

Approved: 4-9-99  
Date

## MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 10, 1999 in Room 313-S of the Capitol.

All members were present except:

Representative David Adkins - Excused  
Representative Peggy Long - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Kathy Taylor-Olsen, Kansas Bankers Association  
Natalie Bright, Kansas Chamber of Commerce  
David Dick, Kansas Credit Union Association  
Elden Cleaver, Chanute, Kansas  
Art Brown, Mid-America Lumbermens Association  
Joe Leiber, Kansas Cooperative Council  
Senator John Vratil  
Ron Smith, Kansas Bar Association  
Rick Friedstrom, Kansas Association of Life Underwriters Insurance Agencies

Hearings on **SB 97 - corporate representation by officer or agent in small claims procedure**, were opened.

Kathy Taylor-Olsen, Kansas Bankers Association, appeared before the committee as a proponent of the bill. **SB 97** speaks to representation in small claims courts by including corporations in the list of those who are allowed to use small claims court. Small businesses currently have two options: turn the claims over to a collection agency or write it off. (Attachment 1)

Natalie Bright, Kansas Chamber of Commerce, appeared before the committee in support of the bill. There has been a recent trend among magistrate judges not to allow corporations appear in their court room. She explained that some corporations are so small that it would be cost prohibitive to hire an attorney. (Attachment 2)

David Dick, Kansas Credit Union Association, appeared before the committee as a proponent of the bill. He commented that it is too expensive for a credit union to hire an attorney to collect \$1,800 or less therefore the actual recovery would be small. (Attachment 3)

Elden Cleaver, Chanute, Kansas, appeared before the committee in support of the proposed bill. While small claims does not guarantee collection, it does help. (Attachment 4)

Art Brown, Mid-America Lumbermens Association, appeared before the committee as a proponent of the bill. There are some areas in the state that do not allow corporations in small claims court without an attorney. The bill would help those corporations who can't afford to hire one. (Attachment 5)

Joe Leiber, Kansas Cooperative Council, appeared before the committee in support of the bill. While most think of corporations as large firms, many corporations are very small, like cooperatives and farmers. (Attachment 6)

Senator John Vratil appeared before the committee as a opponent of the bill. He was concerned that this bill would not be good public policy. While it tries to correct one problem it creates another, the unauthorized practice of law. (Attachment 7)

Ron Smith, Kansas Bar Association, appeared before the committee in opposition to the bill. He stated that corporations should be using Chapter 61 to file claims. He was also concerned that this would increase the unauthorized practice of law that goes on in small claims courts. (Attachment 8)

Community Bankers Association of Kansas and Petroleum Marketers and Convenience Store Association of Kansas did not appear before the committee but requested that their testimony be included in the minutes. (Attachments 9 & 10)

Hearings on **SB 97** were closed.

Hearings on **SB 143 - Roth IRA exempt from claims of creditors**, were opened.

Ron Smith, Kansas Bar Association, appeared before the committee as a proponent of the bill. He explained that the proposed bill would allow Roth IRA to be added to the list of those exempt from creditors. (Attachment 11)

Rick Friedstrom, Kansas Association of Life Underwriters Insurance Agencies, appeared before the committee in support of the bill. He stated that the proposed bill is needed because people who have or want to invest in Roth IRA are concerned that their retirement funds could be claimed by creditors. (Attachment 12)

Hearings on **SB 143** were closed.



March 10, 1999

To: House Committee on Judiciary

From: Kathleen Taylor Olsen

Re: **SB 97: Small Claims Court**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee today in support of **SB 97**. As you can see, this bill amends the Small Claims Procedure Act by adding language relating to appearances by corporations in small claims court.

We believe the amendment clarifies what appears to be a conflict between the Small Claims Procedure Act and case law. The Small Claims Procedure Act is found in Chapter 61, Article 27 of the Kansas Statutes Annotated. It is by legislative authority that any "person" may file a written statement of the person's small claim with the clerk of the court as an alternative procedure to filing a small claim under the code of civil procedure for limited actions. "Person" is specifically defined to include a corporation. Attorney representation is specifically prohibited except in limited circumstances.

The case law in Kansas provides that a corporation may not appear in court by an agent who is not an attorney. The reason for this rule is that a corporation is legally, a separate entity that can only interact with other entities and persons through an agent. In court, Kansas case law has held that this agent must be a licensed attorney.

This issue was brought to our attention by a banker in Jamestown, Cloud County, Kansas. I have attached a copy of the letter he wrote to be presented to this committee. As he states in the letter, until 1995, bank employees were allowed to file the bank's small claims under the Small Claims Procedures Act. For some reason, the Magistrate Judge decided at this time, to ignore the statute and apply the common law rule to small claims.

This prompted a request for an Attorney General's Opinion from Senator Hardenburger which I have attached to my testimony. In that Opinion, the Attorney General discusses the apparent conflict in laws – **noting that other states have made an exception to the common law rule requiring corporations to be represented by attorneys in court, for small claims court**. The General then concludes that since corporations are authorized by statute to bring claims in small claims court, and since no party is allowed attorney representation therein, a corporation may participate in small claims court through an agent who is not licensed to practice law.

The bill as originally presented was our attempt to codify the Attorney General's opinion. The Senate Judiciary Committee amended the bill. Our intent has never been to ask for any greater rights than any other claimant has in small claims court. We are only asking that corporations have the same rights as other business entities to resolve disputes of minimal amounts.

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Attachment 1



The argument against such an amendment is that by allowing nonlawyer representation, the legislature is somehow legitimizing or contributing to the unauthorized practice of law. You will also hear that this presents a Constitutional question regarding separation of powers and whether the legislature can determine who appears in state courts.

The legislature has already made the policy decision to allow the forum of a small claim court where attorney representation is prohibited and where corporation representation is allowed. This bill goes no further than the law already allows, it is our attempt to clarify who can represent a corporation, just as other states have done. It is not our intention to authorize nonlawyer corporate representatives to practice law. Again, it is our intent only to allow the same rights under the Small Claims Procedure Act as afforded to other entities.

While the Attorney General, in the Opinion letter, indicates that it is difficult to define what the practice of law is, she opines that completing the fill-in-the-blank claim forms does not constitute the practice of law – unless that requires some legal skill or knowledge or unless legal advice is given. The Small Claims Procedure Act itself states, that “discovery methods or proceedings shall not be allowed nor shall the taking of depositions for any purpose be permitted.” (KSA 61-2707(a)) The General concludes her Opinion letter by stating:

“We have no facts upon which to base a conclusion that the unauthorized practice of law is occurring in small claims courts throughout the state of Kansas and, therefore, it is our opinion that the legislature is not usurping the judiciary’s power to regulate the practice of law by allowing nonlawyer corporate representatives to appear in small claims courts.”

Any “person” that subjects himself to the jurisdiction of the small claims court must accept the limitations placed by that Act. The rules there apply to everyone so that the amount of value of the claim may not exceed \$1,800, there can be no more than 10 appearances in the same small claims court in any calendar year, and no party may be represented by an attorney except in limited circumstances.

What are those “limited circumstances”? They are found in KSA 61-2714. If any party in small claims litigation uses an attorney or is an attorney, the other party is entitled to have an attorney appear on their behalf. We believe this provision was intended to be used sparingly as its use defeats the premise of small claims court, i.e., to be used as an alternative procedure for processing small claims in an economical manner. **Not allowing attorney representation when the amount in dispute is small lowers the cost of adjudication to both parties.**

After **SB 97** was amended in the Senate and passed as amended, the parties interested in this piece of legislation met to discuss a concern that the amendment had effectively eliminated some businesses from participating in small claims court. In other words, some businesses don’t have “presidents” or “treasurers” that work for the business. In some instances, these are titles given to elected “shareholders” who are employed elsewhere but serve on the corporation’s board.

As we looked for guidance from our surrounding states, it was discovered that all of our surrounding states provide for corporate representation in small claims courts and while each state goes about it a bit differently, the language that you see as a balloon amendment appears to met the concerns of those involved while also making certain that the corporate representative is not a person who makes a career out of contracting with organizations to do their collections.

In conclusion, as our new language suggests, we are not advocating the unauthorized practice of law in any circumstance. We **are** asking for the right to represent a business interest under the limitations of small claims court – just as other interests are represented there.



# THE JAMESTOWN STATE BANK

422 WALNUT ST., P.O. BOX 285  
JAMESTOWN, KANSAS 66948

JOHN F. HERBIN  
PRESIDENT

January 29, 1999

Kathleen Olsen  
Associate General Counsel  
Kansas Bankers Association  
800 SW Jackson, Suite 1500  
Topeka, KS 66612-1265

Dear Kathy:

As I am aware of the upcoming hearings regarding the Small Claims Court Bill, SB 97, I would like to take this opportunity to express some of our bank's experiences with the small claims process of the past and to delineate some reasons why I would like to see SB 97 move forward.

My family has been involved in Kansas banking for 76 years. Our bank has been chartered for over 100 years. When necessary in the past, we always availed ourselves of the right to pursue some accounts through the small claims court. It was cost effective for us and the hearings were speedy. Then, one day in the summer of 1995, a bank employee visited the District Magistrate Court in our County with the intention of filing a small claims case against a delinquent debtor. He was instructed that our Magistrate no longer allowed corporations to file small claims cases. In disbelief, I made some telephone calls and found that banks in other jurisdictions were still using the small claims procedure, just as they had previously. Further investigation revealed that there was even disagreement in the legal community, from the Attorney General's Office on down, as to the application of a corporation's right to use the small claims court process.

Since we now have the opportunity to resolve this issue legislatively, once and for all, I would like to emphasize the following points in favor of this bill

- Small Claims Court is cost efficient for both the corporation and the debtor. That is why we had it in the first place. The small claims procedure act was enacted in 1973 to create a "practicable forum in which a small claim could be adjudicated economically"
- We are a small corporation and do not have in-house counsel. We cannot afford to hire an outside attorney at an hourly rate to collect small debts in Limited Action Cases. In the past our collection claims have averaged about \$500. Four or five hours of attorney's time can easily consume over 50 percent of the claim.
- It is difficult, if not impossible to persuade an attorney to represent a corporation in a small claims case on a contingency basis because there is not enough fee income relative to the time spent. Our primary attorney will not even accept contingency cases under \$200.00 and charges a 50 percent contingency on amounts above that.

