

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 5, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Peggy Long - Excused
Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Jeff Bottenberg, Kansas Sheriffs' Association
Kathy Olsen, Kansas Bankers Association
Jim Keating, President of Kansas State Firefighters Association
John Lloyd, President of Kansas State Fire Chiefs Association
Casey McCoy, Kansas Forrest Service
Rob Brown, Wakarusa Fire Chief
John Parisi, Kansas Trial Lawyers Association
David Lake, Administrative Board of Emergency Medical Services
Mike Taylor, City of Wichita
Sandy Jocquot, Kansas League of Municipalities
Jay Hinkel, Assistant City Attorney, Wichita

Jeff Bottenberg, Kansas Sheriffs' Association, requested a committee bill which would allow sheriff offices to charge a reasonable fee for service of process. Representative Loyd made the motion to have the request introduced as a committee bill. Representative Yoder seconded the motion. The motion carried.

Kathy Olsen, Kansas Bankers Association, requested a committee bill which would address the situation where a garnishment has been sent to the garnishee, the garnishee has frozen the funds and sent its answer to the court, but the garnishee never receives an order to pay. The bill would provide that after a period of time, the garnishee could unfreeze the account and release the fund to the owner. Representative Goering made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Representative Loyd requested a bill introduction which would amend K.S.A. 23-02 to eliminate the authority to hear motions on severance actions. He made the motion to have the request introduced as a committee bill. Representative Patterson seconded the motion. The motion carried.

Representative Davis requested a committee bill regarding jury compensation. He moved to have the request introduced as a committee bill. Representative Patterson seconded the motion. The motion carried.

Representative O'Neal requested a committee bill to reintroduce the Last Call Program bill from 2002 Legislative Session. Representative Loyd made the motion to have the request introduced as a committee bill. Representative Yoder seconded the motion. The motion carried.

Representative O'Neal requested a bill introduction regarding Dram Shop liability. Representative Patterson made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

Hearings on **HB 2068 - tort claims liability, immunity, fire control and rescue equipment**, were opened.

Jim Keating, President of Kansas State Firefighters Association, explained that the proposed bill would allow fire departments to donate usable equipment to another department instead of throwing it away. It would also limit the liability of the department donating the equipment (Attachment 1).

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 5, 2003 in Room 313-S of the Capitol.

John Lloyd, President of Kansas State Fire Chiefs Association, informed the committee that there has been numerous times when they have placed working equipment out by the dumpster and called other area departments to let them know it's out there. He suggested that the bill be amended to require the department donating self-contained breathing apparatus to have each unit tested and certified by the manufacture before donating it (Attachment 2).

Casey McCoy, Kansas Forrest Service, told the committee that the proposed program is similar to the VFD Helping Hands Program that has been used in Texas since 1997. Bill Spencer, who manages the program, stated that "a lot of very good equipment has found a home that's not in a dumpster." (Attachment 3)

Rob Brown, Wakarusa Fire Chief, reiterated that the proposed bill would help volunteer fire departments across the state. (Attachment 4)

John Parisi, Kansas Trial Lawyers Association, told the committee that the KTLA would be in support of the proposed bill as long as the committee adopted their suggested amendments (Attachment 5):

- require the party accepting breathing apparatus to ensure that the equipment is recertified to the original manufacture's specifications by a technician certified by the manufacturer, before the equipment can be used by firefighters in the field.
- delete section 3, and provisions regarding inclusion of the Kansas Forrest Service placed within Section 2(x).

David Lake, Board of Emergency Medical Services, supported emergency medical technicians being included in the bill as both a organization that can donate & receive such goods.

Written testimony in support of the bill was provided by Representative Tom Sloan, Kanwaka Township Fire Department, and City of Overland Park (Attachments 6-8).

Hearings on **HB 2068** were closed.

Hearings on **HB 2133 - municipal courts collecting fines and court costs**, were opened.

Mike Taylor, City of Wichita, explained that the proposed bill would allow municipal courts the same authority as district courts which can collect an imposed fine plus the cost of collecting the fine. Wichita has approximately \$21 million in uncollected fines. The collection agency they use takes 22 percent off the top and the city receives the rest. They try to work with those people who have fines to figure out ways for them to pay it but when they go unpaid for a long period of time, they are turned over to the collection agency (Attachment 9).

Sandy Jocquot, Kansas League of Municipalities, appeared in support of the proposed bill stating that it would benefit all municipalities. She suggested a time frame be included in the bill as to how much time a person has to pay the fine before it is turned over to the collection agency (Attachment 10).

Jay Hinkel, Assistant City Attorney, Wichita, requested an amendment which would allow misdemeanor crime victims immediate benefit from their independent actions to collect restitution and related collection costs directly (Attachment 11).

Written testimony in support of the bill was provided by the City of Emporia, the City of Overland Park and the Unified Government of Wyandotte County (Attachment 12-14).

Hearings on **HB 2133** were closed.

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled for Thursday, February 6, 2003 at 3:30 p.m. in room 313-S.



Kansas State Firefighters, Association Inc.

