

Approved: 6/27/97  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 10:20 a.m. on April 24, 1997 in Room 313-S of the Capitol.

All members were present except: Representative Adkins (excused)  
Representative Garner (excused)  
Representative Howell (excused)  
Representative Kline (excused)  
Representative Shultz (excused)  
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Jamie Corkhill, SRS

Others attending: See attached list

The Chairman called the meeting to order at 10:20 a.m. and read New Section 16 of **SB 140**.

**SB 140: Enforcement of child support, uniform interstate family support act.**

The Committee members discussed New Section 16 concerning subpoena powers and expressed concerns regarding administrative powers of the Secretary of SRS and enforcement of the provision from out-of-state IV-D agencies.

Ms Corkhill, SRS Attorney, stated that finances and location of obligee is being sought and suggested that all records subject to subpoenas be treated in the same way. The conferee stated that suggested changes are included in a balloon dated April 24, 1997. (Attachment 1)

The Chair opened discussion on New Section 17 by stating that this section deals with the establishment of paternity and questioned if New Section 17 was needed? Ms Corkhill stated that suggested language was offered in the April 24th balloon. (Attachment 1)

The Committee members discussed Section 18 dealing with minimum payments for arrearages and administrative orders to defray such arrearages. Ms Corkhill discussed some of the changes proposed in the balloon language and stated that she could incorporate language stating, "this section does not apply if the court has issued a minimum payment order." The Committee members discussed subsection (b). The conferee offered language that would state, "This entire section does not apply if an income withholding order or court order is in effect."

The Committee members discussed Section 19 concerning initiation of administrative income withholding order. Ms Corkhill stated that subsection (d) was current law placed into this section and that item (6) was added. The conferee stated that on line 12 of page 17 the word "shall" could be changed to "may".

The Committee members discussed New Section 20 with the conferee concerning modification of administrative withholding orders. The Committee members offered questions regarding how a creditor would know when a garnishment form reaches the employer.

The Committee members discussed New Section 21 with the conferee. The conferee stated that this is a procedural section for income withholding orders and a restatement of current law.

The Committee members discussed New Section 22 concerning the attachment of retirement funds by the SRS. The Chair referred to a definition of cash assets as defined in Section 9, page 7, line 27. Ms Corkhill referred to the balloon which offered a provision stating that if the primary beneficiary is other than the responsible parent (as in group funds) the funds are not subject to this act. The Chair stated that possible interpretation of this provision are unclear. Representative Pauls offered that a statement should be added to

## CONTINUATION SHEET

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clarify the funds subject to this act. The Committee discussed concerns with the interpretation of this provision by other states attorneys and the possible implications of this provision. The Committee members discussed the inclusion of language, "while still employed by that employer."

The Committee members discussed differential treatment for those employed in the private sector by small companies and those employed by the state or large corporations. Issues concerning the attachment of funds held in joint tenancy were addressed by the Committee members. The attachment of funds added after the order was discussed as to whether any kind of notice was given before attaching those additional funds. Ms Corkhill suggested that the Committee might want to delete that provision. The Committee members discussed current joint tenancy law and the fair hearing provision of current law.

The Committee members discussed with the conferee subsections (a), (f) and (g) of New Section 23.

The Committee members discussed with the conferee New Section 24 concerning the Secretary's execution pursuant to K.S.A. 60-2401. The Committee discussed the definition of execution and Ms Corkhill referred to page 68, Section 77 of **SB 140**.

The Committee members and the conferee discussed Section 25 concerning foreign support orders.

The Committee members and the conferee discussed Section 26. The conferee elaborated on the meaning of "business day." The Committee members expressed concern with the broad definition of "compensation" as used in subsection (d).

The Committee members and the conferee discussed Section 27. The Committee discussed the reference to federal forms and offered suggestions to make the adoption of such forms discretionary for the Secretary.

The Committee members and the conferee discussed Section 28. The Committee offered that on page 31, line 1 the "shall" be changed to "may" and to amend that section to protect the employer. A Committee member suggested that a date of the act referred to on lines 17 and 18 of page 30 needs to be stated.

The Chair recessed the meeting at 12:15 p.m. for lunch.

The Chair reconvened the meeting at 1:35 p.m. and opened discussion on Section 29.

The Committee members discussed with Ms Corkhill Section 29 concerning income withholding orders. Ms Corkhill discussed the need to double the percent of withholding.

The Committee members and Ms Corkhill discussed Section 30.

The Committee member and conferee discussed Section 31 concerning income withholding orders not applying to IV-D cases, but applicable to court orders.

The Committee members and conferee discussed Section 32 concerning procedure for initiating income withholding orders with other states.

The conferee stated that Section 33 deals with technical clean-up.

The Committee members and conferee discussed several issues regarding Section 34. Ms Corkhill referred to Attorney General Stovall's opinion as requested by the House Judiciary Committee. (Attachment 2) The conferee discussed the proposed amendment provided by Betty McBride, Department of Revenue concerning the perfection date on a title and delaying the effective date to allow for use of current title forms. (Attachment 3) Ms Corkhill discussed the Automobile Dealers request that the lien is not perfected until it is noted on the title. Ms Corkhill referred to a balloon (April 9) that clarifies what needs to be on the title. (Attachment 4)

The Committee members discussed with Ms Corkhill the definition of perfection and several scenarios concerning lien priority.

During Committee discussion it was offered that lines 24 through 27 on page 38 be deleted. Ms Corkhill offered that the definition of obligee could allow for simplification. The Committee offered that the definition of Workers Compensation include lump sum settlements on line 4 of page 38 and eliminate (6) on page 38.

The Conferee stated that Sections 35 through 63 refer to the Uniform Interstate Family Support Act effective in 1995. The conferee discussed each of those sections. The Committee members and the conferee discussed adding a sentence to Section 46 to avoid penalizing those challenging the order. During Committee discussion

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of Section 49 language change was suggested on line 1, subsection (d) to add "with that employer." The Committee and conferee discussed Section 59 and it was suggested that on line 12 of page 52, the language be changed to: "for in this state."

The Committee and conferee discussed Section 64 concerning the license suspension.

The conferee stated that Section 65 refers to the Kansas Parentage Act.

The conferee stated that Section 66 is current law until subsection (e).

The Committee addresses concerns with subsections (d) and (e) of Section 67.

The Committee members addressed concerns with the terminology used in Section 68 regarding "clear and convincing evidence" in subsection (c).

The Committee members discussed eliminating reference to Section 2 of SB 140, page 59, line 6 in Section 69.

The Committee suggested that Section 70 dealing with parentage disclosure and the revocation of parentage needs to be changed. Ms Corkhill stated that she will draft a balloon.

The Committee discussed problems with Section 71 concerning federal regulation to be promulgated.

The Committee and conferee discussed Section 72 and suggested adding language, "locating parents and their assets."

During discussion of Section 73, the Committee suggested striking the language "absent parent" and replace it with "any parent" since absent parent is not defined anywhere. Ms Corkhill referred to a balloon at the suggestion of the Department of Revenue referring to the access to information. (Attachment 5)

Ms Corkhill discussed the proposed balloon that expands sanctions in Section 74. The Committee discussed specifying the establishment of "good cause." (Attachment 6)

Ms Corkhill discussed Section 75 and its cross reference to Workers Compensation statutes.

Ms Corkhill and the Chair discussed the opinion from the Attorney General's office. The conferee referred to a balloon for subsection (d) specifying arrearages as of the date of filing. The conferee stated that the balloon, (April 24) addresses subsection (d) of Section 76 concerning the full faith and credit clause. (Attachment 1)

During discussion on Section 77, the conferee stated that language could be included to specifically limit the action to personal property.

The conferee discussed the provisions in Section 78.

During discussion of Section 79, Representative Pauls suggested that other language may be needed on line 17.

The conferee related the content of Section 80.

Ms Corkhill stated that a balloon reflecting the suggestions of the Department of Revenue would change Section 81 per the April 9 balloon. (Attachment 4)

The conferee discussed the provisions of Section 82.

The Committee and conferee discussed several options for Section 83 such as a sunset provision, making effective date of this act October 1, 1997 or pursuing a lawsuit.

The Chair adjourned the meeting at 5:20 p.m.

The next meeting is scheduled for April 25, 1997.

# COMMITTEE GUEST LIST

DATE: 4-24-97

NAME	REPRESENTING
Paul Johnson	PACK
Roger Aeschliman	KS DHR
James Corbhill	SRS - CSE
Matt Goddard	HCBA
Betty Mc Bride	K D. of Revenue
Whitney Tammam	KS Auto Dealers.

April 24th packet of balloons:

Section Number & Topic	Comments
6 - Social security numbers on applications	Added <i>option</i> for agencies to permit use of other numbers
16 - Administrative subpoenas	Clarifies scope of information & availability of defenses. Incorporates manner of service, admin. appeal procedures, judicial enforcement for noncompliance.
17 - Admin. order for genetic testing	Limited to cases with consent of the alleged father. Incorporates service of the order, admin. appeal procedures, judicial enforcement for noncompliance.
18 - Admin. order for minimum payments to defray arrearages	Incorporates service of order, admin. appeal procedures, judicial enforcement for noncompliance.
19 - Initiation of admin. income withholding order	Incorporates jurisdiction over persons, service of notice. (Admin. appeals procedures are in section 21)
20 - Modification of admin. income withholding order	Clarifies that it applies only to admin. withholding orders. Incorporates notice, admin. appeal procedures.
21 - Request to stay initiation of admin. IWO under sec. 19	Incorporates special provisions previously contained in sec. 15.
22 - Administrative levy against bank accounts	Clarifies exemptions, prior attachments or rights. Incorporates jurisdiction, service of orders, admin. appeal procedures, judicial enforcement for noncompliance.
23 - Admin. order to change payee	Incorporates jurisdiction, service of orders, admin. appeal procedures, judicial enforcement for noncompliance.
76 - Liens on real property	<b>[Attorney General opinion]</b> Adds requirements to insure notice & opportunity for hearing have been provided to obligor.
New Section - Court review of administrative procedures	Immediate access to court for review, as alternative to admin. review. Also, court review of attachment of <b>out-of-state lien</b> to Kansas real estate.

House Judiciary  
 Attach # 1  
 4/24/97

**(Revised) New Section 6. *The Except as otherwise provided in this section, the social security number of any individual applicant for a professional license, occupational license or marriage license shall be recorded, if available, on the application for such license. As used in this section, "on the application" includes but is not limited to any document attached or supplemental to an application or any optically, electronically or magnetically recorded data related to an individual application. An agency or entity that issues professional or occupational licenses may permit the use of a number other than the social security number on an application, provided that the agency or entity so advises the applicant.***

**(Revised) New Section 16.** (a) In any title IV-D case, the secretary may issue a subpoena pursuant to this section to obtain ~~financial or other~~ information ***about the responsible parent's whereabouts or finances if the information is*** needed to establish, modify or enforce a support order. The subpoena ~~shall be issued by an authorized agent of the secretary and~~ shall require the person to whom it is directed to produce a copy of the records designated in the subpoena or, if applicable, to complete a form furnished pursuant to subsection (c). At least ~~seven~~ ***fourteen*** days shall be allowed for compliance with the subpoena. ***A subpoena issued pursuant to this section shall be subject to defenses which would apply if the subpoena had been issued by a court of this state.***

***(b) A subpoena issued pursuant to this section shall be served in any manner permitted for service of a subpoena to produce records issued pursuant to chapter 60 of the Kansas statutes annotated and amendments thereto.***

(c) The secretary may furnish with the subpoena a form requesting specific information from the records of the person to whom the subpoena is directed. The person may elect to furnish the copy of the designated records or to complete the form in full. If the person completes the form in full and returns it to the secretary's authorized agent by mail or otherwise within the time allowed, it shall be sufficient compliance with the subpoena.

(d) Except as otherwise provided in this subsection or subsection (c), the person to whom a subpoena is directed shall comply with the subpoena by delivering to the

secretary's authorized agent by mail or otherwise a sworn statement and a true and correct copy of the records designated in the subpoena. ~~If the records are not related to a business, the~~ **The** sworn statement shall certify that the copy delivered by the person is a true and correct copy of the records designated in the subpoena. ~~If the records are related to a business, the sworn statement shall state that: (1) The affiant is a duly authorized custodian of the records and has authority to certify records; (2) the copy is a true copy of the records designated in the subpoena; and (3) the records were prepared by the personnel or staff of the business, or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.~~ When more than one person has custody of the records or has knowledge of the facts required to be stated in the sworn statement, more than one sworn statement may be made.

If the person has none of the records designated in the subpoena, or only part thereof, the person shall so state in the sworn statement and shall send a copy of those records of which the person has custody.

(e) Before the time specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may request **an administrative hearing** to review of all or part of the subpoena pursuant to ~~section 15 K.S.A. 75-3306~~ and amendments thereto **by complying with procedures established by the secretary for requesting such a review.** The person shall comply with any portion of the subpoena for which review is not requested. **If the subpoena is served by mail, the**



*time for requesting review shall be extended by three days. If the request for review is made within the time allowed, the effect of the subpoena shall be stayed pending resolution of the review. Upon request, the presiding officer may limit the stay to the matters under review.*

~~(f) A person in this state shall comply with a subpoena issued by a title IV-D agency of any other state for the purpose of obtaining financial or other information needed to establish, modify or enforce a support order in a title IV-D case. Upon request of a IV-D agency in another state, the secretary of social and rehabilitation services may enforce such a subpoena as though it had been issued by the secretary of social and rehabilitation services. Except as otherwise provided in this subsection, a subpoena issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto, after the time for compliance with the subpoena has expired. A subpoena issued pursuant to this section shall not be enforceable more than two years after the date of issuance shown on the face of the subpoena.~~

**(Revised) New Section 17.** (a) This section shall not apply if an action to establish the father's duty of support on behalf of the child is pending before any tribunal. As used in this section, "mother" means the natural mother of the child whose parentage is in issue.

(b) Except as otherwise provided in subsection (d), genetic tests may be ordered by the secretary ~~on the secretary's own initiative or if requested by another title IV-D agency, the alleged father or the mother if the alleged father consents and the necessary persons are available for testing.~~ Except as otherwise provided in subsection (e), the secretary shall pay the costs of genetic tests, subject to recoupment from the father if paternity is established.

~~—— (c) Except as otherwise provided in subsection (d), the secretary shall enter an administrative order for genetic testing if paternity of the child is contested, genetic testing is requested pursuant to this subsection by a party and the necessary persons are available for testing.~~ For purposes of this section, a person receiving title IV-D services is not available for testing if a claim for good cause not to cooperate under title IV-D is pending or has been determined in the person's favor or if the person ceases to receive title IV-D services for any reason. **A request under this subsection shall be supported by a sworn statement by the requesting party:**

~~—— (1) Alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or~~

~~(2) Denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.~~

*(c) A copy of the order for genetic tests shall be served upon persons required to comply with the order in any manner permitted for service of summons and petition pursuant to article three of chapter 60 of the Kansas statutes annotated and amendments thereto. The order shall specify the time and place the person is required to appear for testing, which shall be at least ten days after the date the order is entered.*

(d) If a presumption of paternity arises pursuant to subsection (a) of K.S.A. 38-1114 and amendments thereto because the mother married or attempted to marry any man, the secretary shall not order genetic testing unless a court of this state or an appropriate tribunal in another state has found that determining the child's biological father is in the child's best interests. If a tribunal subsequently determines that the prohibition of this subsection applied at the time genetic tests were ordered by the secretary, any support order based in whole or in part upon the genetic tests may be set aside only as provided in K.S.A. 60-260 and amendments thereto.

(e) Upon receiving the results of genetic testing, the secretary shall promptly send a copy of the results to the parties, together with notice of the time limits for requesting any additional genetic tests or for challenging the results pursuant to K.S.A. 38-1118 and amendments thereto, how to make such request or challenge, and any associated costs. The notice shall state the consequences pursuant to K.S.A. 38-1118

and amendments thereto of failing to act within the time allowed by the statute. Any additional genetic tests shall be at the expense of the person making the request for additional genetic tests. Failure of the person requesting additional tests to make advance payment as required by the secretary shall be deemed withdrawal of the request.

