

KANSAS CREDIT ATTORNEY ASSOCIATION

SENATE BILL NO. 283

HOUSE COMMITTEE ON JUDICIARY

March 07, 2012

Chairman Kinzer and Members of the House Committee on Judiciary:

I appreciate this opportunity to present remarks to you on behalf of the Kansas Credit Attorneys Association.

Ensuring efficiency of the Kansas court system and access for citizens to its remedies is of utmost importance and requires careful balance of competing interests and unintended consequences of any shifts in process.

The proposed changes in Senate Bill No. 283 start simple enough. Things cost more than they did in 2004 when the sheriff last had an increase in the fee they collect for service but we have not kept up. The \$5.00 service of process fee currently authorized for sheriffs is not enough and needs to be aligned with present economic realities. On that point, we agree with the proponents of Senate Bill No. 283. Although I might remind this committee that before we started down this road of funding our courts with user taxes Kansas sheriffs served process as a part of their mandated duty and never charged any fee.

We believe the best approach to ensuring the sheriffs see any fee increase is to proceed cautiously with as little as change as necessary. This will meet their perceived need for additional funding while preserving predictability for the parties seeking relief and the court clerks managing the workflow as well as to the state, counties, and cities who endeavor to fulfill the Legislative Post-Audit Committee's instruction to improve recovery of accounts receivable.

To that end, we propose leaving the entirety of KSA 28-110 whole and intact as presently written changing only the number for service set at \$5.00 (line 15 of SB 283) to some higher number which would fund the sheriffs, retain revenues to the courts, and ensure parties have continued access to court remedies. We believe an increase of 100% to \$10.00 is fair and will cause the least harm to limited action filers and thus funding for the judiciary.

As the bill stands today after passing out of the Senate we have several concerns with uncertainties that have been created by Senate Bill No. 283 due to tampering beyond changing that \$5.00 figure.

- First in subsection (b) it is unclear as to whether unsuccessful attempts will be charged this fee. Second, subsection (1) defines process to include alias summons. Again this provides real confusion as to whether alias summons will be charged. It is important to note that many states with higher process fees are based on good service. If the sheriff doesn't provide proper service, the fee is not paid. This is one of the justifications for a higher fee. The uncertainty in amended SB 283 as to whether an alias summons pays an additional fee is very disturbing. If the sheriffs are allowed to charge for alias summons it places the sheriffs in a certain conflict of interest. As long as they file a return, they get a fee. Further, it's possible to read the amended bill that they get a fee on alias as long as they file a return. Filing a return can be "time expired, no service" which usually translates to "we set service as a low priority and didn't get to it". It is unwise to put sheriffs in a situation where ignoring service (an unpopular function of the office) is rewarded with increased revenue.
- The new language in SB 283 dramatically broadens the items covered to include citations in contempt where the plaintiff could be charged \$15.00 because the court's order was ignored by the defendant.
- It is important to remember that some service of process can be effected by first class mail.
- While we understand that service of process is something that could be outsourced to the private sector, there is not a process for the appointment of process servers on a statewide basis. Currently each Judicial District or County controls the appointment and licensing of an individual as a process server on an annual basis. Thus, each individual would have to be approved and licensed 105 times each year. We are not aware of any companies that currently offer statewide service of process.
- Perhaps most important is the adverse effect increasing taxes will have on small business owners access to our judiciary and the certain negative effect it will have on revenue. The revenue numbers reported by the court reveal that our concerns from last session are now concrete reality. **Since the most recent increase which took effect in July 2011, surcharge revenues are down approximately \$1 million with limited action filings seeing a 14% drop.**
- Currently in this session three pieces of pending legislation (SB 283, SB 322 and SB 425) seek to increase the cost for small businesses access to our court system to recover a bad debt legally owed to them. Each time a small business files they will have to pay a filing fee (\$56.00 - \$124.00) plus a sheriff's fee of at least \$15.00 with an average of three process of service per lawsuit (SB 283), plus e-filing fees of \$10.00 to file a petition, \$10.00 to file a summons, \$10.00 to file a journal entry of judgment (SB 245). Just to secure

a judgment they have already spent between \$101.00-\$167.00. Then if the judgment creditor files a garnishment to recover the judgment or files an aide in execution (debtor's exam) they will have to pay a \$12.50 surcharge (SB 322), \$10.00 e-filing fee and \$15.00 for the sheriff to serve.

