

# Journal of the House

FIFTY-SEVENTH DAY

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HALL OF THE HOUSE OF REPRESENTATIVES,  
TOPEKA, KS, Friday, May 10, 2013, 10:00 a.m.

The House met pursuant to adjournment with Speaker Merrick in the chair.

The roll was called with 121 members present.

Rep. Osterman was excused on verified illness.

Rep. Shultz was excused on legislative business.

Reps. Rhoades and Siegfried were excused on excused absence by the Speaker.

Present later: Reps. Rhoades and Siegfried.

Prayer by Representative Frownfelter:

## A GAME GUY'S PRAYER

“Dear God:

“Help me to be a sport in this little game of life. I don't ask for any place in the lineup; play me where you need me, I only ask for the stuff to give You a hundred per cent of what I've got. If all the hard drives come my way, I thank You for the compliment. Help me to remember that You won't let anything come that You and I together can't handle. And help me to take the bad breaks as part of the game. Help make me thankful for them.

“And God, help me always to play on the square, no matter what the other players do. Help me to come clean. Help me to see that often the best part of the game is helping the other guys. Help me to be a 'regular fellow' with the other players.

“Finally, God, if fate seems to uppercut me with both hands and I'm laid up on the shelf in sickness or old age, help me to take that as part of the game also. Help me not to whimper or squeal that the game was a frame-up, or that I had a raw deal. When in the dusk I get the final bell, I ask for no lying, complimentary stones. I'd only like to know that You feel I've been a good guy.”

(Adapted from a prayer by *Richard J. Cushing D.D.*)

The Pledge of Allegiance was led by Rep. Grant.

**PERSONAL PRIVILEGE**

There being no objection, the following remarks of Rep. Grant are spread upon the Journal:

Family, Friends & Colleagues,

As the old saying goes, “the clock on the wall says it is time to call it quits, sink into the sunset and call it a day.”

In my case it is time to call it the end of a career that I have really enjoyed for the last twenty-three years, less two for red-shirting in 1995-96. I have been privileged to attend and be part of a lot of events, meet a lot of great people and see things across the Great State of Kansas that, had I not been a State Representative, I might not have had the opportunity to do.

I would like to thank my wife Lynn, daughter Megan Fry and her husband, Kevin and children, Ross and Katie, for their love and support throughout this endeavor.

In addition, I want to thank the people of the second district for allowing me the distinct privilege and opportunity to represent them in Topeka. I have been fortunate to have served the people of Cherokee, Crawford, Bourbon, Neosho and Allen counties at different times in my career. It has been an honor to serve this district through all its geographical changes. Southeast Kansas is a great part of the state and I hope I have served it well.

I have met some great people along the way and if I tried to thank all of them, we would be here until the next session started. I don't know about you but I don't think I want to do that.

There are a few people I do need to make some comments about:

L.V. “Sam” Roper, the man I followed into the Legislature. I say “followed” because you could not replace Sam. He was my friend, my mentor and he gave me good, sound advice. He said “Always think things through and always tell the truth. People may not like it but when asked the same question two weeks down the road, you don't have to try and remember what you said. It will be automatic.”

Herman Dillon, for those who knew him, was a person you could not forget. He was a close friend and colleague.

I have been so lucky to have three excellent secretaries, Vernita Mitchell, Jo Copeland and Judy Corpolongo. These long-suffering ladies kept me on the straight and narrow over the years and I could not have done my job without them.

The staff in the Capitol building from the custodians to the doormen do a remarkable job making this building a pleasant workplace. I thank them for all the behind the scenes work they do to keep this a house of and for the people of Kansas.

The Democratic staff members through the years have been an exceptional bunch and it has been a pleasure to work with Haley, Tyler and Allison in recent years. Phil Stevenson has been my rock for several years, helping me keep my seat. A thank you too, to John Polzar who helped me regain the position in 1996. The person I always consider to be the mainstay of the Democratic office is Jan King. She knows the process well and doesn't have a problem telling someone where to go. Jan, you are the greatest.

I have worked with some remarkable Democratic leaders: Speaker Marvin Barkis, Tom Sawyer, Jim Garner, Dennis McKinney Paul Davis as well as Bill Reardon and R.J. Wilson. They have all been a huge source of support for me. I value their

friendship as I do so many past and present legislators on both sides of the aisle. Like I said, if I start naming them all we would be here far too long. My memory is not that good anyway and I might leave someone out.

I have served under 5 governors, Joan Finney, Bill Graves, Kathleen Sebelius, Mark Parkinson and Sam Brownback, and have had differences of opinion with all of them. I have served in good times and bad, in contentious years and productive sessions. My advice to all of you: Don't forget WHY you are here. NEVER, EVER forget who hired you. You have a great responsibility to the people you represent as well all the people of Kansas.

It's been a hell of a ride, but come January, it will be time for me to stay home. May God bless you all and may God bless the great state of Kansas.

### **PERSONAL PRIVILEGE**

There being no objection, the following remarks of Rep. Hedke are spread upon the Journal:

June 5, 1984, was a big day in the household of Dennis and Annette Hedke, as we observed the live, beautiful birth of our first child, Reasha Christine. A special name we made up just for this very special person; a softened version of the Hebrew word for 'Tenderness', Recha.

This child was read to while still in her mother's womb, and she took full advantage of the opportunity. She entered the gifted program at Beech Elementary in Wichita at age 5, went to private school at Wichita Collegiate for some years, was then home-schooled with her brother for 5 years, and entered Trinity Academy in Wichita for her freshman year in high school.

We moved to Katy, TX during the summer of 1999, and she entered a brand new public high school, Cinco Ranch, graduated near the top of her class in their first graduating class in the spring of 2002. She achieved multiple scholarships from Southern Methodist University in Dallas and entered undergraduate studies the fall of that year, graduating with a triple degree in Political Science, Public Policy and International Studies.

She went to work in the real world to save money, with the goal of attending Law School. She was accepted to night school at SMU, continuing to work nearly full time to support most of her expenses.

We were very happy when she graduated law school cum laude in December 2012. She then dove in, all-in, to study for the Texas Bar, taking that exam in February 2013. The news arrived last week that she passed that exam, and she is now officially ready to practice law.

We could not possibly be more proud of her successes and wanted to share that elation with some very special colleagues in this Chamber today.

Thank you very much for your indulgence, your attention and your patience.

God Bless each and every one of you.

### **INTRODUCTION OF GUESTS**

There being no objection, the following remarks of Rep. Ruiz are spread upon the Journal:

I'd like to introduce Mark Holland, 4<sup>th</sup> generation Kansan, 3<sup>rd</sup> generation United Methodist Pastor, his wife Julie, and four children. He was elected two terms as an at-large Commissioner for the 2<sup>nd</sup> district Unified Government of Kansas City, Kansas.

