

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 20, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Judy Morrison - Excused

Representative Dean Newton - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research

Jill Wolters, Department of Revisor of Statutes

Sherman Parks, Department of Revisor of Statutes

Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association

Matthew Goddard, Heartland Community Bankers Association

Doug Smith, Kansas Credit Attorneys Association

Hearings on **HB 2771 - civil procedure; garnishment; use of fax and e-mail for services of process**, were opened.

Kathy Olsen, Kansas Bankers Association, explained that the proposed bill would require the garnishee to appoint an e-mail address or fax number that all services of process must be directed too. (Attachment 1)

Matthew Goddard, Heartland Community Bankers Association, appeared in support of the bill. So far the fax services has been smooth for HCBA members largely due to the attorneys calling before they fax the garnishment so the garnishee will know it's coming. (Attachment 2)

Doug Smith, Kansas Credit Attorneys Association, suggested an amendment that would add on page 3, line 19 "In addition to other methods listed in this section, the". The proposed amendment was part of the Senate Bill which passed the Senate last year. (Attachment 3)

Hearings on **HB 2771** were closed.

**HB 2771 - civil procedure; garnishment; use of fax and e-mail for services of process**

Representative Shriver made the motion to amend on page 3, line 19 (g) "In addition to other methods listed in this section, the". Representative Lloyd seconded the motion. The motion carried.

Representative Long made the motion to report HB 2771 favorably for passage as amended. Representative Dillmore seconded the motion. Representative Divita expressed her concern with there not being a notice when first class mail is sent. The motion carried.

**HB 2769 - abatement of common nuisances; adding felonies committed by gang members to the list**

Representative Loyd made the motion to report HB 2769 favorably for passage. Representative Lloyd seconded the motion. Representative Pauls was concerned about forfeiture of homes if gang related activities happens there. Representative Loyd responded that the judge in the case would give notice to the landlord to terminate the lease. The motion carried.

**HB 2772 - included in court costs is a fee for forensic services provided by Sedgwick County regional forensic science center**

Representative Dillmore made the motion to report HB 2772 favorably for passage. Representative Howell seconded the motion.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 20, 2002 in Room 313-S of the Capitol.

Representative Patterson made a substitute motion to include Johnson County Sheriff's laboratory. Representative Long seconded the motion. The motion carried.

Representative Dillmore made the motion to report **HB 2772** favorably for passage, as amended. Representative Howell seconded the motion. The motion carried.

**HB 2366 - common law marriages; parties must be 18 years of age or older, or have parental or judicial consent.**

Representative Crow made the motion to add in section B "that Kansas shall not recognize a common law contract between two parties of the opposite sex if either is under the age of 18." Representative Ruff seconded the motion. The motion carried.

Representative Long made the motion to report **HB 2366** favorably for passage, as amended. Representative Swenson seconded the motion.

Representative Klein made the substitute motion to amend the previous motion to strike "opposite sex". Representative Swenson seconded the motion. The motion carried.

Representative Long made the motion to report **Substitute HB 2366** favorably for passage, as amended. Representative Crow seconded the motion. The motion carried.

**HB 2673 - contributing to the misconduct of a minor**

Representative Long made the motion to adopt the balloon amendment (Attachment 4). Representative Long seconded the motion. The motion carried.

Representative Loyd made the motion to report **Substitute HB 2673** favorably for passage. Representative Owens seconded the motion. The motion carried.

**HB 2078 - if a minor shoplifts, the parents are liable for a civil penalty for up to \$500**

Representative Loyd made the motion to report **HB 2078** favorably for passage. Representative Patterson seconded the motion.

Representative DiVita expressed her concern with parents being responsible for recovery fees when the merchandise has been recovered. She made the substitute motion to have the fee be \$50 plus the ability to receive the merchandise back in retail condition. Representative Lloyd seconded the motion. Representative Crow suggested that her motion would change the penalty for adult shoplifters too and was not in support of that change. With permission of the second, Representative DiVita amended her motion by requesting a new section that would make parents responsible for a juvenile who shoplifts for up to \$50. The motion failed.

Representative DiVita made the motion to have the maximum recovery fee be \$250. Representative Owens seconded the motion. The motion failed 7-9.