Organized August 13, 1887

TESTIMONY

Reference

HOUSE BILL 2068

Presented to:

HOUSE JUDICIARY COMMITTEE

Presented by:

JIM KEATING, PRESIDENT

KANSAS STATE FIREFIGHTERS ASSOCIATION

H. JUDICIARY

2-05-03

Attachment: 1

I sincerely thank you for your interest in this legislation and allowing time for a hearing on the proposal. In my 30 years of experience in Kansas Fire Service, the issue that would be resolved by this bill has been discussed on numerous occasions over the years. This bill simply sets up a means for a fire department to donate usable equipment to another department.

The Kansas State FireFighters Association travels each month to a fire department somewhere in Kansas and presents a 2-day free training school. During those travels, it is not unusual to find small fire departments that have only 3 or 4 sets of firefighter protective clothing and the department may have 10-12 members. What this means is it is possible that members are responding to calls and conducting firefighting operations in regular clothing, which exposes them to hazards and limits the ability to work in a dangerous environment. This same department may also not have self-contained breathing units and have little or no usable fire hose or if they do have such items they are often over 20 years old.

Many mid-size and larger fire departments change out equipment and fire gear on a regular basis and simply discard the equipment being removed from active service. While the equipment may not meet the ever changing standards of today, most often it is very safe and usable, especially for use in a department where the call volume is low. Today, a department removing equipment from active service will likely trash the items rather than donate because of the concern of it not meeting current standards and the possible liability from its use.

A great incentive of this bill is its formal administration through the Kansas Forest Service. The Kansas Forest Service has for many years successfully operated a used vehicle loan program. This simply will be an extension of that valuable program.

The Kansas State FireFighters Association and the Kansas Fire Service Alliance strongly supports this effort and legislation and we sincerely ask for your support.

Jim Keating

smksfd@earthlink.net

785-437-0172

Testimony of
John M. Lloyd, President Kansas State Association of Fire Chiefs
Presented to the House Judiciary Committee
February 5, 2003

The Kansas State Association of Fire Chiefs (KSAFC) appear today in support of House Bill 2068 related to the donation of used Fire Equipment to another Fire Department without liability.

We have departments with no equipment and firefighters fighting fire in blue jeans and t-shirts. My department has had equipment available to our neighbors. Usually we make the department aware we have set some equipment out by our dumpster. Of course we make sure it is still serviceable and they have a need for it. An example is when we changed from inch and a half hose to inch and three quarter hose for attack lines. We had an excess of hose and a neighboring department really needed hose. This is the same department we call for help whenever we have a big fire.

The current version of the draft bill has one part relating to self-contained breathing apparatus that we think should be changed. The bill is calling for each unit to be tested and certified by a manufacture representative before giving the unit away. We feel this should be the responsibility of the department receiving the unit not the department giving it away. If this cannot be changed, then we believe this section of the bill should be removed. If departments want to give the units away they would not be covered under this bill.

We support the bill in concept and ask you not to make it to difficult for the fire service. We look at it as neighbors-helping neighbors like this country was built on.

H. JUDICIARY

2-05-03

Attachment: 2

Kansas Forest Service

2610 Claflin Rd.
Manhattan, KS 66502-2798
785-532-3300
Fax: 785-532-3305
E-mail: kfs@lists.oznet.ksu.edu
<http://www.kansasforests.org>

DATE: February 5, 2003

TO: Honorable Michael O'Neal, Chairperson

FROM: Casey McCoy, Rural Fire Coordinator



RE: HB 2068

Mister Chair, members of the Committee. I am Casey McCoy, Rural Fire Coordinator with the Kansas Forest Service. I would like to thank you for the opportunity to speak today.

Before I explain why the Kansas Forest Service supports HB 2068, I want to provide some background information on a similar program in Texas. In 1997, the Texas Legislature passed HB 680, a measure very similar to the one before you today. In response, the Texas Forest Service created the VFD Helping Hands Program. That program serves as a collection point for an individual, agency, fire department or private business to donate equipment that may be utilized or reutilized for fire suppression. The Texas Forest Service then transfers the equipment and it's ownership to volunteer fire departments. Fire departments submit requests for equipment, which are filled when equipment becomes available. I contacted Bill Spencer, the manager of the Texas program, and in his words, the program has been very well received. The financial impact on their operations has been measurable but minimal and a good deal of equipment has gone through the program and found another life in a fire department, not the dumpster.

We support HB 2068 because it is good for firefighters, not because it benefits the Kansas Forest Service. We focus on improving the ability of fire departments to safely and effectively protect their citizens from fire. All one needs to do to see an example of the level of need is look at current programs at the Kansas Forest Service. For example, the Federal Excess Property Program enables us to acquire excess military vehicles and equipment and loan them to rural fire departments. We have a large fleet in the state, with over 700 total pieces, including more than 600 trucks.

Many of the departments that utilize excess property would not have the ability to provide the level of protection they currently offer without that program. Recently however, due to some legislative changes nationally and the general state of the military today, the availability of equipment through the excess property program has become extremely limited. As an example, we currently have requests from 86 fire departments for 4 wheel drive pickups that we are unable to fill. In the 3-½ years I have been Rural Fire Coordinator, we have not acquired a single 4x4 pickup.

