

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, January 29, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator Greta Goodwin (E)

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Kathy Porter, Office of Judicial Administration
Wayne White, Kansas Legal Services
Doug Smith, Kansas Credit Attorney association
Jim Clark, Kansas Bar Association
Manny Barbaran, Mannies Bonding Company
Shane Rolf, Shane's Bonding Company

Others attending:
See attached List.

Chairman Vratil called for bill introductions, and there were none.

SB 298 - Creation of docket fees for garnishments

Chairman Vratil opened the hearing on **SB 298**, and asked Mike Heim, Legislative Research Department, to brief the Committee on the proposed bill. Mr. Heim explained that **SB 298** was a recommendation from the Interim Committee, and it establishes a \$5 docket fee for garnishment actions. He stated there should be a technical amendment on the bill, and believed this would be the first permanent docket fee for garnishments.

Kathy Porter, Office of Judicial Administration, testified as neutral, and offered technical amendments necessary to carry out the intentions of **SB 298**. The first amendment would remove from lines 18 and 19 providing that "no case shall be docketed or filed" and insert "garnishment shall be issued". The change would mean that the \$5 fee would be charged only when a garnishment actually occurs.

Ms. Porter's second amendment would clarify that K.S.A. 2003 supp. 60-729 addresses garnishments by amending K.S.A. 2003 Supp. 61-3502.

The third amendment occurred in line 21. Ms. Porter explained that payment of the fee to the State Treasurer would be an option, but believed the intent was to make payment to the Clerk of the District Court, for remittance to the State Treasurer.

Ms. Porter's final proposed amendment addressed lines 21 and 22 requiring the State Treasurer to deposit and credit the fees to the State General Fund. She explained that the mechanism present in current law, having the clerk remit the fees to the State Treasurer pursuant to K.S.A. 2003 supp. 20-362, for distribution pursuant to K.S.A. 2003 Supp. 20-367, would allow the clerks to handle this fee in the same manner as other docket fees. Ms. Porter said if this option is chosen, the percentages included in K.S.A. 2003 20-367 would need to be amended so that each fund receiving a portion of the docket fees is held harmless, with the estimated increase credited as this committee desires. She added she would provide those amended percentages if the Committee selects this option. (Attachment 1)

Discussion and questions followed regarding how the Interim Committee arrived at the \$5 amount, who would be paying the \$5 fee, clarification of the garnishment process, statutory limits for garnishments, how the percentages used are determined when docket fees are divided up when you don't know how much money is coming in from docket fees, and how many garnishments occur during the year in Kansas.

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Wayne White, Kansas Legal Services, testified in support of **SB 298**. He proposed that the revenue generated be placed in the Access to Justice Fund administered by the Office of Judicial Administration and used to provide legal assistance in debt collection and related consumer debt legal issues. (Attachment 2)

Doug Smith, testified on behalf of the Kansas Credit Attorneys Association and Kansas Collectors Association, as neutral on **SB 298**. He stated that if the Committee determines that adequate funding of the court system will not happen and that adoption of the proposed bill is necessary, four specific issues were being offered for consideration: (1) In order for the State to collect the maximum revenue for the courts under this legislation, Chapter 61 filings should also be included, (2) Would this provision be more appropriate in Article 20 of Chapter 60 instead of Article 7 or even Chapter 20 instead of Chapter, (3) Define the new garnishment docket as an assessed court cost, so that when expenses are recovered from a party against whom they have been assessed, the garnishment docket shall be included in the amount of the recovery; and (4) If this is designed to provide funding for the Courts, this Committee may want to consider adjusting the distribution percentages in K.S.A. 20-367.

Mr. Smith stated that a request for the introduction of legislation was being prepared, and will be to strike the statutory prohibition against the use of garnishment on assigned accounts, which is contained in K.S.A. 60-2310(d). He said the bill would be identical to SB 126 from the 2001 Legislative Session. He concluded that removing this prohibition would increase the potential for revenue collections under this new docket fee, and should be considered at the same time as **SB 298**. (Attachment 3)

James W. Clark, on behalf of the Kansas Bar Association, submitted written testimony in opposition to **SB 298** as it detracts from uniform docket fees. (Attachment 4)

The Chair called for questions and discussion on the proposed bill. Having no questions, Chairman Vratil closed the hearing on **SB 298**.

