

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 20, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Tim Owens - Excused
 Representative Dale Swenson - Excused
 Representative Dan Williams - 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 Sheriff's Association
 Oscar Thomasson, Sedgwick County Sheriff's Department
 Kathy Porter, Office of Judicial Administration
 Representative Larry Campbell
 Don Seifert, City of Olathe
 Kathy Olsen, Kansas Bankers Association
 Matthew Goddard, Heartland Community Bankers Association
 Chris Wilson, Kansas Building Industry
 Wess Galyon, Wichita Builders Association
 Dave Holtwick, Greater Kansas City Homebuilders
 Mike Perry, Topeka Homebuilders
 Gary White, Kansas Trial Lawyers Association

The hearing on **HB 2293 - Sheriff's fee for service of process**, was opened.

Jeff Bottenberg, Kansas Sheriff's Association, requested the proposed bill to allow sheriff's officers to charge a fee when process serving in a civil case. They currently can charge a fee to state agencies and out of state service but not anyone else. The bill would allow for a \$10 charge if a sheriff's office is used. Private process servers charge between \$25-\$45 (Attachment 1)

He proposed two amendments. The first would delete Section 3 from the bill, which would remove the prohibition against charging for the service of criminal warrants. The second would amend Section 4, (c) by clarifying that the \$10 fee is to be paid up front to the courts and remitted to the county general fund (Attachment 2).

Oscar Thomasson, Sedgwick County Sheriff's Department, estimated that the Sedgwick County Sheriff's Department served 130,000 last year at a cost of \$509,000 to taxpayers. He provided a chart showing that the sheriff's departments in the surrounding states charge a fee, with the least being \$10.00 plus .36 per mile and the most expensive \$200.00 (Attachment 3).

Written testimony in support of the bill was provided the Kansas Association of Counties (Attachment 4).

Kathy Porter, Office of Judicial Administration, was concerned with the clerks having more work by doing additional indexing and accounting. She suggested that the committee just increase a docket fee so it doesn't impose more work on the clerks (Attachment 5).

Written testimony in opposition to the bill was provided by the Kansas Bar Association and Kansas Collectors Association (Attachment 6 & 7).

The hearing on **HB 2293** was closed.

The hearing on **HB 2205 - real estate transaction; disclosures relating to special assessments and fees**, was opened.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 20, 2003 in Room 313-S of the Capitol.

Representative Larry Campbell requested the bill as an attempt to address situations where a person closes on their home only to find out that there are special assessments.

Don Seifert, City of Olathe, stated that these types of situations tend to be consumers who are purchasing a newly built home. The bill would require the seller of a property to disclose, at the time of signing the contract, if there is any existing or proposed special assessments affecting the real estate. Although notices of pending special assessments are included in the owner's title insurance policy, they are often overlooked (Attachment 8).

The Kansas Association of Realtors provided written testimony expressing concerns about the proposed bill (Attachment 9).

The hearing on **HB 2205** was closed.

The hearing on **HB 2297 - garnishment; release of funds if on order to pay is issued**, was opened.

Kathy Olsen, Kansas Bankers Association, explained that the proposed bill would amend both Chapter 60 & 61 to provide that if a garnishee does not receive an order to pay after a certain period of time then the garnishee may release the funds. The bill was drafted with a 60 time period but suggested that they would work with the collection industry to establish a time frame that is more reasonable (Attachment 10).

Matthew Goddard, Heartland Community Bankers Association, informed the committee that if the response to the garnishment order was in the affirmative, an order to pay is issued usually within two weeks but no more than 30 days (Attachment 11).

Written testimony in opposition to the 60 day time frame was provided by the Kansas Collectors Association (Attachment 12).

The hearing on **HB 2297** was closed.

The hearing on **HB 2294 - construction defects; contractor's rights to cure prior to filing a civil action**, was opened.

Chris Wilson, Kansas Building Industry, explained that the proposed bill would require the homeowner to notify the builder of any alleged construction defects prior to filing a claim. This allows the builder the opportunity to inspect the home and to offer to make repairs, if warranted (Attachment 13). The Kansas Building Industry is currently working with several groups to reach some agreements on several issues and hoped to have amendments ready for the committee within the next week.

Wess Galyon, Wichita Builders Association, sees the proposed bill as a way to encourage companies to continue to write general liability for contractors in the state. Currently, three states have similar legislation (Attachment 14).

Dave Holtwick, Greater Kansas City Homebuilders, & Mike Perry, Topeka Homebuilders are encouraged by the bill because it allows for open communication which should lead to solutions to defect problems rather than running to court to file a lawsuit (Attachment 15).

Gary White, Kansas Trial Lawyers Association, originally opposed the proposed bill as written, but has been and will continue to work with the Kansas Building Industry to reach a agreement on several issues (Attachment 16).

The hearing on **HB 2294** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 24, 2003 at 12:00 p.m. in room 313-S.

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Memorandum

TO: THE HONORABLE MICHAEL O'NEAL
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: JEFFERY S. BOTTENBERG, LEGISLATIVE COUNSEL
KANSAS SHERIFFS' ASSOCIATION

RE: HB 2293

DATE: FEBRUARY 20, 2003

Mr. Chairman, Members of the Committee, my name is Jeff Bottenberg and I appear today on behalf of the Kansas Sheriffs' Association ("KSA") which is comprised of approximately 2,100 members, both law enforcement and civilian personnel, that work in county sheriff offices throughout the state. We appreciate the opportunity to testify in support of HB 2293, which the Committee introduced at our request.