***(f) Any person required to comply with an order issued pursuant to this section may request an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto by complying with procedures established by the secretary within ten days after entry of the order. If the order is served on the person by mail, the time for requesting review shall be extended by three days. An order issued pursuant to this section shall be subject to defenses that would apply if the order had been issued by a court of this state. If the request for review is made within the time allowed, the effect of the order shall be stayed with respect to the person requesting review pending resolution of the review.***

***(g) An order issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto, after the time for compliance with the order has expired.***

**(Revised) New Section 18.** (a) If the responsible parent owes any arrearages, the secretary may serve upon the responsible parent an order for minimum payments to defray the arrearages. The order shall identify the amount of unpaid arrearages and the minimum periodic payment the obligor is required to make to defray the arrearages. The amount specified for the minimum periodic payment shall be in addition to any current support order. The **notice order** shall ~~also~~ state that failure to request review of the stated amount of arrearages may bar any later challenge to the amount. ***The order shall be served on the responsible parent in any manner permitted for service of summons and petition pursuant to article three of chapter 60 of the Kansas statutes annotated and amendments thereto.***

***(b) The secretary shall adopt guidelines for determining minimum payments to defray arrearages that may be ordered pursuant to this section. To the extent that information is known, the following factors shall be considered: the financial condition of the child, custodial parent and responsible parent; the amount of the current support order; the existence of other dependents; and the total of unpaid arrearages.***

***(c) Unless stayed, an order issued pursuant to this section shall be effective 30 days after the date of entry. The responsible parent may request an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto by complying with procedures established by the secretary within ten days after entry of the order. If the order is served by mail, the time shall be extended by***

*three days.*

*(d) If, after an order issued pursuant to this section becomes effective, the responsible parent fails to make the minimum payments to defray arrearages, the order may be enforced pursuant to the civil enforcement provisions of the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto.*

~~(b)~~ (e) Nothing in this section shall be construed to prevent the secretary from collecting the full amount of arrearages at any time using any remedy. Nothing in this subsection shall prevent any lien for unpaid support from arising or attaching to property.

**(Revised) New Section 19.** (a) Except as otherwise provided in K.S.A. 23-4,107 *or section 21* and amendments thereto ***and subject to the provisions of subsection (e)***, if no income withholding order is in effect to enforce a support order in a title IV-D case, an income withholding order may be entered by the secretary. A notice of intent to initiate income withholding, as described in K.S.A. 23-4,107 and amendments thereto, shall be served on the responsible parent at least 7 days before the secretary issues the income withholding order. If the amount of arrearages is less than the amount of current support due for one month, the requirements of subsection (d) must be met. The income withholding order shall conform to the requirements of the income withholding act and amendments thereto and shall have the same force and effect as an income withholding order issued by a district court of this state.

(b) If an income withholding order is issued by the secretary to enforce a support order entered by a court of this state, the original document shall be delivered for filing to the clerk of the court that entered the support order. Thereafter, if the secretary is no longer providing title IV-D services in the case, the clerk of the district court shall use the income withholding order issued by the secretary in the same manner as an income withholding order issued by the court.

(c) If an income withholding order is issued by the secretary to enforce a support order entered by a tribunal of another state, the secretary shall transmit a copy of the income withholding order to the tribunal of the other state.

(d) If there are no arrearages or the amount of arrearages under the support

order is less than the amount of current support due for one month, the secretary shall initiate income withholding only if:

(1) Any arrearages are owed;

(2) A medical child support order exists;

(3) The secretary determines that immediate issuance of the income withholding order was required by K.S.A. 23-4,107 and amendments thereto or by a similar law of another state, but no income withholding order was entered;

(4) The responsible parent consents;

(5) Required payments have been received after the due date at least twice within the preceding 12 months, regardless of whether any arrearages are owed; or

(6) The support order was entered by a tribunal of another state.

***(e) An income withholding order may be issued pursuant to this section only if the responsible parent may be made subject to the jurisdiction of the courts of this state for the purpose of enforcing the support order or if the support order was entered by or registered with a court of this state and the responsible parent is subject to the jurisdiction of the court. The jurisdiction of the secretary over the responsible parent for purposes of this section shall commence when the responsible parent is served with a notice of intent to initiate income withholding pursuant to this section and shall continue so long as administrative proceedings under this section are pending or so long as the parent's duty of support exists, whichever is longer, regardless of the***



**responsible parent's subsequent departure from this state.**

**(f) If the support order was entered by or registered with a court of this state, the notice of intent to initiate income withholding shall be served on the responsible parent by first class mail, with service complete upon deposit in the United States mail. In all other cases, the notice of intent to initiate income withholding shall be served upon the responsible parent in any manner permitted for service of summons and petition pursuant to article three of chapter 60 of the Kansas statutes annotated and amendments thereto.**

**(Revised) New Section 20.** (a) At any time after issuing an income withholding order, the secretary shall: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying support order; (2) modify the amount of income withheld to reflect payment in full of the arrearages; (3) modify or terminate the income withholding order to reflect the final order in a fair hearing pursuant to K.S.A. 75-3306 and amendments thereto; or (4) modify, or when appropriate terminate, an income withholding order consisting in whole or in part of a medical withholding order because of a modification or termination of the underlying medical child support order.

(b) In addition to modifications required by subsection (a), at any time the secretary may issue a modified income withholding order: (1) to change the amount to be withheld to defray arrearages, or (2) to conform the terms of a medical withholding order to the requirements of a payor. ***The provisions of this subsection shall apply only to income withholding orders issued pursuant to section 19 and amendments thereto, including any modifications of such orders.***

(c) The secretary shall provide notice of any proposed modification to the responsible parent, ***who by first class mail at least 14 days before entry of the modified income withholding order. The responsible parent may request an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto for review of the proposed modification by complying with procedures established by the secretary within ten days after service of the notice. If the notice is served by mail, the time for requesting review shall be extended by three days. If the***

***proposed modification increases the total amount to be withheld from the responsible parent's income, entry of the modified income withholding order shall be stayed pending resolution of the review. In all other instances, entry of the proposed modification shall be stayed only for cause.*** The issues ***in the administrative hearing*** shall be limited to whether the amount of current support is as stated in the proposed modification and whether the total arrearages are less than the proposed installment to defray arrearages.

(d) The responsible parent may request that the secretary terminate an income withholding order for cash support if: (1) Withholding has not previously been terminated and reinitiated; and (2) there is a written agreement among the parties that provides for an alternative arrangement. If an income withholding order is terminated and the obligor subsequently accrues any arrearages, the secretary may issue another income withholding order as provided in section 19 and amendments thereto.

(e) If the income withholding order includes both a medical withholding order and an income withholding order for cash support, modification or termination of one portion of the income withholding order shall not modify or terminate any other portion of the income withholding order except as expressly provided in the order.

(f) The provisions of section 19 and amendments thereto, related to transmitting income withholding orders to the tribunal that issued the underlying support order, shall apply to any order issued modifying or terminating income withholding that is issued pursuant to this section.

**New Section 21. (a) ~~As provided in section 15 and amendments thereto,~~ the responsible parent may request *an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto* for review of a notice of intent to initiate income withholding served pursuant to section 19 and amendments thereto *by complying with procedures established by the secretary within seven days after service of the notice of intent. If the notice is served by mail, the time for requesting review shall be extended by three days.* The request for review shall specify the mistake of fact alleged to be the basis for the stay or any applicable defense under this section. If the amount of the current support order or the amount of arrearages is challenged, the request shall specify the amount that is uncontested.**

(b) The issues on review shall be limited to whether a mistake of fact existed at the time the notice to the responsible parent was prepared or, if specified in the request for review, whether a defense exists under this section. As used in this section, "mistake of fact" means an incorrect statement of the amount of current support due, the amount of arrearages, the amount of income to be withheld or the ~~identify~~ *identity* of the responsible parent.

(c) Except as otherwise provided in this subsection, ~~upon request~~ the presiding officer shall immediately authorize issuance of an income withholding order *upon request of the secretary* if the identity of the responsible parent is not contested and the uncontested facts in the case show that the requirements of subsection (d) of section 19 and amendments thereto have been met. If a defense under subsection (g)

has been alleged, the presiding officer shall ~~immediately~~ authorize *immediate* issuance of an income withholding order only if the uncontested arrearages equal or exceed the amount of support due for one month. A copy of the request shall be served on the responsible parent.

(d) The income withholding order authorized by this subsection shall specify an amount sufficient to satisfy the order for current support and to defray any arrearages, but only to the extent that each amount is not contested. Any income withholding order issued pursuant to this subsection shall be effective until modified or terminated.

*(d) Entry of the income withholding order may be stayed only to the extent permitted by the income withholding act and amendments thereto or this section. A request for review under this section shall stay issuance of the administrative income withholding order until further order of the presiding officer.*

(e) Within 45 days of the date the notice of intent to initiate income withholding was served on the responsible parent, the presiding officer shall provide the responsible parent an opportunity to present the responsible parent's case, determine if an income withholding order may be issued and notify the responsible parent and the ~~authorized agent secretary~~ whether or not withholding is to occur.

(f) In addition to any other circumstances warranting issuance of an income withholding order under this section and notwithstanding any claim made pursuant to subsection (g), if the presiding officer finds that a notice of intent to initiate income

withholding was served on the responsible parent and that there were arrearages, as of the date the notice was prepared, in an amount equal to or greater than the amount of support payable for one month, the presiding officer shall authorize issuance of an income withholding order. Subsequent payments to defray arrearages shall not prevent issuance of an income withholding order under this subsection unless there is no current support due and all arrearages are satisfied.

(g) If an income withholding order was not entered at the time the support order was entered because the tribunal found that there was good cause not to order immediate income withholding or that the parties had entered into an agreement for an alternative arrangement, the responsible parent may request that income withholding be stayed pursuant to this subsection.

If the responsible parent shows that the tribunal issuing the support order found good cause not to require immediate income withholding and that the basis for the finding of good cause still exists, the presiding officer shall stay issuance of the income withholding order unless subsection (f) applies.

If the responsible parent shows that the tribunal issuing the support order did not require immediate income withholding based upon an agreement of the interested parties for an alternative arrangement, the presiding officer may stay issuance of the income withholding order unless the presiding officer finds that: (1) Subsection (f) applies; (2) the agreement was not in writing; (3) the agreement was not approved by all interested parties, including any IV-D agency involved in the case at the time of the

agreement; (4) the terms of the agreement or alternative arrangement are not being met; (5) the agreement or alternative arrangement is not in the best interests of the child; or (6) the agreement or alternative arrangement places an unnecessary burden upon the custodial parent, the responsible parent, or a public office.

***(h) If the proposed administrative income withholding order specifies a periodic amount to defray arrearages, the presiding officer may order a reduction in the periodic amount to defray arrearages only if the total arrearages owed are less than the periodic amount to defray arrearages.***

**(Revised) New Section 22.** (a) Upon determining that arrearages exist *in a title IV-D case*, the secretary may enforce ~~any the~~ support order by an administrative levy upon the responsible parent's cash assets, ***subject to the provisions of subsection (g)***. Any retirement fund that may be revoked or terminated by the responsible parent and is composed of cash assets shall be subject to administrative levy under this section, notwithstanding any other provision of law ***unless the retirement fund has any primary beneficiary other than the responsible parent or the responsible parent's spouse.***

(b) ~~An~~ ***To initiate an administrative levy under this section, the secretary shall serve an*** order to restrict transfer ~~may be served by the secretary~~ upon ~~any person who is~~ the holder of any cash asset of the responsible parent. The secretary may include with the order to restrict transfer an order to verify information concerning the cash asset. ***Except as otherwise provided pursuant to subsection (j), the order to restrict transfer shall be served in any manner permitted for service of summons and petition pursuant to article three of chapter 60 of the Kansas statutes annotated and amendments thereto.***

(c) The order to restrict transfer shall attach, upon receipt by the holder, the interest of the responsible parent in any cash asset in the possession or control of the holder, ***subject to any prior attachment or lien or any right of setoff that the holder may have against such assets.*** If the total value of all ~~such~~ ***attachable*** cash assets is less than 25 dollars at that time, no interest shall be attached by the order to restrict



transfer. Upon attachment, the holder shall not transfer any of the attached assets without the consent of the secretary until further order of the secretary. If any cash asset is added to an account after the initial attachment and before the order to disburse, the added asset shall also be attached except to the extent that any part of the addition exceeds the maximum amount stated in the order to restrict transfer.

(d) Any cash asset held by the responsible parent in joint tenancy with rights of survivorship shall be presumed to be owned entirely by the responsible parent. The burden of proving otherwise shall be upon any person asserting ownership of any attached cash asset.

(e) The holder shall promptly notify any coowner of the cash asset or account about the attachment if the coowner's interest appears to be affected by the attachment.

(f) If an order to restrict transfer is issued, the secretary shall **promptly** **simultaneously** send notice to the responsible parent **by first class mail**. The notice shall state when review is available under ~~section 15 and amendments thereto~~ **subsection (l)** and to how to request review.

~~(g) The responsible parent, the holder or any coowner may contest the attachment by requesting a fair hearing pursuant to section 15 and amendments thereto. An administrative levy may be initiated pursuant to this section only if the property to be attached is located in this state or if the responsible parent and the holder are subject, or may be made subject, to the jurisdiction of the courts of~~

***this state for the purpose of enforcing the responsible parent's duty of support. The jurisdiction of the secretary over the holder for purposes of this section shall commence when the holder is served with the order to restrict transfer and shall continue so long as administrative proceedings related to that order are pending or until two years after the date of entry shown on the order, whichever is shorter.***

(h) If the secretary includes with the order to restrict transfer an order to verify information, the holder shall comply with the terms of the order to verify information within ~~seven~~ **14** days of receipt.

(i) If the time allowed to request ~~a fair~~ **an administrative** hearing has elapsed and the proposed levy has not been challenged or the challenge has been resolved, in whole or in part, in favor of the secretary, the secretary shall issue an order to the holder to disburse the **attached** funds.

(j) If the holder is a financial institution that has entered into an agreement with the secretary pursuant to section 5 and amendments thereto, the agreement may provide for alternative methods of: (1) notifying the financial institution **of the order** to restrict transfer of cash assets or to disburse proceeds ~~of administrative levies~~, (2) resolving disputes between the financial institution and the secretary concerning an administrative levy and (3) exchanging any data related to the IV-D program.

***(k) Except to the extent that any provision clearly conflicts with this section, the exemptions contained in article 23 of chapter 60 shall apply to any attachment under this section.***

***(l) The responsible parent, the holder or any coowner may contest any order entered under this section that affects the person's rights or duties. The aggrieved person may request an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto by complying with procedures established by the secretary within ten days after entry of the order being contested. If the order is served on the person by mail, the person's time for requesting review shall be extended by three days.***

***(m) Except as otherwise provided in this subsection, the effect of an order to restrict transfer may be stayed pending resolution of an administrative hearing only upon request and only if the person requesting the stay posts a cash or surety bond or provides other unencumbered security equal in value to the amount of the attached assets. Upon notice and opportunity for hearing, the presiding officer may stay or limit the effect of an order to restrict transfer if the request for stay is accompanied by a sworn statement that the responsible parent is not the owner of the attached assets.***

***The effect of an order to verify information or an order to disburse attached funds shall be stayed only at the discretion of the presiding officer.***

***(n) An order issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto, after the time for compliance with the order has***

***expired. An order issued pursuant to this section shall not be enforceable more than two years after the date of entry shown on the face of the order.***

**(Revised) New Section 23.** (a) Nothing in this section shall be construed to prevent the secretary from redirecting support payments by filing a notice of assignment pursuant to K.S.A. 39-754 and amendments thereto, or to require the secretary to issue an order to change payee in lieu of filing such a notice of assignment.

