

Approved: March 26, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 3:55 p.m. on March 25, 1998 in Room 254E of the Capitol.

All members were present.

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor
Mary Blair, Committee Secretary

Conferees appearing before the committee: none

Others attending: see attached list

HB 2744 - Fleeing or attempting to elude a police officer in a willful manner with disregard for the safety of others, severity level 9, person felony

Attendee Steve Kearney explained the purpose of the balloon amendment to **HB 2744** and Revisor Self explained the substantive changes in the bill. (attachment 1) Following discussion Senator Feleciano moved to adopt the amendment and pass the bill out favorably as amended. Senator Oleen seconded. Carried

SB 628 - An act concerning the residential landlord and tenant act; relating to the termination of the rental agreement

Senator Schraad detailed the balloon amendments to **SB 628**. (attachment 2) Following lengthy discussion, Senator Schraad moved to pass the bill as amended. Senator Feleciano seconded. Bill failed with 2-9

HB 2531 - Prevention of assisted suicide act

Senator Bond explained his concern about a portion of **HB 2531** concerning withdrawal of life support systems (line 5(b) pg. 2) (attachment 3) There was discussion on the balloon amendment addressing this. Senator Feleciano moved to adopt the amendment to the bill. Senator Bond seconded. Carried. Following discussion and clarification by Revisor Self on the proposals by the Kansas State Board of Nursing regarding portions of the bill, there was consensus the proposals were unnecessary. The Chair requested Committee delete Section 15 of the bill which directs the University of Kansas Medical Center to perform certain duties. Senator Feleciano moved to strike Section 15 of the bill. Senator Schraad seconded. Carried. The Chair recognized the passage, on March 23, of the "spiritual" amendment to the bill proposed by Keith Landis, Christian Science Committee on Publication for Kansas. Senator Goodwin expressed concern regarding New Section 6 of the bill stating that it sets the stage for family litigation. She requested it be removed. Senator Goodwin made a motion to strike section 6 of the bill. Senator Oleen seconded. There was discussion regarding this section and the need for it to remain. Senator Oleen withdrew her second. Following further discussion the Chair announced that Committee would meet after adjournment of the Senate March 26 to bring this bill to closure.

HB 2233 - Allowing counties and cities to establish a detention facilities processing fee.

Senator Schraad reviewed the bill and stated that the committee recommends it favorably. Attendee Helen Stephens, representing Kansas Sheriffs Assn and Kansas Highway Patrol Assn, requested that **SB 530**, which repeals the sunset on \$1.00 of the docket fee for funding for the law enforcement training center, be amended into **HB 2233**. Following discussion and clarification, Senator Bond moved to amend **SB 530** into **HB 2233**. Senator Feleciano seconded. Carried. Senator Bond moved to pass the bill out as amended. Senator Donovan seconded. Carried.

HB 2282 - An act concerning civil procedure; relating to proof of service

Senator Schraad reviewed **HB 2282** stating that it would require process servers to show proof of service by an affidavit rather than a signed return of service. Following discussion, Attendee Pomeroy clarified certain questions Committee had and explained his proposal to amend **HB 2206** into **HB 2282**. (attachment 4) Following further discussion, Senator Oleen moved to adopt the amendment to amend **HB 2206** into **HB 2282**. Senator Pugh seconded. Motion carried 9-2. Senator Oleen moved to amend the language in the bill to delete the term "affidavit" and insert "statement under penalty of perjury" and pass the bill out as amended. Senator Bond seconded. Carried.

Meeting adjourned at 5:20 p.m. The next scheduled meeting is March 26 in Room 254E following adjournment of the Senate.

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Senate Judiciary
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HOUSE BILL No. 2744

By Representative Huff

1-29

10 AN ACT concerning crimes and punishment; relating to fleeing or elud-
11 ing a police officer; amending K.S.A. 1997 Supp. 8-1568 and repealing
12 the existing section.

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

15 Section 1. K.S.A. 1997 Supp. 8-1568 is hereby amended to read as
16 follows 8-1568. (a) Any driver of a motor vehicle who willfully fails or
17 refuses to bring such driver's vehicle to a stop, or who otherwise flees or
18 attempts to elude a pursuing police vehicle or police bicycle, when given
19 visual or audible signal to bring the vehicle to a stop, shall be guilty as
20 provided by subsection (b) ~~or (c)~~. The signal given by the police officer
21 may be by hand, voice, emergency light or siren. The officer giving such
22 signal shall be in uniform, prominently displaying such officer's badge of
23 office, and the officer's vehicle or bicycle shall be appropriately marked
24 showing it to be an official police vehicle or police bicycle.

