Approved: March 14, 2001
Date

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Kenny Wilk at 9:05 a.m. on February 14, 2001 in Room 514-S of the Capitol.

All members were present
Committee staff present: Alan Conroy, Legislative Research
Rae Anne Davis, Legislative Research
Jim Wilson, Revisor of Statutes
Mike Corrigan, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: George Teagarden, Livestock Commissioner
Rochelle Chronister
August Bogina
Duane Goossen, Director of the Budget
Dr. Eric Mitchell, Shawnee County Coroner
Dr. Lyle Noordhoeck, President-elect of the Kansas Society of Pathologists
Pam Scott, Executive Director of Kansas Funeral Directors
Dr. Lorne Phillips, Kansas Department of Health and Environment

Others attending: See Attached

Hearing on HB 2037–Biennial budget estimates for state agencies

Alan Conroy, Legislative Research Department, explained the bill which would require all state agencies to submit biennial budget estimates. Currently there are 20 fee-funded agencies which estimate their budgets on a biennial basis, however, the bill requires the submission of two individual annual budgets.

George Teagarden, Livestock Commissioner and former Chairman of the House Appropriations Committee, presented non-supportive testimony for biennial budget estimates (Attachment 1). Mr. Teagarden cited Ronald K. Snell's "*Annual and Biennial Budgeting: The Experience of State Governments,*" as not recognizing any real benefits to biennial budgeting. The first comparison study by Snell indicated that biennial budgets spent more; the second study showed no difference in spending. The economy influences the State's budget and it is not always predictable. North Dakota has a true biennial budget but also requires the support of a fallback committee in case budgeting decisions or additions must be made. Most of the legislatures which have biennial budgeting also meet biennially. Mr. Teagarden pointed out that the Legislature would lose power by adopting biennial budgeting as this would require them to work prior to the Session on the budgets, thus leaving their colleagues out of the loop.

Rochelle Chronister, former Chairperson of the House Appropriations Committee and former Secretary of Social and Rehabilitative Services, advised the Legislature that they should not try to run the agencies as that is up to the executive branch of the government (Attachment 2). It is very difficult for CEOs to run their agencies when they are required to be in the Capital several hours a day during the session either meeting with legislators or appearing before committees. Mrs. Chronister suggested that the need for biennial budgets has been reduced by the concentration of members on the Committee and the regular meeting times for the full Committee and Budget Committees to meet. Economic conditions and catastrophes make budget estimating almost impossible on a long-range basis. She suggested there be a meeting between the Legislative and Executive Branches to discuss their philosophical differences on supervision and responsibility for the agencies. An alternative to the current system would be for the Legislature to meet, review the Governor's budget, and then go home for a few weeks while Research prepares the reports.

Gus Bogina, former Chairman of the Senate Ways and Means Committee and former Chairman of the Board of Tax Appeals, appeared before the Committee and shared his perspective as both a member of the legislature and of executive of an agency (Attachment 3). He explained the difficulty of estimating budgets three years in advance. This is especially difficult for legislators to approve as they may have to rescind their decisions for money during the lean years.

Duane Goossen, Director of the Budget, stated that the majority of the states use annual budgets. The annual

budget system is working well within the state and the introduction of a totally new system and its implementation would cause a great deal of confusion and difficulty. He advised the Committee to explore all avenues before changing the statutes on budgeting. Mr. Goossen explained that forecasting caseloads and revenue can be very inaccurate (Attachment 4).

During Committee discussion on biennial budgets, it was pointed out that this method might lead toward long-term thinking and planning. The Division of the Budget receives strategic plans from the agencies and the possibility of passing this information on to the Legislature in a readable and workable form early in the session was discussed. The need for a way to reward agencies who spend and budget prudently was mentioned. As the Chairman of Appropriations is allowed to hold meetings during the interim, the budgets could be worked earlier if they had digestible information.

Chairman Wilk declared the hearing on **HB 2037** was closed.

Hearing on HB 2460 - Notification and investigation of death by district coroner

Dr. Eric Mitchell, Coroner of Douglas, Shawnee, and surrounding counties spoke in support of the bill which would give the local coroners more latitude in the decision-making of where bodies are to be sent for autopsy and who would be fiscally responsible for the investigation on wrongful deaths.

Dr. Lyle Noordhoeck, pathologist from Hays, explained the shifting of jurisdiction from one location to another. He pointed out that it is necessary that the coroner appear in criminal investigation cases and he is required to travel around the state in this area. This bill would allow counties to choose where to send the bodies for autopsy.

Pam Scott, Executive Director of Kansas Funeral Directors, appeared in opposition to the bill (Attachment 5). She reported that the other 49 states all declare jurisdiction over a death is in the county where the death occurs, not where the body is ultimately taken.

Dr. Lorne Phillips, Kansas Department of Health and Environment, also spoke in opposition to the bill which would reverse the current legislation (Attachment 6). The proposed legislation would slow the entire process of signing death certificates as the coroner in the county where the body is taken after the incident would be required to sign the death certificate.

Chairman Wilk declared the hearing closed on **HB 2460**.

Representative Neufeld moved for the introduction of legislation regarding the continued operation of the Kansas Payment Center. Motion was seconded by Representative Campbell. Motion carried.

The meeting was adjourned at 10:45 a.m. The next meeting is scheduled for February 15, 2001.

