

Approved: March 24, 1998
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 20, 1998 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, Gooch, Jordan, Ranson, Steffes, Steineger and Umbarger.

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Terry L. Bullock, Administrative Judge, Third Judicial District
Neil A. Woerman, Office of the Attorney General
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinations Association
Brad Smoot, Legislative Counsel, The American Insurance Association
Terry Leatherman, Kansas Chamber of Commerce and Industry
Phillip S. Harness, Director of Workers Compensation

Others attending: See attached list

Upon motion by Senate Steineger, seconded by Senator Jordan, the Minutes of the March 19, 1998 Meeting were unanimously approved.

SB 599 - Collection of debts owed to courts by attorney general

Terry L. Bullock, Administrative Judge, Third Judicial District, testified in support of **SB 599** stating existing law provides collection costs incurred in recovering court-ordered restitution, costs, fines, treatment costs and attorney fees in criminal cases be deducted from the sums recovered; hence imposing those costs on honest law-abiding citizens. **SB 599** adds the costs to the debt owed by the criminal. **SB 599** also addresses the problem with unemployment security fraud collections wherein Federal regulations prohibit reducing restitution by collection fees. **SB 599** saves taxpayers the necessity of creating a new separate governmental department to collect these sums, as there will be in place a mechanism to collect the fees. **SB 599** will save citizens at least \$27 Million now owing and approximately 27% of all sums owed in the future with no additional cost to the taxpayer. (Attachment 1)

Neil Woerman, Office of the Attorney General, testified in support of **SB 599** stating the 1996 Legislature provided a mechanism for the Attorney General to collect unpaid court debt and restitution. The principal method of collection was anticipated to be privatized collection contracts, and it was the Attorney General's responsibility to establish the program and enter into contracts. The requirement of defendants to pay costs of collection became an issue in the conference committee, the concern being an impermissible *ex post facto* punishment. The bill was changed to take collection fees out of the amounts owed victims and the courts. The Attorney General, after researching the issue, believes legislatively assessing collection fees to the defendants is permissible for all cases, past and present. The Attorney General surveyed the courts in late summer and fall of 1996 to attempt to determine the amount of court debt and restitution owed and the nature of that debt. With all 31 judicial districts providing either precise data or estimates, the debt was found to be just under \$100 Million, with over 60% being less than four years old. (Attachment 2)

Mr. Woerman stated a committee of representatives of Judicial Administration, Director of Purchases and the Attorney General was in the process of negotiating with potential vendors, to enter into agreements with the Attorney General to collect court debt and restitution. All contracts require that a work plan be developed for each judicial district in which a contractor and the administrative judge has reached agreement. To date contractors or trustees have entered into work plans in 13 of the 31 districts. In working with the contractors and the district courts, the major concern is that the cost of collection is paid from the amounts

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 20, 1998.

owed the victims and the courts, which universally has been criticized as further victimizing victims. The procedure also burdens the Court clerks as each debt is broken down into several different sub-accounts (fines, docket fees, court costs, restitution, etc.). When amounts are received from collectors, the clerks not only must credit these amounts to the appropriate debt categories, but must write off a portion from each account for the collection fee. **SB 599** restores the concept of costs of collection being on top of, rather than being taken from, court debt and restitution. Mr. Woerman submitted three administrative amendments: 1) Page 1, line 36, add a new subsection (c); 2) Page 2, line 22 change language to protect existing contracts that costs of collection shall not exceed 33% of the amount collected; and 3) publication in the Kansas Register.

Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinations Association, testified in support of **SB 599** stating the legislation re-enforces the collection process and ensures offenders, as a part of their probation agreement, are held responsible for the collection fee if the fine is not paid timely. **SB 599** also ensures organizations who provide services to the court receive their full fee for services rather than a lesser amount after the collection fee is subtract. (Attachment 3)

Senator Ranson moved, seconded by Senator Steffes, that the amendments to **SB 599** be adopted and **SB 599** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

HB 2799 - Workers compensation insurance deductibles, permitting addition of allocated loss adjustment expenses

Brad Smoot, The American Insurance Association, testified in support of **HB 2799** stating the bill allows the allocated loss adjustment expenses of a policy holder. **HB 2799** allows an employer to control the costs of defending a workers compensation claim, assess the effectiveness of its loss control programs, and to negotiate substantial premium discounts from his carrier. Mr. Smoot stated **HB 2799** amends the Workers Compensation Act to allow legal and medical expenses incurred in defense of a claim, expert witness fees, arbitration fees, copying charges, utilization review expenses, and appeals fees to be included with option deductibles. High deductible policies enable large employers to control their claims and losses without assuming all the risk associated with self-insurance. (Attachment 4)

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), testified in support of **HB 2799** stating the KCCI has been an advocate for permitting an employer to choose a deductibles option when securing workers compensation insurance. When employers accept a deductible, they also accept greater financial responsibility to become involved in reducing injuries in the work place, which ultimately leads to lower experience modification factors and lower insurance costs. (Attachment 5)

Phillip S. Harness, Director of Workers Compensation, submitted amendments to **HB 2799** which had been unanimously approved by the Advisory Council. (Attachment 6)

1. New Section 1, refers to "peer and utilization review" and allows findings and records to be admissible at the hearing before the administrative law judge.
2. New Section 2 conforms the establishment of conservatorship with the probate code for minor persons, and raises the amount to \$5,000.
3. New Section 4 provides for the use of video conferences in medication conferences.
4. New Section 5 incorporates the fraud and abuse section (KSA 44-5120).
5. New Section 6 (KSA 44-5125) raises penalties and severity levels for fraud and abuse.

Senator Feleciano moved, seconded by Senator Steineger, that the amendments be adopted and incorporated into **HB 2799**. The voice vote was in favor of the motion.

Senator Feleciano moved, seconded by Senator Steineger, that **HB 2799 as amended** be recommended favorable for passage. The recorded vote was unanimous in favor of the motion.