January 29, 1999

- It is my opinion that that by being denied access to the small claims court our corporation is being denied a due process that sole proprietorships have enjoyed. We also have a small insurance agency that is owned by my family and which is not a part of the bank. However, since it is incorporated, we cannot even collect small unpaid accounts because we are not allowed access to the small claims court. We must write them off as a non-collectable debts
- There are 90,965 active corporations in the State of Kansas. All of these entities are now denied access to the small claims process, even though they pay millions of dollars in state income and sales taxes, and county property taxes to assist in funding our programs and highways. Personally, I feel it is unfair to prohibit such a large constituency from having access to the small claims procedure, merely over the definition of what constitutes "a person".

If you have any questions or comments, you are invited to contact me.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a long horizontal line extending to the right.

SENATE BILL No. 97

By Committee on Judiciary

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12 AN ACT concerning small claims procedure; relating to corporate rep-  
13 resentation; amending K.S.A. [61-2703 and] 61-2707 and repealing  
14 the existing sections [sections].

15  
16 Be it enacted by the Legislature of the State of Kansas:

17 [Section 1. K.S.A. 61-2703 is hereby amended to read as fol-  
18 lows: 61-2703. As used in this act:

19 [(a) "Small claim" means a claim for the recovery of money or  
20 personal property, where the amount claimed or the value of the  
21 property sought does not exceed \$1,800, exclusive of interest, costs  
22 and any damages awarded pursuant to K.S.A. 60-2610 and amend-  
23 ments thereto. In actions of replevin, the verified petition fixing the  
24 value of the property shall be determinative of the value of the prop-  
25 erty for jurisdictional purposes. A small claim shall not include:

- 26 [(1) An assigned claim;
- 27 (2) a claim based on an obligation or indebtedness allegedly
- 28 owed to a person other than the person filing the claim, where the
- 29 person filing the claim is not a full-time, salaried employee president
- 30 or treasurer of a corporation as permitted in K.S.A. 61-2707 and amend-
- 31 ments thereto, or, if the person bringing the claim is not a corporation
- 32 but is not an individual, is not an equivalent officer in title and function
- 33 to the president or treasurer of the person to whom the obligation or
- 34 indebtedness is allegedly owed; or

35 [(3) a claim obtained through subrogation.

36 [(b) "Person" means an individual, partnership, corporation, fi-  
37 duciary, joint venture, society, organization or other association of  
38 persons.]

39 Section 1. [Sec. 2.] K.S.A. 61-2707 is hereby amended to read as  
40 follows: 61-2707. (a) The trial of all actions shall be by the court, and no  
41 party in any such action shall be represented by an attorney prior to  
42 judgment. A corporation may be represented by an officer the president  
43 or chief executive officer or the treasurer of the corporation or by an

an active corporate officer or authorized full-time employee

an active corporate officer or authorized full-time employee of the corporation, except that such officer or employee shall not represent the corporation if such officer or employee is an attorney.

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1 ~~agent designated by corporate resolution, except that such president or~~  
2 ~~chief executive officer or treasurer shall not represent the corpo-~~  
3 ~~ration if such president or chief executive officer or treasurer is an~~  
4 ~~attorney.~~ Discovery methods or proceedings shall not be allowed nor  
5 shall the taking of depositions for any purpose be permitted. No order of  
6 attachment or garnishment shall be issued in any action commenced un-  
7 der this act prior to judgment in such action.

8 (b) When entering judgment in the action, the judge shall include as  
9 a part of the judgment form or order a requirement that, unless the  
10 judgment has been paid, the judgment debtor shall submit to the clerk  
11 of the district court, within 30 days after receipt of the form therefor, a  
12 verified statement describing the location and nature of property and  
13 assets which the person owns, including the person's place of employ-  
14 ment, account numbers and names of financial institutions holding assets  
15 of such person and a description of real property owned by such person.  
16 The office of judicial administration shall develop the form to be used in  
17 submitting information to the clerk under this subsection. The court shall  
18 also include as a part of the judgment form or order a requirement that,  
19 within 15 days of the date judgment is entered, unless judgment has been  
20 paid, the judgment creditor shall mail a copy of the judgment form or  
21 order to the judgment debtor, together with the form for providing the  
22 information required to be submitted under this subsection, and that the  
23 judgment creditor shall file with the court proof of the mailing thereof.  
24 When the form containing the required information is submitted to the  
25 clerk as required by this subsection, the clerk shall note in the record of  
26 the proceeding that it was received and then shall mail the form to the  
27 judgment creditor. No copy of such form shall be retained in the court  
28 records nor shall it be made available to other persons. Upon motion of  
29 the judgment creditor, the court may punish for contempt any person  
30 failing to submit information as required by this subsection.

31 (c) Any judgment entered under this act on a claim which is not a  
32 small claim, as defined in K.S.A. 61-2703 and amendments thereto, or  
33 which has been filed with the court in contravention of the limitation  
34 prescribed by K.S.A. 61-2704 and amendments thereto on the number  
35 of claims which may be filed by any person, shall be void and  
36 unenforceable.

37 Sec. 2 [3]. K.S.A. [61-2703 and] 61-2707 is [are] hereby repealed.

38 Sec. 3 [4]. This act shall take effect and be in force from and after  
39 its publication in the statute book.



State of Kansas

## Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

October 10, 1995

MAIN PHONE: (913) 296-2215  
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### ATTORNEY GENERAL OPINION NO. 95- 100

The Honorable Janice L. Hardenburger  
State Senator, 21st District  
Rt. #1, Box 78  
Haddam, Kansas 66944

Re: Procedure, Civil for Limited Actions--Small Claims  
Procedure--Corporation's Use of Procedure Without  
Attorney Representation

Synopsis: The small claims procedure act, which prohibits  
attorney representation except in limited  
circumstances, abrogates the common law principle  
that corporations may appear in court only through  
an attorney. While corporate representatives may  
participate in small claims matters, they may not  
practice law. Cited herein: K.S.A. 61-2703;  
61-2704; 61-2705; 61-2707; 61-2712; 61-2713;  
61-2714.

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Dear Senator Hardenburger:

You request our opinion regarding whether a corporation may appear in small claims court by an agent who is not an attorney. You indicate that some district court magistrates are refusing to allow corporations to use the small claims process unless the corporation is represented by an attorney. The small claims procedure act specifically prohibits attorney representation except in limited circumstances.

The small claims procedure act provides a simple method for the recovery of money not exceeding the statutory amount of \$1,800. K.S.A. 61-2712; *Patterson v. Brouhard*, 246 Kan. 700, 703 (1990). The court supplies the forms for the plaintiff's statement of claim and the defendant's statement

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of claim (if the defendant has a counter claim against the plaintiff). K.S.A. 61-2713. No other pleadings are permitted, no discovery is allowed, the trial is to the court and no party may be represented by an attorney except in limited circumstances. K.S.A. 61-2705; 61-2707; 61-2714. Any "person" may file a written statement of the plaintiff's claim with the clerk of the court. K.S.A. 61-2704(a). "Person" includes a corporation. K.S.A. 61-2703(b).

The small claims procedure act was enacted in 1973 after two legislative interim committees concluded that there was no practicable forum in which a small claim could be adjudicated economically. *1971 Reports and Recommendations to the 1972 Session of the Kansas Legislature*, p. 496. A special committee on small claims solicited input from judges of courts of limited jurisdiction and found that it was not economically feasible for most people to retain attorneys for claims of less than \$300 nor was this the kind of litigation profitable for most attorneys. Furthermore, the committee concluded that in a proceeding where the pleadings and other procedures were simple and informal, the particular talent of an attorney would be "superfluous." *Report on Kansas Legislative Interim Studies to the 1973 Legislature*, Proposal No. 20. The committee also agreed that the small claims process should be made available to merchants as well as consumers.

Since its enactment in 1973 there has been no significant change in the procedure and adjudication of small claims except that the statutory amount has increased from \$300 in 1973 to the current amount of \$1,800.

The common law of Kansas provides that a corporation may not appear in court by an agent who is not an attorney. *Union P.R. Co. v. Horney*, 5 Kan. 340 (1870); *U.P.R. Co. v. McCarty*, 8 Kan. 125 (1871). Because the small claims procedure act purports to authorize this nonlawyer representation, it has been suggested that the legislature has usurped the judiciary's inherent power to regulate the practice of law. *Unauthorized Corporate Law Practices in Small Claims Court: Should Anyone Care?*, 33 W.L.J. 345 (Spring 1994).

The reason for the common law rule stems from the fact that a corporation is an artificial entity that can only act through agents. Courts thus require persons trained in the law and familiar with court procedure to act as agents of the corporation in litigation in order to further the efficient administration of justice. *Oahu Plumbing and Sheet Metal Limited v. Kona Construction Inc.*, 590 P.2d 570 (Haw. 1979); 8 A.L.R. 5 653 (1992). However, some jurisdictions have made



an exception for small claims court. *Prudential Insurance Co. v. Small Claims Corp.*, 173 P.2d 38 (Ca. 1946); *State of Washington, ex rel. Long v. McLeod*, 496 P.2d 540 (Wash. 1972); *Woodford Manufacturing Co. v. A.O.Q. Inc.*, 772 P.2d 652 (Colo. App. 1988); *Woerner v. Seneca Petroleum Inc.*, 529 N.E.2d 660 (Ill. App. 1988); *Varney Enterprises Inc. v. W.M.F. Inc.*, 520 N.E.2d 1312 (Mass. 1988). In *Prudential Insurance Co.*, *supra*, the court concluded that since corporations were authorized to prosecute or defend claims in small claims court and since no party was allowed attorney representation, a corporation could appear in small claims court through an agent not licensed to practice law.