COMMITTEE GUEST LIST

DATE: Feb. 14, 2001

NAME	REPRESENTING
Chip Wheelen	Osteopathic Assoc.
Lorne Phillips	KDHE
Gus Bogina	
George Teagarden	

BIENNIAL BUDGETS

George Teagarden
February 14, 2001

House Appropriations Committee

Chairman Wilk and members of the Committee,

I am George Teagarden, here today to share some thoughts regarding Biennial Budgets. As a way of introduction, I spent some time in the House of Representatives and I am currently the Livestock Commissioner for the State of Kansas.

The subject of Biennial Budgeting has been discussed in the past and as you know, several smaller, fee agencies have been operating with biennial budgets for several years. From my limited research, it seems to be working from their perspective. When considering the experiences of these agencies, keep in mind that they are fee funded and the sources of those fees are relative stable.

Alan Conroy has shared a document with me entitled "Annual and Biennial Budgeting: The Experience of State Governments" by Ronald K. Snell, National Conference of State Legislatures. I hope that all of you have had an opportunity to review that document. Several studies have been conducted and were used to support Mr. Snell's work. My thoughts on the subject parallel those of Mr. Snell. I believe there are several things to consider before implementing biennial budgets across the board for the State of Kansas.

When considering annual budgets versus biennial budgets, issues that would have to be resolved would include employee compensation (pay matrix and colas), fringe benefits (insurance, retirement), the amount of legislative oversight and authority desired, supplemental requests, etc. I know that you are now facing fiscal issues that must be addressed or the problems will compound; issues that might have to be dealt with during the off year.

Consideration should be given to whether you want true biennial budgets or two individual annual budgets, reviewed on biennial basis. From an agency standpoint, I think that true biennial budget preparation would be less time consuming than the present situation of developing an annual budget. However, predicting needs for a two year period would be more difficult. The Kansas Animal Health Department can budget for the status quo, but due to outside pressures and circumstances, our needs do change from time to time, regardless of previous plans. Circumstances could easily present the need for supplemental appropriations, thus agency and legislative time would not necessarily be conserved. Legislative action often affects the budget.

Agencies that are wholly or partially funded by State General Fund dollars are definitely affected by the economic conditions of the state. Shortfalls in revenue always effect budget allocations and appropriations. Biennial budgets, as well as annual and current budgets must be looked at when shortfalls occur. It's been my experience that governors

and legislatures try to make up for some of the shortfalls in agency budgets when revenue receipts rebound. I think that you have to ask yourselves if you are willing to stay the course or will you want to make off year adjustments. If you do open budgets in the off year, what will be gained? Even our agency's fee revenue is affected by economic conditions; livestock market numbers are driven somewhat by market conditions.

Agency budgets are affected by conditions outside of their control. This past 14-16 months the cost per mile of our pickups that we lease from the central motor pool has risen from 22 cents per mile to 32 cents per mile for FY'02 (45% increase). This cost rise will amount to over $30,000 in our agency alone. Employee health insurance costs have gone up 12% for FY'02. The cost of gas for heat in state buildings for the current year will be much more than budgeted; is that being considered? Our contract with a private owner allows for energy overruns to be added into the following years rent. We'll have to address that when it comes due. The Department of Administration is now charging us $.35 for each payroll warrant and $.04 per square foot for a lease negotiation fee. The removal of the bottom 3 steps of the pay plan have been dropped and people from steps 1, 2, 3, 4, and 5 will be moved to step 6 on their range within 12 to 18 months with no funding. Somehow this will have to be addressed.

To summarize my rambling, I suggest that moving to biennial budgets may sound good; an efficiency move. But in reality, Mr. Snell's research and my experiences don't recognize any real benefits. The economy has too much influence on the State's budget and it is not always predictable. Adjustments will be made as need arises.

If you adopt the biennial budget, make sure that you understand what it means and who will have control if things go south. Understand prior to implementation how needed adjustments will be handled, what committees or individuals will be involved and what constitutes a supplemental appropriation.

Thank you

Testimony by Rochelle Chronister on House Bill 2037
House Appropriation Committee
Wednesday, February 14,2001

Thank you Chairman Wilk and Members of the House Appropriations committee for the opportunity to talk with you about a two year budget cycle for some state agencies.

In the early 1990's when Rep. George Teagarden and I had the opportunity to chair the House Appropriation committee one of the major problems that we had was finding enough time for the sub-committees to meet and to be sure that they could finish their work on time. Most sub-committees were meeting at 7A.M., over noon hours, after the regular committee work was finished for the day or at the 1:30 P.M. time if a meeting of the full committee was not on the schedule since committee members usually also sat on other committees. Comments were often made in sub-committee reports which referred problems to the second house as the sub-committee did not have time to receive information and analyze what should be done.

In an effort to provide more time for the subcommittees to focus their work on the large agencies and understand the problems in those budgets in 1993 I requested the House Appropriations committee introduction of a bill that would allow the budget committees to alternate analysis of the budgets of agencies every other year. I believe that the bill still called for work on the Cabinet level budgets every year, but all of the fee agencies and some of the other small agencies would only be worked once in each two year cycle. If it appeared that there were problems in an agency it could still be pulled up for review, but if there were no major changes that needed to be made the budget was approved for two years. The argument has always been that fee agencies operate on money raised by assessing their own members and have a board made up of that membership to make recommendations on how they want to spend the money. An assurance of fiscal responsibility is probably all that is needed from the legislature since there is usually a limit set by the legislature on how much those fees can be.