25 (b)(1) Every person convicted of violating subsection (a), upon a first
26 conviction, shall be guilty of a class B nonperson misdemeanor.

27 (2) Every person convicted of violating subsection (a), upon a second
28 conviction of such subsection, shall be guilty of a class A nonperson mis-
29 demeanor.

30 (3) Every person convicted of violating subsection (a), upon a third
31 or subsequent conviction of such subsection ~~or violating subsection (c)~~
32 shall be guilty of a severity level 9, person felony.

33 ~~(4)(c) Any driver of a motor vehicle who flees or attempts to elude a
34 pursuing police officer in violation of subsection (a) and the pursued mo-
35 tor vehicle is driven in a willful and wanton disregard for the safety of
36 persons or property; the person driving the motor vehicle, upon conviction
37 shall be guilty of a severity level 9, person felony. For purposes of this
38 subsection, a willful or wanton disregard for the safety of persons or prop-
39 erty includes, but is not limited to, driving while fleeing or attempting to
40 elude a pursuing police officer during which time either three or more
41 traffic infractions occur, or damage to property occurs, who violates the
42 revision of subsection (a) and who:~~

43 (1) Commits any of the following during police pursuit: (A) Ex-

(c)

(b) Any driver who violates the provisions of subsection (a) and who: (1) Commits any of the following during a police pursuit: (A) Fails to stop for a police road block; (B) drives around tire deflating devices placed by a police officer; (C) engages in reckless driving as defined by K.S.A. 8-1566 and amendments thereto; or (D) is involved in any motor vehicle accident or intentionally causes damage to property; or

(2) is attempting to elude capture for the commission of any felony, shall be guilty as provided in subsection (c)(4).

(c)

(4) Every person convicted of violating subsection (b) shall be guilty of a severity level 9, person felony.

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1 ~~ceeds posted speed limit by more than 20 miles per hour; (B) fails~~
2 ~~to stop for a police roadblock; (C) drives around tire deflating de-~~
3 ~~vices placed by police officer; (D) engages in reckless driving as~~
4 ~~defined by K.S.A. 8-1566, and amendments thereto; (E) is involved~~
5 ~~in any motor vehicle accident or causes any intentional property~~
6 ~~damage; or (F) commits three or more traffic infractions; or~~

7 ~~(2) is attempting to elude capture for the commission of any~~
8 ~~felony, shall be guilty as provided in subsection (b)(3).]~~

9 (d) For the purpose of this section "conviction" means a final con-
10 viction without regard whether sentence was suspended or probation
11 granted after such conviction. Forfeiture of bail, bond or collateral de-
12 posited to secure a defendant's appearance in court, which forfeiture has
13 not been vacated, shall be equivalent to a conviction.

14 (e) The division of vehicles of the department of revenue shall
15 promote public awareness of the provisions of this section when
16 persons apply for or renew such person's driver's license.

17 Sec. 2. K.S.A. 1997 Supp. 8-1568 is hereby repealed.

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

SENATE BILL No. 628

By Senator Hensley

2-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 628

Senate Judiciary
3-25 pm
att 2

9 AN ACT concerning the residential landlord and tenant act; relating to
10 the termination of the rental agreement; amending K.S.A. 58-2543,
11 58-2547 and 58-2564 and repealing the existing sections.

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

14 New Section 1. (a) A landlord or the county or district attorney of
15 the county in which the leased premises is located shall have standing to
16 bring an action pursuant to the residential landlord and tenant act.

17 (b) The county or district attorney may recover the costs of the action,
18 including only court costs, eviction costs for the landlord and attorney
19 fees. Such costs may be recovered from the landlord, tenant, member of
20 the tenant's household, guest of the tenant or person under the control
21 of the tenant, as determined by the court.

22 (c) This section shall be part of and supplemental to the residential
23 landlord and tenant act.

