

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Monday, February 16, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator Barbara Alien (E)
Senator Lana Oleen (E)

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:

Mary Jo Grant, Outreach Ministry to Survivors of Childhood Sexual Abuse of the First United Methodist Church, El Dorado, Ks.
Arlis-Marie Gillcrest, Survivor, Park City, Ks.
Iris Lawrence, Survivor, El Dorado, Ks.
Mike Farmer, Kansas Catholic Conference
John Jurcyk, Jr., Attorney for Roman Catholic Archdiocese of Kansas City, Ks.
Woody Moses, Kansas Aggregate Producers Association and Kansas Ready Mixed Concrete Assn.
Leslie Coffman, Kansas Cooperative Council
Kim Alan Brnes, Pawnee County Coop Association
Kathy Porter, Office of Judicial Administration
Kansas District Judges Association
Doug Smith, Kansas Collectors Association and Kansas Credit Attorneys Association

Others attending: See attached list.

SB 436 - Statute of limitations on childhood sexual abuse extended to 30 years

Chairman Vratil opened the hearing on **SB 436**, and explained the proposed legislation. Mary Jo Grant testified on behalf of the Outreach Ministry to Survivors of Childhood Sexual Abuse of the First United Methodist Church, El Dorado, in support of **SB 436**. She said her organization had researched Statutes of Limitations for childhood sexual abuse for many other states, and found that many states have made improvements in their statutes in the last few years, i.e. Illinois, Arizona, Washington, Colorado, and Connecticut. (Attachment 1)

Mrs. Grant stated that the current Kansas Statute K.S.A. 60-523 (which provides three (3) years to bring an action after the victim turns 18) has a proviso in Paragraph (a) which is designed to provide legal redress for victims of abuse; however, it needs to be revised because it excludes a sizeable number of persons that it is meant to protect. She said her organization was suggesting a change from an initial limitation of three (3) years to 30 years. She stressed several key points to support the requested change which are outlined in detail in her written testimony. One point Mrs. Grant made was that young victims are so traumatized that they cope by forgetting or dissociating or repressing memories of the trauma which do not surface until something triggers the memories and they surface much later in life, typically by ages 30 or 40. She added that almost all victims develop Post Traumatic Stress Disorder (PTSD).

Mrs. Grant introduced the other members of her committee. They included Rev. David Weigle; Jack Dixon, a St. Paul Seminary student; Arlis-Marie Gillcrest, survivor and former multiple personality disorder and now integrated; Iris Lawrence, a survivor from El Dorado; and Ervin Grant, volunteer legal advisor. Ms. Gillcrest spoke briefly about her case history and medical treatments as a victim of child abuse perpetrated by her father. Ms. Iris Lawrence, survivor from El Dorado, expressed her appreciation to the Committee for all it does to help the citizens of Kansas. She gave a prepared statement in support of **SB 436**.

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Committee discussion and questions followed which included some testimonial experiences of survivors. Senator O'Connor questioned whether there had been any inquiries from insurance companies as to what would happen to the premiums for liability insurance if the legislature passed **SB 436**.

Mike Farmer, Kansas Catholic Conference, testified in opposition to **SB 436**. He related that the statutes of limitations exist in order to balance the rights of the victim and the accused. He said they exist because the truth is more difficult to determine as time passes and recollections fade. He explained that the vast majority of cases brought forth involving child sexual abuse by the clergy occurred in excess of 20 years ago, at a time when psychiatry, law and medicine believed that child sexual abuse was a moral lapse, rather than an incurable disease. He concluded that the proposed bill does not appear to increase protection so much as it unduly expands the liability of institutions, school districts, churches, and the many public and private entities that serve children and vulnerable adults. (Attachment 2)

John Jurcyk, Jr., Attorney for the Roman Catholic Archdiocese of Kansas City in Kansas, testified in opposition to **SB 436**. He stated that sexual abuse is not a Catholic Church problem; it is a societal problem. He said statistical evidence supports that 90% of child sexual abuse is committed by parents or relatives. He talked about Statutes of Limitations being deadlines intended to promote the timely and efficient litigation of claims. He explained the Kansas Statute of Limitations for contract cases is five years and two years for tort actions, and current KSA 60-523 provides for a greater period of time in cases of childhood sexual abuse to a minor.

Mr. Jurcyk was concerned that a 30-year time limit could create unforeseen consequences, and he gave several examples as outlined in his written testimony. He said by extending the statute, Kansas courts could be deluged with a torrent of cases, some of which may be meritorious, and some not. However, Mr. Jurcyk stated the policy of the State of Kansas is that stale claims should not be pursued. He concluded by saying that the court system is backlogged under the current Statute of Limitations, and KSA 60-523 is not broken and does not need fixing. He added that the amendments to KSA 60-523 are not fair and do not afford due process to all concerned. (Attachment 3)

Following brief discussion, the Chairman closed the hearing on **SB 436**.