HB 2293 would amend current law to allow the sheriff to charge a fee of \$10 for the service of every paper related to a civil action, as well as certain documents required to be served by law. By way of background, in 1974 the Legislature amended K.S.A. § 60-2001 to prohibit the sheriff from charging the district courts in the state for service of process. Such amendment, as later interpreted by numerous opinions of the Attorney General, prohibited the courts from charging litigants for service of process. In effect, the counties were prohibited from charging civil litigants for the use of the sheriff in delivering process. Such legislation also prohibited the sheriff from charging such fees as court costs for in-state process.

HB 2293 repeals such prohibition on the charging of service of process, and also allows the courts to tax as costs the fees for in-state service, which may be recovered by the prevailing party. We believe that such steps are prudent, fiscally sound measures that will allow the counties to recoup some of the costs of the serving of process by the county sheriff.

We have also submitted two amendments to this testimony. The first amendment would simply delete the entire Section 3 from the bill. When drafting this bill we originally had removed the prohibition against charging for the service of criminal warrants, but we have since decided that we should delete this language since we probably would never be able to recover our costs for such service.

One AmVestors Place
555 Kansas Avenue, Suite 301
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Our second amendment amends Section 4, subsection c, by clarifying that the \$10 fee for service of process is to be paid up front to the court and remitted to the county general fund, in the same fashion as the docket fee.

Thank you very much for the opportunity to testify in support of HB 2293, and please do not hesitate to contact me if I may be of assistance with this or any other matter.

Respectfully Submitted,



Jeff Bottenberg

JSB
Enclosure

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HOUSE BILL No. 2293

By Committee on Judiciary

2-11

AN ACT concerning fees for services by sheriffs; amending K.S.A. 28-110, 28-170 and 28-172a and K.S.A. 2002 Supp. 60-2001 and 60-2003 and repealing the existing sections.

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

Section 1. K.S.A. 28-110 is hereby amended to read as follows: 28-110. The sheriffs of each county in the state shall charge for the services required by law to be performed by them the following fees:

Serving or executing and returning any writ, process, order or notice, or tax warrant, including a copy of the same, whenever a copy is required by law, except as otherwise provided, for the first person	\$1.00 \$10.00
For each additional person50 10.00
Serving warrants and making return thereof	1.00
Making arrests as law enforcement officer	1.00
Serving order of attachment, arrest or replevin and returning same	2.00
Making levy under execution	2.00
Appraisalment of property	2.00
Return of "no property found"	2.00
Return of "not found" each person	1.00
Approving and returning undertaking bond or recognizance	1.00
Advertising property for sale	2.00
Offering for sale or selling property	2.50
Taking inventory of personal property, each day	10.00
Sheriff's deed and acknowledgment, to be paid out of the proceeds of the sale of real estate conveyed	5.00
Issuing certificates of sale and recording same	2.00
Summoning talesman, each50

The sheriff shall charge, for witnesses whose attendance is procured under attachment and who are unable to pay their fare, actual expenses and mileage in an amount set in accordance with K.S.A. 75-3203a, and amendments thereto, and rules and regulations adopted pursuant thereto. The sheriff shall charge, for miles actually and necessarily traveled each way in serving or endeavoring to serve any writ, process, order, venire, notice or tax warrant, mileage in an amount set in accordance with K.S.A. 75-3203a, and amendments thereto, and rules and regulations adopted pur-

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uant thereto. No mileage shall be charged when the distance does not exceed one mile. All fees provided by this section, except those expressly given to the sheriff, are to be paid into the county general fund. If the writ contains the names of more than one person, no mileage shall be taxed or allowed and no person shall be required to pay any mileage unless at the time of making returns the sheriff makes and files with the returns, or as a part thereof, a statement showing the distance actually and necessarily traveled in making service on the first person named by the sheriff and the distance actually and necessarily traveled from the place of making the first service to the place of making service on the second person named by the sheriff and so on for each person served. If more than one process is served in the same case or on the same person, not requiring more than one journey from the office, the sheriff shall charge mileage for one service only. If more than one process for the same person, or in the same case, is issued and is in the hands of the sheriff at one time, it shall be the duty of the sheriff to make service of the processes, if possible, on the one trip. Except as provided by K.S.A. 19-269, and amendments thereto, the sheriff shall be reimbursed for the necessary transportation and board expenses incurred while serving under requisition made by the governor.

Sec. 2. K.S.A. 28-170 is hereby amended to read as follows: 28-170.

(a) The docket fee prescribed by K.S.A. 60-2001 and amendments thereto and the service of process fee shall be the only costs assessed for services of the clerk of the district court and the sheriff in any case filed under chapter 60 of the Kansas Statutes Annotated. For services in other matters in which no other fee is prescribed by statute, the following fees shall be charged and collected by the clerk. Only one fee shall be charged for each bond, lien or judgment:

1. For filing, entering and releasing a bond, mechanic's lien, notice of intent to perform, personal property tax judgment or any judgment on which execution process cannot be issued..... \$5
2. For filing, entering and releasing a judgment of a court of this state on which execution or other process can be issued 15
3. For a certificate, or for copying or certifying any paper or writ, such fee as shall be prescribed by the district court.

(b) The fees for entries, certificates and other papers required in naturalization cases shall be those prescribed by the federal government and, when collected, shall be disbursed as prescribed by the federal government. The clerk of the court shall remit to the state treasurer at least monthly all moneys received from fees prescribed by subsection (a) or (b) or received for any services performed which may be required by law. The state treasurer shall deposit the remittance in the state treasury and credit the entire amount to the state general fund.

(c) In actions pursuant to the Kansas code for care of children (K.S.A. 38-1501 *et seq.* and amendments thereto), the Kansas juvenile justice code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treatment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments thereto) or the care and treatment act for mentally ill persons (K.S.A. 2000 Supp. 59-2945 *et seq.* and amendments thereto), the clerk shall charge an additional fee of \$1 which shall be deducted from the docket fee and credited to the prosecuting attorneys' training fund as provided in K.S.A. 28-170a and amendments thereto.

