

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 2, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Kathy Porter, Office of Judicial Administration

Others attending:

See attached list.

Chairman Vratil opened the meeting and hearing on **HB 2168**.

HB 2168 Uniform commercial code; defining a new class of payment instrument, drawn on the customer's account without an authorized signature, called a demand draft.

Proponent:

Kathy Olsen, Kansas Bankers Association, testified in support of the bill. The bill amends the Uniform Commercial Code, Articles 3 and 4, as they relate to "demand drafts". The purpose is to define a new class of payment that is now being drawn on a bank customer's account without a signature, and it places the risk of loss for processing on the depository-collecting bank. Ms. Olsen testified that demand drafts contain customer account numbers and routing information in order for transactions to occur through normal banking channels. Customers will continue to have a period of time to review their statements and have recourse, to recover monetary funds, if an error has been made or an unauthorized transaction occurs. (Attachment 1)

Chairman Vratil closed the hearing on **HB 2168** and opened the hearing on **HB 2268**.

HB 2268 Uniform interstate enforcement of domestic violence protection orders act

Proponent:

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence (KCADSV), testified in support of the bill. Ms. Barnett stated that **HB2268** is the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act developed by the National Council of Commissioners of Uniform State Laws. The bill addresses interstate enforcement of protection orders and the current piece-meal treatment of the issue. Ms. Barnett stated that there has been much confusion and inconsistency across Kansas and, consequently, less safety for victims of domestic violence and stalking.

Ms. Barnett pointed out that the Kansas process for registering foreign and domestic protection orders is already outlined in K.S.A. 60-3112, and currently it is the responsibility of the sheriff to enter these orders into the national registry. Ms. Barnett asked that **HB 2268** be amended to make reference to K.S.A. 60-3112 so that there is no confusion as to what state law applies and she provided a balloon amendment with suggested language. (Attachment 2) Ms. Barnett encouraged the Committee to consider also changing the name of the Act by removing the words "Domestic Violence" from the title, as protection orders do not just address domestic violence but can also address such things as sexual or physical abuse of a child and anti-stalking protection orders. Ms. Barnett stated she believed **HB2268** included a drafting error in the implementation date. In New Section 10, the effective date of the Act should be July 1, 2005, and it is drafted as July 1, 2006, and each reference to 2006 should be changed.

The Committee asked questions of Ms. Barnett regarding current procedures for entering protection orders,

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 2, 2005, in Room 123-S of the Capitol.

and why protection orders were not entered by the Kansas Bureau of Investigation, since they are the portal through which NCIC information flows. Joyce Grover, Attorney for KCASDV and guest in the meeting, responded that K.S.A. 60-3112, authorizes the sheriff to contact the NCIC to make sure that protection orders are valid. If sheriffs have probable cause and think a protection order is valid, they can enforce it. The procedures do not change from what is being done now on domestic protection from abuse orders. Ms. Grover handed out to Committee members a copy of the statute. (Attachment 3)

Chairman Vratil questioned Ms. Barnett regarding whether or not it would become more difficult for people to figure out how to register the protection orders if the bill refers to another Kansas statute. Ms. Barnett stated that law enforcement personnel are familiar with K.S.A. 60-3112, and that the intent is to further clarify procedures.

Senator O'Connor asked why both "court" and "tribunal" are necessary in the bill. Ms. Barnett stated that in Kansas, the reference used is "court", but in other states there may be other administrative systems in place, so the word "tribunal" is used to recognize other state systems if they are not a "court".

Chairman Vratil stated that the House amended the bill to take the clerk of the court out of the procedure. The proposed amendment eliminates reference to the sheriff and makes reference to K.S.A.60-3112, which puts the clerk of the court back into the procedure on all emergency protection from abuse orders. Ms. Grover stated that she and Ms. Barnett did not read K.S.A. 60-3112 as doing that, and that it is not the current practice around the state. Chairman Vratil stated that a practice is irrelevant when a statute mandates a certain procedure.

Opponent:

Kathy Porter, Office of Judicial Administration (OJA), testified that she felt her point had been addressed. As introduced, New Section 5 of the bill would have impacted the Judicial Branch by requiring the clerks of the district court to accept certified copies of out of state protective orders from persons who wish to have them registered, to enter the orders on a registry, to certify two copies of the registered order, and to give copies of the certified orders to the individual registering the order and the local sheriff. The clerk would also have needed to remove from the registry foreign protective orders that are inaccurate or no longer in effect. Ms. Porter stated that the Judicial Administration believes that the best route is to direct the protective person to the sheriff. (Attachment 4)

Chairman Vratil clarified with Ms. Porter that the OJA likes the House version of the bill. Ms. Porter concurred but stated that if there were a way to incorporate the language that Ms. Barnett would like regarding registration, that would be fine.