HB 2591 - Exempting self-employed subcontractors from workers compensation

Senator Ranson reported the subcommittee recommendations on **HB 2591** is as follows: 1) strike New Section 4 in its entirety and 2) add a new section to amend KSA 44-503 (a) by adding at the end of the paragraph: "For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor."

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 20, 1998.

Senator Ranson moved, seconded by Senator Brownlee that the subcommittee report be adopted. The voice vote was in favor of the motion.

Senator Barone called the Committee's attention to **HB 2982** - relating to Workers Compensation death benefits for dependent legal heirs. **HB 2982** raises death benefits from \$18,500 to \$25,000, allows lump sum payment of \$25,000 to be made to the legal heirs of the employee if no dependents are available, raises funeral expenses from \$4,300 to \$5,000, and provides that if there are no dependents and no legal heirs, the \$18,500 amount will be paid into the Workers Compensation Second Injury Fund.

Senator Barone moved, seconded by Senator Feleciano that **HB 2982 be incorporated into HB 2591**. Senator Brownlee made a substitute motion, seconded by Senator Ranson, that **HB 2982 be incorporated into HB 2591**, except that the \$25,000 death benefit be kept at the \$18,500 amount. The voice vote was in favor of the substitute motion.

Senator Barone moved, seconded by Senator Ranson, that **HB 2591** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

Senator Ranson stated the subcommittee took no action on **HCR 5043**.

A letter from John Samples, President Kan Build, Inc., endorsing the Kansas Building and Industry Association amendment to **HB 2591**, was distributed to members of the Committee. (Attachment 7)

HB 2731 - Municipalities; urban renewal

The Chair informed the Committee it would take action on **HB 2731** some time next week.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 23, 1998.



KANSAS DISTRICT COURT

Chambers of
TERRY L. BULLOCK
Administrative Judge

Shawnee County Courthouse
Division No. Six
Topeka, Kansas 66603-3922
(785) 233-8200 Ext. 4375
Fax (785) 291-4917

Officers:
JOSEPH MARTINEZ
Official Court Reporter
(785) 233-8200 Ext. 4376
MARY BETH HERBSTER
Administrative Assistant
(785) 233-8200 Ext. 4375

Statement Of
JUDGE TERRY L. BULLOCK
Administrative Judge
Third Judicial District
RE: Senate Bill No. 599
March 20, 1998

I appear in enthusiastic support of SB 599. Under existing law, collection costs incurred in recovering court-ordered restitution, costs, fines, treatment costs and attorney fees in criminal cases is deducted from the sums recovered - thus imposing those costs on honest, law-abiding citizens. This is wrong. SB 599 corrects the problem by adding these costs to the debt owed by the criminal. In our view, if criminals do not promptly pay the costs, fines, restitution, treatment fees and attorney fee reimbursement ordered to be paid by the Court --- thus necessitating that we refer the matter to our collection contractor to "chase them for the money" --- the criminal should bear the expense of the collection fee. Not the State. Not the County. Not the victim. Not the treatment provider.

This amendment also addresses the problem with unemployment security fraud collections wherein Federal regulations prohibit reducing restitution by collection fees. If this Bill is adopted, it will be possible to avoid creating a whole new separate governmental department to collect these sums - when we already have one in place at no cost to the taxpayer!

In short, we want the message to the criminal to be: pay what you owe, because if you don't, the cost of collection will be added to your bill.

I am aware of some technical amendments proposed by the Attorney General to make implementation of this change easier and more effective. All of these are appropriate and I support them fully!

Senate Commerce Committee

Date 3-20-98

Attachment # 1-1 thru 1-2

Page 2
March 20, 1998

The adoption of this Bill will save honest law-abiding citizens of this State at least \$27 million now owing and approximately 27% of all sums owed in the future. All at no cost to the taxpayer.

Thank you for your help in making this much needed correction in a very good statutory plan.

Respectfully,

A handwritten signature in cursive script that reads "Terry Bullock". The signature is written in black ink and is positioned above the typed name and title.

Terry L. Bullock
Administrative Judge

TLB/mbh



State of Kansas

Office of the Attorney General

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

CARLA J. STOVALL
ATTORNEY GENERAL

**Statement of
Neil A. Woerman, Office of Attorney General
Before the Senate Commerce Committee
Re: Senate Bill No. 599
March 20, 1998**

MAIN PHONE: (785) 296-2215
FAX: 296-6296
TTY: 291-3767

I appear before you today on behalf of Attorney General Carla J. Stovall to request that you recommend Senate Bill No. 599 for passage, after first amending the bill to correct some administrative concerns. The amendments we propose have been shared with Judge Bullock, and all of Kansas' administrative district court judges, and I am aware of no opposition. They are entirely in keeping with the intent and purpose of this bill: to make the defendants, rather than victims or the courts, pay any costs of collection that are incurred as a result of failure to pay fines, court costs, fees and restitution.

First I would like to provide you with some background on this issue. The 1996 Legislature first passed a bill at the request of judges, including Judge Bullock, and the Attorney General that provided a mechanism to collect unpaid court debt and restitution. The presumed principal method of collection was anticipated to be privatized collection contracts, and it was the Attorney General's responsibility to establish the program and enter into contracts. At the time, the amount owed statewide was not known, but it was known that many individuals simply ignored the courts' orders and failed to pay.

While the 1996 bill originally was drafted to require defendants to pay costs of collection, this became an issue in conference committee, with a conferee concerned this would be impermissible *ex post facto* punishment, and the bill was changed to take collection fees out of the amounts owed victims and the courts. After researching the issue, the Attorney General believes legislatively assessing collection fees to the defendants is perfectly permissible for all cases, past and present. It is this issue that SB 599 now addresses.

