Approved: 3-13-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 3:00 p.m. on February 20, 1996 in Room 220-S- of the Capitol.

All members were present except:

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: Pam Somerville, Kansas Auto Dealers Association
John Federico, Pete McGill and Associates
Elwaine Pomeroy, Kansas Credit Attorneys Association
Bruce Ward, Kansas Credit Attorneys Association
Sherlyn Sampson, Clerk of District Court, Douglas County
Kathy Taylor, Kansas Bankers Association
Matthew Goddard, Heartland Community Bankders Association
Kyle Smith, KBI
Ron Smith, Kansas Bar Association

Others attending: See attached list

The Chair called the meeting of the Senate Judiciary Committee to order at 3:00 p.m. in room 220-S of the State Capitol.

SB 574--Cancellation of agreements between vehicle dealers and manufacturers

Pam Somerville, Kansas Automobile Dealers Association testified in support of **SB 574.** The conferee stated that the Automobile Manufacturers' and the Auto Dealers' Associations had agreed to a compromise and that compromise is addressed in the amendment (balloon) presented to the Committee. The conferee discussed several issues of the agreed compromise concerning the Automobile Dealer Franchise Act. The conferee explained changes on page 3, line 22 concerning dueling facilities and stated that everything existing on February 1, 1996 would remain the same. The conferee discussed Section 1, (f) concerning dealer net acquisition cost for any new, undamaged and unsold new motor vehicle inventory purchased from the first or second stage manufacturer or distributor within 12 months prior to the receipt of notice of termination, cancellation or nonrenewal--- et al. The conferee discussed the compromise agreed to in Section 1 (B) concerning parts, supplies and accessories acquired from a first or second stage manufacturer in the event of cancellation, termination, or nonrenewal of a franchise agreement. The conferee explained other specific terms of agreement and compromise detailed in the balloon. (Attachment 1)

Mr. John Federico referred to an amendment requested by the Motorcycle Industry Council, Inc. exempting motorcycle manufacturers and distributors from certain provisions of **SB 574**. (Attachment 2)

A motion was made by Senator Harris, seconded by Senator Feleciano to amend **SB 574** to exempt motorcycle distributors and manufacturers from certain provisions of that bill as requested by MIC, Inc.. The motion carried.

A motion was made by Senator Bond, seconded by Senator Harris to recommend the bill favorably for passage as amended by the joint amendment from the Auto Dealers' and the Auto Manufacturers' Associations. The motion carried.

SB 707--Garnishment, notice and exemption forms.

Mr. Elwaine Pomeroy, Kansas Credit Attorneys Association testified in support of **SB 707**. Mr. Pomeroy explained that this bill would provide notice of garnishment before the actual taking by the garnishment. The

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.

conferee stated that this bill lists in one place all the exemptions provided by various federal and state statutes. That is repeated in the notice and again in the claim for exemption explained the conferee. The conferee noted that there are three technical amendments, which are the same changes but in three different places where "60-718" should be deleted and "61-2006" should be inserted. (Attachment 3)

Mr. Pomeroy introduced the president of the Kansas Credit Attorneys Association, Bruce Ward.

Mr. Ward testified in support of **SB 707** and stated that this bill provides that notice is given to the defendant. The conferee discussed an election form provided on the second page of the notice that would allow the defendant to request a hearing before the district court to assert his/her rights of protection in the case of the garnishment. The conferee stated that the reason for proposing **SB 707** results from a filing of an appeal pending before the Kansas Court of Appeals which challenges the constitutionality of Kansas garnishments based on the failure to provide the type of notice specified in **SB 707**. Mr. Ward stated that his association has filed a brief and the hearing is set for March. The conferee related that during the research process for the brief, it was discovered that an increased number of cases from the federal circuit courts are finding under the due process clause of the constitution that there is a requirement that some type of notice be given to a defendant when an order of garnishment starts. The conferee stated that a notice would give the defendant a list of exemptions that are available and a right to a quick hearing before the court to assert whatever exemption is claimed by the defendant. The conferee stated that while the current appeal may not be successful, it is a matter of time before somebody is successful in asserting this issue in federal cases in Kansas and might take away from all creditors the right to garnishment. The conferee stated that even though **SB 707** gives substantial additional rights to defendants, it is in the best interest of creditors and attorneys that this issue be dealt with now while there is time to amend the law to what the federal courts say the constitution requires. The conferee requested that the Committee consider this bill favorably for passage.

During discussion with Committee members, the conferee stated that a garnishment has three parties; the claimant; defendant, and the garnishee. The conferee stated that the garnishee would have the most reliable information to locate the defendant, therefore, this bill requires that the notice be given by the garnishee. The conferee stated that **SB 707** was patterned after Oklahoma law although not all of the Oklahoma provisions are included. The conferee stated that the list of exemptions include those under federal law and Kansas law. The conferee and Committee members discussed the reason for requiring that the garnishee provide notice to the defendant and the garnishee's right to charge a fee for reasonable costs. The conferee explained the garnishment process under current law in response to a Committee member's question. The conferee stated that there is currently no requirement that the defendant be notified. The conferee stated that this bill will provide for notice and give the defendant a right to an exemption hearing. In response to a Committee member's question, the conferee stated that his organization would still support the bill if the plaintiff were required to provide notice. The conferee related information concerning the forms that are to be used, and stated that the form can be mailed by first-class mail or hand delivered.

Sherlyn Sampson, Clerk of District Court, Douglas County appeared on behalf of the Kansas Association of District Court Clerks & Administrators to address some concerns of that Association. The conferee stated that her association's concern is with the Notice of Garnishment and Exemption form Clerks are required to attach to Order of Garnishments. The conferee stated that there are problems with the form itself as well as the time standards set out in the bill. The conferee noted that on page 6, line 10, the defendant is advised to mail back any documents proving the money is exempt, however, the conferee related that it is best if the defendant keep the documents until the court hearing on the garnishment as the court cannot consider them until the hearing. The conferee stated that **SB 707** implies that the court clerk will be responsible for preparing and issuing the order to pay money into the court. The conferee stated that this bill will place an additional burden on the judicial branch and this bill will increase expenses by requiring the additional forms. The conferee concluded by stating that **SB 707** is cumbersome and will never be followed by the garnishee or the defendant; and the time standards set out in this bill conflict with the statutory time standards set for the garnishment process. The conferee stated that if this bill is passed, her Association is requesting that it not go into effect until January 1, 1997 because of all the changes that will need to be made. (Attachment 4)

Kathy Taylor, Kansas Bankers Association, spoke in opposition to **SB 707**. The conferee stated that the Kansas Bankers Association's opposition to this bill is to the procedure suggested in delivering the notification to the defendant. The conferee suggested an option for delivering the Notice and Application by having the clerk include it with a copy of the Answer of Garnishee that the clerk is required by statute to send to the plaintiff and to the defendant. The conferee stated that by sending all the documents at the same time, the defendant will receive all of the information necessary to form a reply to the garnishment claim. The conferee concluded by stating that the Notice and Application should come from the court and that could be accomplished under procedures already in place. (Attachment 5)

Matthew Goddard, Heartland Community Bankers Association (HCBA) testified in opposition to **SB 707**.

The conferee stated that HCBA's concerns focus on the mandate that the garnishee must mail a copy of the Notice of Garnishment and Exemption and Application for hearing to the defendant. The conferee stated HCBA does not believe that the responsibility of notification should be mandated on a third party financial institution in lieu of notification by the district court. (Attachment 6)

Written testimony was provided by Danielle Noe, Governmental Affairs Director for the Kansas Credit Union Association opposing **SB 707**. The testimony states that because the courts must already contact the defendant regarding the Answer, KCUA recommends that the duty of Notice should be handled through the court system. (Attachment 7)

The Chair closed the hearing on **SB 707.**

SB 511--Prosecution does not have to identify informant witness until the time such witness has to testify.

Kyle Smith, KBI discussed Mr. Wurtz, Kansas Association of Criminal Defense Lawyers' concerns with the possibility of prosecutors abusing the system by not releasing witnesses names to the defense. Mr. Smith stated that this bill would provide for the withholding of a witness' name who is believed to be in danger until the preliminary hearing. Mr. Smith stated that this bill would provide a tool to encourage witnesses to testify who might not otherwise. Mr. Smith stated that the balloon worked out with Mr. Wurtz, KACD will accomplish the objective of offering some protection for witnesses in criminal cases. During Committee discussion of the bill there was a consensus to not disclose the identity of the witness who might be in danger until after the preliminary hearing.

A motion was made by Senator Feleciano and seconded, to amend **SB 511** as proposed by the balloon offered by Mr. Smith, and recommend **SB 511** favorably for passage. The motion carried.

Subcommittee Reports:

Report from Senator Harris' Sub-committee:

Senator Harris discussed his Sub Committee's report on **SB 347, SB 630** and **SB 677**. Senator Harris suggested that **SB 347** should have further consideration.