"There is a series of cases that it is argued compel the conclusion that a corporation under no circumstances may appear in a court of law in *propria persona* (citations omitted). These cases . . . hold that a corporation under general legal principles can only appear in a court of record by and through an attorney and may not appear and defend or prosecute through its officers or employees. Based on these cases appellant argues that since a corporation can only prosecute or defend legal actions through an attorney and since attorneys are prohibited in the small claims courts, such corporations are denied representation. The obvious answer to this argument is that all of the above cases dealt with courts of record and dealt with general common law principles. They all revolve around the general rule that a corporation in the absence of statutory authority . . . cannot practice law. None of them dealt with a statutory situation such as is here involved. Here we have a statute . . . that expressly confers on corporations, as well as on other persons, the right to prosecute or defend such actions [in small claims court]. At the same time it denies to corporations as well as to other litigants the right to appear in such actions by attorneys. Since a corporation can only speak through a natural person, it is apparent, therefore, that [the statute] must be interpreted as conferring on corporations the right to appear through some representative other than an

attorney. Thus, here, unlike the above cases, there is express statutory authorization for a corporation to appear in *propria persona*, through some proper representative other than an attorney. This serves to distinguish all of the cited cases." *Prudential Insurance Co.*, 173 P.2d at 42.

The attorney representation rule for corporations is part of the common law which can be abrogated or modified by statute. *City of Haven v. Gregg*, 244 Kan. 117, 123 (1988). The legislature has abrogated this principle by virtue of K.S.A. 61-2703(b) and K.S.A. 61-2707. Consequently, it is our opinion that a corporation may participate in small claims court through an agent who is not licensed to practice law. We note that there has been some confusion because of the attorney representation rule which resulted in some district court magistrates requiring corporations to appear by attorney in small claims actions thus creating an inequity for the other party - usually, an individual who was not entitled to attorney representation. The legislature addressed this situation in 1994 by enacting K.S.A. 61-2714 which allows a party not represented by an attorney to be so represented if the other party is represented by counsel or is an attorney representing himself or herself.

Concerning the issue of whether the legislature is usurping the judiciary's inherent right to regulate the practice of law by authorizing nonlawyer corporate representatives to appear in small claims court, the threshold question is whether these representatives are engaging in the unauthorized practice of law. In *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990) the court concluded that there is no precise, all encompassing definition of what constitutes the practice of law and that each situation must be considered on its own facts on a case-by-case basis.

"Although it may sometimes be articulated more simply, one definition [of "practice of law"] has gained widespread acceptance, and has been adopted by this Court:

"'A general definition of the term frequently quoted with approval is given in *Eley v. Miller*, 7 Ind. App. 529, 34 N.E. 836, as follows:'

"'As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any

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matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' *State, ex rel., v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765 (1934).

. . . .

"A more recent source defines the practice of law as 'the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.' (Citation omitted)."

In *State ex rel. v. Hill*, 233 Kan. 425, 426 (1978), the court adopted a test for determining what is the unauthorized practice of law.

"The main general test in unlawful practice of law cases seems to be whether or not an attorney-client relationship exists. That is whether the person whose conduct is under scrutiny represented or implied he had legal knowledge beyond that of a layman and provided 'professional' assistance to a 'client'. The customer pays for the 'skill,' 'special knowledge' or 'expertise' of the seller. There is a personalization of services provided. That is, the customer provides the data or raw material and the 'expert' assembles, compiles, organizes, etc. And using the 'expertise' (real or imagined) provides a legal service."

Because the concept of the practice of law is so amorphous and dependent upon the specific acts of the individual in question we cannot conclude that every representative of a corporation engages in the practice of law simply by filling out a form and appearing in small claims court. In *Depew v. Wichita Association of Credit Men*, 142 Kan. 403, 411 (1935) the court concluded that the filling out of forms like blank promissory notes, drafts and similar forms that are obtainable at book stores does not constitute the practice of law where no legal skill or knowledge is required, no advice as to legal rights



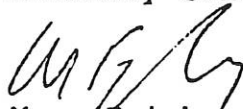
is given and no remuneration is received. Following this rationale, it is our opinion that merely completing the fill-in-the-blank statement of claim form does not constitute practicing law in the absence of evidence that legal skill or knowledge is required and legal advice given.

We hasten to note that our interpretation of the small claims procedure act only extends to allowing corporate agents to participate. It does not authorize corporate representatives to practice law. A corporate representative who appears in small claims court and conducts direct and cross examination of witnesses, presents and objects to evidence and makes legal arguments may be engaging in the practice of law. (Attorney General Opinion No. 93-100). However, if this is the case, the remedy is a quo warranto action filed by this office or, possibly, an injunction action filed by attorneys (see *Depew, supra*, where 8 attorneys obtained an injunction to prohibit a corporation from engaging in the unauthorized practice of law.) We have no facts upon which to base a conclusion that the unauthorized practice of law is occurring in small claims courts throughout the state of Kansas and, therefore, it is our opinion that the legislature is not usurping the judiciary's power to regulate the practice of law by allowing nonlawyer corporate representatives to appear in small claims courts.

Very truly yours,



CARLA J. STOVALL  
Attorney General of Kansas



Mary Feighny  
Assistant Attorney General

CJS:JLM:MF:jm

# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

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SB 97

March 10, 1999

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Judiciary Committee

by

Natalie Bright  
Director of Taxation & Small Business

Chairman O'Neal and Honorable Committee Members:

I am Natalie Bright, Director of Taxation and Small Business for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear before you today on the behalf of small businesses in support of SB 97.

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.

I realize this topic is one which many of you have not dealt with before. As such, I would like to give you some background information on the Small Claims Procedure Act. In 1972, the Kansas Legislature appointed a Special Committee on Small Claims to study the need for an economical forum to resolve small civil disputes. After a two-year study of the issue, the special committee

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Attachment 2

recommended passage of legislation that would create a new procedure for which parties could resolve small civil disputes. The Special Committee found that members of the Kansas Bar Association were concerned about attorneys turning down small claims because the cost to effectively litigate them was too much. The committee also found that judges of limited jurisdiction felt it was not economically feasible for most to retain an attorney to handle such claims. At the end of their study, the Special Committee on Small Claims recommended giving people a practical and economical procedure by which to adjudicate small claims and that if the legal proceedings were simplified, the talent of an attorney would not be necessary and the parties could represent themselves pro se.

In response to these committee findings, the Kansas Legislature enacted the Small Claims Procedure Act in 1973. Since its inception, corporations and partnerships have had the statutory authority to adjudicate claims under the Act without an attorney. Until recently, the Small Claims Procedure Act has served as an effective alternative forum for individuals and businesses to pursue small civil claims without the expense of legal counsel. Unfortunately, there is a recent trend among some Kansas magistrate judges to deny corporations access to small claims courts. Based on the argument that Kansas common law does not allow corporations to appear in court by a representative other than an attorney, the magistrate judges argue that any non-attorney appearing on behalf of the corporation is guilty of the unauthorized practice of law. As a result, Kansas corporations are being forced to either try to find an attorney who will litigate the matter in an alternative forum or forgo pursuing their small, but legitimate, civil claims based on a cost analysis.

This interpretation is misguided according to Attorney General Opinion 95-100. Under the rules of precedence, statutory law outweighs or trumps common law. The rule requiring corporations to be represented by attorneys is based on common law. When the 1973 Legislature made the policy decision to statutorily permit corporations to appear under the Small Claims Procedure Act, the mandate of the common law requiring attorneys to represent corporations was overridden by the 1973 statute. Under a "plain meaning" interpretation of the statute, there is no basis for an argument

st allowing corporations appear in a small claims court with an attorney. The statute clear on its face.

In addition, all statutes are deemed constitutional on their face until proven otherwise. In researching this issue, I have found no case law where the constitutionality of corporations appearing in a small claims forum has been challenged and thus find no reason to believe that the Kansas Supreme Court would find otherwise. What I have found is that other states are allowing corporations to appear in small claims court, just as Kansas has been doing for over 25 years. In fact, if you will look at the chart I have attached to my testimony, you will find that even in jurisdictions where attorneys are permitted in a small claims forum, corporations are given the option to choose whether or not to have an attorney represent them.

Finally, it is argued that any non-attorney appearing on behalf of a corporation in a small claims forum is engaging in the unauthorized practice of law. This argument stems from the Kansas Constitution, which grants the power of "regulating" Kansas courts to the judicial branch of the Kansas government. Based on this power, some argue that the allowance of corporations into small claims without an attorney is a legislative encroachment on the powers of the judicial branch's authority to regulate the practice of law. However, in the Attorney General Opinion 95-100, it is noted there is no precise definition as to what constitutes the unauthorized practice of law, and as such, each situation must be decided on a case by case basis. The Small Claims Procedure Act specifically permits a corporation to appear in small claims; thus there is no foundation for an argument that one has the mental state to engage in the unauthorized practice of law. The Small Claims Procedure Act was passed in 1973 with the assistance and input of Kansas judges. In fact, the minutes of the Special Committee on Small Claims specifically note that it was the judges who were concerned that merchants have the same access as the consumers to the court. Thus, the Small Claims Procedure Act was enacted with the cooperation of the Kansas judicial branch and it is not purely a legislative creation, it was and still is an agreed upon forum in which businesses and individuals may economically resolve small claim disputes.

I am here today to express KCCI's support for the balloon amendment offered by the Kansas Bankers Association. It is the belief of our members that this language offered by the Kansas Bankers Association not only codifies the original intent of the 1973 Legislature, but also codifies how the Kansas courts (not the legislature) have been administering the Small Claims Procedure Act for 25 years. If you pass SB 97 as amended by the Senate, requiring the President or a Treasurer to appear on behalf of the corporation, a business' access to the forum will be far too restricted. As the chart indicates, of these states in our region, regardless of whether or not they allow attorneys in their small claims courts, ALL allow corporations to be represented by a full-time employee.