Representative Loyd made the motion to amend the bill to apply to juveniles when merchandise is recovered in merchantable condition and allow the store to recover a \$50 civil penalty fee. Representative Crow seconded the motion. Committee discussion touched on the issue that the parents could be liable for the \$50 and the juvenile would still be liable for up to \$350. The motion failed.

Representative Flaharty made the substitute motion to table the bill. Representative DiVita seconded the motion. The motion failed.

Representative Shriver made the motion to report **HB 2078** favorably for passage. Representative Howell seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 20, 2002 in Room 313-S of the Capitol.

**HB 2611 - criminal worthless checks, merchant receive a service charge of \$30, notice letter sent by first class**

Representative Lloyd made the motion to report HB 2611 favorably for passage. Representative DeCastro seconded the motion.

Representative Lloyd made the substitute motion to strike in line 36 "first class mail". Representative Crow seconded the motion. The motion carried.

Representative DiVita made the motion to report HB 2611 favorably for passage, as amended. Representative Lloyd seconded the motion. The motion carried.

**HB 2672 - elective share of surviving spouse; waiver of homestead rights**

Representative Loyd made the motion to make the bill prospective. Representative Long seconded the motion. The motion carried.

Representative DiVita expressed her concern that the bill would waive the rights of children which would make it unconstitutional.

Representative Loyd made the motion to report HB 2672 favorably for passage. Representative Ruff seconded the motion. Representative DiVita continued to express her concerns on the bill. Chairman O'Neal pulled the bill off the table.

**HB 2773 - criminal procedure; adding state security hospital to the definition of criminal justice agency**

Representative Lloyd made the motion to report HB 2773 favorably for passage. Representative Owens seconded the motion. The motion carried.

Representative Crow made the motion to approve the committee minutes from January 28, 29, February 4 and 5. Representative Long seconded the motion. The motion carried.





February 20, 2002

To: Members of the House Committee on Judiciary

From: Kathleen Taylor Olsen

**Re: HB 2771: Service of Process on Garnishments**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2771** and the proposed amendments to K.S.A. 61-3003.

As many of you recall, the 2000 Kansas Legislature passed SB 504 which made sweeping changes to Chapter 61 dealing with Limited Actions. K.S.A. 61-3003 contains information relating to service of process with regard to garnishments.

Since these changes have become effective and as the new procedures become more familiar to the parties involved, suggestions for improvements are inevitable. One of the changes made in 2000 was to allow garnishments to be served by telefacsimile and by e-mail. Many garnishees have more than one fax number and e-mail address. As banks (garnishees) started receiving garnishments by fax machine, we started receiving calls from them that they needed to be able to designate one fax number to which all garnishments could be directed.

On the average, banks in urban areas can receive up to 75 garnishments per week. In order to assure that each garnishment is dealt with in an effective manner, we would like the right to designate one place – one fax number and/or one e-mail address – where garnishments could be collected and properly answered each day.

The fear from our members is that these garnishments could easily be misplaced if not sent to a designated fax number. The concern with service of process by e-mail is even greater with the number of possible e-mail addresses in each bank. Many bank employees are required by bank regulatory agencies to take their annual vacation in two-week increments. This could pose a problem with regard to the 10-day answer period for each garnishment. Allowing each garnishee to designate the appropriate e-mail address for service of process will assure that the garnishment gets to an address that will be regularly checked by a person qualified to handle garnishments.

As drafted, this bill would ask garnishees to designate a fax number and/or an e-mail address to which they will receive service of process on garnishments. It would then be up to the garnishing creditor to contact the garnishee to find out what the appropriate fax number or e-mail address is before attempting service on the garnishee.

**HB 2771** is designed to benefit all parties to the garnishment process by assuring that service of process is received by the garnishee in the manner in which it can be effectively dealt with. We respectfully request that the Committee act favorably on **HB 2771**.

To: House Judiciary Committee  
From: Matthew Goddard  
Heartland Community Bankers Association  
Date: February 20, 2002  
Re: House Bill 2771

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Judiciary to express our support for House Bill 2771.