Mark received his B.A. in Philosophy and Anthropology from Southern Methodist University in Dallas. He has been involved with some of the decision making that has proven successful with the new Cerner towers, Livestrong Stadium, and Hollywood Casino. He has championed health care initiatives for healthier outcomes, and has been known for his outstanding community involvement in all areas of Kansas City, Kansas.

It is my pleasure and very much an honor to introduce to this House membership—Mayor and CEO Mark Holland, two members of his staff, Lindsay Behgam and Maureen Mahoney.

### REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was referred to committee as indicated:

Taxation: **HB 2413**.

### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Vickrey, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **HB 2081**, **HB 2015**.

### CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2081** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 1, following line 5, by inserting:

"Section 1. K.S.A. 60-903 is hereby amended to read as follows: 60-903. ~~(a) No notice or bond required. A restraining order may issue without notice or bond, except as provided in subsection (b) of K.S.A. 60-904, and amendments thereto, but if it appears to the judge that a restraining order may result in damage to the party restrained, a bond to secure payment of any damages sustained may be required. An application for a restraining order shall also be considered as an application for a temporary injunction and either party may give notice of hearing thereon. The order shall remain in force until the hearing on the application for a temporary injunction.~~

(a) Temporary restraining order: issuing without notice. Except as provided in subsection (b) of K.S.A. 60-904, and amendments thereto, the court may issue a temporary restraining order without notice or bond to the adverse party or its attorney only if:

(1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition;

(2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required; and

(3) notice of the issuance of a temporary restraining order is provided to the

attorney general of the state of Kansas 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.

(b) Contents; expiration. Every temporary restraining order issued without notice must state the date and hour it was issued, describe the injury and state why it is irreparable, state why the order was issued without notice and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry, not to exceed 14 days, that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(c) Expediting the temporary injunction hearing. If the temporary restraining order is issued without notice, the motion for a temporary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion, and if the party does not, the court must dissolve the order.

(d) Service. Where a temporary restraining order is issued without notice, it shall be served upon each party restrained in the manner prescribed for personal service of a summons.

(e) Motion to Dissolve. On two days' notice to the party who obtained the temporary restraining order without notice, or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(f) Security. Unless otherwise provided by statute or this section, the court may issue a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully restrained. The state of Kansas or an agency, officer or employee thereof, is not required to give security. For any city or county or an agency, officer or employee thereof, at the discretion of the judge, the security required by this subsection may be waived.

Sec. 2. K.S.A. 2012 Supp. 60-2001 is hereby amended to read as follows: 60-2001.

(a) Docket fee. Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of \$156 on and after July 1, 2009 through June 30, 2013, and \$154 on and after July 1, 2013, to the clerk of the district court. Except as provided further, the docket fee established in this subsection shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after the effective date of this act through June 30, 2013, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(b) Poverty affidavit in lieu of docket fee. (1) Effect. In any case where a plaintiff by reason of poverty is unable to pay a docket fee, and an affidavit so stating is filed, no fee will be required. An inmate in the custody of the secretary of corrections may file a poverty affidavit only if the inmate attaches a statement disclosing the average account balance, or the total deposits, whichever is less, in the inmate's trust fund for each month in: (A) The six-month period preceding the filing of the action; or (B) the current

period of incarceration, whichever is shorter. Such statement shall be certified by the secretary. On receipt of the affidavit and attached statement, the court shall determine the initial fee to be assessed for filing the action and in no event shall the court require an inmate to pay less than \$3. The secretary of corrections is hereby authorized to disburse money from the inmate's account to pay the costs as determined by the court. If the inmate has a zero balance in such inmate's account, the secretary shall debit such account in the amount of \$3 per filing fee as established by the court until money is credited to the account to pay such docket fee. Any initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection (d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection.

(2) *Form of affidavit.* The affidavit provided for in this subsection shall ~~be in the following form and attached to the petition:~~

State of Kansas, \_\_\_\_\_ County:

In the district court of the county: I do solemnly swear that the claim set forth in the petition herein is just, and I do further swear that, by reason of my poverty, I am unable to pay a docket fee set forth a factual basis upon which the plaintiff alleges by reason of poverty an inability to pay a docket fee, including, but not limited to, the source and amount of the plaintiff's weekly income. Such affidavit shall be signed and sworn to by the plaintiff under oath, before one who has authority to administer the oath, under penalty of perjury, K.S.A. 2012 Supp. 21-5903, and amendments thereto. The form of the affidavit shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

(3) *Court review: grounds for dismissal; service of process.* The court shall review any petition authorized for filing under this subsection. Upon such review, if the court finds that the plaintiff's allegation of poverty is untrue, the court shall direct the plaintiff to pay the docket fee or dismiss the petition without prejudice. Notwithstanding K.S.A. 60-301, and amendments thereto, service of process shall not issue unless the court grants leave following its review.

(c) *Disposition of fees.* The docket fees and the fees for service of process shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. For every person to be served by the sheriff, the persons requesting service of process shall provide proper payment to the clerk and the clerk of the district court shall forward the service of process fee to the sheriff in accordance with K.S.A. 28-110, and amendments thereto. The service of process fee, if paid by check or money order, shall be made payable to the sheriff. Such service of process fee shall be submitted by the sheriff at least monthly to the county treasurer for deposit in the county treasury and credited to the county general fund. The docket fee shall be disbursed in accordance with K.S.A. 20-362, and amendments thereto.

(d) *Additional court costs.* Other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Other fees shall include, but not be limited to, witness fees, appraiser fees, fees for service of process, fees for depositions, alternative dispute resolution fees, transcripts and publication, attorney fees, court costs from other courts and any other fees and expenses required by statute. All additional court costs shall be taxed and billed against the parties as directed by the court. No sheriff in this state shall charge any mileage for serving any papers or process.

Sec. 3. K.S.A. 2012 Supp. 60-2414 is hereby amended to read as follows: 60-2414.

(a) *Right of redemption by defendant owner.* Except as stated in subsection (m) and as otherwise provided by law, the defendant owner may redeem any real property sold under execution, special execution or order of sale, at any time within 12 months from the day of sale, for the amount paid by the current holder of the certificate of purchase, including expenses incurred by the holder of the certificate of purchase in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. The defendant owner in the meantime shall be entitled to the possession of the property. If the court finds after hearing, either before or after sale, upon not less than 21 days' notice to all parties, that the property has been abandoned, or is not occupied in good faith, the period of redemption for the defendant owner may be shortened or extinguished by the court. The right of redemption shall not apply to oil and gas leaseholds. Except for mortgages covering agricultural lands or for mortgages covering single or two-family dwellings owned by or held in trust for natural persons owning or holding such dwelling as their residence, the mortgagor may agree in the mortgage instrument to a shorter period of redemption than 12 months or may wholly waive the period of redemption.

