

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Tuesday, February 3, 2004, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Maribeth Kehl, Clerk of the District Court, Linn County
Jeanne Turner, Chief Clerk, 5th Judicial District, Lyon County
John Steelman, Court Administrator, 4th Judicial District

Others attending:

See Attached List.

Chairman Vratil called for bill introductions, and there were none.

SB 315 - Requiring a \$20 domestic post-decree motion fee on any domestic post-decree motion

Chairman Vratil opened the hearing on **SB 315**. Maribeth Kehl testified in support of **SB 315**, and as a representative of the Kansas Association of District Court Clerks and Administrators. She stated the proposed bill would amend K.S.A. 60-1621. It would allow court staffs to expedite and more efficiently process post-decree motions by assessing a docket fee for all post-decree motions filed under this statute. (Attachment 1)

Having no other conferees appear to testify on the proposed bill, the Chair closed the hearing on **SB 315**.

SB 316 - Requiring judges to sign executions and orders of sale

Chairman Vratil opened the hearing on **SB 316**. Jeanne Turner testified in support of the proposed bill which would clarify procedures set forth in K.S.A. 60-2401(b) as to who sign executions and orders of sale. She explained that the statute, as currently written, states that executions and orders of sale shall be issued by the clerk at the request of any interested person and directed to the appropriate officers of the counties where they are to be levied. Ms. Turner said that no where in the statute is specific wording found to define who is to sign the executions or orders. She added that in practice there are clerks signing them as well as judges.

Ms. Turner stated that because executions and an order of sale are a directive to an officer to seize property and cause it to be sold in satisfaction of a judgment, the proposed amendment would change the subsection ..."executions and orders of sale shall be issued by the clerk and signed by the judge." The change would eliminate clerks from the responsibility of ensuring that all journal entries have been filed and all appeal time has passed. (Attachment 2)

Committee questions related to whether the judges knew about the requested change, and Ms. Turner stated that it was presented to the District Court Judges Association. The judges are aware of it, and are fine with the change.

Chairman Vratil inquired if there were any other individuals who wished to testify on **SB 316**, and seeing none, closed the hearing.

Chairman Vratil asked Senator Betts to introduce his special guests. Senator Betts introduced the cast and crew of the traveling Broadway musical show "Kiss Me Kate" from Manhattan, New York, who would be performing tonight at the Topeka Performing Arts Center. He explained that the Company would be traveling and performing for nine months in 103 cities and 33 states. The Committee gave them a warm

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, February 3, 2004 in Room 123-S of the Capitol.

welcome to the State Capitol of Kansas.

SB 317 - Eliminating the requirement that subpoenaed business records be held indefinitely by the clerk of the district court

Chairman Vratil opened the hearing on **SB 317**. John Steelman testified on behalf of the Kansas Association of Court Clerks and Court Administrators in support of **SB 317** which contains proposed changes to K.S.A. 60-245a. (Attachment 3)

Mr. Steelman explained that the first requested change to K.S.A. 60-245a involved business records that have been subpoenaed. Association members would like to include language in the statute to allow the Clerks of District Court to, either return the subpoenaed records to the parties who submitted them or destroy business records that were not entered into evidence as part of the case record sixty days after termination of the case.

Mr. Steelman said that the second request for amendment would be to K.S.A. 60-245a(2)(b) with the addition of the following language: "Sixty days after the termination of the case, records not introduced in evidence or required as part of the records may be destroyed or returned to the custodian of the records who submitted them, if return has been requested." He explained that Clerks of District Court offices continue to experience severe shortages in vault space needed to house court records. He added that currently Clerks of Court have no specific authorization to destroy or return the subpoenaed business records.

Following brief comments and questions, Senator Oleen inquired if this bill could possibly be an amendable bill instead of a new bill. The Chairman asked for clarification on the number of days desired after termination of the case. He pointed out that Mr. Steelman's testimony said 60 days, and the drafted bill denoted 30 days. Mr. Steelman replied that 30 days would give them sufficient time.

Committee discussion and questions continued regarding defining the termination of a case, and clarification as to the difference between a Court Administrator and a Clerk of the District Court.

Chairman Vratil closed the hearing on **SB 317**.

Sub-Committee assignments were announced by the Chairman. Senator Pugh was assigned to chair one sub-committee with Senator Betts and Senator Allen on the committee. The bills assigned were **SB 321**, **SB 322**, **SB 350**, **SB 354**, and **SB 389**. Senator Schmidt was assigned to chair the second sub-committee with Senator Goodwin and Senator Donovan on the committee. The bills assigned to the second sub-committee were: **SB 318**, **SB 319**, **SB 343**, **SB 356**, and **SB 357**.