The Attorney General in the late summer and fall of 1996 surveyed the courts to attempt to determine the amount of court debt and restitution owed and the nature of that debt. With all of the state's 31 judicial districts providing either precise data or estimates, it was found that the debt was just under \$100 million, with over 60 percent being less than four years old. Through sampling of the debt, it was found the average account value was just under \$1,000 and 67 percent of the amount of the debt was for restitution owed to victims. The Attorney General also found in attempting to survey other states that the statewide collection program envisioned here is unique in the nation.

Senate Commerce Committee

Date 3-20-98

Attachment # 2-1 thru 2-12

Last session, while a committee comprised of representatives of the Judicial Administrator, Director of Purchases and the Attorney General, was in the process of negotiating with potential vendors, the Legislature, at the request of district court trustees, amended K.S.A. 75-719, the statute governing this procedure, to allow the trustees, whether serving as private contractors or employees of the court, to enter into agreements with the Attorney General to collect court debt and restitution. Trustees in seven districts expressed interest in entering into such contracts, and five of those have done so to date.

All contracts required that a work plan be developed for each judicial district in which a contractor and administrative judge reached agreement. The work plans were required to finalize the arrangements with each district and set out details of how collections would proceed. With 31 judicial districts in Kansas, 105 counties and 110 separate district court locations, the needs of the courts and requirements on the vendors are quite varied. The work plan was intended to force some measure of planning and examination of these unique district needs.

To date contractors or trustees have entered into work plans with 13 of the 31 districts. I expect to receive work plans for three districts in the very near future, and once collections begin in earnest in several districts, I anticipate all districts to follow suit. Collections actually began here in Shawnee County in January, with the contractor, Vopat and Rowe, reporting to us collection of approximately \$11,000 by mid-February. These are the first collections under this program.

As we have worked with the contractors and the district courts, the major concern expressed has been that the cost of collection is paid from the amounts owed the victims and the courts. Universally, this policy has been criticized as further victimizing those owed restitution, and for requiring the defendants to bear no cost or responsibility whatsoever for failing to pay the amounts ordered by the courts.

Court clerks also are burdened by this policy. Each debt owed is broken down into several different sub-accounts, including fines, docket fees, court costs, restitution and a variety of other fees dependent on the case. When amounts are received from collectors, the clerks not only must credit these amounts to the appropriate debt categories, but in so doing must write off a portion from each account for the collection fee. With many of the courts' existing accounting systems, this has proven to be a complicated and time-consuming task.

Still one more reason for changing this policy is that we have run into situations, such as collection of restitution ordered in certain Department of Human Resources cases, where the federal government will not allow the restitution owed to the federally-assisted program to be compromised by retention of the collection fee.

In its original form, SB 599 would restore the concept of adding costs of collection on top of, rather than being taken from, court debt and restitution. The Attorney General strongly supports

this concept, as she did when collection legislation was first proposed in 1996. We did however have concerns that the bill would inadvertently change collection procedures such that we would have to renegotiate contracts with collectors. After the months of work put into this program by the courts, contractors and trustees and our own office, we did not want to have to go back to square one. Nor did we want to further delay collections in many districts. So we have proposed amendments.

I will conclude by reviewing the amendments:

To clearly add the costs of collection to existing court debt as an additional administrative cost made necessary by the defendants' failure to pay, we request addition of the new subsection (c) on page 1 of the bill. This confronts what we believed to be the incorrect assertion that this would be *ex post facto* punishment.

The language we request to be inserted beginning on line 22 of original page 2 of the bill deals with our concern that existing contracts not be impacted. The cost of collection would be calculated as a percentage of any and all amounts actually collected as they are collected, rather than on the amount of debt turned over to the contracting agents. This is a subtle change in language, but the difference in practice is as follows:

Today: A contractor collecting a \$100 debt at a rate of 27% (of the original amount of the debt) would collect \$100, keep \$27 and send the court \$73 for an effective 27% rate. The contractor would retain 27% of all partial payments as well.

Original SB 599: A contractor collecting a \$100 debt at a rate of 27% (of the original amount of the debt) would collect \$127, keep \$27 and send the court \$100 for an effective 21.3% rate ($\$27 \div \127). In fairness to the court and victim, the contractor could only be allowed to retain the effective rate of 21.3% of any partial payments. If the rate of collection based on the original debt was raised to the 33% statutory maximum, the effective rate could only reach 24.8%.

SB 599 with proposed amendments: A contractor collecting a \$100 debt at a rate of 27% (of all amounts actually collected) would collect \$137, keep \$37 and send \$100 to the court for an effective 27% rate ($\$37 \div \137). The contractor would retain 27% of all partial payments as well. In this way, the contractors' rates are not affected by the legislation and contracts do not need to be renegotiated. However, victims and the courts will be made whole if the full amount of the debt and cost of collection is paid.

Amendments which begin on line 36 of the original page 2 of the bill simply would take care of a concern that a strict reading of the existing language, although contradicted in other sections of the statute, might be construed to require all money collected to be paid by the collector to the clerk, and for the clerk then to turn around and reimburse the collector its fee. This would require the clerk

to perform extra work, delay payment of money owed to the contractor, is contrary to the way we normally draft collection contracts, and is contrary to how we drafted these contracts, as we relied on other portions of the law which contemplate the collector simply retaining the fee. This portion is simply cleanup to coordinate existing sections of the law.

Finally, because we are at a point where other districts are ready to begin collection, we ask that the bill be effective upon publication in the *Kansas Register*, to allow collections to begin as soon as possible under these new provisions.

I have attached to my testimony letters of support from district court judges and trustees around the state. You may have received other letters from judges or trustees independent of these. With us here today is Ward Rowe, of Vopat and Rowe, the contractor here in Topeka. He is here in support of the bill and also would be available if there are any questions about how the program is working.

I also would be pleased to try to answer any questions you may have.