It is imperative we protect the policy decision made by the 1973 Kansas Legislature. Small claims court is an inexpensive forum where businesses, especially those which are very small, are able to settle their disputes economically. There is often a misconception that all businesses either have an attorney in house or retain one on fee. Though this may be a luxury for many larger businesses, this is not the reality for small to mid-size businesses. As I am sure most of you are aware, legal advice and assistance is not cheap. Under most circumstances, businesses are more than willing to pay what it takes to protect their assets and settle their disputes. However, there are instances where the expense of settling one's dispute is more than the amount in controversy. After a simple cost analysis, the smart businessman is forced to forgo pursuing meritorious claims. Yet, for many small businesses, the cumulative effect of forgoing small claims is economically devastating, not to mention frustrating.

The circumstances identified by the 1972 interim committee for creating the small claims forum have not gone away. In 1999, it is still expensive to hire legal counsel and difficult to find one willing to handle disputes of small amounts. Currently, there are almost 91,000 corporations registered with the State of Kansas. I strongly encourage you to favorably consider the amendment offered before you today and statutorily codify the procedure in which Kansas courts have administered the Small Claims Procedure Act for over 25 years and to reiterate the policy decision made by the 1973 Legislature.

Thank you for the opportunity to appear before you today. I will stand for questions.

2-4



## SMALL CLAIMS COURT STATE ANALYSIS

25

State	Applicable Law	Statutory Language	Atty. Allowed	Jurisdictional Limitations
Kansas	Chpt. 61	<ul style="list-style-type: none"> <li>• "Person" means an individual, partnership, corporation, fiduciary, joint venture, society, organization or other association of people.</li> </ul>	No	\$1,800  10 claims per year
Iowa	Chpt. 631	<ul style="list-style-type: none"> <li>• Actions constituting small claims may be brought or defended by...corporation or partnership.</li> <li>• In actions in which a person other than an individual is a party that person may be represented by an officer or an employee.</li> </ul>	Yes	\$4,000
Missouri	Chpt. 482	<ul style="list-style-type: none"> <li>• Parties may prosecute their small claims and defenses without the assistance of an attorney.</li> <li>• Corporations may enter their appearance and be represented by an officer or authorized employee.</li> <li>• Such representation shall not be deemed the unauthorized practice of law</li> </ul>	Yes	\$3,000  8 claims per year
Nebraska	Chpt. 25	<ul style="list-style-type: none"> <li>• Corporation shall be represented by one of its employees.</li> <li>• Partnership shall be represented by a partner or one of its employees.</li> <li>• LLC shall be represented by a member, a manager or one of its employees.</li> </ul>	No	\$1,800 till yr. 2000 and then will increase by the CPI every 5 yrs.  10 claims per year
Oklahoma	Chpt. 12	<ul style="list-style-type: none"> <li>• Employee or agent may represent a corporation.</li> </ul>	Yes	\$4,500
Colorado	Chpt. 13	<ul style="list-style-type: none"> <li>• A partnership shall be represented by an active general partner or authorized full-time employee.</li> <li>• A for profit corporation shall be represented by one of its full-time officers or full-time employees.</li> </ul>	No	\$5,000  18 claims per year



# Central Kansas Credit Union

TESTIMONY ON SENATE BILL 97  
REGARDING CORPORATE REPRESENTATION  
IN SMALL CLAIMS PROCEDURES  
MARCH 10, 1999

Chairman O'Neal, Vice Chairman Carmody, Representative Pauls and members of the Judiciary Committee. I am David Dick, an employee and member of Central Kansas Credit Union located in Hutchinson, Kansas. Thank you for allowing me to testify on Senate Bill 97. I am here in support of Senate Bill 97 and the amendment just submitted by the Kansas Bankers Association which would expand corporate representation in small claims court to allow additional individuals from the corporation the opportunity to appear in small claims court on behalf of a corporation.

For a number of years credit unions have used the small claims procedures to settle differences with members who have failed to repay a loan to the credit union. Since these claims can total no more than \$1,800, it is impractical and too expensive for a credit union to hire legal counsel and go through formal court proceedings to settle these debts. In addition, in many cases these claims are so small that legal counsel is not interested in handling them. Rather the credit union has sent a member of staff to file the necessary paperwork and present it to the judge.

Because of the cooperative nature of credit unions, when one member defaults on a loan, the other members end up paying. So it is important that credit unions continue to have reasonable access to these procedures. While Senate Bill 97 as amended by the Senate would allow a corporation to be represented by the president or chief executive officer or treasurer of the corporation if they are not an attorney, this poses some problems for credit unions.

The treasurer of a credit union is usually an unpaid volunteer who is not involved in the day-to-day functions of the office. This individual usually has another occupation which precludes him or her from being available to represent the credit union in small claims court. In essence this means that only one individual at the credit union could represent the credit union in small claims court. Further this means that the credit unions' ability to utilize small claims court would be greatly limited.

In the past I have gone into small claims court as a representative of Central Kansas Credit Union. My participation has been limited to completing the necessary forms and advising the judge, when asked, that the paperwork I had completed and presented was accurate and pertained to the question at hand. As I understand it, this is the whole idea behind having small claims procedures available. People coming into small claims court do not cross examine witnesses or make points of law related to the evidence. They simply submit the necessary paperwork, state that someone has defaulted on a loan, and ask the court for help in getting that individual to repay the debt.

Again, I would like to thank you for the opportunity to speak to this issue, and I urge you to give careful consideration to expanding who can represent a corporation in small claims court. I'd be happy to answer any questions you may have.

# **CLEAVER FARM & HOME**

2103 S. SANTA FE  
CHANUTE, KS. 66720  
316-431-6070

March 10<sup>th</sup>, 1999

Good Morning. Mister Chairman and members of the House Judiciary Committee, my name is Eldon Cleaver from Chanute Ks. I am the owner of Cleaver Farm & Home and appear before you today favoring the passage of Senate Bill 97, which would allow corporations such as mine representation in small claims Court.

Along with my wife, we have operated our business in Neosho County for many years. As it is a rural community, much of our business is conducted on an open account type arrangement. As a matter of policy, we extend credit to those who meet the criteria of our credit applications, which we issue to each customer wanting to establish an account with our business.

We send out approximately 1000 statements each month. Most of our customers pay within our credit terms. Some don't. For those that don't we have a policy of contacting these people by phone, in writing, by fax, or in person to settle the account. Due to the size of these collectibles (usually \$100.00 to \$400.00) we do not seek legal assistance. While small claims certainly does not guarantee payment, it is a simple procedure and usually results in a settlement within a given period of time.

The bill before you is of major interest to my business and to myself. As stated, most of these collections are in a range under \$400.00. This amount is not large enough to engage the service of an attorney, whose time and labor is simply not worth the expense. We are better off in the long run to just write off the entire matter as a loss. That is a lousy way to run a business. Half seriously, it would be better if those impacted by this action were to rob me blind to make it worth my while to have attorney involvement! Can you imagine a sign posted on my door saying "we prosecute theft, but make sure you take a lot when you steal from me so it will be worth the effort to prosecute you". I cannot believe you folks in the Legislature have ever intended to keep small businesses like mine out of small claims court. Certainly my State Representative and State Senator feel I should have access to this court.

I was asked one question in the Senate Judiciary Committee hearing that I would like to address here. I was asked if I had ever considered selling my accounts back to me personally and then using the Small Claims Court venue. Due to tax considerations and liability insurance costs, such action would not be in my best interest. Besides, why should I have to go to that trouble, when a viable working solution is already in place and has been for years? I sell my products and services in good faith. I expect to be paid the same way, in good faith. When someone acts in bad faith, I need the most expedient and cost-effective method to solve the problem. I see nothing that satisfies that criteria better than utilizing Small Claims Court.

Judge Tim Brazil, a local judge, recently told me he feels small claims is working just the way it should be. He told me attorneys would rather work cases that are a better use of their time, and small merchants need a place where they can settle matters such as this. He feels small claims is a perfect fit for this type of situation.

In some candid follow up remarks, Judge Brazil noted the Chapter 61 action, another avenue for collection of debt that ends up creating the same problems I see us talking about today—that an attorney must be present. My business uses Chapter 61 action in some cases, but such actions require much more paperwork as well as my time. Also, Judge Brazil stated, “greater clarification is still needed for this action”.

As a retailer in a small town, I can tell you it is tough enough out there. We are doing all we can to hold our communities together while providing services and products to impact growth in our region. We will play the game with the cards dealt, but let’s at least keep the rules we have to continue to grow our businesses. We have had the ability to use small claims court for many years now. I don’t think it is your intent to hurt businesses like mine by denying me the opportunity to settle these matters such as I have described. Small Claims Court provides such an opportunity and you will hear from other folks today that it helps their business as much as it helps mine. This issue is a very serious one to my family and my business, and as such I ask this Committee to give its strongest consideration for the passage of Senate Bill 97.



I thank the members of the Committee for allowing me the time to testify before you today and will try to answer any questions.



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## MID-AMERICA LUMBERMENS ASSOCIATION

# TESTIMONY

## HOUSE JUDICIARY COMMITTEE

**MARCH 10, 1999      SENATE BILL #97**

Mister Chairman, members of the House Judiciary Committee. My name is Art Brown, and I appear before you today representing the retail lumber and building material dealers in Kansas as a proponent of Senate Bill No. 97, which would allow corporate representation in the Small Claims Courts of Kansas.

As I told the Senate Committee, I am not an attorney and therefore any attempt to answer any legal questions on my part will not come with a guarantee of legal correctness.

I wish to thank our friends in the banking community for bringing this issue to the attention of the Legislature. It is an issue that our State Committee had legitimate concerns about over the last year and we were pondering the seriousness of this problem as access to the Small Claims venue seemed to be diminishing in certain portions of our State. We feel this bill addresses this concern.

