

Approved: 3/29/10

Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

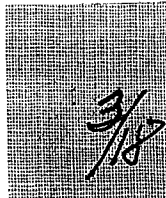
Jason Long, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Lauren Douglass, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.



**SB 381 - Criminal law; justified threat or use of force.**

Representative Pauls made the motion to report substitute bill HB 381 favorably for passage and add "effective upon publication." (Attachment 1)

Representative Grange seconded the motion. Motion carried.

**SB 455 - Civil commitment of sexually violent predators; expert testimony.**

Representative Goyle made the motion to report SB 455 favorably for passage.

Representative Brookens seconded the motion. Motion carried.

**SB 305 - Kansas tort claims act; charitable health care providers.**

Representative Brookens made the motion to report substitute bill SB 305 favorably for passage. (Attachment 2)

Representative Goyle seconded the motion. Motion carried.

**SB 234 - Civil procedure; garnishment.**

Representative Brookens made the motion to report SB 234 favorably for passage.

Representative Talia seconded the motion.

Representative Brookens made a substitute motion to amend the bill per the "balloon amendment # 1." (Attachment 3)

Representative Colloton seconded the motion. Motion carried.

Representative Brookens made a motion to amend the bill per the "balloon amendment # 2." (Attachment 4)

Representative Colloton seconded the motion. Motion carried.

Representative Pauls made a motion to amend the bill to add to Section (d) of the above "balloon amendment # 2" to include "administrative fee of \$10 per month for child support."

Representative Brookens seconded the motion. Motion carried.

Representative Brookens made the motion to report substitute bill SB 234 favorably for passage as amended. Representative Colloton seconded the motion. Motion carried.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

**SB 519 - Allowing for the use of electronic communication and electronic filing in certain instances.**

Representative Brookens made the motion to report SB 519 favorably for passage.  
Representative Yoder seconded the motion. Motion carried.

**SB 471 - Changing crime of harassment by telephone to harassment by telecommunications.**

Representative Brookens made the motion to report SB 471 favorably for passage.  
Representative Kleeb seconded the motion. Motion carried.

**SB 537 - Liens and claims against property; actions concerning validity.**

Two balloons were distributed to the committee identified as Balloon # 1 ( Attachment 5) and Balloon # 2 (Attachment 6). The Revisors Office Staff presented an overview of both and discussion followed.

Representative Pauls made the motion to report SB 537 favorably for passage.  
Representative Whitham seconded the motion. Motion Carried.

Representative Pauls made the substitute motion to amend the bill per "SB 537 Balloon # 1." (Attachment 5)  
Representative Whitham seconded the motion. Motion carried.

Representative Patton made the motion to amend the balloon # 1, by changing "shall" to "may".  
Representative Brookens seconded the motion. Motion carried.

Representative Crow made the motion to amend the bill to remove Lines 1 through 4 in Section 2, page 2.  
Representative Colloton seconded the motion. Motion carried.

Representative Whitham made the motion to report SB 537 favorably for passage as amended. Motion carried.

**SB 471 - Changing crime of harassment by telephone to harassment by telecommunications.**

Representative Colloton made the motion to reconsider the motion to move SB 471 favorably for motion.  
Seconded by Representative Brookens.

Representative Colloton made the motion to amend the bill and add the provisions of Sub for H 2413 by Committee on Corrections and Juvenile Justice - Increasing traffic fines to fund increases in alcohol and drug therapy program for DUI offenders to the bill.  
Representative Brookens seconded the motion. Motion failed.

Representative Kuether made the motion to report SB 471 for passage.  
Representative Brookens seconded the motion. Motion carried.

**HB 2714 - Restricting KDOT'S authority to appeal from awards under eminent domain procedure.**

Representative Brookens made the motion to insert "Substitute for HB 2714" into SB 269 favorably for passage as amended. (Attachment 7) (SB 269 - Conduct and offenses giving rise to forfeiture; adding prostitution and related offenses is currently a shell and now using as a vehicle to move bill.)  
Representative Pauls seconded the motion. Motion carried.

**HB 2585 - Concerning marriage license fees and poverty**

Chairman Kinzer advised the committee the Senate Judiciary Committee deleted the contents of **HB 2585** and inserted the contents of **SB 211**.

Representative Patton made the motion to delete the contents of SB 310 - (SRS prohibited from placing more than eight sexually violent predators in any one county on transitional release or conditional release; annual

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 18, 2010, in Room 346-S of the Capitol.

report) and insert "substitute for **HB 2585**" and report favorably for passage.  
Representative Brookens seconded the motion. Motion carried.

This was the last scheduled meeting of the House Judiciary Committee for the 2010 Legislative Session.

The meeting was adjourned at 5:00 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 3-18-10

| NAME             | REPRESENTING        |
|------------------|---------------------|
| Pat Vegelesburg  | Kearney and Assoc   |
| Ed Klump         | KACP/KSA/KPOA       |
| David Buzyn      | JCSO                |
| Mike Huffles     | KAMU                |
| Catherine Denton | KS Assn for Justice |
| Lane WUSA        | Jud. Branch         |
| RJ Wilson        | KSAJ                |
| Doug Smith       | KCA/KEAA            |
| Kam Barone       | KPBBA               |
| C Kase           | A.G.                |
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SENATE BILL No. 381

By Senators D. Schmidt and Petersen

1-15

House Committee on Judiciary  
SB 381 Balloon  
Prepared by: J. Long

House Judiciary  
Date 3-18-10  
Attachment # 1

10 AN ACT concerning crimes, punishment and criminal procedure; relat-  
11 ing to justified threat or use of force; amending K.S.A. 21-3211, 21-  
12 3212, 21-3214, 21-3215, 21-3216, 21-3217, 21-3218 and 21-3219 and  
13 repealing the existing sections.