Chairman Vratil closed the hearing on HB 2268.

Chairman Vratil stated that although no specific bills were listed for final action on the agenda, he would like the Committee to consider final action on SB 179 perhaps as early as tomorrow's meeting. Senator Donovan stated that the bill was in his Sub-Committee and that they recommended it to the full Committee, but that there might be a bed space impact. Senator Donovan suggested that when the Committee considers it, there may be an amendment offered to adjust some of that. Additionally, the bill deals with the crime of child pornography and the number of counts an individual may be charged with. Senator Bruce suggested that the impact statement numbers may be a little inflated because currently aggravated indecent solicitation is charged as a severity level six, which means there is no presumptive prison time and it is not a border-box situation. Kevin Graham, Assistant Attorney General and guest at the meeting, stated that by having a severity level 6, an offender can't get prison unless it is the third time conviction of the crime. By reducing the severity level to 5, it makes it a first time for border-box. Senator Goodwin clarified that her recollection on the Sub-Committee was that the issue was so complex that the Sub-Committee recommended it be taken up by the full committee, and no other recommendation was made. Senator Journey asked that Committee members have a copy of the bed space impact for consideration when the bill is addressed for final action. Chairman Vratil stated that would be reproduced and provided.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 2, 2005, in Room 123-S of the Capitol.

Chairman Vratil asked to reconsider an issue on **HB 2268**, Section 2. The Chairman questioned why the date of July 1, 2006 or the requested amended date of July 1, 2005, was even needed. Chairman Vratil suggested that taking the date out and saying that "this Act applies to protection orders and to the continuing actions for enforcement of foreign orders" would be comprehensive. Ms. Grover stated that the KCASDV would consider that. Senator Goodwin clarified with Kathy Porter whether there was going to be an amendment from OJA, and Ms. Porter stated she would work with the KCASDV and see if they could come up with language that all could support.

Senator Schmidt requested a clarification on **SB 179**. He stated that some of the language would make it a crime to have depictions that are of or appear to be of a child under the age of 18. The "appears to be" language was new, and he was seeking further clarification of what the language was actually trying to do. Mr. Graham responded that the language was drafted so that the prosecutors can convict if they can convince a jury that the depiction is of a "child". Chairman Vratil stated that "appears to be" really broadens the scope.

Senator Journey stated that, from the information he has seen in the prosecution of these cases, pornography is being computer generated entirely without a person, and it is not a violation of the law if a minor is not used to make the visual image. Expert testimony is being offered to juries in an effort to determine the age of the purported image, based upon its physical characteristics. Videos are being produced without any human actors whatsoever, except perhaps for voice-over.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for March 3, 2005.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/2/05

NAME	REPRESENTING
Sandy Barnett	KCSDV
Joyce Grover	KCSDV
Melinda Lewis	El Centro
Anna Williams	El Centro
Jacob Kellert	SCLP
Kahe Olsen	KS Bar Association
Jeff Bottenbox	KS Sheriff's Ass'n
Kevin Berone	KTCA
Richard Samson	Kenny & Assoc



March 2, 2005

To: Senate Committee on Judiciary

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2168: Demand Drafts

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today before you in support of **HB 2168**, which represents amendments to the Uniform Commercial Code, Articles 3 and 4, as they relate to a new form of payment which we define as “demand drafts”.

Modern check collection methods have increased the risk on payor banks that items not bearing authorized signatures may be paid against customer accounts. The purpose of these amendments is to define a new class of payment instrument, drawn on a bank customer’s account without a signature, and to place the risk of loss for processing this instrument on the depository-collecting bank which is in the best position to prevent its introduction into the check collection system.

The amendments were originally drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). To date, **fifteen** states have adopted these specific amendments and we understand that both Missouri and Iowa are considering adoption during this legislative session. These amendments were also initially a part of federal legislation known as “Check 21”, but were taken out so that interested parties could focus solely on the implementation of the Check 21 provisions. As more states enact the provisions found in **HB 2168**, we sense a need to do so as to ensure the proper flow of commerce from state to state.

