

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 18

As Amended by Senate Committee on Judiciary

Brief*

SB 18, 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

*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, the court could issue a temporary injunction or a temporary restraining order only if the movant gives security in an amount the court considers proper to pay the costs and damages sustained by the party wrongfully enjoined or restrained. Security would not be required from the State of Kansas or an agency, officer, or employee of the state. The court could waive the security requirement for any city or county or an agency, officer, or employee thereof.

Background

SB 18 was introduced by the Senate Judiciary Committee at the request of Attorney General Derek Schmidt. 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.

The fiscal note indicates the bill 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*.