SENATE BILL No. 599

By Committee on Judiciary

2-5

Bold type indicates Attorney General's proposed amendments

9 AN ACT concerning courts; relating to collection of debts owed thereto;
10 attorney general; amending K.S.A. 75-719 and repealing the existing
11 section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 75-719 is hereby amended to read as follows: 75-
15 719. (a) The attorney general is authorized to enter into contracts in
16 accordance with this section for collection services for debts owed to
17 courts or restitution owed under an order of restitution.

18 (b) As used in this section:

19 (1) "Beneficiary under an order of restitution" means the victim or
20 victims of a crime to whom a district court has ordered restitution be
21 paid;

22 (2) "contracting agent" means a person, firm, agency or other entity
23 who contracts hereunder to provide collection services;

24 (3) "cost of collection" means the fee specified in contracts hereunder
25 to be paid to or retained by a contracting agent for collection services.
26 "Cost of collection" also includes any filing fee required under K.S.A. 60-
27 4303 and amendments thereto or administrative costs prescribed by the
28 attorney general pursuant to rules and regulations; and

29 (4) "debts owed to courts" means any assessment of court costs, fines,
30 fees, moneys expended by the state in providing counsel and other de-
31 fense services to indigent defendants or other charges which a district
32 court judgment has ordered to be paid to the court, and which remain
33 unpaid in whole or in part, and includes any interest or penalties on such
34 unpaid amounts as provided for in the judgment or by law. Debts owed
35 to courts also includes the cost of collection when collection services of
36 a contracting agent hereunder are utilized.

(c) **The cost of collection shall be paid by the defendant as an additional court cost in all criminal, traffic and juvenile offender cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay court debt and restitution.**

Continued on Back

37 (ed) (1) Contracts authorized by this section may be entered into with
38 state or federal agencies or political subdivisions of the state of Kansas,
39 including contracts for participation in the collection program authorized
40 by K.S.A. 75-6201 *et seq.* and amendments thereto. Such contracts also
41 may be entered into with private firms or individuals selected by a pro-
42 curement negotiation committee in accordance with K.S.A. 75-37,102
43 and amendments thereto, except that the attorney general shall designate

1 a representative to serve as the chief administrative officer member of
2 such committee and that the other two members of such committee shall
3 be designated by the director of purchases and the judicial administrator.

4 (2) Prior to negotiating any contract for collection services, this pro-
5 curement negotiation committee shall advertise for proposals, negotiate
6 with firms and individuals submitting proposals and select among those
7 submitting such proposals the party or parties to contract with for the
8 purpose of collection services.

9 (3) The attorney general may adopt rules and regulations as deemed
10 appropriate for the administration of this section, including procedures
11 to be used in the negotiation and execution of contracts pursuant to this
12 section and procedures to be followed by those who utilize collection
13 services under such contracts.

14 (4) For purposes of this section, the agencies, firms or individuals
15 with whom contracts are entered under this section shall be known as
16 contracting agents. The attorney general shall publish a list of the con-
17 tracting agents for use by courts or beneficiaries under orders of resti-
18 tution who desire to utilize the collection services of such agents.

19 (5) Each contract entered pursuant to this section shall provide for a
20 fee to be paid to or retained by the contracting agent for collection serv-
21 ices. Such fee shall be designated as the cost of collection hereunder, and
22 shall be **expressed as a percentage** not to exceed 33% of the amount of
the debt to be actually collected. The cost
23 of collection shall be ~~deducted~~ **paid or retained** from ~~the all~~ amounts
collected ~~and, but and~~
24 shall not be ~~in addition to~~ **deducted from the any other** debts owed to
courts or
25 restitution.

26 ~~(de)~~ Judicial districts of the state of Kansas are authorized to utilize
27 the collection services of contracting agents pursuant to this section for
28 the purpose of collecting all outstanding debts owed to courts. Subject to
29 rules and orders of the Kansas supreme court, each judicial district may
30 establish by local rule guidelines for the compromise of court costs, fines,
31 attorney fees and other charges assessed in district court cases.

32 ~~(ef)~~ Any beneficiary under an order of restitution entered by a court
33 after this section takes effect is authorized to utilize the collection services
34 of contracting agents pursuant to this section for the purpose of collecting
35 all outstanding amounts owed under such order of restitution.

36 ~~(fg)~~ Contracts entered hereunder shall provide **for the payment of that**
any

Continued on Back

7
2-6

37 amounts collected **and received by a contracting agent shall be paid to**
the clerk of the district court for the court in which
38 the debt being collected originated, **after the contracting agent first**
retains the cost of collection. In accounting for amounts collected
39 from any person pursuant to this section, the district court clerk shall
40 credit the person's amount owed in the amount of the ~~gross-net~~ proceeds
41 collected, *after first deducting the cost of collection-fee*, and shall *not*
otherwise reduce the
42 amount owed by any person by that portion of any payment which con-
43 stitutes the cost of collection pursuant to this section.

1 **(gh)** With the appropriate cost of collection paid to the contracting
2 agent as agreed upon in the contract hereunder, the clerk shall then
3 distribute amounts collected hereunder as follows:

4 (1) When collection services are utilized pursuant to subsection **(de)**,
5 all amounts shall be applied against the debts owed to the court as spec-
6 ified in the original judgment creating the debt;

7 (2) when collection services are utilized pursuant to subsection **(ef)**,
8 all amounts shall be paid to the beneficiary under the order of restitution
9 designated to receive such restitution, except where that beneficiary has
10 received recovery from the Kansas crime victims compensation board and
11 such board has subrogation rights pursuant to K.S.A. 74-7312 and amend-
12 ments thereto, in which case all amounts shall be paid to the board until
13 its subrogation lien is satisfied.

14 **(hi)** Whenever collection services are being utilized against the same
15 debtor pursuant to both subsections **(de)** and **(ef)**, any amounts collected
16 by a contracting agent shall be first applied to satisfy subsection **(ef)** debts,
17 debts pursuant to an order of restitution. Upon satisfaction of all such
18 debts, amounts received from the same debtor shall then be applied to
19 satisfy subsection **(de)** debts, debts owed to courts.