House Judiciary  
3-10-99  
Attachment 5

As it will no doubt be pointed out by the loyal opposition to this bill, there is substantial case law that prohibits corporations from appearing in a Kansas Court of law without attorney representation. Somewhere and somehow for reasons that cannot be pinpointed, small business corporations have utilized this venue in Kansas for many years. As you also probably know, attorneys are not allowed in the Kansas Small Claims venue except in rare circumstances.

Along with other conferee's I will also point out to you that there will no doubt be made the arguement that as a Legislature, "you can't go there," in regards to enacting this statute due to the fact you will tread on the domain of the Judiciary. This certainly did not stop the Senate from voting 34-6 to press on with this matter. As we see this, your are codifying activity that has been occuring in this State for many years.

When opponents of the bill are pressed about where these small corporations can find solutions to the nagging \$300 to \$500 accounts they cannot collect, they are powerless to come up with a cost-effective alternative. Attorneys have no desire to expend effort in such matters, it is simply not worth their time and effort for the expense involved. As Mr. Cleaver noted in his testimony he has the support of a local judge on this matter. I have attached to my testimony a response to an e-mail sent by Ron Smith of the Bar Assn. to their members. I would be very curious to know the TRUE FEELING of many other such attorneys in this matter. I

would not be shocked to find that many such attorneys have the same feelings about this issue as Mr. Kluin does. We feel that Mr. Kluin, the Judge addressed in Mr. Cleavers testimony and the proponents of this bill do not see this as quite the cataclysmic event as the opponents of the bill would have you believe. You as a Legislature set public policy that you feel best addresses the needs of your constituents. We believe that by not passing this bill into law, the real cataclysmic event is having the business community vehemently protest the denial of access to a venue they have utilized for many years.

We support the adding of the new wording of the amendment offered in prior testimony. Our support is derived from the fact that we have several "chain yard" operations in Kansas. With one central office and many small satellite locations, this change in language would certainly make it much easier to have the manager at that location represent the corporations interest, rather than have the C.E.O. travel to various locations to represent the corporation in this venue.

The heart of this issue is that corporations, such as Mr. Cleavers, are the true users of this venue. Mr. Cleaver is a representation of the small corporation of today. Attorney's rightfully so, have been advising Mr. Cleaver, and businesses his size to incorporate for many years, primarily for liability protection. It should also be noted that in the business community today, the trend is to hire outside services. Employers will look at incorporation as a

benchmark in companies they hire for many of these services to provided to their customers. Why a corporation? To protect themselves from the possible tax lability associated with the employee/independent contractor relationship. The I.R.S. considers incorporation as one of the major components for independent contractor status. Companies hiring such independent contractors can relize a savings to their bottom line in employment taxes and benefits in this fast growing trend in the business community today. Again, many of these corporations are small businesses like Mr. Cleavers.

I close by simply saying that Mr. Cleaver very much represents the typical small business user of the small claims venue. As stated in his testimony, he has visited with his State Senator and State Representative and they support him in this endeavor. In fact his Senator spoke as a supporter of this issue on the floor of the Senate. If a pat on the back, a smile or a handshake with a "thank you" is gratification enough for supporting your small business constituents, we feel you will get one of the above if you a favorable vote to send SB 97 out of this Committee, and onto the floor of the House for passage. At the end of the day, we feel you can pass this bill favorably, and in the solitude of just basic reasoning and common sense thinking, know that in your mind, it is the right thing to do.



From: Kluin Law Office <KluinLawOffice@Chanareks.com>  
To: ronsmith@ksbar.org <ronsmith@ksbar.org>  
Date: Wednesday, February 24, 1996 8:30 AM  
Subject: Small Claims Act Amendments

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Ron:

I do not support your position on prohibiting corporations from appearing in Small Claims cases through corporate officers. Since small claims cases involve very limited dollar amounts, and a corporate plaintiff is limited on the number of small claims cases that can be filed, I see absolutely no problem allowing corporations to appear in such cases through a corporate officer or director.

I would encourage you and the KBA to assist in enacting legislation to permit such appearances in Small Claims Act cases.

Kurt F. Kluin  
Attorney at Law

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2/24/99

5-5

Testimony on SB 97  
House Judiciary Committee  
March 10, 1999  
Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the committee, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperative businesses who have a combined membership of nearly 200,000 Kansans. All of these cooperatives are incorporated.

It has always been our belief that the Small Claims Court was established for people or organizations that can not afford to hire an attorney.

Many of our cooperatives do business in several counties. In some counties, an employee can represent the cooperative in Small Claims Court while in other counties they can not.

Many times, when people think of corporations, they think of large firms, such as General Motors, IBM or AT&T, but many small businesses, including many farmers, have organized themselves as corporations.

Asking these businesses to hire an attorney kind of defeats the purpose of the Small Claims Court.

This is why we support SB 97. Thank you. I will try to answer any questions.

JOHN VRATIL  
 SENATOR, ELEVENTH DISTRICT  
 JOHNSON COUNTY  
 LEGISLATIVE HOTLINE  
 1-800-432-3924



COMMITTEE ASSIGNMENTS  
 VICE CHAIRMAN: JUDICIARY  
 MEMBER: ENERGY AND NATURAL RESOURCES  
 FEDERAL AND STATE AFFAIRS  
 SPECIAL CLAIMS AGAINST THE STATE

TOPEKA

SENATE CHAMBER  
 STATE CAPITOL  
 TOPEKA, KANSAS 66612-1504  
 (785) 296-7361

March 10, 1999

**Testimony of Senator John Vratil  
 Before the House Judiciary Committee  
 on S.B. 97**

Mr. Chairman and Members of the Committee, I appear today in opposition to S.B. 97, which amends the small claims procedure law. This bill would allow presidents and treasurers of corporations, who are non-lawyers, to represent corporations in small claims court. I oppose this bill for the following reasons:

1. Under Kansas law, corporations can only be represented in court by a person authorized to practice law. (Atchison Homeless Shelters, Inc. v. County of Atchison, 24 Kan.App.2d 454, 946 P.2d 113 (Kan.App. 1997))
2. The Kansas Supreme Court has exclusive authority to determine who is authorized to practice law in this state.
3. To permit non-lawyers to represent corporations in small claims court constitutes the unauthorized practice of law.
4. S.B. 97 is unconstitutional because it violates the "Separation of Powers Doctrine."

A long line of Kansas appellate court decisions have held that corporations do not have a right of self-representation in court. Individuals have constitutional rights of self-representation, but corporations do not. Corporations are artificial entities. They must be represented in court by attorneys. That is the current law in this state.

The Kansas Constitution gives administrative authority over the courts to the judicial branch of government. The Supreme Court has exclusive authority to decide who practices law in our courtrooms. That is a power than cannot be circumvented by state statute.

HOME

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DISTRICT OFFICE

1050/40 CORPORATE WOODS  
 9401 INDIAN CREEK PKWY.  
 OVERLAND PARK, KS 66210  
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 FAX (913) 451-0875

House Judiciary  
 3-10-99  
 Attachment 7

In the Atchison Homeless Shelters case, the Court of Appeals held that corporations could not appear in court without an attorney. The fact that the corporation president felt he could not afford an attorney was interesting, but irrelevant to the court's decision. Corporations realize all sorts of tangible benefits from being incorporated, including limits on liability and lesser income tax rates than individuals. In exchange for those advantages, corporations must comply with certain duties imposed by law. One of them is to appear in court represented by an attorney and not a layperson.

My opposition is not intended to keep corporations from collecting their lawful debts in an expedient and inexpensive manner. Corporations are now entitled to appear in Chapter 61 limited action cases to collect their lawful debts. They simply must be represented by an attorney. Chapter 61 is an expedited process which is much less expensive than a Chapter 60 procedure. Corporations will still have the opportunity to collect their lawful debts, even though they cannot appear in small claims court. As a matter of fact, small claims court was never intended to be a vehicle through which large corporations could sue to collect their over-due accounts.

S.B. 97 is a direct attack on the authority of the Kansas Supreme Court to determine who is authorized to practice law in our state. It will result in a violation of our constitutional provisions concerning Separation of Powers. In my opinion, S.B. 97 is unconstitutional. Perhaps most important, S.B. 97 is unnecessary. I urge you to reject this legislation.



**KANSAS BAR  
ASSOCIATION**

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## Legislative Testimony

TO: Members, House Judiciary Committee

FROM: Ron Smith, General Counsel  
Kansas Bar Association

SUBJ: SB97; Corporate Representation In Small Claims

DATE: March 10, 1999

The proposed amendments in this bill raise a problem for the KBA. On the one hand, the amendments are distinctly better than the current law, which allows all corporations to appear by sending any "full time employee" into small claims court. On the other hand, even with these amendments, what is being proposed is still the Unauthorized Practice of Law. KBA opposes this bill for that reason, and it is an issue on which we cannot compromise.

The reason for the expansion being sought in this bill is that businesses have turned small claims court into a collections court. Thus, many other groups will seek to expand the jurisdiction of small claims court by increasing the amount plaintiffs can seek.

The appellate process in small claims court is decidedly more unfair to the small claims defendants than similar defendants in Chapter 61 cases of an identical nature.

Legislatures have no authority to decide who can represent others -- who can practice law -- in our court system.

### I.

#### Separation of Judicial and Legislative Powers

The claims are "small" but the issues are large. The Kansas constitution creates three *constitutional* powers: executive, legislative and judicial power. *These powers are coequal*. One is not more important than another. The 1972 change to the Judicial Article gave judicial power solely to the Supreme Court to administer. This was a codification of the inherent power of the Court.

Representing someone else or some business or government entity in a courtroom is the practice of law. In *Martin v. Davis*, 187 Kan. 473, 478-79, 357 P.2d 782 (1960), the Court held the right to regulate the practice of law is a judicial power that "naturally and logically belongs to the judicial department." The *Davis* case concluded:



Included in the concept of judicial power is “the supreme court’s inherent right to prescribe conditions for admission to the bar, to define, supervise regulate and control the practice of law, whether in or out of court, and *this is so notwithstanding acts of the legislature in the exercise of its police power to protect the public interest and welfare.*”<sup>1</sup>

No individual has the right to practice medicine, or teach without a license.