Definition of Demand Draft. Page Four of the bill provides a definition of this new class of payment instrument called a “demand draft”. As you can see it is a payment instrument that is not signed by the bank customer but is created by a third party (such as a telemarketer) under the purported authority of the customer. The purpose of the demand draft is to debit the customer’s account and send it for collection through the normal check collection system.

The demand draft must contain the customer’s account number and it will be encoded with other processing information to allow for collection through normal banking channels.

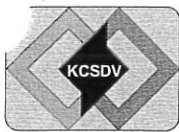
Demand drafts do not include instruments that bear forged or unauthorized signatures of customers. Any instrument bearing a forged or unauthorized signature should be handled under the forgery provisions and unauthorized signature provisions of the UCC. Demand drafts do not include instrument drawn or purportedly drawn and signed by a "fiduciary" as defined in KSA 84-3-307(a)(1).

Warranties and Risk of Loss. Because checks are processed rapidly and in high volume, payor banks are not always able to determine if customers authorized the creation of a demand draft. The amendments found on Page Five of the bill and repeated in various sections of the bill set forth the warranties that are provided by each transferor. The amendments create an additional warranty in the case of a demand draft to each transferee that the demand draft was authorized by the bank customer upon whose account it is drawn.

These amendments are consistent with other provisions of the UCC dealing with check collection as they place the risk of loss for an unauthorized draft with the bank which is in the best position to avoid the introduction of the draft into the check collection system. In this case, as with checks containing forged endorsements, the risk of loss lies with the depository bank which is charged with knowing its customer and with scrutinizing the customers allowed to deposit these types of drafts.

We also believe these amendments dovetail nicely with the provisions of K.S.A. 50-6,105 which was passed by the 2001 legislature. These provisions allow a financial institution to refuse to accept any draft they believe is not truly authorized. In this manner, these institutions are not only protecting their customers, but are protecting themselves from the liability associated with allowing an unauthorized check to move through the check collection system.

In conclusion, we would ask that the Committee act favorably on the provisions of **HB 2168** as they provide certainty to those banks involved in the demand draft collection process.



UNITED AGAINST VIOLENCE

KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

Submitted by
Sandy Barnett

March 2, 2005

TO: Senate Judiciary Committee
RE: HB2268
Proponent

Dear Chairman Vratil and Senate Judiciary Committee Members:

The Kansas Coalition Against Sexual and Domestic Violence believes that the enforcement of foreign protection orders is a critical link to providing safety to victims of domestic violence and stalking.

The interstate enforcement of protection orders is a part of the safety net. Victims may relocate to Kansas from another state in an effort to escape the violence. Victims may come here from other states while visiting families or vacationing. Finally, particularly in the border areas of Kansas, victims may work in Kansas but live in another state, thus making enforcement of their protection orders a critical piece of their day to day safety.

Currently, Kansas provides for enforcement of foreign protection orders in several places, including statutes (K.S.A. 60-3112; K.S.A. 21-3843[a][2]; K.S.A. 22-2307[b][7]), Attorney General Opinions, and law enforcement training and policies (K.S.A. 22-2307[b][7]). Additionally, Congress included the full faith and credit provision in the federal Violence Against Women Act to support interstate enforcement of protection orders. See 18 U.S.C. 2265; 2266. This piecemeal treatment of the issue has resulted in much confusion and inconsistency across Kansas and, consequently, less safety for victims of domestic violence and stalking.

For example, in Kansas, some officers will not enforce a foreign order that is not listed in the National Crime Information Center's protection order file, though that has never been a pre-requisite for validity of a protection order. Some officers will not enforce an order if it has not somehow come through the county or local law enforcement agency. Some officers believe that if they make a mistake and enforce an order that is not valid, they or their agency will be sued. All of these scenarios lead to situations of great danger for victims of domestic violence and stalking.

It is hoped that the passage of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act will decrease this confusion and increase the safety of victims protected by orders issued in other states, territories or by Indian Tribes. Having all of the statutory instructions for enforcement of foreign protection orders in one place could only help law enforcement agencies and others who are active in the pursuit of safety for victims.

Member Programs Serve All 105 Counties in the State of Kansas

Senate Judiciary

3-20-05

Attachment 2

HB2268 is the Uniform Interstate Enforcement of Protection Orders Act developed by the National Council of Commissioners of Uniform State Laws (NCCUSL). Some of the minor changes in the Act were also adopted in the state of Nebraska and approved by NCCUSL when this Act was considered last year. See Neb. Rev. Stat. § 42-932 *et seq.*

I would like to point out a couple of on-going issues with HB2268.