The bill requires garnishees to designate a fax number and e-mail address for service of process for garnishments. Rather than adding another obligation for garnishees to meet, however, the requirements in HB 2771 offer more of an opportunity. It is an opportunity for the garnishee to designate how and where it should receive the service of process.

As financial institutions, the members of HCBA deal with garnishment orders on a daily basis. Our members in Kansas have over 600,000 deposit accounts. However, only a handful of our members receive garnishment orders via fax and those that do report that they receive very few by that method. I am unaware of any of our members being serviced by e-mail.

Thus far, service of process by telefacsimile has been a smooth process for HCBA members. This is because the attorneys performing the service have called ahead and asked to what phone number the institution wants the garnishment order faxed. This ensures that the service of process is directed to the appropriate personnel at an institution. However, as the number of attorneys performing service of process by fax grows, so does the risk that faxes will be sent without first asking what fax number should be used. At that point, there is a greater risk that a problem could occur.

HCBA believes that the brief experience Kansas has with service of process by fax shows that the system works best when the garnishee designates a fax number for service. House Bill 2771 takes a process that has proven to be efficient and effective and makes it a uniform process in law.

We respectfully request that the House Committee on Judiciary recommend HB 2771 favorable for passage.

Thank you.

## House Judiciary Committee

### Testimony of Kansas Credit Attorneys Association and Kansas Collectors Association

#### House Bill No. 2771

February 20, 2002

Chairman O'Neal and Members of the House Judiciary Committee:

I appear on behalf of the Kansas Credit Attorneys Association (KCAA) and Kansas Collectors Association (KCA). We thank you for the opportunity to present remarks today. KCAA and KCA would like to express their support for House Bill No. 2771.

We do want to express two thoughts to the Committee:

- 1) The mechanism for when, where and how the facsimile number or email address is to be designated has not been established.
- 2) Can the garnishee simply defeat the email service by failing to reply? Should it be mandatory that the garnishee send a reply upon receipt of service by email to the designated address?

In addition, we would also like to offer the attached amendment for the Committee's consideration. (Page 3, line 19 of the bill.) This proposed amendment is also a part of Senate Bill No. 159 which passed the Senate last year and is currently in this Committee.

We believe this amendment to KSA 61-3003 was intended to be a part of the revisions to Chapter 61 and was inadvertently left out of the final draft. It was not the intent of the advisory committee drafting the changes to limit the service of process in a garnishment to the three methods listed in subsection (g) but to include them as additional methods to the existing modes of service.

Once again, thank you for the opportunity to appear today and your consideration and encourage your favorable action on this legislation.

Testimony presented by Douglas E. Smith



1 either to serve process in a single case or in cases generally during a fixed  
 2 period of time. A process server or an authorized attorney may make the  
 3 service anywhere in or out of the state and shall be allowed the fees  
 4 prescribed in K.S.A. 28-110, and amendments thereto, for the sheriff and  
 5 such other fees and costs as the court shall allow. All persons authorized  
 6 under this subsection to serve, levy and execute process shall be consid-  
 7 ered an "officer" as used in K.S.A. 60-706 and 60-2401, and amendments  
 8 thereto.

9 (4) In all cases when the person to be served, or an agent authorized  
 10 by the person to accept service of process, refuses to receive copies  
 11 thereof, the offer of the duly authorized process server to deliver copies  
 12 thereof, and the refusal, shall be a sufficient service of the process.

13 (e) Publication service. Service of process by publication may be  
 14 made pursuant to the provisions of K.S.A. 60-307, and amendments  
 15 thereto, which are not inconsistent or in conflict with this act.

16 (f) Acknowledgment or appearance. An acknowledgment of service  
 17 on the summons is equivalent to service. The voluntary appearance by a  
 18 defendant is equivalent to service as of the date of appearance.

19 (g) ~~The person serving process may serve a garnishment process in~~  
 20 any of the following methods:

In addition to other methods listed in  
 this section, the

21 (1) First class mail. Process may be sent to a person by first-class mail  
 22 by placing a copy of the process and petition or other document to be  
 23 served in an envelope addressed to the person to be served in accordance  
 24 with K.S.A. 2001 Supp. 61-3004, and amendments thereto, at such per-  
 25 son's last known address. The envelope used for such service shall be  
 26 addressed to the person in accordance with K.S.A. 2001 Supp. 61-3004,  
 27 and amendments thereto, and shall contain adequate postage. Such en-  
 28 velope shall be sealed and placed in the United States mail. Service by  
 29 first-class mail shall be complete when the envelope is placed in the mail  
 30 unless returned undelivered. Service shall be considered obtained upon  
 31 the mailing by first-class mail unless returned undelivered.