This program would be a valuable supplement to FEPP. Would it become a complete replacement? Probably not. But it would provide an opportunity to expand the quantity and type of equipment available. Federal regulations do not allow us to acquire vehicles to be used for rescue or emergency medical services. I personally believe that is a limited, unrealistic view of what many fire departments do, but it isn't something within our ability to change. We are also not allowed to acquire computers, which is a necessity to a fire department. And although we are authorized to acquire radios and protective clothing, both are rarely available and the inventory requirements for radios are such that it's impractical to obtain them. The changes suggested in HB2068 would enable the Kansas Forest Service to provide a level of service to Kansas fire departments that is much improved, better reflects the "all risk" nature of what they do and could build their capacity to a great extent.

I could give you additional figures to illustrate the need for HB2068, but the best utilization of time may be spent responding to your specific questions. I appreciate the opportunity to speak.

KANSAS
H. JUDICIARY

2-05-03

Attachment: 3



WAKARUSA TOWNSHIP FIRE DEPARTMENT

300 West 51st Street P.O. Box 3809 Lawrence Kansas 66046 Phone/Fax (785) 843-2226

Fire Chief - Rod Brown

Representatives,

I am Chief Rod Brown of Wakarusa Fire/Rescue of Wakarusa Township Douglas County. I am here on behalf of the Douglas County Fire Chief's Association and the Wakarusa Fire Department to testify in support of House Bill Number 2068.

There are tens of thousands of dollars of functioning serviceable used fire equipment that end up in county landfills each and every year. This equipment is being destroyed instead of being donated or sold to other fire departments due to the fear that if donated equipment should fail or malfunction the liability of such failures would lie on the donating department.

Case in point, in October of 2002 the Wakarusa Fire Department tried to purchase ten (10) used Scott 2.2 Self Contained Breathing Apparatus, or commonly called air pacs, from a neighboring Fire Department that is upgrading to Scott 4.5 air pacs. The air pacs that were being replaced were used as front line equipment. The governing body of the potential selling department had agreed to not sell the currently used air pacs due to the liability fears in the event of equipment failure.

Wakarusa is a small under funded Fire Department that would be able to purchase ten (10) used air pacs from another Fire Department at \$300.00 each, but is unable to purchase the same ten (10) air pacs new at \$2300.00 each. Due to this fear of liability Wakarusa was unable to purchase any air pacs and is operating without an adequate supply of air pacs to provide proper fire protection.

There are many small under funded departments across the state that would benefit from the passage of House Bill Number 2068. This bill will provide access to functioning serviceable equipment to these small departments that would otherwise have to do without due to the lack of funds to purchase new equipment.

We the members of the Fire / Rescue and Emergency Medical Services truly need your support on House Bill Number 2068.

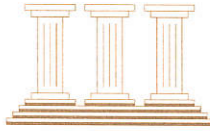
Thank You

Rod Brown
Fire Chief
Wakarusa Township Fire Department

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2-05-03

Attachment: 4



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Judiciary Committee

FROM: John Parisi, President
Kansas Trial Lawyers Association

RE: 2003 HB 2068

DATE: Feb.5, 2003

Chairman O'Neal and members of the House Judiciary Committee; I am John Parisi, the current president of the Kansas Trial Lawyers' Association. We are a statewide non-profit organization and advocate for the safety of families and the preservation of the civil justice system. I appreciate the opportunity to be before you today and provide our prospective on HB 2068.

HB 2068 addresses an issue of significance. The intent of the bill was to make it possible for one Kansas firefighting organization to donate its' used or excess equipment to another Kansas firefighting organization in need of the equipment. The amendments that we offer with the approval of Rep. Sloan and the Kansas Firefighters Alliance, achieve that intent. (See attached balloon.)

KTLA thanks Rep. Tom Sloan and the Firefighters Alliance for allowing us the opportunity to work with them in crafting amendments to HB 2068. The amendments that resulted from that collaboration alleviate KTLA's initial concerns regarding the bill. I also believe that our dialogue with the Firefighters Alliance strengthened the bill to ensure the safety of the firefighters who actually use donated firefighting equipment.

KTLA's concern regarding the original language of HB 2068 was that it applied to the sale of fire or safety equipment as well as to donated used or excess fire equipment. To include sales transactions would have improperly expanded liability protections which otherwise may be appropriate when equipment is donated by one fire department to another. Such protection is unwarranted for those who compete in the marketplace, including manufacturers, wholesalers and retailers of fire safety equipment. KTLA believes that it is poor public policy to grant immunity from liability to the manufacturers and/or sellers of safety equipment. Firefighters deserve the same protection against injury caused by defective equipment or negligence as that provided to all other Kansans.

Also, the original version of HB 2068 did not provide sufficient protection to the firefighters who would use the donated breathing apparatus equipment. We believe it is

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Terry Humphrey, Executive Director

extremely important that breathing apparatus be refurbished and recertified to the original specifications given by the manufacturer prior to the time it is used by a firefighter in the field. Obviously, a firefighter can not afford to learn their breathing apparatus is not operating properly in an emergency situation in an oxygen-deprived environment. Thus, KTLA, with the aid and assistance of the Firefighters Alliance offer an amendment to Sec. 2(y) of the bill to require the party accepting breathing apparatus to ensure that the equipment is recertified to the original manufacturer's specifications by a technician certified by the manufacturer, before the equipment can be used by firefighters in the field.