14  
15 Be it enacted by the Legislature of the State of Kansas:  
16 **New Section 1. ~~The provisions of this act are to be construed~~**  
17 **~~and applied retroactively.~~**

18 ~~Section Sec. 1. 2.~~ K.S.A. 21-3211 is hereby amended to read as fol-  
19 lows: 21-3211. (a) A person is justified in the ~~threat or~~ use of force against  
20 another when and to the extent it appears to such person and such person  
21 reasonably believes that such ~~threat or~~ use of force is necessary to defend  
22 such person or a third person against such other's imminent use of un-  
23 lawful force.

24 (b) A person is justified in the ~~threat or~~ use of deadly force under  
25 circumstances described in subsection (a) if such person reasonably be-  
26 lieves that such ~~threat or~~ use of deadly force is necessary to prevent im-  
27minent death or great bodily harm to such person or a third person.

28 (c) Nothing in this section shall require a person to retreat if such  
29 person is ~~threatening or~~ using force to protect such person or a third  
30 person.

31 ~~Sec. 2. 3.~~ K.S.A. 21-3212 is hereby amended to read as follows: 21-  
32 3212. (a) A person is justified in the ~~threat or~~ use of force against another  
33 when and to the extent that it appears to such person and such person  
34 reasonably believes that such ~~threat or~~ use of force is necessary to prevent  
35 or terminate such other's unlawful entry into or attack upon such person's  
36 dwelling or occupied vehicle. ~~There shall be a rebuttable presumption~~  
37 ~~that such person had a reasonable belief that such threat or use of~~  
38 ~~force was necessary to prevent or terminate such other's unlawful~~  
39 ~~entry into or attack upon such person's dwelling or occupied~~  
40 ~~vehicle.~~

41 (b) A person is justified in the ~~threat or~~ use of deadly force to prevent  
42 or terminate unlawful entry into or attack upon any dwelling or occupied  
43 vehicle if such person reasonably believes that such ~~threat or~~ use of deadly

21-3213,

(a) As used in article 32 of chapter 21 of the Kansas Statutes  
Annotated, and amendments thereto:  
(1) "Use of force" means any or all of the following directed at or  
upon another person or thing: (A) Words or actions that reasonably  
convey the threat of force, including threats to cause death or great  
bodily harm to a person; (B) the presentation or display of the  
means of force; or (C) the application of physical force, including by  
a weapon or through the actions of another.  
(2) "Use of deadly force" means the application of any physical  
force described in paragraph (1) which is likely to cause death or  
great bodily harm to a person. Any threat to cause death or great  
bodily harm, including, but not limited to, by the display or  
production of a weapon, shall not constitute use of deadly force, so  
long as the actor's purpose is limited to creating an apprehension  
that the actor will, if necessary, use deadly force in defense of  
himself or another or to affect a lawful arrest.  
(3) An actor who merely threatens deadly force as described in  
paragraph (2) shall be subject to the determination in subsection (a)  
of K.S.A. 21-3211, and amendments thereto, and not to the  
determination in subsection (b) of K.S.A. 21-3211, and amendments  
thereto.  
(b) The provisions of this section are to be construed and applied  
retroactively.

INSERT A and renumber the remaining sections accordingly

, place of work

1-2

1 force is necessary to prevent imminent death or great bodily harm to such  
2 person or another. ~~There shall be a rebuttable presumption that such~~  
3 ~~person had a reasonable belief that such threat or use of deadly~~  
4 ~~force was necessary to prevent imminent death or great bodily harm~~  
5 ~~to such person or another.~~

6 (c) Nothing in this section shall require a person to retreat if such  
7 person is ~~threatening or~~ using force to protect such person's dwelling or  
8 occupied vehicle.

, place of work

INSERT B and renumber the remaining sections accordingly

9 Sec. ~~3-4~~. K.S.A. 21-3214 is hereby amended to read as follows: 21-  
10 3214. The justification described in sections 21-3211, 21-3212, and 21-  
11 3213, *and amendments thereto*, is not available to a person who:

12 ~~(1)~~ (a) Is attempting to commit, committing, or escaping from the  
13 commission of a forcible felony; or

14 ~~(2)~~ (b) Initially provokes the use of force against ~~himself~~ *such person*  
15 or another, with intent to use such force as an excuse to inflict bodily  
16 harm upon the assailant; or

17 ~~(3)~~ (c) Otherwise initially provokes the use of force against ~~himself~~  
18 *such person* or another, unless:

19 ~~(a)~~ ~~He~~ (1) *Such person* has reasonable ~~ground~~ *grounds* to believe that  
20 ~~he~~ *such person* is in imminent danger of death or great bodily harm, and  
21 ~~he~~ *such person* has exhausted every reasonable means to escape such  
22 danger other than the ~~threat or~~ use of force which is likely to cause death  
23 or great bodily harm to the assailant; or

24 ~~(b)~~ (2) In good faith, ~~he~~ *such person* withdraws from physical contact  
25 with the assailant and indicates clearly to the assailant that ~~he~~ *such person*  
26 desires to withdraw and terminate the ~~threat or~~ use of force, but the  
27 assailant continues or resumes the use of force.

28 Sec. ~~4-5~~. K.S.A. 21-3215 is hereby amended to read as follows: 21-  
29 3215. ~~(1)~~ (a) A law enforcement officer, or any person whom such officer  
30 has summoned or directed to assist in making a lawful arrest, need not  
31 retreat or desist from efforts to make a lawful arrest because of resistance  
32 or threatened resistance to the arrest. Such officer is justified in the ~~threat~~  
33 ~~or~~ use of any force which such officer reasonably believes to be necessary  
34 to effect the arrest and ~~of the~~ ~~threat or~~ use of any force which such officer  
35 reasonably believes to be necessary to defend the officer's self or another  
36 from bodily harm while making the arrest. However, such officer is just-  
37 ified in ~~threatening or~~ using force likely to cause death or great bodily  
38 harm only when such officer reasonably believes that such ~~threat or~~ use  
39 of force is necessary to prevent death or great bodily harm to such officer  
40 or another person, or when such officer reasonably believes that such  
41 ~~threat or~~ use of force is necessary to prevent the arrest from being de-  
42 feated by resistance or escape and such officer has probable cause to  
43 believe that the person to be arrested has committed or attempted to

1 commit a felony involving **death or** great bodily harm or is attempting to  
2 escape by use of a deadly weapon, or otherwise indicates that such person  
3 will endanger human life or inflict great bodily harm unless arrested with-  
4 out delay.