32 (2) Telefacsimile communication. Process may be sent to a person by  
 33 telefacsimile communication. *Garnishees shall designate a telefacsimile*  
 34 *number to which all garnishment process shall be served.* Service is com-  
 35 plete upon receipt of a confirmation generated by the transmitting  
 36 machine.

37 (3) Internet electronic mail. Process may be sent to a person by in-  
 38 ternet electronic mail as provided in the rules to be adopted hereunder  
 39 by the supreme court. *Garnishees shall designate an internet electronic*  
 40 *mail address to which all garnishment process shall be served. Service is*  
 41 *complete upon receipt of a reply generated by the garnishee.*

42 Sec. 2. K.S.A. 2001 Supp. 61-3003 is hereby repealed.  
 43

## Substitute for HOUSE BILL NO. 2673

By Committee on Judiciary

AN ACT concerning children in need of care; amending K.S.A. 2001 Supp. 38-1502 and repealing the existing section.

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

Section 1. K.S.A. 2001 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

(a) "Child in need of care" means a person less than 18 years of age who:

(1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;

(2) is without the care or control necessary for the child's physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-4204a and amendments thereto, does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and amendments thereto;

(9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other



custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused; or

(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a and amendments thereto.

(b) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

(c) "Sexual abuse" means any act committed with a child which is described in article 35, chapter 21 of the Kansas Statutes Annotated and those acts described in K.S.A. 21-3602 or 21-3603, and amendments thereto, ~~regardless of the age of the child.~~

(d) "Parent," when used in relation to a child or children, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the child.

(e) "Interested party" means the state, the petitioner, the child, any parent, any grandparent and any person found to be an interested party pursuant to K.S.A. 38-1541 and amendments thereto.

(f) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(g) "Youth residential facility" means any home, foster home

or structure which provides 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(h) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary placement for the care of children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(i) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(j) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(k) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of its residents. No secure facility shall be in a city or county jail.

(l) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to this code and who continues subject to that jurisdiction until the petition is dismissed or the child is discharged as provided in K.S.A. 38-1503 and amendments thereto.

(m) "Custody," whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

(n) "Placement" means the designation by the individual or

agency having custody of where and with whom the child will live.

(o) "Secretary" means the secretary of social and rehabilitation services.

(p) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(q) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1505a and amendments thereto, in a proceeding pursuant to this code.

(r) "Multidisciplinary team" means a group of persons, appointed by the court or by the state department of social and rehabilitation services under K.S.A. 38-1523a and amendments thereto, which has knowledge of the circumstances of a child in need of care. A multidisciplinary team may serve as a community services team.

(s) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(t) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.



(u) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(v) "Abandon" means to forsake, desert or cease providing care for the child without making appropriate provisions for substitute care.

(w) "Permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention by the secretary. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent. A permanent guardian may be appointed after termination of parental rights or without termination of parental rights, if the parent consents and agrees to the appointment of a permanent guardian. Upon appointment of a permanent guardian, the child shall be discharged from the custody of the secretary.

(x) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(y) "Permanency hearing" means a notice and opportunity to be heard is provided to interested parties, foster parents, preadoptive parents or relatives providing care for the child. The court, after consideration of the evidence, shall determine whether progress toward the case plan goal is adequate or reintegration is a viable alternative, or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or to appoint a permanent guardian.

(z) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(aa) "Educational institution" means all schools at the

elementary and secondary levels.

(bb) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 2001 Supp. 72-89b03 and amendments thereto.

(cc) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child or presenting a likelihood of harm and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and amendments thereto.

(dd) "Community services team" means a group of persons, appointed by the court or by the state department of social and rehabilitation services for the purpose of assessing the needs of a child who is alleged to be a child in need of care.

Sec. 2. K.S.A. 2001 Supp. 38-1502 is hereby repealed.

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