(d) In actions pursuant to the Kansas code for care of children (K.S.A. 38-1501 *et seq.* and amendments thereto), the Kansas juvenile justice code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treatment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments thereto) or the care and treatment act for mentally ill persons (K.S.A. 2000 Supp. 59-2945 *et seq.* and amendments thereto), the clerk shall charge an additional fee of \$.50 which shall be deducted from the docket fee and credited to the indigents' defense services fund as provided in K.S.A. 28-172b and amendments thereto.

Sec. 3. K.S.A. 28-172a is hereby amended to read as follows: 28-

172a. (a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

On and after July 1, 1998:

Murder or manslaughter.....	\$164.50
Other felony.....	146.00
Misdemeanor.....	111.00
Forfeited recognizance.....	62.50
Appeals from other courts.....	62.50

(b) (1) Except as provided in paragraph (2), in actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 8-2118, and amendments thereto), a cigarette or tobacco infraction, any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$54 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 8-2118 or subsection (f) of K.S.A. 79-3393, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$54.

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(2) In actions involving the violation of a moving traffic violation under K.S.A. 8-2118, and amendments thereto, as defined by rules and regulations adopted under K.S.A. 8-249, and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$54 shall be charged. When an action is disposed of under subsection (a) and (b) of K.S.A. 8-2118, and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$54.

(c) If a conviction is on more than one count, the docket fee shall be the highest one applicable to any one of the counts. The prosecuting witness or defendant, if assessed the costs, shall pay only one fee. Multiple defendants shall each pay one fee.

(d) Statutory charges for law library funds, the law enforcement training center fund, the prosecuting attorneys' training fund, the juvenile detention facilities fund, the judicial branch education fund, the emergency medical services operating fund and the judiciary technology fund shall be paid from the docket fee; the family violence and child abuse and neglect assistance and prevention fund fee shall be paid from criminal proceedings docket fees. All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Additional fees shall include, but are not limited to, fees for Kansas bureau of investigation forensic or laboratory analyses, fees for detention facility processing pursuant to K.S.A. 12-16,119, and amendments thereto, fees for the sexual assault evidence collection kit, fees for conducting an examination of a sexual assault victim, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctors' fees and examination and evaluation fees. No sheriff in this state shall charge any district court of this state a fee or mileage for serving any paper or process.

(e) In each case charging a violation of the laws relating to parking of motor vehicles on the statehouse grounds or other state-owned or operated property in Shawnee county, Kansas, as specified in K.S.A. 75-4510a, and amendments thereto, or as specified in K.S.A. 75-4508, and amendments thereto, the clerk shall tax a fee of \$2 which shall constitute the entire costs in the case, except that witness fees, mileage and expenses incurred in serving a warrant shall be in addition to the fee. Appearance bond for a parking violation of K.S.A. 75-4508 or 75-4510a, and amendments thereto, shall be \$3, unless a warrant is issued. The judge may order the bond forfeited upon the defendant's failure to appear, and \$2 of any bond so forfeited shall be regarded as court costs.

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Sec. 4. K.S.A. 2002 Supp. 60-2001 is hereby amended to read as follows: 60-2001. (a) *Docket fee*. Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or

pealed, without payment of a docket fee in the amount of \$105 to the clerk of the district court.

(b) *Poverty affidavit in lieu of docket fee.* (1) *Effect.* In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in (A) the six-month period preceding the filing of the action; or (B) the current period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall be in the following form and attached to the petition:
State of Kansas, _____ County.

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee.

(c) *Disposition of docket fee.* The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with K.S.A. 20-362 and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process outside the state, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. ~~No sheriff in this state shall charge any district court in this state a fee or mileage for serving any paper or process.~~

Sec. 5. K.S.A. 2002 Supp. 60-2003 is hereby amended to read as

and the service of process fee

For every person to be served by the sheriff after the initial filing of the case the clerk shall collect \$10 in accordance with K.S.A. 28-110 as amended and shall submit that fee at least monthly to the County Treasurer, for deposit in the county treasury and credit to the county general fund.

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ollows: 60-2003. Items which may be included in the taxation of costs are:

- 3 (1) The docket fee as provided for by K.S.A. 60-2001, and amend-
- 4 ments thereto.
- 5 (2) The mileage, fees, and other allowable expenses of the sheriff or
- 6 other officer incurred in the service of process ~~outside of this state~~ or in
- 7 effecting any of the provisional remedies authorized by this chapter.
- 8 (3) Publisher's charges in effecting any publication of notices author-
- 9 ized by law.
- 10 (4) Statutory fees and mileage of witnesses attending court or the
- 11 taking of depositions used as evidence.
- 12 (5) Reporter's or stenographic charges for the taking of depositions
- 13 used as evidence.
- 14 (6) The postage fees incurred pursuant to K.S.A. 60-303 or subsec-
- 15 tion (e) of K.S.A. 60-308, and amendments thereto.
- 16 (7) Alternative dispute resolution fees shall include fees, expenses
- 17 and other costs arising from mediation, conciliation, arbitration, settle-
- 18 ment conferences or other alternative dispute resolution means, whether
- 19 or not such means were successful in resolving the matter or matters in
- 20 dispute, which the court shall have ordered or to which the parties have
- 21 agreed.
- 22 (8) The mileage and fees of a private process server incurred in the
- 23 service of process or in effecting any of the provisional remedies author-
- 24 ized by this chapter.
- 25 (9) Such other charges as are by statute authorized to be taxed as
- 26 costs.
- 27 Sec. 6. K.S.A. 28-110, 28-170 and 28-172a and K.S.A. 2002 Supp.
- 28 60-2001 and 60-2003 are hereby repealed.
- 29 Sec. 7. This act shall take effect and be in force from and after its
- 30 publication in the statute book.