20 Sec. 2. K.S.A. 75-719 is hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the **statute book** *Kansas Register*.

23

THE STATE OF KANSAS
SECOND JUDICIAL DISTRICT
JACKSON JEFFERSON POTTAWATOMIE WABAUNSEE

TRACY D. KLINGINSMITH
DISTRICT JUDGE
COURTHOUSE
HOLTON, KANSAS 66436
(913) 364-2191

VANESSA L. DUNBACK, CSR
OFFICIAL REPORTER
WAMEGO, KANSAS 66547
(913) 456-7513

March 16, 1998

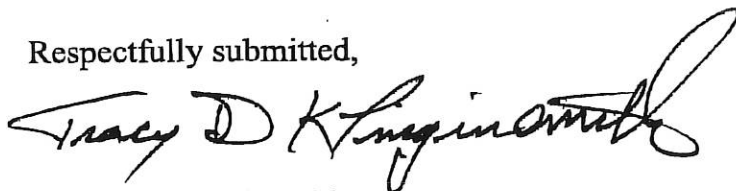
Senate Commerce Committee
Attn: Honorable Senator Alicia Salisbury

Re: Senate Bill 599, Amending KSA 1997 Supp 75-719

Dear Senators:

I'm writing to indicate my support as Administrative Judge of the Second Judicial District for adoption of Senate Bill 599, with amendments thereto as proposed by the office of the Kansas Attorney General. The amendments proposed by the Kansas Attorney General clearly impose responsibility for the costs of collection upon defendants as an additional court costs in all criminal, traffic, and juvenile offender cases. It also will greatly simplify the job of the District Court Clerks in dispersing monies collected pursuant to the Bill. I urge the committees support of this Bill with amendments as proposed by the Kansas Attorney General.

Respectfully submitted,



Tracy D. Klinginsmith
Administrative Judge

*Sent by Facsimile: Neil A. Woerman
Office of Attorney General
785-296-6296*

c Senator Ed Pugh
Representative Becky Hutchins



DISTRICT COURT OF KANSAS

TWELFTH JUDICIAL DISTRICT

Cloud, Jewell, Lincoln, Mitchell, Republic and Washington

Cloud County Courthouse
Post Office Box 423
Concordia, Kansas 66901
Facsimile 913-243-8188

THOMAS M. TUGGLE

District Judge
913-243-8125

JO ANNE RICE

Administrative Assistant
913-243-8131

BECKY L. HOESLI, C.S.R.

Official Court Reporter
913-243-8193

March 16, 1998

Hon. Alicia Salisbury, Chairperson
Senate Commerce Committee
Kansas State Senate
State Capitol Building
Topeka, KS 66601

Re: Senate Bill 599.

Dear Senator Salisbury and Members of the Committee:

I am writing in support of Senate Bill 599 which would make criminal defendants and juvenile offenders pay the cost of collection for court debt and restitution. In addition, I support the amendments the Attorney General has proposed to this bill.

The 12th Judicial District consists of six rural counties in north-central Kansas (Cloud, Jewell, Lincoln, Mitchell, Republic and Washington Counties). The 12th Judicial District court trustee has contracted with the Attorney General to collect court debt and restitution. This district is one of the first in the state to implement this program.

Presently the cost of collection can be added to restitution, but the cost of collection cannot be added to court debt. It is only fair that if collection efforts are needed criminal defendants and juvenile offenders pay the cost of collection of court debt so that all court costs, fines, fees and other amounts are collected in full.

I hope the committee will seriously consider recommending passage of this bill to the full Senate.

Sincerely,



Thomas M. Tuggle

TMT/jr

cc: Mr. Neil A. Woerman
Mr. Mark J. Noah
Hon. Terry L. Bullock

//
2-9

DISTRICT COURT OF KANSAS

CHAMBERS OF
PHILIP L. SIEVE
ADMINISTRATIVE JUDGE



COURTHOUSE
KANSAS CITY, KANSAS 66101-3076
913-573-2823

WYANDOTTE COUNTY

March 17, 1998

Senator Alicia Salisbury
Senate Commerce Committee
State Capitol Building
Topeka KS 66612

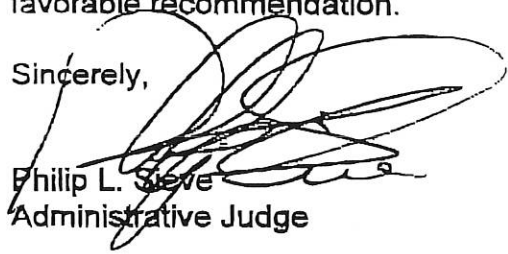
RE: S.B 599, as Amended

Dear Senator Salisbury:

I am writing to express support for the amended version of S.B. 599, which would allow Court Debt Collection Contractors to collect the cost of their services from the defendant rather than deduct it from payments to victims or the courts. Passage of this measure will allow victims and courts to receive the full amount of the restitution and costs. I believe the Court Debt Collection program is beneficial to the court system and that this bill will enhance its effectiveness.

Thank you for considering this bill. I urge you to pass it out of committee with a favorable recommendation.

Sincerely,


Philip L. Sieve
Administrative Judge

ANNE McDONALD
COURT TRUSTEE
WYANDOTTE COUNTY
FAX (913) 573-2989



WYANDOTTE COUNTY COURTHOUSE
710 NORTH SEVENTH STREET
KANSAS CITY, KANSAS 66101-3998
913-573-2992

THE DISTRICT COURT TRUSTEE
TWENTY-NINTH JUDICIAL DISTRICT, KANSAS

March 17, 1998

Senator Alicia Salisbury
Senate Commerce Committee
State Capitol Building
Topeka KS 66612

RE: S.B 599, as Amended

Dear Senator Salisbury:

I am writing to express support for the amended version of S.B. 599, which would allow Court Debt Collection Contractors to collect the cost of their services from the defendant rather than deduct it from payments to victims or the courts. As the amount of the fee to be collected was capped at 33%, this will not add a large amount to most of the debts to be collected and thus should not be a major hardship on the defendants. Yet it will allow victims and courts to receive the full amount of the restitution and costs.