The argument can be made that a two year cycle lessens the legislature's oversight of an agency and that is correct, but since I have now been on the other side and fully understand how much of an agency's time is taken up by the legislature I am no longer convinced that is all bad. It is very difficult for an agency to move forward with new plans when the top level staff is tied up two to four days a week for the 90 days that the legislature is in session. Not only the CEO of the agency, but all of the top level people who are responsible for finding the answers to legislative questions and putting them together in a format that insures everyone's understanding are taken from their regular duties.

In the early 1980's the discussion was in the opposite direction from that of HB 2035 with some in the legislature advocating for a legislative budget instead of beginning with one proposed by the Governor. The issue was that when the Governor proposed a budget he or she then set the expectations for an agency or advocacy group as the minimum that would be given and made it very difficult for the legislature to focus on different goals.

Route 2- Box 321A, Neodesha, Ks. 66757

examined in depth and new programs recommended.

With the decision to change the time when the Appropriations committee meets and the removal of members from other committees many of the difficulties around time management were resolved. A new set of questions are then raised, "When does the legislature overstep it's boundaries and go from a body that is charged with overseeing the operations of state government and begin to interfere in the day to day operations of running an agency which is the responsibility of a governor?"

I would suggest to you that the need for HB 2037 has been reduced by the changes put in place over the past 6 years, but the philosophical discussion behind the conflict between the legislative and executive branches needs to take place. The four people who the Chairman have asked to testify on this bill are all former Appropriation members who have gone on to run executive branch agencies and, I suspect, have opinions on this subject.

Thank you for the opportunity to present my views on this subject and I would be happy to answer questions at the appropriate time.

Route 2- Box 321A, Neodesha, Ks. 66757 rrc@terraworld.net

HOUSE APPROPRIATIONS COMMITTEE

February 14,2001

Good Morning, Mr. Chairman and Members of the Committee:

It is a pleasure to be before a Legislative Committee with two former colleagues from the House of Representatives. Each of us had the privilege of being involved with the appropriations process and subsequently moved to the administrative branch of our state government. The agencies we administered, and in Commissioner Teagarden's case still administers, are quite different. Secretary Chronister had the largest and, in my opinion, the most onerous task. While our duties and responsibilities as Chairs of the committee responsible for the appropriations process were somewhat similar, our experience in the administrative branch were diverse and different. We therefore probably will have differing opinions about the subject of Biennial Budgets.

At the outset, let me state that I was not a proponent or believer that biennial budgets solved any problems, real or perceived, reduced the work load of the committee and fine loyal staff members, or furnished any other real benefit. I believe it is extremely difficult, if not impossible, for an agency to predict (guess) in August and September of any given year the activity to be encountered, revenue available, economic conditions, etc. three years "down the road." Using your current appropriations requests as an example, the agencies in August and September of 2000 estimate their expenses and revenues required to fulfill their responsibilities for the balance of the current fiscal year that ends June 30, 2001 and the same information for the fiscal year ending June 30, 2002. If biennial budgets are required, that same information will be required for the fiscal year ending June 30, 2003. I submit that for the agencies that do not have a

dedicated source of income, the numbers necessary for you to make rational judgments would be difficult to determine with any degree of accuracy.

I believe the appropriations process does currently involve a biennial review of the agency requests and Governor's recommendations. This Committee, various subcommittees, and the entire Legislature currently makes appropriations which are called "Supplemental" or reductions as warranted in the appropriations for the current fiscal year which ends June 30, 2001. Those appropriations bills were enacted last session and appropriated funds for the operation of the agencies for the fiscal year that ends June 30, 2001.

The problems that are inherent in predicting the revenue that would be available to properly fund the governmental agencies are currently very evident. Added to that the idiosyncrasies of the federal government and its largess, the assurance of adequate funding three years down the road becomes a more harrowing "guessing game." I believe it is extremely difficult, if not impossible, for this Committee or your Senate counterpart to determine, make judgments, and vote to provide funds now for fiscal year 2003. Further, I could not determine any advantage to that exercise since next session the Committee will review the then current year plus future years' appropriations.

Fee agencies have different requirements and do function with a revenue stream that may not be as susceptible or change as dramatically as the various tax revenues, the caseloads, or other demands of our society and citizens.

I do not offer any recommendations. I have only my opinion based upon 22 years of legislative experience, 18 years service on the House and Senate Appropriations Committees with the last 12 years as Chair of the Senate Ways and Means Committee.

Mr. Chairman, thank you for the opportunity of appearing before the Committee. I am available to answer any questions.

TO: House Appropriations Committee

FROM: Duane Goossen, Director, Division of the Budget

SUBJECT: **BIENNIAL BUDGETING**

DATE: February 14, 2001

ADVANTAGES

- Full budget process occurs only every other year which may allow more time for policy development or for focusing on specific items.
- May facilitate a longer term view of agency activity and may add a measure of stability to agency budgets.

DISADVANTAGES

- Budget will be built on revenue estimates that are likely less accurate.
- Budget itself may be less accurate and may generate many supplemental requests.
- Loss of some Legislative control over agencies.
- With little lead time, a new Governor would be recommending a budget that covers the first half of his or her term.

"A state can develop a good system of executive and legislative fiscal and program planning and controls under either an annual or biennial budget. The system would work differently with the alternative timespans but could be effective under either approach."

"The arguments used to justify and refute both annual and biennial budgets remain essentially unchanged since 1972—and unproven. The success of a budget cycle seems to depend on the commitment of state officials to good implementation rather than on the method itself."