SB 437 - Raising small claims limitation to \$5,000, with an increase every 3 years based on the consumer price index

Chairman Vratil opened the hearing on **SB 437**. Woody Moses, Kansas Aggregate Producers Association and Kansas Ready Mixed Concrete Association, testified in support of the proposed legislation. He said the members of the Association routinely used the Small Claims Act since its inception in 1973, and in the past it has been a valuable tool. In recent years its value has been reduced because the claim limit has remained at \$1,800 since 1994. He stated the current legal limitations prevents access in two ways: (1) It limits the number of eligible claims; and (2) the availability of legal counsel willing to accept cases of low value is limited. (Attachment 4)

Mr. Moses explained that if **SB 437** were enacted, it would raise the statutory limit in small claims actions from the current \$1,800 to \$5,000 with an increase every three years based on the Consumer Price Index (CPI).

Committee questions and discussion followed. Senator Donovan stated the bill would greatly benefit small businesses because they would not have to go to court saving them time and expense. Mr. Moses agreed.

Senator O'Connor asked if the decision to change from \$1,800 to \$5,000 was based on the CPI. Mr. Moses responded that \$5,000 is approximately the CPI, and his association did not come up with that figure. Chairman Vratil clarified that the bill was introduced by the Committee and not Mr. Moses.

Leslie Coffman, representing the Kansas Cooperative Council, testified in support of **SB 437**. She stated there was a growing interest within the Coop Council's membership to increase the dollar amount for which remedy can be sought in small claims court, and to increase the number of claims per year one can

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Monday, February 16, 2004 in Room 123-S of the Capitol.

file in that court. She attached copies of two emails to her written testimony illustrating the need for many cooperatives to have increased access to small claims court for amounts larger than the current \$1,800 limit. (Attachment 5)

Kim Alan Barnes, Pawnee County Coop Association, Larned, Ks., submitted written testimony in support of **SB 437**. (Attachment 6)

Kathy Porter, Office of Judicial Administration (OJA), testified in opposition to **SB 437**. She stated OJA requested deletion of the provision allowing for an adjustment of the small claims jurisdictional limitation every three years based on the average increase in the CPI for the previous three years. OJA was concerned the clerks of the District Court would spend a great deal of time answering questions from the public. With the change, clerks would not be able to refer the public to a statute, but would have to refer the public to both a statute and a memorandum from the Judicial Administrator. Ms. Porter requested that if the provision remains in **SB 437**, the date for the CPI adjustment be amended to read, "On July 1, 2007, and every three years thereafter." She explained that the CPI for calendar year 2006 would not be available on January 1, 2007, and at the July date it would be plus the State of Kansas runs on a fiscal year basis. (Attachment 7)

Written testimony in opposition to **SB 437** was submitted by the Kansas District Judges Association. (Attachment 8)

Doug Smith, representing the Kansas Collectors Association and Kansas Credit Attorneys Association, submitted written testimony in opposition to **SB 437**. (Attachment 9)

Following brief Committee discussion and questions, the Chairman closed the hearing on **SB 437**.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 17, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon, Feb. 16, 2004

NAME	REPRESENTING
Erin Grant	First United Meth. Church
Mary Jo Grant PhD	First United Meth Church El Dorado
Julys-Mareilchrist	First United Meth. Ch - El Dorado
Jail Decision	Potomac First United Methodist
Iris Lawrence	First United Methodist Church
Rev. David Weible	First United Methodist Church, El Dorado
Sue Christmas	Private Counselor
Bill Lucas	Murder Victims' Families for Reconciliation
Kirk W. Lowrey	KAPS
Bill Trenkoe	Catholic Diocese of Dodge City
Mike Farmer	Kansas Catholic Conference
JOHN J JURCYK JR	ATTY, Arch Diocese of KCK
Redym. Nearrell	K. G. C.
Kon Wurtz	KJC
Sandy Bennett	KCSDV
Wendy M. Arms	KAPA
W. Holmes	KRMCA
Rt. Mey	HEIN Law Firm
PATRICIA BIGGS	KS Sentencing Comm

MEMO

FROM: The Outreach Ministry to Survivors of Childhood Sexual Abuse
First United Methodist Church
El Dorado, Kansas

Mary Jo Grant

TO: Judiciary Committee of the Kansas Senate
John Vratil, Chairman
2004 Session

DATE: February 10, 2004

RE: Revision of current State Statute for childhood sexual abuse

We have researched Statutes of Limitations for childhood sexual abuse for many other states and have found that many states have made improvements in their statutes in the last few years: among them are Illinois, Arizona, Washington, Colorado and Connecticut.

The current Kansas Statute K.S.A. 60-523 (which provides 3 years to bring an action after turning 18) has a proviso in Paragraph (a) which is designed to provide legal redress for victims of abuse, but needs to be revised because it excludes a sizable number of those that it is meant to protect. The unique characteristics that most victims display simply cannot meet the criteria of the present statute even though the tolling provision attempts to do just that. We are suggesting a change from an initial limitation period of 3 years to 30 years.

