

Approved

Date: *March 5, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:38 a.m. on March 1, 2001 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Bruce Ward, Kansas Judicial Council (KJC)
Elwaine Pomery, Kansas Credit Union Attorneys

Others attending: see attached list

Minutes of the February 28th meeting were approved on a motion by Senator Donovan, seconded by Senator O'Connor. Carried.

Confirmation

A motion to reappoint Paula S. Salazar to the Crime Victims Compensation Board was made by Senator Donovan and seconded by Senator O'Connor. Carried

SB 236—concerning the code of civil procedure; re: garnishment

SB 159—concerning the code of civil procedure for limited actions

Conferee Ward testified in support of **SB 236**, a bill which he stated will amend the provisions of Chapter 60 of K.S.A. to make it's garnishment provisions identical to those in Chapter 61 of K.S.A. He further stated that the bill will adopt certain forms to be used in Chapter 60 garnishment proceedings and make a technical amendment to Chapter 60 consistent with a technical amendment to Chapter 61 proposed in **SB 159**. He elaborated on the history of and the need for this bill. (attachment 1) He also offered written testimony on **SB 159**. (attachment 2) Lengthy discussion followed regarding the necessity of listing the large number of forms in both bills. At the request of the Chair, the Conferee clarified the difference between Chapter 60 and 61 explaining that general civil cases can be filed under Chapter 60 while general collection lawsuits can be filed under Chapter 61.

Conferee Pomeroy testified in support of **SB 236**. He stated that having the garnishment provisions of both Chapter 60 and 61 be identical would eliminate confusion on the part of all parties involved with garnishment. Regarding concern over the number of forms in the statute, he supported their presence and cited the number of forms there are in other statutes. (attachment 3) He also provided written testimony in support of **SB 159** and reminded Committee of conceptual amendments he'd offered during testimony on February 13th. (attachment 4) At the request of the Chair, the Conferee agreed to submit the amendments in writing.

SCR 1604—nonpartisan selection of judges

Following the Chair's review of **SCR 1604** Senator Goodwin moved to pass the resolution out favorably, Senator Adkins seconded. Carried on a vote of 6 - 4.

SB 205—re: appearance bonds

SB 341—re: domestic violence

The Chair reviewed **SB 205**. There was general consensus to keep **SB 205** and **SB 341** separate. Senator Goodwin moved to pass **SB 205** out favorably, Senator Adkins seconded. Carried on a vote of 9-1.

The meeting adjourned at 10:15 a.m. The next scheduled meeting is March 5, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 1, 2001

NAME	REPRESENTING
Elwaine F Pomeroy	Kansas Credit Attorneys Assn Kansas Collectors Assn
BRUCE WARD	JUDICIAL COUNCIL
Edy M. Neave	Judicial Council
Robert Collins	Reaney Law Office
Joe Herold	KSC
Jean Barber	KADC
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Bruce Dimmitt	Independent
Paul Davis	KS Bar Assn.
Whitney Damron	KS Bar Assn.
Kathy Powell	Judicial Branch
Aui Hyten	JUDICIAL BRANCH
Marlee Carpenter	KCCI
Meliss Mangemann	Sec. of State
Kathy Olsen	KS Bankers Assn.
Barb Dault	KS Trial Lawyers Assoc
Kelly Kuttala	City of Overland Park
Neal Whitakey	Kansas Beer Wholesalers Assn
Jack Dwan	KS wine & spirits wholesalers Assn.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 1, 2001

NAME	REPRESENTING
Candy Shroy	SRS
Marilyn Jacobsen	SRS
Janet Schalansky	SRS
[initials]	

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Remarks Concerning Senate Bill 236

Senate Judiciary Committee

February 28, 2001

Thank you for giving me the opportunity to appear before you in support of SB 236. I am Bruce Ward and practice law in Wichita in the area of debt collection. I am appearing on behalf of and at the request of the Judicial Council which requested that your committee introduce this bill.