Finally, KTLA had concerns regarding New Sec. 3. The Firefighters Alliance and Rep. Sloan, agrees with our recommendation that Sec. 3 be deleted and the provision regarding inclusion of the Kansas Forest Service placed within Section 2(x).

With the adoption of these amendments, KTLA has no opposition to HB 2068. We again want to thank the Firefighters Alliance and Rep. Sloan for their willingness to work with us in addressing concerns we had about HB 2068. We believe that through cooperation we have protected firefighters in the field from the use of defective equipment while at the same time facilitating the purpose of the bill, allowing the donation of used or excess equipment from one firefighting entity to another.

1 protection;

2 (o) any claim for injuries resulting from the use of any public property
 3 intended or permitted to be used as a park, playground or open area for
 4 recreational purposes, unless the governmental entity or an employee
 5 thereof is guilty of gross and wanton negligence proximately causing such
 6 injury;

7 (p) the natural condition of any unimproved public property of the
 8 governmental entity;

9 (q) any claim for injuries resulting from the use or maintenance of a
 10 public cemetery owned and operated by a municipality or an abandoned
 11 cemetery, title to which has vested in a governmental entity pursuant to
 12 K.S.A. 17-1366 through 17-1368, and amendments thereto, unless the
 13 governmental entity or an employee thereof is guilty of gross and wanton
 14 negligence proximately causing the injury;

15 (r) the existence, in any condition, of a minimum maintenance road,
 16 after being properly so declared and signed as provided in K.S.A. 68-
 17 5,102, and amendments thereto;

18 (s) any claim for damages arising from the performance of community
 19 service work other than damages arising from the operation of a motor
 20 vehicle as defined by K.S.A. 40-3103, and amendments thereto;

21 (t) any claim for damages arising from the operation of vending ma-
 22 chines authorized pursuant to K.S.A. 68-432 or K.S.A. 75-3343a, and
 23 amendments thereto;

24 (u) providing, distributing or selling information from geographic in-
 25 formation systems which includes an entire formula, pattern, compilation,
 26 program, device, method, technique, process, digital database or system
 27 which electronically records, stores, reproduces and manipulates by com-
 28 puter geographic and factual information which has been developed in-
 29 ternally or provided from other sources and compiled for use by a public
 30 agency, either alone or in cooperation with other public or private entities;

31 (v) any claim arising from providing a juvenile justice program to
 32 juvenile offenders, if such juvenile justice program has contracted with
 33 the commissioner of juvenile justice or with another nonprofit program
 34 that has contracted with the commissioner of juvenile justice; ~~or~~

35 (w) performance of, or failure to perform, any activity pursuant to
 36 K.S.A. 74-8922, and amendments thereto, including, but not limited to,
 37 issuance and enforcement of a consent decree agreement, oversight of
 38 contaminant remediation and taking title to any or all of the federal en-
 39clave described in such statute;

40 (x) *any claim arising from the making of a donation ~~or sale~~ of used*
 41 *or excess fire control, fire rescue, or emergency medical services equip-*
 42 *ment to a fire department, fire district or volunteer fire department if at*
 43 *the time of making the donation the donor believes that the equipment is*

or the Kansas forest service

1 serviceable or may be made serviceable ~~is not liable in any civil action for~~
 2 ~~any injury or death as a direct result of the intentional misconduct, gross~~
 3 ~~or ordinary.~~ This subsection also applies to equipment that is acquired
 4 through the Federal Excess Personal Property Program established by the
 5 Federal Property and Administrative Services Act of 1949 (P.L. 81-152;
 6 63 stat. 377; 40 United States Code Section 483); or

7 (y) any claim arising from the acceptance of a donation ~~or purchase~~
 8 of fire control, fire rescue or emergency medical services equipment, if at
 9 the time of the donation the donee reasonably believes that the equipment
 10 is serviceable or may be made serviceable and if after placing the donated
 11 equipment into service, the donee maintains the donated equipment in a
 12 safe and serviceable manner. ←

This section shall apply to a breathing apparatus only if it is recertified to the manufacturer's specifications by a technician certified by the manufacturer.

13 The enumeration of exceptions to liability in this section shall not be
 14 construed to be exclusive nor as legislative intent to waive immunity from
 15 liability in the performance or failure to perform any other act or function
 16 of a discretionary nature.

17 ~~Now Sec. 3. (a) A person may donate used or obsolete fire control~~
 18 ~~or fire rescue equipment to the Kansas forest service for the service's use~~
 19 ~~or the service's distribution to other volunteer fire departments.~~

20 (b) A person shall not be liable for damages for personal injury, prop-
 21 erty damage or death resulting from a defect in equipment donated in
 22 good faith by the person under this section unless the person's act or
 23 omission proximately causing the claim, damage, or loss constitutes mal-
 24 ice, gross negligence, recklessness or intentional misconduct.

25 (c) The protection from liability under subsection (b) shall apply to a
 26 breathing apparatus only if it is recertified to the manufacturer's speci-
 27 fications by a technician certified by the manufacturer.

