

January 24, 2012

Senate Judiciary Chairman Tim Owens
Kansas State Capitol Room 559-S
Topeka, Kansas 66612

RE: Opposition to SB 283 (Amending K.S.A. 2011 Supp. 28-110)

Dear Chairman Owens:

I write this letter in opposition to Senate Bill 283 in my capacity of assistant general counsel for a collection agency, Credit Management Services, Inc. ("CM"). CM provides collection services to medical service providers, banks, and other businesses across the state of Kansas. In doing so, CM files many limited actions civil lawsuits in Kansas each month and, thus, incurs costs associated with serving process upon defendants.

- **Table: The Proposed Amendment**

Service Provided by Sheriff	Current Fee (\$ 28-110)	Proposed Fee (SB 283)	Increase (\$)	Increase (%)
Serving or executing any writ, process, order or notice	\$5	\$30	\$25	500%
Serving warrants	\$1	\$30	\$29	2,900%
Serving orders of attachment, arrest or replevin	\$2	\$30	\$28	1,400%
(Civil) Serving the aforementioned on behalf of the state, counties, cities, or townships	\$0	\$30 when the case is filed by a non-governmental firm for debt collection	New	New

- **Negative Effects on Kansas Businesses and Kansas Consumers**

The statutory amendment proposed through Senate Bill 283 (“The Bill”) is adverse to Kansas businesses and consumers. As you know, The Bill proposes to substantially increase the cost of serving process by sheriff in Kansas. Consequently, The Bill proposes to substantially increase the costs to Kansas businesses in providing goods and services to Kansas consumers, as well as increase the costs to Kansas consumers of obtaining goods and services.

For each account receivable held by a business, the business must determine the costs that it is willing and able to invest in attempts to collect said account from the non-paying consumer. Such costs include the fees that said business must pay to compel payment of the account through Kansas courts. As proposed, The Bill substantially increases such fees.

For example, currently businesses must consider the \$5 service of summons by sheriff fee in addition to the cost of filing suit in order to determine whether an account receivable is *worth* attempting to collect through Kansas courts. As is indicated by the table on page “1” of this letter, a 500% increase to the sheriff’s summons service fee would prevent a business from investing in attempts to collect certain accounts, and would result in losses to the business. In turn, the business would be forced to cover its losses by charging Kansas consumers more for goods and services. Additionally, less money would be available for the business to reinvest in its operations and Kansas employees.

If a business did invest in the cost of filing suit and serving a summons by sheriff, under The Bill the sheriff would be entitled to a \$30 fee for each attempted service of summons, assuming that the sheriff’s return of service was timely. Consequently, if the sheriff was unable to perfect service on the first attempt, then an additional \$30 fee would be charged to the Kansas business for each subsequent service attempt. With each additional service attempt, the cost of collection and the likelihood that the business abandons its efforts to collect would increase. The effect of such *abandonment* would be an additional loss to the business in the form of the account receivable plus the service fees and filing fees expended.

Bear in mind that in any debt collection lawsuit, the following documents may need to be served by sheriff: (i) A summons and petition (proposed \$30 per attempt, assuming that the sheriff’s return of service is timely); (ii) garnishment orders (proposed \$30 per garnishment order); and, (iii) orders to appear for hearing in aid of execution of judgment (proposed \$30 per order). Therefore, regardless of the judgment principal, and even if service of the aforementioned documents was perfected on the sheriff’s first service attempt, the outlay of service fees for one lawsuit would be substantial under the amendment proposed by The Bill. And, again, service fees are in addition to the costs of filing such documents with Kansas courts.

As for the non-paying consumer, if a business did invest in attempts to collect the account despite the substantial increase in costs to do so, service fees would be included in the judgment and charged to the non-paying consumer's judgment balance. Assuming that the non-paying consumer eventually satisfied the judgment entered against him or her, the consumer would pay the increased service fees and, thus, would have less money to support him or herself and family.

As the examples demonstrate, the net effect of the proposed increased sheriff's service fees would necessarily increase the cost of doing business in Kansas, as well as the cost of living for Kansas consumers.

- **Unjustified Windfall for Kansas Sheriffs**

I understand that sheriffs must be funded for the service of process in Kansas. However, The Bill proposes a scenario under which sheriffs realize an unjustified windfall in the form of excessive service fees.

For example, efficiency in service suggests that the sheriff *hold* multiple garnishments directed to the same garnishee, and serve such garnishments at one time; that is, the sheriff makes one trip to the same garnishee to serve ten separate garnishment orders, as opposed to ten separate trips to the same garnishee to serve each garnishment order. Under the amendment proposed by The Bill, a sheriff serving ten separate garnishment orders to the same garnishee on one trip has the potential to realize a fee of \$30.00 per garnishment order, or \$300.00 total. Clearly, one trip to the same garnishee does not justify service fees totaling \$300.00.

Under the current statute, the cost to effect service as suggested above would be \$5 per garnishment order, or \$50.00 total. Fifty dollars to serve the same garnishee is, objectively, a more reasonable fee for the sheriff's service, and does not create a windfall for the sheriff.

- **Conclusion**

In sum, the aforementioned examples demonstrate the real world effects of the amendment proposed by The Bill. Clearly, the costs of such amendment to Kansas businesses and consumers are not justified by the benefits associated with The Bill's passage. Further, the amendment would do more to create a windfall for sheriffs than it would to provide a reasonable fee based upon the costs to sheriffs in serving process.

Chairman Tim Owens
January 24, 2012
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I provide this letter in opposition to SB 283. I ask that this letter be considered written testimony in opposition to SB 283, and included as part of the permanent record. Please feel free to contact me with any questions: (308) 382-3000.

Sincerely,

CREDIT MANAGEMENT SERVICES, INC.

/s/Brady W. Keith
Assistant General Counsel.