KEY POINTS

- A problem with the present Kansas Statute is that the Kansas Supreme Court has interpreted it to require a plaintiff to take action within 3 years after turning 18 years of age or to prove THAT THEIR PRESENT DISABILITY WAS CAUSED BY CHILD ABUSE TO A COURT OR JURY BEFORE THEY CAN EVEN GET INTO COURT. In other words, the statute has been interpreted to require that in order to have one's day in court, one must first go to court to prove that they are not barred by the Statute of Limitations and many abuse victims simply cannot surmount that hurdle.
- Young victims are so traumatized that they cope by forgetting or dissociating or repressing memories of the trauma which do not surface until something triggers them and they surface much later in life (typically by ages 30 or 40).
- Almost all victims develop PTSD or Post Traumatic Stress Disorder, which is explained in the Diagnostic and Statistical Manual for Psychiatric Disorders IV as a disabling disorder that includes flashbacks of actual events, numbing out, dissociation, recurrent distressing dreams, distortion of reality, denial, body memories (trauma is stored in tissue) hyper arousal, rage and suicidal ideology. Most victims bury the trauma until it erupts and dominates conscious reality.

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Attachment 1

- The present Kansas Statute is based on the assumption that victims know and can articulate what happened to them. A five or six year old hasn't the vocabulary or maturity to process the trauma. The reality is that most victims cannot. Many do not remember for years even though the trauma is producing disturbing physical and psychological symptoms.
- One in three females and one in five males experience sexual abuse by age 18 (National Crime Victims Research Center 2002).
- In 2000, 19,736 children were reported as abused or neglected in Kansas (Kansas ATTACH December 3, 2003). It is estimated that only 1/3 of abuse cases are reported.
- We need a revision of the statute which will relax the burden of taking immediate action to recover for the disabling consequences of childhood sexual abuse the way other states have done. The statute is designed to help only in civil and not criminal cases.
- The unique Connecticut Statute comes the closest, in our opinion, to taking all aspects of childhood sexual abuse into account. It gives the victim 30 years from age 18 to bring civil action against the abuser. It seems a realistic, reasonable, and compassionate time allowance when all the life-long injury resulting from the trauma of abuse to a child is taken into consideration.
- Perpetrators have had a measure of protection from their crimes for too long. It is time to protect the victims. A revision of the current statute would hold the abuser accountable longer than 3 years and gives the victims a chance to heal so that they are able to bring legal action.
- A brief description of statutes of other states which have recently been changed to address this problem are attached hereto, and reference is made to the web site below for others.

Respectfully submitted,

Iris Lawrence
Paula Zintchen

Mary Jo Grant, Ph.D. for the Committee
First United Methodist Church
El Dorado, Kansas

Rev. David White
Mary Jo Grant
Jack M. Dickson
Alex - Marie J. J. - Sullivan

Web site: For information about other state statutes
[http://www.smith-lawfirm.com/sol_\(enter state name\).html](http://www.smith-lawfirm.com/sol_(enter state name).html)



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Testimony in Opposition to Senate Bill 436

Chairman Vratil and members of the committee:

Thank you for the opportunity to testify in opposition to Senate Bill 436, which would increase, from 3 years to 30 years past the age of 18, the statute of limitations on recovery of damages from child abuse. My name is Mike Farmer and I am the Executive Director of the Kansas Catholic Conference, the public policy office of the Catholic Church in Kansas.

It is my understanding that statutes of limitations exist in order to balance the rights of the victim and the accused. They also exist because the truth is more difficult to determine as time passes and recollections fade. If a claim is not asserted until years after an event took place, it is more likely that witnesses may have become deceased or moved away, and other relevant evidence may no longer exist. Even witnesses who are still alive may no longer accurately recall the underlying events that formed the basis for a claim. In such cases, it would be difficult if not impossible to ascertain what actually occurred.

The vast majority of cases that have been brought forth involving child sexual abuse by the clergy occurred in excess of 20 years ago, at a time when psychiatry, law and medicine believed that child sexual abuse was a moral lapse, rather than an incurable disease. Another reason for statutes of limitation is to assure that the accused will be judged by knowledge and understanding available at the time an injury occurred.

I would like to take a few minutes to update you on the recent actions taken by the Catholic Church to prevent any future situations of child abuse by priests or other church ministers and volunteers. On June 12, 2002 the Bishops of the United States took decisive action by adopting a *Charter for the Protection of Children and Young People*. The *Charter* mandated that every diocese in the United States put into place certain structures and procedures to assure the safety of children and young people in the future. Some of the provisions of the *Charter* include reporting any allegation of sexual abuse of a person who is a minor to public authorities, criminal background checks on all church personnel who regularly minister to children, the establishment of a diocesan Victim Assistance Coordinator, diocesan seminars or workshops on the

MOST REVEREND GEORGE K. FITZSIMONS, D.D.
DIOCESE OF SALINA

MOST REVEREND JAMES P. KELEHER, S.T.D.
Chairman of Board
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND THOMAS J. OLMSTED, J.C.D., D.D.
DIOCESE OF WICHITA

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.
DIOCESE OF DODGE CITY

MOST REVEREND EUGENE J. GERRER, S.T.L., D.D.