28 (d) As used in this section, "fire control or fire rescue equipment"
 29 includes a vehicle, fire fighting tool, protective gear, breathing apparatus
 30 and other supplies and tools used in fire fighting or fire rescue.

31 Sec. 4. K.S.A. 2002 Supp. 75-6102 and 75-6104 are hereby repealed.

32 Sec. 5. This act shall take effect and be in force from and after its
 33 publication in the statute book.

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TOM SLOAN
 REPRESENTATIVE, 45TH DISTRICT
 DOUGLAS COUNTY

STATE CAPITOL BUILDING
 ROOM 446-N
 TOPEKA, KANSAS 66612-1504
 (785) 296-7677
 1-800-432-3924

772 HWY 40
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENT 5
 CHAIRMAN: HIGHER EDUCATION
 MEMBER: UTILITIES
 ENVIRONMENT
 GENERAL GOVERNMENT &
 HUMAN RESOURCES
 BUDGET

Testimony on HB 2068 – Judiciary Committee

Mr. Chairman, Members of the Committee, I apologize for not appearing before you today on this bill. Unfortunately the Higher Education Committee is working bills today and my participation is desired.

HB 2068 was introduced after representatives of Douglas County volunteer fire fighters met with me to discuss problems arising from the Lawrence Fire Department wanting to donate used, but still serviceable, equipment to the volunteers. I have since learned that this is a problem statewide.

Currently a fire department that wishes to donate used, serviceable equipment cannot simply donate the material because the donating department retains liability should any problems arise. The apparently common practice is for the larger department to place the materials behind the station or in a particular dumpster and call the smaller department with a list of the items available and their location. The volunteer fire department personnel then “dumpster dive.”

HB 2068 provides civil liability protection if the donor believes that the equipment is serviceable or may be made serviceable; similar protection is provided for the donee, if the equipment is properly serviced prior to and maintained after being placed into service.

Following introduction of HB 2068, representatives of the Kansas Trial Lawyers Association and the Kansas Fire Fighters Alliance met with me. The Trial Lawyers’ conferee testifying today has proposed amendments that are endorsed by the bill’s sponsors. We view the proposed amendments as technical in nature to achieve the bill’s intent.

Also appearing before the Committee today will be a representative of Douglas County volunteer fire fighters. This bill is designed to make easier the acquisition of personal protective gear and fire fighting equipment. That representative can best describe the types of equipment generally made available and the importance of “hand me down” equipment to small, under financed, volunteer fire departments.

I apologize for not being present to respond to questions. I will appear at another Committee meeting if you so desire and will talk with any Committee member on the House floor or your office about this bill. On behalf of Kansas’ fire fighters, I ask the Committee to recommend HB 2068, with the KTLA amendments, favorable for passage.

H. JUDICIARY

2-05-03

Attachment: 6

House Bill NO. 2068

02-04-03

Members of the committee,

My name is Chris Lesser and I am the Chief of the Kanwaka Township Fire Department. I am writing this letter to express my support for HB. 2068.

I believe this bill could be of great benefit to many fire departments in the state. One benefit will be the cost savings extended to departments that receive donated or purchased equipment. I know of a department near mine that wanted to purchase some used equipment from another department, but did not make that purchase because the selling department was afraid of liability issues. There would have been considerable savings to the buying department if the transaction would have taken place.

In this time of budget constraints anything that can be done to allow fire departments to stretch their budget dollars should be considered.

Sincerely,
Chris Lesser
Chief, Kanwaka Township Fire Department.

H. JUDICIARY

2.05.03
Attachment: 7



8500 Santa Fe Drive
Overland Park, Kansas 66212
913-895-6100 • Fax: 913-895-5003
www.opkansas.org

Testimony
Before
The House Judiciary Committee
Regarding
House Bill 2068

February 5, 2003

Mr. Chairman and members of the committee, the City of Overland Park appreciates the opportunity to submit testimony in favor of House Bill 2068. We believe this bill will encourage the sharing of useful fire equipment among communities.

The quality of personnel serving as firefighters and the training they receive is without a doubt a vital part of successful fire and rescue departments. Just as integral, however, is the equipment these individuals use to meet the challenges they face.

Equipment in the fire and rescue realm is prohibitively expensive in many smaller communities. In tight economic times such as these, local units of government strike delicate balances to provide the services needed in their communities. Receiving donated fire equipment is one way they can ensure public safety without sacrificing some other important public service. This legislation will encourage jurisdictions with excess fire control, fire rescue or emergency medical services equipment to donate those items and will enable agencies to receive and utilize the equipment by limiting their respective liability with regard to the donation, receipt and use of said items.

The City of Overland Park asks that you recommend House Bill 2068 favorably for passage.

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2-05-03

Attachment: 8



Issue Update

Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
Topeka Phone: 316.648.6236
mtaylor@wichita.gov

House Bill 2133 Delinquent Municipal Court Fines

Additional Information requested by
House Judiciary Committee
February 11, 2003

Members of the House Judiciary Committee had several concerns and questions about procedures to be used if House Bill 2133 is approved. The answers to those concerns and questions are detailed here.