Thank you for considering this bill. I urge you to pass it out of committee with a favorable recommendation.

Sincerely,

A handwritten signature in cursive script that reads "Anne McDonald".

Anne McDonald
Court Trustee

DISTRICT COURT TRUSTEE
SEVENTH JUDICIAL DISTRICT
JUDICIAL CENTER, 111 E. 11TH
LAWRENCE, KANSAS 66044-2966

785-832-5215
Fax: 785-832-5174

BRIAN M. FARLEY
District Court Trustee

KATY S. MITCHELL
Deputy Court Trustee

HARRY G. MILLER
Assistant Court Trustee

SUZANNE R. HENDERSON
Paralegal

JAN R. MORIN
Paralegal

March 17, 1998

Senator Alicia Salisbury
Kansas Senate Commerce Committee
Capitol Building
Topeka, Kansas 66612

Re: **Senate Bill 599, amending K.S.A. 1997 Supp. §75-719**

Dear Senator Salisbury:

Thank you for accepting this letter in *support* of Senate Bill 599, which would amend K.S.A. 1997 Supp. §75-719. The version being supported by this office includes the amendments proposed by the office of the Attorney General.


Senate Bill 599, as amended, corrects some serious deficiencies in K.S.A. 1997 Supp. §75-719. The law was intended to provide a mechanism for the collection of restitution owed by criminal defendants to the victims of their criminal actions, and for the collection of court costs held as receivables by the State of Kansas and currently being absorbed by the taxpayers at large.


Senate Bill 599, as amended:

- 1) Places the burden of collection on the perpetrator of crime rather than the victim;
- 2) Establishes the collection fee as an administrative cost rather than an *ex post facto* punishment;
- 3) Prevents the need to renegotiate collection contracts; and,
- 4) Makes the change in the assessment of fees early enough under the existing contracts to avoid disparate treatment of individual cases.

The Douglas County Court Trustee and the Seventh Judicial District have been working closely with Neil Weerman and the Attorney General to implement K.S.A. 1997 Supp. §75-719 in Douglas County. For the last year we have been working together to set up a successful collection mechanism under our contract. Senate Bill 599, as amended, addresses what we consider to be a serious failing in the current statute. Thank you for your consideration of Senate Bill 599, as amended.

Very truly yours,


Brian M. Farley
District Court Trustee


Linda Koester-Vogelsang
District Court Administrator

**Senate Commerce Committee
Testimony
March 20, 1998**

Senate Bill 599

Senator Alicia Salisbury
Chairperson, Commerce Committee
State House, Topeka, KS. 66612

Good Morning Madam Chairperson, and members of the Committee.

I represent the Kansas Community Alcohol Safety Action Project Coordinators Association. We provide the evaluation, monitoring, and suspension of D.U.I. and other alcohol and drug offenders for all the courts in the State of Kansas. For this service, the law provides a fee of up to \$125.00, payable by the offender to the courts as part of their probation agreement. In addition, the offender by statute is responsible for any cost incurred for their education and/or treatment.

The majority of offenders that we supervise comply with their agreements with the courts and pay their fines, fees, and costs in full within the court ordered time period. However, a certain portion of our offenders seem to think it is okay to push the courts to the limit in paying their debt. These offenders realize there is a fairly good chance that a judge will not put them in jail for just not paying their debt. We find this same portion of D.U.I. and alcohol/drug offenders are more likely recidivate for the same offense over and over, building up larger debt to our court system. These offenders are "wise" in their own way, realizing they weren't held responsible on their first offense and just assume that is the way the system works.

This legislation would put more "teeth" in the collection process. The offender who doesn't pay on time as they agreed to in their probation agreement is then held responsible for the collection fee not to exceed 33%.

Our organization supports this proposed legislation as positive in the rehabilitation of alcoholics and drug addicts, as it requires the alcoholic, or addict to be responsible for their own behavior. If they don't, a penalty of a collection fee will be added to their debt to the court. Also by adding the collection fee to the offenders debt, our organization would be receiving their full fee for services provided rather than the amount after the collection fee is subtracted.

We would also like to point out, that sometimes these offenders cause damage to property or injury to individuals and are required to make restitution. We would hope this committee would make it possible for the innocent victim to receive 100% of their loss.

Again, our organization positively supports this legislation as a step forward in making the alcohol and drug offenders fiscally responsible for their actions.

Thank-you, I'll try and answer any questions.

Sincerely:


Gene Johnson

Kansas Community Alcohol Safety Action Project Coordinations Assoc.

Senate Commerce Committee

Date 3-20-98

Attachment # 3

BRAD SMOOT

ATTORNEY AT LAW

EIGHTH & JACKSON STREET
MERCANTILE BANK BUILDING
SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 FAX

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206
(913) 649-6836

STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL THE AMERICAN INSURANCE ASSOCIATION

KANSAS SENATE COMMERCE COMMITTEE
1998 HOUSE BILL 2799
MARCH 20, 1998

I am Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), a trade association representing more than 270 companies providing property and casualty insurance, including workers compensation, to Kansas and the nation. We appreciate the opportunity to address H 2799.

House Bill 2799 was graciously introduced by the House Business, Commerce & Labor Committee at our request and the House passed it on the Consent Calendar. In 1991, Kansas enacted K.S.A. 44-559a to permit employers and insurers to negotiate large deductible workers compensation policies. Such policies add to the variety of coverage options employers otherwise have available, namely traditional first dollar coverage, self-insurance and group funded pool coverage. High deductible policies enable large employers to control their claims and losses without assuming all the risk associated with self-insurance.