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HB 2293

Service of Process Fact Sheet
Oscar Thomasson, Sedgwick County Sheriff's Department

- Under current law Sheriff's are not allowed to charge fees for each court document or order they serve. The current reimbursement procedure for the service of process by Kansas Sheriff's is provided for under KSA 20-362 (2001 supp) under that law \$10.00 for each new filing is paid into the County general fund to cover the service of process in that case. This one-time fee is all the reimbursement that the County will receive regardless of the number of papers filed under each case and the actual costs of service incurred.
- During 2002 a total of 37,408 new civil, limited action, small claims and domestic cases were filed with the 18th Judicial District in Sedgwick County. During 2002 the 18th Judicial District transferred the sum of \$340,682 this along with \$40,148 received for out of state papers, was deposited in the Sedgwick County General Fund for the service of process in Sedgwick County. During 2002 the Sedgwick County Sheriff's Department served over 130,000 court documents and orders at a cost of over \$890,000. Based on these figures, in 2002 the taxpayers of Sedgwick County paid service of process costs of just over \$509,000.
- This legislation will shift this burden from the taxpayers to the individuals who are actually involved in these suits. Any increased costs should then be passed on to the judgment debtors.
- By requiring a fee for service of process, this legislation might actually discourage frivolous filings that clog the court system. As an example of such frivolous filings, our office has served garnishments in the amount of \$.01.
- All the surrounding states charge a fee to the originator of each paper served by local sheriff's departments. The following fees are currently being charged by Colorado, Missouri, Nebraska, Oklahoma, and Texas:

State	Documents	Court Orders
Colorado (Varies by County)	\$38.00-\$92.40	\$23.40-\$200.00
Missouri	\$10.00+\$.36 per mile	\$20.00+\$.36 per mile
Nebraska	\$15.00+\$.36 per mile	\$15.00+\$.36 per mile
Oklahoma	\$35.00	\$35.00
Texas	\$55.00	\$65.00

- Private process servers surveyed charge fees beginning at \$25-\$35 per paper.
- To illustrate the impact of this legislation, if each paper served generated a fee of \$10.00, then the potential revenue would be over \$1 Million for Sedgwick County and over \$8 Million statewide.

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Attachment: 3



WRITTEN TESTIMONY
Before the House Judiciary Committee

HB 2293

February 20, 2003

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you Chairman O'Neal and Members of the House Judiciary Committee for allowing the Kansas Association of Counties to provide written testimony on HB 2293.

The Kansas Association of Counties supports HB 2293. This bill would allow sheriff's to collect a reasonable fees for the service of process. This bill could mean over \$8 million dollars for county general budgets statewide in a time when county budgets are suffering.

The Kansas Association of Counties strongly supports the passage of HB 2293.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Topeka, KS 66615
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H. JUDICIARY

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Attachment: 4



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

February 20, 2003

Testimony In Opposition to HB 2293 House Judiciary Committee

Kathy Porter
Office of Judicial Administration

Comments on the Bill As Introduced

HB 2293 appears to be a proposal to generate additional funding for sheriffs by increasing amounts that may be charged for serving process. As the bill is drafted, sheriffs would be authorized to collect this fee from district courts.

The bill includes no mechanism for the district courts to collect a fee from the person requesting service of process. Therefore, if a sheriff charges a district court a fee for service of process, the district court would be forced to pay the fee from its county operating budget. What results is the county paying for a service of the sheriff, an entity that is currently also funded from the county. In the process, clerks of the district court will incur some additional work because they will be required to process and include these fees in their accounting work.

If this is what the bill intends, I would question why the clerks are being brought into this process, and why the county is not simply adding money to the sheriff's department budget based on the number of processes served. If the bill intends to somehow pass this cost on to attorneys and others for whom process is served, the bill lacks that mechanism.

Comments on the Amendment

I understand that some of the issues noted above may be corrected in a proposed amendment. As the amendment was explained to me, it would authorize a \$10 fee to be charged to any person requesting service of process or service of other orders or notice in Chapter 60 and Chapter 61 limited actions cases. The fee would be collected by the clerks of the district court, and would be placed in the county general fund.

An issue still remains with the additional workload this would impose on the clerks of the district court. The amendment would require the clerks to scrutinize each Chapter 60 and Chapter 61 limited actions filing to see upon how many persons process is to be served, and to make sure that the person filing has included \$10 for each person to be served.

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Attachment: 5

experience that turning away people who do not have the correct filing fee often can result in unpleasant, if not hostile, reactions from those persons filing cases. Allowing a separate \$10 fee for each party to be served could well lead to disagreements about the number of persons to be served. If a clerk accepts a party's statement that two people are to be served and accepts a \$20 service fee, only to find out later that three persons are to be served, there is no mechanism, and certainly no clerk time, available to collect the additional fee from the party. These same issues could result in more work when clerks receive filings by mail. If the correct fee is not included, the clerk would have to send the filing back or make a phone call requesting an additional fee.

This is an additional indexing and accounting issue for the clerks, and the clerks do not need any additional work. If the court system were adequately staffed, I might not be here pointing out this additional duty. As we are presently staffed, I can almost guarantee that clerks will not be able to implement this provision in the manner in which we would all like. Clerks simply will not have the time to carefully scrutinize the number of persons to be served. In addition, the bill would allow the fee to be charged for "any writ, process, order or notice, or tax warrant." Although the clerks currently collect fees at the onset of a case, this could mean that clerks will be collecting fees at other stages, as notices, orders of sale, and other documents may be served by the sheriff. Again, this requires additional receipting, indexing, and accounting work.

The current docket fee system evolved around the time of court unification from a system in which individual fees were charged for many different work processes performed by the clerks. The docket fee simplified matters for both the clerks and the litigants. This proposal is a step backward to a more fragmented system.