(b) *Redemption by lien creditor.* Except as provided in subsection (m), for the first three months of the redemption period, if any, the right of the defendant owner or successors and assigns to redeem is exclusive. If no redemption is made by the defendant owner during the time in which the defendant owner has the exclusive right to redeem, any creditor referred to in subsection (c) may redeem the property during the balance of the redemption period remaining. If the defendant owner has waived the right of redemption, a creditor shall have a right to redeem the property for a period of three months from the date of the judicial sale. If the defendant owner has agreed to a period of redemption of three months or less, a creditor shall have a right to redeem for a period of three months from the date of expiration of the defendant owner's redemption period. If the court shortens or extinguishes the period of redemption because of abandonment or lack of good faith occupation as provided in subsection (a), the court shall specify in the order a time not to exceed three months during which a creditor may redeem. The first creditor redeeming must pay only the amount of the successful sale bid, the expenses incurred by the holder of the certificate in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption. After redemption by a creditor, no further redemption shall be allowed except by the defendant owner or such owner's successors and assigns. If a creditor redeems during the period of redemption for the defendant owner, the defendant owner shall have the balance of such period, but in no event less than 14 days from the filing of the affidavit required in subsection (f), to redeem from the creditor. When the defendant owner or such owner's successors and assigns redeem subsequent to redemption by a creditor, the defendant owner or such owner's successors and assigns shall pay an amount equal to the redemption amount paid by such creditor, plus the amount required by subsection (f), and expenses incurred by the creditor in accordance with subsection (d), together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs and taxes to the date of redemption.

(c) *Creditors who may redeem.* Any creditor whose claim is or becomes a lien prior

to the expiration of the time allowed by law for the redemption by creditors may redeem. A mortgagee may redeem upon the terms prescribed by this section before or after the debt secured by the mortgage falls due.

(d) *Terms of redemption; rights of parties.* During the period allowed for redemption, the holder of the certificate of purchase or the creditor who has redeemed may pay the taxes on the lands sold, insurance premiums on the improvements thereon, other sums necessary to prevent waste, and interest or sums due, upon any prior lien or encumbrance on the real property. Upon the redemption of the property, the holder of the certificate or the creditor who has redeemed shall be entitled to repayment of all sums thus paid, together with interest at the rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto. All expenses incurred by the holder of the certificate or the creditor who has redeemed shall be as shown by receipts or vouchers filed in the office of the clerk of the district court.

(e) *Effect of failure of debtor to redeem; deficiency.* If the defendant owner or such owner's successors or assigns fail to redeem as provided in this section, the holder of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period will hold the property absolutely. If it is held by a redeeming creditor, the lien and the claim out of which it arose will be held to be extinguished, unless the redeeming creditor is unwilling to hold the property and credit the defendant owner with the full amount of the redeeming creditor's lien and, at the time of redemption, files with the clerk of the district court a statement of the amount that the redeeming creditor is willing to credit on the claim. If the redeeming creditor files such a statement and the defendant owner or such owner's successors and assigns fail to redeem, the creditor's claim shall be extinguished by the amount in the statement. The sheriff, at the end of the redemption period, shall execute a deed to the current owner of the certificate of purchase or the creditor who has redeemed prior to the expiration of the redemption period.

(f) *Mode of redemption.* The party redeeming shall pay the money into the office of the clerk of the district court for the use of the persons entitled to it. The clerk shall give a receipt for the money, stating the purpose for which it is paid. The clerk shall also enter the transaction on the appearance docket of the case, showing the amount paid. A redeeming creditor, or agent of the creditor, shall also file an affidavit stating as nearly as practicable the amount still unpaid due on the claim of that creditor and any lesser amount the creditor is willing to credit on the claim in accordance with subsection (e). The creditor's claim, or such lesser amount as the creditor is willing to credit on the claim in accordance with subsection (e), shall be added to the redemption amount to be paid by the defendant owner or such owner's successors and assigns.

(g) *Redemption of property sold in parcels, or undivided portions.* Whenever the property has been sold in parcels, any distinct portion of that property may be redeemed by itself. If a creditor has redeemed, the amount of the creditor's claim or such lesser amount as the creditor is willing to credit on the claim as stated in the affidavit under subsection (f) shall be added to each parcel sold pro rata in proportion to the amount for which it was originally sold. When the interests of several tenants in common have been sold on execution the undivided portion of any or either of them may be redeemed separately.

(h) *Transfer of right of redemption.* The rights of the defendant owner in relation to redemption may be assigned or transferred, and the assignee or transferee shall have the



same right of redemption as the defendant owner. The assigned or transferred right of redemption shall not be subject to levy or sale on execution.

(i) *Holder of legal title.* The holder of the legal title at the time of issuance of execution or order of sale shall have the same right of redemption upon the same terms and conditions as the defendant in execution and shall be entitled to the possession of the property the same as the defendant in execution.

(j) *Injury or waste after sale.* After the sheriff makes the deed to the purchaser or party entitled to a deed under sale as provided in this section, the purchaser or party may assert a claim for damages against any person committing or permitting any injury or waste upon the property purchased after the sale and before possession is delivered under the conveyance.

(k) *Second sale not permitted.* Real estate once sold upon order of sale, special execution or general execution shall not again be liable for sale for any balance due upon the judgment or decree under which it is sold, or any judgment or lien inferior thereto, including unadjudicated junior liens filed after the petition is filed in the district court to foreclose the senior lien against the real estate.

(l) *Injunction or receiver to protect property.* The holder of the certificate of purchase shall be entitled to prevent any waste or destruction of the premises purchased. For that purpose the court, on proper showing, may issue an injunction or, when required to protect the premises against waste, appoint a receiver who shall hold the premises until the purchaser is entitled to a deed. The receiver may rent, control and manage the premises but the income during that time, except the fees and expenses of the receiver and the amount that is necessary to keep up repairs, prevent waste and pay real estate taxes and insurance premiums, shall go to the person who otherwise would be entitled to possession during the period of redemption.