MOST REVEREND MARION F. FORST, D.D.
RETIRED

MICHAEL P. FARMER
Executive Director

Senate Judiciary

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nature of child sexual abuse and its prevention, the formation of a lay review board to assist the Bishop when allegations arise, the implementation of age-appropriate educational programs for children to prevent future victimization, the establishment of a national Office of Child and Youth Protection, and the permanent removal of any priest or deacon who is proven guilty of child sexual abuse.

Recently an audit was conducted to determine the compliance of each diocese with the mandates of the *Charter*. A national, independent, auditing firm that employs former F.B.I. agents and other professionals who have been involved in law enforcement conducted this audit. The auditing firm conducted onsite visits of every diocese in the country. The results were released to the media last month. All four dioceses in Kansas were found to be in full compliance with the dictates of the *Charter*. The official results of the audit for each diocese can be found on the United States Bishops website at www.usccb.org. I am very proud of the steps that my Church has taken in this regard.

We continue to pledge our assistance toward reaching our mutual goal of increasing the protection of all the children in the State of Kansas. The bill you are currently considering does not appear to increase protection so much as it unduly expands the liability of institutions, school districts, churches, and the many public and private entities that serve children and vulnerable adults.

We urge you, Mr. Chairman and members of this committee, to not recommend this bill favorably for passage.

Thank you.



Michael P. Farmer
Executive Director

STATEMENT OF JOHN J. JURCYK, JR., ATTORNEY FOR THE ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS, A NON-PROFIT CORPORATION, A KANSAS CORPORATION BEFORE THE SENATE COMMITTEE ON THE JUDICIARY

Re: S.B. 436
February 16, 2004

Chairman Vratil and Members of the Committee:

My name is John J. Jurcyk, Jr. I am with a law firm in Kansas City, Kansas, called McAnany, Van Cleave & Phillips, P.A. I am the general counsel for The Roman Catholic Archdiocese of Kansas City in Kansas. The Archdiocese comprises 21 counties in northeast Kansas. The Catholic population of this area is over 192,000. In Kansas, there are three other Catholic dioceses, namely Wichita, Salina, and Dodge City. I represent the Archdiocese of Kansas City in Kansas.

I am reminded of the old Polish proverb that says, "If it ain't broke, don't fix it." K.S.A. 60-523, I submit, is not broken and does not need fixing.

I am not aware of any compelling reasons that require the present K.S.A. 60-523 to be amended to increase the limitation period to 30 years. Sexual abuse is not a Catholic Church problem. It is a societal problem. Statistical evidence that 90 percent of child sexual abuse is committed by parents or relatives. The Catholic Church has received the notoriety. It has taken unprecedented action for a church organization to remedy the matter.

1. Public Policy And Statutes of Limitations

A statute of limitations is any law which fixes the time within which parties must take judicial action to enforce rights or else thereafter be barred from enforcing them.

Statutes of limitation are deadlines. They are intended to promote timely and efficient litigation of claims. The right to be free from a claim upon which the statute of limitations has expired is as important as an aggrieved party's right to file an action. The defense of the statute of limitations stands upon the same place as any other legal defense; it is legitimate and meritorious. 51 Am. Jur. 2d Limitations of Action §§ 2, 6.

The Kansas Supreme Court has said that statutes of limitation are enacted to prevent fraudulent and stale claims from springing up at great intervals of time and surprising the parties or their representatives when all proper vouchers and evidence are lost or the facts have become obscure from the last lapse of time or defective memory, death, or removal of witnesses. *Bott v. Equitable Life Assurance Society of the United States*, 147 Kan. 671 (1938).

A federal court sitting in Kansas has also said that statutes of limitation represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them. Statutes of limitation protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, or disappearance of document or otherwise. *City of Wichita v. Aero Holdings, Inc.*, 177 Fed. Supp. 2d 1153, 1178 (D. Kan. 2000). CF. *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

A treatise on statutes of limitation has said that the primary purpose of a statute of limitations is to compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend, that is, to present without undue delay the bringing of a suit or claim and to encourage promptness and diligence in bringing actions. Statutes of limitation reflect the understanding that a party will generally choose to pursue available claims rather than wait indefinitely to do so. 51 Am. Jur. 2d, Limitations, § 14, 16, 17.