(b) If a support order has been entered in any IV-D case, the secretary may ~~issue~~ **enter** an order to change the payee. The order may be directed to the clerk of court or any other payer under the support order and shall require payments to be made and disbursed as provided in the order to change payee until further notice. ***The order to change payee shall be served on the clerk of court or other payer by first class mail.*** The secretary shall serve ~~notice~~ **a copy** of the order to change payee on the responsible parent and the custodial parent and, if the previous payee is a real party in interest, upon the previous payee ***by first class mail.*** ***An order to change payee may be entered pursuant to this section only if the payer is subject, or may be made subject, to the jurisdiction of the courts of this state. The jurisdiction of the secretary over the payer for purposes of this section shall commence when the payer is served with the order to change payee and shall continue so long as the order to change payee is in effect and has not be superceded.***

(c) If an order to change payee is directed to any payer other than the clerk of court, a copy shall also be filed with the tribunal that issued the support order.

(d) If the underlying support order was entered or has been registered in this state, no order to change payee issued by any IV-D agency shall be effective to require

any payer, other than a clerk of court, to send payments to any location other than to the clerk of court where the support order was entered or registered, a location specified in the support order or a location specified by court rule ~~or statute~~. If the clerk of court receives an order to change payee from anyone other than the secretary and a notice of assignment pursuant to K.S.A. 39-754 and amendments thereto or a conflicting order to change payee is still in effect, the clerk of court ~~shall~~ **may at any time** request ~~review of the order to change payee pursuant to section 15 and amendments thereto~~ **an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto by complying with procedures established by the secretary.**

(e) If the underlying support order was not entered and has not been registered in this state, any person whose interest may be prejudiced by the order to change payee may request ~~review pursuant to section 15 and amendments thereto~~ **an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto by complying with procedures established by the secretary within ten days after entry of the order being contested. If the order is served on the person by mail, the person's time for requesting review shall be extended by three days.**

(f) An order to change payee issued by a IV-D agency in another state shall have the same force and effect in this state, and be subject to the same limitations, as an order to change payee issued by the secretary under this section. Upon request of a IV-D agency in another state, the secretary may enforce such an order to change payee as though it had been issued by the secretary of social and rehabilitation

services. By serving an order to change payee related to a support order entered in this state, such IV-D agency shall be deemed to have consented to the jurisdiction of this state to determine how payments will be directed to maintain accurate payment records and rapid disbursement of support collections.

(g) As used in this section, "clerk of court" includes any district court trustee generally designated to process support payments and includes any disbursement unit or entity that may be established by court rule ~~or statute~~ to process support payments.

***(h) In an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto, the effect of an order to change payee may be stayed only upon request and only if the new payee is a person or entity other than the clerk of court.***

***(i) An order issued pursuant to this section whose effect has not been stayed may be enforced pursuant to the civil enforcement provisions of the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto, after the time for compliance with the order has expired.***

30 Sec. 76. K.S.A. 60-2202 is hereby amended to read as follows: 60-  
31 2202. (a) Any judgment rendered in this state by a court of the United  
32 States or by a district court of this state in an action commenced under  
33 chapter 60 of the Kansas Statutes Annotated shall be a lien on the real  
34 estate of the judgment debtor within the county in which judgment is  
35 rendered. Except as provided in subsection (c), the lien shall be effective  
36 from the time at which the petition stating the claim against the judgment  
37 debtor was filed but not to exceed four months prior to the entry of the  
38 judgment. An attested copy of the journal entry of the judgment, together  
39 with a statement of the costs taxed against the judgment debtor in the  
40 case, may be filed in the office of the clerk of the district court of any  
41 other county upon payment of the fee prescribed by K.S.A. 28-170 and  
42 amendments thereto, and the judgment shall become a lien on the real  
43 estate of the debtor within that county from the date of filing the copy.

1 The clerk shall enter the judgment on the appearance docket and index  
2 it in the same manner as if rendered in the court in which the clerk serves.  
3 Executions shall be issued only from the court in which the judgment is  
4 rendered.

5 (b) Any judgment rendered by a district court of this state in an action  
6 commenced under chapter 61 of the Kansas Statutes Annotated shall  
7 become a lien on the real property of the judgment debtor when the  
8 party in whose favor the judgment was rendered pays the fee prescribed  
9 by K.S.A. 28-170 and amendments thereto and the clerk of the district  
10 court enters the judgment in the appearance docket. The lien shall be-  
11 come a lien only upon the debtor's real property that is located in the  
12 county in which the filing is made, but a filing may be made in any county  
13 in which real property of the judgment debtor is located. Upon the filing  
14 of a journal entry of judgment and payment of the fee as provided in this  
15 section, the clerk of the district court shall enter it in the appearance  
16 docket. The lien shall cease to be a lien on the real property of the judg-  
17 ment debtor at the time provided in article 24 of this chapter.

18 (c) Notwithstanding the foregoing provisions of this section, the filing  
19 of a petition or other pleadings against an employee of the state or a  
20 municipality which alleges a negligent or wrongful act or omission of the  
21 employee while acting within the scope of the employee's employment  
22 shall create no lien rights as against the property of the employee prior  
23 to judgment, regardless of whether or not it is alleged in the alternative  
24 that the employee was acting outside the scope of the employee's em-  
25 ployment. A judgment against an employee shall become a lien upon the  
26 employee's property when the judgment is rendered only if it is found  
27 that (1) the employee's negligent or wrongful act or omission occurred  
28 when the employee was acting outside the scope of the employee's em-  
29 ployment or (2) the employee's conduct which gave rise to the judgment  
30 was because of actual fraud or actual malice of the employee; in those  
31 cases the lien shall not be effective prior to the date judgment is rendered.  
32 As used in this subsection, "employee" has the meaning provided by  
33 K.S.A. 75-6102 and amendments thereto.



62-1

34 ~~To the extent that any unpaid arrearages accruing~~ under a sup-  
 35 port order rendered in another state give rise to a lien on real property  
 36 in the state where rendered, such arrearages shall become a lien on the  
 37 real property of the obligor ~~when~~ the clerk of court in this state enters the  
 38 order in the appearance docket. The clerk of court shall enter the order  
 39 in the appearance docket upon receiving payment of the fee prescribed  
 40 by K.S.A. 28-170 and amendments thereto and a legible copy of the sup-  
 41 port order or, in a title IV-D case, a notice of lien that describes the  
 42 support order. The lien shall become a lien only upon the obligor's real  
 43 property that is located in the county in which the filing is made, but a

If unpaid arrearages accrued

as of the date

1 filing may be made in any county in which real property of the obligor is  
 2 located. The lien shall cease to be a lien on the real property of the obligor  
 3 at the time provided in article 24 of this chapter. As used in this section,  
 4 "title IV-D case" means a case being administered pursuant to part D of  
 5 title IV of the federal social security act (42 U.S.C. § 651 et seq.) and  
 6 amendments thereto.

; a sworn statement that the obligor was provided at least 30 days prior written notice that the lien would be filed in this state, that the obligor was provided an opportunity for hearing concerning the proposed filing and that no hearing was timely requested or the decision therein allows the lien to be filed; a sworn statement of the amount of the lien

Any person filing the documents required by this subsection shall be deemed to have submitted to the jurisdiction of the courts of this state with respect to any action in this state to determine the validity of the lien or the lien's attachment to any real property.

**New Section \_\_\_\_.** (a) If an aggrieved person has the right to request an administrative hearing pursuant to K.S.A. 75-3306 and amendments thereto concerning any action of the secretary of social and rehabilitation services initiated pursuant to sections 16 through 24 and amendments thereto and such request for administrative hearing has not been docketed, the aggrieved person may file a petition with the district court pursuant to chapter 60 of the Kansas statutes annotated for review of the secretary's action. A petitioner under this section shall not be required to first exhaust administrative remedies that may be available to the person. The action shall be commenced within the time allowed, including any applicable extension, for requesting an administrative hearing on the same grounds. The action shall be filed in the county where child support enforcement services pursuant to K.S.A. 39-702 and amendments thereto are being provided at the time the petition is filed. The secretary of social and rehabilitation services shall be a necessary party in the action. In any action under this subsection, the court may grant any relief that would have been available to the parties in an administrative hearing conducted pursuant to K.S.A. 75-3306 and amendments thereto.

(b) A person named as the debtor in a notice of lien filed pursuant to subsection (d) of K.S.A. 60-2202 and amendments thereto, based upon a support order issued in another state, or a person whose interest in real estate is affected by the filing of such a notice of lien may file a petition pursuant to chapter 60 of the Kansas statutes annotated with the district court where the notice of lien was filed. The petitioner shall

notify the person who filed the notice of lien that a hearing to contest the validity of the lien or the lien's attachment to the petitioner's property will be held no less than 30 days after the date of mailing or personal service of the notice.

4-24-97

**Kansas**

**Social and  
Rehabilitation  
Services**

*MEMO*

**To:** Members of the Kansas Legislature

**From:** Rochelle Chronister  
Secretary

**Subject:** Senate Bill 140 - Child Support Enforcement

**Date:** April 23, 1997

An Attorney General's opinion was requested on Senate Bill 140, currently under consideration by the House Judiciary Committee. A copy of the opinion is attached for your reference.

The opinion notes that Section 76 of the bill does not insure that notice and opportunity for hearing are provided for persons affected by liens based on out-of-state orders. We are preparing a balloon to address this concern.

If you have any questions, Jamie Corkhill at the Child Support Enforcement Program will be glad to respond. Her number is 296-7209.

JLC  
JLC: Letters\LEGIS-23.047  
Attachment

*House Judiciary  
Attach 2  
4/24/97*



State of Kansas

## Office of the Attorney General

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COPY

CARLA J. STOVALL  
ATTORNEY GENERAL

April 22, 1997

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### ATTORNEY GENERAL OPINION NO. 97- 39

Rochelle Chronister, Secretary  
Kansas Department of Social and Rehabilitation Services  
915 S.W. Harrison Street  
Topeka, Kansas 66612

Re: Mentally Ill, Incapacitated and Dependent Persons; Social Welfare--  
Enforcement of Child Support Orders--1997 Senate Bill No. 140

Constitution of the State of Kansas--Bill of Rights--Equal Rights; Search and  
Seizure; Forfeiture of Estate

Synopsis: 1997 Senate Bill No. 140, Sections 4 and 73 (access to records held by third parties) and Section 6 (social security numbers required on certain license applications) do not violate Section 15 of the Kansas Bill of Rights. Sections 8 through 24 (administrative procedures) allow the Secretary of the Kansas Department of Social and Rehabilitation Services (SRS) to obtain access to information, subpoena records, order genetic tests and enforce support duties by income withholding and administrative levy. There may be Section 15 issues regarding the manner employed by SRS in conducting investigations and gathering evidence, but the resolution of those issues will be factual in nature. Consequently, we decline to opine whether Sections 8 through 24 violate Section 15 of the Kansas Bill of Rights.

Section 34 (liens on personal property) creates a preexisting right to certain personal property of a parent who is in arrears on a child support obligation and the due process procedural protections that are afforded to such parent comport with the Fourteenth Amendment to the United States Constitution. Unlike the procedural protections afforded by section 34, section 76 (liens on real property) contains no provisions for notice and an opportunity to contest the lien. Consequently, to the extent adequate due process proceedings are not available in the state of origin, that portion of Section 76

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which allows a lien from another state to become a lien on real property in this state violates the Fourteenth Amendment.

Sections 4 and 73 (access to records held by third parties) do not violate a right of privacy because the information at issue here serves a legitimate state interest in locating parents who owe child support and the assets of those parents. Such information is regarded as confidential and a person who discloses the information to unauthorized individuals is subject to criminal penalties. Moreover, section 6 (social security numbers required on certain license applications) does not violate a right of privacy because disclosure is required by federal law.

Whether a right of privacy is violated by Sections 8 through 24 (administrative procedures) will depend upon whether there is a violation of one of the provisions of the United States Constitution which forms the basis for a right of privacy. Liens on personal and real property do not generally raise issues concerning privacy rights and are better analyzed under the Fourteenth Amendment.

Sections 8 through 24 (administrative procedures) do not violate the separation of powers doctrine nor does section 10(e) [Secretary of Department of Social and Rehabilitation Services (SRS) authorized to designate SRS employees and independent contractors to exercise the powers of the Secretary in certain cases] violate Article 2, Section 1 of the Kansas Constitution which prohibits delegation of legislative authority to private individuals.

Finally, Section 12 of the Kansas Bill of Rights which prohibits forfeiture of estate upon conviction does not appear to be implicated in 1997 Senate Bill No. 140. Cited herein: K.S.A. 1996 Supp. 20-1204a; K.S.A. 23-492; 23-496; 23-4,105; 23-4,117; 23-4,145; 23-4,147; K.S.A. 1996 Supp. 38-1115; 38-1118; 39-709; K.S.A. 39-753; K.S.A. 1996 Supp. 39-755; K.S.A. 39-758; 39-759; 60-2202; K.S.A. 1996 Supp. 60-1610; 60-2202; 74-146; K.S.A. 77-501; 77-601; 77-624; Kan. Const., Art. 3, § 1; Art. 2, § 1; Kan. Bill of Rights, §§ 12, 15; U.S. Const., amend. IV, V, XIV; 5 U.S.C. § 552a; 42 U.S.C. § 666.

Dear Secretary Chronister:

You request our opinion concerning 1997 Senate Bill No. 140. Your Department has advised us that this bill was designed to implement Title III of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which is

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designed to tighten existing child support collection endeavors. The bill establishes a state directory of new hires and establishes new administrative procedures for ordering paternity testing, enforcing child support orders and collecting child support arrearages, including administrative levies on real and personal property. In an attempt to locate parents who are dilatory in paying child support, cable television companies, public utilities and financial institutions are required to provide information about the parent and the parent's assets and/or liabilities. We are advised that failure to implement Title III could result in the loss of \$29.3 million for the state.

Some members of the legislature are concerned that 1997 Senate Bill No. 140 violates provisions of the Kansas Bill of Rights (see 1997 Senate Concurrent Resolution No. 1612) and this is the impetus for your opinion request. However, before we address your specific questions, we believe that a brief history of federal and state efforts to collect child support is helpful in order to understand the genesis of this proposed legislation.

Prior to 1967, the methods of enforcement and implementation of child support orders were left to the discretion of the individual states. *Kansas Enacts New Provisions for Child Support Enforcement -Mandatory Wage Withholding*, 25 Washburn L. J., 91, 94 (1985). State efforts to collect child support were unsuccessful and, as a result, the number of children receiving support under the Aid to Families with Dependent Children Program (AFDC) increased dramatically. Rute, *The Tightening Web: Child Support Enforcement*, 63 J.K.B.A. p. 14 (October, 1994). In 1950, 34 of every 1000 children in the United States were receiving AFDC. *Id.* By 1975, the number had increased to 122 per 1000 - an increase of 72%. *Id.* By 1973, 83% of the families receiving AFDC benefits had one parent absent and were not receiving support from that parent sufficient to keep the family off assistance. *Id.*

Responding to the increase in AFDC recipients, Congress amended The Social Security Act in 1967 requiring states to initiate paternity actions and collect support on behalf of children receiving public assistance. *Id.* In 1974, Congress enacted amendments to the Social Security Act, adding Title IV, Part D, which provided federal funding to the states to cover part of the administrative cost of paternity establishment and child support enforcement. *Id.* Minimum standards were imposed upon state collection efforts, cooperation by AFDC recipients was mandated in most cases and non-AFDC recipients became eligible for assistance in obtaining enforcement of support orders. *Id.* The Child Support Enforcement Amendments of 1984 were Congress's next attempt to decrease the number of AFDC recipients. This legislation required intercepts of state tax refunds, mandated states to establish discretionary child support guidelines and procedures for expeditious processing of cases and provided incentive payments for collection of non-AFDC as well as AFDC support obligations. *Id.*

The federal Family Support Act of 1988 mandated more stringent wage withholding provisions by requiring withholding even where there was no arrearage and allowed the use of social security numbers to establish the identity of parents. *Id.* Congress

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addressed the problem of collecting child support in two more legislative enactments [Child Support Recovery Act of 1992 and the Omnibus Reconciliation Act of 1993] before passing the 1996 Welfare Reform Act which generated the mandate that 1997 Senate Bill No. 140 was drafted to address.