(m) *Owners reduced redemption period.* In the event a default occurs in the conditions of the mortgage or instrument of the most senior lien foreclosed before  $\frac{1}{3}$  of the original indebtedness secured by the mortgage or lien has been paid, the court shall order a redemption period of three months. If, after proper showing, the court finds that the total outstanding amount of all mortgages or liens is less than  $\frac{1}{3}$  of the market value of the property, the court shall order a redemption period of 12 months. If the court finds after a hearing with not less than 21 days' notice to all parties, that the defendant owner has involuntarily lost such owner's primary source of income after the date of the foreclosure sale and prior to expiration of a three-month period of redemption, the court may extend the three-month period of redemption an additional three months. If the court orders a redemption period of six months or less, the right of the defendant owner or successors and assigns to redeem is exclusive for the first two months of the redemption period. This subsection shall not apply in the event redemption rights have been shortened, waived or terminated pursuant to subsection (a).";

On page 3, following line 30, by inserting:

"New Sec. 6. (a) The conduct prohibited by K.S.A. 2012 Supp. 21-6107, and amendments thereto, constitutes an unconscionable act or practice in violation of K.S.A. 50-627, and amendments thereto, and any person who engages in such conduct shall be subject to the remedies and penalties provided by the Kansas consumer protection act.

(b) For the purposes of the remedies and penalties provided by the Kansas consumer protection act:

(1) The person committing the conduct prohibited by K.S.A. 2012 Supp. 21-6107,

and amendments thereto, shall be deemed the supplier, and the person who is the victim of such conduct shall be deemed the consumer; and

(2) proof of a consumer transaction shall not be required.

(c) This section shall be part of and supplemental to the Kansas consumer protection act and shall be known and may be cited as the Wayne Owen law.";

And by renumbering sections accordingly;

On page 3, in line 31, after "K.S.A." by inserting "60-903 and K.S.A."; also in line 31, after "Supp." by inserting "60-2001, 60-2414,";

On page 1, in the title, in line 1, after "procedure" by inserting "and civil actions"; also in line 1, by striking "the forfeiture of"; in line 2, by striking "instrumentalities of a crime" and inserting "temporary restraining orders; docket fees and costs; poverty affidavits; redemption of real property; asset seizure and forfeiture; unconscionable act or practice under the Kansas consumer protection act"; also in line 2, after "K.S.A." by inserting "60-903 and K.S.A."; also in line 2, after "Supp." by inserting "60-2001, 60-2414,";

And your committee on conference recommends the adoption of this report.

JEFF KING

GREG SMITH

DAVID HALEY

*Conferees on part of Senate*

LANCE Y. KINZER

ROBERT BRUCHMAN

JANICE L. PAULS

*Conferees on part of House*

On motion of Rep. Kinzer, the conference committee report on **HB 2081** was adopted.

On roll call, the vote was: Yeas 121; Nays 0; Present but not voting: 0; Absent or not voting: 4.

Yeas: Alcala, Alford, Ballard, Barker, Becker, Bideau, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, Couture-Lovelady, Campbell, Carlin, Carlson, Carpenter, Cassidy, Christmann, Claeys, Clayton, Concannon, Corbet, Crum, Davis, DeGraaf, Dierks, Dillmore, Doll, Dove, Edmonds, Edwards, Esau, Ewy, Finch, Finney, Frownfelter, Gandhi, Garber, Goico, Gonzalez, Grant, Grosserode, Hawkins, Hedke, Henderson, Henry, Hermanson, Hibbard, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Howell, Huebert, Hutton, Jennings, Johnson, Jones, Kahrs, Kelley, Kelly, Kinzer, Kleeb, Kuether, Lane, Lunn, Lusk, Macheers, Mast, McPherson, Meier, Meigs, Menghini, Merrick, Montgomery, Moxley, O'Brien, Pauls, Peck, Perry, Peterson, Petty, Phillips, Powell, Proehl, Read, Rooker, Rothlisberg, Rubin, Ruiz, Ryckman Jr., Ryckman Sr., Sawyer, Schroeder, Schwab, Schwartz, Seiwert, Sloan, Sloop, Suellentrop, Sutton, Swanson, Thimesch, Tietze, Todd, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, Weigel, Whipple, Wilson, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: Osterman, Rhoades, Shultz, Siegfried.

**CHANGE OF CONFEREES**

Speaker Merrick announced the appointment of Reps. Kinzer, Bruchman and Pauls as members of the conference committee on **HB 2162** to replace Reps. Schwab, Huebert and Sawyer.

**REPORT OF STANDING COMMITTEES**

Your Committee on **Calendar and Printing** recommends on requests for resolutions and certificates that

**Request No. 95**, by Representative Henderson, congratulating George Melvin Richardson on celebrating his 100<sup>th</sup> birthday;

**Request No. 96**, by Representative Hibbard, congratulating Ida Webb on celebrating her 103<sup>rd</sup> birthday;

**Request No. 97**, by Representative Mast, congratulating Elijah Smith for making history in the collegiate debate world by winning the National Debate Tournament and the Cross Examination Debate Association National Tournament;

**Request No. 98**, by Representative Mast, congratulating Ryan Wash for making history in the collegiate debate world by winning the National Debate Tournament and the Cross Examination Debate Association National Tournament;

**Request No. 99**, by Representative Ewy, congratulating John Fritzler on twenty years of dedicated service to the State of Kansas;

**Request No. 100**, by Representative Davis, congratulating Bill and Pat Moore on their retirement from the Teamsters Local Union #696;

**Request No. 101**, by Representative Kelly, congratulating Guy Ray Rutland on being inducted into the American Quarter Horse Hall of Fame;

**Request No. 102**, by Representative Meier, congratulating Harry Mohan on celebrating his 90<sup>th</sup> birthday;

**Request No. 103**, by Representative Dove, congratulating Zachary Hevel of Basehor Linwood High School on acceptance into the Air Force Academy Class of 2017;

**Request No. 104**, by Representative Schwartz, congratulating Marysville Kiwanis Club on 75 years of service to the Marysville Community;

**Request No. 105**, by Representative Meier, congratulating C.W. Parker Carousel "Carry-Us-All #118" on celebrating the 100<sup>th</sup> birthday in Leavenworth;

**Request No. 106**, by Representative Davis, congratulating the Brotherhood of Locomotive Engineers and Trainmen in recognition for 150 years of distinguished service to the United States and the state of Kansas;

**Request No. 107**, by Representative Boldra, congratulating Joseph Heimann on achieving the rank of Eagle Scout;

**Request No. 108**, by Representative Mast, congratulating Toad Hollow Daylily Farm in recognition for seventeen years of sharing beauty, hard work and hospitality;

**Request No. 109**, by Representative Henderson, congratulating the First Baptist Church of Quindaro 2013 graduates;

be approved and the Chief Clerk of the House be directed to order the printing of said certificates and order drafting of said resolutions.