Final Action on:

SB 298 - Creation of docket fees for garnishments

Chairman Vratil called for discussion and final action on **SB 298**. The Chairman explained the bill, and referred to proposed technical amendments previously described by Kathy Porter, Office of Judicial Administration. He clarified the requested amendments, and stated the most substantive one was to add to the bill garnishments under Chapter 61. (Attachment 4)

Senator Pugh made a motion to amend the bill in line 22 and replace State General Fund with Judicial Branch Fund. The motion was seconded by Senator O'Connor. Committee discussion followed with the clarification by Chairman Vratil. Previously, the Committee discussed reducing the number of separate funds to which the Statute requires allocation of money. He explained that if the Committee indicated a desire to put all the money in the Judicial Branch Fund and let the Supreme Court divide it between the various needs according to their determination of what is best rather than the Legislature telling them how to do it. He added that the amendment suggested by the Office of Judicial Administration would be contrary to this, and that Senator Pugh's motion would be in line with the Committee's philosophy

Chairman Vratil called for a vote on Senator Pugh's amendment. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Tuesday, February 3, 2004 in Room 123-S of the Capitol.

Senator O'Connor made a motion to adopt Office of Judicial Administration's balloon amendment and in so doing renumber Sections 2 and 3 to Sections 3 and 4 with the authority the Revisor to make any necessary technical amendments, seconded by Senator Donovan, and the motion carried.

Senator Donovan moved to recommend SB 298 favorably for passage as amended, seconded by Senator Goodwin, and the motion carried.

SB 315 - Requiring a \$20 domestic post-decree motion fee on any domestic post-decree motion

Chairman Vratil called for discussion and final action on **SB 315**. He explained amendments that will be in a balloon he has instructed staff to prepare. Chairman Vratil called attention to the line immediately preceding the words "No post-decree motions", and inserting "**In an action of divorce or separate maintenance**". The Chair explained the purpose of the amendment was to make it clear that the statute applies to domestic relations cases and no other type of cases. He said the other portion of the amendment, beginning on line 18 with the word "during" striking that word and all subsequent wording through July 1, 2005 on line 20. He said that language was no longer necessary. The Revisor offered alternative language "**in any Article 16, Chapter 60 case**" for the first part of the amendment, and the Chairman agreed that was better language.

Senator Donovan made a motion to make the amendments as described, seconded by Senator Goodwin, and the motion carried.

Brief discussion followed regarding fiscal impact the bill could possibly have, which according to Office of Judicial Administration, would be none, and whether this was a policy shift. (Attachment 5) Following clarification regarding policy change, the Chairman called for a motion on the bill. Senator Goodwin made a motion to recommend SB 315 favorably as amended for passage, seconded by Senator Oleen, and the motion carried.

Minutes for the January 15 and January 20 meetings were presented for approval. Senator Schmidt made a motion to approve the minutes as written, seconded by Senator Donovan, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 3, 2004.

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February 3, 2004

Senate Bill 315
Post-Divorce Motions

Thank you for allowing me, as a representative of the Kansas Association of District Court Clerks and Administrators, to speak to you today concerning SB 315 relating to post-decree motion docket fees.

Statute currently assesses a \$21 docket fee for filing certain types of post-decree motions.

We have seen documents with very creative titles requiring clerks to spend much time reading to determine what type of motion is being filed.

Therefore, we are requesting that K.S.A. 60-1621 (a) be amended as written in the bill before you.

This would allow us to quickly and more efficiently process these motions by assessing the docket fee to all post-decree motions filed under this statute.

Thank you for your time and allowing us to appear before you today. If you have any questions, I would be happy to answer them.

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Senate Judiciary

2-03-04
Attachment 1

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Senate Bill No. 316
EXECUTIONS AND ORDERS OF SALE
K.S.A. 60-2401

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding Senate Bill No. 316. This bill proposes a clarification of procedures set forth in K.S.A. 60-2401(b) of who signs executions and orders of sale.

The statute, as it is currently written, states that executions and orders of sale shall be issued by the clerk at the request of any interested person and directed to the appropriate officers of the counties where they are to be levied.

No where in K.S.A. 60-2401(b) do you find specific wording on who is to sign these executions or orders. In practice, we have clerks signing them and we also have judges signing them. Because executions and an order of sale are a directive to an officer to seize property and cause it to be sold in satisfaction of a judgment, we are proposing to have this subsection changed to read that . . . **executions and orders of sale shall be issued by the clerk and signed by the judge.** This would eliminate clerks from the responsibility of making sure that all journal entries have been filed and all appeal time has passed—a responsibility we feel that a judge should have—not a clerk.

Thank you for allowing us the opportunity to appear before you today on this bill. I would be glad to answer any questions you may have.

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Senate Judiciary
2-03-04
Attachment 2

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February 3, 2004

SB317

Testimony by John K. Steelman,
Fourth Judicial District Court Administrator

Subpoena of Records of a Business not a Party
K.S.A. 60-245a

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Court Administrators regarding our proposed changes to K.S.A. 60-245a.

