

# KANSAS CREDIT ATTORNEYS ASSOCIATION

## SENATE BILL NO. 366 HOUSE COMMITTEE ON JUDICIARY MARCH 8, 2012

*Chairman Kinzer and Members of the House Committee on Judiciary:*

I appreciate this opportunity to submit remarks to you on behalf of the Kansas Credit Attorney Association.

My name is Donald C. Astle. I am a licensed attorney practicing in Wichita, Kansas. A majority of my practice for the last 20+ years has focused on the collection of delinquent accounts for Kansas businesses. When attempts to collect have failed, the legal process involved often requires the use of garnishment: specifically, non-wage (usually bank) garnishments.

Senate Bill No. 366 removes the Court Clerk as an intermediary from the garnishment answer and the handling of the funds. This will reduce Court/Clerk work and result in a more efficient handling of non-wage garnishments. This process will mirror the way wage garnishments are now handled. Senate Bill No. 366 allows payments be made directly to the judgment creditor. Senate Bill No. 366 incorporates the original procedure in the draft Chapter 61 write of the late 1990's by the Civil Practice Sub Committee of the Kansas Judicial Council.

However, Senate Bill No. 366 proposes a significant change in Sections 3 & 6 of the bill by way of subsections (c). Subsections (c) will basically give the garnishee immunity from any errors as a result of the garnishee's "good faith" action in response to a Court garnishment order.

Currently, under K.S.A. 60-738, 60- 741 & 60-742, and the corresponding statutes in K.S.A. 61-3511, 3514, and 3515, the judgment creditor may file a motion disputing the garnishees handling of the Court's garnishment order. The Court then conducts a hearing and has the Court discretion of entering the appropriate remedy if it finds a failure of the garnishee to properly comply with the garnishment order. In Senate Bill No. 366, in Subsections (c) the Sections 3 & 6 would appear to remove the Court's discretion to enter any such remedy absent a finding that the garnishee (bank) did not act in good faith.

This would appear to let a garnishee be immune from its negligence, and poor policy and procedures, and other errors regarding court ordered garnishments. This may result in the judgment creditor being denied funds or property that should have been used for satisfaction of a judgment entered by the court. Our association would be opposed to those specific provisions in Senate Bill No. 366.

Thank you for your time and consideration.

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