--conclusions from studies cited by Ronald Snell, Director of Economic, Fiscal, and Human Resources at NCSL, in an article printed in SPECTRUM, Winter 1995, page 24

HOUSE APPROPRIATIONS
DATE 2/14/01
ATTACHMENT #4

KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

1200 S. KANSAS AVENUE ◆ PO BOX 1904 ◆ TOPEKA, KS 66601-1904
PHONE (785) 232-7789 ◆ FAX (785) 232-7791
WEBSITE: www.ksfda.org ◆ E-MAIL: kfda@inlandnet.net

AFFILIATED WITH NFDA

To: House Appropriations Committee

From: Pam Scott, Executive Director
Kansas Funeral Directors and Embalmers Association

Date: February 14, 2001

Re: House Bill No. 2460

Mr. Chairman and members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association(KFDA). I appear before you today in opposition to House Bill No. 2460.

Last year the legislature passed Senate Bill No. 224, which amended K.S.A. 22a-231 concerning coroner jurisdiction over dead bodies. Basically, Senate Bill No. 224 was intended to remedy problems that were occurring as a result of changes made to the coroner jurisdiction law in 1993.

Funeral directors and families had encountered many difficulties in their ability to get death certificates completed, signed and filed within a reasonable period of time. As a result, the families of the deceased had not been able to put their financial affairs in order after the death of a loved one because of their inability to receive certified copies of the death certificate. Death certificates are often required in order to receive the proceeds of life insurance policies, obtain access to bank accounts or even apply for social security benefits.

The intent of last year's legislation was to change the law back to the way it was prior to 1993 and place jurisdiction over dead bodies with the coroner of the county where death occurred. Because of changes made to the bill at the request of county coroners from some of the larger counties with major medical centers, this was not totally accomplished. The amendments provided that the county where the cause of death occurred would pay the cost of an investigation. It did, however, serve the major purpose of placing the responsibility of determining cause of death and completing a death certificate with the coroner of the county where death occurred.

Kansas law requires that in situations where a person dies by unnatural causes or when not regularly attended by a licensed physician, the coroner with jurisdiction over the death must sign the death certificate and state the cause of death thereon. If House Bill No. 2460 is passed, we will once again likely see difficulties in getting death certificates completed in a timely manner. This is espec[illegible]

HOUSE APPROPRIATIONS
DATE 2/14/01
ATTACHMENT #5

occurring in one county but death occurring in another county. The following is a typical example of a problem we might see if the law is changed: An automobile accident occurs in Rice County. The accident victim is transported to a hospital in Sedgwick County and dies hours, days, or even months after the accident. Once death occurs, the coroner of Rice County, the county where the cause of death occurred, would be required to sign the death certificate stating the cause of death even though that coroner never saw the victim prior to death and perhaps did not even know an accident had occurred. As past experience indicates, that coroner would be reluctant to sign and often would refuse to sign the death certificate. This problem not only would occur with automobile accidents but also with other types of unintentional deaths such as work related accidents, falls at home, or sudden illnesses when the individual was in apparent good health at time of death. The problem is prevalent in rural areas of the state where individuals must be taken to hospitals in larger surrounding communities for medical care.

I have checked the laws of surrounding states concerning who has jurisdiction over dead bodies and have found that in Colorado, Nebraska and Missouri, jurisdiction lies with the coroner of the county where death occurred. Oklahoma has a statewide medical examiner that has jurisdiction over all deaths in the state. According to the Office of Vital Statistics, they know of no other state with a law which places jurisdiction with a coroner of a county other than the county in which death occurred.

It will be argued that the new law would take away the investigation of a suspicious death away from local authorities where a crime may have occurred. This is simply not true. An investigation can still take place in the county where cause of death occurred. Investigations would proceed and criminals would be tried and convicted just as they were prior to 1993. The coroner of the county where death occurred and law enforcement from the county where the cause of death occurred would communicate their findings to one another. This happens under current law and it happened under the law as it was previously written. Even before last year's changes, the coroner of the county where death occurred would oftentimes determine cause of death for a coroner in the county where the "cause of death" occurred, for a fee.

I might note that the total number of deaths in Kansas resulting from crimes is small in comparison to the number of accidental deaths. According to the 1999 "Kansas Annual Summary of Vital Statistics", 1124 deaths in Kansas were caused by accidents, including automobile accidents, while only 138 deaths resulted from homicide and legal intervention. Of those 138 deaths, 96 occurred in Johnson, Sedgwick, Shawnee and Wyandotte counties. Although I have no statistics to prove it, it is likely that in the majority of the remaining 42 homicide cases, the county of where death occurred and the county where cause of death occurred are the same.

Since Senate Bill No. 224 was enacted last year, we have seen a decrease in the number of complaints received regarding the completion of death certificates in a timely manner. It is my understanding that the Office of Vital Statistics has also not seen any problems resulting from last year's legislation.

In conclusion, the KFDA would ask that this committee oppose House Bill No.2460 and leave in place the current law which was enacted during the 2000 legislative session. Thank you for the opportunity to testify. I would be happy to address any questions you may have.

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

Testimony on House Bill No. 2460
to
House Appropriations Committee
Presented by Dr. Lorne A. Phillips
State Registrar and Director
Center for Health and Environmental Statistics
February 14, 2001

Section 1. of the Bill **provides authority** for a coroner to conduct an inquest on the body of a dead person who's death appears to have been caused by unlawful means when circumstances relating to the death are unknown. **Authority is deleted** for the coroner of the county in which the death occurred to request an inquiry by the coroner of the county in which the cause of death occurred.