- Our position is simple. The more the Kansas Legislature taxes access to the judiciary the less Kansas businesses will use it to collect their bad debt. This certainly can't be the objective of anyone. In addition to decreasing revenue for the judiciary as evidenced by the 14% reduction in limited action filings and \$1 million drop in surcharge revenue, it will ultimately harm Kansas small businesses who attempt to collect their unpaid bills through our court system.

Considerable effort could be expended to reshape SB 283 to amend out contradictions and evaluate unintended consequences. More viable and more reasonable would be to leave KSA 28-110 alone but for the fee amount.

Mark Kahrs
Legislative Member
Kansas Credit Attorneys Association

SENATE BILL No. 283
 By Committee on Judiciary
 1-17
 Session of 2012

1. AN ACT concerning sheriffs; relating to fees; amending K.S.A. 2011 Supp. 28-110 and repealing the existing section.

3. *Be it enacted by the Legislature of the State of Kansas:*

4. Section 1, K.S.A. 2011 Supp. 28-110 is hereby amended to read as follows: 28-110. (a) The sheriff of each county in the state shall
5. charge the following fees for the services required by law to be performed by them: Serving or executing and returning any writ, process,
6. order or notice, including a copy of the same,
7. whenever a copy is required by law, except as
8. otherwise provided, for the first person.....\$5.00 ← 10.00
9. Serving warrants and making return thereof.....1.00
10. Making arrests as law enforcement officer.....1.00
11. Serving order of attachment, arrest or replevin and returning same.....2.00
12. Making levy under execution.....2.00
13. Appraisal of property.....2.00
14. Return of "no property found".....2.00
15. Approving and returning undertaking bond or recognizance.....1.00
16. Advertising property for sale.....2.00
17. Offering for sale or selling property.....2.50
18. Taking inventory of personal property, each day.....10.00
19. Sheriff's deed and acknowledgment, to be paid out of the proceeds of the sale of real estate conveyed.....5.00
20. Issuing certificates of sale and recording same.....2.00
21. Summoning talesman, each.....50
22. The sheriff shall charge, for witnesses whose attendance is procured under attachment and who are unable to pay their fare, actual expenses and mileage in an amount set in accordance with K.S.A. 75-3203a, and amendments thereto, and rules and regulations adopted pursuant thereto. If the writ, process, order or notice contains the names of more than one

1. person, no fee shall be taxed or allowed and no person shall be
2. required to pay any fee unless at the time of making returns the
3. sheriff makes and files with the returns, or as a part thereof, a
4. statement showing the service on the first person named by the
5. sheriff and the service on the second person named by the sheriff
6. and so on for each person served. If more than one process is served
7. in the same case or on the same person, not requiring more than one
8. journey from the office, the sheriff shall charge a fee for one service
9. only. If more than one process for the same person, or in the same
10. case, is issued and is in the hands of the sheriff at one time, it shall be
11. the duty of the sheriff to make service of the processes, if possible, on
12. the one trip. Where service is not affected or timely return made
13. pursuant to K.S.A. 60-312 or 61-3005, and amendments thereto, no
14. fee shall be taxed or allowed on subsequent alias, writ, process, order
15. or notice as required to effect service and the return of service. Except
16. as provided by K.S.A. 19-269, and amendments thereto, the sheriff
17. shall be reimbursed for the necessary transportation and board
18. expenses incurred while serving under requisition made by the
19. governor. All fees charged by the sheriff pursuant to this section for
20. the same case may be paid by a single check, money order or other
21. form of payment at the discretion of the person making such
22. payment. The state of Kansas and all municipalities in this state, as
23. defined in K.S.A. 12-105a, and amendments thereto, are hereby
24. exempt, in any civil action in which such state or municipality is
25. involved, from paying service of process fees prescribed herein.
26. Sec. 2. K.S.A. 2011 Supp. 28-110 is hereby repealed.
27. Sec. 3. This act shall take effect and be in force from and after its
28. publication in the statute book.