No person can be the architect on a building or an engineer in its design without a license.

No person has the right to practice law and represent other persons or entities without a license.

The shorthand here is that the legislature can affect judicial power *only* with the acquiescence of the judicial branch.

One of the purposes for courts controlling who practices law is “to guard against the unauthorized practice of law by those who are not subject to the general discipline of the Court.”<sup>2</sup> Corporations which appear without attorneys are not subject to judicial regulation of the *methods* in which they practice law.

Many of you have heard of Franklin Dee Williams. Several times, Mr. Williams has sought permission from the LCC to use the capitol legislative rooms for his Citizens’ Constitutional Court. The LCC has said no. *There is no appeal from an LCC decision on legislative room assignments. Not even to a court.* This is because a basic legislative power is the power to decide how legislative rooms are scheduled. I doubt any Court would interfere with that basic legislative power.

In 1990, the same Franklin Dee Williams was representing farmers against banks in farm foreclosures. Williams claimed to be a lawyer by authority of representing a territorial-era corporation. Mr. Williams was very good at delaying the legal process of foreclosures. In that case, the Kansas Supreme Court held that nonattorneys who “*appeared on behalf of others at court hearings ... [were] engaged in unauthorized practice of law ...*”) The petition by the Attorney General in *Williams* requested the court enjoin the defendant from even “*appearing as counsel or filing papers for others in any courts ...*”<sup>3</sup>

If SB 97 is enacted, Mr. Williams would have the legitimate right to come to this Judiciary Committee and say, “Why can the President, or the Treasurer, or full time employees represent corporations? I want to represent the defendants in small claims actions. Why not enact a statute that allows laypersons to represent other laypersons in small claims court? After all, it is just small claims?” What is your answer?

The practice of law as defined and restated in *Williams* is:

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<sup>1</sup> *Martin v. Davis, Id.* In accord, *Washington State Bar Assoc. v. State of Washington, etal*, 890 P.2d. 1047 (1995); *In re Succession of Wallace*, 574 So.2d 348 (La. 1991) *Attwell v. Nichols*, 466 F.Supp. 206, 209 (1979)

<sup>2</sup> *Reeves v. Queen City Transp.*, 10 F.Supp.2d 1181 (D.Colo. 1998)

<sup>3</sup> *State ex rel Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234, 236 (1990)

'As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' *State, ex rel., v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765 (1934).

The legislature has the power to create a court. When it does so it exercises legislative power. The legislature does not have the power to tell the Court who practice law in that court. In SB 97, and in the 1973 legislation, the legislature is going beyond legislative power and into judicial power.

***Ironically, SB 97 authorizes the President of KP&L or the Treasurer of KP&L to appear and do in small claims court that which the Kansas Supreme Court told Franklin Dee Williams in 1990 he could not do.***

The business community looks at this issue as a business issue. They argue that small corporations cannot afford attorneys and thus should have this exemption. The “inability to afford attorneys” was the argument used in *Atchison Homeless Shelters case*, which is attached to this handout. The Court of Appeals not only did not adopt that rationale, it awarded Atchison County attorney fees to be paid by the corporation for filing frivolous claims. (The county is still trying to collect them.)

KBA is opposed to this bill. Thank you.

**Comparing Small Claims & Chapter 61:  
Unfair to the small claims defendant**

By comparing Small Claims court and Chapter 61 (collections) courts, you can see that *for the business community* they are remarkably similar. However, note in the following table that *appellate rights* are much different. The shaded areas underscore the differences.

Issue	Small Claims Court	Chapter 61 Court
Filing fee in all matters up to \$5000	The Same in both courts	The Same in both courts
Limitation on jurisdiction	\$1800 or less; ten times per year	Unlimited amounts in certain contract areas, \$10,000 in tort; no limit on yearly filings
Limitation on discovery	No discovery is allowed.	Very limited discovery is allowed.
Corporation required to have Attorney Representation	No, by what we believe is an unconstitutional statute	Yes, by Court Rules & Case Law
Right of either party to appeal de novo to the district court	Yes	Yes
Right to jury trial in initial proceeding	No	Yes
Limited pleadings.	Very informal. Primarily a petition & Answer	Petition is a little more formal than small claims court.
Attorney can be used on appeal to District Court	Yes	Yes
Right to jury trial on appeal	Yes	Yes
If losing party in lower court wins on appeal, they get attorneys fees and cost penalty.	No	No
If winning party in small claims court wins on appeal in district court, they get attorneys fees and cost penalty.	Yes	No
Post-Judgment the winner can seek to collect the judgment using garnishment & attachment	Yes	Yes
Can use out-of-state attorney without compliance with Rule 118 on pro haec vice.	Yes	No
IF THIS BILL IS ENACTED, corporation can name nonlawyer agent or officer to represent it in court.	Yes	No

As you can see the advantages of small claims court to the corporate plaintiff makes it easier to collect judgments. That is why businesses are eager to expand small claims jurisdiction.

- ◆ a plaintiff can keep defendant from using legal counsel at the critical first trial,
- ◆ no juries are allowed; and
- ◆ a plaintiff who prevails in small claims court is given statutory pressure to keep the defendant from appealing the case *de novo* to the district court.
- ◆ Once the judgment is obtained, the plaintiff can give the case to attorneys to collect the judgment.

*Atchison Homeless Shelters, Inc.*  
v.  
*County of Atchison,*  
24 Kan.App.2d 454, 946 P.2d 113 (Kan.App. 1997)

The Atchison District Court, Martin Asher, J., awarded sanctions against corporation for filing frivolous claim, and corporation appealed. The Court of Appeals, Stephen D. Hill, District Judge, assigned, held that: (1) corporations can only be represented in court by attorney who is duly licensed to practice law, and (2) corporation did not lawfully appear in proceeding, and thus, its appeal was not properly before Court.

Appeal dismissed.

Syllabus by the Court

1. Only four categories of individuals may appear in the courts of this state (except for out-of-state attorneys): (1) members of the bar; (2) graduates of accredited law schools who have temporary permits to practice law; (3) legal interns, who are law students supervised by members of the bar responsible for the interns' activities; and (4) nonlawyers, who may represent only themselves and not others in court.

2. Kansas follows the common-law rule that an appearance in court of a corporation by an agent other than a licensed attorney is not proper since a corporation is an artificial entity without the right of self-representation.

Rev. Don Lockhart, Patricia A. Lockhart, and LaChelle Lockart, pro se, for appellant.

Leonard L. Buddenbohm, Atchison, for appellee.

Before KNUDSON, P.J., and STEPHEN D. HILL and PAUL E. MILLER, District Judges, Assigned.

STEPHEN D. HILL, District Judge, Assigned:

Atchison Homeless Shelters, Inc., is a corporation which has filed this appeal from an order awarding sanctions against it for filing a frivolous claim in the district court of Atchison County. No attorney has entered an appearance for the appellants in this appeal.

[1] Except for out-of-state attorneys, the Supreme Court recognizes only four categories of individuals who may appear in the courts of this state: (1) members of the bar who have licenses to practice law; (2) individuals who have graduated from an accredited law school and have a temporary permit to practice law; (3) legal interns, who are law students supervised by members of the bar responsible for the interns' activities; and (4) nonlawyers, who may represent only themselves and not others. State

ex rel. Stephan v. Adam, 243 Kan. 619, 623, 760 P.2d 683 (1988); see State ex rel. Stephan v. Williams, 246 Kan. 681, 690-91, 793 P.2d 234 (1990).

[2] [3] This means, therefore, that corporations can only be represented in Kansas courts by an attorney duly licensed to practice law in Kansas. Kansas follows the common-law rule that an appearance in court of a corporation by an agent other than a licensed attorney is not proper since a corporation is an artificial entity without the right of self-representation. Such a rule helps to maintain a distinction between the corporation and its directors and employees. See 8 A.L.R.5th 653, § 3. This rule was tacitly acknowledged in dicta in U.P. Railway Co. v. McCarty, 8 Kan. 125, 131 (1871), and U.P.R.W. Co. v. Horney, 5 Kan. 340, 347 (1870).

[4] Since Atchison Homeless Shelters, Inc., does not lawfully appear in this proceeding, its appeal is not properly before this court, and this appeal is dismissed.

Appeal dismissed.

### Small Claims Issues Survey

Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
1	@80	50%	N	Y	The attempt to use non-lawyer representation by businesses in S.C. court is a significant problem. An attempt by the legislature to specifically authorize this practice should be vigorously opposed.
2	120	20%	N	N	People are often highly emotional, try to get too much done (evictions, TRO's, etc., out of the procedure. And then get mad when they can't. If I ever get shot it will be over a small claims case more than likely then even a domestic.

Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
05	52	50%	N	N	None
6	37	46%	N	N	None
08	96	?	N	N	The problem is the post-trial activity. Average individual doesn't understand. If a small claims form kit could be developed and distributed, it would be helpful. This kit would need to include all forms and instructions on when and how to file them.
09	37	25%	Y	No; sometimes they file several all toward the end of the year.	Our treasurer's office seems to be advising people to file a S.C. case when the title to a vehicle is lost. Keeping track of the number of cases filed-the limit of 10 cases per year; recovery of property-difficult to assist people with after judgement.