5 ~~(2)~~ (b) A law enforcement officer making an arrest pursuant to an  
6 invalid warrant is justified in the ~~threat or~~ use of any force which such  
7 officer would be justified in ~~threatening or~~ using if the warrant were valid,  
8 unless such officer knows that the warrant is invalid.

9 Sec. ~~5~~. 6. K.S.A. 21-3216 is hereby amended to read as follows: 21-  
10 3216. ~~(1)~~ (a) A private person who makes, or assists another private person  
11 in making a lawful arrest is justified in the ~~threat or~~ use of any force which  
12 ~~he such person~~ would be justified in ~~threatening or~~ using if ~~he such person~~  
13 were summoned or directed by a law enforcement officer to make such  
14 arrest, except that ~~he such person~~ is justified in the ~~threat or~~ use of force  
15 likely to cause death or great bodily harm only when ~~he such person~~  
16 reasonably believes that such ~~threat or~~ use of force is necessary to prevent  
17 death or great bodily harm to ~~himself such person~~ or another.

18 ~~(2)~~ (b) A private person who is summoned or directed by a law en-  
19 forcement officer to assist in making an arrest which is unlawful, is jus-  
20 tified in the ~~threat or~~ use of any force which ~~he such person~~ would be  
21 justified in ~~threatening or~~ using if the arrest were lawful.

22 Sec. ~~6~~. 7. K.S.A. 21-3217 is hereby amended to read as follows: 21-  
23 3217. A person is not authorized to ~~threaten or~~ use force to resist an  
24 arrest which ~~he such person~~ knows is being made either by a law enforce-  
25 ment officer or by a private person summoned and directed by a law  
26 enforcement officer to make the arrest, even if the person arrested be-  
27 lieves that the arrest is unlawful.

28 Sec. ~~7~~. 8. K.S.A. 21-3218 is hereby amended to read as follows: 21-  
29 3218. (a) A person who is not engaged in an unlawful activity and who is  
30 attacked in a place where such person has a right to be has no duty to  
31 retreat and has the right to stand such person's ground and meet force  
32 with ~~the threat or~~ use of force.

33 (b) This section shall be part of and supplemental to the Kansas crim-  
34 inal code.

35 Sec. ~~8~~. 9. K.S.A. 21-3219 is hereby amended to read as follows: 21-  
36 3219. (a) A person who ~~threatens or~~ uses force which, subject to the  
37 provisions of K.S.A. 21-3214, and amendments thereto, is justified pur-  
38 suant to K.S.A. 21-3211, 21-3212 or 21-3213, and amendments thereto,  
39 is immune from criminal prosecution and civil action for the ~~threat or~~  
40 use of such force, unless the person against whom force was ~~threatened~~  
41 ~~or~~ used is a law enforcement officer who was acting in the performance  
42 of such officer's official duties and the officer identified the officer's self  
43 in accordance with any applicable law or the person ~~threatening or~~ using

4-1

1 force knew or reasonably should have known that the person was a law  
2 enforcement officer. As used in this subsection, “criminal prosecution”  
3 includes arrest, detention in custody and charging or prosecution of the  
4 defendant.

5 (b) A law enforcement agency may use standard procedures for in-  
6 vestigating the ~~threat of~~ use of force as described in subsection (a), but  
7 the agency shall not arrest the person for ~~threatening or~~ using force unless  
8 it determines that there is probable cause for the arrest.

9 (c) A county or district attorney or other prosecutor may commence  
10 a criminal prosecution upon a determination of probable cause.

11 Sec. ~~9~~ **10**. K.S.A. 21-3211, 21-3212, 21-3213, 21-3214, 21-3215, 21-3216, 21-  
12 3217, 21-3218 and 21-3219 are hereby repealed.

21-3213,

13 Sec. ~~10~~ **11**. This act shall take effect and be in force from and after  
14 its publication in the statute book.



Insert A

New Sec. 2. (a) For the purposes of K.S.A. 21-3211 and 21-3212, and amendments thereto, a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

- (1) The person against whom the force is used, at the time the force is used:
  - (i) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied vehicle of the person using force; or
  - (ii) has removed or is attempting to remove another person against such other person's will from the dwelling, place of work or occupied vehicle of the person using force; and
- (2) the person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

(b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

- (1) The person against whom the force is used has a right to be in, or is a lawful resident of, the dwelling, place of work or occupied vehicle of the person using force, and is not subject to any order listed in K.S.A. 21-3843, and amendments thereto, that would prohibit such person's presence in the property;
- (2) the person sought to be removed is a child, grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the force is used;
- (3) the person using force is engaged in the commission of a crime, attempting to escape from a location where a crime has been committed, or is using the dwelling, place of work or occupied vehicle to further the commission of a crime; or
- (4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

Insert B

Sec. 4. K.S.A. 21-3213 is hereby amended to read as follows: 21-3213. A person who is lawfully in possession of property other than a dwelling, *place of work or occupied vehicle* is justified in the ~~threat or~~ use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such degree of force or threat thereof as a reasonable man would deem necessary to prevent or terminate the interference may intentionally be used.