SB 236 will amend the provisions of Chapter 60 of K.S.A. to make the garnishment provisions of Chapter 60 identical to the garnishment provisions of Chapter 61 of K.S.A. Additionally, SB 236 will adopt as part of the provisions of Chapter 60 certain forms to be used in garnishment proceedings under Chapter 60, and to make a technical amendment to Chapter 60 consistent with a technical amendment to Chapter 61 proposed in SB 159.

Last year the legislature passed and the Governor signed House Substitute for Senate Bill 504 which was originally drafted by and introduced at the request of the Judicial Council. H Sub. for SB 504 made a complete recodification of Chapter 61 of K.S.A. which is known as the Code of Civil Procedure for Limited Actions.

The recodification of Chapter 61 became law in May, 2000, but did not take effect until January 1, 2001. The new law makes the most sweeping changes to Chapter 61 since the late 1960s when the old "Justice Code" was repealed. Included in those changes were significant amendments to the wage garnishment provisions under Chapter 61 and minor amendments to the non-wage garnishment provisions under Chapter 61.

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Under the new Chapter 61, wage garnishment now operates as follows:

- a. the garnishment Order is continuing and remains in effect until the judgment is paid or the court releases the Order;
- b. wage withholding is calculated monthly and the garnishee's Answer is completed each month and sent to defendant and plaintiff but not filed with the court;
- c. the money withheld from wages is automatically paid directly to the creditor by the garnishee without court order; and
- d. multiple garnishments can be in effect against the same debtor at the same time; the same amount is withheld from the debtor's wages as before and each creditor shares equally in the amount withheld from defendant's wages.

Under current Chapter 60, wage garnishment operates as follows:

- a. the garnishment Order remains in effect for 30 days after service on the garnishee and covers all pay periods which end during that 30 day period;
- b. the garnishee's Answer is completed within 10 days after the end of the 30 day withholding period and filed with the court;
- c. the money withheld is paid to the court pursuant to an Order issued by the court and upon receipt of the money by the court is paid out to the creditor's attorney; in some counties the money is paid directly to the creditor's attorney pursuant to court order;
- d. only one garnishment can be in effect at any given time on the same debtor; subsequent garnishments filed after the first one is in effect are rejected because there is no procedure for sharing among creditors.

Because of the differences between garnishment under Chapter 61 and Chapter 60,

as summarized above, courts, clerks, employers, attorneys and creditors are faced with a confusing and complex situation involving two completely different procedures and two completely different sets of forms. It is believed that the new garnishment procedure under Chapter 61 is working well and to the benefit of these parties. The confusion and differences between Chapter 61 and Chapter 60 should be eliminated by making the Chapter 60 garnishment procedure identical to Chapter 61. SB 236 seeks to do just that.

The new Chapter 61 made certain minor changes to the non-wage (bank) garnishment procedures. Because of this, there are now slightly different procedures and forms to be used under Chapter 61 non-wage garnishment as are used under Chapter 60. SB 236 seeks to make the Chapter 60 non-wage garnishment procedure identical to that under Chapter 61.

Specifically, SB 236 will do the following:

1. Repeal all of the garnishment provisions of Chapter 60, which currently are K.S.A. 60-714 through 60-728.
2. Repeal Forms No.27 and 28 in the appendix of forms following K.S.A. 60-269, which are the notice forms for wage and non-wage garnishment under Chapter 60.
3. Replace the repealed garnishment provisions of Chapter 60 with the identical garnishment provisions of Chapter 61 as follows:
 - a. New Section 1 of the bill is identical to K.S.A. 61-3502.
 - b. New Section 2 of the bill is identical to K.S.A. 61-3503.
 - c. New Section 3 of the bill is identical to K.S.A. 61-3504.
 - d. New Section 4 of the bill is identical to K.S.A. 61-3505 except for the way forms

are handled.