Senator Harris discussed proposed changes in **SB 677**. A staff member stated that on lines 18, 19 the word "likely" in the phrase "likely to expose" was discussed. The Committee discussed the case where consequential, protected sex could be a felony. Discussion regarding putting "intent" back into the bill followed. It was reported by staff that the County and District Attorneys association had requested that "intent" be stricken because intent is difficult to prove. Committee members requested additional information on the possible number of cases that would be affected by this bill.

SB 679--Retention of specimens by district coroners

Senator Harris reported that the subcommittee recommends **SB 679** favorably for passage.

A motion was made by Senator Harris, seconded by Senator Petty to recommend **SB 679** favorably for passage and place it on the Consent Calendar. The motion carried.

SB 678--Cremation permit fees

Senator Harris stated that the bill would allow an assessment fee up to $25 for filing a cremation form. Senator Harris reported that
SB 678 was requested by the Shawnee County coroner who testified at the subcommittee hearing and related that some background check is necessary to avoid criminal prosecution. Senator Harris stated that those who testified in opposition were funeral directors, and their problem is that in pauper cases what the SRS pays them does not cover this fee, they felt like it was a tax on them. The subcommittee amended the bill to waive the fee where it was a pauper case. Senator Harris stated that with that proposed amendment, the subcommittee recommends **SB 678** favorably for passage.

A motion was made by Senator Feleciano, seconded by Senator Harris to recommend **SB 678** as amended for passage. The motion carries.

Report from Senator Bond 's Sub-committee:

SB 619--Certain injuries in public cemeteries exempt from liability under Kansas tort claims act.

A motion was made by Senator Bond, seconded by Senator Parkinson to recommend **SB 619** favorably for passage. The motion carried.

SB 497--Docket fees

Senator Bond reported that docket fees were expiring this year and in order to renew the funding source for domestic shelters, Casa, and Citizens' Review Boards, action was needed. The Senator stated that this bill is one of the base sources for funding of domestic violence shelters. Senator Bond reported that the sub-committee recommended that the fee be increased by fifty cents. Senator Bond stated that language was removed in the bill to phrase down the fee after July 1, 1998 so this funding source will continue at the current level plus fifty-cents.

A motion was made by Senator Bond, seconded by Senator Parkinson to recommend SB 497 favorably as amended for passage. The motion carried.

SB 546--Notice requirement relating to change in child residence.

Senator Bond reported that this bill would provide that the custodial parent shall not be required to give the notice required by statute when the other parent has been convicted of any crime in which the child is the victim of such crime. Senator Bond related that a conferee testified during the subcommittee hearing on this bill. The conferee related a personal experience concerning the requirement of giving her convicted ex-husband notice of a change in residence when the divorce degree specified that the ex-husband was to have no contact with the child.

The Staff discussed the background of certain statutory provisions pertaining to visitation conditions in divorce cases. Discussion pertaining to including a no-contact condition in the divorce degree followed. The staff member related a judge's concern that allowing a judge to waive statutory requirement of notifying the ex-spouse might involve additional hearings, and that is why this bill was drafted. A staff member reported that Senator Karr, sponsor of the bill had stated that this bill could be narrowed. During Committee and staff discussion the option of tying this bill to Articles 34, 35 and 36 was considered.

SB 594--Uniform docket fees; distributing certain funds to the Kansas endowment for youth trust fund and the Kansas trust fund for prevention of domestic violence.

Senator Bond stated that this bill would provide uniform docket fees statewide. Senator Bond stated that there is a big problem when the amount of the fee varies in each jurisdiction. Senator Bond stated that Representative Adkins had requested that the language be changed in New Section 12 to reconcile it with language that is in the Youth Authority bill which really broadens definitions and makes it clear that the interest income on the dollars that go into the Kansas Endowment for Youth Trust Fund go into the Endowment. (Attachment 8) Senator Bond discussed information presented by Larry Rute on **HB 3033**. (Attachment 9) Senator Bond stated that a $20 filing fee was added to post divorce motions relating to three areas, but not support. Those dollars are going to replace the federal dollars for indigent representation in civil matters, Kansas Legal Services.

A motion was made by Senator Bond, seconded by Senator Petty to recommended favorably for passage as amended by the subcommittee. The motion carried.

SB 584--Confidentiality of mediation proceedings

Mr. Ron Smith discussed the three amendments to be included in **SB 584**. The conferee addressed the question raised by Larry Rute regarding the neutral party in the mediation process. (Attachment 10) The conferee stated that the neutral person in mediation does not have any kind of privilege against disclosure of information if the parties to the mediation agree to disclose the information. The conferee referred to sub paragraph (b) and stated that confidentially would not apply if information that is reasonably necessary to establish a defense for the neutral person or staff of an approved program. The conferee explained that in sub paragraph (5) a report to the court shall be made of any threats of physical violence occur during the mediation process.

A motion was made by Senator Parkinson, seconded by Senator Petty to adopt the amendments proposed by Mr. Ron Smith and recommend SB 584 favorably for passage. The motion carried.

The Chair adjourned the meeting at 4:30 p.m.

The next meeting is scheduled for February 21, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-20-96

NAME	REPRESENTING
Danielle Noe	Ks Credit Union Assoc
Jim Entz	Pro Security
Bruce Ward	Kansas Credit Attys Assoc
Walt Scott	Assoc Credit Bureaus Ks
Clarence Tomerlin	Kansas Collector Assn Kansas Credit Attys Assn
Matthew Goddard	Heartland Community Bankers
Kathy Taylor	KCBA
John Brunk	Peterson Public Affairs group
Kathy Merrill	KS. Auto Dlrs
Bud Grant	KCCI
Nancy Lindberg	A6
Kyle Smith	KBI
Shelby Sampson	Dg Co District Court
Paul Shelby	OJA
Jim Clark	KCDAA
Terry Leatherman	KCCI
John Schmid	KADA
Lonnie Scalatter	KADA
Dan McCoy	KADA

Fig 2

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-20-96

NAME	REPRESENTING
	KADA

Session of 1996

SENATE BILL No. 574

By Committee on Judiciary

1-31

AN ACT amending the vehicle dealers and manufacturers licensing act; relating to the cancellation of agreements between dealers and manufacturers or distributors; amending K.S.A. 8-2414 and repealing the existing section.

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

Section 1. K.S.A. 8-2414 is hereby amended to read as follows: 8-2414. (a) No franchise agreement entered into between a vehicle dealer and a first or second stage manufacturer or distributor may be cancelled, terminated or not renewed by the first or second stage manufacturer or distributor unless ~~30 days~~ *90 days* notice has been given to the vehicle dealer and the director, which notice must state in full the reasons and causes for the cancellation, termination or nonrenewal of such franchise agreement, except that in the event of a showing of fraud, insolvency or failure to perform in the ordinary course of business, a notice of not less than 15 days may be approved by the director, with notice thereof to such vehicle dealer and upon written application by such first or second stage manufacturer or distributor. A notice required under this subsection shall be given by certified mail and the period of time given in the notice prior to cancellation, termination or nonrenewal shall be computed from the date of mailing thereof.

(b) A vehicle dealer, within a period of time equal to that provided for in the notice filed pursuant to subsection (a), may file a complaint with the director against a first or second stage manufacturer or distributor challenging the reasons and causes given for the proposed cancellation, termination or nonrenewal of the franchise agreement. Upon a complaint being filed, the director shall ~~promptly~~ set the matter for public hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for the purpose of determining whether there has been a violation of K.S.A. 8-2410, and amendments thereto, or whether ~~reasonable justification~~ *good cause* exists for cancellation, termination or nonrenewal of the franchise agreement. Notwithstanding the provisions of K.S.A. 8-2411, and amendments thereto, the hearing may be set for a time which is not less than the number of days provided in the notice given pursuant to subsection (a), from the date the director gives notice thereof.

AAMA AMENDMENTS
(2-10-96)

KADA COUNTEROFFER
(2-13-96)

COMPROMISE VERSION
(2-13-96)

.....reinsert "promptly" → Accepted amendment → reinsert "promptly"

Sen Jud
2-20-96
Attach 1

(c) The franchise agreement shall remain in full force and effect pending the determination by the director of the issues involved as provided by this act. If the director determines that the first or second stage manufacturer or distributor is acting in violation of this act or that no ~~reasonable justification exists~~ *good cause does not exist* for the proposed action, the director shall order for the franchise agreement to be kept in full force and effect.

(d) The burden of proof shall be on the ~~dealer to show that the~~ first or second stage manufacturer or distributor ~~acted~~ *to show that it did not* act arbitrarily or unreasonably *and that good cause did exist for the proposed cancellation, termination or nonrenewal of the franchise agreement.* The director shall order that the franchise agreement may be cancelled, terminated or not renewed if the director finds, after a hearing that the licensed vehicle dealer is acting in violation of this act or that the judgment of the first or second stage manufacturer or distributor is reasonable *with good cause* and the vehicle dealer's default is material.