## HOUSE Substitute for SENATE BILL NO. 305

By Committee on Judiciary

AN ACT concerning the Kansas tort claims act; relating to charitable health care providers; amending K.S.A. 2009 Supp. 75-6102 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2009 Supp. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) (1) "Employee" means: (A) Any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider;

(B) any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the

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services of such steward or racing judge are rendered pursuant to contract as an independent contractor;

(C) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections;

(D) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor;

(E) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program;

(F) a person who contracts with the Kansas guardianship program to provide services as a court-appointed guardian or

conservator;

(G) an employee of an indigent health care clinic;

(H) former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity;

(I) any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response; and

(J) medical students enrolled at the university of Kansas medical center who are in clinical training, on or after July 1, 2008, at the university of Kansas medical center or at another health care institution.

(2) "Employee" does not include: (A) An individual or entity for actions within the scope of K.S.A. 60-3614, and amendments thereto; or

(B) any independent contractor under contract with a governmental entity except those contractors specifically listed in paragraph (1) of this subsection.

(e) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts, a mental health practitioner licensed by the behavioral sciences regulatory board or a health care provider as the term "health care provider" is

defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the ~~department-of-social-and-rehabilitation services~~ Kansas health policy authority, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the ~~department-of-social-and-rehabilitation-services~~ Kansas health policy authority gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be

considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 et seq., and amendments thereto, or dental hygienist services defined by K.S.A. 65-1456, and amendments thereto, that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis at a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location. Except that such dentistry services and dental hygienist services shall not include "oral and maxillofacial surgery" as defined by Kansas administrative regulation 71-2-2, or use sedation or general anesthesia that result in "deep sedation" or "general anesthesia" as defined by Kansas administrative regulation 71-5-1.

(f) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(g) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health

and environment to provide health care services to medically indigent persons.

(h) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241, and amendments thereto.

(i) "Fire control, fire rescue or emergency medical services equipment" means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

Sec. 2. K.S.A. 2009 Supp. 75-6102 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

## SENATE BILL No. 234

By Committee on Judiciary

2-6

9 AN ACT concerning civil procedure; relating to garnishment; amending  
10 K.S.A. 60-740, 61-3507 and 61-3510 and repealing the existing  
11 sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-740 is hereby amended to read as follows: 60-  
15 740. This section shall apply if the garnishment is to attach earnings of  
16 the judgment debtor. If no reply is made to the answer of garnishee within  
17 10 days following the date the garnishee has completed the answer, the  
18 garnishee shall promptly thereafter pay the earnings withheld as indicated  
19 on the answer to all judgment creditors designated on the answer in the  
20 amount due each as indicated on the answer, and thereafter continue to  
21 pay the earnings withheld as they are withheld, unless the garnishee re-  
22 ceives prior to such payment an order of the court to the contrary. If any  
23 judgment creditor receives more than they are entitled to, that judgment  
24 creditor shall promptly pay return the excess amount to the garnishee for  
25 distribution pro-rata to the other judgment creditors designated on the  
26 answer, or if no such other judgment creditors are designated, the judg-  
27 ment creditor garnishee shall promptly pay the excess amount to the  
28 judgment debtor.

29 Sec. 2. K.S.A. 61-3507 is hereby amended to read as follows: 61-  
30 3507. This section shall apply if the garnishment is to attach earnings of  
31 the judgment debtor.

32 (a) The order of garnishment and the appropriate form for the gar-  
33 nishee's answer shall be served on the garnishee in the same manner as  
34 process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and  
35 amendments thereto except that the garnishee may be served by any  
36 means provided under K.S.A. 61-3001 through 61-3006, and amendments  
37 thereto, at the garnishee's business or office location and this shall be  
38 considered proper service. A copy of the answer form shall be served if  
39 the garnishment order is not served electronically. If the party having  
40 requested the garnishment is notified by the garnishee that the judgment  
41 debtor has never been employed by the garnishee or the judgment  
42 debtor's employment has been terminated, the party seeking the garnish-  
43 ment shall forthwith file a release with the clerk of the court of such

Replace "shall" with  
"must" wherever it  
appears on page 1

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Attachment # 3



3-2

1 garnishment.

2 (b) The order of garnishment shall have the effect of attaching the  
3 nonexempt portion of the judgment debtor's earnings for all pay periods  
4 which end while the order is in effect. The order shall remain in effect  
5 until either of the following occur, whichever is sooner: (1) The judgment  
6 is paid; or (2) the garnishment is released. The party for whom the gar-  
7 nishment is issued shall file a release with the clerk of the court upon  
8 satisfaction of the judgment and provide a copy thereof to the defendant  
9 and garnishee. Nonexempt earnings are earnings which are not exempt  
10 from wage garnishment pursuant to K.S.A. 60-2310, and amendments  
11 thereto. Computation of the nonexempt portion of the judgment debtor's  
12 wages for the pay period or periods covered by the order shall be made  
13 in accordance with the directions accompanying the garnishee's answer  
14 form, and a written explanation of the garnishee's computations shall be  
15 furnished to the judgment debtor with each paycheck from which earn-  
16 ings are withheld pursuant to the order of garnishment. The order of  
17 garnishment shall also constitute an order of the court directing the gar-  
18 nishee to pay to the judgment creditor all earnings which are to be with-  
19 held by the garnishee under the order of garnishment as more particularly  
20 provided in the answer of the garnishee. *A party or the court may request*  
21 *a written explanation of the garnishee's computations of earnings withheld*  
22 *during any pay period and the explanation shall be submitted by affidavit*  
23 *to all parties and the court within 15 days after such request. Service of*  
24 *the request shall be in the same manner as process is to be served pursuant*  
25 *to K.S.A. 61-3001 through 61-3006, and amendments thereto.*

14

26 (c) From income due the judgment debtor, the garnishee may with-  
27 hold and retain to defray the garnishee's costs, an administrative fee of  
28 \$10 for each pay period for which income is withheld, not to exceed \$20  
29 for each 30 day period for which income is withheld, whichever is less.  
30 Such administrative fee shall be in addition to the amount required to be  
31 withheld under the order for garnishment. If the addition of this fee  
32 causes the total amount withheld to exceed the restrictions imposed by  
33 subsection (b) of K.S.A. 60-2310, and amendments thereto, the fee shall  
34 be deducted from the amount withheld.