First, It is important to note that in Kansas, the process for registering foreign and domestic protection orders is already outlined in K.S.A. 60-3112. Currently, it is the responsibility of the sheriff to enter these orders into the national registry. I believe HB2268 should be amended to make reference to K.S.A. 60-3112 so that there is no confusion as to what state law applies. I have provided a balloon with suggested language. It should be noted that in the original uniform act, Section 5 is "bracketed" making it an optional provision. Its comments say the Act should defer to current state practice for the discretionary registering of these foreign protection orders.

Second, I am encouraging the Committee to consider changing the name of this Act. I believe the name is somewhat misleading. Protection orders do not just address domestic violence. These orders can address sexual violence between intimate partners, sexual or physical abuse of a child, and may also include anti-stalking protection orders that do not necessarily involve an intimate relationship between the parties. Further, some states have separate civil protection orders that specifically address sexual assault, even that perpetrated by a stranger. In Kansas, for example, protection orders would include both Protection from Abuse Act orders and Protection from Stalking Act orders, as well as some restraining orders issued under K.S.A. 60-1601 *et seq.* and K.S.A. 60-901 *et seq.* Our overall desire in supporting the adoption of this Uniform Act is to reduce the confusion that has reigned in Kansas surrounding foreign orders of protection. In order to further that purpose, I suggest that the words "Domestic Violence" be removed from the title and that the Act simply be called the "Uniform Interstate Enforcement of Protection Orders Act."

Finally, I believe there is a drafting error in the implementation date. I vaguely remember that this was raised during the hearing in the House Judiciary Committee but it was not corrected when HB2268 was worked. In New Section 10, the effective date of the Act should be July 1, 2005, not July 1, 2006. Each reference to 2006, should be changed to 2005.

I look forward to working with you and the rest of the committee to provide better protection for victims in Kansas. We support passage of HB2268, with our suggested changes, as an important step toward improving protection for victims of sexual and domestic violence and stalking.

Sandra Barnett
Executive Director

Statutes Implementing Interstate Enforcement of Protection Orders

K.S.A. 60-3112

Entering protection orders into the national criminal information center protection order file

K.S.A. 21-3843

Violation of a Protection Order

K.S.A. 22-2307

Domestic violence calls; written policies to be adopted by law enforcement agencies; contents

18 U.S.C. 2265

Full faith and credit given to protection orders

18 U.S.C. 2266(5)

Definition of protection order

10 U.S.C. 1561a

Civilian orders of protection: force and effect on military installations

1 respondent and, on its face, is currently in effect constitutes probable
 2 cause to believe that a valid foreign protection order exists. For the pur-
 3 poses of this section, the protection order may be inscribed on a tangible
 4 medium or may have been stored in an electronic or other medium if it
 5 is retrievable in perceivable form. Presentation of a certified copy of a
 6 protection order is not required for enforcement.

7 (b) If a foreign protection order is not presented, a law enforcement
 8 officer of this state may consider other information in determining
 9 whether there is probable cause to believe that a valid foreign protection
 10 order exists.

11 (c) If a law enforcement officer of this state determines that an oth-
 12 erwise valid foreign protection order cannot be enforced because the
 13 respondent has not been notified or served with the order, the officer
 14 shall inform the respondent of the order, make a reasonable effort to
 15 serve the order upon the respondent and allow the respondent a reason-
 16 able opportunity to comply with the order before enforcing the order.

17 (d) Registration or filing of an order in this state is not required for
 18 the enforcement of a valid foreign protection order pursuant to this act.

19 New Sec. 5. ~~(a) Any individual may register a foreign protection or-
 20 der in this state. To register a foreign protection order, an individual shall
 21 present a certified copy of the order to the clerk of the district court in
 22 the judicial district sheriff in the county where the protection order will
 23 be enforced and request that the order be registered with the district
 24 court.~~

25 ~~(b) Upon receipt of a foreign protection order, the clerk of the district
 26 court in the judicial district where the order will be enforced shall register
 27 the order in accordance with this section. After the order is registered,
 28 the clerk of the district court shall furnish to the individual registering
 29 the order and the sheriff of the county where the order will be enforced
 30 a certified copy of the registered order.~~