▪ **What type of civil judgment is being sought? Could the City attach liens on property?**

The current state statute (K.S.A. 75-719) is silent on this issue. The City suggests that language be included to clarify that this would be a Chapter 61 judgment. This is in line with the typical practice for other debt collection actions. A Chapter 61 action does not create a lien on real estate or any other property. The defendant would additionally have a right to assert most defenses and request a trial for that purpose by contesting the propriety of a garnishment or attachment. This protection is available in its current form through legislation passed last year at L. 2002, Ch. 198.

▪ **What time period would Wichita Municipal Court use before going to collection?**

The current statute for districts courts is silent on this issue as well. The City proposes curing this concern by delaying civil judgment collection until after the Municipal Court case is complete, including any term of probation for the affected defendant. During any period of probation, which could last from 6 months to 2 years, the court, through the assigned probation officer (or the Court Compliance Unit in Wichita) would attempt to collect the monetary obligations of the court order. After the completion of the case, the criminal file would be closed and the civil collection process would begin. This will give the defendant ample opportunity to satisfy the judgment before civil collection is undertaken. This process is more defendant-friendly than the practice used in districts that currently make use of the authority granted at K.S.A. 75-719.

▪ **How will record of payment to the collection agency be coordinated with the court and police to prevent someone who has already paid from being arrested?**

This potential would be eliminated if, as suggested above, there is complete separation between criminal enforcement and subsequent civil collection process. Once the criminal case is complete, with or without payment of the debts owed to the court and the restitution ordered, the defendant is no longer subject to arrest. Any suspension, once issued by the State, must be reinstated by the State. Driving prior to receipt of the reinstatement notice from the State is unlaw

H. JUDICIARY

- **Is suspension of a drivers license and taking a delinquent debt to collection a double penalty?**

This question mixes the concept of pre-judgment enforcement of the court's procedural requirements with post judgment enforcement of the court's final order entered after an evidentiary hearing. A defendant's driver's license is suspended by the Kansas Department of Revenue BEFORE CONVICTION at the request of any municipal or district court only for individuals who do not respond to the court dates set on the original ticket or by subsequent intermediary order of the court. Once the dilatory person responds to the Court, completes the court process and pays a \$50 reinstatement fee TO THE STATE, the driver's license is re-instated, whether the case is disposed of by a dismissal, an acquittal, or a finding of guilt. This suspension has nothing to do with guilt or innocence, but rather with recognition of and adherence to the authority of the Court. It is not a double penalty, as it is assessed only against those few persons who flaunt the authority of the Court. The suspension, and its attendant reinstatement fee, is a penalty for disobeying the rules of the court, while a fine AFTER CONVICTION is the penalty for disobeying the rules of the road or the legislatively imposed rules governing social interaction (crimes). If a driver's license is suspended at this point, it is because the legislative body has determined that such a suspension is an appropriate punishment for the offense, and is properly imposed for the safety of the motoring public. We cannot simply suspend a license to induce payment. This would be only marginally effective, as demonstrated by the large number of drivers who choose to drive without a license, without insurance, or even having had their license suspended by prior court action. More importantly, this would also constitute an impermissible use of criminal sanctions affecting the defendant's liberty interests solely to enforce a purely financial obligation.

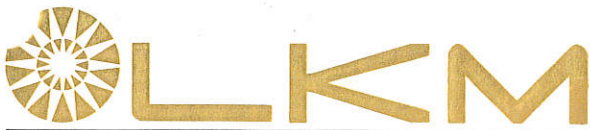
- **Which District Courts use this authority and what are their procedures?**

Douglas, Harvey and McPherson Counties use their court trustee's offices. Douglas County attempts a voluntary payment plan, and then if unsuccessful, does a wage garnishment or wage assignment to satisfy the judgment. Geary County is planning to institute collections based on the Douglas County model. Sedgwick County pursues collection in conjunction with probation supervision. In Harvey County, the case is not turned over for collection until the completion of probation. Wyandotte County has used this authority in the past, but the private collection attorney who had contracted for the work let the contract lapse as unprofitable. Apparently, other district courts have had trouble finding law firms interested in bidding for the collection work, and the statute was amended to allow the District Court Trustee to handle the collections. The Attorney General has approved a 33% collection fee, figured on the entire unpaid balance subject to collection, as an add-on to be collected by the court.

- **What percentage of people found guilty in Wichita Municipal Court actually go delinquent?**

This statistic is variable, depending on how "delinquent" is defined. In the recent past, the City of Wichita has employed a definition that has become more restrictive over time. Currently, Wichita Municipal Court accounts are sent to a collection agency when they are inactive for 45 days. This means no payment of any kind, despite payment agreements to the contrary. The delinquency rate under these terms stands at monthly rates ranging between 60% and 74% over the last three years.

Thank you for your careful consideration of this issue. I hope this addresses the questions and concerns of the committee. Please feel free to contact me if you have additional questions or need more information.



League of Kansas Municipalities

300 SW .venue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: Senate Judiciary Committee
FROM: Sandy Jacquot, Director of Law/Legal Counsel
DATE: February 5, 2003
RE: HB 2133

I want to thank you on behalf of the League of Kansas Municipalities for the opportunity to testify in favor of HB 2133. This bill would assess the cost of collecting delinquent municipal court fines to the defendant when the court contracts with a collection agency. In addition, the bill would allow the victim to which restitution had been ordered to use the contracting collection agency to attempt to collect any unpaid restitution.