35 (d) *The party having requested the garnishment shall provide the*  
36 *garnishee the unsatisfied balance of the judgment at the time of issuance*  
37 *of the order of garnishment.*

38 (e) For any continuing garnishment, the party having requested  
39 the garnishment shall maintain an accounting and record of the judgment  
40 reflecting thereon all garnishment proceeds received and applied, all in-  
41 terest accrued thereon, and any and all credits applied in satisfaction  
42 thereof, and the remaining unsatisfied balance of such judgment. The  
43 party requesting the garnishment shall produce a copy of such accounting

Replace "shall" with  
"must" wherever it  
appears on page 2

3-3

1 and record upon request of the court. ~~The garnishee may request a pay~~  
 2 ~~off balance from the judgment creditor or, if represented, from the judg-~~  
 3 ~~ment creditor's attorney. If the garnishee fails to receive a response, the~~  
 4 ~~garnishee may make written request for the pay off balance from the~~  
 5 ~~judgment creditor or, if represented, upon the judgment creditor's attor-~~  
 6 ~~ney, via facsimile, electronic mail with read receipt confirmation or first~~  
 7 ~~class mail. Upon failure of the garnishee to receive a response within 10~~  
 8 ~~days following the written request, the garnishee may submit a written~~  
 9 ~~statement to the judgment creditor or, if represented, to the judgment~~  
 10 ~~creditor's attorney, advising that the garnishee intends to release the gar-~~  
 11 ~~nishment order 10 days following the date of the letter unless they receive~~  
 12 ~~written notice of objection from the judgment creditor or judgment cred-~~  
 13 ~~itor's attorney.~~

by an attorney, such request may also be by facsimile or electronic mail with read receipt confirmation.

, in writing by first class mail, an unsatisfied

7

in the same fashion as the original request

14 Sec. 3. K.S.A. 61-3510 is hereby amended to read as follows: 61-  
 15 3510. This section shall apply if the garnishment is to attach earnings of  
 16 the judgment debtor.

14

statement unless the garnishee receives

17 (a) Within 15 days following the end of each month date of service  
 18 upon a garnishee of an initial order of garnishment, the garnishee shall  
 19 complete the answer in accordance with the instructions accompanying  
 20 the answer form for all pay periods ending during the month and send  
 21 the completed answer to each judgment creditor and judgment debtor at  
 22 the addresses listed on the answer form. The garnishee shall designate  
 23 on the answer in the space provided on the answer form the name and  
 24 case number for each judgment creditor who has a garnishment order in  
 25 effect for the same debtor at the end of each month and the amount that  
 26 is due each judgment creditor under the garnishment in accordance with  
 27 the instructions accompanying the answer form. Only one answer needs  
 28 to be completed for each judgment debtor by the garnishee and the gar-  
 29 nishee may duplicate the completed answer in any manner the garnishee  
 30 desires for distribution to each judgment creditor and judgment debtor.  
 31 The answer shall be supported by unsworn declaration in the manner set  
 32 forth on the answer form. ~~Once the garnishee has distributed the answer~~  
 33 ~~to the initial order of garnishment, no further answer is required. A party~~  
 34 ~~or the court may request a written explanation of the garnishee's com-~~  
 35 ~~putations of earnings withheld during any pay period and the explanation~~  
 36 ~~shall be submitted by affidavit to all parties and the court within 15 days~~  
 37 ~~after such request. Service of the request shall be in the same manner as~~  
 38 ~~process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and~~  
 39 ~~amendments thereto.~~

14

as well as the requested unsatisfied balance. If no objection is timely received by the garnishee, the garnishee may then release the garnishment

14

Replace "shall" with "must" wherever it appears on page 3

40 (b) If there are other liens against the judgment debtor's earnings  
 41 which by law have priority over garnishments, the garnishee shall so in-  
 42 dicate on the answer. In such event, the garnishment shall remain in  
 43 effect but no earnings of the debtor shall be withheld under the garnish-

3-4

1 ment order unless and until all of the other liens having priority are re-  
2 leased or satisfied or the earnings being withheld under all of such liens  
3 are less than the amount which is exempt under K.S.A. 60-2310, and  
4 amendments thereto.

5 Sec. 4. K.S.A. 60-740, 61-3507 and 61-3510 are hereby repealed.

6 Sec. 5. This act shall take effect and be in force from and after its  
7 publication in the statute book.

# SENATE BILL No. 234

By Committee on Judiciary

2-6

60-734, 60-737,

Sec 1. and Sec. 2: see attached  
Renumbering remaining sections accordingly

9 AN ACT concerning civil procedure; relating to garnishment; amending  
10 K.S.A. ~~60-740, 61-3507 and 61-3510~~ and repealing the existing  
11 sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-740 is hereby amended to read as follows: 60-  
15 740. This section shall apply if the garnishment is to attach earnings of  
16 the judgment debtor. If no reply is made to the answer of garnishee within  
17 10 days following the date the garnishee has completed the answer, the  
18 garnishee shall promptly thereafter pay the earnings withheld as indicated  
19 on the answer to all judgment creditors designated on the answer in the  
20 amount due each as indicated on the answer, *and thereafter continue to*  
21 *pay the earnings withheld as they are withheld*, unless the garnishee re-  
22 ceives prior to such payment an order of the court to the contrary. If any  
23 judgment creditor receives more than they are entitled to, that judgment  
24 creditor shall promptly ~~pay return~~ the excess amount *to the garnishee for*  
25 *distribution* pro-rata to the other judgment creditors designated on the  
26 answer, or if no such other judgment creditors are designated, the judg-  
27 ~~ment creditor garnishee~~ shall promptly pay the excess amount to the  
28 judgment debtor.

