

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2081**

As Agreed to April 3, 2013

Brief*

HB 2081 would amend the Kansas Consumer Protections Act (KCPA) and the Kansas Code of Civil Procedure in the areas of temporary restraining orders and temporary injunctions; poverty affidavits; redemption of real property; and civil forfeiture.

KCPA

The bill would add a new section named the “Wayne Owen Law” stating the conduct outlined in the definitions of the crimes of identity theft and identity fraud would constitute unconscionable acts or practices prohibited by the KCPA, and any person who engaged in such conduct would be subject to the remedies and penalties provided by the KCPA.

Temporary Restraining Orders and Temporary Injunctions

The bill would allow a court 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,

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loss, or damage will result to the movant before the adverse party can be heard;

- The movant's attorney certifies in writing 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 Attorney General if the adverse party is the State 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.

The bill would require each temporary restraining order issued without notice 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. The order would expire at the time set by the court, not to exceed 14 days, unless the court extends the order 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 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.

Poverty Affidavits

The bill 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.

Redemption of Real Property

The bill would amend a provision allowing a mortgagor to agree in the mortgage instrument to a shorter period of redemption than 12 months or wholly waive the period of redemption. The bill would clarify that an existing exception for mortgages covering single- or two-family dwellings owned by or held in trust for natural persons would be applicable only when held in trust by natural persons owning or holding the dwelling as their residence.

Civil Forfeiture

The bill would add to the list of conduct and offenses giving rise to forfeiture indecent solicitation of a child, aggravated indecent solicitation of a child, and sexual exploitation of a child. The bill also would specify that, if used during the commission of an offense giving rise to forfeiture,

any computer, computer system, computer network, or any software or data owned by the defendant is subject to forfeiture. Currently, these items are forfeited only if used in commission of the crime of unlawful possession of a scanning device or reencoder. Further, the bill would provide for forfeiture of an “electronic device” used during the commission of an offense giving rise to forfeiture.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to the bill and added the contents of Sub. for HB 2093, as amended by the Senate Committee on Judiciary, concerning the Kansas Consumer Protection Act, and HB 2204, as amended by the Senate Committee on Judiciary, concerning redemption of real property. The Conference Committee also agreed to insert the contents of SB 20, which the House Committee amended to include revised provisions of SB 18, concerning temporary restraining orders and temporary injunctions. However, the Conference Committee agreed to revert to the Senate’s version of SB 18.

Background

HB 2081. In the House Judiciary Committee, representatives of the Kansas Sheriffs Association, Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Bureau of Investigation appeared in support of the bill. No opponents offered testimony. The House Committee adopted a technical amendment proposed by the Office of the Revisor of Statutes.

The same proponents appeared in support of the bill in the Senate Judiciary Committee. No others offered testimony. The Senate Committee adopted a technical correction to the bill requested by the Office of the Revisor of Statutes.

The fiscal note prepared by the Division of the Budget for the bill, as introduced, indicates the precise impact to

judicial operations cannot be determined, but likely would be accommodated within existing resources. Law enforcement may incur additional revenue from the changes to civil forfeiture, but the precise impact is unknown.

Sub. for HB 2093. The bill, as introduced, would have amended the statutes governing computer crimes and the crimes of identity theft and identity fraud to address conduct related to social networking sites.

In the House Corrections and Juvenile Justice Committee, Representative Finney and representatives of the Kansas Bureau of Investigation (KBI) and Kansas Oath Keepers appeared in support of the bill. No others offered testimony.

The House Committee amended the bill to add a new section applying remedies and penalties under the KCPA to the crimes of identity theft and identity fraud.

The House Committee of the Whole amended the bill to name the new section added to the KCPA the "Wayne Owen Law."

In the Senate Committee on Judiciary, representatives of the KBI, Kansas Association of Chiefs of Police, Kansas Peace Officers' Association, and Kansas Sheriffs' Association appeared in support of the bill.

The Senate Committee expressed concerns that the House's addition of the KCPA language would violate the single-subject rule and agreed to strike the criminal provisions and recommend the KCPA section as a substitute bill.

The fiscal note prepared by the Division of the Budget for the bill, as introduced, does not address the changes made by the substitute bill.

HB 2204. In the House Judiciary Committee, a representative of the Kansas Bankers Association (KBA)

appeared in support of the bill. No others offered testimony. The House Committee amended the bill to strike the requirement that a residence be the “principal” residence of natural persons and replaced it with the requirement that the dwelling is “their” residence.

A representative of the KBA appeared in support of the bill in the Senate Judiciary Committee and offered an amendment to remove new language concerning creditors who may redeem and restore the text in current statute. The Senate Committee adopted the KBA amendment.

The fiscal note for the bill, as introduced, indicates passage would have no impact on the judicial branch.

SB 20. 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 same proponent appeared in support of the bill in the House Judiciary Committee. 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 House Committee, regarding temporary restraining orders.

The fiscal note for the bill, as introduced, indicates passage likely would not cause any additional expenditures for the judicial branch. The bill could have a negligible effect on docket fee collections, but the precise impact cannot be determined until the courts have been able to operate under the provisions of the bill.

SB 18. 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 same proponents appeared in the House Judiciary Committee. 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 for the bill, as introduced, indicates passage 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.

Kansas Consumer Protection Act; Kansas Code of Civil Procedure; temporary restraining orders and temporary injunctions; poverty affidavits; redemption of real property; civil forfeiture

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