Under current state law, the Kansas Department of Social and Rehabilitation Services (SRS) is the agency designated under Title IV-D to collect child support, but the court trustee office is also authorized to enforce child support obligations. K.S.A. 23-492 *et seq.* AFDC recipients are required to assign their child support rights to SRS and SRS can then institute a civil action to establish parentage and enforce child support. [SRS can also initiate such actions on behalf of non-AFDC recipients]. K.S.A. 1996 Supp. 39-709(c), K.S.A. 1996 Supp. 39-755; K.S.A. 39-756; K.S.A. 1996 Supp. 38-1115. SRS or its contractor can apply to the court for income withholding orders which require an employer to withhold income to satisfy a child support order. K.S.A. 23-4,105 *et seq.* K.S.A. 23-4,147 directs SRS to establish a system for disseminating information and advice to individuals seeking assistance in enforcing support orders and K.S.A. 39-753 requires SRS to establish a parent locator registry. State, county and local units of government are required to assist SRS by providing information concerning the location, employment status, income, date of birth and social security number of an absent parent. K.S.A. 39-758. SRS can provide arrearage information to credit reporting agencies and a court may restrict a parent's driver's license if he or she is found guilty of contempt in a child support enforcement proceeding. K.S.A. 23-4,145; K.S.A. 1996 Supp. 20-1204a. Moreover, licensing entities may take disciplinary action against a professional licensee if the latter has been found in contempt in a child support enforcement proceeding. K.S.A. 1996 Supp. 74-146.

With this background in mind, we now address your queries:

**1. Does 1997 Senate Bill No. 140 violate Section 15 of the Kansas Bill of Rights as it relates to Sections 4 and 73 (access to records), Section 6 (social security numbers on certain applications), Sections 8 through 24 (administrative procedures), Section 34 (liens on personal property), and Section 76 (liens on real property)?**

***a. Do Sections 4 and 73 (access to records) violate Section 15 of the Kansas Bill of Rights?***

1997 Senate Bill No. 140 authorizes SRS to subpoena information concerning the location of parents and their assets and liabilities from a variety of sources. An employer must provide information regarding the employment, compensation and benefits of its employees and contractors. Section 4(b). Public utility and cable television companies must provide customers' names and addresses as well as those of customers' employers as reflected in such records. Section 4(c). Financial institutions must disclose information



about a parent or the parent's property and liabilities. Section 4(d). State, county and local units of government are already required to cooperate with SRS in locating absent parents by providing information about location, employment status, date of birth and social security number as well as any information concerning medical or health insurance coverage for a dependent. K.S.A. 39-758. Section 73(a) of Senate Bill 140 amends K.S.A. 39-758 by requiring governmental entities to provide information concerning the location of a parent's assets. Finally, SRS or its designee can obtain information from records of the Department of Revenue concerning the person who has a duty of support. Section 73(c). Information gathered by SRS is confidential and is available only to persons authorized to receive such information. Sections 4(f), 73(d). Violation of these confidentiality provisions is a class B nonperson misdemeanor. K.S.A. 39-759, as amended by 1997 S. B. No. 140, § 74(a).

Section 15 of the Kansas Bill of Rights guarantees the "right of the people to be secure in their persons and property against unreasonable searches and seizures." Section 15 is identical to the wording of the Fourth Amendment to the United States Constitution. *State v. Tinsley*, 16 Kan.App.2d 287 (1992).

The first step in reviewing a potential violation of Section 15 or the Fourth Amendment is to determine whether a person has a reasonable expectation of privacy in the items disclosed to the government. *Smith v. Maryland*, 442 U.S. 731, 61 L.Ed.2d 220, 99 S.Ct. 2577 (1979). In that vein, the United States Supreme Court and the Kansas Supreme Court have concluded that a person has no expectation of privacy in records pertaining to that individual which are held by a financial institution or a telephone company because the customer knows and expects that others will see the records. *State v. Schultz*, 252 Kan. 819 (1993), *Southwestern Bell Telephone Company v. Miller*, 2 Kan.App.2d 558 (1978), *United States v. Miller*, 425 U.S. 435, 48 L.Ed.2d 71, 96 S.Ct. 1619 (1976); *Smith v. Maryland*, *supra*.

"In *United States v. Miller* (citation omitted), the United States Supreme Court reasoned that a bank depositor had no reasonable expectation of privacy in bank records because the documents were the bank's business records, not the depositors 'private papers.' The court stated: 'the checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain all information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. . . .

"The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the government. [Citations omitted.] This court has held repeatedly that the fourth amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to government authorities, even if the information is revealed on the

assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed. [Citations omitted.]

"In *Southwestern Bell Telephone Co.*, the Kansas Court of Appeals stated the *Miller* decision 'establishes that bank customers have no fourth amendment interest in their records, so that such records could be lawfully obtained by a grand jury through subpoena duces tecum addressed to a bank. We would suppose that this disposes of any claim which might be made by telephone customers.'" 252 Kan. at 823.

Using the same rationale, a federal district court in Wyoming found no legitimate expectation of privacy in a utility company's records. *United States v. Porco*, 842 F.Supp. 1393 (D.Wy. 1994). Finally, in *Donaldson v. United States*, 400 U.S. 517, 27 L.Ed.2d 580, 91 S.Ct. 534 (1971), the court concluded that an employee has no reasonable expectation of privacy in the employment records held by an employer.

In short, it appears that an individual has no reasonable expectation of privacy as against the government in the records held by the various entities identified in Sections 4 and 73 of 1997 Senate Bill No. 140 and, therefore, these sections do not violate Section 15 of the Kansas Bill of Rights.

***b. Does Section 6 (social security numbers on license applications) violate Section 15 of the Kansas Bill of Rights?***

Section 6 of 1997 Senate Bill No. 140 requires that the social security numbers of individuals applying for professional licenses, occupational licenses or marriage licenses be recorded on the license application. Kansas statutes are replete with the requirement that a person disclose a social security number. See, e.g., K.S.A. 1996 Supp. 65-2409a(f) (parents required to furnish social security number when birth certificate is filed unless an exemption applies); K.S.A. 1996 Supp. 8-240(c) (application for commercial driver's license must include applicant's social security number); K.S.A. 17-2256 (an agent of a guarantee corporation who writes contracts guaranteeing shares of credit union members must provide social security number to the credit union administrator); K.S.A. 23-4,108 (payor in an income withholding procedure is obligated to supply the social security number of an obligor); K.S.A. 40-2508 (a person desiring to register with the state insurance commissioner as an automobile club agent must supply social security number); K.S.A. 59-2130 (petition for adoption must contain the social security number of the child's parents); K.S.A. 60-717 (garnishment orders must include the defendant's social security number); K.S.A. 65-1815 (applicant for barber's license must supply social security number); K.S.A. 65-2422b (information regarding divorces that is filed with the Register of Vital Statistics must contain the parties' social security numbers); K.S.A. 74-139 (all applicants for state licenses must provide social security numbers).

Section 15 of the Kansas Bill of Rights addresses unreasonable searches and seizures. A seizure of property is some meaningful interference with an individual's possessory interest in property. 68 Am.Jur.2d *Searches and Seizures*, § 7. A search occurs when an expectation of privacy that society considers reasonable is infringed. *Id.* 42 U.S.C. § 666(a)(13) requires that states obtain social security numbers from applicants for the types of licenses mentioned in Section 6 of 1997 Senate Bill No. 140. Given the plethora of laws that require disclosure of one's social security number, it is our opinion that an individual has no reasonable expectation of privacy in his or her social security number as against the government when applying for a professional, occupation, or marriage license. Consequently, there is no violation of Section 15 of the Kansas Bill of Rights.

***c. Do Sections 8 through 24 (administrative procedures) violate Section 15 of the Kansas Bill of Rights?***

Sections 8 through 24 allow the Secretary of SRS to obtain access to information as authorized by law, subpoena records, order genetic tests, order minimum payments to defray arrearages and enforce support duties by income withholding, administrative levy and executions against property. Section 10(d) allows the Secretary to conduct investigations into the existence of the parent and child relationship and the location of a parent and the parent's assets. The Secretary may also initiate, modify and enforce income withholding orders and otherwise enforce support orders by administrative remedies provided by law. Section 10(d)(5)(6). The mechanism to accomplish these objectives is through administrative hearings governed by the Kansas Administrative Procedures Act (KAPA), K.S.A. 77-501 *et seq.* and the Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* 1997 S. B. No. 140, § § 13, 14, 15 and 21.

Section 15 of the Kansas Bill of Rights addresses unreasonable searches and seizures. Sections 8 through 24 of Senate Bill No. 140 create administrative procedures that enable SRS to take action. There may be Section 15 issues regarding the manner employed by SRS or its designees in conducting investigations and gathering evidence, but the resolution of those issues will be factual in nature and, therefore, we decline to speculate concerning whether particular proceedings initiated under Sections 8 through 24 violate Section 15 of the Kansas Bill of Rights.

***d. Does Section 34 (liens on personal property) and Section 76 (liens on real property) violate Section 15 of the Kansas Bill of Rights?***

While you request our opinion concerning whether Sections 34 and 76 violate Section 15 of the Kansas Bill of Rights, we understand your inquiry to be whether the Fourteenth Amendment's protection against the deprivation of property without due process of law is implicated.

Section 34 of 1997 Senate Bill No. 140 amends K.S.A. 23-4,146 (Income Withholding Act) by creating a lien by operation of law upon certain personal property of an individual who owes child support arrearages. The person who is owed such support or SRS, by virtue of its assignment, may then perfect the lien by filing a notice as prescribed in the section.

In **Connecticut v. Doebr**, 501 U.S. 1, 115 L.Ed.2d. 1, 111 S.Ct. 2105 (1991), the United States Supreme Court concluded that state procedures for creating and enforcing attachments, as with liens, are subject to the strictures of due process. See **Reardon v. United States**, 947 F.2d. 1509 (1st Cir. 1991) (lien on real property created by federal statute amounts to a deprivation of a significant property interest within the meaning of the Fourteenth Amendment's Due Process Clause); **Cobb v. Saturn Land Co.**, 966 F.2d. 1334 (10th Cir. 1992) (oil and gas liens constitute a deprivation of property sufficient to require procedural due process protections).

"We agree . . . that the property interests that attachment affects are significant. For a property owner . . . attachment ordinarily clouds title; impairs the ability to sell or otherwise alienate the property; taints any credit rating; reduces the chances of obtaining a home equity loan or additional mortgage; and can even place an existing mortgage in technical default where there is an insecurity clause." 115 L.Ed.2d at 14.

In **Cobb v. Saturn Land Co.**, *supra*, the 10th Circuit upheld an Oklahoma statute that created an oil and gas lien on a leasehold where the lienor had performed services or provided supplies. The lien statute required a public filing of the notice of lien, notice to the owner and a hearing on the merits, if requested. The court concluded that in light of the fact that the lienor already possessed a lien by operation of law, this "preexisting right in the encumbered property" heightened the creditor's interest that justified the summary enforcement procedures provided in the statute.

Before an income withholding order can issue, there must first be an underlying order of support issued by a court or an administrative agency which contains a finding that the obligor owes a duty of support and the amount that is due. Such a procedure, whether conducted in a divorce setting or a paternity hearing, requires notice to the obligor and an opportunity to be heard. K.S.A. 60-1601; K.S.A. 38-1117. Support orders issued or modified after January 1, 1986 contain income withholding provisions which require a payor to withhold income to satisfy an arrearage. However, prior to initiating a withholding order, notice and an opportunity to contest the withholding is provided to the obligor before the withholding order issues. K.S.A. 23-4,107. If the original support order does not contain an income withholding provision, either the court or SRS may issue the order after notice and an opportunity to contest the withholding has been offered to the obligor. Sections 15(c), 19, 21, 27, 30. [S.B. 140, Section 27 amends K.S.A. 23-4,107 by requiring new support orders and modifications of support orders to contain income withholding provisions that provide for immediate issuance without further notice to the obligor.]

Under the proposed amendment to the Income Withholding Act, a lien will not arise under an income withholding order until there is an arrearage in a certain amount. Section 34. The obligee is required to provide notice of the lien to the obligor and the latter may request a hearing. Section 34(a)(4). Consequently, it is our opinion that Section 34 creates a preexisting right to certain personal property of a parent who is in arrears on a child support obligation and the due process procedural protections that are afforded to such parent comport with the Fourteenth Amendment.

Section 76 amends K.S.A. 60-2202 [which provides that any judgment rendered by a district court in the state of Kansas creates a lien on the debtor's real estate in the county in which the judgment is rendered] by allowing unpaid child support arrearages accruing under a support order issued in another state that would give rise to a lien on real property in that state to become a lien on the obligor's real estate located in the state of Kansas when the notice of lien is filed in the county where the property is located. Unlike the procedural protections afforded by Section 34 with regard to certain personal property, Section 76 contains no provisions for notice and an opportunity to contest the lien. Consequently, to the extent adequate due process proceedings are not available in the state where the lien arises, that portion of Section 76 which allows a lien from another state to become a lien on real property in this state violates the Fourteenth Amendment.

2. Is the right of privacy violated by Sections 4 and 73 (access to records), Section 6 (social security numbers on certain applications), Section 8 through 24 (administrative procedures), Section 34 (liens on personal property) and Section 76 (liens on real property)?

a. Do Sections 4 and 73 (access to records) violate a right of privacy?

While the Constitution does not explicitly establish a right of privacy, the Supreme Court has recognized for nearly 100 years that a right of personal privacy does exist. *Eastwood v. Dept. of Corrections of State of Oklahoma*, 846 F.2d 627 (10th Cir. 1988). In a series of cases, the court established a zone of privacy protected by the penumbra of a variety of provisions in the United States Constitution. [The roots of the right of privacy have been found in the First Amendment, *Stanley v. George*, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); the Fourth and Fifth Amendments, *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); the general penumbra of the Bill of Rights, *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); and in the Fourteenth Amendment's concept of personal liberty and restriction upon state action, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973)]. This penumbra protects two kinds of privacy interests: the individual's interest in avoiding disclosure of personal matters and the interest in being independent when making certain kinds of personal decisions. *Whalen v. Roe*, 429 U.S. 589, 599, 97 S.Ct. 869, 51 L.Ed.2d 64 (1977). The first interest protects the individual from governmental inquiry into matters in which it does not have a legitimate and proper interest. "The right to be left alone" is "the right most valued by

civilized men." *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed.2d 944 (1928).

Sections 4 and 73 require individuals and entities to provide information to SRS concerning the location of a parent who owes child support, the nature of the parent's assets and liabilities and the location of such assets. The seminal case on the issue of disclosure of personal information to the government by third parties is *Whalen v. Roe*, *supra*. In *Whalen*, the court upheld a New York statute that required physicians to provide to the state copies of prescriptions for certain designated drugs. The prescription contained the doctor's name, the drug and its dosage and the name, address and age of the patient. The information was recorded in a central computerized file with strict regulations designed to protect the patient's identity. The United States Supreme Court found that the state had a vital interest in controlling the distribution of dangerous drugs and that the privacy concerns were ameliorated by the strictures on disclosure.

In *Skinner v. Railway Labor Executive Association*, 489 U.S. 602, 103 L.Ed.2d 639, 109 S.Ct. 1402 (1989), transportation employees subject to drug testing were required to disclose in writing whether they had taken any medications during the preceding thirty days in order to ascertain whether an employee's positive drug test result could be explained by the lawful use of medications. The written disclosures were collected by the employer and provided to government regulators. Citing *Whalen*, the court found no invasion of privacy in the absence of evidence that the government did not treat the information as confidential or that it used the information for any other purpose. See also *Shane v. Buck*, 658 F.Supp. 908 (D. Utah 1985), *affirmed*, 817 F.2d 87 (10th Cir. 1987) and *Kuzman v. United States Postal Service*, 798 F.2d 29 (2d Cir. 1986) where the court upheld the validity of a United States Postal Service regulation that required a private mail forwarding service to supply to the government information concerning its customers. Supplying one's name and address to the Postal Service was not a disclosure of personal matters likely to establish a constitutional deprivation.

The lesson of *Whalen* and its progeny is that the right of privacy encompasses an individual's interest in avoiding the disclosure of personal matters but when confronted with such disclosure, the court will uphold a scheme where the state has articulated a legitimate need for the information and there are sufficient safeguards to protect the confidentiality of the information.