~~(e) In the event of cancellation, termination or nonrenewal of a franchise agreement, the first or second stage manufacturer or distributor shall repurchase or otherwise reasonably compensate the vehicle dealer for all new, unused and undamaged vehicles, parts and accessories which are in salable condition and remain in such vehicle dealer's inventory at the time the cancellation, termination or nonrenewal becomes effective if such vehicles, parts and accessories were supplied to the vehicle dealer by such first or second stage manufacturer or distributor.~~

~~(f) Failure of the first or second stage manufacturer or distributor to give proper notice or maintain the franchise agreement in full force and effect pending determination by the director pursuant to this act, or to abide by the final order of the director, shall be cause for the director to refuse to issue a license to a replacement vehicle dealer or to a dealership which would be conducting business in the same trade area and selling the same make of vehicles where the vehicle dealer in question was engaged in business.~~

(e) (1) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause as used in this section shall mean the failure of the new vehicle dealer to effectively carry out the performance provisions of the franchise agreement if all of the following have occurred:

(A) The new vehicle dealer was given notice by the first or second stage manufacturer or distributor of the failure prior to the notice of cancellation, termination or nonrenewal as required by subsection (a);

(B) the notification stated that the notice of failure of performance was provided pursuant to this article;

(C) the new vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the franchise agreement; and

1-2

AAMA AMENDMENTS (2-10-96)	KADA COUNTEROFFER (2-13-96)	COMPROMISE VERSION (2-13-96)
-delete the phrase "exert good faith efforts to" on Line 43.	Accepted amendment	delete the phrase "exert good faith efforts to" on Line 43.

(D) the failure continued for more than one year after the date notification was given.

(2) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause shall not exist where there has been a violation by the first or second stage manufacturer or distributor of K.S.A. 8-2410, and amendments thereto. Additionally, notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation or nonrenewal of a franchise agreement:

(A) A change in ownership of the new vehicle dealer's dealership. This subparagraph does not authorize any change in ownership which would have the effect of a sale or an assignment of the franchise agreement or a change in the principal management of the dealership without the first or second stage manufacturer's or distributor's prior written consent;

(B) the refusal of the new vehicle dealer to purchase or accept delivery of any new motor vehicles, parts, accessories or any other commodity or services not ordered by the new vehicle dealer;

(C) the fact that the new vehicle dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or that the new vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the first or second stage manufacturer or distributor; provided that the new vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new vehicle dealer remains in substantial compliance with the terms and conditions of the franchise agreement and with the reasonable facilities requirements of the first or second stage manufacturer or distributor;

(D) the fact that the new vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new vehicle dealer's spouse, son or daughter, except that the sale or transfer shall not have the effect of a sale or an assignment of the franchise agreement without the first or second stage manufacturer's or distributor's prior written consent.

(f) (1) In event of cancellation, termination or nonrenewal of a franchise agreement, the first or second stage manufacturer or distributor shall pay the new vehicle dealer, at a minimum:

(A) Dealer cost plus any charges by the first or second stage manufacturer or distributor for distribution including delivery and taxes, less allowances paid or credited to the new vehicle dealer by the first or second stage manufacturer or distributor for new motor vehicle inventory that has been acquired from the first or second stage manufacturer or distributor within 18 months, which has not been altered or damaged, and for which no certificate of title has been issued;

AAMA AMENDMENTS
(2-10-96 and addl. 2-16-96)

-Line 22 (2-10-96): delete "; provided that the new vehicle dealer" and after the word distributor insert "that has been approved by the manufacturer or distributor" and delete remainder of paragraph, i.e., lines 23 through 27 after additions.

Line 22 (2-16-96) add instead: which existed on or before February 1, 1996, or is approved in writing by the first or second stage manufacturer or distributor.

-Delete all of (f) by deleting lines 34 through 43 on page 3 and lines 1 through 30 on page 4. Insert the following language in its place:

(f) "Upon the termination, nonrenewal or cancellation of any franchise the franchisee shall be allowed fair and reasonable compensation by the franchisor for:

(1) any new, undamaged and unsold vehicle inventory of the current model year, or purchased from a franchisor within 120 days prior to receipt of notice of termination or nonrenewal, provided the vehicle has less than 500 miles registered on the odometer, not including mileage incurred in delivery from the franchisor or in transporting the vehicle between dealers for sale, at the dealer's net acquisition cost, plus any cost to the dealer for returning the vehicle inventory to the franchisor;

KADA COUNTEROFFER
(2-13-96)

Line 22:
Delete "provided that the new vehicle" and all of Line 22-27 after the semi-colon on Line 22.

(A) Dealer net acquisition cost for any new, undamaged and unsold new motor vehicle inventory purchased from the first or second stage manufacturer or distributor within 12 months prior to the receipt of notice of termination, cancellation or nonrenewal, provided the new motor vehicle has less than 500 miles registered on the odometer, not including mileage incurred in delivery to the new vehicle dealer or in transporting the vehicle between dealers for sale or delivery, plus any cost to the new vehicle dealer for returning the vehicle inventory to the first or second stage manufacturer or distributor.

COMPROMISE VERSION
(2-13-96 w/ addl. AAMA agreed amend.)

Line 22:
Delete "provided that the new vehicle" and all of Line 22-27 after the semi-colon on Line 22, delete the semi-colon, and then add the following: "which existed on or before February 1, 1996, or is approved in writing by the first or second stage manufacturer or distributor."

(A) Dealer net acquisition cost for any new, undamaged and unsold new motor vehicle inventory purchased from the first or second stage manufacturer or distributor within 12 months prior to the receipt of notice of termination, cancellation or nonrenewal, provided the new motor vehicle has less than 500 miles registered on the odometer, not including mileage incurred in delivery to the new vehicle dealer or in transporting the vehicle between dealers for sale or delivery, plus any cost to the new vehicle dealer for returning the vehicle inventory to the first or second stage manufacturer or distributor.

13

SB 574

4

(B) dealer cost for supplies, parts inventory and accessories purchased from the first or second stage manufacturer or distributor or their approved sources;

(C) fair market value for equipment, furnishings and signs purchased or leased from the first or second stage manufacturer or distributor, or their approved sources;

(D) dealer cost for special tools required to be purchased or leased by the first or second stage manufacturer or distributor within three years of the date of termination, cancellation or nonrenewal;

(E) the cost of transporting, handling, packing and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment and furnishings.

(2) Upon termination, cancellation or nonrenewal of a franchise agreement by the first or second stage manufacturer or distributor, the first or second stage manufacturer or distributor shall also pay to the new vehicle dealer a sum equal to the current fair rental value of its established place of business for a period of one year from the effective date of termination, cancellation or nonrenewal, or the remainder of the lease, whichever is less. If the new vehicle dealer owns the dealership facilities, the first or second stage manufacturer or distributor shall pay the new vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.

(3) To the extent the franchise agreement provides for payment or reimbursement to the new vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(4) The first or second stage manufacturer or distributor shall pay the new vehicle dealer the sums specified in this subsection within 90 days after the tender of the property, subject to the new vehicle dealer arranging or having clear title to the property which may be conveyed to the first or second stage manufacturer or distributor.

Sec. 2. K.S.A. 8-2414 is hereby repealed.

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

Kansas register

REVISOR'S AMENDMENTS

(5) Notwithstanding the provisions of this subsection, nothing in this subsection shall preclude or prohibit the first or second stage manufacturer or distributor or vehicle dealer from agreeing to other terms for additional payment or reimbursement, except that such terms shall include, at a minimum, the payment or reimbursement requirements contained in this subsection.

(g) Failure of the first or second stage manufacturer or distributor to give proper notice or maintain the franchise agreement in full force and effect pending determination by the director pursuant to this act, or to abide by the final order of the director, shall be cause for the director to refuse to issue a license to a replacement vehicle dealer or to a dealership which be conducting business in the same trade area elling the same make of vehicles where the vehicle dealer in question was engaged in business.

AAMA AMENDMENTS

(2-10-96 and add'l. 2-16-96)

(2) all new, unused and undamaged parts listed in the current price catalog acquired from a franchisor or a source approved or recommended by the franchisor at the franchisee or dealer price listed in the current parts catalog, less applicable allowances, plus five percent of the catalog price of the part for the cost of packing and returning the parts to the franchisor. Reconditioned or core parts shall be valued at their core value, the price listed in the current price catalog or the amount paid for expedited return of core parts, whichever is higher; and

(3) any special tools or equipment offered for sale during the three years preceding termination or nonrenewal and each trademark or trade name bearing signs which was recommended or required by the franchisor at fair market value at the time the notice of termination or nonrenewal is given.

The franchisee shall provide evidence of good clear title upon return of the inventory. Any payment owed the franchisee is subject to offset of any obligations owed by the franchisee to the franchisor.