The Kansas Association of Court Clerks and Court Administrators is once again respectfully requesting a change to KSA 60-245a, which involves business records that have been subpoenaed. The association members would like to include language in the statute allowing the Clerks of District Court to, either return the subpoenaed records to the parties that have submitted them or destroy the business records that have not been entered into evidence as part of the case record sixty days after termination of the case.

We would request that KSA 60-245a(2)(b) would be amended with the addition of the following language:

“Sixty days after the termination of the case, records not introduced in evidence or required as part of the records may be destroyed or returned to the custodian of the records who submitted them, if return has been requested.”

The association has been requesting this change since 1998. Clerks of District Court offices continue to experience severe shortages in vault space needed to house the ever increasing number of court records. Currently Clerks of Court have no specific authorization to destroy or return these subpoenaed business records so they take up valuable records space in the Courthouses.

Thank you for allowing me the opportunity to speak before you today on our proposed change.

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Senate Judiciary
2-03-04
Attachment 3



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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(785) 296-2256

January 22, 2004

Senate Judiciary Committee

Testimony on Senate Bill 298
Kathy Porter

There are a few technical amendments that would appear necessary to carry out the intentions of SB 298.

The language in lines 18 and 19 providing that "no case shall be docketed or filed" without payment of the docket fee would require payment at the filing of each Chapter 60 case, regardless of whether a garnishment will ultimately issue out of the case or not. Replacing that language with the phrase, "no garnishment shall be issued," would mean that the \$5 fee would be charged only when a garnishment actually occurs.

Although K.S.A. 2003 Supp. 61-3501 states that the provisions of Article 7 of Chapter 60 relating to attachment shall govern the attachment proceedings pursuant to the Code of Civil Procedure for Limited Actions, K.S.A. 2003 Supp. 61-3502, "Nature of garnishment," is identical to K.S.A. 2003 Supp. 60-729. A technical amendment would make the same amendment in the Chapter 61 provision as in the Chapter 60 provision, removing any doubt as to whether the provisions of this bill apply to Chapter 61 garnishments, which is indeed the chapter under which the bulk of garnishments are filed.

In line 21, payment of the fee to the State Treasurer would be an option, but I believe the intent was that payment be made to the Clerk of the District Court, for remittance to the State Treasurer.

In lines 21 and 22, requiring the State Treasurer to deposit and credit the fees to the State General Fund would require more work from the clerks of the district court, if the clerks are to collect the fees. The mechanism present in current law, having the clerk remit the fees to the State Treasurer pursuant to K.S.A. 2003 Supp. 20-362, for distribution pursuant to K.S.A. 2003 Supp. 20-367, would allow the clerks to handle this fee in the same manner as other docket fees. If this option is chosen, the percentages included in K.S.A. 2003 20-367 would need to be amended so that each fund receiving a portion of the docket fees is held harmless, with the estimated increase credited as this committee desires. I would provide those amended percentages if the Committee selects this option.

Thank you for your consideration of this issue.

Senate Judiciary

2-03-04

Attachment 4

SENATE BILL No. 298

By Special Committee on Judiciary
1-9

AN ACT concerning civil procedure; relating to docket fees; amending
K.S.A. 2003 Supp. 60-729 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 60-729 is hereby amended to read as follows: 60-729. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

(b) Except as otherwise provided by law, no case shall be filed or docketed garnishment shall be issued under article 7 of Chapter 60 of the Kansas Statutes Annotated and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court, for remittance to the state treasurer pursuant to K.S.A. 20-363 and amendments thereto, for deposit in the state treasury and distribution according to K.S.A. 20-367 and amendments thereto.

New Section 2. K.S.A. 2003 Supp. 61-3502 is hereby amended to read as follows: 61-3502. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

(b) Except as otherwise provided by law, no case shall be filed or docketed garnishment shall be issued under article 35 of Chapter 61 of the Kansas Statutes Annotated and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court, for remittance to the state treasurer pursuant to K.S.A. 20-363 and amendments thereto, for deposit in the state treasury and distribution according to K.S.A. 20-367 and amendments thereto.

Sec. 3. K.S.A. 2003 Supp. 60-729 and 61-3502 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

February 3, 2004

The Honorable John Vratil, Chairperson
Senate Committee on Judiciary
Statehouse, Room 522-S
Topeka, Kansas 66612

Dear Senator Vratil:

SUBJECT: Fiscal Note for SB 315 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 315 is respectfully submitted to your committee.

SB 315 would eliminate restrictions on charging docket fees for domestic post-decree motions.

The Office of the Judicial Administrator states that it does not know how many post-decree motions the courts will receive that are applicable to this bill, but that presumably more fees would be charged. The fiscal effect of SB 315 would best be assessed after courts have had an opportunity to operate under the new provisions.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Brandy Wheeler, Judiciary

Senate Judiciary

2-3-04

Attachment 5