e. New Section 5 of the bill is identical to K.S.A. 61-3506.

f. New Section 6 of the bill is identical to K.S.A. 61-3507 except for the way forms are handled.

g. New Section 7 of the bill is identical to K.S.A. 61-3508 except for the way forms are handled.

h. New Section 8 of the bill is identical to K.S.A. 61-3509 except for the way forms are handled.

i. New Section 9 of the bill is identical to K.S.A. 61-3510 except for the way forms are handled.

j. New Section 10 of the bill is identical to K.S.A. 61-3511.

k. New Section 11 of the bill is identical to K.S.A. 61-3512 except for the reference to K.S.A. 60-701.

l. New Section 12 of the bill is identical to K.S.A. 61-3513.

m. New Section 13 of the bill is identical to K.S.A. 61-3514 except for the reference to K.S.A. 60-205.

n. New Section 14 of the bill is identical to K.S.A. 61-3515 except for the reference to K.S.A. 60-205.

New Section 15 of the bill will adopt certain forms as part of Chapter 60. These are the same forms for garnishment which were drafted by the Judicial Council for use under Chapter 61, except for a reference in the forms to Chapter 60 instead of to Chapter 61. The Chapter 61 forms have been approved for use under Chapter 61 by Order of the supreme court of this state and are now being widely used across the state

in practice under Chapter 61. The Judicial Council believes that by adopting the forms as part of the law, it will make the use of the forms more consistent and less confusing across the state among judges, clerks and lawyers. SB 159 proposes to do the same thing by making the Chapter 61 forms a part of Chapter 61.

The Judicial Council would propose two amendments to the bill as follows:

1. On Page 2, insert the following after line 14:

In addition to other methods listed in this section, the person serving process may serve a garnishment process in any of the following methods:

(1) First class mail. Process may be sent to a person by first-class mail by placing a copy of the process and petition or other document to be served in an envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, at such person's last known address. The envelope used for such service shall be addressed to the person in accordance with K.S.A. 60-304, and amendments thereto, and shall contain adequate postage. Such envelope shall be sealed and placed in the United States mail. Service by first-class mail shall be complete when the envelope is placed in the mail unless returned undelivered. Service shall be considered obtained upon the mailing by first-class mail unless returned undelivered.

(2) Telefacsimile communication. Process may be sent to a person by telefacsimile communication. Service is complete upon receipt of a confirmation generated by the transmitting machine.

(3) Internet electronic mail. Process may be sent to a person by internet electronic mail as provided in the rules of the supreme court of this state.

2. On Page 4, insert the following after line 42:

In addition to other methods listed in this section, the person serving process may serve a garnishment process in any of the following methods:

(1) First class mail. Process may be sent to a person by first-class mail by placing a copy of the process and petition or other document to be served in an envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, at such person's last known address. The envelope used for such service shall be addressed to the person in accordance with K.S.A. 60-304, and amendments thereto, and shall contain adequate postage. Such envelope shall be sealed and placed in the United States mail. Service by first-class mail shall be complete when the envelope is placed in the mail unless returned undelivered. Service shall be considered obtained upon the mailing by first-class mail unless returned undelivered.

(2) Telefacsimile communication. Process may be sent to a person by telefacsimile communication. Service is complete upon receipt of a confirmation generated by the transmitting machine.

(3) Internet electronic mail. Process may be sent to a person by internet electronic mail as provided in the rules of the supreme court of this state.

The above two amendments will make service of garnishment orders under Chapter 60 consistent with the current provisions under Chapter 61 and as the same are to be amended by SB 159.

In closing, I would urge this Committee to adopt passage of SB 236 which is before you today. Thank you for your consideration.

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For the Kansas Judicial Council

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Remarks Concerning Senate Bill 159

Senate Judiciary Committee

February 28, 2001

Thank you for giving me the opportunity to appear before you in support of SB 159. I am Bruce Ward and practice law in Wichita in the area of debt collection. I am appearing on behalf of and at the request of the Judicial Council which requested that your committee introduce this bill.