(2-16-96)

Line 4: delete "equipment" and after the word "furnishings", insert: "required to be purchased by the first or second stage manufacturer,"; and also, after the word "signs" change the new insert as follows: "which bear the trademark or trade name of the first or second stage manufacturer or distributor which were required or recommended to be".

Line 7: after the word "tools" insert "and equipment".

Line 22: replace the period with a comma and insert "or until the facilities are leased or sold whichever is less. The rental payment required under this subsection is only required to the extent that the facilities were used for activities under the franchise and only to the extent the facilities were not leased for unrelated purposes. If payment under this section is made, the manufacturer or distributor is entitled to possession and use of the new vehicle dealership facilities for the period rent is paid. The first or second stage manufacturer or distributor shall not be required to pay facilities assistance under this subsection for the cancellation, termination or nonrenewal of such franchise agreement under this Act for fraud, insolvency or failure to perform in the ordinary course of business."

Lines 28 and 29: delete "arranging or having clear title to the property which may be conveyed..." and insert "providing evidence of good and clear title upon return of the property..."

KADA COUNTEROFFER

(2-13-96)

(B) Line 1-3: delete and substitute: the dealer price listed in the current list or catalog or, if unavailable, the list or catalog actually utilized within the 12 months previous to termination, cancellation or nonrenewal, as the case may be, for any new, unused and undamaged parts, supplies, and accessories acquired from a first or second stage manufacturer, or distributor, or a source approved or recommended by it, less applicable allowances specified in advance of dealer purchase, plus five percent of the catalog or list price, as the case may be, for the cost of packing and returning the parts, supplies and accessories to the first or second stage manufacturer or distributor. Parts, supplies or accessories which are reconditioned or subject to reconditioning or rebuilding or other return in the ordinary course of business which are considered to be core parts in the trade practice and usage of the industry shall be valued for payment purposes at their core value, the price listed in the catalog or list referenced above or the amount paid for expedited return of core parts, whichever is higher;

(C) Add on Line 4 after the word signs:
which bear the trademark or trade name of the first or second stage manufacturer or distributor which were required, recommended,

(E) Delete the words: "new motor vehicles, supplies, parts, accessories"

COMPROMISE VERSION

(2-13-96 w/ add'l. AAMA agreed amend.)

(B) Line 1-3: delete and substitute: the dealer price listed in the current list or catalog or, if unavailable, the list or catalog actually utilized within the 12 months previous to termination, cancellation or nonrenewal, as the case may be, for any new, unused and undamaged parts, supplies, and accessories acquired from a first or second stage manufacturer, or distributor, or a source approved or recommended by it, less applicable allowances specified in advance of dealer purchase, plus five percent of the catalog or list price, as the case may be, for the cost of packing and returning the parts, supplies and accessories to the first or second stage manufacturer or distributor. Parts, supplies or accessories which are reconditioned or subject to reconditioning or rebuilding or other return in the ordinary course of business which are considered to be core parts in the trade practice and usage of the industry shall be valued for payment purposes at their core value, the price listed in the catalog or list referenced above or the amount paid for expedited return of core parts, whichever is higher;

(C) Delete the word "equipment" on Line 4 and after the word "furnishings" insert "required to be purchased by the first or second stage manufacturer or distributor", and after the word "signs" insert "which bear the trademark or trade name of the first or second stage manufacturer or distributor which were required or recommended to be"

(D) On Line 7 after the word "tools" add the words "and equipment"

(E) Delete the words: "new motor vehicles, supplies, parts, accessories"

Line 22: At the end replace the period with a comma and insert: "or until the facilities are leased or sold, whichever is less. The rental payment required under this subsection is only required to the extent that the established place of business was being used for activities under the franchise agreement and only to the extent such facilities were not leased for unrelated purposes. The first or second stage manufacturer or distributor shall not be required to make the payment set forth under this subsection if the basis of the cancellation, termination or nonrenewal of such franchise agreement under this Act is due to conviction of the dealer of a felony or any crime involving moral turpitude, or has been adjudged guilty of the violation of any law of any state or the United States in connection with such person's operation as a dealer."

Lines 28 and 29: delete "arranging or having clear title to the property which may be conveyed..." and insert "providing evidence of good and clear title upon return of the property..."

- Include Revisor's Amendments at left.

9-1

Memorandum

DATE: February 19, 1996

TO: Senate Judiciary Committee

FROM: Jeffrey A. Chanay/Motorcycle Industry Council, Inc.

RE: SB 574

The Motorcycle Industry Council, Inc., a non-profit national trade association representing motorcycle distributors and allied trades, would like to request an amendment to Senate Bill 574 exempting motorcycle manufacturers and distributors from certain provisions of the bill.

Attached to this memorandum is balloon language that is suggested by MIC. The exemption language proposed by MIC has been discussed with the principal sponsor of SB 574, the Kansas Automobile Dealers Association, and KADA has indicated that it is not opposed to the suggested amendment.

In further explanation of the reasons for the requested amendment, I have attached a statement of position from the Motorcycle Industry Council, Inc.

The proposed amendment presupposes the adoption of a new subsection (g) as proposed by KADA. In the event that the new subsection (g) is not adopted, the MIC proposal should be altered to reflect proper numbering.

Thank you for your consideration of this proposed amendment.

Senator Emert:

I apologize for the lateness of this request. I was retained by MIC just last Thursday p.m. I would appreciate your consideration of and support for this proposed amendment.

Sincerely,

Jeff Chanay

267-5004

Sen. Jud 2-20-96 Attach 2

GOVERNMENT RELATIONS OFFICE

MOTORCYCLE INDUSTRY COUNCIL, INC. 1235 Jefferson Davis Hwy., Suite 600, Arlington, VA 22202-3251 • (703) 416-0444 • FAX (703) 416-2268

The Motorcycle Industry Council is a nonprofit national trade association which represents motorcycle distributors and over 140 other companies involved in allied trades. The Council wishes to express its opposition to certain provisions contained in SB 574.

Reimbursement of Dealer Facility Rental Costs

Motorcycle franchises should be excluded from the provision of SB 574 which requires manufacturers or distributors to pay money to a terminating dealer for the dealer's dealership premises.

While this may have some applicability in the auto industry, motorcycle dealerships are not similar to automobile dealerships in terms of their facilities. Whereas car dealerships are housed in single-use facilities, specifically designed to be auto dealerships, the vast majority of motorcycle dealers are in multiple-use facilities, often in strip malls and the like. Auto dealerships are often multi-million dollar operations occupying large unique showrooms, multi-acre display areas and service buildings housing special installed lift equipment and dedicated service bays. Motorcycle dealerships are generally basic store front operations. They are typically much smaller and much more flexible and are very adaptable to many types of uses. They can easily be converted to any number of retail establishments, from carpet stores to clothing chains if the dealership ceases to operate. Accordingly, in the motorcycle industry this type of provision is unnecessary and would only provide a windfall to a small group of dealers at the ultimate expense of the consumer.

Motorcycle distributors do not require enormous facility investments as do some auto manufacturers. However, the costs associated with some poorly managed dealerships are often remarkably high. It is one of the few contributors to dealer cost but yet is responsible for the bulk of the cost. A law requiring the manufacturer or distributor to pay the dealer for his facilities will hide the chronic facility cost problem (over-investment in the facility by the dealership's upper management), rather than bring it out in the light and convert it into alarm signals that would stimulate corrective action before the ownership overextended itself to the point of jeopardizing the operation. A dealer who overinvests in his facilities or poorly manages his business would be insulated from risk if protected by a law requiring the franchisor to reimburse the dealer for his facility rental costs if the franchise is terminated for any reason.

A manufacturer or distributor should not be put in a position of having to be in the real estate business after a dealer has been terminated, especially since the law provides that a dealer can only be terminated for good cause.

Inventory Repurchase Requirements

Motorcycle franchises should be excluded from the inventory repurchase requirements.

These provisions add extensive inventory repurchase obligations upon any franchise termination, regardless of the reason. While the financial impact of these provisions may not be significant to auto and truck manufacturers, they will be significant to some of the manufacturers of motorcycles. These added costs of doing business ultimately result in higher prices to consumers. Again, the manufacturer becomes a financial

guarantor for the dealer. A dealer can, over the course of many years, order too many parts and have a parts department bloated with parts which the manufacturer must repurchase at the dealer price listed in the current parts catalog. This price may well be above the price that the dealer originally paid for the part. Therefore, a dealer who goes out of business for any reason, is guaranteed the return of his investment in inventory and may very well make on profit on it as well. This seems neither reasonable nor fair.

Very few if any businesses enjoy such protections as afforded by the above provisions of SB 574. Motorcycle dealers do not pay any franchise fee to the manufacturer or distributor for the privilege of becoming dealers. Accordingly, manufacturers and distributors should not be required under law to insulate their dealers from loss when other business owners assume that risk in the free enterprise system.