"A final word about issues we have not decided. We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health and the direction of our armed forces and the enforcement of the criminal laws, all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed. The right to

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collect and use such data for public purposes is typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures." 51 L.Ed.2d at 77.

It is our opinion that the provisions of 1997 Senate Bill No. 140 relating to the disclosure of information by third parties to SRS do not violate a right of privacy because the information at issue here serves a legitimate state interest in locating parents who owe child support. Such information is regarded as confidential and a person who discloses the information to unauthorized individuals is subject to the criminal penalties of K.S.A. 39-759, as amended by 1997 S.B. 140, § 74. 1997 Senate Bill No. 140, § 4(f).

***b. Does Section 6 (social security numbers on certain applications) violate a right of privacy?***

Section 7 of the Federal Privacy Act of 1974 [5 U.S.C.S. § 552a note] does not prohibit disclosure of social security numbers but generally makes it unlawful for a state or local governmental agency to deny an individual any right or benefit provided by law because of the individual's refusal. However, it is not unlawful if disclosure is required by federal statute. 42 U.S.C. § 666(a)(13) requires that states obtain social security numbers from applicants for the type of licenses mentioned in Section 6 of 1997 Senate Bill No. 140 so it is not unlawful for the state to require an applicant for such licenses to disclose the applicant's social security number. Consequently, we find no violation of a federal statutory right of privacy.

***c. Do Sections 8 through 24 (administrative procedures), Section 34 (lien on personal property) and Section 76 (lien on real property) violate a right of privacy?***

Virtually, every governmental action interferes with personal privacy to some degree. *Katz v. United States*, 389 U.S. 347, 19 L.Ed.2d. 576, 88 S.Ct. 507 (1967). The question in each case is whether that interference violates a command of the United States Constitution. *Katz, supra*. Sections 8 through 24 create an administrative procedure designed to allow SRS to conduct investigations into the parent and child relationship, the location of parents and their assets and to enforce support orders by income withholding, administrative levy and execution against property.

As indicated previously, the right of privacy exists in the penumbra of several constitutional provisions. Whether a right of privacy is violated by the administrative procedures at issue here will depend upon whether there is a violation of one of those provisions. We cannot speculate on which constitutional provision, if any, may apply to the numerous provisions of 1997 Senate Bill No. 140 and, therefore, we decline to opine whether Sections 8 through 24 violate any of the provisions of the United States Constitution that create a right of privacy.

Liens on personal and real property do not generally raise issues concerning privacy rights and are better analyzed under the Fourteenth Amendment to the United States Constitution. [See Section 1(d).]

**3. Do Sections 8 through 24, concerning administrative procedures of 1997 Senate Bill No. 104 violate the separation of powers doctrine?**

Like the Constitution of the United States, the Kansas Constitution contains no express provision establishing the doctrine of separation of powers. However, it has been recognized that the very structure of the three branch system gives rise to the doctrine. *State ex rel, Stephan v. Kansas House of Representatives*, 236 Kan. 45, 59 (1984).

"The basic meaning of the separation of powers doctrine is that the whole power of one department should not be exercised by the same hands which possess the whole power of either of the departments. [Citations omitted]. It does not necessarily follow, however, that an entire and complete separation is either desirable or was ever intended by the framers of the Constitution. The fact that the powers of one department may overlap with another department's powers has longed been a recognized fact. Throughout the judicial history of this state early decisions attempted to apply the doctrine strictly, refusing to tolerate any overlapping of powers. [Citations omitted]. The more recent cases have modified the doctrine, taking a more pragmatic, flexible and practical approach giving recognition to the fact that there may be a certain degree of blending or admixture of the three powers of government and that absolute separation of powers is impossible." *Leek v. Theis*, 217 Kan. 784 (1975).

When a statute is challenged under the doctrine of separation of powers, the Court must search for a usurpation by one department of the powers of another department on the specific facts and circumstances presented. *Leek, supra*. A usurpation of powers exists when there is a significant interference by one department with the operations of another department. *State, ex rel. v. Bennett*, 219 Kan. 285 (1976). In determining whether or not a usurpation of powers exists a court should consider (a) the essential nature of the power being exercised; (b) the degree of control by one department over another; (c) the objective sought to be obtained by the legislature; and (d) the practical result of the blending of powers as shown by actual experience over a period of time. *Bennett, supra*.

Presently, it is the district court that issues child support judgments and income withholding orders. K.S.A. 1996 Supp. 60-1610; K.S.A. 23-4105 *et seq.* The district court may also order genetic testing and determine paternity. K.S.A. 1996 Supp. 38-1118. Sections 8 through 24 of 1997 Senate Bill No. 140 provide an administrative scheme that is parallel to the court process in that SRS or its designees may subpoena records, order genetic testing, order payments to defray child support arrearages, enforce income withholding



orders, enforce support duties by administrative levy, and order execution on property. Section 10.

Under the separation of powers doctrine, we must determine whether the executive department is significantly interfering with the power of the judiciary by implementing an administrative procedure that is designed to expedite the identification of parents who owe child support, the location of their assets and the collection of those support obligations. Over the years the district courts and SRS have joined forces to collect child support obligations. In 1972, the Office of the Court Trustee was established for the purpose of performing support enforcement duties. K.S.A. 23-492 *et seq.* The court trustee, with the approval of the administrative judge, may issue subpoenas, summonses, administer oaths and take sworn testimony, appoint special process servers and enter into stipulations, acknowledgments, agreements and journal entries, subject to approval of the court. K.S.A. 23-496. The Office of Judicial Administration and the Secretary of SRS are required to cooperate in designing legal forms and informational materials which describe the procedures and remedies under the Income Withholding Act. K.S.A. 23-4117. Moreover, the Judicial Administrator of the courts and the Secretary of SRS are required to contract with each other to develop and maintain an automated management information system which monitors support payments, maintains accurate records of support payments and permits prompt notices of arrearages in support payments. K.S.A. 23-4117. The Secretary of SRS may contract with court trustees for enforcement services. K.S.A. 23-4117.

A balloon amendment to Section 10 of 1997 Senate Bill No. 140 provides as follows:

"Nothing in sections 8 through 24 . . . shall be construed as authorizing the secretary to enter an order to establish or modify an obligation for current support. Nothing in sections 8 through 24 . . . shall be construed as limiting or restricting the jurisdiction of the courts of this state."

Furthermore, the bill prohibits SRS from modifying a child support order or an income withholding order that has been issued by a district court. Sections 19, 20.

Any administrative order that is issued by SRS or its designees is subject to a hearing pursuant to KAPA with judicial review pursuant to K.S.A. 77-601 *et seq.* Sections 13, 14, 15. Any order issued by SRS can only be enforced by resort to the Act for Judicial Review and Civil Enforcement of Agency Actions at K.S.A. 77-624. So, ultimately, it is the courts who will be the final arbiters concerning contested administrative actions and the enforcement of orders issued by SRS.

Article 3, Section 1 of the Kansas Constitution, which vests judicial powers in the courts, was never intended to prevent the Legislature from conferring quasi-judicial powers on administrative agencies when necessary to enable them to carry out their functions. *Behrman v. PERB*, 225 Kan. 435 (1979). While the essential nature of the power sought to be exercised by SRS under the bill is quasi-judicial we can find no usurpation by SRS

over the functions of the judiciary in the administrative procedures set forth in 1997 Senate Bill No. 140, especially in light of the existing cooperation between the courts and SRS in collecting child support and the legislative objective of expediting the enforcement of child support obligations. Consequently, it is our opinion that Sections 8 through 24 of 1997 Senate Bill No. 140 do not violate the separation of powers doctrine.

**4. Does subsection (e) of Section 10 of 1997 Senate Bill 140 concerning delegation of administrative powers to SRS employees and independent contractors violate Article 2, Section 1 of the Kansas Constitution which provides that the legislative power is vested in the Legislature?**

Subsection 10(e) allows the Secretary of SRS to designate SRS employees to exercise the powers of the Secretary in certain cases and to contract with private individuals to serve as agents in order to exercise the powers of the Secretary in Title IV-D cases. Those powers are enumerated in Section 10(b) and (d) and include, among other things, the power to obtain access to information, subpoena records, order genetic testing, determine arrearage amounts, perfect liens, order execution against property, enforce income withholding orders and investigate the location of a parent and the parent's assets.

Article 2, Section 1 of the Kansas Constitution provides that the legislative power is vested in the Legislature. Such power cannot be delegated to private individuals or entities. *Gumbhir v. Kansas State Board of Pharmacy*, 228 Kan. 579 (1980). The issue that we must determine is whether Section 10(e) delegates legislative power to private individuals. Legislative power includes the power to appoint and the authority to make rules and provide penalties for their breach. *Gumbhir, supra*; *Sedlak v. Dick*, 256 Kan. 779 (1995); *Vakas v. Kansas State Board of Healing Arts*, 248 Kan. 589 (1991); *State v. Crawford*, 104 Kan. 141 (1919); *Van Sickle v. Shanahan*, 212 Kan. 426, 440 (1973). The powers enumerated in Section 10(b) and (d) do not appear to be legislative in nature. If anything, they are more in line with executive (i.e. administrative) or quasi-judicial functions. Article 2, Section 1 of the Kansas Constitution only encompasses legislative powers - not quasi-judicial functions. *U.S.D. 279 v. Secretary of Kansas Department of Human Resources*, 247 Kan. 519 (1990). We understand that the quasi-judicial functions listed in Section 10 will be administered by SRS employees but that contractors may be retained to provide the administrative services associated with investigations and the collection of support. In short, there does not appear to be a delegation of legislative authority to such contractors and, therefore, we find no violation of Article 2, Section 1.

**5. Does 1997 Senate Bill No. 140 violate Section 12 of the Kansas Bill of Rights concerning forfeiture of an estate?**

Section 12 of the Kansas Bill of Rights provides that "no conviction within the state shall work a forfeiture of an estate." Under the common law, when sentence was pronounced for a capital offense, the offender, by operation of law, forfeited his or her property to the

King. 21 Am.Jur.2d *Criminal Law* § 616. Section 12 prevents such forfeiture when a person is convicted of a crime. ***Rosenberger v. Northwestern Mutual Life Insurance***, 182 F.Supp. 633 (D.C. Kansas 1960); ***United States v. Nichols***, 841 F.2d 1485 (10th Cir. 1988). We fail to see how Section 12 is implicated in this proposed enactment because it does not deal with criminal convictions. Therefore, it is our opinion that 1997 Senate Bill No. 140 does not violate Section 12 of the Kansas Bill of Rights.

Summarizing, it is our opinion that 1997 Senate Bill No. 140, Sections 4 and 73 (access to records held by third parties) and Section 6 (social security numbers required on certain license applications) do not violate Section 15 of the Kansas Bill of Rights. Sections 8 through 24 (administrative procedures) allow the Secretary of the Kansas Department of Social and Rehabilitation Services (SRS) to obtain access to information, subpoena records, order genetic tests and enforce support duties by income withholding and administrative levy. There may be Section 15 issues regarding the manner employed by SRS in conducting investigations and gathering evidence, but the resolution of those issues will be factual in nature. Consequently, we decline to opine whether Sections 8 through 24 violate Section 15 of the Kansas Bill of Rights.

Section 34 (liens on personal property) creates a preexisting right to certain personal property of a parent who is in arrears on a child support obligation and the due process procedural protections that are afforded to such parent comport with the Fourteenth Amendment to the United States Constitution. Unlike the procedural protections afforded by Section 34, Section 76 (liens on real property) contains no provisions for notice and an opportunity to contest the lien. Consequently, to the extent adequate due process proceedings are not available in the state of origin, that portion of Section 76 which allows a lien from another state to become a lien on real property in this state violates the Fourteenth Amendment.

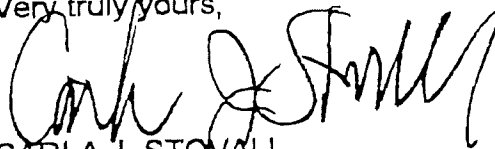
Sections 4 and 73 (access to records held by third parties) do not violate a right of privacy because the information at issue here serves a legitimate state interest in locating parents who owe child support and their assets. Such information is regarded as confidential and a person who discloses the information to unauthorized individuals is subject to criminal penalties. Moreover, Section 6 (social security numbers required on certain license applications) does not violate a right of privacy because disclosure is required by federal law. Liens on personal and real property do not generally raise issues concerning privacy rights and are better analyzed under the Fourteenth Amendment to the United States Constitution.

Sections 8 through 24 (administrative procedures) do not violate the separation of powers doctrine nor does Section 10(e) [Secretary of Department of Social and Rehabilitation Services (SRS) authorized to designate SRS employees and independent contractors to exercise the powers of the Secretary in certain cases] violate Article 2, Section 1 of the Kansas Constitution which prohibits delegation of legislative authority to private individuals.

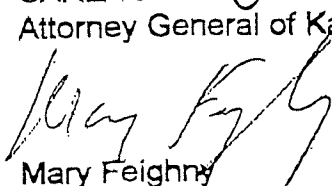
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Finally, Section 12 of the Kansas Bill of Rights which prohibits forfeiture of estate upon conviction does not appear to be implicated in 1997 Senate Bill No. 140.

Very truly yours,



CARLA J. STOVALL  
Attorney General of Kansas



Mary Feighny  
Assistant Attorney General

CJS:JLM:MF:jm

3

**Amend Section 34.**

K.S.A. 23-4,146 is hereby amended to read as follows: 23-4,146.

(a) Whenever there is an arrearage in payment of an order of support in an amount equal to or greater than the amount of support payable for one month, ~~the obligee, the secretary of social and rehabilitation services or the secretary's contractors, if the right to support has been assigned to the secretary, may establish~~ a lien shall arise by operation of law upon certain personal property of the obligor. *The lien may be perfected as follows:*

(1) In the case of a vehicle, the obligee ~~or secretary may perfect establish a~~ may perfect a lien on the vehicle by filing a notice of lien with the division of vehicles of the department of revenue. [The perfection of the lien shall not be in effect until the notation of the lien is actually placed upon the certificate of title for the vehicle.] The notice shall be in a form prescribed by the division, *or on a federal form as required by title IV-D*, and shall contain a description of the vehicle, the name and address of the obligee or secretary, the name and last known address of the obligor and any other information required by the division. ~~An affidavit of the obligee or the person designated by the secretary shall be filed with the notice and shall state that there is an arrearage in an amount~~ *The notice shall state the amount of the arrearage and that the arrearage is equal to or greater than the amount of support payable for one month and that a.* A copy of the notice of lien shall be sent ~~simultaneously~~ by first class mail to the obligor ~~and~~ the obligor's last known address.

Upon the filing of the of the notice of lien in accordance with this subsection (a)(1) and payment tot the division of a fee of \$5, the division shall be authorized to demand in writing the surrender of the title certificate from the owner of the vehicle for the purpose of recording the lien on the title certificate. Once the lien is properly recorded [and perfected by actually noting it on the certificate of title], a transfer of title <sup>is not</sup> valid unless the lien has been released in the manner provided the K.S.A. 8-135 and amendments thereto or the transfer has been consented to in writing by the lienholder. If the obligor fails to surrender the title certificate within 15 days after the written demand by the division of vehicles, the division shall notify ~~the person or entity seeking the lien.~~ Such

OK

House Judiciary  
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~~person or entity obligee~~ secretary *seeking to perfect the lien*. If the ~~tribunal that issued the support order~~ is able to exercise jurisdiction over the obligor. The obligee secretary may obtain an order of the court which issued the support order ~~from the tribunal~~ requiring the obligor to surrender the title certificate ~~to the court~~ so that ~~a~~ *the* lien may be properly recorded.