A much simpler means of obtaining additional funding for sheriffs' departments would be to increase the docket fee. Under current law (K.S.A. 20-362), the clerk of the district court remits to the county treasurer for deposit in the county general fund, \$10 from each Chapter 60 docket fee and either \$5 or \$10 from each Chapter 61 limited actions docket fee, depending upon the amount in controversy. The clerks' workload would not increase if the docket fee were raised and the additional fees were dedicated to the county general fund.

Clerks of the district court work each day with sheriffs, and would be supportive of the sheriffs in their efforts to generate additional funding. The Judicial Branch as a whole probably understands better than most the need for adequate funding to carry out our duties mandated by statute and the Constitution. While we do not in any way mean to hinder the sheriffs from collecting a fee, we are asking that any fees be collected in a manner that does not require additional work from court staff. It almost goes without saying that funding for additional clerks to carry out these provisions would not be forthcoming in these difficult fiscal times.

Thank you for the opportunity to address this bill.

KP:mr



**KANSAS BAR
ASSOCIATION**

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February 20, 2003

TO: Chairman O'Neal and Members of the House Judiciary Committee
FROM: Trista Beadles Curzydlo, KBA Lobbyist
RE: House Bill 2293

Chairman O'Neal and Members of the Committee:

My name is Trista Beadles Curzydlo and I am here today representing the Kansas Bar Association. The KBA is a diverse organization with more than 6,000 members, including judges, prosecutors, plaintiffs' attorneys, defense attorneys, and many others.

The KBA understands the need for local sheriffs' offices to find additional funding sources and supports the adequate funding of law enforcement in Kansas. However, HB 2293 is not the appropriate tool for that funding. The KBA Board of Governors at a meeting on February 14, 2003 adopted a position in opposition to HB 2293. While the members of the Board did not have adequate time to examine 2293 in great detail and to develop proposed changes to the bill, many concerns exist.

There is no clear guidance for how this fee will be assessed. The KBA is concerned of any additional burden on the judicial system and its employees, and cannot support a proposal that increases the duty of the clerk to oversee the billing operations for a Sheriffs' office. If these charges are to be added to court costs, instances may exist where the court costs are not collected, there is no explanation in the proposal as to how that situation will be addressed and who will bear final responsibility for payment, there is no clear barrier to ensure the judicial branch would not be further burdened by being required to pay that cost.

I thank you for your consideration of this issue and welcome any questions that you may have.

H. JUDICIARY

2-20-03

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REMARKS CONCERNING HOUSE BILL NO. 2293

HOUSE JUDICIARY COMMITTEE

FEBRUARY 20, 2003

Thank you for giving me the opportunity to present remarks on House Bill No. 2293 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 oppose House Bill No. 2293.

This measure is an effort to raise additional money through service fees with no corresponding improvement in services being offered. There is no commitment to increase personnel to ensure the timely service of process, orders or notices, no guarantee that the appropriate method of service will be used to limit the need for a party to be served a second time and no method to confirm that proper service has been made. This bill merely make access to the judicial process more expensive.

We believe that this legislation is a result of the financial crisis in this State and the lack of funding at the local level to meet the budget needs of county government. We can sympathize with the governmental departments that are suffering because the revenue is not there. But our clients are experiencing the same revenue problems and are attempting to collect these amounts owed them. If this bill passes it will just cost them more. Should they have to weigh the cost of entering the judicial system into their attempts to recover money due them for the goods or services they provided someone?

In some cases with multiple parties, such as an eviction, the process fees go from \$3.00 to \$40.00. In the scheme of things the numbers appear to be small, but in actuality it is a huge increase and an additional impediment to those seeking to enforce their rights through the judicial system.

We respectfully request that you reject House Bill No. 2293.

Thank you again for your time and consideration.

Douglas E. Smith
For Kansas Collectors Association, Inc.
And Kansas Credit Attorneys Association

H. JUDICIARY

2 - 20 - 03

Attachment:

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MEMORANDUM

TO: Members of the House Judiciary Committee

FROM: Donald R. Seifert, Policy Development Leader *MS*

SUBJECT: **HB 2205**; Notification of Pending Special Assessments

DATE: February 20, 2003

On behalf of the city of Olathe, thank you for the opportunity to appear today in support of this bill. HB 2205 is a relatively simple bill that would require sellers of real property to provide written disclosure of existing or proposed special assessments affecting a piece of real estate. The disclosure would be provided prior to execution of a sales contract. The bill would address a common problem in local government: a roomful of upset property owners at a city council hearing on the levying of special assessments for a public improvement stating that "no one told me about this assessment when I bought the property." In Olathe, where developers routinely petition for benefit district improvements well in advance of the first homes in a subdivision, this unfortunate situation happens all too often.

The city of Olathe, like many Kansas communities, regularly uses the general improvement and assessment statute at K.S.A. 12-6a01 *et seq.* as a tool to facilitate development in the city. Benefit districts may be used to finance roads, water mains, sewers, and other public infrastructure that makes up the fabric of a growing community. Once the improvement is constructed, special assessments are then levied against real estate parcels receiving a benefit from the improvement, generally on a pro-rated square foot basis. Once levied, the property owner may pay off the assessment, or pay it in installments over the life of the bonds issued to finance the improvement.

This system generally works well unless the landowner(s) that petitioned for the original improvement has sold or subdivided property in the benefit district to new owners, or there is a substantial time lag between creation of the district and final assessment. By then, an entire subdivision of new homeowners may receive notice to attend an assessment hearing they claim they knew nothing about. Although notices of pending assessments are included in the owner's title insurance policy, often these notices are overlooked or not understood. The city regularly provides special assessment information to anyone that asks, but not all buyers know to ask.