Session of 1996

SENATE BILL No. 574

By Committee on Judiciary

1-31

AN ACT amending the vehicle dealers and manufacturers licensing act; relating to the cancellation of agreements between dealers and manufacturers or distributors; amending K.S.A. 8-2414 and repealing the existing section.

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

Section 1. K.S.A. 8-2414 is hereby amended to read as follows: 8-2414. (a) No franchise agreement entered into between a vehicle dealer and a first or second stage manufacturer or distributor may be cancelled, terminated or not renewed by the first or second stage manufacturer or distributor unless ~~30 days'~~ *90 days* notice has been given to the vehicle dealer and the director, which notice must state in full the reasons and causes for the cancellation, termination or nonrenewal of such franchise agreement, except that in the event of a showing of fraud, insolvency or failure to perform in the ordinary course of business, a notice of not less than 15 days may be approved by the director, with notice thereof to such vehicle dealer and upon written application by such first or second stage manufacturer or distributor. A notice required under this subsection shall be given by certified mail and the period of time given in the notice prior to cancellation, termination or nonrenewal shall be computed from the date of mailing thereof.

(b) A vehicle dealer, within a period of time equal to that provided for in the notice filed pursuant to subsection (a), may file a complaint with the director against a first or second stage manufacturer or distributor challenging the reasons and causes given for the proposed cancellation, termination or nonrenewal of the franchise agreement. Upon a complaint being filed, the director shall ~~promptly~~ set the matter for public hearing, in accordance with K.S.A. 8-2411, and amendments thereto, for the purpose of determining whether there has been a violation of K.S.A. 8-2410, and amendments thereto, or whether ~~reasonable justification~~ *good cause* exists for cancellation, termination or nonrenewal of the franchise agreement. Notwithstanding the provisions of K.S.A. 8-2411, and amendments thereto, the hearing may be set for a time which is not less than the number of days provided in the notice given pursuant to subsection (a), from the date the director gives notice thereof.

2-7

(c) The franchise agreement shall remain in full force and effect pending the determination by the director of the issues involved as provided by this act. If the director determines that the first or second stage manufacturer or distributor is acting in violation of this act or that ~~no reasonable justification exists~~ *good cause does not exist* for the proposed action, the director shall order for the franchise agreement to be kept in full force and effect.

(d) The burden of proof shall be on the ~~dealer to show that the~~ first or second stage manufacturer or distributor ~~acted~~ *to show that it did not act* arbitrarily or unreasonably *and that good cause did exist for the proposed cancellation, termination or nonrenewal of the franchise agreement.* The director shall order that the franchise agreement may be cancelled, terminated or not renewed if the director finds, after a hearing that the licensed vehicle dealer is acting in violation of this act or that the judgment of the first or second stage manufacturer or distributor is ~~reasonable~~ *with good cause* and the vehicle dealer's default is material.

~~(e) In the event of cancellation, termination or nonrenewal of a franchise agreement, the first or second stage manufacturer or distributor shall repurchase or otherwise reasonably compensate the vehicle dealer for all new, unused and undamaged vehicles, parts and accessories which are in salable condition and remain in such vehicle dealer's inventory at the time the cancellation, termination or nonrenewal becomes effective if such vehicles, parts and accessories were supplied to the vehicle dealer by such first or second stage manufacturer or distributor.~~

~~(f) Failure of the first or second stage manufacturer or distributor to give proper notice or maintain the franchise agreement in full force and effect pending determination by the director pursuant to this act, or to abide by the final order of the director, shall be cause for the director to refuse to issue a license to a replacement vehicle dealer or to a dealership which would be conducting business in the same trade area and selling the same make of vehicles where the vehicle dealer in question was engaged in business.~~

(e) (1) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause as used in this section shall mean the failure of the new vehicle dealer to effectively carry out the performance provisions of the franchise agreement if all of the following have occurred:

(A) The new vehicle dealer was given notice by the first or second stage manufacturer or distributor of the failure prior to the notice of cancellation, termination or nonrenewal as required by subsection (a);

(B) the notification stated that the notice of failure of performance was provided pursuant to this article;

(C) the new vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the franchise agreement; and

2-5

(D) the failure continued for more than one year after the date notification was given.

(2) In the event of cancellation, termination or nonrenewal of a franchise agreement, good cause shall not exist where there has been a violation by the first or second stage manufacturer or distributor of K.S.A. 8-2410, and amendments thereto. Additionally, notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation or nonrenewal of a franchise agreement:

(A) A change in ownership of the new vehicle dealer's dealership. This subparagraph does not authorize any change in ownership which would have the effect of a sale or an assignment of the franchise agreement or a change in the principal management of the dealership without the first or second stage manufacturer's or distributor's prior written consent;

(B) the refusal of the new vehicle dealer to purchase or accept delivery of any new motor vehicles, parts, accessories or any other commodity or services not ordered by the new vehicle dealer;

(C) the fact that the new vehicle dealer owns, has an investment in, participates in the management of or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or that the new vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the first or second stage manufacturer or distributor; provided that the new vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new vehicle dealer remains in substantial compliance with the terms and conditions of the franchise agreement and with the reasonable facilities requirements of the first or second stage manufacturer or distributor;

(D) the fact that the new vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new vehicle dealer's spouse, son or daughter, except that the sale or transfer shall not have the effect of a sale or an assignment of the franchise agreement without the first or second stage manufacturer's or distributor's prior written consent.

(f) (1) In event of cancellation, termination or nonrenewal of a franchise agreement, the first or second stage manufacturer or distributor shall pay the new vehicle dealer, at a minimum:

(A) Dealer cost plus any charges by the first or second stage manufacturer or distributor for distribution including delivery and taxes, less allowances paid or credited to the new vehicle dealer by the first or second stage manufacturer or distributor for new motor vehicle inventory that has been acquired from the first or second stage manufacturer or distributor within 18 months, which has not been altered or damaged, and for which no certificate of title has been issued;

8-9

(B) dealer cost for supplies, parts inventory and accessories purchased from the first or second stage manufacturer or distributor or their approved sources;

(C) fair market value for equipment, furnishings and signs purchased or leased from the first or second stage manufacturer or distributor, or their approved sources;

(D) dealer cost for special tools required to be purchased or leased by the first or second stage manufacturer or distributor within three years of the date of termination, cancellation or nonrenewal;

(E) the cost of transporting, handling, packing and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment and furnishings.

(2) Upon termination, cancellation or nonrenewal of a franchise agreement by the first or second stage manufacturer or distributor, the first or second stage manufacturer or distributor shall also pay to the new vehicle dealer a sum equal to the current fair rental value of its established place of business for a period of one year from the effective date of termination, cancellation or nonrenewal, or the remainder of the lease, whichever is less. If the new vehicle dealer owns the dealership facilities, the first or second stage manufacturer or distributor shall pay the new vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.

(3) To the extent the franchise agreement provides for payment or reimbursement to the new vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(4) The first or second stage manufacturer or distributor shall pay the new vehicle dealer the sums specified in this subsection within 90 days after the tender of the property, subject to the new vehicle dealer arranging or having clear title to the property which may be conveyed to the first or second stage manufacturer or distributor.

Sec. 2. K.S.A. 8-2414 is hereby repealed.

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

(h) The provisions of subsections (e), (f), and (g)* of this section shall not apply to any first or second stage manufacturer or distributor of motorcycles as defined in article 1 of chapter 8 of Kansas Statutes Annotated.

*Presupposes adoption of new subsection (g) as proposed by KADA.

REMARKS CONCERNING SENATE BILL 707
SENATE JUDICIARY COMMITTEE
FEBRUARY 20, 1996

Thank you for giving me the opportunity to appear before your committee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas. We also appreciate having a hearing on SB 707, which was introduced by this committee at our request.

This bill was introduced for the purpose of providing notice of garnishment before the actual taking of property by garnishment. The bill looks much longer and more complicated than it really is. Most of the new language in the bill is simply listing in one place all the exemptions afforded by various Kansas and Federal statutes. Those exemptions are set out in the notice to be furnished the person whose funds are being garnished, and then repeated in the claim for exemption. The bill also provides for a claim of exemption and provides for a request for hearing when an exemption is claimed.

I would like to introduce the president of the Kansas Credit Attorneys Association, Bruce C. Ward, from Wichita, Kansas. Bruce did most of the work on the preparation of this bill, and he can explain it much better than I.

I would like to call to your attention the fact that there are three corrections which are needed to the bill. The same correction needs to be made in three different places: on page 21, line 35; page 22, line 4; and page 22, line 7. In each of those places, "60-718" should be deleted and "61-2006" should be inserted in its place.

Elwaine F. Pomeroy
For Kansas Credit Attorneys Association
And Kansas Collectors Association, Inc.

Sen Jud.
2-20-96
Attach 3

#4

SENATE BILL NO. 707
Senate Judiciary Committee
February 20, 1996

Testimony of Sherlyn Sampson
Clerk of District Court, Douglas County
for the Kansas Association of District Court Clerks & Administrators

Mr. Chair:

I appreciate the opportunity to appear before you today on behalf of the Kansas District Court Clerks and Administrators to discuss Senate Bill No. 707 and share with you some concerns we have with this bill.