<b>Judicial District</b>	<b>Total S.C. filed last quarter 1998</b>	<b>What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?</b>	<b>Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N</b>	<b>Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N</b>	<b>Judge Or Clerk Comments or Observations</b>
11	84	50%	N	N	Answer no. 2 is clerk's estimate when entities are sued we transfer to the Ch. 61 or continue and ask both parties to appear w/ counsel. Current rule is to require entities to file Ch. 61.
12	13	90+%	Y	N	None
12	27	10%	Y	N	I agree with the bankers and business groups.
12	60	20%	N	N	None

<b>Judicial District</b>	<b>Total S.C. filed last quarter 1998</b>	<b>What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?</b>	<b>Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N</b>	<b>Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N</b>	<b>Judge Or Clerk Comments or Observations</b>
<p>12</p>	<p>18</p>	<p>0 Not permitted</p>	<p>N</p>	<p>No; not small claims</p>	<p>I have had a few corp. Assign their debts to their "owners", to pursue personally, which I have permitted. It can become interesting with a defense that requires joining the corp. Some of the practices in the assignment probably expose the "owners" to liability, i.e. piercing the veil of the corp., corporation stationary, envelopes, postage, secretary preparing petition, etc.</p>
<p>12</p>	<p>17</p>	<p>95%; 12 filed by indiv. 83 by businesses</p>	<p>Not having any forms discourages filing</p>	<p>N</p>	<p>Government antics using small claims??</p>

<b>Judicial District</b>	<b>Total S.C. filed last quarter 1998</b>	<b>What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?</b>	<b>Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N</b>	<b>Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N</b>	<b>Judge Or Clerk Comments or Observations</b>
<p>14</p>	<p>8</p>	<p>33%</p>	<p>N</p>	<p>N</p>	<p>None</p>
<p>14</p>	<p>121</p>	<p>55%</p>	<p>N</p>	<p>N</p>	<p>An ongoing problem is that the statute doesn't address post-judgement procedures, past the debtor's statement of assets; therefore, causing the clerk's office to deal with legal questions that we cannot/should not answer. Venue should also be more clearly defined, as that is not a judgement for the clerk's office to make; however, we are occasionally faced with that question.</p>

Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
16	82	20%	Y	N	They continuously seek legal advice from clerks. The small claims pamphlet needs to be more detailed. More details about the law of small claims and procedures.
19	117	65%	Y	Yes; maybe not exactly "problems" but attempts are always made by businesses w/ more than one operation name	From the clerk's standpoint, we would vigorously oppose any expansion of the S.C. procedure. As evidenced above, we are increasingly becoming the arena for collections by business w/out the expenses of an attorney. We also are their avenues of enforcement after judgement is obtained. Obviously any enhancement of S.C. would greatly increase our workload and subsequent pro-se contact w/ ea. litigant.

Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
20	33	6%	N	No; Two times in 3 years	This for Barton Co., normally equals 55% of districts so for 20 <sup>th</sup> dist. I estimate 66 cases for last three months. Our clerks "warn" plaintiffs when they have filed 8 or 9 cases a year so no real problems out here. Limited action is our real caseload. In Barton Co., for r 1998 we had 130 small claims and 2004 limited action.
21	95	75%	N	Y	Some business or corp., will file 10 cases in more than one county.

Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
23	75	61%	Y	N	<p>S. C. Is a zoo!! People have no concept of how to proceed. It is tough to maintain order. Increasing jurisdictional limits would increase these problems. With proposed change in law, unlicensed agents would act as attorneys with other party being at a disadvantage.</p> <p>Increasing number of cases allowed per year would make S.C. court the creature of big business. Collection procedures are difficult with lay persons not understanding how to proceed</p>
24	55	50%	N	N	<p>We are trying to get some amendments to the small claim act to clarify some issues.</p>

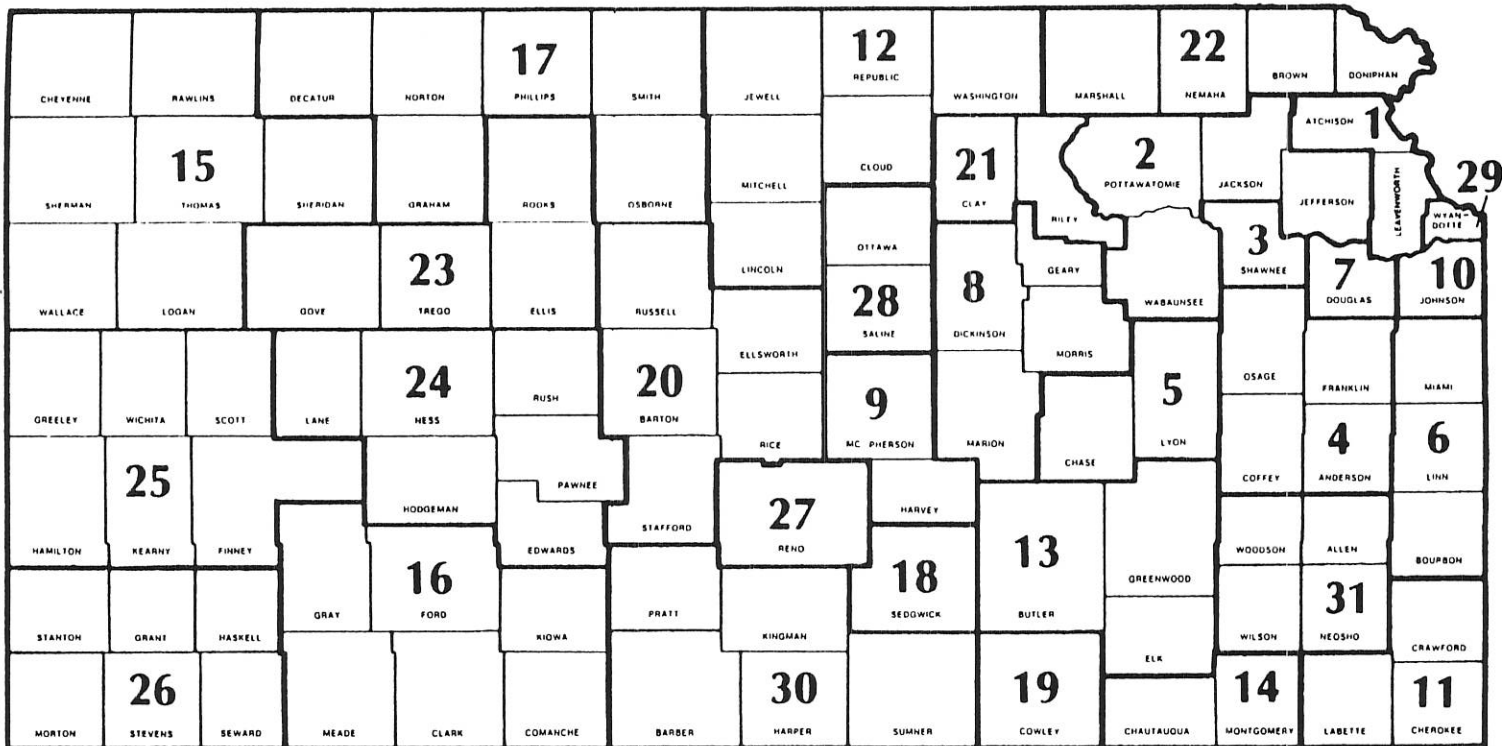


Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
24	22	82%	N	N	NONE
24	12	80%	N	N	None
27	107	50%	N	N	None
28	96	Last column	N	N	Based on last 96 cases of year, 25.8% filed by plaintiffs other than individuals. 8% of cases were against defendants, which were not individuals.
29	95	50%	N	N	You can count this district as being opposed to the legislation, which would expand the jurisdiction of the small claims court by allowing corps to be represented by agents or directors. We also agree that the jurisdictional amount is much too high and that this has resulted in defeating the rationale of this court in the first place. The judge who presides over the S. C. Court frankly feels that it is a court of "frustration" in that litigants who do obtain a judgement don't have the know-how to execute on and collect same. We would appreciate being provided a copy of your position paper on this issue.

Judicial District	Total S.C. filed last quarter 1998	What percentage of S.C. filings would you estimate involve either plaintiffs or defendants who are not individuals?	Do you allow Corporations to appear in Chap. 61 limited actions court w/out attorneys? Y / N	Any problems w/ plaintiffs attempting to file more than ten cases per year? Y / N	Judge Or Clerk Comments or Observations
30	20	67%	N	N	Some are ridiculous. Some people expect the court to do all the work, especially after judgement is rendered. They think it's the court's job to collect their money.
30	24	75%	N	N	None
30	26	90%	Y	N	None
30	39	50%	Y	N	Our limited actions have doubled in the last year. If they allow the S.C. limit to be raised we will drown in paper. We can barely keep up now. They need better rules for small claims by itself.
30	9	66%	Y	N	None

# Kansas Judicial Districts (31)

8-11-8



Court Section 79

ATTY ALPHA ROSTER  
COURT OF ATTORNEYS



Date: March 10, 1999

To: The House Judiciary Committee

From: J. Sue Anderson, Executive Director

Re: Senate Bill 97

On behalf of the membership of the Community Bankers Association of Kansas, thank you for the opportunity to comment on Senate Bill 97. We are in support of the amendment suggested to K.S.A. 61-2707.

It was brought to our attention last Spring by one of our members that a discrepancy existed concerning whether banks had the ability of banks to represent themselves in small claims court or whether an attorney could represent the corporation on its behalf. A copy of this community banker's letter of frustration is attached to our testimony.

Traditionally, under Kansas Common Law, banks had been able to represent themselves in small claims court, since Kansas law states that no party in any case before the Small Claims Court will be represented by an attorney. The contradiction developed when a Kansas Court of Appeals ruled in early 1997 that under Kansas Common Law, corporations were artificial entities which were separate from individuals acting on its behalf. The Court's conclusion was, that banks could not represent themselves (by way of a non-lawyer representative) to argue a case before the court. So it has been a catch-22 situation . . . a problematic situation for which a common sense solution is denied by a circumstance.

Senate Bill 97 remedies this contradiction and restores reason to the situation. We respectfully ask the Judiciary Committee to approve this measure.

W:\POLITICS\SESSION 99\SM-CLAM\310

*Directed By The Member We Serve*

House Judiciary  
3-10-99  
Attachment 9

# Wellsville Bank

April 7, 1998

Sue Anderson, Exec. Director  
Community Bankers Assn.  
2942-B SW Wanamaker Dr.  
Suite 2 A  
Topeka, Ks 66614

Dear Sue,

I raised the question at the CBA March 12 meeting about corporations not allowed in small claims court. Our bank was kicked out of small claims court in Franklin County due to a court of appeals ruling October 10, 1997, disallowing corporations (banks) in small claims (SC) court, and were told that we must have an attorney represent us. At the same time the Franklin County SC rules state "No Attorneys".