Section 2. of the Bill specifies the circumstances or conditions when the coroner of the county in which the cause of death **must be given notice** that a person has died or a body has been found. The **requirement** for the coroner of the county in which the cause of death occurred **to determine** if an investigation shall take place **is deleted**.

Section 3 of the Bill **requires** the coroner of the county in which the cause of death occurred to make **an inquiry and file a report** with the clerk of the district court **whenever a notice has been received** by the coroner that a person has died or a body has been found under the circumstance or conditions specified in Section 2.

The Bill revokes changes enacted by the 2000 Session of the Legislature. Despite minor opposition to the 2000 changes, implementation progressed smoothly with no complaints filed with the Office of Vital Statistics. From the perspective of the Office of Vital Statistics and relative to the timely registration , certification and issuance of death certificates we find the current language to be very functional .

Therefore, we do not recommend passage of House Bill No. 2460.

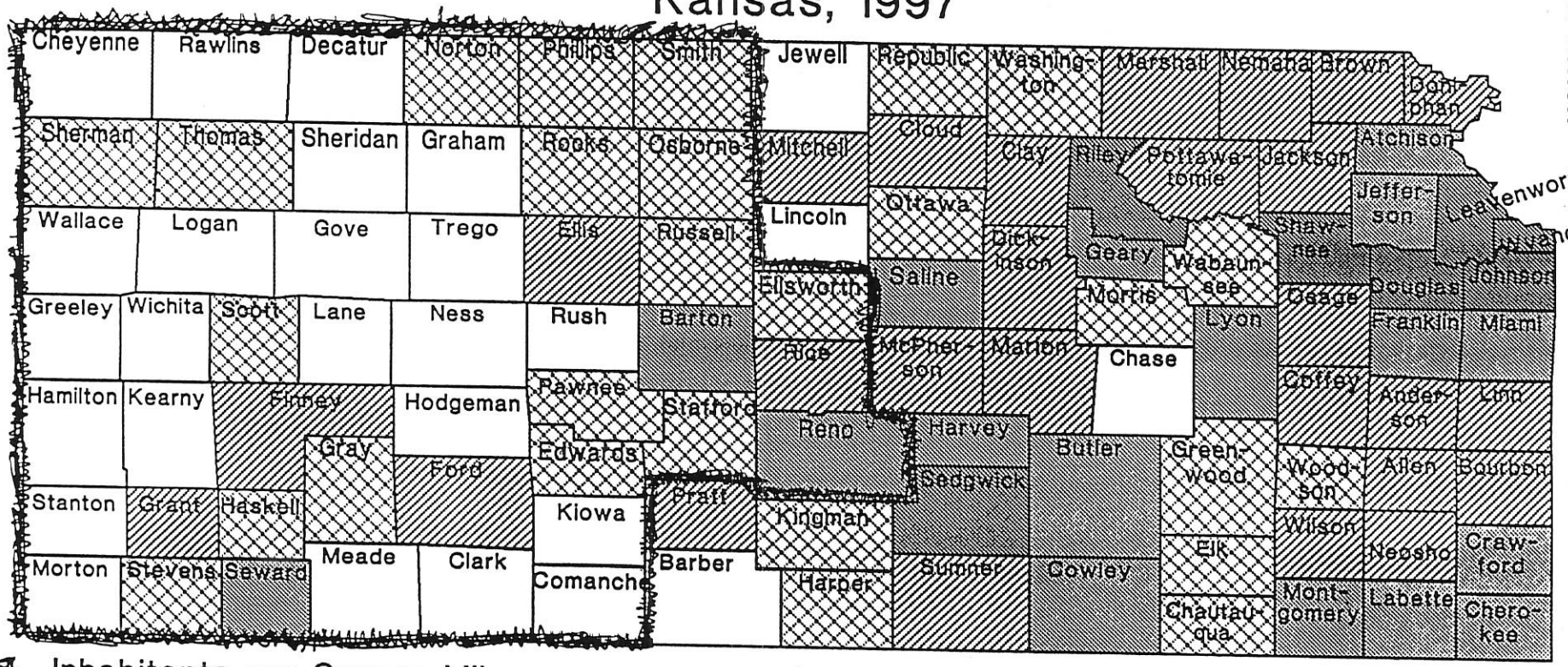
I thank you for the opportunity to appear before the House Appropriations Committee and will gladly stand for questions the committee may have on this topic.

Capitol Tower Building
400 SW 8TH Street, Suite 200
(785) 296-0461

HOUSE APPROPRIATIONS
DATE 2/14/01
ATTACHMENT #7

Population Density By County of Residence

Kansas, 1997



Inhabitants per Square Mile

State Population Density: 31.7

BLUE BOX
COUNTIES SERVED BY LYLE NOORDHOEK MD
- AS CORONER
- AS DEPUTY CORONER
- AS AUTOPSY PATHOLOGIST
- AS CONSULTANT

LEGEND
Under 5.0
5.0 to 9.9
10.0 to 30.9
31.0 to 99.9
100.0 & over

Figure 9

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

February 14, 2001

TO: House Appropriations Committee

FROM: Janet Schalansky, Secretary, SRS

RE: Bill Introduction

Chairman and Members of the Committee, I am here today to request that a bill be introduced into your committee. This bill would authorize the continued operation of the Kansas Payment Center (KPC). Each state is required by federal statute to operate a centralized payment center for child support collection and enforcement. The KPC began operation on September 29, 2000, under authority of a legislative proviso. This bill would codify its continued operation.