Statutes of limitation are designed, in part, to protect potential defendants from the fear of litigation and to promote repose and security by bringing finality to disputes. Statutes of limitation are intended, in part, to prevent burdening courts with stale claims and to promote judicial economy.

The public policy of Kansas as announced through the courts is that claims should be pursued timely, diligently, and efficiently and that the courts should not have to deal with stale claims where witnesses, documents, and evidence are lost or unavailable and memories are faded.

2. Kansas Statute of Limitations

At the present time, the Kansas statute of limitations for contract cases is five years and two years for tort actions. If a person under 18 is involved in a car accident, for example, that person may bring that action at any time up to his or her 18th birthday, and after his or her 18th birthday, that person may bring the action within one additional year.

The current K.S.A. 60-523 provides for a greater period of time in cases of childhood sexual abuse to a minor. The statute permits the minor to bring the action at any time after the incident and has an additional three years after his or her 18th birthday to bring the action. The statute also provides that if the damage from the alleged sexual abuse is not known, and the person later discovers it, he or she has three years from the date of discovery of the injury or three years from the date that the person should have reasonably known about it. This last provision, I understand, is an exception for the so-called repressed memory syndrome.

3. Senate Bill 436

Senate Bill 436, as proposed, would give the minor 30 years after the person's 18th birthday to file suit. So that person could file up to his or her 48th birthday.

In essence, this means that a person who was allegedly abused at age 16 could file a suit at any time for the next 30 years after the 18th birthday. And the person would only be time-barred after the 48th birthday. But if there is a repressed memory syndrome injury, then the case could be brought at any time within the three years of discovering the injury.

Not only does the Senate Bill 436 give the right for anyone to proceed with a case for the next 30 years; the bill goes further to say that any claims that occurred prior to the date of the enactment of the statute within the last 30 years may also be brought. Consequently, in my judgment, the longstanding Kansas public policy as proclaimed by the Kansas courts that claims should be pursued timely and efficiently and that courts should not deal with stale claims, dead witnesses, and lost evidence is being violated.

4. Concerns

Please keep in mind that the statute does not deal with claims of sexual abuse involving only ministers and priests; it covers everyone. A 30-year time limit could create unforeseen consequences.

For example, let's take a high school coach of a girls' softball team. The coach is 50 years old. A girl is 15 years old. Thirty-three years later, the girl, at age 48, brings a claim that the coach, now 83, abused her sexually while on a trip to a high school softball tournament. The coach, now 83 years old, is going to have to defend himself. His school district will have to defend itself. What insurance policy is applicable? Is the policy itself still in existence? What is covered by the policy? Where are the witnesses? The records are gone. The witnesses, if available, have scattered. It is simply not fair to allow suits 33 years after the alleged incident. What will we lose as a society? Who will want to volunteer to work with youth groups or coach teams?

The popular media complains that we live in a litigious society. For example, there was a hue and cry about the \$200,000 plus verdict against McDonalds in a case where a lady went through the McDonalds drive-through and put the cup of hot coffee between her legs while driving away from the drive-up window. The coffee spilled and her legs were burned. The woman sued McDonalds and the jury rewarded her. You will note that all McDonalds coffee cups now have a warning stating the obvious, that the coffee is hot.

By extending the statute to 30 years, Kansas courts could be deluged with a torrent of cases, some of which may be meritorious, and some not. However, the policy of the state of Kansas as announced in its courts is that stale claims should not be pursued, that there ought to be a time when a person may no longer pursue a claim.

In preparation for my testimony, I visited with an attorney in Los Angeles, California. The California legislature recently passed a one-year moratorium of the statute of limitations for sexual abuse cases. The Los Angeles Archdiocese has now been sued over 500 times. Those cases go back to the 1930s, '40s, '50s, '60s, '70s, '80s, and the '90s.

How does one evaluate, defend, or try to settle claims occurring in 1930 when the alleged perpetrator is deceased? Witnesses are scattered. Memories are faded. Who among you could go back and determine the name of your insurance carrier 30 years ago and what the policy covered or did not cover? Most institutions do not keep their records forever. In one case in Los Angeles, they compared the date of the alleged incident with the priest's records and they found that at the time of the date of the claim, the priest would have been two years old. This is not to say that all of those claims are not without merit; however, the opportunity for claims that are without merit is there.

How does an insurance company underwrite a policy if the statute of limitations is 30 years? Is that policy affordable? How much is the premium?

Another problem presented in permitting stale claims to be brought is that prior to 1985, there were no cases on the law books where any church or organization was held responsible for the individual sexual misconduct of an employee or minister because it was clear that such conduct was not in the scope of that person's job duties with the church or employer. Since 1985, the laws have changed somewhat, and what may happen is actions occurring in the 1930s, '40s, '50s, and '60s, will be judged by today's standards. For example, can you fault a manufacturer of 1940 automobiles for not having seat belts which are required today?