On motion of Rep. Vickrey, the committee report was adopted

On motion of Rep. Vickrey, the House recessed until 2:00 p.m.

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#### AFTERNOON SESSION

The House met pursuant to recess with Speaker Merrick in the chair.

#### PERSONAL PRIVILEGE

There being no objection, the following remarks of Rep. Hermanson are spread upon the Journal:

Thank you Mr. Speaker for allowing me to have this point of personal privilege. This is personal and a huge privilege. I want to take this time to make this official in front of many friends and colleagues.

My girlfriend, Rhonda Riggs, is here. She is a life long Wichitan and we were classmates K-12 in the Goddard School District.

Rhonda, you are my best friend and this day is important to us both. Would you please come up here to the well.

Rhonda Riggs, will you marry me? That is a yes.

#### MESSAGE FROM THE SENATE

The Senate not adopts the Conference Committee report on **S Sub for HB 2199**, requests a conference and appoints Senators Ostmeyer, Emler and Faust-Goudeau as third conferees on the part of the Senate.

The Senate announces the appointment of Senators King, Smith and Haley as members of the conference committee on **HB 2162** to replace Senators Pyle, Holmes and Faust-Goudeau.

#### INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Vickrey, the House acceded to the request of the Senate for a conference on **S Sub for HB 2199**.

Speaker Merrick thereupon appointed Reps. Siegfried, Brunk and Ruiz as third conferees on the part of the House.

#### CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2015** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill, as printed with Senate Committee amendments, as follows:

On page 2, following line 10, by inserting:

"New Sec. 3. (a) On and after July 1, 2015, notwithstanding any other law to the contrary, for any order of support required to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 2012 Supp. 39-7,135, and amendments thereto, regardless of when such order was entered or modified, amounts collected by such central unit shall be distributed in accordance with rules and regulations adopted by the secretary of the department for children and

families. Such rules and regulations shall be based on child support distribution requirements as set forth in part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended, and federal regulations promulgated pursuant thereto.

(b) Prior to July 1, 2015, the secretary of the department for children and families shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall not become effective until July 1, 2015.

New Sec. 4. (a) Except as otherwise provided in this section, an income withholding order for attachment of a lump sum payment shall have the effect of attaching: (1) Any intangible property, funds, credits or other indebtedness of a non-recurring nature belonging or owing to the obligor which is due from the payor or in the possession or under the control of the payor at the time of service of the order; and (2) all such personal property becoming due to the obligor between the time the order is served on the payor and the 35<sup>th</sup> day after the date the order is served.

(b) The payor shall hold the attached funds, credits or indebtedness at least 14 days following the date the income withholding order for attachment of a lump sum payment was served. Thereafter, except as otherwise provided in this section, the payor shall remit the amount attached no later than the date the lump sum payment would have been paid to the obligor or 21 days after the date the order was served, whichever is later.

(c) The payor shall hold the attached funds, credits or indebtedness until further order of the court if, before remitting funds pursuant to subsection (b), the payor receives notice of a hearing on the obligor's claim of exemption concerning the income withholding order for attachment of a lump sum payment.

(d) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

New Sec. 5. (a) Immediately following the date the income withholding order for attachment of a lump sum payment is served on the payor, the person or public office seeking the withholding shall send a notice to the obligor, notifying the obligor: (1) That an income withholding order to attach a lump sum payment has been served on the payor and the effect of such order; (2) of the obligor's right to assert any claim of exemption allowed under the income withholding act; and (3) of the obligor's right to a hearing on such claim. The notice shall be substantially in compliance with the form developed pursuant to K.S.A. 2012 Supp. 23-3113, and amendments thereto, and shall contain a description of the exemptions that are applicable under the income withholding act and the procedure by which the obligor can assert any claim of exemption.

(b) If the obligor requests a hearing to assert any claim of exemption, the request shall be filed no later than 10 days following the date the notice is served on the obligor. If a hearing is requested, the hearing shall be held by the court no sooner than five days nor later than 10 days after the request is filed. At the time the request for hearing is filed, the obligor shall obtain from the clerk of the court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the obligor shall hand-deliver or mail, by first-class mail, a copy of the request for hearing to the payor and to the person or public office seeking the withholding or such person's attorney, if the person is represented by an attorney.

(c) If a hearing is held, the obligor shall have the burden of proof to show that some or all of the property subject to the withholding is exempt, and the court shall enter an

order determining the exemption and such other order as is appropriate.

(d) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

New Sec. 6. (a) (1) The secretary of the department for children and families may collect, pursuant to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto, support owed in a title IV-D case from unemployment insurance benefits payable to the obligor. Such collections may be remitted directly to the secretary. The secretary, and any other agency affected, shall use electronic processes to the greatest extent feasible.

(2) All provisions of the income withholding act shall apply to the withholding of support from unemployment insurance benefits from the state employment security agency, which shall be considered a payor for the purposes of the income withholding act, except that any cost recovery fee as a result of such withholding shall be paid by the department for children and families and shall not be paid by the obligor.

(b) If the secretary of the department for children and families receives an income withholding collection directly from another state agency for a debtor with more than one income withholding order and the payor agency does not identify the amount to be applied to each withholding order, the secretary may apply the collection in any manner allowed under title IV-D, provided that all current support due for the month under the withholding orders is satisfied first.

(c) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

Sec. 7. K.S.A. 2012 Supp. 23-3102 is hereby amended to read as follows: 23-3102. As used in the income withholding act:

(a) "Arrearage" means the total amount of unpaid support which is due and unpaid under an order for support, based upon the due date specified in the order for support or, if no specific date is stated in the order, the last day of the month in which the payment is to be made. If the order for support includes a judgment for reimbursement, an arrearage equal to or greater than the amount of support payable for one month exists on the date the order for support is entered.

(b) "Business day" means a day on which state offices in Kansas are open for regular business.

(c) "Health benefit plan" means any benefit plan, other than public assistance, which is able to provide hospital, surgical, medical, dental or any other health care or benefits for a child, whether through insurance or otherwise, and which is available through a parent's employment or other group plan.

(d) "Income" means any form of ~~periodic~~ payment to an individual, regardless of source, including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, workers compensation and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof. "Income" does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including but not limited to federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply.

Workers compensation shall be considered income only for the purposes of child support and not for the purposes of maintenance. Unemployment insurance benefits shall be considered income for purposes of this act when such funds are sought by the secretary of the department for children and families, or the secretary's designee, in administration of the title IV-D program.

(e) "Income withholding agency" means the department for children and families.

~~(e)~~ (f) "Income withholding order" means an order issued under this act which requires a payor to withhold income to satisfy an order for support or to defray an arrearage.