HOUSE APPROPRIATIONS
DATE 2/14/01
ATTACHMENT #8

2001 DRAFT lrs0028

PROPOSED BILL NO.

By

AN ACT concerning child support enforcement; establishing the Kansas payment center; income withholding; amending K.S.A. 23-4,136, 38-1121, 38-1123 and 60-2803 and K.S.A. 2000 Supp. 23-4,106, 23-4,108, 23-4,118, 60-1610 and 60-2308 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 23-4,106 is hereby amended to read as follows: 23-4,106. As used in the income withholding act:

(a) "Arrearage" means the total amount of unpaid support which is due and unpaid under an order for support, based upon the due date specified in the order for support or, if no specific date is stated in the order, the last day of the month in which the payment is to be made. If the order for support includes a judgment for reimbursement, an arrearage equal to or greater than the amount of support payable for one month exists on the date the order for support is entered.

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

(c) "Health benefit plan" means any benefit plan, other than public assistance, which is able to provide hospital, surgical, medical, dental or any other health care or benefits for a child, whether through insurance or otherwise, and which is available through a parent's employment or other group plan.

(d) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, workers compensation and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof. "Income" does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including but not limited to federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance

benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply. Workers compensation shall be considered income only for the purposes of child support and not for the purposes of maintenance.

(e) "Income withholding order" means an order issued under this act which requires a payor to withhold income to satisfy an order for support or to defray an arrearage.

(f) "Medical child support order" means an order requiring a parent to provide coverage for a child under a health benefit plan and, where the context requires, may include an order requiring a payor to enroll a child in a health benefit plan.

(g) "Medical withholding order" means an income withholding order which requires an employer, sponsor or other administrator of a health benefit plan to enroll a child under the health coverage of a parent.

(h) "Nonparticipating parent" means, if one parent is a participating parent as defined in this section, the other parent.

(i) "Obligee" means the person or entity to whom a duty of support is owed.

(j) "Obligor" means any person who owes a duty to make payments or provide health benefit coverage under an order for support.

(k) "Order for support" means any order of a court, or of an administrative agency authorized by law to issue such an order, which provides for payment of funds for the support of a child, or for maintenance of a spouse or ex-spouse, and includes an order which provides for modification or resumption of a previously existing order; payment of uninsured medical expenses; payment of an arrearage accrued under a previously existing order; a reimbursement order, including but not limited to an order established pursuant to K.S.A. 39-718a or 39-718b, and amendments thereto; an order established pursuant to K.S.A.

23-451 et seq. and amendments thereto; or a medical child support order.

(l) "Participating parent" means a parent who is eligible for single coverage under a health benefit plan as defined in this section, regardless of the type of coverage actually in effect, if any.

(m) "Payor" means any person or entity owing income to an obligor or any self-employed obligor and includes, with respect to a medical child support order, the sponsor or administrator of a health benefit plan.

(n) "Public office" means any elected or appointed official of the state or any political subdivision or agency of the state, or any subcontractor thereof, who is or may become responsible by law for enforcement of, or who is or may become authorized to enforce, an order for support, including but not limited to the department of social and rehabilitation services, court trustees, county or district attorneys and other subcontractors.

(o) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.) and amendments thereto, as in effect on ~~May 17, 1997~~ December 31, 1999. "Title IV-D cases" means those cases required by title IV-D to be processed by the department of social and rehabilitation services under the state's plan for providing title IV-D services.

Sec. 2. K.S.A. 2000 Supp. 23-4,108 is hereby amended to read as follows: 23-4,108. (a) It shall be the affirmative duty of any payor to respond within 10 days to written requests for information presented by the public office concerning: (1) The full name of the obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; (10) the obligor's health insurance coverage; and (11) whether or not income owed the obligor is being withheld pursuant to this act. This is an exclusive list of

8-4
~~8-3~~

the information that the payor is required to provide under this section.

(b) It shall be the duty of any payor who has been served a copy of an income withholding order for payment of an order for cash support to deduct and pay over income as provided in this section. The payor shall begin the required deductions no later than the next payment of income due the obligor after 14 days following service of the order on the payor.

(c) Within seven business days of the time the obligor is normally paid, the payor shall pay the amount withheld as directed by the income withholding agency pursuant to K.S.A. 23-4,109 and amendments thereto, as directed by the income withholding order or by a rule of the Kansas supreme court. The payor shall identify each payment with the name of the obligor, the county and case number of the income withholding order, and the date the income was withheld from the obligor. A payor subject to more than one income withholding order payable to the same payee may combine the amounts withheld into a single payment, but only if the amount attributable to each income withholding order is clearly identified. Premiums required for a child's coverage under a health benefit plan shall be remitted as provided in the health benefit plan and shall not be combined with any other support payment required by the income withholding order.

(d) The payor shall continue to withhold income as required by the income withholding order until further order of the court or agency.

(e) From income due the obligor, the payor may withhold and retain to defray the payor's costs a cost recovery fee of $5 for each pay period for which income is withheld or $10 for each month for which income is withheld, whichever is less. Such cost recovery fee shall be in addition to the amount withheld as support.