29 Sec. 2. K.S.A. 61-3507 is hereby amended to read as follows: 61-  
30 3507. This section shall apply if the garnishment is to attach earnings of  
31 the judgment debtor.

32 (a) The order of garnishment and the appropriate form for the gar-  
33 nishee's answer shall be served on the garnishee in the same manner as  
34 process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and  
35 amendments thereto ~~except that the garnishee may be served by any~~  
36 ~~means provided under K.S.A. 61-3001 through 61-3006, and amendments~~  
37 ~~thereto~~, at the garnishee's business or office location and this shall be  
38 considered proper service. A copy of the answer form shall be served if  
39 the garnishment order is not served electronically. If the party having  
40 requested the garnishment is notified by the garnishee that the judgment  
41 debtor has never been employed by the garnishee or the judgment  
42 debtor's employment has been terminated, the party seeking the garnish-  
43 ment shall forthwith file a release with the clerk of the court of such

House Judiciary  
Date 3-18-10  
Attachment # 4

4-2

60-734. Order of garnishment when garnishment is to attach earnings; service of process; length of and effect of order; administrative fee; accounting and record. This section shall apply if the garnishment is to attach earnings of the judgment debtor.

(a) The order of garnishment shall be substantially in compliance with the forms set forth by the judicial council.

(b) The order of garnishment and the appropriate form for the garnishee's answer shall be served on the garnishee in the same manner as process is to be served pursuant to K.S.A. 60-301 through 60-313, and amendments thereto, except that the garnishee may be served by any means provided under K.S.A. 60-301 through 60-313, and amendments thereto, at the garnishee's business or office location and this shall be considered proper service. A copy of the answer form shall be served if the garnishment order is not served electronically. If the party having requested the garnishment is notified by the garnishee that the judgment debtor has never been employed by the garnishee or the judgment debtor's employment has been terminated, the party seeking the garnishment shall forthwith file a release with the clerk of the court of such garnishment.

(c) The order of garnishment shall have the effect of attaching the nonexempt portion of the judgment debtor's earnings for all pay periods which end while the order is in effect. The order shall remain in effect until either of the following occur, whichever is sooner: (1) The judgment is paid; or (2) the garnishment is released. The party for whom the garnishment is issued shall file a release with the clerk of the court upon satisfaction of the judgment and provide a copy thereof to the defendant and garnishee. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to K.S.A. 60-2310, and amendments thereto. Computation of the nonexempt portion of the judgment debtor's wages for the pay period or periods covered by the order shall be made in accordance with the directions accompanying the garnishee's answer form, and a written explanation of the garnishee's computations shall be furnished to the judgment debtor with each paycheck from which earnings are withheld pursuant to the order of garnishment. The order of garnishment shall also constitute an order of the court directing the garnishee to pay to the judgment creditor all earnings which are to be withheld by the garnishee under the order of garnishment as more particularly provided in the answer of the garnishee. ←

(d) From income due the judgment debtor, the garnishee may withhold and retain to defray the garnishee's costs, an administrative fee of \$10 for each pay period for which income is withheld, not to exceed \$20 for each 30 day period for which income is withheld, whichever is less. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment. If the addition of this fee causes the total amount withheld to exceed the restrictions imposed by subsection (b) of K.S.A. 60-2310, and amendments thereto, the fee shall be deducted from the amount withheld. ←

(e) For any continuing garnishment, the party having requested the garnishment shall maintain an accounting and record of the judgment reflecting thereon all garnishment proceeds received and applied, all interest accrued thereon, and any and all credits applied in satisfaction thereof, and the remaining unsatisfied balance of such judgment. The party requesting the garnishment shall produce a copy of such accounting and record upon request of the court. ←

A party or the court may request a written explanation of the garnishee's computations of earnings withheld during any pay period and the explanation must be submitted by affidavit to all parties and the court within 14 days after such request. Service of the request must be in the same manner as process is to be served pursuant to K.S.A. 60-301 through 60-313, and amendments thereto.

e) The party having requested the garnishment must provide the garnishee the unsatisfied balance of the judgment at the time of issuance of the order of garnishment.

and renumbering the remaining sections

The garnishee may request in writing by first class mail the unsatisfied balance from the judgment creditor or, if represented by an attorney, such request may also be by facsimile or electronic mail with read receipt confirmation. If the garnishee fails to receive a response within 7 days following the request, the garnishee may submit a written statement to the judgment creditor or, if represented, to the judgment creditor's attorney, in the same fashion as the original request, advising that the garnishee intends to release the garnishment order 14 days following the date of the state unless the garnishee receives written notice of objection from the judgment creditor or judgment creditor's attorney, as well as the requested unsatisfied balance. If no objection is timely received by the garnishee, the garnishee may then release the garnishment.

Replace "shall" with "must" wherever it appears in K.S.A. 60-734

60-737. Same; garnishment attaching earnings; contents. This section shall apply if the garnishment is to attach earnings of the judgment debtor.

4-3

(a) The answer of the garnishee shall be substantially in compliance with the forms set forth by the judicial council.

14

date of service upon a garnishee of an initial order of garnishment

(b) Within 15 days following the end of each month, the garnishee shall complete the answer in accordance with the instructions accompanying the answer form for all pay periods ending during the month and send the completed answer to each judgment creditor and judgment debtor at the addresses listed on the answer form. The garnishee shall designate on the answer in the space provided on the answer form the name and case number for each judgment creditor who has a garnishment order in effect for the same debtor at the end of each month and the amount that is due each judgment creditor under the garnishment in accordance with the instructions accompanying the answer form. Only one answer needs to be completed for each judgment debtor by the garnishee and the garnishee may duplicate the completed answer in any manner the garnishee desires for distribution to each judgment creditor and judgment debtor. The answer shall be supported by unsworn declaration in the manner set forth on the answer form. ←

Once the garnishee has distributed the answer to the initial order of garnishment, no further answer is required. A party or the court may request a written explanation of the garnishee's computations of earnings withheld during any pay period, and the explanation must be submitted by affidavit within 14 days after such request. Service of the request must be in the same manner as process is to be served pursuant to K.S.A. 61-3001 through 61-3006, and amendments thereto.