(g) "Lump sum payment" means income in the form of a bonus, commission, an amount paid in lieu of vacation or other leave time, or any other payment to an obligor. "Lump sum payment" does not include payments made on regular paydays as compensation, reimbursement of expenses incurred by the obligor on behalf of the payor, or an amount paid as severance pay on termination of employment.

~~(f)~~ (h) "Medical child support order" means an order requiring a parent to provide coverage for a child under a health benefit plan and, where the context requires, may include an order requiring a payor to enroll a child in a health benefit plan.

~~(g)~~ (i) "Medical withholding order" means an income withholding order which requires an employer, sponsor or other administrator of a health benefit plan to enroll a child under the health coverage of a parent.

~~(h)~~ (j) "Nonparticipating parent" means, if one parent is a participating parent as defined in this section, the other parent.

~~(i)~~ (k) "Obligee" means the person or entity to whom a duty of support is owed.

~~(j)~~ (l) "Obligor" means any person who owes a duty to make payments or provide health benefit coverage under an order for support.

~~(k)~~ (m) "Order for support" means any order of a court, or of an administrative agency authorized by law to issue such an order, which provides for payment of funds for the support of a child, or for maintenance of a spouse or ex-spouse, and includes an order which provides for modification or resumption of a previously existing order; payment of uninsured medical expenses; payment of an arrearage accrued under a previously existing order; a reimbursement order, including, but not limited to, an order established pursuant to K.S.A. 39-718a or 39-718b, and amendments thereto; an order established pursuant to K.S.A. 23-451 et seq., and amendments thereto; or a medical child support order.

~~(l)~~ (n) "Participating parent" means a parent who is eligible for single coverage under a health benefit plan as defined in this section, regardless of the type of coverage actually in effect, if any.

~~(m)~~ (o) "Payor" means any person or entity owing income to an obligor or any self-employed obligor and includes, with respect to a medical child support order, the sponsor or administrator of a health benefit plan.

(p) "Periodic payment" means wages, salary, royalties, trust payments, annuity payments, retirement payments and any other regularly occurring, scheduled payment to an obligor.

~~(n)~~ (q) "Public office" means any elected or appointed official of the state or any political subdivision or agency of the state, or any subcontractor thereof, who is or may become responsible by law for enforcement of, or who is or may become authorized to enforce, an order for support, including but not limited to the department of social and

rehabilitation services, court trustees, county or district attorneys and other subcontractors.

~~(t)~~ (r) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.), and amendments thereto, as in effect on December 31, ~~1999~~ 2009. "Title IV-D cases" means those cases required by title IV-D to be processed by the department of ~~social and rehabilitation services for children and families~~ under the state's plan for providing title IV-D services.

Sec. 8. K.S.A. 2012 Supp. 23-3103 is hereby amended to read as follows: 23-3103.

(a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or ~~(l)~~ (m), all new or modified orders for support shall provide for immediate issuance of an income withholding order. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. ~~The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.~~

(1) If the income withholding order is to attach to periodic payments, an amount sufficient to satisfy the order for support and to defray any arrearage; or

(2) if the income withholding order is to attach a lump sum payment, the amount the payor is required to withhold for support from the lump sum payment.

(c) Except as otherwise provided in this subsection or subsections (j) or ~~(l)~~ (m), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a



contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. 39-7,147, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, ~~any only an~~ income withholding order prepared in a standard format prescribed by the secretary of ~~social and rehabilitation services the department for children and families, or the standard federal notices and forms promulgated under 42 U.S.C. § 652 (a)(11) and 42 U.S.C. § 666 (b)(A)(ii),~~ shall be deemed to be in compliance with this act.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 2012 Supp. 23-3104 and 23-3105, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 2012 Supp. 23-3116, and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 2012 Supp. 23-3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor ~~only by personal service or registered mail, return receipt requested by first-class mail.~~

(2) Without the requirement of further notice to the obligor, the court trustee or IV-D agency may cause a copy of any income withholding order to be served on the payor ~~only by personal service or registered mail, return receipt requested by first-class mail~~ or by any alternate method acceptable to the payor, including, but not limited to: Facsimile transmission, electronic mail attachment or electronic interface allowing for the download of a document or transmission of the terms of the income withholding order. No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, "copy of the income withholding order" means a copy of any document or notice, regardless of copy format, that advises the payor of the same general duties, requires the same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order that

complies with the requirements of subsection (e)(1).

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or ~~(l)~~ (m), at any time following entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor ~~only~~ by personal service, first-class mail or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or (B) a written agreement among all interested parties provides for an alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income

withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

- (A) The agreement was not in writing;
  - (B) the agreement was not approved by all interested parties;
  - (C) the terms of the agreement or alternative arrangement are not being met;
  - (D) the agreement or alternative arrangement is not in the best interests of the child;
- or

(E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 2012 Supp. 23-3106, and amendments thereto, apply to any motion pursuant to paragraph (3) or (4) of this subsection.

(k) (1) An ex parte interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

(2) An ex parte interlocutory order for support may be enforced pursuant to subsection (c) only if 14 or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) All remittances from any income withholding order, regardless of when such order was entered or modified, shall be required to be directed to the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 2012 Supp. 39-7,135, and amendments thereto.

~~(m)~~ (m) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent

in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

Sec. 9. K.S.A. 2012 Supp. 23-3104 is hereby amended to read as follows: 23-3104.

(a) It shall be the affirmative duty of any payor to respond within 10 days to written or electronic requests for information presented by the public office concerning: (1) The full name of the obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; (10) the obligor's health insurance coverage; and (11) whether or not income owed the obligor is being withheld pursuant to this act. This is an exclusive list of the information that the payor is required to provide under this section.

(b) It shall be the duty of any payor who has been served a copy of an income withholding order for payment of an order for cash support that meets the requirements of subsection ~~(h)~~ (i) to deduct and pay over income as provided in this section. The payor shall begin the required deductions no later than the next payment of income due the obligor after 14 days following service of the order on the payor.

(c) Within seven business days of the time the obligor is normally paid, the payor shall pay the amount withheld as directed by the income withholding agency pursuant to K.S.A. 2012 Supp. 23-3105, and amendments thereto, as directed by the income withholding order or by a rule of the Kansas supreme court. The payor shall identify each payment with the name of the obligor, the county and case number of the income withholding order, and the date the income was withheld from the obligor. The payor shall pay the amounts withheld and identify each payment in the same business day. A payor subject to more than one income withholding order payable to the same payee may combine the amounts withheld into a single payment, but only if the amount attributable to each income withholding order is clearly identified. Premiums required for a child's coverage under a health benefit plan shall be remitted as provided in the health benefit plan and shall not be combined with any other support payment required by the income withholding order.