Real estate professionals compile countless facts and figures about a property before marketing it to prospective buyers. HB 2205 would simply provide an additional notification to real estate buyers early in the purchase process when they receive many other disclosure statements. The city believes this is good public policy, and should not be a burden on the real estate or development community. The city of Olathe urges the committee to recommend this bill favorably for passage.

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TO: HOUSE JUDICIARY COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: February 20, 2003
SUBJECT: House Bill 2205

The Kansas Association of REALTORS® has concerns about this legislation. We fully appreciate the frustration and concerns that brought about the introduction of the bill. However, we are concerned about the ability of sellers to comply with the law.

Timing: If this becomes law, the seller must get a written acknowledgment from the buyer that they have been made aware of the assessments. This may be difficult to get, given that, typically, a buyer submits an offer to the seller without having had any prior contact with the seller. How is the seller supposed to get this acknowledgement in front of the buyer and get them to sign it before they even sign a contract?

Content: The buyer is supposed to be told not only of the existence of the special assessments and fees from the special benefit district, but also of any special assessment for which they may become liable in the future. How far into the future? What if the special benefit district is created after the buyer purchases the property? Is the seller going to be held responsible for districts that are not in existence?

Enforcement: Who is going to enforce this--the city, the county? Will cities and counties be forced to hire personnel to go out and look over the shoulders of sellers to make sure they are doing this--and doing it at the right time?

Thank you for the opportunity to present our concerns about House Bill 2205.



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February 20, 2003

To: House Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2297: Non-wage Garnishments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **HB 2297**, relating to non-wage garnishments. Specifically, this bill would amend both Chapter 60 and Chapter 61, to provide that if the garnishee does not receive an order to pay after a certain period of time, the garnishee may release the funds.

This bill 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.

This does actually happen with some frequency. We have had bankers call our office from time to time, with one banker having had an account frozen for almost a year. They call to ask whether there is a time certain after which they can release the funds as it is their belief that either the garnishing creditor has gotten repaid by other means, or the case is stale.

Our solution, as represented by this bill, is to provide that after a period of time, the garnishee could unfreeze the account, thereby releasing the funds to the owner. If a case is still pending, surely the garnishing creditor will renew a request for a garnishment order and not rely on one that was filed two months or before.

In reference to the time period, we drafted the bill with a time period of 60 days, but we are very willing to work with the collection industry to establish what all parties believe to be a reasonable period of time.

In conclusion, we respectfully ask that the Committee see the need for this legislation and so act favorably on the passage of **HB 2297**.



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: House Committee on Judiciary
From: Matthew Goddard
Heartland Community Bankers Association
Date: February 20, 2003
Re: House Bill 2297

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Judiciary to express our support for **House Bill 2297**.

House Bill 2297 allows a garnishee to release any funds that have been withheld pursuant to a garnishment order if no order to pay has been received within 60 days following receipt of the garnishee's answer by the court. This legislation is necessary because in some cases a financial institution will freeze the funds in a customer's account but an order to pay is never issued by the court. The account, or at least the amount of the garnishment, must remain with a "hold" until the court issues a release. This bill would permit the garnishee to release the funds without first obtaining written approval by the court.

In most cases with our member institutions, if the response to the garnishment order was in the affirmative, an order to pay is issued within two weeks. If more than 30 days go by after an answer is made, it is rare that a payment order will ever be issued. The exception to this is if, as sometimes happens, the creditor attorney simply forgets to follow up after an affirmative answer.

It is the experience of our members that accounts with a balance of only several dollars are the most likely to be frozen but not receive an order for payment. As a result, HCBA does not feel that HB 2297 would allow a judgment debtor to escape his or her obligations. In fact, the language of HB 2297 is entirely permissive. A garnishee is not required by the bill to release any funds after 60 days and we anticipate that some of our members may not take full advantage of the opportunity made available by this bill.

We respectfully request that the House Committee on Judiciary recommend HB 2297 favorable for passage.

Thank you.

H. JUDICIARY

REMARKS CONCERNING HOUSE BILL NO. 2297

HOUSE JUDICIARY COMMITTEE

FEBRUARY 20, 2003

Thank you for giving me the opportunity to present remarks on House Bill No. 2297 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 believe that once a garnishment is served and funds are attached, the money belongs to the creditor that garnished the account, not the bank, the court or the debtor and are we not necessarily in agreement with the Kansas Bankers Association on the need for this legislation. In addition, we have concerns about the practical impact of returning garnished funds to a judgement debtor without proper notice and hearing.

However, we would like to work with the Kansas Bankers Association on the language and try to develop some mutually agreeable resolution. Our members are attempting to draft some language to help address the concerns of both parties. At a minimum, we believe the 60-day time frame is too short and need to arrive at an adequate time period. We have expressed to the KBA our concern and willingness to arrive at a solution.

We ask for your favorable action on this request. Thank you again for your time and consideration.

Douglas E. Smith
For Kansas Collectors Association, Inc.
And Kansas Credit Attorneys Association

H. JUDICIARY

2. 20. 03

Attachment: 12

LEGISLATIVE



TESTIMONY



2206 SW 29th, Terr., Topeka, KS 66611 ♦ 785-267-2936 Fax 785-267-2959 ♦ E-mail: chris@agresources.com

STATEMENT OF KANSAS BUILDING INDUSTRY
TO THE HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE MIKE O'NEAL, CHAIR

REGARDING H.B. 2294

FEBRUARY 20, 2003

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Government Affairs for Kansas Building Industry Association. KBIA is the statewide professional and trade organization of the home building industry, with approximately 1800 members. We appreciate the opportunity to come before you today in support of H.B. 2294.

H.B. 2294 came about in part as a result of concerns regarding construction defect claims and how best to resolve them. Rep. Merrick previously introduced legislation to address construction defects through a statutory warranty. Our industry did not support that bill, and Rep. Merrick admonished us to work on something we could accept to address this issue.