24 Sec. 2. K.S.A. 58-2543 is hereby amended to read as follows: 58-
25 2543. As used in this act: (a) "Action" includes recoupment, counterclaim,
26 setoff, suit in equity and any other proceeding in which rights are deter-
27 mined, including an action for possession.

28 (b) "Building and housing codes" includes any law, ordinance or gov-
29 ernmental regulation concerning fitness for habitation, or the construc-
30 tion, maintenance, operation, occupancy, use or appearance of any prem-
31 ises or dwelling unit.

32 (c) "Dwelling unit" means a structure or the part of a structure that
33 is used as a home, residence or sleeping place by one person who main-
34 tains a household or by two or more persons who maintain a common
35 household; but such term shall not include real property used to accom-
36 modate a manufactured home or mobile home, unless such manufactured
37 home or mobile home is rented or leased by the landlord.

38 (d) "Good faith" means honesty in fact in the conduct of the trans-
39 action concerned.

40 (e) "Landlord" means the owner, lessor or sublessor of the dwelling
41 unit, or the building of which it is a part, and it also means a manager of
42 the premises who fails to disclose as required by K.S.A. 58-2551 and
43 amendments thereto.

Except as otherwise provided,

In order to recover costs from the landlord, the county or district attorney must request that the landlord first proceed pursuant to the expedited eviction provisions of subsection (b) of K.S.A. 58-2564 and amendments thereto to evict the person conducting the breach. If the landlord fails to proceed pursuant to such expedited eviction provisions and the county or district attorney does proceed pursuant to such expedited eviction provisions, the county or district may recover costs from the landlord as provided in this section. If the county or district proceeds pursuant to such expedited eviction provisions without first requesting the landlord as provided in this subsection, the county or district attorney shall not recover costs from the landlord as provided in this subsection.

(f) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(g) "Owner" means one or more persons, jointly or severally, in whom is vested: (1) All or part of the legal title to property; or (2) all or part of the beneficial ownership and a right to prevent use and enjoyment of the premises; and such term includes a mortgagee in possession.

(h) "Person" includes an individual or organization.

(i) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or the use of which is promised to the tenant.

(j) "Rent" means all payments to be made to the landlord under the rental agreement, other than the security deposit.

(k) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under K.S.A. 58-2556 and amendments thereto, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premise.

(l) "Roomer" means a person occupying a dwelling unit that lacks a major bathroom and kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. As used herein, a major bathroom facility means a toilet, and either a bath or shower, and a major kitchen facility means a refrigerator, stove and sink.

(m) "Security deposit" means any sum of money specified in a rental agreement, however denominated, to be deposited with a landlord by a tenant as a condition precedent to the occupancy of a dwelling unit, which sum of money, or any part thereof, may be forfeited by the tenant under the terms of the rental agreement upon the occurrence or breach of conditions specified therein.

(n) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(o) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

(p) "*Partial eviction*" means the eviction and removal of specified persons other than the tenant from a leased premises.

Sec. 3. K.S.A. 58-2547 is hereby amended to read as follows: 58-2547. (a) No rental agreement may provide that the tenant or landlord:

213

(1) Agrees to waive or to forego rights or remedies under this act;
 (2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) agrees to pay either party's attorneys' fees *except as provided in section 1, and amendments thereto*; or

(4) agrees to the exculpation or limitation of any liability of either party arising under law or to indemnify either party for that liability or the costs connected therewith, except that a rental agreement may provide that a tenant agrees to limit the landlord's liability for fire, theft or breakage with respect to common areas of the dwelling unit.

(b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by such landlord to be prohibited, the tenant may recover actual damages sustained by such tenant.

Sec. 4. K.S.A. 58-2564 is hereby amended to read as follows: 58-2564. (a) Except as otherwise provided in the residential landlord and tenant act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with K.S.A. 58-2555 and amendments thereto materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ~~30~~ 30 days after receipt of the notice, if the breach is not remedied in ~~14~~ 14 days. The rental agreement shall terminate as provided in the notice regardless of the periodic rent-paying date, except that if the breach is remediable by repairs or the payment of damages or otherwise, and the tenant adequately initiates a good faith effort to remedy the breach prior to the date specified in the notice, the rental agreement will not terminate. However, in the event that such breach or a similar breach occurs after the ~~14 day~~ 14-day period provided in this subsection, the landlord may deliver a written notice to the tenant that the rental agreement will terminate upon a date not less than ~~30~~ 30 days after receipt of the notice without providing the opportunity to remedy the breach. The rental agreement then shall terminate as provided in such notice regardless of the periodic rent-paying date.