For some of our larger municipal courts, collection of delinquent fines and court costs is an ongoing concern. Contracting with a collection agency is often the most efficient means of collecting fines and court costs, but the end result is that the city bears the cost of collection. This bill would shift the burden to the defendant who has chosen not to pay the fine rather than the taxpayers of the city at large. The League supports HB 2133 and urges the committee to report the bill favorably for passage.

H. JUDICIARY

2-05-03

Attachment: 10



Date: February 5, 2003

To: House Judiciary Committee

From: Jay C. Hinkel, Assistant City Attorney
City of Wichita, Kansas

Subject: *Technical Amendment Offered in Support of HB 2133*

Thank you for the opportunity afforded the City of Wichita to provide a suggested amendment to HB 2133. The proposed amendment returns to the bill an important focus – that of empowering victims of misdemeanor crimes with an independent means to collect restitution rightfully owed to them.

The City of Wichita is one of several Kansas cities that undertakes the enforcement of misdemeanor criminal laws, bridging the enforcement gap left by District Attorney offices that concentrate on felony offenses. This responsibility can come about by political agreement, as occurred many years ago in Wichita, or it can occur by political fiat, as happened here in Topeka more recently. Due to the limited dollar value of restitution associated with misdemeanor crimes, conversion of the criminal court order and the associated collection costs to a civil judgment is the only effective collection means available to victims of less serious crimes. Without this collection tool, it is not economical for them to pursue restitution. They may share in society's vindication of the wrong done to them, but their financial injury remains.

For those many Kansans living in cities that undertake municipal prosecution of misdemeanors, they have no chance at restitution. The victim of a misdemeanor theft, criminal damage to property or battery case in Mulvane, Andover or Halstead, for example, can currently anticipate court use of K.S.A. 75-719 to collect restitution, or they can pursue an independent collection action for that restitution and its related collection costs. Ten minutes away, Wichita residents who are victims of similar crimes have no possibility of relief in either form. The same can be said for residents of Tecumseh, Berryton and Auburn, compared to Topeka residents.

The bill as proposed would allow the court to include restitution owed as a collectible item along with court costs, fines and costs of collection. The City of Wichita strongly supports this bill as presented. We offer the proposed amendment to allow misdemeanor crime victims immediate benefit from their independent actions to collect restitution and related collection costs directly. Such an amendment would equalize the remedies available to victims of crime across the state.

H. JUDICIARY

2-05-03

Attachment: 11

PROPOSED AMENDMENT TO

HOUSE BILL No. 2133

By Committee on Corrections and Juvenile Justice

1-30

AN ACT concerning municipal courts; relating to collection of fines and court costs.

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

Section 1. (a) As used in this section: (1) "Beneficiary under an order of restitution" means the victim or victims of a crime to whom a municipal court has ordered restitution be paid.

(2) "Contracting agent" means a person, firm, agency or other entity who contracts as provided in this section to provide collection services.

(3) "Cost of collection" means the fee specified in contracts as provided in this section to be paid to or retained by a contracting agent for collection services. Cost of collection also includes any filing fee required under K.S.A. 60-4303, and amendments thereto, or administrative costs prescribed by the clerk of the municipal court.

(4) "Debts owed to the court" means any assessment of court costs, fines, fees or moneys expended by the municipality in providing counsel and other defense services to indigent defendants or other charges which a municipal court judge has ordered to be paid to the court, and which remain unpaid in whole or in part. Such debts include any interest or penalties on such unpaid amounts as provided for in the judgment or by law and the cost of collection when collection services of a contracting agent as provided in this section are utilized.

(b) The clerk of the municipal court is authorized to enter into contracts in accordance with this section for collection services for debts owed to the court or restitution owed under an order of restitution. The cost of collections shall be paid by the defendant as an additional court cost in all criminal and traffic cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection

shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay the court a debt or restitution. Any fine, penalty, or any part of any fine or penalty assessed by a municipal court which remains unpaid shall be a debt due and owing to the municipality and, as such, may be collected in accordance with applicable law. Such debts shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases.

(c) Each contract entered pursuant to this section shall provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection as provided in this section, and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to courts or restitution.

(d) On and after July 1, 2003, any beneficiary, under an order of restitution entered by a court, is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

(e) Contracts entered as provided in this section shall provide for the payment of any amounts collected to the clerk of the municipal court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the municipal court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(f) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract, the clerk shall then distribute amounts collected as provided in this section as follows: (1) all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt; or

(2) all amounts shall be paid to the beneficiary under an order of restitution designated to receive such restitution, except that where the beneficiary

When collection services are utilized pursuant to subsection (b),

When collection services are utilized pursuant to subsection (d),

has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312, and amendments thereto, all amounts shall be paid to the board until the board's subrogation lien is satisfied.

(g) Whenever collection services are being utilized against the same debtor pursuant to both subparagraphs (f)(1) and (f)(2), any amounts collected by ~~a~~ **any** contracting agent shall be first applied to satisfy debts owed to courts as provided under subsection (f)(1). Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy debts owed to pursuant to an order of restitution as provided under subsection (f)(2).

