

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on January 25, 2010, in Room 548-S of the Capitol.

All members were present except:
Senator Terry Bruce- excused

Committee staff present:
Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:
Randy Hearrell, Kansas Judicial Council
Richard Tomlison, Accounts Receivable Manager, Dibolt Lumber & Supply
Dan Murray, State Director, National Federation of Independent Businesses
Senator Dick Kelsey
Kent Eckles, Vice President of Government Affairs, The Kansas Chamber
Mark Tallman, Kansas Association of School Boards

Others attending:
See attached list.

Approval of Minutes

The minutes of the Senate Judiciary Committee for January 14 and January 15 were distributed for approval. Senator Schodorf moved, Senator Schmidt seconded, to approve the Committee minutes for January 14 and January 15. Motion carried.

Sheri Smilely, Kansas Secretary of State's Office, requested the introduction of five bills. The first bill relates to the business entity transactions act regarding limited partnership mergers. The second bill relates to resident agent filing requirements with the Secretary of State's Office. The third bill relates to repealing statutes on registration of insignias by secretary of state. The fourth bill relates to required filings with the secretary of state regarding business trusts. The fifth bill relates to the contents, procedure for submitting materials for publication in the Kansas Register. The bills were introduced without objection

Pat Scalia, Board of Indigents' Defense Services, requested the introduction of a bill that would Barring privately retained attorneys from collecting reimbursement from the state for expert services provided for an indigent defendant except in capital murder cases. The bill was introduced without objection.

The hearing on **SB 371 - Increasing the property damage amount that would allow the prevailing party to receive attorney fees** was opened. Jason Thompson, staff revisor, reviewed the bill.

Randy Hearrell spoke in support indicating **SB 371** is the result of a study on 2008 SB 537 requested by the Legislature. During testimony in 2008 it was recommended that the dollar amount contained in K.S.A. 60-2006 be increased and the Council agreed. The limit was last changed in 1990, given the length of time since the last increase, the increase in the consumer price index, and the cost of motor vehicle repair the Council recommended an increase to \$15,000. (Attachment 1)

There being no further conferees, the hearing on **SB 371** was closed.

The Chairman opened the hearing on **SB 360 - Removing limitation on number of small claims that may be filed in a calendar year.** Jason Thompson, staff revisor, reviewed the bill.

Richard Tomilinson appeared in favor stating his company does a large amount of business on credit with a large amount of accounts deficient payments. A cap of 20 small claims per year allow for only half of



CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on January 25, 2010; in Room 548-S of the Capitol.

collectibles at best which range from \$500 to \$4,000. Enactment of this bill will benefit Kansas businesses. (Attachment 2)

Daniel Murray spoke in support stating many businesses rely on small claims court to resolve unpaid bills or bad checks. A small business recourse is to either forgo a court claim or hire an attorney which can be costly. A cap of 20 claims places an arbitrary limitation to one's ability to access of the judicial system and encouraged passage of **SB 360** to provide some relief to Kansas small businesses. (Attachment 3)

Written testimony in support of **SB 360** was submitted by:

Leslie Kaufman, Executive Director, Kansas Cooperative Council (Attachment 4)

There being no further conferees, the hearing on **SB 360** was closed.

Chairman Owens opened the hearing on **SCR 1621 - Expenditure of public moneys to finance litigation against the state**. Jason Thompson, staff revisor, reviewed the bill.

Senator Dick Kelsey testified as a sponsor of the resolution. The Senator stated it is important to remind the public of the separation of powers that is clearly set forth in our State Constitution and that it is wrong to use taxpayer money to sue the legislature to get more taxpayer money. (Attachment 5)

Kent Eckles appeared in support stating the Chamber opposes anyone in the public sector being able to use their tax dollars to sue the State's citizens for more of their own money. The power of appropriations rests solely with the Legislature and the funding of State services should be determined by them (Attachment 6)

Mark Tallman spoke in opposition stating it is consistent with the roles of public bodies to use public funds seeking to enforce or clarify constitutional rights. The sentiments expressed in this resolution limit the ability of our members to pursue legal action they believe necessary to protect the interests of the students, patrons and taxpayers of their districts. To prohibit the use of public funds for litigation would make it much harder to seek remedies for alleged violations of constitutional protections. (Attachment 7)

Written testimony in support of **SCR 1621** was submitted by:

Derrick Sontag, State Director, Americans for Prosperity (Attachment 8)

There being no further conferees, the hearing on **SCR 1615** was closed.