At the same time, the National Association of Home Builders was addressing the issue of construction defect litigation and the resulting effect on general liability insurance. NAHB members nationwide were facing significantly increased premiums with increased deductibles or self-insured retentions for their general liability insurance and even having difficulties obtaining general liability insurance. Part of the reason for this trend has been the impact of an increased level of construction defect litigation. NAHB established a General Liability Insurance Task Force, which made its report in September, 2002. That report included the recommendation to states to seek construction defect claim legislation. H.B. 2294 is based on the NAHB model legislation.

Also, last year, bills addressing this issue were passed in California, Washington, and Minnesota. The NAHB model bill is based on legislation passed in those three states, especially Washington.

Because of the timing of the national model legislation becoming available late last year, we had to move quickly to work within our organization and with others, such as Rep. Merrick, to bring a bill to you for consideration this session. We greatly

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appreciate the assistance of Rep. Merrick and other state associations on this bill. We have worked with the Kansas Trial Lawyers Association on the bill, and we are indebted to Gary White, Barb Conant and Terry Humphreys for their work on this bill. We will have a balloon for you with proposed amendments agreed upon by KTLA and KBIA.

The approach of this bill is in the spirit of alternate dispute resolution, to have the homeowner/claimant notify the builder of alleged construction defects prior to filing a claim. The builder will then have an opportunity to inspect the home and to offer to make repairs, if warranted. H.B. 2294 sets up a process for that communication to occur, which hopefully will resolve many of these claims without the filing of a lawsuit.

General liability insurance companies have told NAHB that this type of legislation will have positive effect on the pricing and availability of general liability insurance to our members, especially if passed in multiple states in a region. Missouri is also considering this type of legislation during this session. At least 13 states have a proposed bill this year.

Thank you for the opportunity to come before you in support of H.B. 2294. We would be glad to respond to questions at the appropriate time.

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Testimony on Notice and Right to Repair Legislation
Wess Galyon, President/CEO, Wichita Area Builders Association
Presented to Kansas House Judiciary Committee
Thursday, February 20, 2003

Mr. Chairman and Members of the Committee.

I'm Wess Galyon, President/CEO of the Wichita Area Builders Association located in Wichita, Kansas.

We are a not for profit trade association with 1150 members doing business throughout the greater Wichita and surrounding areas and counties which border Sedgwick.

I am here today to urge your support of the proposed Notice and Right to Repair legislation.

I think we are all generally aware that the housing industry in Kansas is becoming the target of lengthy, expensive, and damaging litigation that is being brought by a relatively small number of people seeking damages when something goes wrong with their homes. Too often these claims assume that whatever has gone wrong is a direct result of something the builder of the home did wrong, or did not do, during the time the home was being constructed originally, or improved subsequently.

While litigation may be justified in a small number of instances, it is not in the vast majority, but is often used as a remedy because there is no prescribed process specifically designed to force a homeowner and a contractor to communicate with each other.

The proposed legislation prescribes such a process and will go a long way in getting the complaints of the homeowners addressed when they feel they have a problem in a timely and satisfactory manner. In the event the homeowner and contractor are not able to come to an agreed solution, the homeowner still has the option to go to litigation.

The Wichita Area Builders Association has success using such a process on a voluntary basis and know that it is effective. Over the last several years, a number of homeowners have contacted us, on the advice of their attorneys, to resolve disputes before they go to litigation. We can usually help them

H. JUDICIARY

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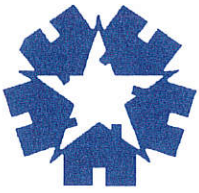
since most of the contractors in our area are members of our Association. However, we have no influence over those contractors who are not members and in those instances we suggest other remedies available to the homeowners.

Not only will this proposed legislation help homeowners and contractors come together to work out a solution when there is a problem regarding construction defects, but it will influence insurance companies to continue writing liability insurance coverage for contractors at reasonable rates. And, it should help keep homeowners insurance rates more reasonable by reducing litigation against contractors' insurance carriers. Our members are experiencing great difficulties in getting general liability insurance coverage in order to continue to operate their businesses regardless of whether or not they have ever had a claim of any type. From the perspective of those who understand the dynamics of what is going on in the building industry, this legislation is timely and needed.

I would like to end my remarks by briefly outlining for you a sequence of events that occurred in relation to a particular lawsuit that was filed in our area against one of our most respected builders. I feel, this suit could have been avoided if what is required to be done via the proposed legislation was in place. (Note attachment.)

1149 N. Glenmoor**TIMELINE:**

- 3/16/96 - Contract written between Kevin and Susan Gross, buyers, and Robl Construction, Inc., seller, for purchase of 1149 N. Glenmoor
- 4/26/96 - Gross closed on 1149 N. Glenmoor
- 6/15/96 - Gross sent Robl Construction their Initial Callback list with only cosmetic items to be taken care of
- 3/17/97 - Robl Construction received Final Callback sheet from Gross (cosmetic items listed)
- 2/12/98 - Maurice Henry Van Strickland and Cathy O'Shea Strickland purchased 1149 N. Glenmoor from Kevin and Susan Gross
- 2/17/98 - MidWest Home Inspections, Inc. performed a visual home inspection of 1149 N. Glenmoor for the Stricklands. They found no problems with the home other than minor maintenance items that the homeowner needed to address.
- 10/98 - After a large rain, Strickland found they had water leakage in their home
- 10/5/98 - A Robl employee caulked the dining room window and a window on the floor above. He advised the Stricklands that the house needed to be recaulked and painted.
- 4/15/99 - Robl Construction sent a letter to all customers who had E.I.F.S. or Dryvit on the exterior of their homes. They recommended that the homeowners do an inspection of their home to insure the quality and longevity of the product. Enclosed was a letter from the E.I.F.S. company with their recommendations on the inspection and sealant process. Robl Construction offered to help with the inspection, if the homeowner needed it.
- 9/27/99 - After being contacted by Stricklands, a Robl representative went to 1149 N. Glenmoor and noted that the windows had not been caulked or painted. Maintenance had not been done by the homeowner. He gave the Stricklands names and telephone numbers of subcontractors for them to call and get the work done.
- 11/6/01 - Robl Construction received notice of lawsuit filed of record by Stricklands contending that the home at 1149 N. Glenmoor had water leakage as a result of poor construction of the roof and windows and lack of appropriate caulking and painting. Stricklands requested damages in the amount of \$75,000.00 plus their costs.
- 2002 - Robl Construction was notified that damages now were in excess of \$900,000.00 on the lawsuit. Court date was set for January 21, 2003.
- 1/20/03 - Attorney for Strickland settled out of court for approximately \$200,000.00 with the majority of the money going to Strickland's lawyers, leaving little money for repairs.



**HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY**



600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

Testimony in support of HB2294
House Judiciary Committee
February 20th, 2003

Chairman O'Neal and committee members:

Thank you for the opportunity to speak to you today. My name is Dave Holtwick and I am with the Home Builders Association of Greater Kansas City where I serve as Staff Vice-President of Governmental Affairs. Our association consists of over 1,000 member companies engaged in the home building industry in the Kansas City area. I am here today to speak in support of House Bill 2294.

Our association and our members, working together with industry professionals, seek to provide housing at all price points, offering "choices" to meet the demands of consumers. As part of this effort, we have worked with cities and counties for years to develop strong building codes that are consistent throughout the area. Most recently, we have worked with local units of government to help adopt the International Residential Code, part of the International Code family of codes, to establish codes that guide builders to produce safe, well-built homes.

Additionally, we worked closely with Johnson County officials, building code officials, industry professionals and consumer groups to push for implementation of the Johnson County Contractor Licensing program. Not only does the program establish guidelines for contractors to qualify to perform work in the county, it contains requirements for them to retain their license including continuing education courses related to building codes and standards. Currently, over 2,300 contractors are licensed under the program and nearly 39,000 hours of continuing education has been provided to these contractors through the program.

New home construction is a complex process performed in an environment controlled by nature and dozens of sub-contractors and their employees are often required to complete the home. Although we have building codes to guide contractors and programs to help educate them, there are times when defects occur that need to be remedied. I believe House Bill 2294 establishes parameters to guide that process.

We all know that in most situations, open communication will lead to a solution much faster and with much less expense than moving directly to litigation. You may be surprised to learn, as I was, that on some occasions, a contractor is alerted to an alleged defect by a homeowner only to be denied access to investigate and repair the problem. It seems to me that common sense would tell you that the contractor should have the right

H. JUDICIARY

Do Business With A Member

2-20-03

Attachment: 15

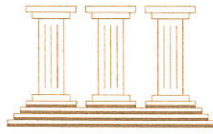
to inspect and repair the defect in a timely manner before costly, often time consuming, litigation is begun.

I mentioned to you that I am on the staff of the Home Builders Association of Greater Kansas City but I didn't mention that I recently moved in to a new home we had built. I am glad to say that we are very happy with our new home. I will also share that we did encounter some minor frustrations along the way (as did our builder, I'm certain) but we communicated openly our concerns and they were all addressed. I know not everyone is as fortunate as we were, but I believe the guidelines provided in this legislation will help facilitate communication and lead to a remedy in most situations.

Kansas is not the first state to consider this type of legislation. Arizona, California, and Washington already have similar regulations in place with many other states considering it. Reports we have received indicate that this process is working and that some additional benefits are arising out of the regulation. At least one state reports that they are experiencing insurance companies coming back to the state and writing insurance at more competitive prices rather than the current trend of pulling out or increasing rates while reducing coverage. This can have a tremendous impact on housing prices, both new and existing.

House Bill 2294 will help provide assurance for homeowners that defects will be repaired in a timely manner while assuring contractors the opportunity to remedy the situation before litigation is pursued. I believe this is good policy and I encourage you to support HB 2294.

Thank you.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Judiciary Committee

FROM: Gary White, Legislative Vice President
Kansas Trial Lawyers Association

RE: 2003 HB 2294 / Construction defects; rights to cure

DATE: Feb. 20, 2003

Chairman O'Neal and members of the House Judiciary Committee. Thank you for the opportunity to submit comments regarding HB 2170. My name is Gary D. White, Jr. and I currently serve as Vice President of Legislation for the Kansas Trial Lawyers Association. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to offer comments regarding HB 2294.

KTLA would oppose HB 2294 as introduced. In its initial version, the bill attempts to implement a model act drafted promoted by the National Association of Home Builders. There are a number of problems with trying to adopt this model legislation into Kansas law. Among them, HB 2294 mandates a process that would be both cumbersome and difficult for consumers. The multitude of deadlines and time triggers is confusing and would require consumers to seek legal help to successfully maneuver through the process.

There is no good policy reason to put the burden for economic injury onto the home buyer who is not in the position to avoid the negligent work because he doesn't do the work, and would be unable to absorb the economics of negligence.

We have been pleased, however, to work with the Kansas Building Industry Association in substantially amending HB 2294 to meet their members' goals with this legislation and at the same time, protect the interests of consumers. We have assisted in crafting the amendments that they offer today. With the adoption of those amendments by the committee, KTLA would not oppose the bill. We would like to express our appreciation to the Kansas Building Industry Association for their willingness to work with us in crafting compromise language.

Thank you for the opportunity to express our concerns about the original version of HB 2294 and to encourage the committee to adopt the amendments offered by the Kansas Building Industry Association.

H. JUDICIARY

Terry Humphrey, Executive Director

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