(h) The provisions of this act shall be part of and supplemental to the Kansas code of procedure for municipal courts.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.



THE CITY OF
EMPORIA

City Attorney's Office/522 Mechanic St./P.O. Box 928/Emporia, KS 66801-0928/620-343-4250/FAX 620-343-4254

HOUSE JUDICIARY COMMITTEE
WRITTEN TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2133
February 4, 2003

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

I am writing in strong support of HB2133. Municipal court fines serve as punishment and a deterrent for ordinance violations. If the fines go uncollected, the ends of justice will not be met. It is unfair to the majority of citizens who pay their fines, court costs and restitution to let defendants slide due to the inability to collect the amounts owed.

The indigent are offered community service as an alternative sentence due to their inability to pay. The collection efforts in municipal court, in my opinion, are directed at those defendants who promise the judge that they will pay, but who ultimately fail and refuse to honor their promise even though they are able to pay.

A key feature of HB2133 is the provision of paragraph 2(b) which provides:

"Such debts shall be a judgment against the defendant which may be enforced as judgments for payment of money in civil cases."

The legislature has already given this authority to district courts to convert a fine and court costs to a civil judgment in two statutes: K.S.A. 22-3425(2) and K.S.A. 22-3801. Municipal courts should be given the same authority.

HB2133 also benefits victims by allowing them to use the services of a contract agent to collect restitution, including the costs of collection. Municipal Court Judges will continue to hold defendants accountable for their fines, costs and restitution. HB2133 provides a tool to convert fines, court costs and restitution to a civil judgment, and to utilize the existing limited actions procedures in district court to execute on the judgment.

Sincerely,

Blaise Plummer
City Attorney

H. JUDICIARY

2.05.03

Attachment: 12



City Manager's Office

8500 Santa Fe Drive
Overland Park, Kansas 66212
913-895-6100 • Fax: 913-895-5003
www.opkansas.org

Testimony Before
The House Judiciary Committee
Regarding
House Bill 2133

February 5, 2003

The City of Overland Park appreciates the opportunity to offer testimony in support of House Bill 2133, which would allow municipal courts to convert unpaid fines into civil judgments.

Our municipal court system works very well, and the vast majority of people who interact with the court pay their fines. We also understand there are times when fine cannot be paid, and our court has flexibility to allow individuals to work off their fine in lieu of payment.

However, there is a third group of people who utilize the courts, individuals who can afford to pay their fines but simply refuse. Allowing us to convert their fines to civil judgments, as provided in House Bill 2133, would give us a useful tool in addressing such offenders.

House Bill 2133 also guides municipal courts' use of collection agencies. Fees assessed by the agencies for collecting delinquent fines are limited to 33% of the fine amount. Of equal importance is the fact that these costs are to be paid by the offender, rather than the taxpaying public. It makes little sense for tax money to be used to pay a collection agency, as the collection agency would not be needed if offenders paid their fines. We believe that this provision provides fairness for taxpayers.

The City of Overland Park asks that you recommend House Bill 2133 favorably for passage.

H. JUDICIARY

2.05.03

Attachment: 13



Municipal Court

701 N. 7th Street, Rm 232
Kansas City, Kansas 66101

Phone: (913) 573-5200
Fax: (913) 573-5210

Wesley K. Griffin
Administrative Judge

Maurice J. Ryan
Municipal Court Judge

Mark E. Chop
Court Administrator

February 4, 2003

House Judiciary Committee
Kansas House of Representatives

Re: House Bill 2133

Michael O'Neal
-Chairman
Judiciary Committee Members,

The Unified Government of Wyandotte County/Kansas City, Kansas has contracted with an outside agency (contracting agent) to collect certain fines owed to this Court. While the agent has successfully collected fees that when the Court could not, the cost of the collection reduces the effectiveness of the process.

Costs of the collection of the fines are currently borne by the Unified Government. The fine amounts paid to the municipality are reduced by the amount of the fee to the contracting agent. In addition, the agent has recently sent the Court a "bill" for money collected by the Court when the party, before he/she could pay the agent in total, is arrested and pays the remaining fine to the Court. They are requesting payment equal to the total amount the agent would have been paid.

House Bill 2133 would assist municipalities who, because of funding and staffing restraints, contract with private collection agencies. I believe that local governments should not have to receive reduced fine amounts

H. JUDICIARY

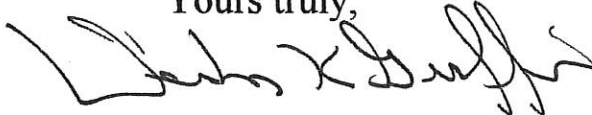
2.05.03

Attachment: 14

simply because a person fails to timely pay their legally obligated fines. If a Court must resort to a contracting agent, the fees should be borne by the defaulting defendant, not the City or County. The governments are being punished for seeking the assistance of an agent.

This bill, if passed, would help all governments who must seek help from private collection agencies. It is only appropriate that the fees or costs entailed in such a contract should be paid by the parties who have "forced" such an agreement. I would recommend passage of this bill. If I can be of any further assistance, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Wesley K. Griffin', written over a horizontal line.

Wesley K. Griffin
Administrative Judge

cc: Don Denney