House Bill 2799 is designed to correct an old interpretation of K.S.A. 44-559a. The law refers to "benefits," (see line 18) and early interpretations of this term limited deductibles to "benefits" paid for disability or medical expenses only. This narrow interpretation is contrary to practice in the insurance industry and interpretations of similar language in deductible laws in surrounding states, e.g., Colorado, Iowa and Arkansas.

In these states and the industry at large, "benefits" usually includes allocated loss adjustment expenses (ALAE) which is nothing more than costs directly associated with a particular claim. Such expenses might include legal and medical expenses incurred for the benefit of the carrier or employer in defense of the claim, expert witness fees, arbitration fees, copying charges, utilization review expenses and appeals fees. For employers who take direct responsibility for claims management, there are Senate Commerce Committee

Date 3-20-98

Attachment # 4.1 thru 4-2

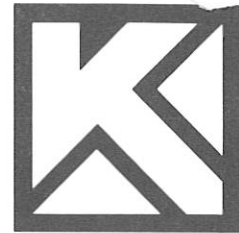
including ALAE in the deductible: First, the employer can control the costs of defending the claim and assess the effectiveness of its loss control programs, and second, the employer can negotiate substantial premium discounts from the carrier. Of course, the workers compensation system benefits because employers are encouraged to settle claims promptly and fairly since the costs of defending the claim are paid by the employer.

The Workers Compensation Division and the Kansas Insurance Department have reviewed this proposal and it appears that this change does not affect any aspect of workers compensation system's pricing, assessments or other calculations.

AIA member companies would like to offer high deductible policies to Kansas employers which include ALAE expenses within the deductible and correspondingly, Kansas employers would also like to have that option. We can find no reason why this option should be denied them. On behalf of AIA carriers and the employers they serve, we would ask that you act favorably on the modest change proposed in House Bill 2799.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, KS 66612-1671 (785) 357-6321 FAX (785) 357-4732 e-mail: kcci@kspress.com

HB 2799

March 20, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Commerce

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to comment on HB 2799.

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

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

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

KCCI has been a long-time advocate of permitting an employer to choose a deductibles option when they secure workers compensation insurance. KCCI supports deductibles because when an employer accepts a deductible, they also accept greater financial r

Senate Commerce Committee

Date 3-20-98

Attachment # 5-1 thru 5-2

in .cing injuries in their work place. When they are successful, the deductibles option leads to lower experience modification factors and lower insurance costs.

HB 2799 is very consistent with the philosophy. The issue of including allocated loss adjustment expenses in a deductible charge will only occur in cases where an employer assumes a large deductible with the idea of paying their company's claims. Due to its consistency with the concept of deductibles, KCCI would urge the Committee to favorably recommend HB 2799.

Thank you for the opportunity to comment on HB 2799. I would be happy to answer any questions.

P-5

(11) Except as provided by K.S.A. 60-437 and amendments thereto or this section, all reports, information, statements, memoranda, proceedings, findings and records which relate to utilization review or peer review conducted pursuant to this section, including any records of peer review committees, shall be privileged and shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding, except those proceedings authorized pursuant to this section. *In any proceedings where there is an application by an employee, employer, insurance carrier or workers compensation fund for a hearing pursuant to K.S.A. 44-534a and amendments thereto, for a change of medical benefits which has been filed after a health care provider, employer, insurance carrier or the workers compensation fund has made application to the medical services section of the division for the resolution of a dispute or matter pursuant to the provisions of K.S.A. 44-510 and amendments thereto, all reports, information, statements, memoranda, proceedings, findings and records which relate to utilization review and peer review including the records of contract reviewers, records of peer review committees and findings and records of the medical services section of the division shall be admissible at the hearing before the administrative law judge on the issue of the medical benefits to which an employee is entitled.*

Exchange for pages 5, 6, 7 and 8 of SB 555

Senate Commerce Committee

Date 3-20-98

Attachment # 6-1 thru 6-5

29 Sec. 3. K.S.A. 44-513a is hereby amended to read as follows: 44-
30 513a. (a) Whenever a minor person shall be entitled to compensation
31 under the provisions of the workmen's *workers* compensation act, in an
32 amount not to exceed two thousand dollars (\$2,000); the director *admin-*
33 *istrative law judge* is authorized to direct such compensation to be paid
34 to the natural guardian of such minor person; or to the minor himself;
35 provided that if a conservator shall have been appointed for such minor
36 person the payment shall be directed to such conservator. Before ordering
37 such a payment, the director shall inquire into the advisability thereof;
38 and if he finds that there is no manifest disadvantage to the minor person
39 therefrom; he shall order such payment to be made to the natural guard-
40 ian; or to the minor himself.

41 (b) In the event the director is of the opinion that payment of such
42 compensation should not be made to the natural guardian; or to such
43 minor; he shall direct to whom payment shall be made. The payment of

1 compensation pursuant to an order or directive made by the director
2 under authority of the workmen's compensation act shall exclude and
3 satisfy all other claims and causes of action of such minor person for the
4 injury or death for which the compensation award is made in accordance
5 with K.S.A. 59-3001 et seq., and amendments thereto.

10 Sec. 10. K.S.A. 1997 Supp. 44-5,117 is hereby amended to
11 follows: 44-5,117. (a) Upon the request of any party to a work
12 pension claim and the acceptance of the other party, the director of
13 workers compensation shall schedule the parties for a mediation confer-
14 ence. The purpose of the mediation shall be to assist the parties in reach-
15 ing agreement on any disputed issues in a workers compensation claim.
16 If the director is advised that one party does not wish to participate in
17 the mediation, the director is authorized to encourage that party to par-
18 ticipate.
19 (b) Mediation conferences shall be conducted by mediators ap-
20 pointed by the director. Such mediators shall be qualified as mediators
21 pursuant to the dispute resolution act, K.S.A. 5-501 *et seq.*, and amend-
22 ments thereto, and any relevant rules of the Kansas supreme court as
23 authorized pursuant to K.S.A. 5-510, and amendments thereto.
24 (c) Persons with final settlement authority for each party shall be
25 present, in person *or by video conference*, at the mediation conference.
26 (d) All mediation conferences shall be conducted by a mediator in
27 accordance with the dispute resolution act, K.S.A. 5-501, and amend-
28 ments thereto.
29 (e) The director shall widely disseminate information about the me-
30 diation conference procedure.