Last year the legislature passed and the Governor signed House Substitute for Senate Bill 504 which was originally drafted by the Judicial Council. H Sub. for SB 504 made a complete recodification of Chapter 61 of K.S.A. which is known as the Code of Civil Procedure for Limited Actions. The recodification of Chapter 61 became effective on January 1, 2001. The purpose of the new law is:

- a. To allow and encourage judicial districts to study and adopt a procedure for the electronic filing of court documents.
- b. To streamline the procedure under Chapter 61, to reduce the amount of paperwork filed with the clerk, and to reduce the amount of court time required in the handling of Chapter 61 cases.

The act consists of 118 sections now found at K.S.A. 61-2801, et. seq., a Supreme Court rule on technical standards for electronic filing which was adopted on September 6, 2000, and a contemplated Supreme Court Rule on forms to be used under Chapter 61.

The new act makes the most sweeping changes to Chapter 61 since the late 1960s when the old "Justice Code" was repealed. A summary of the significant changes made

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under the new law are as follows:

1. Jurisdictional limits on tort and secured claims raised to \$25,000. No limit remains on unsecured contract claims.

2. If defendant appears and disputes the Petition, defendant must file a written Answer.

3. Garnishment orders may be served by first class mail, e-mail and fax.

4. Optional pre-trial procedure allowed where within discretion of court, judgment may be entered as a matter of law against defendant if defense has no legal merit or case may be dismissed against plaintiff if plaintiff's claim has no legal merit.

5. On wage garnishments:

a. Order is continuing and remains in effect until the judgment is paid or the court releases.

b. Withholding is calculated monthly and Answer is completed each month and sent to defendant and plaintiff but not filed with the court.

c. Money withheld is automatically paid directly to creditor by garnishee without court order.

d. Multiple garnishments can be in effect against the same debtor at the same time. Each creditor shares equally in the amount withheld from defendant's wages.

After the recodification bill became law and before it took effect, the Judicial Council continued to study the bill and its effect. It became apparent to the Council that certain technical amendments were needed to correct a handful of things overlooked originally in such a large bill. Further, it was believed that the forms which were drafted and recommended by the Council for use under Chapter 61, should be adopted by the

Legislature as an Appendix to the new law, rather than be included in a Supreme Court Rule as the act now provides.

The bill before you, SB 159 will accomplish these two things:

1. Make certain technical amendments to Chapter 61 of K.S.A., now found at K.S.A. 61-2801, et. seq.

2. Adopt as an Appendix to Chapter 61 the forms for use under Chapter 61 which were drafted and recommended by the Judicial Council. These forms were originally contemplated by the recodification bill to be adopted as a Rule of the Supreme Court. That Rule has not been adopted. The forms were, however, approved for use by Order of the Supreme Court dated December 20, 2000.

A detailed explanation of the amendments proposed in SB 159 is as follows:

A. Page 1, lines 20-22. Amend K.S.A. 61-2803. The supreme court has already adopted a rule on electronic filing. They have not yet adopted one to govern the forms. This bill elsewhere proposes that the forms be adopted as an appendix to the law.

B. Page 1, line 38. Amend K.S.A. 61-2907. There was a fear by some that the word "clerk" here might be construed to refer to the clerk of the court, so it was thought best to delete it.

C. Page 2, lines 3-5. K.S.A. 61-2907. These lines should be left in the law and not deleted. This proposed deletion was included by error through possible miscommunication between the Judicial Council and the Revisor's office. This language refers to existing Rules of the supreme court and should not be deleted from the law.

D. Page 2, lines 8-9, lines 15-15. Amend K.S.A. 61-3002. The bill proposes that the summons form be set forth in an appendix of forms rather than in a supreme court

rule.