**April 9th packet of balloons:**

Section Number & Topic	Comments
9 - Definitions for administrative procedures	Additional changes may be needed in definitions for "party" and "state"
10 - General statement of administrative powers	<b>Delete</b> section 10 (also sections 11, 14, and 15) <b>if new versions of sections 16 through 23 are adopted</b>
16 - Administrative subpoenas	<b>Replaced</b> - see new packet
17 - Admin. order for genetic testing	<b>Replaced</b> - see new packet
20 - Modification of admin. income withholding order	<b>Replaced</b> - see new packet
22 - Administrative levy against bank accounts	<b>Replaced</b> - see new packet
34 - Liens against personal property	Includes changes requested by Div'n of Vehicles and Don McNeely (car dealers)
64 - Lifetime hunting/fishing licenses	Technical correction (pointed out by Revisor's Office)
73 - Access to government records	May need additional change recommended by Dept. of Revenue (Shirley Sicilian)
74 - Sanctions for misuse of information	
81 - Access to Dept. of Revenue records	Includes Dept. of Revenue (Shirley Sicilian) suggestions as of April 9
83 - Effective date of act	Change requested by Governor's Office, unless Senate language deleted.

*House Judiciary  
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4-9-97

4-2

15 New Sec. 9. The following definitions shall apply in any IV-D ad-  
16 ministrative proceeding related to sections 8 through 24 and amendments  
17 thereto, except where the context requires otherwise.

18 (a) "Account" means a demand deposit account, checking or nego-  
19 tiable withdrawal order account, savings account, time deposit account or  
20 money-market mutual fund account.

21 (b) "Arrearages" means past due support under any support order of  
22 any tribunal of this or any other state, including but not limited to the  
23 unpaid balance of any costs awarded, public assistance debt or accrued  
24 interest.

25 (c) "Business day" means a day on which state offices in Kansas are  
26 open for regular business.

27 (d) "Cash asset" means any intangible property that consistently  
28 maintains a fair market value of one dollar per unit. It shall be presumed  
29 that any account held by a financial institution and from which the obligor  
30 may make cash withdrawals, with or without penalty, consists entirely of  
31 cash assets.

32 (e) "Current support" includes but is not limited to the duty to pro-  
33 vide for a child's ongoing medical needs through cash, insurance coverage  
34 or other means. "Current support" does not include any periodic amount  
35 specified to defray arrearages.

36 (f) "Custodial parent" means the parent or other person receiving IV-  
37 D services on the child's behalf and may include an agency acting *in loco*  
38 *parentis*, a guardian, or a blood or adoptive relative with whom the child  
39 resides.

40 (g) "Duty of support" means any duty to support another person that  
41 is imposed or imposable by law or by any order, decree or judgment of  
42 any tribunal, whether interlocutory or final or whether incidental to a  
43 proceeding for divorce, judicial separation, separate maintenance or oth-

1 erwise, including but not limited to the duty to provide current support,  
2 the duty to provide medical support, the duty to pay birth expenses, the  
3 duty to pay a public assistance debt and the duty to pay arrearages.

4 (h) "Financial institution" means any financial institution as defined  
5 in 469A of the federal social security act (42 U.S.C. § 469A) and amend-  
6 ments thereto.

7 (i) "Holder" means any person who is or may be in possession or  
8 control of any cash asset of the responsible parent.

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9 (j) "IV-D" or "title IV-D" means part D of title IV of the federal  
10 social security act (42 U.S.C. § 651 *et seq.*) and amendments thereto. "IV-  
11 D services" means those services the secretary provides pursuant to title  
12 IV-D.

13 (k) "Party" means the secretary, the responsible parent, the custodial  
14 parent or the child or any assignee or other successor in interest to any  
15 of them. "Party" shall not be construed to require that any person or  
16 entity must be formally joined or personally served in any IV-D admin-  
17 istrative proceeding except as specifically provided by law.

18 (l) "Public assistance debt" means the obligation to reimburse public  
19 assistance as described in K.S.A. 39-718b or 39-719 and amendments  
20 thereto or in any similar law of this or any other state.

21 (m) "Responsible parent" means, if a child is receiving or has re-  
22 ceived IV-D services from the secretary, the mother, father or alleged  
23 father of the child.

24 (n) "Secretary" means the secretary of social and rehabilitation serv-  
25 ices or a designee of the secretary.

26 (o) "State" means a state of the United States, the District of Colum-  
27 bia, the Commonwealth of Puerto Rico or any territory or insular pos-  
28 session subject to the jurisdiction of the United States. The term "state"  
29 includes an Indian tribe and includes any jurisdiction declared a foreign  
30 reciprocating country by the United States secretary of state and any  
31 foreign jurisdiction that has established procedures for issuance and en-  
32 forcement of child support orders which are substantially similar to the  
33 procedures of this state. It shall be presumed that a foreign jurisdiction  
34 which is the subject of an unrevoked declaration by the attorney general  
35 pursuant to K.S.A. 23-4,101 and amendments thereto is a state as defined  
36 in this subsection.

37 (p) "Support order" means any order by which a person's duty of  
38 support is established, including but not limited to any order modifying  
39 a prior support order.

40 (q) "Tribunal" means any court, administrative agency or quasi-ju-  
41 dicial entity authorized to establish, modify or enforce support orders or  
42 to determine parentage.

With respect to support orders entered in this state, the courts are the tribunals in Kansas.

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44

43 New Sec. 10. (a) The powers and remedies provided in this section  
1 are cumulative and do not affect any other powers of the secretary or the  
2 availability of remedies under other law.

3 (b) In any case for which the secretary is providing IV-D services, the  
4 secretary may:

5 (1) Obtain access to information as authorized by law;

6 (2) subpoena records pursuant to section 16 and amendments  
7 thereto;

8 (3) order genetic tests pursuant to section 17 and amendments  
9 thereto;

10 (4) order minimum payments to defray arrearages pursuant to section  
11 18 and amendments thereto;

12 (5) enforce any duty of support by income withholding pursuant to  
13 the income withholding act and section 19 *et seq.* and amendments  
14 thereto;

15 (6) enforce any duty of support by administrative levy pursuant to  
16 section 22 and amendments thereto;

17 (7) perfect any lien against property;

18 (8) order executions against property pursuant to K.S.A. 60-2401 and  
19 amendments thereto; and

20 (9) change the payee of any support order pursuant to section 23 and  
21 amendments thereto.

22 (c) ~~Except as otherwise provided in this subsection or in section 17~~  
23 ~~and amendments thereto, and notwithstanding any other law to the con-~~  
24 ~~trary, the secretary shall have concurrent jurisdiction with the courts of~~  
25 ~~this state in proceedings in which a support obligation is or may be en-~~  
26 ~~forced.~~ In any IV-D administrative proceeding, the secretary shall not  
27 have jurisdiction over matters involving custody of the child or involving  
28 establishment or exercise of visitation rights with the child. Nothing in  
29 this subsection shall be construed to prevent the secretary from making  
30 findings of fact concerning the child's whereabouts or living arrangements  
31 if the facts are relevant to a matter otherwise within the secretary's juris-  
32 diction.

Nothing in sections 8 through 24 and amendments thereto shall be construed as authorizing the secretary to enter an order to establish or modify an obligation for current support. Nothing in sections 8 through 24 and amendments thereto shall be construed as limiting or restricting the jurisdiction of the courts of this state.

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33 (d) The secretary shall have all powers necessary to carry out the  
34 provisions of this section. The powers of the secretary shall include but  
35 not be limited to the power to:

36 (1) Conduct investigations into the existence of the parent and child  
37 relationship, including but not limited to the power to order persons to  
38 cooperate in genetic testing;

39 (2) conduct investigations into the whereabouts of any parent or asset;

40 (3) conduct investigations into the income, resources and expenses of  
41 the parties; the ability of the responsible parent to pay arrearages and the  
42 alleged nonpayment of support;

43 (4) determine the amount of any arrearages;

1 (5) initiate, modify or enforce an income withholding order for cash  
2 support or medical support or both;

3 (6) enforce any support order using any administrative remedy pro-  
4 vided by law;

5 (7) attest that a document is a true copy of any document in the  
6 records of the secretary or attest that a document derived from records  
7 of the secretary accurately reflects the information contained in those  
8 records; and

9 (8) delegate the powers described in this section to hearing officers  
10 and to authorized agents of the secretary.

11 (e) The secretary may designate employees of the secretary to serve  
12 as authorized agents to exercise powers of the secretary in IV-D admin-  
13 istrative proceedings. By written contract, the secretary may designate  
14 other persons to serve as authorized agents to exercise specific powers of  
15 the secretary in IV-D cases.

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7 New Sec. 16. (a) ~~As used in this section:~~  
8 (1) ~~"Business" means any kind of business, profession, occupation,~~  
9 ~~calling or operation of institutions, whether carried on for profit or not.~~  
10 (2) ~~"Records" means writings, including but not limited to data stored~~  
11 ~~electronically or magnetically, which are memoranda or notations of acts,~~  
12 ~~conditions or events. "Records" may also include books, papers, docu-~~  
13 ~~ments or tangible things.~~  
14 ~~(b) In any title IV-D case, the secretary may issue a subpoena pur-~~  
15 ~~suant to this section to obtain financial or other information needed to~~  
16 ~~establish, modify or enforce a support order. The subpoena shall be issued~~  
17 ~~by an authorized agent of the secretary and shall require the person to~~  
18 ~~whom it is directed to produce a copy of the records designated in the~~  
19 ~~subpoena or, if applicable, to complete a form furnished pursuant to sub-~~  
20 ~~section (c). At least seven days shall be allowed for compliance with the~~  
21 ~~subpoena.~~  
22 ~~(c) The secretary may furnish with the subpoena a form requesting~~  
23 ~~specific information from the records of the person to whom the sub-~~  
24 ~~poena is directed. The person may elect to furnish the copy of the des-~~  
25 ~~ignated records or to complete the form in full. If the person completes~~  
26 ~~the form in full and returns it to the secretary's authorized agent by mail~~  
27 ~~or otherwise within the time allowed, it shall be sufficient compliance~~  
28 ~~with the subpoena.~~  
29 (d) Except as otherwise provided in this subsection or subsection (c),  
30 the person to whom a subpoena is directed shall comply with the sub-  
31 poena by delivering to the secretary's authorized agent by mail or oth-  
32 erwise a sworn statement and a true and correct copy of the records  
33 designated in the subpoena. ~~If the records are not related to a business,~~  
34 ~~the sworn statement shall certify that the copy delivered by the person is~~  
35 ~~a true and correct copy of the records designated in the subpoena. If the~~  
36 ~~records are related to a business, the sworn statement shall state that: (1)~~  
37 ~~The affiant is a duly authorized custodian of the records and has authority~~  
38 ~~to certify records; (2) the copy is a true copy of the records designated in~~  
39 ~~the subpoena; and (3) the records were prepared by the personnel or staff~~  
40 ~~of the business, or persons acting under their control, in the regular~~  
41 ~~course of the business at or about the time of the act, condition or event~~  
42 ~~recorded. When more than one person has custody of the records or has~~  
43 knowledge of the facts required to be stated in the sworn statement, more

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1 than one sworn statement may be made.

2 If the person has none of the records designated in the subpoena, or  
3 only part thereof, the person shall so state in the sworn statement and  
4 shall send a copy of those records of which the person has custody.

5 (e) Before the time specified in the subpoena for compliance there-  
6 with, the person to whom the subpoena is directed may request review  
7 of all or part of the subpoena pursuant to section 15 and amendments  
8 thereto. The person shall comply with any portion of the subpoena for  
9 which review is not requested.

10 (f) A person in this state shall comply with a subpoena issued by a  
11 title IV-D agency of any other state for the purpose of obtaining financial  
12 or other information needed to establish, modify or enforce a support  
13 order in a title IV-D case. Upon request of a IV-D agency in another  
14 state, the secretary may enforce such a subpoena as though it had been  
15 issued by the secretary.

16 New Sec. 17. (a) This section shall not apply if an action to establish  
17 the father's duty of support on behalf of the child is pending before any  
18 tribunal. As used in this section, "mother" means the natural mother of  
19 the child whose parentage is in issue.

20 (b) Except as otherwise provided in subsection (d), genetic tests may  
21 be ordered by the secretary on the secretary's own initiative or if re-  
22 quested by another title IV-D agency, the alleged father or the mother.  
23 Except as otherwise provided in subsection (e), the secretary shall pay  
24 the costs of genetic tests, subject to recoupment from the father if pa-  
25 ternity is established.

26 (c) Except as otherwise provided in subsection (d), the secretary shall  
27 enter an administrative order for genetic testing if paternity of the child  
28 is contested, genetic testing is requested pursuant to this subsection by a  
29 party and the necessary persons are available for testing. For purposes of  
30 this section, a person receiving title IV-D services is not available for  
31 testing if a claim for good cause not to cooperate under title IV-D is  
32 pending or has been determined in the person's favor or if the person  
33 ceases to receive title IV-D services for any reason. A request under this  
34 subsection shall be supported by a sworn statement by the requesting  
35 party:

36 (1) Alleging paternity and setting forth facts establishing a reasonable  
37 possibility of the requisite sexual contact between the parties; or

38 (2) denying paternity and setting forth facts establishing a reasonable  
39 possibility of the nonexistence of sexual contact between the parties.

40 (d) If a presumption of paternity arises pursuant to subsection (a) of  
41 K.S.A. 38-1114 and amendments thereto because the mother married or  
42 attempted to marry any man, the secretary shall not order genetic testing  
43 unless a court of this state or an appropriate tribunal in another state has

(c) or

with the consent of the alleged father,

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1 found that determining the child's biological father is in the child's best  
2 interests. If a tribunal subsequently determines that the prohibition of  
3 this subsection applied at the time genetic tests were ordered by the  
4 secretary, any support order based in whole or in part upon the genetic  
5 tests may be set aside only as provided in K.S.A. 60-260 and amendments  
6 thereto.

7 (e) Upon receiving the results of genetic testing, the secretary shall  
8 promptly send a copy of the results to the parties, together with notice  
9 of the time limits for requesting any additional genetic tests or for chal-  
10 lenging the results pursuant to K.S.A. 38-1118 and amendments thereto,  
11 how to make such request or challenge, and any associated costs. The  
12 notice shall state the consequences pursuant to K.S.A. 38-1118 and  
13 amendments thereto of failing to act within the time allowed by the stat-  
14 ute. Any additional genetic tests shall be at the expense of the person  
15 making the request for additional genetic tests. Failure of the person  
16 requesting additional tests to make advance payment as required by the  
17 secretary shall be deemed withdrawal of the request.

24 New Sec. 20. (a) At any time after issuing an income withholding  
25 order, the secretary shall: (1) Modify or terminate the income withholding  
26 order because of a modification or termination of the underlying support  
27 order; (2) modify the amount of income withheld to reflect payment in  
28 full of the arrearages; (3) modify or terminate the income withholding  
29 order to reflect the final order in a fair hearing pursuant to K.S.A. 75-  
30 3306 and amendments thereto; or (4) modify, or when appropriate ter-  
31minate, an income withholding order consisting in whole or in part of a  
32 medical withholding order because of a modification or termination of  
33 the underlying medical child support order.

34 (b) In addition to modifications required by subsection (a), at any  
35 time the secretary may issue a modified income withholding order: (1)  
36 To change the amount to be withheld to defray arrearages; or (2) to  
37 conform the terms of a medical withholding order to the requirements  
38 of a payer.

39 (c) The secretary shall provide notice of any proposed modification  
40 to the responsible parent, who may request review of the proposed mod-  
41 ification. The issues shall be limited to whether the amount of current  
42 support is as stated in the proposed modification and whether the total  
43 arrearages are less than the proposed installment to defray arrearages.

1 (d) The responsible parent may request that the secretary terminate  
2 an income withholding order for cash support if: (1) Withholding has not  
3 previously been terminated and reinitiated; and (2) there is a written  
4 agreement among the parties that provides for an alternative arrange-  
5 ment. If an income withholding order is terminated and the obligor sub-  
6 sequently accrues any arrearages, the secretary may issue another income  
7 withholding order as provided in section 19 and amendments thereto.

8 (e) If the income withholding order includes both a medical with-  
9 holding order and an income withholding order for cash support, modi-  
10 fication or termination of one portion of the income withholding order  
11 shall not modify or terminate any other portion of the income withholding  
12 order except as expressly provided in the order.

13 (f) The provisions of section 19 and amendments thereto, relating to  
14 transmitting income withholding orders to the tribunal that issued the  
15 underlying support order, shall apply to any order issued modifying or  
16 terminating income withholding that is issued pursuant to this section.