30

14

14-day

30

DELETE

(b) (1) ~~If there is a breach as provided in this subsection that is both material and irreparable that~~ is committed by the tenant, a member of the tenant's household, a guest of the tenant or a person under the control of the tenant on or within 1000 feet of the leased premises, the landlord or the district or county attorney may deliver a written notice to the tenant advising such tenant that the rental agreement will be terminated within three days without the opportunity to remedy the breach. Such notice shall be served as required under subsection (c) of K.S.A. 58-2564, and amendments thereto. The three-day notice period provided for in this

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1 subsection shall be computed as three consecutive 24-hour periods. The
 2 rental agreement then shall terminate as provided in such notice regard-
 3 less of the periodic rent-paying date. Conduct and offenses giving rise to
 4 a breach under this subsection shall include arrests for violations of K.S.A.
 5 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-
 6 3415, 21-3420, 21-3421, ~~21-3422, 21-3423~~, 21-3426, 21-3427, 21-3442,
 7 21-3502, 21-3503, 21-3504, 21-3506, 21-3510, 21-3511, 21-3512, 21-
 8 3513, 21-3515, 21-3516, 21-3517, 21-3518, ~~21-3602, 21-3603~~, 21-3715,
 9 21-3716, 21-3718, 21-3719, ~~subsection (b)(1) or (b)(2) of 21-3720~~, sub-
 10 section (b)(1) or (b)(2) of 21-3731, subsection (a) or (b) of 21-3812,
 11 21-3833, 21-4201, 21-4202, 21-4204, or article 41 of chapter 65 of the
 12 Kansas Statutes Annotated including felonies and misdemeanors, and
 13 amendments thereto ~~or any other breach of the lease agreement that~~
 14 ~~otherwise seriously jeopardizes the health, safety and welfare of the land-~~
 15 ~~lord, the landlord's agent or other tenant or involves imminent or actual~~
 16 ~~serious property damage~~ [The court may order a partial eviction if the
 17 tenant establishes that such tenant was unable to take action to prevent
 18 the breach because of verbal or physical coercion by the person conduct-
 19 ing the breach]

the execution of a search warrant that produces evidence of or

The law enforcement officer who executes the search warrant or arrest pursuant to this subsection shall notify the landlord in the manner provided in subsection (b)(2) within 48 hours of executing such search warrant or arrest.

was without knowledge of the breach or

If the court orders a partial eviction of a person conducting the breach other than the tenant as provided in this section, and the person evicted returns to the premises, such conduct shall constitute a breach pursuant to this subsection by the tenant, the provisions of this subsection shall apply to the tenant and the court shall not order a partial eviction in such circumstances.

20 (2) Within two days of delivering a written notice to the tenant pur-
 21 suant to this subsection, the district or county attorney shall notify the
 22 landlord of such breach. Notice as required in this subsection may be
 23 served on the landlord, or, if the landlord cannot be found, by leaving a
 24 copy thereof at the landlord's usual place of residence, or by delivering a
 25 copy thereof to some person over 12 years of age residing at the residence,
 26 or, if no person is found upon the residence, by posting a copy of the
 27 notice in a conspicuous place thereon, or by registered mail, registered
 28 mail return receipt requested, or certified mail, return receipt requested,
 29 addressed to the landlord at the landlord's usual place of residence. Proof
 30 of service by registered mail may be by the affidavit of the person mailing
 31 such notice or by the return receipt. Proof of service by certified mail may
 32 be by the return receipt. The two-day notice period provided in this sub-
 33 section shall be computed as two consecutive 24-hour periods.

(3) The provisions of this subsection, section 1 and subsection (p) of K.S.A. 58-2543 and amendments thereto shall constitute an expedited eviction procedure and shall be known and may be cited as the expedited eviction procedure act.

