and Demand Claims
March 15, 1995

Mr. Chairman and members of the committee, thank you for the opportunity to present testimony on H.B. 2184. This bill is designed to reduce the level of demand for the medical assistance claim from its current level as a first class claim to a second class claim equivalent with costs of administration and costs of last illness. The impact of this proposal on the SRS Estate Recovery program would be to reduce the total amount of collections while increasing the cost of administration of the program.

Initially authorized by the Kansas legislature in 1992, the Estate Recovery program allows the agency to recover Medicaid expenditures paid on behalf of a recipient from the recipient's estate. Congress acknowledged the importance of such efforts in controlling Medicaid costs by mandating in 1993 that all states develop estate recovery programs. Since that time States have implemented a variety of recovery procedures. State programs differ in their approach, scope of recovery, and recovery methods. In Kansas most of the recoveries are from probate actions and family agreements. Operation of the program has helped offset the ever increasing costs in the Medicaid program. As the attachments show, the Estate Recovery program has recovered nearly $1,530,000 while incurring expenses of $360,000 in handling approximately 1,500 cases.

As a second class claimant under the proposed legislation, SRS would recover less since the available money left after payment of reasonable funeral expense would be split proportionately with costs of administration and costs of last illness. The amount paid to a claimant in a class is determined by computing the claim's respective percentage to the overall amount of similar class claims. The fiscal impact of reducing the claim in this manner is conservatively estimated at a 15% reduction in total collections. For FY 96, the loss would be estimated at $180,000.

Second class claim status would also result in a need for more administrative review and court time to determine the amount to be paid to the agency. Since determination of SRS's appropriate amount would be based on other claims presented, all creditors' claims would need to be heard and determined. This would increase staff time needed on each case due to preparation, litigation, tracking, and negotiation.

There are some estates in which the property value does not justify a normal probate process, the proposed legislation would probably not increase the number of probate actions filed in these estates. However, in those cases where there are assets which justify the probate action, there would be an added financial incentive for someone other than the agency to file. This added time and litigation would probably not benefit the family. The costs of last sickness and the costs of administration, except for attorney fees,