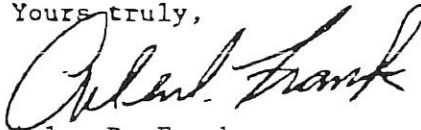
So, we had a SC case in Douglas County. The Douglas County judge said "No" your attorney cannot be present, the Bank has to appear. One county says we can't the other adjoining county says we can. "A damn mess".

Come to find out we have an administrative judge over 4 counties (Franklin, Osage, Coffey and Anderson). Judge James Smith. He has followed the court of appeals opinion in his counties. While the Administrative Judge north of us (Douglas co.) does not follow the appeals decision.

Our Attorney says the Stovall opinion is just that "an opinion". Judges are not bound to follow an opinion by the Attorney General.

Our Bank wishes to bring this up because it needs to be straightened out. We use the small claims court and if our judge reads the appeals decision surely other judges will begin to notice. I couldn't believe no other bankers have heard of this. Something needs to be done.

Yours truly,



Arlen D. Frank  
President

## ■ Small Claims

*Mi Co. Republic*

*2-22-99*

■ America's Sales and Leasing filed a small claims lawsuit against Frank Caswell of Louisburg, asking for recovery of property valued at \$794.99 plus costs. The company claims Caswell owes for a washer, dryer and microwave.

■ Bank of Greeley was awarded \$1,495.75 plus costs and interest from Raymond K. Graham of Paola.

■ Cut Rate Lumber was awarded \$449.83 plus costs and interest from Kevin Gammill of Paola.

■ The court dismissed the case filed by Reliable Electric against Andrea Paterson, doing business as Country House Restaurant, upon a motion by the plaintiff. The company was asking for \$275, costs and interest.

■ The court dismissed the case filed by Nola Russell against Casey Maisch, address unknown. Russell was asking for \$206, costs and interest.



Small Claims Procedure

Plaintiff—name and address

Defendant—name and address

**PETITION**

PURSUANT TO CHAP. 61 OF K.S.A.

No. \_\_\_\_\_

To Plaintiff: Read instructions on bottom of this form. Set forth a short and plain statement of your claim below.

Plaintiff, having read the instructions on the bottom of the petition, asserts the following claim against the above defendant(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Based on the claim stated above, judgment is demanded against defendant(s) as follows: (check applicable provision)

- Payment of \$ \_\_\_\_\_, plus interest, costs and any damages awarded under K.S.A. §60-2610
- Recovery of the following described personal property, plus costs—estimated value of property \$ \_\_\_\_\_:

The plaintiff, hereby declares under penalty of perjury under the laws of the State of Kansas that, to the best of plaintiff's knowledge and belief, the above claim asserted against the defendant(s) (including the estimate of value of any property sought to be recovered) is a just, true, and correct statement, exclusive of any valid claim or defense which defendant(s) may have.

Check this box if the plaintiff is an attorney or a corporation or entity that will appear by an attorney or former attorney or person qualified to be an attorney as defined by law.

Executed on \_\_\_\_\_, 19 \_\_\_\_\_

Signature of Plaintiff

Indicate this box to request personal or residence service of the summons and not certified mail service. If you do not mark this box the sheriff or process server may make certified mail service or you may make certified mail service. Follow strict terms of the "returns" on back of the summons forms if you make the service yourself.

The trial on this matter is set for \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ M., at \_\_\_\_\_

Place of hearing and address

This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

**INSTRUCTIONS TO PLAINTIFF:**

1. State the claim you have against the defendant(s) in the space provided on the petition form. Be clear and concise.
2. Your total claim against defendant may not exceed \$1,800, not including interest, costs and any damages awarded under K.S.A. §60-2610. If you are seeking the recovery of personal property, the value of that property shall be based on your estimate of its value under unsworn declaration under penalty of perjury.
3. You must be present in person at the hearing in order to avoid default judgment against you on any claim defendant(s) may have which arises out of the transaction or occurrence which is the subject of your claim against the defendant(s).
4. You must make demand for judgment in one or both of the spaces provided on the petition form.
5. Neither you nor the defendant(s) are permitted to appear with an attorney at the hearing unless the other party is an attorney or is a corporation or entity that uses an attorney in a representative capacity. In such case you are entitled to one continuance to obtain an attorney.
6. You may not file more than ten small claims under the small claims procedure act in this court during any calendar year.
7. After completing the petition form, you must sign it. Your signature is under unsworn declaration under penalty of perjury.

9-4

## **Petroleum Marketers and Convenience Store Association of Kansas**

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*Serving the Independent Petroleum Marketing Industry of Kansas since 1914*

Memo to: Committee Members of the House Judiciary Committee  
From: Thomas M. Palace, Executive Director, PMCA of Kansas  
Date: March 10, 1999  
Re: Testimony for Senate Bill 97

Mr. Chairman, Members of the House Judiciary Committee;

My name is Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas, representing over 350 independent Kansas petroleum companies that distribute petroleum products at the wholesale and retail level.

We appreciate the opportunity to provide written testimony in support of SB 97.

Independent petroleum marketers market fuel throughout the State of Kansas. Many times, customers fail to pay their monthly bill. When this happens marketers normally attempt to collect the balance due on their own. However, when customers fail to pay their bill, and depending on the amount owed, the only alternatives available to the marketer would be to turn it over to a collection agent or to file a claim with the small claims court. Because of the attorney representation rule in which some district court magistrates required corporations to appear by attorney but prohibited by the small claims procedures act, has caused some confusion amongst our members.

It appears there are inconsistencies in the Kansas Statutes as they relate to the small claims procedure act. The small claims procedure act, prohibits attorney representation except in limited circumstances, abrogates the common law principle that corporations may appear in court only through an attorney. The Attorney General has opined that a corporation may participate in small claims court through an agent who is not licensed to practice law. With this opinion, Senate Bill 97 simply puts in statute what the Attorney General has stated is acceptable.

PMCA of Kansas appreciates the opportunity to provide written testimony and position in support of Senate Bill 97.



**KANSAS BAR  
ASSOCIATION**

**DENNIS P. HARWICK**  
Executive Director

1200 S.W. Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
Email: barchief1@aol.com

## Legislative Testimony

TO: Members, House Judiciary Committee

FROM: Ron Smith  
Kansas Bar Association

SUBJ: SB 143

DATE: March 10, 1999

The KBA supports this legislation.

This legislation simply allows Roth IRAs to be treated for debtor-creditor purposes on attachments and garnishments -- and bankruptcy -- exactly the same way we treat any other IRA or retirement accounts under Kansas law.

There was concern that Section 408A of the internal revenue code, the Roth IRA, was not specifically listed even when indicating that Section 408 plans are exempt. This bill clarifies that Kansas policy on exemptions for retirement accounts also includes Roth IRAs.

There may be concern in other quarters that Kansas is too liberal with its exemptions. I understand that argument but the policy question of exempting retirement accounts from creditor's claims already has been decided. If the legislature wants to revisit that policy question, you may want to choose a different forum or vehicle for that discussion.

Without this legislation, estate planners tell me that they cannot in good conscience recommend Roth IRAs to their clients because if the client later has to take bankruptcy or is personally liable on a judgment, the trustee or the plaintiff may get the retirement income. The gist of current law is that if Mr. Jones has two IRAs -- one a Roth IRA and the other an ordinary IRA at the bank, the bank IRA would avoid creditors while the Roth IRA might not. This raises the question of "why?"

Thank you.

*Testimony  
House Judiciary Committee  
Representative Mike O'Neal, Chairman  
Wednesday, March 10, 1999*

Mr. Chairman, Members of the Committee, thank you for the opportunity to visit with you today regarding Senate Bill 143.

My name is Rick Friedstrom and I am a full time insurance agent located in Topeka. I appear before you today as Chairman of the State Law and Legislative Committee of the 1,500 member strong Kansas Association of Life Underwriters.

KALU supports the proposed legislation as found in Senate Bill 143.

In 1976 Congress created the first generation Individual Retirement Account. This first generation IRA allowed an individual to make tax-deductible contributions for his or her own retirement. Today one has access to at least seven additional generations of IRA's that are available for a variety of accumulation purposes. This discussion today is not to review the 20-year history of the IRA, but rather encourage legislation that will bring the newest IRA under the umbrella of creditor protection available in Kansas.

In August 1997, Congress passed legislation creating the Roth IRA. This newest retirement vehicle allows individuals to contribute funds on an after-tax basis that will grow free of future income taxation unlike the traditional IRA, which is fully taxable at retirement.

Early in the summer of 1998, a member of our association posed the following question. That being: "does the Roth IRA enjoyed the same protection from attachment and creditors that prior generation IRA's and business sponsored qualified plans do?" We sought counsel and discovered Kansas's statutes did not address this issue. We think legislation should be passed before even one Kansas citizen is negatively impacted.

In creating the Roth IRA, Congress allowed individuals the opportunity to convert their traditional IRA to a Roth IRA. Many in Kansas have, are, or will take advantage of this provision, however, many Kansas taxpayers will not take advantage of this provision that should do so. The overriding concern for not taking advantage of this provision is of exposing their hard-earned retirement funds to possible creditor issues.

The Consumer obviously makes the final decision in dealing with his or her own finances. The trust officer, the attorney, the CPA, the securities broker, and the insurance agent are often relied upon to provide accurate, reliable, and consistent advice. Many advisors feel the Roth IRA is a wonderful accumulation tool; however, many are hesitant to recommend the Roth until adequate creditor protection is provided.

We feel passage of Bill 143 continues good public policy by expanding the protection afforded Kansas citizens in KSA 60-2308.

Thank you.

Richard K. Friedstrom, CLU  
1414 Ashworth Place  
Topeka, Kansas 66604  
1.785.228-5233