

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 20**

As Amended by House Committee on Judiciary

**Brief\***

SB 20, as amended, would modify provisions in the Kansas Code of Civil Procedure related to restraining orders and temporary injunctions.

A court would be allowed to issue a temporary restraining order without notice or bond to the adverse party only if:

- Specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard;
- The movant's attorney certifies any efforts to give notice and why it should not be required; and
- Notice of the issuance of a temporary restraining order is provided to the Kansas Attorney General if the adverse party is the State of Kansas or an agency, officer, or employee thereof, or to the appropriate city clerk or county clerk if the adverse party is a city or county, or an agency, officer, or employee thereof.

Every temporary restraining order issued without notice would have to include its issuance date and time, information regarding the irreparable injury, and the reason the order was issued without notice. The order would have to be promptly filed in the clerk's office and entered in the record. It would

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

expire at the time set by the court, not to exceed 14 days, unless the court extends it for good cause or the adverse party consents.

If a temporary restraining order is issued without notice, the bill would require the motion for a temporary injunction to be set for hearing at the earliest possible time.

The adverse party would be allowed to appear before the court to move to dissolve or modify the temporary restraining order, after giving two days' notice to the party who obtained the order.

Under the bill, a temporary restraining order would operate only if the movant gives security in an amount the court fixes to pay the damages sustained by the injured party, including attorney fees, if it is finally determined the order should not have been granted. Security would not be required from the State of Kansas or any of its agencies. The court could waive the security requirement for any other party.

The bill also would modify the requirements for poverty affidavits filed by plaintiffs in civil cases who seek to be relieved from paying the docket fee. Such affidavits would be required to include a factual basis for the plaintiff's allegation of poverty, including, but not limited to, the source and amount of the plaintiff's weekly income. The plaintiff would be required to sign and swear to the affidavit, under penalty of perjury. An affidavit in substantial compliance with the form set forth by the Kansas Judicial Council would be deemed sufficient.

Upon the filing of a petition with a poverty affidavit, the court would be required to review the petition and, if the court finds the allegation of poverty is untrue, the court would be required to direct the plaintiff to pay the docket fee or dismiss the petition without prejudice. Service of process would not be made unless the court grants leave following the review.

## **Background**

SB 20 was introduced by the Senate Judiciary Committee at the request of Attorney General Derek Schmidt. In the Senate Judiciary Committee, a representative of the Attorney General spoke in support of the bill, explaining the provisions were similar to federal requirements found in 28 USC § 1915. The Committee recommended the bill be passed.

In the House Judiciary Committee, a representative of the Attorney General testified in support of the bill. The House Committee amended the bill by striking provisions that would require the court to authorize the filing of a petition by a plaintiff submitting a poverty affidavit and then dismiss the petition if the court finds: it is frivolous, malicious, or brought in bad faith; it fails to state a claim on which relief may be granted; or it seeks monetary relief against an immune defendant. The House Committee also added the language of SB 18, as amended by the Committee, regarding temporary restraining orders.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states the Judicial Branch does not believe it would cause any additional expenditures for the branch. The bill could have a negligible effect on docket fee collections, but no accurate estimate of the possible effect is possible until the courts have been able to operate under the provisions of the bill.

Any fiscal effect associated with SB 20 is not reflected in *The FY 2014 Governor's Budget Report*.

## **Background of SB 18**

SB 18 was introduced by the Senate Judiciary Committee at the request of Attorney General Derek Schmidt. As introduced, the bill contained provisions related to temporary restraining orders and temporary injunctions.

In the Senate Judiciary Committee, representatives of the Attorney General appeared in support of the bill, explaining it would curb abuses under the current law and bring it in line with the Federal Rules of Civil Procedure. A representative of the Kansas Association of Counties appeared to request the bill be amended to include cities and counties with the state in the notice and security provisions. The Riley County Counselor's Office submitted testimony containing the same request.

The Senate Committee amended the bill by making technical changes, adding cities and counties to the notice provision, and adding a provision allowing the court to waive the security requirement for cities and counties. The Committee recommended the bill be passed as amended.

In the House Judiciary Committee, representatives of the Attorney General and the Kansas Association of Counties testified in support of the bill. Representatives of the Attorney General and the Riley County Counselor's Office submitted written testimony supporting the bill. A private citizen submitted written testimony regarding the bill.

The House Committee amended the security provision in the bill with language more closely matching that used in KSA 60-905 regarding security for temporary injunctions. The House Committee placed this amended language in SB 20.

The fiscal note prepared by the Division of the Budget indicates the bill, as introduced, would impose some additional duties on the court. However, the Judicial Branch is unable to estimate a precise fiscal effect on expenditures and expects no fiscal effect on revenues.

Any fiscal effect associated with SB 18 is not reflected in *The FY 2014 Governor's Budget Report*.