5. Unintended Consequences

Extending the time period to 30 years may involve what I call the law of unintended consequences. For example, a person might open a car window in the garage to air out the car, but the motor is running and carbon monoxide enters the vehicle and the person becomes ill.

The amendments to House Bill 436, while intending to help victims of sexual misconduct, might have the opposite effect. It seems to me that the best thing for people who claim to have been abused sexually is to come forward and come to terms with their victimization. I submit that one of the reasons for not extending the statute of limitations is that it does not help a victim begin the process of healing to be waiting for 30 years to pursue justice. If anything, victims should be supported by the law to come forward sooner. If there are perpetrators, delaying the statute of limitations would allow those perpetrators to continue in their activities with the victims and, potentially, others.

Coming forward takes courage, but that courage should be encouraged by the law because the sooner the better for all concerned. The goal of American justice has always been to be swift, timely,

efficient, and fair. Nor does delay assist the organization in dealing with the problem.

6. Conclusion

The work to stop victimization is best applied in prevention and education. The Boy Scouts of America and the Catholic Church are two examples of organizations doing that.

We live in a world of limitations. If a person is in a car wreck, he or she has two years in which to bring a case. If a minor is in a car wreck, he or she may bring the case at any time and has one year after his or her 18th birthday in which to bring a case.

Periodically, people come to my office with potential motor vehicle personal injury claims. The claims are meritorious; however, I am forced to tell them when the statute of limitations has expired.

Our courts are backlogged under the current statute of limitations. K.S.A. 60-523 is not broken and does not need fixing. Extending the limitations for 30 years, in my judgment, will dramatically increase litigation and insurance costs and is not fair to everyone concerned. There are no compelling reasons for the amendments to K.S.A. 60-523. The amendments are not fair and do not afford due process to all concerned.

I recommend that K.S.A. 60-523 remain as it is.

Thank you.

KRMCA

Kansas Ready Mixed
Concrete Association

KAPA

Kansas Aggregate
Producers' Association

TESTIMONY

By the
Kansas Aggregate Producers' Association
Kansas Ready Mixed Concrete Association

Before the
Senate Committee on Judiciary

Regarding SB 437

February 16, 2004

Mr. Chairman and members of the committee, my name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association and the Kansas Ready Mixed Concrete Association. We are a statewide trade association, comprised of over 250 members, producing sand, gravel, crushed rock, and concrete products, and one of the few industries to be represented in every county in the state.

Our members have routinely used the Small Claims Act since its inception in 1973, and in the past it has been a valuable tool. In recent years this value has been reduced by increasing difficulty utilizing the system as the claim limit has remained at \$1,800 since 1994. In effect preventing access to it in two ways; 1.) by limiting the number of eligible claims, and 2.) the limited availability of legal counsel willing to accept cases of low value.

If enacted SB 437 would raise the statutory limit in small claims actions from the current \$1,800 to \$5,000, with an increase every three years based on the consumer price index, allowing small business owners greater flexibility in the filing of small claims. We believe all Kansans would be better served by raising the current \$1,800 to \$5,000 for the following reasons by:

- Enabling producers to resolve a greater number of claims without having to secure the services of a lawyer or go to the expense of a formal trial.
- Reducing the filing of suits either in the limited actions division, or the district court, thus relieving workload in these areas.

Since its inception in 1973, the Kansas Small Claims Act has become a valuable legal service, allowing many Kansans greater access to their judicial system. Please join us in making this an even better system by recommending SB 437 favorably for passage.

Thank you for receiving our comments on SB 437, I will be happy to respond to any questions you may have at this time.

Senate Judiciary

2-16-04

Attachment 4



**Leslie Kaufman, Director
Governmental Relations
Kansas Cooperative Council**

Senate Judiciary Committee
February 16, 2004

SB 2437 - Small Claims Court Limitations

Chairman Vratil and members of the Senate Judiciary Committee. Thank you for the opportunity to appear today on behalf of the Kansas Cooperative Council (Council/KCC) and share our support for SB 437. As you know, this bill increases the dollar amount for which recovery can be sought in small claims court. I am Leslie Kaufman and I serve the Council as Director of Governmental Relations. The Council has a membership of 186 cooperative businesses. Together, they have a combined membership of nearly 200,000 Kansans.

Over the past few years, there has been a growing interest within our membership to increase the dollar amount for which remedy can be sought in small claims court and to increase the number of claims per year one can file in this court. I have attached two emails, with permission of the senders, to my testimony today that illustrate the need for many cooperatives to have increased access to small claims court for amounts larger than the current \$1,800 limit. As you can see by the 2003 dates, this is an issue the Council has been discussing for some time.

We do appreciate that this bill is before you now, and that your committee is considering this measure. We appeared in the House Judiciary Committee last week in support of a similar measure, HB 2678. We certainly welcome legislative action to increase the claim amount available in small claims court and would respectfully request that you also consider increasing the number of times per year an entity can file in small claims court.

Thank you.