6-4

1 missioner, to a monetary penalty of not more than \$10,000 for each and
2 every act or violation, but not exceeding an aggregate penalty of \$50,000
3 for any six-month period in addition to any penalty imposed pursuant to
4 subsection (g).

5 (j) Any civil fine imposed under this section shall be subject to review
6 in accordance with the act for judicial review and civil enforcement of
7 agency actions in the district court in Shawnee county.

8 (k) All moneys received under this section for costs assessed, which
9 are not awarded to a complainant, or monetary penalties imposed shall
10 be deposited in the state treasury and credited to the ~~workmen's~~ workers
11 compensation fee fund.

12 (l) Any person who refers a possibly fraudulent or abusive practice
13 to any state or governmental investigative agency, shall be immune from
14 civil or criminal liability arising from the supply or release of such referral
15 as long as such referral is made in good faith with the belief that a fraud-
16 ulent or abusive practice has, is or will occur and said referral is not made
17 by the person or persons who are in violation of the workers compensation
18 act in order to avoid criminal prosecution or administrative hearings.

19 [(m) The remedies and penalties provided in this section are not ex-
20 clusive remedies and penalties and do not preclude the use of any other
21 criminal or civil remedy or penalty for any act that is in violation of this
22 section.]

23 Sec. 12. K.S.A. 1997 Supp. 44-5,125 is hereby amended to read as
24 follows: 44-5,125. (a) (1) Any person who obtains or attempts to obtain
25 any payment of compensation under the workers compensation act for
26 such person or who denies or attempts to deny the obligation to make
27 any payment of workers compensation benefits; who obtains or attempts
28 to obtain a more favorable workers compensation benefit rate or insur-
29 ance premium rate than that to which such person is otherwise entitled;
30 who prevents, reduces, avoids or attempts to prevent, reduce or avoid the
31 payment of any compensation under the workers compensation act; or
32 who fails to communicate a settlement offer or similar information to a
33 claimant under the workers compensation act, by, in any such case, know-
34 ingly or intentionally: (A) Making a false or misleading statement, (B)
35 misrepresenting or concealing a material fact, or (C) fabricating, altering,
36 concealing or destroying a document; (D) *is employed while receiving*
37 *temporary total disability benefits for permanent total disability benefits*
38 *to which they are not entitled; and*

39 (2) any person who conspires with another person to commit any act
40 described by ~~elause~~ paragraph (1) of this subsection (a), shall be guilty
41 of:

42 (A) A class A ~~C~~ nonperson misdemeanor, if the amount received as
43 a benefit or other payment under the workers compensation act as a result

Strike subsection (m)

A

7-87

1 of such act or the amount that the person otherwise benefited monetarily
2 as a result of a violation of this subsection (a) is \$500 or less; or

3 (B) a severity level 9, nonperson felony, if such amount is more than
4 \$500, but less than \$25,000;

5 (C) a severity level 7, nonperson felony, if the amount is more than
6 \$25,000, but less than \$50,000;

7 (D) a severity level 6, nonperson felony if the amount is more than
8 \$50,000, but less than \$100,000; or

9 (E) a severity level 5, nonperson felony if the amount is more than
10 \$100,000.

11 (b) Any person who knowingly and intentionally presents a false cer-
12 tificate of insurance that purports that the presenter is insured under the
13 workers compensation act, shall be guilty of a level 8, nonperson felony.

14 (c) A health care provider under the workers compensation act who
15 knowingly and intentionally submits a charge for health care that was not
16 furnished, shall be guilty of a level 9, nonperson felony.

17 (d) Any person who obtains or attempts to obtain a more favorable
18 workers compensation insurance premium rate than that to which the
19 person is entitled, who prevents, reduces, avoids or attempts to prevent,
20 reduce or avoid the payment of any compensation under the workers
21 compensation act, or who fails to communicate a settlement offer or sim-
22 ilar information to a claimant under the workers compensation act, by,
23 in any such case knowingly or intentionally: (1) Making a false or mis-
24 leading statement; ~~(2) misrepresenting, concealing or failing to disclose a~~
25 ~~material fact;~~ (3) fabricating, concealing or destroying a document; or (4)
26 conspiring with another person or persons to commit the acts described
27 ~~in paragraph (1) or (2);~~ shall be guilty of a level 9, nonperson felony.

(2) misrepresenting or
concealing a material fact;

in paragraphs (1), (2), or
(3)

28 (b)(e) Any person who has received any amount of money as a benefit
29 or other payment under the workers compensation act as a result of a
30 violation of subsection (a) or (c) and any person who has otherwise ben-
31 efitied monetarily as a result of a violation of subsection (a) or (c) shall be
32 liable to repay an amount equal to the amount so received by such person
33 or the amount by which such person has benefited monetarily, with in-
34 terest thereon. Any such amount, plus any accrued interest thereon, shall
35 bear interest at the current rate of interest prescribed by law for judg-
36 ments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto
37 per month or fraction of a month until repayment of such amount, plus
38 any accrued interest thereon. The interest shall accrue from the date of
39 overpayment or erroneous payment of any such amount or the date such
40 person benefited monetarily.

41 (e)(f) Any person aggrieved by a violation of subsection (a), (b), (c)
42 or (d) shall have a cause of action against any other person to recover any
43 amounts of money erroneously paid as benefits or any other amounts of