SB 299 - Concerning Kansas surety agents

Chairman Vratil reopened the hearing on **SB 299**. He instructed Committee members he was reopening the hearing in order to hear from both proponents and opponents regarding the four amendments offered by Senator Haley.

Manny Barbaran, Mannies Bonding Company, expressed concerns regarding two of the amendments relating to forcibly entering a residence, and one relating to the requirement that surety agents must carry \$300,000 liability insurance. He explained his reasons for not supporting the amendments, and stated that getting that type of insurance for this type of business is extremely difficult if not impossible. Mr. Barbaran spoke briefly on Senator Haley's second amendment regarding "no security recovery agent shall wear, carry or display any uniform, badge, shield or other insignia or emblems that purport to indicate that such person is an employee, officer or agent of any state,". He stated that the amendments were not necessary.

Brief questions and discussion followed Mr. Barbaran's testimony.

Senator Haley reviewed and explained his amendments for the Committee. The first inserted at the end of Section 3, line 38, "A surety recovery agent may not enter a residence to recover a principal without first demanding admittance and explaining the purpose for which admittance is desired". Brief discussion followed Senator Haley's comments on the requested amendment. (Attachment 5)

The second amendment also added language to Section 3, line 38, "No security recovery agent shall wear, carry or display any uniform, badge, shield or other insignia or emblems that purport to indicate that such person is an employee, officer or agent of any state, any political subdivision of any state or the United States". (Attachment 6) Mr. Barbaran clarified his comments on this particular amendment upon Senator Haley's request.

Senator Haley's third amendment would also add language to Section 3, as follows: "(a) All surety recovery agents must maintain a policy of liability insurance in an amount not less than \$300,000

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protecting persons and property from harm, written by a company approved by the attorney general. (b) The failure to maintain the required insurance invalidates the authority granted by a surety recovery agent license or a provisional surety recovery agent license. (c) Deductibles are not permitted unless the licensee submits a bond to the attorney general for the purpose of serving as a source of recovery for persons who receive judgments against a licensee for amounts less than that covered by insurance. The bond must be in a form and provided by a company acceptable to the attorney general, based upon the likelihood that sufficient assets support the bond.” (Attachment 7) He commented that as the bill is written now, it would not stop the outrageous acts inflicted on Kansans by unqualified and unregulated bounty hunters. He explained that this amendment was an attempt to hold the owner’s of the surety companies liable in order to ensure these lawless acts.

The fourth amendment offered would add additional language to Section 3, as follows: “A surety recovery agent forcibly entering a residence shall insure the residence is secured before leaving the scene of the apprehension”. Mr. Barbaran explained that this could be a very dangerous situation, and waiting around until the proper repairs could be made would put the officers in additional peril and in a threatening situation as well as the person apprehended. (Attachment 8)

Shane Rolf, Shane’s Bonding Company, added additional comments regarding the inability to obtain insurance involves mostly issues that cause claims for crimes or intentional torts. He said there tends to be a public policy issue against insuring against intentional torts, and is one of the main reasons insurance is not available. He added as far as securing a residence and the badge insignia that there is no allowance for extreme situations. There are dangerous situations where you need to get the person out of there immediately, and not have them sit in the car while the agent takes time to nail the door shut.

Senator Pugh asked staff to distribute information he had requested Mr. Heim to furnish the Committee members relating to certification requirements for teachers for comparison purposes against the requirements for surety agents. (Attachment 9)

Chairman Vratil closed the hearing on SB 299.

Final Action:

SB 324 - Concerning appellate jurisdiction of the supreme court

Chairman Vratil called for discussion and final action on SB 324. Seeing none, the Chair called for a motion on the proposed bill. Senator Schmidt made a motion to report SB 324 favorably, seconded by Senator Umbarger, and the motion carried.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 2, 2004.