Our concern is with the Notice of Garnishment and Exemption form Clerks are required to attach to Order of Garnishments. We have concerns with the form itself as well the time standards set out in the bill.

There are exemptions on the form that we feel are not applicable to either a non-wage or an earnings garnishment. These should be deleted from the form since they are not applicable and make the form confusing.

The bill has the Clerks attach the Notice of Garnishment and Exemption to the Order of Garnishment that is issued to the garnishee. The garnishee is to mail the Notice to the defendant and put on the Answer of Garnishment the date the notice was mailed. The defendant has 10 days to complete the Claim for Exemption and Request for Hearing and send it to the clerk's office. If the defendant cannot file the Claim within the 10 days, he is to contact an attorney to prepare a motion for extension of time. No claim for exemption and request for hearing may be made after the expiration of 10 days following the date the Answer of Garnishment is filed. If a claim for exemption is filed, the hearing must be not less than 3 nor more than 10 days from receipt of the returned claim form.

Current law gives the Garnishee 10 days to file their answer on a non-wage garnishment and 40 days to file their answer on an earnings garnishment. Non-wage garnishees sometimes file their answers within a couple of days after being served. The order to pay funds into court can be signed 10 days after the Answer is filed. One of our concerns is that if the Garnishee didn't immediately mail the notice to the defendant, the order to pay could be signed before the exemption form or a Motion for Extension of Time is filed.

The time standards for the filing of the Claim for Exemption and Request for Hearing set out in the bill are the same for non-wage garnishments as well as earnings garnishment. However, in earnings garnishments, the garnishee has 40 days after service to file his answer of garnishee. The answer will not be filed with the court by the time the hearing has to be held.

The exemption hearing must be set not less than 3 nor more than 10 days from receipt of the returned application from the defendant or filing of defendant's motion. The clerk shall give

Sen Jud.
2-20-96
Attach 4

notice of the hearing to the plaintiff and defendant by first class mail. If the hearing is set as early as 3 days after receipt of the application, there is a very good chance the parties will not receive the notice in time if it is mailed first class mail.

Page 6, line 10, (Item #4), tells the defendant he can mail back any documents proving the money is exempt. It would be best if the defendant kept the documents until the court hearing on the garnishment as the court cannot consider them until the hearing.

The bill states the court or clerk shall issue the order to pay money into court to the garnishee, the order releasing the garnishment to the garnishee, or an order to deliver other property to the plaintiff. We will issue the orders after they are signed, however the attorney must prepare the order. The bill implies that we will be responsible for preparing and issuing those orders.

It is our opinion that the entire process set out in this bill is cumbersome, will never be followed by the garnishee or the defendant, and the time standards set out in this bill conflict with the statutory time standards set for the garnishment process. Most of the time you will be having an exemption hearing before an Answer of Garnishment is filed. Garnishees and defendants do not understand the current garnishment forms. The Answer of Garnishee on Earnings garnishments is seldom completed correctly. Defendants will not understand the Exemption Form, nor will they fill it out correctly. A lot of garnishees don't file their answers on time, if at all, therefore, it is our opinion a lot of them will never mail this form to the defendant. The garnishment process needs to be simplified, not get more complicated.

This bill will have a dramatic impact on the Judges. They will spend a lot of time with garnishment hearings as almost every defendant will mark some reason on the form why they feel they are exempt and request a hearing..

At a time when we are short staffed and looking at ways to reduce our work load in order to survive hiring freezes and budget cuts we've been on the last several years, the procedures set out in this bill will be a real hardship on the Judicial Branch and on the Clerks of District Court.

This bill in its present form will have a substantial impact on the 105 District Courts of the State by requiring them to revise the garnishment forms and/or change their computer programs to generate this notice. This bill will add expenses to each court for the costs of making the necessary changes to the garnishment forms and computer programs. It will increase the workload of the clerks as we will be docketing and issuing a lot of notice of hearings as almost all garnishments will have hearings in the future. We will also be fielding numerous calls as neither the garnishee or defendant will understand the process.

This bill will also slow down the garnishment process and garnishees will not receive their money as quick as they used to because of the extensions defendants can get to file an exemption form and also because of the hearings that will be held on most garnishments.

I thank you for the opportunity to speak to you today to address the concerns the Clerks and Court Administrators in Kansas have with this bill. .

#6

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 20, 1996

TO: Senate Judiciary Committee

FROM: Kathy Taylor, Kansas Bankers Association

RE: **SB 707**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in opposition to **SB 707** as it amends several statutes regarding garnishment procedures.

As you know, the bill provides for a Notice of Garnishment and Exemptions and Application for the defendant to request a hearing (Notice and Application) to be sent by the clerk. Such Notice and Application is to be attached to the Order of Garnishment which is sent to the garnishee. It would then be the garnishee's responsibility to send the Notice and Application to the defendant if wages, property, funds, credits or other indebtedness is found.

As the representative of many garnishees, our opposition to this bill is to the procedure suggested in delivering the notification to the defendant. We do not believe that it should be the responsibility of the garnishee to send the Notice and Application.

In a garnishment proceeding, a garnishee/bank merely serves as a reporting and transfer agent of property or funds. As such, it is the bank's duty to report to the court, whether property and/or funds exist in the institution, and then upon court order, transfer the funds to the court. The amendments found in **SB 707**, would require the bank to also notify the defendant of his or her property and due process rights. In doing so, the bank would double its postage costs and incur additional labor costs.

We also have some concerns with the specific language of the amendments. On page 8, starting on line 27, the amendment reads that if a garnishee finds it has property belonging to the defendant, the garnishee shall "immediately" mail the Notice and Application to the defendant at the last known address.

A garnishee has 10 days to form an answer to the court on a garnishment. Many times, a bank needs that time to determine the true identity of the defendant. There are a lot of variations of common names, for example: Richard Johnson, Rich Johnson, Dick Johnson, Richard L. Johnson. And it becomes increasingly difficult to identify the defendant when the garnishing creditor has not included the address or tax identification number on the garnishment form.

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

Sen Jud.
2-20-96
Attach 5

Our concern is that when the amendments refer to "immediately", does that mean within 10 days? There is obviously a greater potential for mistakes to be made if the Notice and Application were to be sent to the defendant any sooner.

We would like to suggest another option for delivering this information to the defendant. Currently, under KSA 60-718(c), the clerk is required to send a copy of the Answer of Garnishee to the plaintiff and to the defendant. The plaintiff and the defendant then have 10 days to reply to the Answer. It is during this time that the defendant may raise a claim for exemption under current law.

It would be our suggestion that the clerk include a copy of the Notice and Application proposed in **SB 707** along with the copy of the Answer that is sent to the defendant. It is within the next 10 days that the defendant must reply and state a claim for exemption. This procedure would seemingly add no additional labor cost as the proposed amendments would already require the clerk to enclose a Notice and Application to the garnishee, and there should be no additional postage as a mailing is already being sent to the defendant under current law.

We also believe that such a procedure would be less confusing to the defendant as he or she would receive all of the information necessary to form a reply to the garnishment claim at the same time. The defendant would know what property was being held by reviewing the Answer of the Garnishee, and would know what property being held might be exempt from garnishment by reading the Notice and Application.

In conclusion, the KBA is in opposition to the procedure set forth under **SB 707** for notifying a garnishment defendant of his or her property and due process rights. We believe that such notice should come from the court and could be accomplished under procedures already in place. We urge your favorable consideration of the suggestions made above.

HEARTLAND COMMUNITY BANKERS ASSOCIATION

Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(913) 232-8215

To: Senate Judiciary Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 20, 1996

Re: Senate Bill No. 707

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Committee on Judiciary to express our concerns regarding SB 707.

Our concerns with SB 707 focus on the mandate that the garnishee must mail a copy of the notice of garnishment and exemption and application for hearing to the defendant. The notice that is to be mailed comes from the clerk of the court. It would seem to us that this is a responsibility better delegated to the clerk than mandated on a private sector, third party financial institution.

Savings institutions recognize our statutory responsibility in executing a garnishment order issued by the district court. At present, most if not all Kansas savings institutions already contact a customer when a garnishment order is served on their account(s) or other property. Some contact a defendant by phone while others make contact in writing. Our industry takes the appropriate steps to execute an order and then notify the costumer without a legislative mandate.

While savings institutions already notify our customers of garnishments, we do not feel our actions should be in lieu of notification by the district court. HCBA fails to see why that responsibility should mandated on a third party financial institution.

Thank you.

Sen. Jud. Comm.
2-20-96
Attach 6

Kansas
Credit
Union
Association

Testimony on SB 707

AN ACT concerning garnishments

Presented to the

Senate Committee on Judiciary

February 20, 1996

Mr. Chairman and members of the Committee:

I am Danielle Noe and I am the Governmental Affairs Director for the Kansas Credit Union Association. Our association represents 160 credit unions who serve more than 600,000 members.