Senate Judiciary
2-16-04
Attachment 5

Council@Kansasco-op.coop

From: "Joe Biswell" <joe@stmaryscoop.com>
To: <Council@kansasco-op.coop>
Sent: Tuesday, January 14, 2003 10:00 AM

I am writing in response to your proposal to take legislation to Topeka to up the number of Small Claims that can be presented per year per county and the dollar amount. We have a propane business and will on average send a number of cases to an attorney as the year winds down because of the present limit. Without being specific I looked at our payables to the attorney for collection fees and it shows we spent over \$6,000.00 in 2002. Well over a third of this could have been saved had we have been able to handle them ourselves. Thanks for your help. Joe Biswell, Credit Manager, Farmers Union Coop, St. Marys, Kansas 66536 785-437-2984

Page 1 of 1

Diane@Kansasco-op.coop

From: "Dennis Taylor" <dennist@frontier-equity.com>
To: <council@kansasco-op.coop>
Sent: Thursday, January 09, 2003 3:52 PM
Attach: Small Claims Court.doc
Subject: Small Claims Court

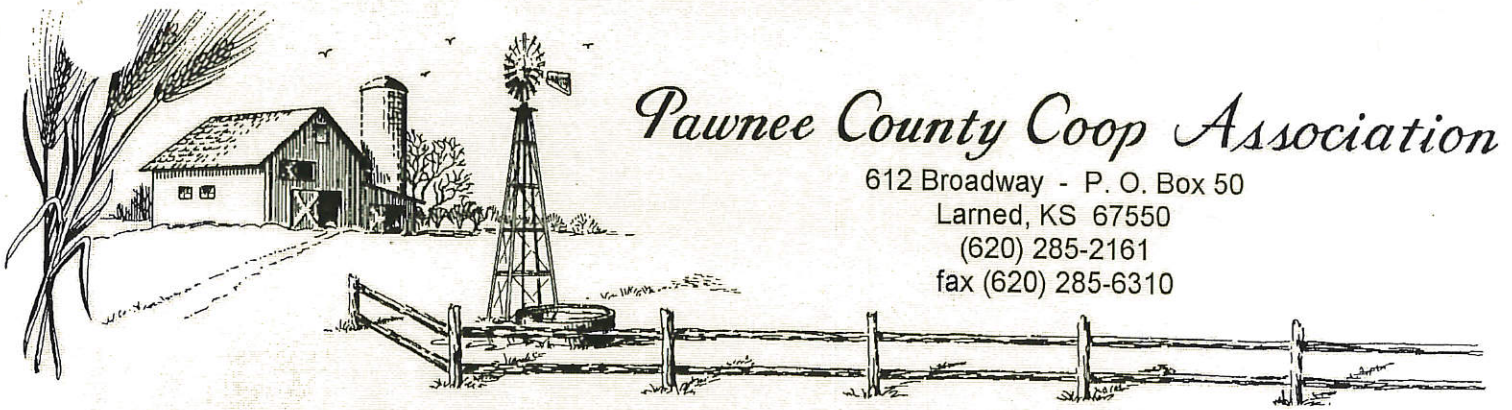
Co-op Council

January 9, 2003

The Frontier Equity Exchange feels it is necessary to raise the small claims filings from the current 10 appearances a year, up to at least 20 appearances a year. The Frontier Equity Exchange reasoning is due to the increased number of unpaid debts due to the tough economical times in which the current business owners and cooperatives can not afford to absorb these losses. The amounts of these unpaid debts have grown in size to an average \$2500.00 up to \$5000.00. Under the current small claims laws if a business chooses to pursue these unpaid debts we have to seek a lawyer at which time we loose approximately half of the unpaid debt in legal fee's. The small claims court of Kansas would hopefully increase the dollar amount from \$1800.00 to \$2500.00 or higher to help take the burden of these losses from small business.

Dennis Lee Taylor

Credit Manager



Pawnee County Coop Association

612 Broadway - P. O. Box 50
Larned, KS 67550
(620) 285-2161
fax (620) 285-6310

February 16, 2004

Dear Legislators,

Our letter today is in support of Senate Bill No 437, an amended change to K.S.A. 61-2003. In today's economy the current statute that only allows small claims action not to exceed \$1,800.00 is inadequate. We feel that changing the not to exceed level to \$5,000.00 will be a right decision. Changing the limit to \$5,000.00 will allow individuals to recover more of the debt owed without incurring legal fees. We exercise our rights given to us under law to collect accounts. This increase will also help our producers who sell alfalfa and other commodities the current level of \$1,800.00 only covers a part of a load of hay so they have to seek legal council for collection.

Amounts higher than \$1,800.00 under the current statute requires an attorney representation. This only adds cost of collection and reduces our ultimate recovery of the bad account. In to-days economy the \$5,000.00 level will allow more people to represent themselves in collecting past due accounts.