Senator Haley introduced two bills. The first regarding children in need of care relating to runaways, the second bill on criminal procedure relating to search incident to arrest. The bills were introduced without objection.

Senator Vratil moved, Senator Schmidt seconded, to recommend SB 371 favorably for passage. Motion carried.

Senator Vratil moved, Senator Kelly seconded, to recommend SB 360 favorably for passage. Motion carried.

The next meeting is scheduled for January 26, 2010.

The meeting was adjourned at 10:35 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/25/10

NAME	REPRESENTING
Patricia A. Scalia	BIDS
Ken Ecklos	KS Chamber of Commerce
Dan Murray	NFIB - KS
Lance Walsh	Judicial Branch
Joe Molina	KS BAR ASSN.
Levi Henry	Sandstone Corp. LLC
Scott Frank	LPA
Mark Tallman	KASB
Diane Gjerstad	USD 259
Joe Mosimann	Pmca
Lori Church	KAPCIC
Bessie Kaufman	Ks Coop Council
Berend Koops	Hain Law Firm
Jen Bruning	OP Chamber
Sean Miller	CAPITOL STRATEGIES
Scott Heidner	KS Association of Defense Counsel
Ashley Ballweg	Pinegar, Smith & Associates
Randy Hearwood	Judicial Council



KANSAS JUDICIAL COUNCIL

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JUDGE JERRY G. ELLIOTT, WICHITA
JUDGE ROBERT J. FLEMING, PARSONS
JUDGE JEAN F. SHEPHERD, LAWRENCE
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BRANDY M. WHEELER

TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Randy M. Hearrell

DATE: January 25, 2010

RE: 2010 SB 371 Relating to Civil Procedure and Amending K.S.A. 60-2006 which Concerns Attorney Fees Taxed as Costs in Certain Actions Involving Negligent Motor Vehicle Operation

In 2009, the Legislature requested that the Judicial Council study 2008 SB 537 which contained three sections, each of which amended a civil procedure statute. The study of the bill was assigned to the Judicial Council's Civil Code Advisory Committee (the Committee members are listed at the end of this testimony) and that Committee's report was approved by the Judicial Council.

The Civil Code Advisory Committee recommended against enactment of SB 537 but, in reviewing the testimony on the bill by Independence attorney W. J. Fitzpatrick, the Committee noted that he suggested, as an alternative to adopting section 3 of SB 537, that the dollar amount contained in K.S.A. 60-2006 be increased.

The Judicial Council agrees with this suggestion. The limit in the statute was last changed in 1990 when it was increased from \$3,000 to \$7,500. The dollar amount contained in the statute has been changed three times since it was enacted in 1969. Given the length of time since the last increase, the increase in the consumer price index since that time (see the following table), and the increase in the cost and complexity of motor vehicle repair, the Judicial Council recommends adoption of which increases the amount in K.S.A. 60-2006 from \$7,500 to \$15,000.

Senate Judiciary

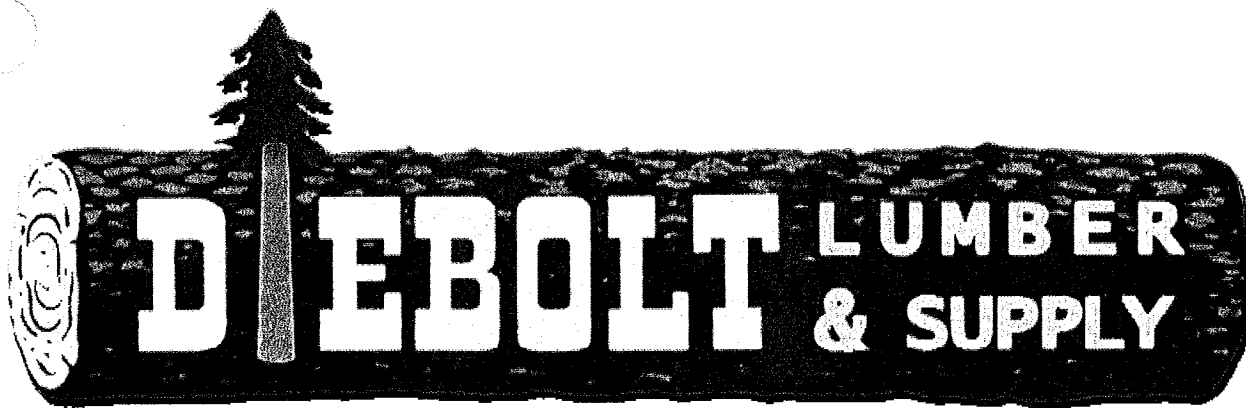
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ENACTMENT OF AND AMENDMENTS TO K.S.A. 60-2006