(c) If there are other liens against the judgment debtor's earnings which by law have priority over garnishments, the garnishee shall so indicate on the answer. In such event, the garnishment shall remain in effect but no earnings of the debtor shall be withheld under the garnishment order unless and until all of the other liens having priority are released or satisfied or the earnings being withheld under all of such liens are less than the amount which is exempt under K.S.A. 60-2310, and amendments thereto.

History: L. 2002, ch. 198, § 10; July 1.

Replace "shall" with "must" wherever it appears in K.S.A. 60-737

1 ment order unless and until all of the other liens having priority are re-  
2 leased or satisfied or the earnings being withheld under all of such liens  
3 are less than the amount which is exempt under K.S.A. 60-2310, and  
4 amendments thereto.

60-734, 60-737,

5 Sec. 4. K.S.A. ~~60-740~~, 61-3507 and 61-3510 are hereby repealed.

6 Sec. 5. This act shall take effect and be in force from and after its  
7 publication in the statute book.

SENATE BILL No. 537

By Committee on Judiciary

2-5

Balloon #1

House Committee on Judiciary  
SB 537 Balloon  
Prepared by: J. Long

House Judiciary  
Date 3-18-10  
Attachment # 5

10 AN ACT concerning liens and claims against real or personal property;  
11 amending K.S.A. 58-4301 and repealing the existing section.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) ~~Any person aggrieved by an alleged violation of~~  
15 ~~K.S.A. 58-4301, and amendments thereto, may bring a civil action for~~  
16 ~~damages and injunctive relief against the person who filed or recorded~~  
17 ~~the documents alleged to violate such section.~~

After the court made a finding that a lien or claim is fraudulent pursuant to

the aggrieved person

fraudulent

18 (b) In such an action, the burden shall be on the plaintiff to prove  
19 **by a preponderance of the evidence** that the defendant knew or should  
20 have known that the documents filed or recorded were in violation of  
21 K.S.A. 58-4301, and amendments thereto.

22 (c) Such an action shall be bifurcated from an action under K.S.A.  
23 58-4301, and amendments thereto, and service shall be made in accord-  
24 ance with article 3 of chapter 60 of the Kansas Statutes Annotated, and  
25 amendments thereto.

26 (d) ~~After trial the court shall:~~  
27 ~~(1) Make findings of fact and conclusions of law in a form as provided~~  
28 ~~in K.S.A. 58-4301, and amendments thereto;~~

29 ~~(2) order the defendant to pay damages of up to \$10,000 to the plain-~~  
30 ~~tiff for each violation of K.S.A. 58-4301, and amendments thereto, and~~

31 ~~(3) award the prevailing party the costs of the proceeding arising un-~~  
32 ~~der this section, including reasonable attorney's fees.~~

33 ~~(e) After trial the court may:~~

34 ~~(1) Enjoin the defendant from filing any future liens or claims with~~  
35 ~~any filing officer without approval of the court that enters the order; and~~

36 ~~(2) enjoin the defendant from filing any future liens or claims that~~  
37 ~~would violate K.S.A. 58-4301, and amendments thereto.~~

38 (f) Any order set forth in subsection (e) shall be subject to modifi-  
39 cation and termination by the court that enters the order.

40 (g) (1) Each violation of any order set forth in subsection (e) may be  
41 considered contempt of court, ~~punishable by a fine not to exceed \$1,000,~~  
42 ~~imprisonment in the county jail for not more than 120 days, or both such~~  
43 ~~fine and imprisonment.~~

The court shall award the prevailing party the costs of the proceeding arising under this section, including reasonable attorney's fees.  
(e) After trial, and if the court makes a finding that a lien or claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto, the court may:  
(1) Order the defendant to pay \$500 or actual damages to the plaintiff for each violation of K.S.A. 58-4301, and amendments thereto;  
(2) enjoin the defendant from filing any future liens or claims with any filing officer without approval of the court that enters the order; and  
(3) enjoin the defendant from filing any future liens or claims that would violate K.S.A. 58-4301, and amendments thereto.



SENATE BILL No. 537

By Committee on Judiciary

2-5

House Judiciary  
Date 3-18-10  
Attachment # 6

10 AN ACT concerning liens and claims against real or personal property;  
11 amending K.S.A. 58-4301 and repealing the existing section.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) ~~Any person aggrieved by an alleged violation of~~  
15 ~~K.S.A. 58-4301, and amendments thereto, may bring a civil action for~~  
16 ~~damages and injunctive relief against the person who filed or recorded~~  
17 ~~the documents alleged to violate such section.~~

civil action, for the  
plaintiff to be awarded  
damages as provided in  
subsection (e)(1),

In addition to or in lieu of any motion file  
pursuant to K.S.A. 58-4301, and  
amendment thereto, any person may br  
a civil action for damages and injunctive  
relief against:  
1) A person who has filed or recorded  
documents allegedly in violation of K.S.A.  
58-4301, and amendments thereto; or  
2) any advisor or alleged conspirator of  
such person, or other participant with such  
person assisting or actively encouraging  
such person to file or record such  
documents.