Currently the statute allows for 10 fillings in a calendar year per judicial jurisdiction. We ask that consideration be given to increase this to 20 to 25 times per year.

Thank you for this opportunity to share with you our thoughts on Senate Bill 437.

Cordially yours,

Kim Alan Barnes

Senate Judiciary

2-16-04

Attachment 6



State of Kansas

Office of Judicial Administration

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

(785) 296-2256

February 16, 2004

Testimony on **SB 437**

Kathy Porter

For the same reasons noted in the written testimony from the Kansas District Judges Association Executive Board, the Office of Judicial Administration requests deletion of the provision allowing for an adjustment of the small claims jurisdictional limitation every three years based on the average increase in the Consumer Price Index (CPI) for the previous three years. Every day, the clerks of the district court spend a great deal of time answering questions from the public. While the small claims jurisdictional limitation in effect could be prominently displayed on the Judicial Branch website and in the clerks' offices, it is our current experience that these methods do not stop the public from telephoning for this information or from questioning the accuracy of a particular document or piece of information. In this instance, the clerks will not be able to refer the public to a statute, but will have to refer the public to both a statute and a memorandum from the judicial administrator.

If this provision remains in SB 437, it is requested that the date for the adjustment be amended to read, "On July 1, 2007, and every three years thereafter." On January 1, 2007, the CPI for calendar year 2006 will not be available. We would have to use the CPI for calendar years 2003, 2004, and 2005. Use of this method would mean that the adjustment made every three years would always be one year behind. If the date were July 1, 2007, the CPI for calendar year 2006 would be available, and the average CPI of calendar years 2004, 2005, and 2006 would be used. Moreover, the state of Kansas runs on a fiscal year basis. Clerks and the public are accustomed to changes in the law occurring, in large part, on July 1 of each year. This adjustment, which would affect forms and training for the clerks, could be handled with all other changes if the date were amended to July 1.

Thank you for the opportunity to address this issue.

KP:bw

Senate Judiciary

2-16-04

Attachment 7



The Kansas District Judges' Association



February 16, 2004

Written Testimony in Opposition to SB 437

The Kansas District Judges Association (KDJA) Executive Board discussed SB 437 at its February 12, 2004, meeting. While the Executive Board members understand the effects of inflation, the Board concluded after discussing the issue that a more reasonable increase would be in the range of \$3,000, which would represent an increase of approximately 67%. It was felt that a \$5,000 limitation would result in an increase in small claims filings in addition to a shift from Chapter 61 filings to small claims filings.

The current limit of \$1,800 has been in effect since 1994, when it was increased from \$1,000. (1994 *Session Laws of Kansas*, Chapter 273, Section 19.) An increase from \$1,800 to \$5,000 represents an increase of approximately 178 percent. The "Inflation Calculator" at the U.S. Department of Labor homepage (<http://www.bls.gov/cpi/>) states that \$1,800 in 1994 had the same buying power that \$2,234.82 has in 2003. The increase from \$1,800 to \$2,234.82 is an increase of approximately 24 percent.

The Board further urges deletion of the provision allowing for an adjustment every three years based on the average increase in the Consumer Price Index for the previous three years. While the Board again can certainly see the benefits of an automatic inflation adjustment, it is our experience that the clerks of the district court spend a great deal of time every day answering questions from the public. It is anticipated that this provision would increase the number of questions clerks would have to answer regarding this provision.

The KDJA Executive Board appreciates your consideration of this issue.

KP:bw

Senate Judiciary
2-16-04
Attachment 8

REMARKS CONCERNING SENATE BILL No. 437

SENATE JUDICIARY COMMITTEE

FEBRUARY 16, 2004

Chairman Vratil and Members of the Senate Judiciary Committee:

Thank you for giving me the opportunity to present testimony on Senate Bill No. 437 on behalf of the Kansas Credit Attorneys Association and Kansas Collectors Association, Inc. The Kansas Credit Attorneys Association is a statewide organization of attorneys, representing approximately 60 law firms, whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

We are concerned about the substantial financial increase in jurisdictional limits and cannot predict the impact on the judicial system, which is most likely going to see an increase in case filings, if this measure becomes. We would to suggest that the Committee adopt a slower incremental change in limits.

Small Claims filings are intended to be a streamlined and user-friendly procedure, permitting a speedy resolution. We believe that this measure may possibly delay a court's ruling on cases being heard. In addition, judges, clerks and other court staff will be required to spend increased time assisting and educating parties, who are unfamiliar with the legal process, on important cases as the get their "day in court".

We feel this is contrary to the whole rationale for setting up small claims courts and helping consumers settle disputes and free the court for more valuable and complex matters.

We again ask that a smaller increase in the limits be adopted. Failing that, we respectfully request that you reject Senate Bill No. 437 because of the burdens it may place on an already overwhelmed judicial system.

Thank you again for your time and consideration this morning.

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

Senate Judiciary
2-16-04
Attachment 9