(f) The entire sum withheld by the payor, including the cost recovery fee and premiums due from the obligor which are incurred

solely because of a medical withholding order, shall not exceed the limits provided for under section 303(b) of the consumer credit protection act (15 U.S.C. § 1673(b)). If amounts of earnings required to be withheld exceed the maximum amount of earnings which may be withheld according to the consumer credit protection act, priority shall be given to payment of current and past due support, and the payor shall promptly notify the holder of the limited power of attorney of any nonpayment of premium for a health benefit plan on the child's behalf. An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. 60-2310 and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to the consumer credit protection act, the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.

(g) The payor shall promptly notify the court or agency that issued the income withholding order of the termination of the obligor's employment or other source of income, or the layoff of the obligor from employment, and provide the obligor's last known address and the name and address of the individual's current employer, if known.

(h) A payor who complies with a copy of an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the income withholding order.

(i) Except as provided further, if any payor violates the provisions of this act, the court may enter a judgment against the payor for the total amount which should have been withheld and paid over. If the payor, without just cause or excuse, intentionally fails to pay over income within the time established in subsection (c) and the obligee files a motion to have such income paid over, the court shall enter a judgment

against the payor and in favor of the obligee for three times the amount of the income owed and reasonable attorney fees.

(j) In addition to any judgment authorized by subsection (i), a payor shall be subject to a civil penalty not exceeding $500 and other equitable relief as the court considers proper if the payor: (1) Discharges, refuses to employ or takes disciplinary action against an obligor subject to an income withholding order because of such withholding and the obligations or additional obligations which it imposes upon the payor; or (2) fails to withhold support from income or to pay such amounts in the manner required by this act.

Sec. 3. K.S.A. 2000 Supp. 23-4,118 is hereby amended to read as follows: 23-4,118. (a) ~~The department of social and rehabilitation services is designated as the state income withholding agency in title IV-D cases. For the purpose of keeping adequate records to document, track and monitor support payments in title IV-D cases and for the purpose of initiating the income withholding process in such cases, the department may contract for the performance of all or a portion of the withholding agency function with existing title IV-D contractors or any newly created entity capable of providing such services.~~

~~(b) In all other cases, except as otherwise provided in this subsection, the clerk of the district court is designated as the income withholding agency for the purpose of keeping adequate records to allow the obligor and obligee to track and monitor support payments. If a district court trustee has been designated by the chief judge to receive, process and maintain records for moneys received under support orders, the district court trustee is designated as the income withholding agency for non-IV-D cases in the judicial district.~~ The department of social and rehabilitation services, the title IV-D agency for the state, shall establish a central unit for collection and disbursement of support payments to meet the requirements of title IV-D. The department shall collaborate with the Kansas supreme court to establish the central unit for collection and disbursement of

support payments, which shall include, but is not limited to, all support payments subject to the requirements of title IV-D. Upon designation by the Kansas supreme court, the central unit for collection and disbursement of support payments shall commence operations with respect to support orders entered in each county as provided in a schedule adopted or approved by the supreme court or the supreme court's designee.

(b) When the central unit for collection and disbursement of support payments commences operations with respect to a county, any provision in any child support order or income withholding order entered in that county which requires remittance of support payments to the clerk of the district court or district court trustee shall be deemed to require remittance of support payments to the central unit for collection and disbursement of support payments, regardless of the date the child support or income withholding order was entered.

(c) As used in this section, "child support order" includes any order for maintenance of a spouse or ex-spouse issued in conjunction with a child support order.

Sec. 4. K.S.A. 23-4,136 is hereby amended to read as follows: 23-4,136. Any person who is the obligor under a support order of another jurisdiction may obtain voluntary income withholding by filing with the court a request for an income withholding order and a certified copy of the support order of the other jurisdiction. The court shall issue an income withholding order, as provided in subsection (i) of K.S.A. 23-4,107 and amendments thereto, which shall be honored by any payor regardless of whether there is an arrearage. ~~In such a case, payments shall be made from the payor or the clerk of the court to the agency for distribution to the obligee.~~

Sec. 5. K.S.A. 38-1121 is hereby amended to read as follows: 38-1121. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for

all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child including the necessary medical expenses incident to the birth of the child. The court may order the support and education expenses to be paid by either or both parents for the minor child. When the child reaches 18 years of age, the support shall terminate unless: (1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time; (2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was

ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). ~~The judgment shall specify the terms of payment and shall require payment to be made through the clerk of the district court or the court trustee--except--for good cause shown.~~ The judgment may require the party to provide a bond with sureties to secure payment. The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) In entering an original order for support of a child under this section, the court may award an additional judgment to reimburse the expenses of support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 38-1114 and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(f) In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

(1) The needs of the child.

(2) The standards of living and circumstances of the parents.

(3) The relative financial means of the parents.

(4) The earning ability of the parents.

(5) The need and capacity of the child for education.

(6) The age of the child.

(7) The financial resources and the earning ability of the child.

(8) The responsibility of the parents for the support of others.

(9) The value of services contributed by both parents.

(g) The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of support issued under this section.

(h) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.

Sec. 6. K.S.A. 38-1123 is hereby amended to read as follows: 38-1123. (a) If existence of the father and child relationship has been determined and payment of support is ordered under prior law, the court may order support and any related expenses to be paid through ~~the clerk of the court or district court trustee~~ the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. If payment of support is ordered under this act, the court shall require such support and any related expense to be paid through the ~~clerk of the court or the court trustee~~ central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto.