The provisions of this subsection shall apply only to income withholding orders issued pursuant to section 19 and amendments thereto, including any modifications of such orders.



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43 New Sec. 22. (a) Upon determining that arrearages exist, the secre-

1 tary may enforce any support order by an administrative levy upon the  
2 responsible parent's cash assets. Any retirement fund that may be revoked  
3 or terminated by the responsible parent and is composed of cash assets  
4 shall be subject to administrative levy under this section, notwithstanding  
5 any other provision of law.

6 (b) An order to restrict transfer may be served by the secretary upon  
7 any person who is the holder of any cash asset of the responsible parent.  
8 The secretary may include with the order to restrict transfer an order to  
9 verify information concerning the cash asset.

10 (c) The order to restrict transfer shall attach, upon receipt by the  
11 holder, the interest of the responsible parent in any cash asset in the  
12 possession or control of the holder. If the total value of all such cash assets  
13 is less than \$25 at that time, no interest shall be attached by the order to  
14 restrict transfer. Upon attachment, the holder shall not transfer any of  
15 the attached assets without the consent of the secretary until further order  
16 of the secretary. If any cash asset is added to an account after the initial  
17 attachment and before the order to disburse, the added asset shall also  
18 be attached except to the extent that any part of the addition exceeds the  
19 maximum amount stated in the order to restrict transfer.

20 (d) Any cash asset held by the responsible parent in joint tenancy  
21 with rights of survivorship shall be presumed to be owned entirely by the  
22 responsible parent. The burden of proving otherwise shall be upon any  
23 person asserting ownership of any attached cash asset.

24 (e) The holder shall promptly notify any coowner of the cash asset or  
25 account about the attachment if the coowner's interest appears to be  
26 affected by the attachment.

27 (f) If an order to restrict transfer is issued, the secretary shall  
28 promptly send notice to the responsible parent. The notice shall state  
29 when review is available under section 15 and amendments thereto and  
30 how to request review.

31 (g) The responsible parent, the holder or any coowner may contest  
32 the attachment by requesting a fair hearing pursuant to section 15 and  
33 amendments thereto.

34 (h) If the secretary includes with the order to restrict transfer an  
35 order to verify information, the holder shall comply with the terms of the  
36 order to verify information within seven days of receipt.

37 (i) If the time allowed to request a fair hearing has elapsed and the  
38 proposed levy has not been challenged or the challenge has been resolved,  
39 in whole or in part, in favor of the secretary, the secretary shall issue an  
40 order to the holder to disburse the funds.

41 (j) If the holder is a financial institution that has entered into an  
42 agreement with the secretary pursuant to section 5 and amendments  
43 thereto, the agreement may provide for alternative methods of: (1) No-

1 tifying the financial institution to restrict transfer of cash assets or to  
2 disburse proceeds of administrative levies; (2) resolving disputes between  
3 the financial institution and the secretary concerning an administrative  
4 levy; and (3) exchanging any data related to the IV-D program.

(k) Except to the extent any provision clearly conflicts with this section, the exemptions of article 23 of chapter 60 shall apply to any attachment under this section.

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1 Sec. 34. K.S.A. 23-4,146 is hereby amended to read as follows: 23-  
2 146. (a) Whenever there is an arrearage in payment of an order of  
3 support in an amount equal to or greater than the amount of support  
4 payable for one month, ~~the obligee, the secretary of social and rehabilit-~~  
5 ~~tation services or the secretary's contractors, if the right to support has~~  
6 ~~been assigned to the secretary, may establish a lien shall arise by opera-~~  
7 ~~tion of law upon certain personal property of the obligor. The lien may~~  
8 ~~be perfected as follows:~~

9 (1) In the case of a vehicle, the obligee ~~or secretary may establish a~~  
10 ~~may perfect a lien on the vehicle by filing a notice of lien with the division~~  
11 ~~of vehicles of the department of revenue. [The perfection of the lien~~  
12 ~~shall not be in effect until the notation of the lien is actually placed~~  
13 ~~upon the certificate of title for the vehicle.] The notice shall be in a~~  
14 ~~form prescribed by the division, or on a federal form as required by title~~  
15 ~~IV-D, and shall contain a description of the vehicle, the name and address~~  
16 ~~of the obligee or secretary, the name and last known address of the obligor~~  
17 ~~and any other information required by the division. An affidavit of the~~  
18 ~~obligee or person designated by the secretary shall be filed with the notice~~  
19 ~~and shall state that there is an arrearage in an amount The notice shall~~  
20 ~~state the amount of the arrearage and that the arrearage is equal to or~~  
21 ~~greater than the amount of support payable for one month and that a . A~~  
22 ~~copy of the notice of lien has been sent shall be sent simultaneously by~~  
23 ~~first-class mail to the obligor at the obligor's last known address.~~

24 Upon the filing of the notice of lien in accordance with this subsection  
25 (a)(1) and payment to the division of a fee of \$5, the division shall be  
26 authorized to demand in writing the surrender of the title certificate from  
27 the owner of the vehicle for the purpose of recording the lien on the title  
28 certificate. Once the lien is properly recorded [~~and perfected by actu-~~  
29 ~~ally noting it on the certificate of title], a transfer of title is not valid  
30 unless the lien has been released in the manner provided by K.S.A. 8-  
31 135 and amendments thereto or the transfer has been consented to in  
32 writing by the lienholder. If the obligor fails to surrender the title certifi-  
33 cate within 15 days after the written demand by the division of vehicles,  
34 the division shall notify the ~~person or entity seeking the lien. Such person~~  
35 ~~or entity obligee seeking to perfect the lien. If the tribunal that issued the~~  
36 ~~support order is able to exercise jurisdiction over the obligor, the obligee~~  
37 ~~may obtain an order of the court which issued the support order from~~  
38 ~~the tribunal requiring the obligor to surrender the title certificate to the~~  
39 ~~court so that a the lien may be properly recorded.~~~~

[The  
of the court which issued the support order  
to the court

Notwithstanding any provision of this section authorizing a lien on a vehicle of an obligor, no lien shall attach to any vehicle which the obligor has transferred to another person who has purchased the vehicle or accepted it by trade in exchange for other property or services in good faith, for value, prior to the time that the lien on the vehicle has been noted and perfected in the manner provided by this subsection (a)(1).

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42 (2) In the case of a vessel or aircraft, the obligee or secretary may  
43 establish may perfect a lien on the vessel or aircraft by filing a notice of  
lien with the office where filing is required by K.S.A. 84-9-401 and  
amendments thereto to perfect a security interest in the vessel or aircraft.

1 [The perfection of the lien shall not be in effect until the notation  
2 of the lien is actually placed upon the certificate of title for the  
3 vessel or aircraft.] The notice shall contain a description of the make,  
4 model designation and serial number of the vessel or aircraft, including  
5 its identification or registration number, if any; the name and address of  
6 the obligee or secretary; and the name and last known address of the  
7 obligor. An affidavit of the obligee or person designated by the secretary  
8 shall be filed with the notice and shall state that there is an arrearage in  
9 an amount The notice shall state the arrearage and that the arrearage is  
10 equal to or greater than the amount of support payable for one month  
11 and that a . A copy of the notice of lien has been sent shall be sent  
12 simultaneously by first-class mail to the obligor at the obligor's last known  
13 address.

14 Upon the filing of the notice of lien in accordance with this subsection  
15 (a)(2) and payment of a fee of \$5, the notice of lien shall be retained by  
16 the office where filed and may be enforced and foreclosed in the same  
17 manner as a security agreement under the provisions of the uniform com-  
18 mercial code. If such liens are required by law to be the notice of lien is  
19 filed in the office of the secretary of state, the filing officer shall file,  
20 index, amend, maintain, remove and destroy the lien notification state-  
21 ment notice of lien in the same manner as a financing statement filed  
22 under part 4 of article 9 of the uniform commercial code. The secretary  
23 of state shall charge the same filing and information retrieval fees and  
24 credit the amounts in the same manner as financing statements filed  
25 under part 4 of article 9 of the uniform commercial code.

Notwithstanding any provision of this section authorizing a lien on a vessel or aircraft of an obligor, no lien shall attach to any vessel or aircraft which the obligor has transferred to another person who has purchased the vessel or aircraft or accepted it by trade in exchange for other property or services in good faith, for value, prior to the time that the lien on the vessel or aircraft has been noted and perfected in the manner provided by this subsection (a)(2).

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26 (3) In any case filed under chapter 60 or 61 of the Kansas Statutes  
27 Annotated, the obligee may perfect a lien on the obligor's interest in any  
28 judgment or settlement in the case by filing a notice of lien with the clerk  
29 of the district court. Copies shall be served on appropriate parties to the  
30 action. The notice of lien shall have the effect of attaching the obligor's  
31 interest in any judgment or settlement in the case. Any person holding  
32 property or funds to satisfy any judgment or settlement in the obligor's  
33 favor shall be prohibited from transferring to the obligor any of such  
34 property or funds without the written consent of the obligee. At the time  
35 that the holder would otherwise be required to transfer property to the  
36 obligor, such property shall be transferred to the obligee unless the lien  
37 on the property has been released. Nothing in this subsection shall be  
38 construed to require the holder to transfer any property to the obligee  
39 any sooner than the holder would have been required to transfer property  
40 to the obligor. To the extent that an attorney's lien on the obligor's interest  
41 in any settlement or judgment is perfected before service of the notice of  
42 lien under this section, the attorney's lien shall have priority.  
43 Any person affected by the notice of lien who is or will be a payor as

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1 defined in the income withholding act and amendments thereto may re-  
2 quest that the obligee proceed under the income withholding act and re-  
3 lease the lien perfected pursuant to this section.

4 (4) If the obligor is or may become entitled to workers compensation  
5 benefits, the obligee may perfect a lien on the benefits by serving a notice  
6 of lien on the obligor. Copies shall be served on appropriate persons,  
7 including but not limited to the director of workers compensation. The  
8 notice of lien shall have the effect of attaching the obligor's interest in the  
9 workers compensation benefits. Any person holding property or funds to  
10 satisfy the obligor's interest shall be prohibited from transferring to the  
11 obligor any of such property or funds without the written consent of the  
12 obligee. At the time that the holder would otherwise be required to trans-  
13 fer property to the obligor, such property shall be transferred to the ob-  
14 ligee unless the lien on the property has been released. Nothing in this  
15 subsection shall be construed to require the holder to transfer any prop-  
16 erty to the obligee any sooner than the holder would have been required  
17 to transfer property to the obligor. To the extent that attorney fees are  
18 allowed by K.S.A. 44-501 et seq. and amendments thereto, the attorney  
19 fees shall have priority.

20 Any person affected by the notice of lien who is or will be a payor as  
21 defined in the income withholding act and amendments thereto may re-  
22 quest that the obligee proceed under the income withholding act and re-  
23 lease the lien perfected pursuant to this section.

24 In a title IV-D case, if no court or administrative agency of this state  
25 has jurisdiction to determine the interests of the obligee and obligor in  
26 property attached under this subsection, the obligor may request review  
27 pursuant to section 15 and amendments thereto.

28 (b) As used in this section:

29 (1) "Aircraft" has the meaning provided by K.S.A. 3-201 and amend-  
30 ments thereto.

31 (2) "Vehicle" has the meaning provided by K.S.A. 8-126 and amend-  
32 ments thereto.

33 (3) "Vessel" has the meaning provided by K.S.A. 82a-801 and amend-  
34 ments thereto.

35 (4) "Arrearage," "obligee," title IV-D, "obligor" and "order for sup-  
36 port" have the meanings provided by K.S.A. 23-4,106 and amendments  
37 thereto.

38 (5) "Obligee" means the person or entity to whom a duty of support  
39 is owed, including but not limited to any title IV-D agency.

40 (6) "Workers compensation" has the meaning provided by K.S.A. 44-  
41 501 et seq. and amendments thereto.

42 (7) "Attorney's lien" has the meaning provided by K.S.A. 7-108 and  
43 amendments thereto.

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Sec. 64. K.S.A. 32-930 is hereby amended to read as follows: 32-930.

(a) Except as provided in subsection (a), the secretary or the secretary's designee is authorized to issue to any Kansas resident a lifetime fishing, hunting or combination hunting and fishing license upon proper application made therefor to the secretary or the secretary's designee and payment of a license fee as follows: (1) A total payment made at the time of purchase in the amount prescribed pursuant to K.S.A. 32-988 and amendments thereto; or (2) payment may be made over a two-year period in eight quarter-annual installments in the amount prescribed pursuant to K.S.A. 32-988 and amendments thereto. If payment is in installments, the license shall not be issued until the final installment has been paid. A person making installment payments shall not be required to obtain the appropriate annual license, and each installment payment shall be deemed to be such an annual license for a period of one year following the date of the last installment payment made. If an installment payment is not received within 30 days after it is due and owing, the secretary may

(b)

consider the payments in default and may retain any payments previously received. Any lifetime license issued to a Kansas resident shall not be made invalid by reason of the holder thereof subsequently residing outside the state of Kansas. Any nonresident holder of a Kansas lifetime hunting or combination hunting and fishing license shall be eligible under the same conditions as a Kansas resident for a big game permit upon proper application to the secretary. Any nonresident holder of a lifetime fishing license issued before July 1, 1989, shall be eligible under the same conditions as a Kansas resident for a big game permit upon proper application to the secretary.

(b) Upon request of the secretary of social and rehabilitation services, the secretary of wildlife and parks shall not issue a lifetime fishing, hunting or combination hunting and fishing license to an applicant except as provided in this subsection. The secretary of social and rehabilitation services may make such a request if, at the time of the request, the applicant

owed

~~(1) Owed arrearages under a support order in a title IV-D case being administered by the secretary of social and rehabilitation services/or~~  
~~(2) had outstanding a warrant or subpoena, directed to the applicant, in a title IV-D case being administered by the secretary of social and rehabilitation services.~~

delete

delete

Upon receiving a release from an authorized agent of the secretary of social and rehabilitation services, the secretary of wildlife and parks may issue the lifetime fishing, hunting or combination hunting and fishing

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24 license. The applicant shall have the burden of obtaining and delivering  
25 the release.

26 The secretary of social and rehabilitation services shall issue a release  
27 upon request if, as appropriate:

28 (1) The arrearages are paid in full or a tribunal of competent juris-  
29 diction has determined that no arrearages are owed;

30 (2) an income withholding order has been served upon the applicant's  
31 current employer or payor;

32 (3) an agreement has been completed or an order has been entered  
33 setting minimum payments to defray the arrearages, together with receipt  
34 of the first minimum payment; or

35 (4) the applicant has complied with the warrant or subpoena or the  
36 warrant or subpoena has been quashed or withdrawn.

37 Nothing in this subsection shall be construed to require or permit the  
38 secretary of wildlife and parks to determine any issue related to the title  
39 IV-D case except to resolve questions of mistaken identity or determine  
40 the adequacy of any notice relating to this subsection that the secretary  
41 of wildlife and parks provides to the applicant.

42 "Title IV-D" means part D of title IV of the federal social security act  
43 (42 U.S.C. § 651 et seq.) and amendments thereto, relating to child sup-  
1 port enforcement services.

2 (b) (c) The secretary, in accordance with K.S.A. 32-805 and amend-  
3 ments thereto, may adopt rules and regulations necessary to carry out the  
4 provisions of this section.



4-9-97

4-19

27 Sec. 73. K.S.A. 39-758 is hereby amended to read as follows: 39-758.  
 28 (a) State, county and local units of government, their officers and em-  
 29 ployees, shall cooperate with the secretary of social and rehabilitation  
 30 services in locating absent parents or their assets and shall on request  
 31 supply the secretary of social and rehabilitation services with available  
 32 information about an absent parent or the absent parent's assets including  
 33 but not limited to the location, employment status, income, date of birth  
 34 and social security number of an the absent parent including or any in-  
 35 formation concerning medical or health insurance coverage for depend-  
 36 ents.