The Kansas Credit Union Association opposes SB 707 relating to garnishments.

SB 707 would require that the clerk of the court attach a notice of garnishment and exemption and an application for request of hearing to the order of garnishment sent to the garnishee. In turn, the garnishee must immediately send the notice of exemption and request for hearing to the defendant.

A garnishee has ten days (forty days if an employer) after service of an order of garnishment in which to file an answer with the clerk of the court. During this ten day period, our members are searching their records to determine: who the defendant is; whether or not they have an existing account; and the value of the

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Topeka, KS 66612
(913) 232-2446
(913) 232-2730 fax

8410 W. Kellogg
Wichita, KS 67209

P.O. Box 757
Dodge City, KS
67801

Sen. Jud. Comm.
2-20-96
Attach 7

account. In addition, the credit union must put a hold on the account. In some cases, this may not be much trouble, however, there are times when just determining who the actual defendant is takes several days.

SB 707 would add the burden of forwarding on to the defendant the notice of exemption and request for hearing. The bill requires such delivery to be *immediate*, which would suggest the notice be forwarded before the time expires for filing an Answer. The bill could substantially increase the costs to the garnishee by requiring delivery through either first class mail or hand delivery.

It is important to note that under current law, the clerk of the court must send a copy of the Answer to the defendant. It would make sense to require the clerk to send a copy of the notice of exemption and request for hearing at the time the Answer is sent. Not only would this save postage expense and time for our members (the garnishees), it would simplify the process that the defendant must go through. The defendant may be able to make a more informed response if he is able to look at the Answer at the same time that he had to make a decision to request a hearing to determine if certain property was exempt.

Mr. Chairman, SB 707 would add considerable time and expense to the process our members must go through when they receive a garnishment. Because the courts must already contact the defendant regarding the Answer, we feel that this duty is more properly that of the court system. We ask that you do not act favorably upon this bill. Thank you.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KANSAS 66612
(913) 296-7678

RESIDENCE
8021 BELINDER ROAD
LEAWOOD, KANSAS 66206
(913) 341-1232

COMMITTEES:
VICE CHAIRMAN: JUDICIARY
VICE CHAIRMAN: JOINT COMMITTEE ON ARTS AND CULTURAL RESOURCES
MEMBER: FEDERAL AND STATE AFFAIRS
CHAIRMAN: KANSAS YOUTH AUTHORITY
MEMBER: KANSAS FILM COMMISSION

REPRESENTATIVE DAVID ADKINS
TWENTY-EIGHTH DISTRICT

Mr. Chairman and Members of the Subcommittee:

It is my pleasure to appear before you today as Chairman of the Kansas Youth Authority and testify in favor of SB 594. As you may know, the Kansas Youth Authority, created pursuant to law enacted during the 1995 session, embarked on the development of a strategic plan to reform the delivery of juvenile justice in our state. Although significant attention was focussed on placement alternatives for juveniles adjudicated to be juvenile offenders we also felt a strong need to emphasize the importance of prevention and early intervention. To this end our recommendations included the creation of the Kansas Endowment for Youth. The Endowment would be a fund generated from both public and private sources. Revenue generated from the fund corpus would be made available to worthwhile projects and programs that focus on prevention of juvenile crime and delinquency. SB 594 is a valuable vehicle to insure that the endowment is created.

I have enclosed with this testimony a copy of an editorial supportive of the endowment's purposes. Additionally, I have enclosed language from HB 2900 which establishes the endowment and states its purposes. HB 2900 is the Juvenile Justice Reform Act of l996. The Youth Authority would request that the language of SB 594 be made consistent with that of HB 2900.

I appreciate your consideration of the bill and urge your favorable consideration of this measure.

Respectfully submitted,

David Adkins
Chair, Kansas Youth Authority

Sen. Jud.
2-20-96
Attach. 8

Date: Mon 1-15-96

Topeka Capital Journal

EDITORIALS

JUVENILE CRIME

Creative prevention

The Kansas Youth Authority suggests an endowment to help fund innovative programs.

A proposal to establish a $25 million endowment to fund innovative juvenile crime prevention programs should be thoroughly explored by the Legislature.

It just sounds like a terrific idea.

The fund would be created initially by some public money, but the plan is to have most of the $25 million come from private donations.

Interest on the endowment could then be used to finance creative programs that help reduce juvenile crime.

Ambitious? You bet. That's a lot of money. But it's doable. The Koch Crime Commission is evidence of that: One man, millionaire industrialist Bill Koch, has spent several million of his own money to create a commission that is currently studying approaches to solving crime in Kansas.

If the endowment is a worthy effort — and it is — then attracting money won't be impossible by any means.

The endowment proposal has been put forth by the Kansas Youth Authority, created by last year's Legislature to reshape the state's juvenile justice system.

The youth authority late last year received publicity for recommending development of a maximum security facility for juvenile offenders; specifically, three 50-bed facilities at an estimated cost of $18 million to 24 million.

Considering that the Youth Center at Topeka has been the most secure of the state's juvenile facilities — and it hasn't been all that secure in the past — the recommendation for a maximum security facility is a good one. Consider, too, that experts expect juvenile crime to grow in the coming years.

But the youth authority's notion of an endowment is an exciting prospect worthy of just as much publicity.

Why? Because it's a creative, private-sector approach not often seen in government. Because the state could invest a little — a million or two to get it started — and get a lot of bang for its buck. Because, most importantly, prevention is the key to our having any success in fighting juvenile crime.

Congratulations to the Kansas Youth Authority and its chairman, Rep. David Adkins of Leawood, for having the courage to think creatively and act on it.

Adkins and the authority know that the key to prevention and to finding alternatives to incarceration will be found in community-based programs. The endowment would be a relatively painless way for the state to help communities do more.

That's different: a funded mandate!

8-2

cil. Such council shall advise the authority on policy recommendations and programs. Members of the youth council shall meet and have such duties as determined by the Kansas youth authority.

(i) There is hereby created the Kansas endowment for youth fund in the state treasury. All moneys credited to the Kansas endowment for youth fund shall be used to fund prevention programs for youths. The Kansas youth authority shall accept grants and donations, both public and private, to be credited to the fund. All expenditures from the Kansas endowment for youth fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the Kansas youth authority or by a person or persons designated by such chairperson. The Kansas youth authority may contract with a consultant to determine the elements of a successful endowment program. On the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Kansas endowment for youth fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a, and amendments thereto, that is attributable to money in the Kansas endowment for youth fund. Such amount of money shall be determined by the pooled money investment board based on:

(1) The average daily balance of moneys in the Kansas endowment for youth fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and

(2) the average interest rate on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the Kansas endowment for youth fund for the period of time specified under this subsection.

Sec. 135. On and after July 1, 1996, K.S.A. 1995 Supp. 75-7009 is hereby amended to read as follows: 75-7009. (a) The Kansas youth authority shall consist of seven members. The governor shall appoint one member from each congressional district and three members from the state at large. The governor shall appoint a chairperson. ~~The members of the authority shall be appointed by June 1, 1995.~~

(b) The authority shall meet upon call of its chairperson as is necessary to carry out its duties under this act.

(c) *Of the members of the board appointed in the year 1999, three*

TESTIMONY OF

Larry R. Rute
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SENATE JUDICIARY SUB-COMMITTEE

Dick Bond, Chairman

Monday, February 20, 1996
East Lounge

Mr. Chairman, Members of the Sub-Committee, I very much appreciate the opportunity to appear before you today in support of House Bill 3033. I am Deputy Director and Director of Litigation for Kansas Legal Services, Inc. (KLS). I have also been authorized to speak in favor of this bill on behalf of the Kansas Bar Association Family Law Section. I am past-President of the Family Law Section.

Kansas Legal Services, Inc. (KLS) is a private, non-profit corporation dedicated to providing free or low cost legal services to low and moderate income Kansans. Last year our staff attorneys, located in twelve (12) field offices throughout the state, provided legal advice and representation to more than 28,000 Kansans. Services are provided in all 105 Kansas counties. We commonly provide civil legal assistance in a wide variety of legal issues, including: agriculture, consumer, disability, education, family, health, housing and public benefits law. This year we anticipate that we will represent more than 26,000 Kansans, this decrease reflects a recent decline in our federal funding. This decrease in federal funds is in excess of $800,000.00 for Calendar Year 1996.

Since the mid 1980's, Kansas Legal Services has successfully reduced its reliance upon federal funds. In 1980 83% of our funding was from the federal Legal Services Corporation (LSC). By 1990 we had reduced that percentage to 57%. We have continued to reduce our reliance on federal funding each year; today only 28% of our funding is from LSC. We have diversified our scope of operations to make our services more appealing to the State, local governments and to private funding sources. For example, since 1985 KLS has successfully sought and received state funding for a variety of purposes beneficial to the State. Our Social Security Disability Advocacy Projects alone have returned over $30 million since 1985 to Kansas residents receiving retroactive awards and new monthly benefits. These two contracts have also resulted in over $15 million in monetary benefits to the State of Kansas.