(b) The provisions of ~~K.S.A. 23-4,107~~ the Kansas income withholding act, K.S.A. 23-4,105 through K.S.A. 23-4,123, and amendments thereto, shall apply to orders of support issued under this act or under the predecessor to this act.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Sec. 7. K.S.A. 2000 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) Minor children. (1) Child support and education. The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order,

when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202 and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose

support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (a)(1)(B), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(B). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. ~~Every~~ Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the ~~clerk of the district court or the court trustee except for good cause shown~~ central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(2) Child custody and residency. (A) Changes in custody. Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

(B) Examination of parties. The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235 and amendments thereto.

(3) Child custody or residency criteria. The court shall determine custody or residency of a child in accordance with the best interests of the child.

(A) If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. **This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.**

(B) In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

(i) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

(ii) the desires of the child's parents as to custody or residency;

(iii) the desires of the child as to the child's custody or

residency;

(iv) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

(v) the child's adjustment to the child's home, school and community;

(vi) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent; and

(vii) evidence of spousal abuse.

Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(4) Types of legal custodial arrangements. Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference:

(A) Joint legal custody. The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

(B) Sole legal custody. The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.

(5) Types of residential arrangements. After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

(A) Residency. The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

(B) Divided residency. In an exceptional case, the court may order a residential arrangement in which one or more children reside with each parent and have parenting time with the other.

(C) Nonparental residency. If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (a)(1), (2) or (3) of K.S.A. 38-1502 and amendments thereto or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds the award of custody to such person or agency is in the best interests of the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court

the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 38-1531 and amendments thereto and may request termination of parental rights pursuant to K.S.A. 38-1581 and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the Kansas code for care of children shall be binding and shall supersede any order under this section.

(b) Financial matters. (1) Division of property. The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) a division of the property in kind; (B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of

distribution to that nonparticipant. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property. The decree shall provide for any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; (B) any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or (C) any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries. Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

(2) Maintenance. The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court

shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Every order requiring payment of maintenance under this section shall require that the maintenance be paid through the clerk of the district court or the court trustee except for good cause shown.

(3) Separation agreement. If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or

education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) Costs and fees. Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) Miscellaneous matters. (1) Restoration of name. Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name.

(2) Effective date as to remarriage. Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

Sec. 8. K.S.A. 2000 Supp. 60-2308 is hereby amended to read as follows: 60-2308. (a) Money received by any debtor as pensioner of the United States within three months next preceding the issuing of an execution, or attachment, or garnishment process, cannot be applied to the payment of the debts of such pensioner when it appears by the affidavit of the debtor or otherwise that such pension money is necessary for the maintenance of the debtor's support or a family support wholly or in part by the pension money. The filing of the affidavit by the debtor, or making proof as provided in this section, shall be prima facie evidence of the necessity of such pension money for such support. It shall be the duty of the court in which such proceeding is pending to release all moneys held by such attachment or garnishment process, immediately upon the filing of such affidavit, or the making of such proof.

(b) Except as provided in subsection (c), any money or other assets payable to a participant or beneficiary from, or any

interest of any participant or beneficiary in, a retirement plan which is qualified under sections 401(a), 403(a), 403(b), 408, 408A or 409 of the federal internal revenue code of 1986 and amendments thereto shall be exempt from any and all claims of creditors of the beneficiary or participant. Any such plan shall be conclusively presumed to be a spendthrift trust under these statutes and the common law of the state. All records of the debtor concerning such plan or arrangement and of the plan concerning the debtor's participation in the plan or arrangement shall be exempt from the subpoena process.

(c) Any plan or arrangement described in subsection (b) shall not be exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than the state department of social and rehabilitation services, of the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meaning ascribed to them in section 414(p) of the federal internal revenue code of 1986 and amendments thereto.

(d) The provisions of subsections (b) and (c) shall apply to any proceeding which: (1) Is filed on or after July 1, 1986; or (2) was filed on or after January 1, 1986, and is pending or on appeal July 1, 1986.

(e) Money held by the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto, the state department of social and rehabilitation services, any clerk of a district court or a any district court trustee in connection with a court order for the support of any person, whether ~~it be~~ the money is identified as child support, spousal support, alimony or maintenance, shall be exempt from execution, attachment or garnishment process.

Sec. 9. K.S.A. 60-2803 is hereby amended to read as follows: 60-2803. (a) When a money judgment rendered in a civil action in a court of this state is satisfied, the judgment creditor or the

assignee of the judgment creditor shall file satisfaction and release of the judgment within twenty days after receipt of written demand therefor, sent by restricted mail as defined by K.S.A. 60-103 and amendments thereto. Such satisfaction and release shall be filed with the clerk of the court in which the judgment was entered and with the clerk of any other court in which the judgment was filed.

(b) If a judgment creditor or the assignee of a judgment creditor refuses or neglects to enter satisfaction and release of a judgment when required by this section, such judgment creditor or assignee shall be liable to the judgment debtor, or other interested person demanding the satisfaction or release, in damages in the amount of one hundred dollars, together with a reasonable attorney's fee for preparing and prosecuting the action to recover such damages.

(c) The provisions of this section shall not apply if the judgment is satisfied by payment through the office of the clerk of the district court, the district court trustee or any central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto.

Sec. 10. K.S.A. 23-4,136, 38-1121, 38-1123 and 60-2803 and K.S.A. 2000 Supp. 23-4,106, 23-4,108, 23-4,118, 60-1610 and 60-2308 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.