34 (c) The landlord may terminate the rental agreement if rent is unpaid
 35 when due and the tenant fails to pay rent within three days, after written
 36 notice by the landlord of nonpayment and such landlord's intention to
 37 terminate the rental agreement if the rent is not paid within such
 38 three-day period. The three-day notice period provided for in this sub-
 39 section shall be computed as three consecutive 24-hour periods. When
 40 such notice is served on the tenant or to some person over 12 years of
 41 age residing on the premises, or by posting a copy of the notice in a
 42 conspicuous place thereon, the three-day period shall commence at the
 43 time of delivery or posting. When such notice is delivered by mailing, an

additional two days from the date of mailing should be allowed for the tenant to pay such tenant's rent and thereby avoid having the rental agreement terminated.

3

4 ~~(e)~~ (d) Except as otherwise provided in the residential landlord and
5 tenant act, the landlord may recover damages and obtain injunctive relief
6 for any noncompliance by the tenant with the rental agreement or K.S.A.
7 58-2555 and amendments thereto.

8 ~~(d)~~ (e) The provisions of this section shall not limit a landlord's or
9 tenant's right to terminate the rental agreement pursuant to K.S.A. 58-
10 2570, and amendments thereto.

11 Sec. 5. K.S.A. 58-2543, 58-2547 and 58-2564 are hereby repealed.

12 Sec. 6. This act shall take effect and be in force from and after its
13 publication in the statute book.

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1 pain or discomfort, even if the medication or procedure may hasten or
2 increase the risk of death, does not violate K.S.A. 21-3406 and amend-
3 ments thereto unless the medications or procedures are knowingly ad-
4 ministered, prescribed or dispensed with the intent to cause death.

5 (b) ~~Withholding or withdrawal of a life-sustaining procedure does not~~
6 violate K.S.A. 21-3406 and amendments thereto.

7 New Sec. 5. (a) A cause of action for injunctive relief may be main-
8 tained against any person who is reasonably believed to be about to violate
9 or who is in the course of violating K.S.A. 21-3406 and amendments
10 thereto by any person who is:

- 11 (1) The spouse, parent, child or sibling of the person who would
- 12 commit suicide.
- 13 (2) Entitled to inherit from the person who would commit suicide.
- 14 (3) A health care provider of the person who would commit suicide.
- 15 (4) A public official with appropriate jurisdiction to prosecute or en-
16 force the laws of this state.

17 New Sec. 6. A cause of action for civil damages **may be maintained**
18 against any person who violates or who attempts to violate K.S.A. 21-3406
19 and amendments thereto **may be maintained** by any person **given standing**
20 **by section 5 and amendments thereto who is the spouse, parent, child,**
21 **sibling, or entitled to inherit from the person or who is the per-**
22 **sonal representative of the person who did or would commit sui-**
23 **cide for compensatory damages and exemplary damages, whether or not**
24 **the plaintiff consented to or had prior knowledge of the violation or at-**
25 **tempt.**

26 New Sec. 7. Reasonable attorney fees shall be awarded to the pre-
27 vailing plaintiff in a civil action brought pursuant to section 5 or 6 and
28 amendments thereto, or in a proceeding for a judgment of contempt of
29 court for violating an injunction issued under section 5 and amendments
30 thereto. If the defendant prevails, and the court determines that a plaintiff
31 brought the suit or the proceeding for a judgment of contempt frivolously
32 or in bad faith, reasonable attorney fees shall be awarded to the defend-
33 ant.

34 Sec. 8. K.S.A. 1996 Supp. 65-1120 is hereby amended to read as
35 follows: 65-1120. (a) ~~Grounds for disciplinary actions.~~ The board may
36 deny, revoke, limit or suspend any license, certificate of qualification or
37 authorization to practice nursing as a registered professional nurse, as a
38 licensed practical nurse, as an advanced registered nurse practitioner or
39 as a registered nurse anesthetist that is issued by the board or applied for
40 under this act or may publicly or privately censure a licensee or holder
41 of a certificate of qualification or authorization, if the applicant, licensee
42 or holder of a certificate of qualification or authorization is found after
43 hearing;

A health care professional, family member
or other legally authorized person who
participates in the act of, or the decision
making process which results in, the

Senate Judiciary
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REMARKS CONCERNING HB 2282

SENATE JUDICIARY SUBCOMMITTEE

MARCH 17, 1998

Thank you for giving me the opportunity to appear before your Subcommittee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

Our groups support HB 2282. We believe this is a good bill, but we believe it could be improved by adding another section.