<u>Year</u>	<u>Limit</u>	<u>CPI</u>
1969	\$500	36.8
1977	\$750	61.0
1982	\$3,000	97.7
1990	\$7,500	131.6
2010	\$15,000 (proposed)	214.5 (December 2009)

**KANSAS JUDICIAL COUNCIL
CIVIL CODE ADVISORY COMMITTEE**

J. Nick Badegrow, Chairman, Overland Park;
James M. Armstrong, Wichita;
Hon. Terry L. Bullock, Topeka;
Professor Robert C. Casad, Lawrence;
Professor Jim Concannon, Topeka;
Hon. Jerry G. Elliott, Topeka;
Hon. Bruce T. Gatterman, Larned;
Allen G. Glendenning, Great Bend;
John L. Hampton, Lawrence;
Joseph W. Jeter, Hays;
Hon. Marla J. Luckert, Topeka;
Hon. Kevin P. Moriarty, Olathe;
Thomas A. Valentine, Topeka; and
Donald W. Vasos, Fairway.



Testimony in support of Senate Bill 360
Presented to the Senate Judiciary Committee
By Richard Tomlinson, Accounts Receivable Manager

January 25, 2010

Mr. Chairman and members of the committee, thank you for hearing Senate Bill 360. My name is Richard Tomlinson and I am the Accounts Receivable Manager for Diebolt Lumber and Supply of LaHarpe, Kansas.

Diebolt Lumber does a large amount of business of which 80 percent is on credit. With that in mind there is always a large amount of deficient timely payments. Therefore, a business doing over \$9 million per year, we can expect 2 percent of our sales to be placed for collection. These accounts can range in amount from \$500.00 to \$4,000.00.

A cap of 20 small claims per year will allow us to only reach one half of our collectables at best. We feel that changing this law to raise the number of court filings will benefit all Kansans.

Thank you for your consideration.

Dick Tomlinson



Senate Judiciary Committee
Daniel S. Murray: State Director, NFIB-Kansas
Testimony in Support of SB360
January 25, 2010

Mr. Chair, Members of the Committee: My name is Dan Murray and I am the State Director of the National Federation of Independent Business-Kansas. NFIB-KS is the leading small business association representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB-KS represents the consensus views of its 4,000 members in Kansas. Thank you for the opportunity to comment on SB 360.

First, let me thank Senators Abrams, Apple, Huelskamp, Lynn, Petersen, Vicki Schmidt, Schodorf, Taddiken, Vratil, Wagle, and particularly Senator Derek Schmidt for sponsoring this bill and bringing this issue to your attention.

Under current law, no persons -- or small businesses -- may file more than 20 small claims in a calendar year. SB360 removes this arbitrary limitation.

NFIB/KS supports SB360 for the following reasons:

- First, an arbitrary limitation on one's ability to bring actions to court is, in our opinion, is a limitation on access to the justice system.
- Second, and more importantly, many small businesses rely on small claims court to resolve unpaid bills or bad checks. Often, small businesses' only recourse for bad checks or overdue bills is small claims court. A cap of 20 claims is burdensome and can lead to costly legal expenses. If a small business reaches the cap of 20 claims, they either forgo a court claim or must hire an attorney. Both options will likely result in unexpected costs and lost revenue.

At a time when many Kansas small businesses are hurting, SB360 provides some relief to our essential job creators.

Small Business Isn't Small

Collectively, small business isn't small. It provides employment to 54.7% of the non-farm private work force in Kansas. It generates more than 50% of the gross domestic product. It possesses half of the business wealth in the U.S. In the past decade, it has annually provided 60% to 80% of net new jobs. It has been giving 67% of workers their first job. It hires a larger proportion of women, younger workers, older workers, and part-time workers than does big business.



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Senate Judiciary Committee January 25, 2010

SB 360 - Removing the Annual Limit on Small Claims Court Filings

Chairman Owens and members of the Senate Judiciary Committee, thank you for the opportunity to comment on behalf of the Kansas Cooperative Council (Council/KCC) in support of SB 360. I am Leslie Kaufman, Executive Director for the Council. The KCC is a voluntary trade association representing cooperative structured business entities across Kansas.

As you know, SB 360 removes the limit on the number of cases one can file in small claims court in any given year. Over the past few years, there has been a lot of interest within our membership in increasing the dollar amount for which remedy can be sought in small claims court and increasing the number of claims per year one can file in this court. As such, our association has supported bills in the recent past that did just that. SB 360 continues the trend of opening-up small claims court even further and our members truly appreciate this change.