To accomplish this diversification plan, we have attempted to place ourselves in a position to meet the needs of our various funding sources while at the same time staying within our mission to serve the legal needs of low and

Sen. Jud.
2-20-96
Attach 9

moderate income Kansans. To do this we endeavor to be clear about what services we can and cannot deliver. We attempt at all times to provide quality service with staff that is carefully trained and dedicated to our mission. We take particular pride in the fact that we are responsive to the needs of our clients. KLS is one of a handful of legal services programs who annually conduct and respond to comprehensive client satisfaction surveys. We have also conducted client focus groups to help us assess the future direction of service delivery.

We believe that House Bill 3033 does the right thing at the right time. The bill includes a relatively modest filing fee increase and places revenue in the new Access to Justice Fund in accordance with guidelines promulgated by the Supreme Court of Kansas. This is an excellent vehicle for addressing not only the legal needs of low income persons but the very real needs of the Kansas judicial system.

For several months the Kansas Bar Association's Access to Justice Committee, Chaired by Professor Lynette Petty, has committed itself to the goal of equal access to the justice system for all members of our society regardless of their income or physical circumstances. This Committee has been supportive of legal services for the poor by suggesting legislation such as House Bill 3033 to increase filing fees sufficient to support civil legal services for low income persons. The Committee also seeks to address domestic matters with an emphasis on pro se litigants and supports the use of alternative dispute resolution. The Committee has noted that a number of states have already addressed this issue by establishing a specific filing fee to provide funding directly to legal services programs. Attachment No. 1 sets out in some detail filing fee funding legislation in behalf of legal services programs in other states. The Committee has also noted that filing fees for states surrounding Kansas are, for the most part, much higher than filing fees currently in existence in our state.

Sub-Committee members might justifiably ask how KLS would utilize funds made available by the Access to Justice Fund. We believe that the intent of this legislation is that KLS provide legal counsel for civil and domestic matters, provide legal assistance to pro se litigants and develop dispute resolution services. We anticipate use of funds in the following general categories:

1. Additional attorney and support staff to assist low income individuals in civil and domestic relations matters.

2. Enhance information and assistance to victims of domestic violence.

3. Enhance information and assistance to pro se litigants, particularly in domestic relations matters where children are involved.

4. Representation of children in divorce actions and/or juvenile court when there are allegations of child abuse and neglect.

5. Provide the administrative structure for alternative dispute resolution activities in individual judicial districts to allow judges ready access to ADR programs.

6. Provide certified mediators in each of our offices to meet local demands.

7. Provide an "800" number to assist the judiciary in drafting orders in cases where there are only pro se litigants.

Currently, KLS provides advice and representation to a substantial number of individuals seeking resolution of family law matters. In any given year family law cases represent between 9,000 to 11,000 cases. Of that number, cases involving divorce with abuse and custody with abuse requiring Protection Orders total between 1,800 and 2,100 cases. As can be seen, our work puts us in touch with many victims of domestic violence seeking Protection Orders, support and custody orders, injunctions and divorce. In addition, KLS now has trained, certified mediators in all but one of our field offices. We believe that the most beneficial use of Access to Justice Funds would be to utilize filing fee dollars that will primarily come from family law related cases and keep those resources in the family law/alternative dispute resolution arena.

It has been reported that on the average, divorced women and minor children and their households experience a 73% drop in their standard of living in the first year after divorce. Men, in contrast, experience a 42% increase in their standard of living. It is clear, therefore, that the most likely time for women and children to enter poverty is when a marriage or domestic relationship dissolves. It is not uncommon for women to find themselves without adequate support and many times facing eviction and the lack of food and other resources for the children. If the cause for the dissolution of the relationship is a domestic violence situation, the family faces yet another devastating crisis, being a serious drain on the public and private resources of the community.

By providing access to the Courts during a time of marital dissolution or domestic crisis, the community can prevent some of the drain on public benefits, private charity and other valuable community resources such as police, hospitals and social services. Through quality legal advice, representation and advocacy, we can lessen the drain on community resources. Even more important, participants in the dissolution of the marriage or domestic relationship can receive appropriate attention to their plight through access to the Courts, rather than suffering alone in the community.

We also believe that alternative dispute resolution, and particularly mediation, is an important component of the future of legal services for low income people. Mediation is less expensive, it relieves pressure on the judicial system and enables disputants to be actively involved in resolving their individual differences. In many cases, alternative dispute resolution proves to be a lower cost and a more satisfactory vehicle for resolving disputes. If it is

9-3

more satisfactory for the disputants it will certainly assist our judiciary. Alternative dispute resolution in the long run may help to save finite state resources and improve the quality of life for individual Kansans.

We are proud of the support that our two major bar associations, the Kansas Bar Association and the Kansas Trial Lawyers Association, have given to our legal services efforts. Both organizations have contributed significantly to our pro bono and low fee programs. Individual members of these organizations have served on a voluntary basis or at low cost in cases ranging from consumer law, domestic relations and senior citizen matters. Kansas Legal Services is proud it has been chosen for a number years to house and administer the Kansas Bar Association's Lawyer Referral Services. This important service matches individuals throughout the state with participating members of the Bar Association in order that they might receive legal advice and representation in their geographical area. The Kansas Bar Foundation has continued its outstanding financial support of our programs through its Interest On Lawyers Trust Accounts (IOLTA) program.

CONCLUSION

We believe that an increase in the filing fee is an appropriate vehicle, in fact the most appropriate vehicle, to provide the services that I have outlined above. This filing fee increase should be considered to be a user fee. As such, the user fee asks persons that use the court system to pay a portion of the cost associated with providing a strong and efficient system of justice. The Access to Justice Fund established by this legislation can address specific problems of the judicial system. First, the courts are indeed overburdened with post divorce and domestic litigation. Second, our judiciary is being asked to deal with an increasing number of pro se litigants. These pro se litigants do not understand our justice system and are unable to work within it effectively. Third, the Access to Justice Fund provides alternatives to litigation by creating a pool of resources to support alternative dispute resolution, particularly mediation. We feel that this money could go to no better purpose and strongly encourage the committee to support the principles found in House Bill 3033.

Respectfully submitted,

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9-4

#138

TESTIMONY OF

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SENATE JUDICIARY COMMITTEE

Tim Emert, Chairman

Monday, February 14, 1996
Room 514-S

Mr. Chairman, Members of the Committee, I very much appreciate the opportunity to appear before you today to discuss Senate Bill 584. I would like to discuss with you very briefly today some of the concerns that were brought to my attention last week regarding Senate Bill No. 584, relating to confidentiality in alternative dispute resolution matters.

Senate Bill No. 584

Senate Bill No. 584 amends a number of mediation-related statutes to ensure confidentiality within the Alternative Dispute Resolution process. Last week members of the Committee raised several questions in regard to this legislation. The first concern was whether a privilege to refuse to disclose, and prevent a witness from disclosing any communication made within the course of the proceeding could be upheld by a mediator even if the parties consented to a waiver. The second major question was whether actual threats of physical violence that might occur during the Alternative Dispute Resolution proceeding could be disclosed.

Having taken into consideration the questions expressed by the Committee, I propose the following modifications to the original language:

That on Page 1, Line 29, at the close of the paragraph, we add the following sentence, "A neutral person conducting the proceeding shall not be subject to process requiring the disclosure of any matter discussed within the proceedings unless all parties consent to a waiver." This language will hopefully clarify that the privilege can be waived by an agreement of the parties.

Sen. Jud. Comm
2-20-96
Attach. #10

I would also recommend modifying paragraph 1 and adding a new paragraph 5 under Subsection (b) found on Page 1, Line 30 et. seq. that would read as follows:

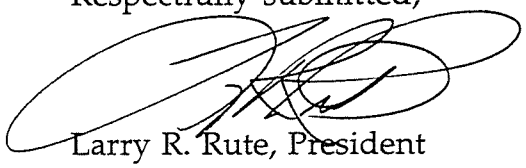
(1) information that is reasonably necessary to allow investigation of or action for ethical violations against the neutral person conducting the proceeding or for the defense of the neutral person or staff of an approved program conducting the proceeding in the case of an action against the neutral person or staff of an approved program that is filed by a party to the proceeding.

In addition, we would suggesting a paragraph (5) under the same section to read:

"(5) A report to the Court of threats of physical violence made by a party during the proceeding." This language would, hopefully, ensure that any threats of physical violence made by one of the parties during a mediation or other alternative dispute resolution proceeding would be reported to the court.

I appreciate the opportunity to appear before this Committee today. I am prepared to stand for questions.

Respectfully submitted,



Larry R. Rute, President
Kansas Bar Association
ADR Section

10-2