(d) The payor shall continue to withhold income as required by the income withholding order until further order of the court or agency.

(e) From income due the obligor, the payor may withhold and retain to defray the payor's costs a cost recovery fee of \$5 for each pay period for which ~~income support~~ is withheld ~~from a periodic payment~~ or \$10 for each month for which ~~income support~~ is withheld ~~from a periodic payment~~, whichever is less. For income withholding from a lump sum payment, a cost recovery fee of up to \$10 per withholding may be withheld by the payor and shall be in addition to any cost recovery fee charged for withholding from periodic payments. Any such cost recovery fee shall be in addition to the amount withheld as support.

(f) The entire sum withheld by the payor, including the cost recovery fee and premiums due from the obligor which are incurred solely because of a medical withholding order, shall not exceed ~~the limits provided for under section 303(b)~~ 50% of the obligor's disposable income as defined by section 302(b) of the consumer credit protection act (15 U.S.C. § ~~1673(b)~~ 1672(b)). If amounts of earnings required to be withheld exceed the maximum amount of earnings which may be withheld ~~according to~~

~~the consumer credit protection act under this section~~, priority shall be given to payment of current and past due support, and the payor shall promptly notify the holder of the limited power of attorney of any nonpayment of premium for a health benefit plan on the child's behalf. An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. 60-2310, and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to section 303(b) of the consumer credit protection act, 15 U.S.C. § 1673(b), the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.

(g) A payor who has been served an income withholding order by the IV-D agency which includes an amount to defray an arrearage shall contact the IV-D agency no less than 14 days prior to making payment of any lump sum amount to the obligor. The payor may make payment of the lump sum to the obligor once 14 days have passed after providing such contact unless additional process, or notice of intended process, has been received.

~~(g)~~ (h) The payor shall promptly notify the court or agency that issued the income withholding order of the termination of the obligor's employment or other source of income, or the layoff of the obligor from employment, and provide the obligor's last known address and the name and address of the individual's current employer, if known.

~~(h)~~ (i) A payor who complies with a copy of an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the income withholding order. As used in this section, "regular on its face" means a completed document ~~in the standard format for any income withholding notice that has been adopted by the United States secretary of health and human services in a final rule or a certified copy of the income withholding order~~ that is in compliance with subsection (e)(1) of K.S.A. 2012 Supp. 23-3103, and amendments thereto.

~~(i)~~ (j) Except as provided further, if any payor violates the provisions of this act, the court may enter a judgment against the payor for the total amount which should have been withheld and paid over. If the payor, without just cause or excuse, fails to pay over income within the time established in subsection (c) and the obligee files a motion to have such income paid over, the court shall enter a judgment against the payor and in favor of the obligee for three times the amount of the income owed and reasonable attorney fees. If the payor, without good cause, fails to pay over the income and identify each payment in the same business day, the court shall enter a judgment against the payor and in favor of the obligee for twice the amount of the cost recovery fee, as established in subsection (e), per obligor.

~~(j)~~ (k) In addition to any judgment authorized by subsection (i), a payor shall be subject to a civil penalty not exceeding \$500 and other equitable relief as the court considers proper if the payor: (1) Discharges, refuses to employ or takes disciplinary action against an obligor subject to an income withholding order because of such withholding and the obligations or additional obligations which it imposes upon the payor; or (2) fails to withhold support from income or to pay such amounts in the manner required by this act.

(l) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, 2013, regardless of when the applicable income withholding

order was entered or modified.

Sec. 10. K.S.A. 2012 Supp. 23-3105 is hereby amended to read as follows: 23-3105. (a) An income withholding order shall have priority over any other legal process under state law against the same income. Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or other claims of creditors.

(b) Except as provided by K.S.A. 60-2310, and amendments thereto, any state law which limits or exempts income from legal process or the amount or percentage of income that can be withheld shall not apply to withholding income under this act.

(c) Subject to the provisions of K.S.A. 2012 Supp. 23-36,503, and amendments thereto, if more than one income withholding order requires withholding from the same source of income of a single obligor, the payor shall withhold and disburse as ordered the total amount required by all income withholding orders if such amount does not exceed the limits of subsection (f) of K.S.A. 2012 Supp. 23-3104, and amendments thereto, ~~as shown in the withholding order which specifies the highest percentage of income allowed to be withheld.~~ If the total amount required by all income withholding orders, including premiums due from the obligor which are incurred solely because of a medical withholding order, exceeds such limits, the payor shall withhold the amount permitted to be withheld under such limits and from the amount withheld the payor shall retain any cost recovery fee charged by the payor. The remaining funds shall first be prorated by the payor among all income withholding orders for the obligor that require payment of current support. When all current support for the month has been satisfied, any remaining funds shall be prorated among all income withholding orders for the obligor that require payment of an amount for arrearages. With respect to a medical withholding order, the payor shall promptly notify the affected holder of the limited power of attorney of any nonpayment of premium. The payor may request assistance from the income withholding agency in determining the amount to be disbursed for each income withholding order, but such assistance shall not relieve the payor from any responsibility under this act. Upon request of a public office or of any obligee whose income withholding order is affected by this subsection, the payor shall provide the county, case number and terms of all the obligor's income withholding orders.

(d) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, ~~1992~~ 2012, regardless of when the applicable income withholding order was entered or modified.

Sec. 11. K.S.A. 2012 Supp. 39-7,147 is hereby amended to read as follows: 39-7,147. (a) Except as otherwise provided in K.S.A. 39-7,149 or K.S.A. 2012 Supp. 23-3103, and amendments thereto, if no income withholding order is in effect to enforce a support order in a title IV-D case, an income withholding order may be entered by the secretary. A notice of intent to initiate income withholding, as described in K.S.A. 2012 Supp. 23-3103, and amendments thereto, shall be served on the responsible parent at least seven days before the secretary issues the income withholding order. If the amount of arrearages is less than the amount of current support due for one month, the requirements of subsection (d) must be met. The income withholding order shall conform to the requirements of the income withholding act, and amendments thereto and shall have the same force and effect as an income withholding order issued by a district court of this state.

(b) If an income withholding order is issued by the secretary to enforce a support order entered by a court of this state, the original document shall be delivered for filing to the clerk of the court that entered the support order. Thereafter, if the secretary is no longer providing title IV-D services in the case, the clerk of the district court shall use the income withholding order issued by the secretary in the same manner as an income withholding order issued by the court.