31 ~~(c) The clerk of the district court in the judicial district where the
 32 protection order will be enforced shall register an order upon presenta-
 33 tion of a copy of a protection order which has been certified by the issuing
 34 state. A registered foreign protection order that is inaccurate or is not
 35 currently in effect must be corrected or removed from the registry in
 36 accordance with the law of this state.~~

37 ~~(d) (c) An individual registering a foreign protection order shall file
 38 an affidavit by the protected individual with the district court in the ju-
 39 dicial district sheriff in the county where the protection order will be
 40 enforced stating that, to the best of the protected individual's knowledge,
 41 the order is currently in effect.~~

42 ~~(e) (d) A foreign protection order registered under this act may be
 43 entered in any existing state or federal registry of protection orders, in~~

New Sect. 5 (a) Any individual may register a foreign
 order in this state by following the procedures set forth in
 K.S.A. 60-3112 and amendments thereto.

2-5

1 accordance with applicable law.

2 ~~(f) (e)~~ A fee shall not be charged for the registration of a foreign
3 protection order.

4 ~~(g) (f)~~ No sheriff's department or district court accepting or register-
5 ing a foreign protection order under this section may notify or require
6 notification of a party against whom the protection order was filed of its
7 filing or registration unless the individual protected by the protection
8 order requests that the sheriff's department or district court do so and
9 the respondent has not already been notified of such filing or
10 registration.

11 New Sec. 6. This state, a local governmental agency, a law enforce-
12 ment officer, a prosecuting attorney, a clerk of court or any state or local
13 governmental official acting in an official capacity is immune from civil
14 and criminal liability for conduct arising out of the registration or enforce-
15 ment of a foreign protection order or the detention or arrest of an alleged
16 violator of a foreign protection order if the conduct was done in good
17 faith in an effort to comply with this act.

18 New Sec. 7. A protected individual who pursues remedies under this
19 act is not precluded from pursuing other legal or equitable remedies
20 against the respondent.

21 New Sec. 8. In applying and construing this uniform act, consider-
22 ation shall be given to the need to promote uniformity of the law with
23 respect to its subject matter among states that enact it.

24 New Sec. 9. If any provision of this act or its application to any person
25 or circumstance is held invalid, the invalidity does not affect other pro-
26 visions or applications of this act which can be given effect without the
27 invalid provision or application. To this end, the provisions of this act are
28 severable.

29 New Sec. 10. This act applies to protection orders issued before July
30 1, 2006, and to continuing actions for enforcement of foreign protection
31 orders commenced before July 1, 2006. A request for enforcement of a
32 foreign protection order made on or after July 1, 2006, for violations of
33 a foreign protection order occurring before July 1, 2006, is governed by
34 this act.

35 Sec. 11. K.S.A. 2004 Supp. 21-3843 is hereby amended to read as
36 follows: 21-3843. (a) Violation of a protective order is knowingly or in-
37 tentionally violating:

38 (1) A protection from abuse order issued pursuant to K.S.A. 60-3105,
39 60-3106 and 60-3107, and amendments thereto;

40 (2) a protective order issued by a court or tribunal of any state or
41 Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and
42 amendments thereto;

43 (3) a restraining order issued pursuant to K.S.A. 38-1542, 38-1543,

~~(f) (e) (b)~~ A fee shall not be charged for the registration of a
foreign protection order.

~~(g) (f) (c)~~ No sheriff's department accepting or registering a foreign
protection order under this section may notify or require
notification of a party against whom the protection order was
filed of its filing or registration unless the individual protected
by the protection order requests that the sheriff's department
do so and the respondent has not already been notified of
such filing or registration.

SUBMITTED BY
Joyce Grogan

KANSAS STATUTES ANNOTATED
CHAPTER 60.--PROCEDURE, CIVIL
ARTICLE 31.--PROTECTION FROM ABUSE ACT

60-3112. Entering protection orders into the national criminal information center protection order file.

(a) All temporary, amended, final and other protection from abuse orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, or protection orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, shall be entered into the national criminal information center protection order file. All emergency protection from abuse orders issued pursuant to article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and such emergency orders issued based on the laws of another jurisdiction which are entitled to full faith and credit in Kansas pursuant to the provisions of 18 U.S.C. 2265, and amendments thereto, may be entered into the national criminal information center protection order file. A copy of these orders shall be delivered by the clerk of the court to the sheriff of the county where the order is issued or registered. The sheriff's office shall immediately enter the order into the national criminal information center and other appropriate databases after all mandatory identifiers are available. If the order is a foreign protective order, the sheriff's office shall contact the issuing jurisdiction to verify the order and request that such jurisdiction enter the order into the national criminal information center and other appropriate databases. Any modification of an order shall be forwarded immediately by the clerk of the court to the sheriff's office with jurisdiction to enforce the modified order. The sheriff's office shall ensure the accuracy of the entries and the court shall ensure the validity of the orders.