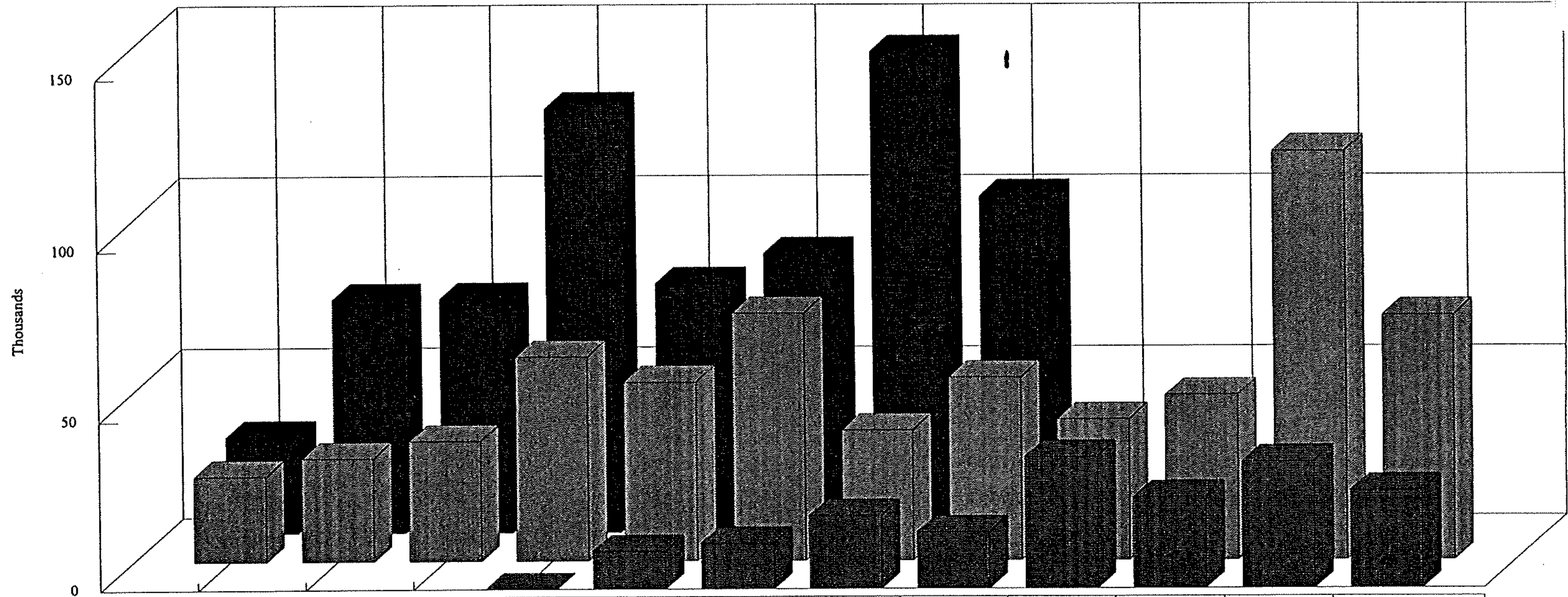
Senate Judiciary
3-16-95
Attachment 16

are in many cases already covered by some other means. (Hospital, pharmacy, and nursing home charges are cognizable through state or federal assistance; filing fees and publication costs are covered by SRS under estate recovery initiated probates.) The main items not covered automatically are attorney fees. As such, this proposal may encourage attorneys to initiate probate since payment of fees would now be available. This would further reduce the amount of the state's claim and increase costs as a result of additional litigation.

In summary, passage of this legislation will have a substantive negative impact on the state general fund dollars recovered through estate recovery as well as increase the operational cost of the program.

Brian Vasquez,
Administrator
Estate Recovery Program
Acting for Janet Schalansky,
Acting Secretary

COLLECTIONS



	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
FISCAL YEAR 1993				73.07	11,262.42	13,621.57	21,745.35	16,728.99	39,080.66	27,074.08	37,611.91	29,092.65
FISCAL YEAR 1994	25,335.03	30,562.61	35,551.89	60,295.88	52,880.01	73,102.65	38,595.11	54,130.50	41,759.80	48,876.60	120,102.53	72,405.31
FISCAL YEAR 1995	28,630.89	68,851.01	69,097.39	124,310.00	73,424.19	82,103.69	140,887.47	98,711.03				

SRS Estate Recovery
Attachment to Testimony

COLLECTIONS

CALENDAR YEAR	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
1992										73.07	11,262.42	13,621.57	$24,957.06
1993	21,745.35	16,728.99	39,080.66	27,074.08	37,611.91	29,092.65	25,335.03	30,562.61	35,551.89	60,295.88	52,880.01	73,102.65	$449,061.71
1994	38,595.11	54,130.50	41,759.80	48,876.60	120,102.53	72,405.31	28,630.89	68,851.01	69,097.39	124,310.00	73,424.19	82,103.69	$822,287.02
1995	140,887.47	98,711.03											$239,598.50
													$0.00
TOTALS	$201,227.93	$169,570.52	$80,840.46	$75,950.68	$157,714.44	$101,497.96	$53,965.92	$99,413.62	$104,649.28	$184,678.95	$137,566.62	$168,827.91	$1,535,904.29

FISCAL YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL
1993				73.07	11,262.42	13,621.57	21,745.35	16,728.99	39,080.66	27,074.08	37,611.91	29,092.65	$196,290.70
1994	25,335.03	30,562.61	35,551.89	60,295.88	52,880.01	73,102.65	38,595.11	54,130.50	41,759.80	48,876.60	120,102.53	72,405.31	$653,597.92
1995	28,630.89	68,851.01	69,097.39	124,310.00	73,424.19	82,103.69	140,887.47	98,711.03					$686,015.67
													$0.00
TOTALS	$53,965.92	$99,413.62	$104,649.28	$184,678.95	$137,566.62	$168,827.91	$201,227.93	$169,570.52	$80,840.46	$75,950.68	$157,714.44	$101,497.96	$1,535,904.29

SRS Estate Recovery
Attachment to Testimony