We would request that you amend this bill by adding to it the contents of HB 2206. HB 2206, like HB 2282, concerns civil procedure. The statute amended by HB 2206 is K.S.A. 60-2003, which is the statute that enumerates items that are allowable as costs when judgment is rendered. As set forth in HB 2206, we would like to add an additional item, which is specified on lines 34 through 36 of HB 2206.

The services of a private process server are typically used when there is difficulty getting service by ordinary methods or in cases where the statute of limitations is about to expire, and it is important to get service quickly.

In Sedgwick County, where there is extensive use of private process servers, the mileage and fees of the private process server are allowed as an item of costs by District Court rule. We feel that the authorization to tax the expenses of private process servers costs should be available throughout the state.

Elwaine F. Pomeroy
Elwaine F. Pomeroy

Senate Judiciary
3-25-98 PM
att 4

HOUSE BILL No. 2206

By Committee on Judiciary

2-4

9 AN ACT concerning civil procedure; relating to costs; amending K.S.A.
10 60-2003 and repealing the existing section.

11

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

13 Section 1. K.S.A. 60-2003 is hereby amended to read as follows: 60-
14 2003. Items which may be included in the taxation of costs are:

15 (1) The docket fee as provided for by K.S.A. 60-2001, and amend-
16 ments thereto.

17 (2) The mileage, fees, and other allowable expenses of the sheriff or
18 other officer incurred in the service of process outside of this state or in
19 effecting any of the provisional remedies authorized by this chapter.

20 (3) Publisher's charges in effecting any publication of notices author-
21 ized by law.

22 (4) Statutory fees and mileage of witnesses attending court or the
23 taking of depositions used as evidence.

24 (5) Reporter's or stenographic charges for the taking of depositions
25 used as evidence.

26 (6) The postage fees incurred pursuant to K.S.A. 60-303 or subsec-
27 tion (e) of K.S.A. 60-308, and amendments thereto.

28 (7) Alternative dispute resolution fees shall include fees, expenses
29 and other costs arising from mediation, conciliation, arbitration, settle-
30 ment conferences or other alternative dispute resolution means, whether
31 or not such means were successful in resolving the matter or matters in
32 dispute, which the court shall have ordered or to which the parties have
33 agreed.

34 (8) *The mileage and fees of a private process server incurred in the*
35 *service of process or in effecting any of the provisional remedies author-*
36 *ized by this chapter.*

37 (9) Such other charges as are by statute authorized to be taxed as
38 costs.

39 Sec. 2. K.S.A. 60-2003 is hereby repealed.

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

Elwaine F Pomeroy

From: Bruce C Ward [bward@southwind.net]
Sent: Wednesday, March 25, 1998 7:30 AM
To: Elwaine Pomeroy
Cc: CAA List
Subject: HB 2206

Elwaine:

You have asked me to comment on the proposal to amend HB 2206 into HB 2282.

My practice is devoted exclusively to debt collection, primarily in Sedgwick County. I file thousands of papers with the court each year in connection with my practice. The vast majority of these papers which require service are served by the Sheriff.

Occasionally, I find it necessary or desirable to hire a special process server to serve a paper.

Typically, these are papers where either:

1. the Sheriff has not had any success serving the paper;
2. the situation requires service at an odd time or place; or
3. there are time deadlines that require extremely fast service.

Typically, the charges for a special process server in Sedgwick County average \$35 per paper for the more routine situations and \$75 where more time and effort is required.

The charges for a special process server are paid by the plaintiff's attorney and either absorbed by the attorney as a part of the fee arrangement or billed to his/her client depending on the fee arrangement.

In Sedgwick County, these costs can be assessed as court costs by local court rule. If these costs are passed on to the defendant as court costs, they are only paid by the defendant to the extent that the plaintiff is successful in collecting any money from the defendant. Collections in Sedgwick County average between 33% and 50% of the total amount in suit each year for most collection attorneys.

The practice of allowing these costs to be assessed as court costs in Sedgwick County has not encouraged the increased use of special process servers. The situations requiring the use of process servers are limited and the cost of a process server must be borne by the attorney or client with no guarantee that they will ever be reimbursed.

I think the same thing can be expected statewide if HB 2206 is amended into HB 2282 and passed.

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