18 (b) In such an action, the burden shall be on the plaintiff to prove  
19 *by a preponderance of the evidence* that the defendant knew or should  
20 have known that the documents filed or recorded were in violation of  
21 K.S.A. 58-4301, and amendments thereto.

that the filing or recording  
of the documents violated  
K.S.A. 58-4301, and  
amendments thereto, and

defendants

22 (c) Such an action shall be bifurcated from an action under K.S.A.  
23 58-4301, and amendments thereto, and service shall be made in accord-  
24 ance with article 3 of chapter 60 of the Kansas Statutes Annotated, and  
25 amendments thereto.

a separate cause of action  
from, and at trial be

26 (d) ~~After trial the court shall:~~  
27 (1) ~~Make findings of fact and conclusions of law in a form as provided~~  
28 ~~in K.S.A. 58-4301, and amendments thereto;~~

The court shall award the prevailing party the costs of  
the proceeding arising under this section, including  
reasonable attorney's fees.

29 (2) ~~order the defendant to pay damages of up to \$10,000 to the plain-~~  
30 ~~tiff for each violation of K.S.A. 58-4301, and amendments thereto; and~~  
31 (3) ~~award the prevailing party the costs of the proceeding arising un-~~  
32 ~~der this section, including reasonable attorney's fees.~~

pursuant to

33 (e) ~~After trial the court may:~~  
34 (1) ~~Enjoin the defendant from filing any future liens or claims with~~  
35 ~~any filing officer without approval of the court that enters the order; and~~  
36 (2) ~~enjoin the defendant from filing any future liens or claims that~~  
37 ~~would violate K.S.A. 58-4301, and amendments thereto.~~

indirect

38 (f) Any order set forth in subsection (e) shall be subject to modifi-  
39 cation and termination by the court that enters the order.

40 (g) (1) Each violation of any order set forth in subsection (e) may be  
41 considered contempt of court, punishable by a fine not to exceed \$1,000,  
42 imprisonment in the county jail for not more than 120 days, or both such  
43 fine and imprisonment.

(e) After the trial, and if the court makes a finding that  
a lien or claim is fraudulent pursuant to K.S.A.  
58-4301, and amendments thereto, the court may: (1)  
Order the defendant to pay \$500 or actual damages  
to the plaintiff for each violation of K.S.A. 58-4301,  
and amendments thereto;  
(2) enjoin the defendant from filing any future liens or  
claims with any filing officer without approval of the  
court that enters the order; and  
(3) enjoin the defendant from filing any future liens or  
claims that would violate K.S.A. 58-4301, and  
amendments thereto.

6-2

citation in contempt

entered pursuant to

, and may be directed against any person to whom the initial or subsequent order was directed, and with notice and an opportunity to be heard, the same may be brought against others even if such persons were not a party to the original civil action brought pursuant to this section

(2) A contempt action under this section may be brought by any person aggrieved by a violation of any order set forth in subsection (e) regardless of whether such person was a party to the original civil action brought pursuant to this section.

Sec. 2. K.S.A. 58-4301 is hereby amended to read as follows: 58-4301. (a) (1) Any person who owns real or personal property or an interest in real or personal property or who is the purported debtor or obligor and who has reason to believe that any document or instrument purporting to create a lien or claim against the real or personal property or an interest in real or personal property previously filed or submitted for filing and recording is fraudulent as defined in subsection (e) may complete and file, at any time without any time limitation, with the district court of the county in which such lien or claim has been filed or submitted for filing, or with the district court of the county in which the property or the rights appertaining thereto is situated, a motion for judicial review of the status of documentation or instrument purporting to create a lien or claim as provided in this section. Such motion shall be supported by the affidavit of the movant or the movant's attorney setting forth a concise statement of the facts upon which the claim for relief is based. Such motion shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

(2) The completed form for ordinary certificate of acknowledgment shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

(3) The clerk of the district court shall not collect a filing fee for filing a motion as provided in this section.

(b) The court's findings may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence. The district court's review may be made ex parte without delay or notice of any kind. An appellate court shall expedite review of a district court's findings as provided in this section.

(c) (1) After review, the district court shall enter appropriate findings of fact and conclusions of law in a form as provided in subsection (d) regarding the documentation or instrument purporting to create a lien or claim, which shall be filed and indexed in the same filing office in the appropriate class of records in which the original documentation or instrument in question was filed.

(2) The court's findings of fact and conclusions of law may include an order setting aside the lien and directing the filing officer to nullify the lien instrument purporting to create the lien or claim. If the lien or claim was filed pursuant to the uniform commercial code, such order shall act as a termination statement filed pursuant to such code.

(3) The filing officer shall not collect a filing fee for filing a district

## Proposed Substitute for HOUSE BILL NO. 2714

By Committee on Judiciary

AN ACT concerning compensation awards under eminent domain procedure; amending K.S.A. 26-511 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 26-511 is hereby amended to read as follows: 26-511. (a) If the compensation finally awarded on appeal exceeds the amount of money paid to the clerk of the court pursuant to K.S.A. 26-507, and amendments thereto, the judge shall enter judgment against the plaintiff for the amount of the deficiency, ~~with interest~~ and may enter an award for interest. If the compensation finally awarded on appeal is less than the amount paid to the clerk of the court pursuant to K.S.A. 26-507, and amendments thereto, the judge shall enter judgment in favor of the plaintiff for the return of the difference, with interest.

~~(b) -- If the money paid to the clerk of the court under K.S.A. 26-507 is paid before July 1, 1982, the judgment shall bear interest as follows:~~

~~(1) -- On and after the date of the payment to the clerk and before July 1, 1982, at the rate of 6% per annum; and~~

~~(2) -- on and after July 1, 1982, and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.~~

~~(c) -- If (b) Of the money paid to the clerk of the court under K.S.A. 26-507 is paid on or after July 1, 1982, and amendments thereto, the judgment shall bear interest, on and~~

House Judiciary

Date 3-18-10Attachment # 7

after the date of the payment to the clerk and until the date the judgment is paid, at the rate provided by K.S.A. 16-204, and amendments thereto.

Sec. 2. K.S.A. 26-511 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.