E. Page 4, line 25. Amend K.S.A. 61-3003. When the new law was originally drafted by the Judicial Council it was contemplated that garnishment orders would be served by three new methods, first-class mail, fax and electronic mail, in addition to the other existing methods of service. Through the process of debate last year on H. Sub. for SB 504, these three new methods became the only methods. This is not what was intended by the Judicial Council and probably not by the legislature. There is widespread confusion now among clerks and sheriff's about how to serve a garnishment order. This change will eliminate the confusion and restore what the Judicial Council believes was the original intent.

F. Page 5, lines 6-11. Amend K.S.A. 61-3302. The journal entry of judgment form will be in an appendix of forms rather than in a supreme court rule.

G. Page 5, lines 34-35. Amend K.S.A. 61-3505. The non-wage garnishment order form will be in an appendix of forms rather than in a supreme court rule.

H. Page 5, line 42. Amend K.S.A. 61-3505. Changes the number of copies of the non-wage answer form to be served on the garnishee from two to one. It was thought that this would help reduce the amount of paperwork filed with and handled by the clerk while not substantially increasing the burden on the garnishee.

I. Page 6, lines 38-39. Amend K.S.A. 61-3507. The wage garnishment order form will be in an appendix of forms rather than in a supreme court rule.

J. Page 7, line 3. Amend K.S.A. 61-3507. Changes the number of copies of the wage answer form to be served on the garnishee from two to one. It was thought that this would help reduce the amount of paperwork filed with and handled by the clerk

while not substantially increasing the burden on the garnishee. Many employer garnishees have their own form of answer on their computer. The employer is allowed under the law to duplicate the answer in any reasonable method and to deliver it to the creditor in any number of ways, including electronically or by fax.

K. Page 8, line 16. Amend K.S.A. 61-3508. The notice to debtor form will be in an appendix of forms rather than in a supreme court rule.

L. Page 8, line 19-20. Amend K.S.A. 61-3508. The original draft of the new law required the garnishee to deliver to the debtor the notice to debtor form, and the form was to be served on the garnishee for the garnishee's use. The final draft of the law which was passed put the burden on the creditor to deliver the notice to the debtor. Hence, there is no need now to serve the notice form on the garnishee, but that requirement was inadvertently left in the law.

M. Page 8, line 43. Amend K.S.A. 61-3509. The non-wage answer form will be in an appendix of forms rather than in a supreme court rule.

N. Page 9, lines 14-15. Amend K.S.A. 61-3510. The wage answer form will be in an appendix of forms rather than in a supreme court rule.

O. Page 9, lines 42-43. Amend K.S.A. 61-3513. Under wage garnishment, the garnishee completes the answer form no later than the 15th day of each month and sends it to the judgment creditor and debtor. It is not filed with the court. Either party may then within 10 days thereafter object to the answer. Currently the law says that this 10 day period begins to run when the garnishee has completed the answer. This is not very definite. The proposed amendment will start the time when the garnishee has sent the completed answer to the judgment creditor and debtor. This is more definite.

P. Page 10, lines 20-22. Amend K.S.A. 61-3604. Currently the law requires a debtor to appear in court in response to an Order to Appear and furnish information to the creditor's attorney regarding the debtor's income and assets. This change will give the debtor the option of either appearing in court or contacting the creditor's attorney prior to the hearing to make arrangements to furnish the required information. Presumably, this would allow the debtor to come to the attorney's office to furnish the information at a time more convenient to the debtor.

Q. Page 10, lines 26-28. Amend K.S.A. 61-3604. The Order to Appear form will be in an appendix of forms rather than in a supreme court rule.

R. Page 11, lines 7-11. Amend K.S.A. 61-3606. Currently the law requires a debtor to appear in court in response to a Contempt Citation or contact the creditor's attorney and furnish information to the creditor's attorney regarding the debtor's income and assets, in the event the debtor failed to appear in response to an Order to Appear. This language doesn't make sense on a Contempt Citation and should not have been included in the law. The debtor will be given this option on an Order to Appear under the proposed amendment discussed above. A Contempt Citation is more serious than an Order to Appear and should be handled only by court hearing.