(b) All emergency and temporary orders which have been entered into the national criminal information center file shall be canceled upon the expiration of the time period set out in the court order, or, if no time period is set, no later than one year from the entry date. All other orders which have been entered into the national criminal information center protection order file shall be cleared as an active record from the computer system when:

- (1) The order expires according to the terms of such order;
 - (2) a Kansas court notifies the law enforcement agency which has jurisdiction over the entry of the order that such order has been dismissed; or
 - (3) a foreign protective order has been invalidated by either a Kansas court or a foreign court with jurisdiction over such order.
- (c) This section shall be part of and supplemental to the protection from abuse act.

History: L. 2001, ch. 177, § 3; L. 2002, ch. 142, § 4; July 1.

<General Materials (GM) - References, Annotations, or Tables>

LAW REVIEW AND BAR JOURNAL REFERENCES:

2003 Pocket Part LAW REVIEW AND BAR JOURNAL REFERENCES:

'2002 Legislative Wrap-Up,' Paul T. Davis, 71 J.K.B.A. No. 7, 15 (2002).

K. S. A. § 60-3112, KS ST § 60-3112

Current through the 2003 Regular Session



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th

Topeka, Kansas 66612-1507

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Senate Judiciary Committee
Testimony Regarding 2005 HB 2268

Wednesday, March 2, 2005

Kathy Porter

I would like to address the House amendments in New Sections 5 and 6 of the bill, and request that the Senate concur with these House amendments. As introduced, New Section 5 of HB 2268 would have impacted the Judicial Branch by requiring the clerks of the district court to accept certified copies of out of state protective orders from persons who wish to have them registered, to enter the orders on a registry, to certify two copies of the registered order, and to give copies of the certified orders to the individual registering the order and the local sheriff. The clerk would also have needed to remove from the registry foreign protective orders that are inaccurate or no longer in effect.

It is unclear to us what purpose was intended by inserting the clerk of the district court into this registration process. If the intent was that somehow the clerk is to make sure the foreign order is valid, is not inaccurate, and is currently in effect, we questioned how the clerk would make these determinations other than through inspecting the document itself. The bill provides that the foreign order will go to the sheriff, and the sheriff would be as able to make a determination as to the validity of the document as would be the clerks.

It did not appear that registering a foreign order with the clerk of the district court was intended to make it convenient for respondents who might not have a copy of a foreign order to obtain one. The comments to Section 5 of the uniform act provide in part as follows:

While the management of state registries is purely governed by state law, in implementing a registration system, however, enforcing States should strongly consider keeping these protection orders under seal. The purpose of more effectively protecting victims of domestic violence will be undermined if respondents can use the process of registration to locate the very people who are trying to escape from them.

The comments appear to indicate that the registration system is for the benefit of law enforcement. The comments to Section 5 of the uniform act provide that "[a] registration system

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Attachment 4

supplies law enforcement officers and agencies more accurate information, more quickly, about both the existence and status of foreign protection orders and their terms and conditions." It would appear more beneficial to law enforcement to keep the registry within a law enforcement agency, where it would be available 24 hours a day, seven days a week, than it would be to keep the registry within the court system, where it would be available during working hours five days a week.

Section 5 of the uniform act refers to registration with "the state agency responsible for registration" or "the agency designated by the state." It would appear that, if the uniform act had anticipated registration with the court, it would have specified registration with the court. Moreover, registration of the order with the clerk of the district court in one county would not mean counties have access to the document. Any registry kept by a clerk of the district court in one county would be specific to that county, and would not be an aggregate registry for the state.

Initial comments to the uniform act state that "[t]he Act does not require individuals seeking the enforcement of a protection order to register or file the order with the enforcing State. The Act does, however, include an optional registration process The purpose of these procedures is to make it as easy as possible for the protected individual to register the protection order and thus facilitate its enforcement." Taking a copy of a foreign order to the appropriate law enforcement agency would appear to be as easy as taking a copy to the clerk of the district court.

I ask that you concur with the House in simplifying the process. Thank you for the opportunity to testify on this bill.