37 (b) ~~All federal and state agencies conducting activities under title IV-~~  
 38 ~~D shall have access to any system used by this state or any political sub-~~  
 39 ~~division to locate an individual for purposes relating to motor vehicles or~~  
 40 ~~law enforcement/including but not limited to the national law enforce-~~  
 41 ~~ment telecommunications system (NLETS) and the national crime infor-~~  
 42 ~~mation center (NCIC). For purposes of this section, the title IV-D agency~~  
 43 ~~shall be considered a law enforcement agency.~~

1 ~~(c) The secretary of social and rehabilitation services or the secreta-~~  
 2 ~~ry's designee shall have access pursuant to K.S.A. 79-3234 and amend-~~  
 3 ~~ments thereto to information in the records of the department of revenue~~  
 4 ~~concerning any person who has or may have a duty of support in a title~~  
 5 ~~IV-D case. The secretary of social and rehabilitation services or the se-~~  
 6 ~~cretary's designee may use the information in an appropriate administra-~~  
 7 ~~tive or judicial proceeding to establish, modify, or enforce a support ob-~~  
 8 ~~ligation in the title IV-D case or may disclose the information to another~~  
 9 ~~title IV-D agency for use in any administrative or judicial proceeding to~~  
 10 ~~establish, modify or enforce a support obligation in the title IV-D case.~~  
 11 ~~Except to the extent that disclosure of information is authorized by this~~  
 12 ~~subsection, any person receiving information pursuant to this subsection~~  
 13 ~~shall be subject to the provisions of subsections (b) and (d) of K.S.A. 79-~~  
 14 ~~3234 and amendments thereto.~~

15 (b)(d) Information received by the secretary of social and rehabili-  
 16 tation services under this section shall be available upon request to per-  
 17 sons authorized to receive such information in accordance with rules and  
 18 regulations duly adopted by the secretary of social and rehabilitation ser-  
 19 vices.

20 ~~Except as otherwise provided in this section, any person receiving such~~  
 21 ~~information shall be subject to the provisions of K.S.A. 39-759 and amend-~~  
 22 ~~ments thereto.~~

Upon written request,

be eligible to receive information leading to the location of an individual if the information is contained within

delete

delete

(c)

Any

Information of the department of revenue shall be subject to the limitations of K.S.A. 79-3234 and amendments thereto.

4-20  
off

(d)

23 ~~(e)~~ Any person or entity providing access to information pursuant to  
24 this section, including but not limited to access by automated processes,  
25 shall not be liable to any person for good faith actions in providing the  
26 access or information.

27 ~~(f)~~ For purposes of this section, the secretary may enter into an agree-  
28 ment with any agency or official to permit the secretary and the secre-  
29 tary's designees access to information. Such an agreement shall not be  
30 construed to be a contract for the performance of support enforcement  
31 services pursuant to K.S.A. 75-5365 and amendments thereto.

The provisions of this subsection shall not apply to information of the department of revenue.

(e) Notwithstanding any prohibition to the contrary which may apply to information of the department of revenue;

in this state

for purposes of this section.

sections 4, 5, 16 and 22

32 Sec. 74. K.S.A. 39-759 is hereby amended to read as follows: 39-759.  
 33 (a) ~~Any~~ *With respect to information obtained by the secretary under*  
 34 *K.S.A. 39-758 or ~~section 4~~ and amendments thereto, any person who*  
 35 *willfully requests, obtains or seeks to obtain any confidential information*  
 36 *available under K.S.A. 39-758 under false pretenses or who willfully com-*  
 37 *municates or seeks to communicate such information to any person ex-*  
 38 *cept in accordance with the provisions of this act and rules and regulations*  
 39 *adopted pursuant thereto any law permitting such disclosure shall be*  
 40 *guilty of a class B nonperson misdemeanor.*  
 41 (b) *Effective October 1, 1997, the secretary shall safeguard, to the*  
 42 *extent required by title IV-D, any confidential information handled by*  
 43 *the secretary. Unauthorized use or disclosure of information relating to*  
 1 *proceedings or actions to establish paternity or to establish or enforce a*  
 2 *support obligation is prohibited, except that nothing in this provision shall*  
 3 *prevent the secretary or the secretary's designees from using or disclosing*  
 4 *information, or authorizing use or disclosure of information, as needed in*  
 5 *the administration of the IV-D program or as authorized by title IV-D.*  
 6 *The release of information concerning the location of one party to an-*  
 7 *other party against whom a protective order with respect to the former*  
 8 *party has been entered is prohibited. The release of information concern-*  
 9 *ing the location of one party to another party is prohibited if the secretary*  
 10 *has reason to believe that the release of such information may result in*  
 11 *physical or emotional harm to the former party. For purposes of this*  
 12 *subsection, "has reason to believe" means that the former party has*  
 13 *claimed good cause for refusing to cooperate in IV-D activities, so long*  
 14 *as the claim is pending or has been approved.*

If the offender is an officer or employee of the state or a political subdivision of the state, such officer or employee shall be dismissed from office. Any violation of this subsection by a IV-D contractor or an agent of a IV-D contractor shall be grounds for termination of the IV-D contract unless the IV-D contractor terminates the contractor's relationship with any individual offender. The provisions of this subsection shall be a complete defense in any civil action concerning such dismissal, termination of the IV-D contract or termination of a contractor's relationship with an individual offender.

or any other provision of law

(c) The provisions of this section shall be in addition to any other prohibition against further disclosure, remedy or sanction provided by law.

4-9-97

4-22

12 c. 81. K.S.A. 1996 Supp. 79-3234 is hereby amended to read as  
13 follows: 79-3234. (a) All reports and returns required by this act shall be  
14 preserved for three years and thereafter until the director orders them  
15 to be destroyed.

16 (b) Except in accordance with proper judicial order, or as provided  
17 in subsection (c) or in K.S.A. 17-7511, ~~K.S.A. 39-758~~, subsection (g) of  
18 K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments  
19 thereto, it shall be unlawful for the director, any deputy, agent, clerk or  
20 other officer, employee or former employee of the department of revenue  
21 or any other state officer or employee or former state officer or employee  
22 to divulge, or to make known in any way, the amount of income or any  
23 particulars set forth or disclosed in any report, return, federal return or  
24 federal return information required under this act; and it shall be unlawful  
25 for the director, any deputy, agent, clerk or other officer or employee  
26 engaged in the administration of this act to engage in the business or  
27 profession of tax accounting or to accept employment, with or without  
28 consideration, from any person, firm or corporation for the purpose, di-  
29 rectly or indirectly, of preparing tax returns or reports required by the  
30 laws of the state of Kansas, by any other state or by the United States  
31 government, or to accept any employment for the purpose of advising,  
32 preparing material or data, or the auditing of books or records to be used  
33 in an effort to defeat or cancel any tax or part thereof that has been  
34 assessed by the state of Kansas, any other state or by the United States  
35 government.

*delete*

36 (c) Nothing herein shall be construed to prohibit the publication of  
37 statistics, so classified as to prevent the identification of particular reports  
38 or returns and the items thereof, or the inspection of returns by the  
39 attorney general or other legal representatives of the state. Nothing in  
40 this section shall prohibit the post auditor from access to all income tax  
41 reports or returns in accordance with and subject to the provisions of  
42 subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments  
43 thereto. Nothing in this section shall be construed to prohibit the disclo-

1 sure of the taxpayer's name, social security number, last known address  
2 and total tax liability, including penalty and interest, from income tax  
3 returns to a debt collection agency contracting with the secretary of rev-  
4 enue pursuant to K.S.A. 75-5140 through 75-5143, and amendments  
5 thereto. Nothing in this section shall be construed to prohibit the disclo-  
6 sure of job creation and investment information derived from tax sched-  
7 ules required to be filed under the Kansas income tax act to the secretary  
8 of commerce. Nothing in this section shall be construed to prohibit the  
9 disclosure of the taxpayer's name, last known address and residency status  
10 to the department of wildlife and parks to be used solely in its license  
11 and investigations. Any person receiving any information under the pro-  
12 visions of this subsection shall be subject to the confidentiality provisions  
13 of subsection (b) and to the penalty provisions of subsection (d).

Nothing in this section shall prohibit the disclosure of the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D (cite?) case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a Title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the Title IV-D proceeding.

4-23

14 (d) Any violation of subsection (b) or (c) is a class B misdemeanor  
15 and, if the offender is an officer or employee of the state, such officer or  
16 employee shall be dismissed from office.

17 (e) Notwithstanding the provisions of this section, the secretary of  
18 revenue may permit the commissioner of internal revenue of the United  
19 States, or the proper official of any state imposing an income tax, or the  
20 authorized representative of either, to inspect the income tax returns  
21 made under this act and the secretary of revenue may make available or  
22 furnish to the taxing officials of any other state or the commissioner of  
23 internal revenue of the United States or other taxing officials of the fed-  
24 eral government, or their authorized representatives, information con-  
25 tained in income tax reports or returns or any audit thereof or the report  
26 of any investigation made with respect thereto, filed pursuant to the in-  
27 come tax laws, as the secretary may consider proper, but such information  
28 shall not be used for any other purpose than that of the administration  
29 of tax laws of such state, the state of Kansas or of the United States.

30 (f) Notwithstanding the provisions of this section, the secretary of  
31 revenue may:

32 (1) Communicate to the executive director of the Kansas lottery in-  
33 formation as to whether a person, partnership or corporation is current  
34 in the filing of all applicable tax returns and in the payment of all taxes,  
35 interest and penalties to the state of Kansas, excluding items under formal  
36 appeal, for the purpose of determining whether such person, partnership  
37 or corporation is eligible to be selected as a lottery retailer;

38 (2) communicate to the executive director of the Kansas racing com-  
39 mission as to whether a person, partnership or corporation has failed to  
40 meet any tax obligation to the state of Kansas for the purpose of deter-  
41 mining whether such person, partnership or corporation is eligible for a  
42 facility owner license or facility manager license pursuant to the Kansas  
43 parimutuel racing act; and

1 (3) provide such information to the president of Kansas, Inc. as re-  
2 quired by K.S.A. 1996 Supp. 74-8017, and amendments thereto. The  
3 president and any employees or former employees of Kansas, Inc. re-  
4 ceiving any such information shall be subject to the confidentiality pro-  
5 visions of subsection (b) and to the penalty provisions of subsection (d).

(g) Nothing in this section shall be construed to allow disclosure of  
the amount of income or any particulars set forth or disclosed in any report, return,  
federal return or federal return information, where such disclosure is prohibited by  
the federal internal revenue code as in effect on September 1, 1996, and  
amendments thereto, related federal internal revenue rules or regulations, or other  
federal law.

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4-24

14 Sec. 83. This act shall take effect and be in force from and after its  
15 publication in the statute book *[and publication in the Kansas register*  
16 *of a proclamation issued by the governor which states that this act*  
17 *shall take effect upon the publication of such proclamation].*

[ resolution adopted by the state finance council  
[ resolution

House Judiciary  
Attach 5  
4/28/97

27 Sec. 73. K.S.A. 39-758 is hereby amended to read as follows: 39-758.  
28 (a) State, county and local units of government, their officers and em-  
29 ployees, shall cooperate with the secretary of social and rehabilitation  
30 services in locating absent parents or their assets and shall on request  
31 supply the secretary of social and rehabilitation services with available  
32 information about an absent parent or the absent parent's assets including  
33 but not limited to the location, employment status, income, date of birth  
34 and social security number of an absent parent including or any in-  
35 formation concerning medical or health insurance coverage for depend-  
36 ents.

37 ~~(b) All federal and state agencies conducting activities under title IV-  
38 D shall have access to any system used by this state or any political sub-  
39 division to locate an individual for purposes relating to motor vehicles or  
40 law enforcement, including but not limited to the national law enforce-  
41 ment telecommunications system (NLETS) and the national crime infor-  
42 mation center (NCIC). For purposes of this section, the title IV-D agency  
43 shall be considered a law enforcement agency.~~

1 ~~(c) The secretary of social and rehabilitation services or the secreta-  
2 ry's designee shall have access pursuant to K.S.A. 79-3234 and amend-  
3 ments thereto to information in the records of the department of revenue  
4 concerning any person who has or may have a duty of support in a title  
5 IV-D case. The secretary of social and rehabilitation services or the se-  
6 cretary's designee may use the information in an appropriate administra-  
7 tive or judicial proceeding to establish, modify, or enforce a support ob-  
8 ligation in the title IV-D case or may disclose the information to another  
9 title IV-D agency for use in any administrative or judicial proceeding to  
10 establish, modify or enforce a support obligation in the title IV-D case.  
11 Except to the extent that disclosure of information is authorized by this  
12 subsection, any person receiving information pursuant to this subsection  
13 shall be subject to the provisions of subsections (b) and (d) of K.S.A. 79-  
14 3234 and amendments thereto.~~

15 ~~(b) (d)~~ Information received by the secretary of social and rehabilita-  
16 tion services under this section shall be available upon request to per-  
17 sons authorized to receive such information in accordance with rules and  
18 regulations duly adopted by the secretary of social and rehabilitation serv-  
19 ices.

20 ~~Except as otherwise provided in this section, any person receiving such~~  
21 ~~information shall be subject to the provisions of K.S.A. 39-759 and amend-~~  
22 ~~ments thereto.~~

Upon written request,

be eligible to receive information leading to the location of an individual if the information is contained within

delete

delete

(c)

Any

5\*

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~~(e)~~ Any person or entity providing access to information pursuant to this section, including but not limited to access by automated processes, shall not be liable to any person for good faith actions in providing the access or information.  
~~(f)~~ For purposes of this section, the secretary may enter into an agreement with any agency or official to permit the secretary and the secretary's designees access to information. Such an agreement shall not be construed to be a contract for the performance of support enforcement services pursuant to K.S.A. 75-5365 and amendments thereto.

(d)

The provisions of this subsection shall not apply to information of the department of revenue.

(e) Notwithstanding any prohibition to the contrary which may apply to information of the department of revenue,

in this state

for purposes of this section.

5-2



4/12/97

3:74  
Hansen Judiciary  
Attach 6  
4/24/97

32 Sec. 74. K.S.A. 39-759 is hereby amended to read as follows: 39-759.  
33 (a) ~~Any~~ With respect to information obtained by the secretary under  
34 K.S.A. 39-758 or ~~section 4~~ and amendments thereto, any person who  
35 willfully requests, obtains or seeks to obtain ~~any~~ confidential information  
36 available under K.S.A. 39-758 under false pretenses or who willfully com-  
37 municates or seeks to communicate such information to any person ex-  
38 cept in accordance with the provisions of this act and rules and regulations  
39 adopted pursuant thereto any law permitting such disclosure shall be  
40 guilty of a class B nonperson misdemeanor.

sections 4, 5, 16 and 22

41 (b) Effective October 1, 1997, the secretary shall safeguard, to the  
42 extent required by title IV-D, any confidential information handled by  
43 the secretary. Unauthorized use or disclosure of information relating to

1 proceedings or actions to establish paternity or to establish or enforce a  
2 support obligation is prohibited, except that nothing in this provision shall  
3 prevent the secretary or the secretary's designees from using or disclosing  
4 information, or authorizing use or disclosure of information, as needed in  
5 the administration of the IV-D program or as authorized by title IV-D.

6 The release of information concerning the location of one party to an-  
7 other party against whom a protective order with respect to the former  
8 party has been entered is prohibited. The release of information concern-  
9 ing the location of one party to another party is prohibited if the secretary  
10 has reason to believe that the release of such information may result in  
11 physical or emotional harm to the former party. For purposes of this  
12 subsection, "has reason to believe" means that the former party has  
13 claimed good cause for refusing to cooperate in IV-D activities, so long  
14 as the claim is pending or has been approved.

If the offender is an officer or employee of the state or a political subdivision of the state, such officer or employee shall be dismissed from office. Any violation of this subsection by a IV-D contractor or an agent of a IV-D contractor shall be grounds for termination of the IV-D contract unless the IV-D contractor terminates the contractor's relationship with any individual offender. The provisions of this subsection shall be a complete defense in any civil action concerning such dismissal, termination of the IV-D contract or termination of a contractor's relationship with an individual offender.

or any other provision of law

(c) The provisions of this section shall be in addition to any other prohibition against further disclosure, remedy or sanction provided by law.