S. Page 11, lines 14-15. Amend K.S.A. 61-3606. The Contempt Citation form will be in an appendix of forms rather than in a supreme court rule.

T. Page 11, line 18. Amend K.S.A. 61-3608. If a debtor does not appear in response to a Contempt Citation, the court has the option to issue a Civil Bench Warrant. Currently the debtor is given two options on a Contempt Citation and the proposed amendment discussed above will reduce that to one option. The bench

warrant statute would then to be amended to make it consistent.

U. Page 12, lines 9-11. Amend K.S.A. 61-3803. Before an eviction suit can be filed, the tenant must be given a three-day notice. The form of the notice will be in an appendix of forms rather than in a supreme court rule.

V. Page 12, lines 17-19. Amend K.S.A. 61-3804. The form of the eviction petition will be in an appendix of forms rather than in a supreme court rule.

W. Page 12, lines 25-27. Amend K.S.A. 61-3808. The form of the eviction writ will be in an appendix of forms rather than in a supreme court rule.

X. Page 12, lines 39-40. Amend K.S.A. 61-4105. Provides that the forms are to be in an appendix of forms rather than in a supreme court rule.

Y. Pages 13-89. Sets forth the text of the forms to be included in the appendix of forms.

It is believed by the Judicial Council that the proposed technical amendments are not controversial and will serve to clarify and improve the law which just took effect on January 1, 2001. The proposed forms are the same forms approved for use by Order of the Supreme Court and which are now being widely used across the state in practice under Chapter 61. The Judicial Council believes that by adopting the forms as part of the law, it will make the use of the forms more consistent across the state among judges, clerks and lawyers.

In closing, I would urge this Committee to adopt passage of SB 159 which is before you today. Thank you for your consideration.

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For the Kansas Judicial Council

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REMARKS CONCERNING SENATE BILL 236

SENATE JUDICIARY COMMITTEE

MARCH 1, 2001

Thank you for giving me the opportunity to express support of SB 236 on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

Our groups feel that having the garnishment provisions of Chapter 60 be identical to the garnishment provisions of Chapter 61 makes very good sense. Having them be the same would eliminate confusion on the part of attorneys, employers, financial institutions, clerks, and all others involved with garnishment.

I am aware that some of you have some concerns about having forms part of the statute. However, that already is the case. Presently, there are 29 forms set out in the statute book and supplement following K.S.A. 60-269. In addition, there are forms set out in K.S.A. 2000 Supp. 60-247a, 60-717, and 60-718, and in K.S.A. 60-706, to name just some of the statutes which presently contain forms. In addition, there are several statutes in Chapter 59 which set forth probate forms.

Our groups also support the amendments to the bill requested by the Kansas Judicial Council.

Elwaine F. Pomeroy
For Kansas Collectors Association, Inc.
And Kansas Credit Attorneys Association

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REMARKS CONCERNING SENATE BILL 159

SENATE JUDICIARY COMMITTEE

MARCH 1, 2001

I appreciate appearing before you on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

We support SB 159. When I briefly appeared before you on February 13, I made suggestions for amendments to the bill. Although the bill has been exempted from deadlines, the practical demands of the calendar are such that we would now urge your committee to pass the bill in its present form, except for one minor amendment, to restore the stricken language on page 2, lines 3 through 5.

If your committee acts promptly on this bill and it arrives in the House Judiciary Committee in time to work the bill, we may ask that committee to consider the amendments which I described conceptually in my written testimony to you dated February 13, 2001.

Elwaine F. Pomeroy
For Kansas Collectors Association, Inc.
And Kansas Credit Attorneys Association

Elwaine F. Pomeroy
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