(c) If an income withholding order is issued by the secretary to enforce a support order entered by a tribunal of another state, the secretary shall transmit a copy of the income withholding order to the tribunal of the other state.

(d) If there are no arrearages or the amount of arrearages under the support order is less than the amount of current support due for one month, the secretary may initiate income withholding only if:

- (1) Any arrearages are owed;
- (2) a medical child support order exists;
- (3) the secretary determines that immediate issuance of the income withholding order was required by K.S.A. 2012 Supp. 23-3103, and amendments thereto, or by a similar law of another state, but no income withholding order was entered;
- (4) the responsible parent consents;
- (5) required payments have been received after the due date at least twice within the preceding 12 months, regardless of whether any arrearages are owed; or
- (6) the support order was entered by a tribunal of another state.

(e) If the support order was entered by or registered with a court of this state, the notice of intent to initiate income withholding shall be served on the responsible parent by ~~only~~ personal service, first-class mail or registered mail, return receipt requested. In all other cases, the notice of intent to initiate income withholding shall be served upon the responsible parent only by personal service or registered mail, return receipt requested.

Sec. 12. K.S.A. 39-7,148 is hereby amended to read as follows: 39-7,148. (a) At any time after issuing an income withholding order, the secretary shall: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying support order; (2) modify the amount of income withheld to reflect payment in full of the arrearages; (3) modify or terminate the income withholding order to reflect the final order in a fair hearing pursuant to K.S.A. 75-3306, and amendments thereto; or (4) modify, or when appropriate terminate, an income withholding order consisting in whole or in part of a medical withholding order because of a modification or termination of the underlying medical child support order.

(b) In addition to modifications required by subsection (a), at any time the secretary may issue a modified income withholding order: (1) To change the amount to be withheld to defray arrearages; or (2) to conform the terms of a medical withholding order to the requirements of a payer. The provisions of this subsection shall apply only to income withholding orders issued pursuant to K.S.A. 39-7,147, and amendments thereto, including any modifications of such orders.

complying with procedures established by the secretary within ten days after service of the notice; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the notice is served by mail, the time for requesting review shall be extended by three days. If the proposed modification increases the total amount to be withheld from the responsible parent's income, entry of the modified income withholding order shall be stayed pending resolution of the review. In all other instances, entry of the proposed modification shall be stayed only for cause. The issues in the administrative hearing shall be limited to whether the amount of current support is as stated in the proposed modification and whether the total arrearages are less than the proposed installment to defray arrearages.

(d) The responsible parent may request that the secretary terminate an income withholding order for cash support if: (1) Withholding has not previously been terminated and reinitiated; and (2) there is a written agreement among the parties that provides for an alternative arrangement. If an income withholding order is terminated and the obligor subsequently accrues any arrearages, the secretary may issue another income withholding order as provided in K.S.A. 39-7,147, and amendments thereto.

(e) If the income withholding order includes both a medical withholding order and an income withholding order for cash support, modification or termination of one portion of the income withholding order shall not modify or terminate any other portion of the income withholding order except as expressly provided in the order.

(f) The provisions of K.S.A. 39-7,147, and amendments thereto, relating to transmitting income withholding orders to the tribunal that issued the underlying support order, shall apply to any order issued modifying or terminating income withholding that is issued pursuant to this section.";

And by redesignating sections accordingly;

On page 2, in line 11, after "K.S.A." by inserting "39-7,148 and K.S.A."; also in line 11, by striking the first "and" and inserting a comma; also in line 11, after "23-2704" by inserting ", 23-3102, 23-3103, 23-3104, 23-3105 and 39-7,147";

On page 1, in the title, in line 2, after "process;" by inserting "enforcement of support orders;"; also in line 2, after "K.S.A." by inserting "39-7,148 and K.S.A."; in line 3, by striking the first "and" and inserting a comma; also in line 3, after "23-2704" by inserting ", 23-3102, 23-3103, 23-3104, 23-3105 and 39-7,147";

And your committee on conference recommends the adoption of this report.

JEFF KING

GREG SMITH

DAVID HALEY

*Conferees on part of Senate*

LANCE Y. KINZER

ROBERT BRUCHMAN

JANICE L. PAULS

*Conferees on part of House*

On motion of Rep. Kinzer, the conference committee report on **HB 2015** was adopted.

On roll call, the vote was: Yeas 117; Nays 4; Present but not voting: 0; Absent or not voting: 4.



Yeas: Alcala, Alford, Ballard, Barker, Becker, Bideau, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, Couture-Lovelady, Campbell, Carlin, Carlson, Carpenter, Cassidy, Christmann, Claeys, Clayton, Concannon, Corbet, Crum, Davis, DeGraaf, Dierks, Dillmore, Doll, Dove, Edmonds, Edwards, Esau, Ewy, Finch, Finney, Frownfelter, Gandhi, Garber, Goico, Gonzalez, Grant, Grosserode, Hawkins, Hedke, Henderson, Henry, Hermanson, Hibbard, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Howell, Huebert, Hutton, Jennings, Johnson, Jones, Kelley, Kelly, Kinzer, Kleebe, Lane, Lunn, Lusk, Macheers, Mast, McPherson, Meier, Meigs, Menghini, Merrick, Moxley, O'Brien, Pauls, Peck, Perry, Petty, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rothlisberg, Rubin, Ruiz, Ryckman Jr., Ryckman Sr., Sawyer, Schroeder, Schwab, Schwartz, Seiwert, Siegfried, Sloan, Sloop, Suellentrop, Sutton, Swanson, Thimesch, Todd, Trimmer, Vickrey, Victors, Waymaster, Weber, Weigel, Whipple, Wilson, Winn, Wolfe Moore.

Nays: Kahrs, Kuether, Tietze, Ward.

Present but not voting: None.

Absent or not voting: Montgomery, Osterman, Peterson, Shultz.

#### EXPLANATION OF VOTE

MR. SPEAKER: This legislation impedes creditors' right to collect legal debt and burdens creditors to prove that the conveyance of a gift is fraudulent. Public policy has long held this exception to protect creditors from fraudulent conveyances. It undermines the marriage covenant. Marriage is a special relationship like none other. Typical marriage vows include the words, "for better, for worse, for richer, for poorer." In other words, marriage partners share everything including: riches/financial burdens; successes/failures; good times/bad times. By removing this exception in the law it creates an undue burden on creditors and undermines and weakens the institution of marriage. I vote no on CCR for **HB 2015**. — MARK KAHR

#### REPORT ON ENGROSSED BILLS

**HB 2218** reported correctly engrossed May 10, 2013.

On motion of Rep. Vickrey, the House adjourned until 10:00 a.m., Monday, May 13, 2013.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