Our members try to implement reasonable and prudent credit policies within their businesses. There are times, though, when accounts become delinquent. Recovery through small claims court is one tool our members, particularly our ag co-op members, can utilize to collect on debts.

It may not have been cost effective for a cooperative to hire an attorney and seek recovery through a regular district court case or to hire a debt collection agent to garner repayment, but small claims court can be a cost-effective tool for recovering what is owned the co-op. As such, we do support removal of an annual limit on the number of cases one entity may file in small claims court and we encourage favorable action on this bill.

If you have any questions regarding our testimony or position on this bill, please feel free to contact me at 785-220-4068.

Thank you.

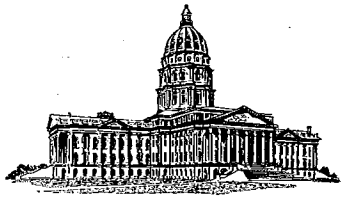
The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

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Attachment 4

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

DICK KELSEY

STATE SENATOR, 26RD DISTRICT
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COMMITTEE ASSIGNMENTS
COMMERCE
FINANCIAL INSTITUTIONS AND INSURANCE
PUBLIC HEALTH AND WELFARE

Testimony to Senate Judiciary Committee concerning SCR 1621

January 25, 2010

By Senator Dick Kelsey

Thank you for taking time to hear testimony about this resolution. I believe it is important for us as legislators to remind the public of the separation of powers that is clearly set forth in our state constitution.

In our constitution the legislature is clearly given the responsibility to determine policy regarding the expenditure of state funds. It is our duty to decide what to spend and how to spend it, not the courts. That is not the role of the state.

I also believe very strongly that it is wrong to use taxpayer money to sue the legislature to get more taxpayer money. If groups want to sue, let them use their own money.

I urge a favorable vote on this resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Kelsey". The signature is written in a cursive style and is positioned above the printed name.

Senator Dick Kelsey

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Attachment 5



**Testimony before the Senate Judiciary Committee
SCR 1621 – Concerning the Expenditure of Public Moneys to Finance Certain Litigation
Against the Legislature or the State of Kansas
Presented by J. Kent Eckles, Vice President of Government Affairs**

Monday, January 25th, 2010

The Kansas Chamber of Commerce appreciates the opportunity to submit testimony in favor of SCR 1621, which would prohibit the expenditure of public funds to bring litigation in pursuit of more public funding.

The Chamber strongly believes the power of appropriations rests solely with the legislature as granted by the Constitution of the State of Kansas and that any opinion rendered by the Judiciary should be viewed as advisory in nature. We are a nation of government of the people, by the people and for the people. In our republican form of government, the people determine what government will and will not do through their vote for members of the state legislature. Simply put, the Kansas legislature has the power to levy taxes and appropriate funds as it deems necessary and is charged with determining matters of public policy such as the proper level of funding state government services.

Kansas businesses and residents find it offensive their tax dollars are being used to bring litigation in pursuit of more of their hard-earned tax dollars. Our members have asked the question of why we even need the legislature if groups who perceive a lack of funding on the part of the legislature can approach the courts for a remedy for increased funding and bypass the legislature simply because they are not capable of convincing the legislature to levy increased taxes and appropriate additional funding. This tactic amounts to nothing more than Kansas businesses and residents giving their hard-earned tax dollars to government entities who then use the money to sue ourselves (businesses and residents). Additionally they raise the question of where does it stop? Will local taxing entities sue for increased transportation funding or social services funding? The list could certainly go on and on.

The bottom line is the Kansas Chamber opposes anyone in the public sector being able to use their tax dollars to sue the State's citizens for more of their own money.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium and large employers all across Kansas. Please contract me directly if you have any questions regarding these comments.



KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



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Testimony before the
Senate Judiciary Committee
on
SCR 1621

by
Mark Tallman, Assistant Executive Director/Advocacy
Kansas Association of School Boards

January 25, 2010

Mr. Chairman, Members of the Committee:

Thank you for the opportunity comment on **SCR 1621**. While this resolution speaks to the general issue of expenditures of public funds for litigation against the state, the specific issue of concern is the recent action by many school districts to support a lawsuit regarding school finance.

The Kansas Association of School Boards was not part of the original action in the *Montoy* lawsuit and we are not involved in either the funding or direction of the renewed litigation. Although this resolution is really an expression of legislative opinion rather than an amendment of state law, we feel we should express the opinion of our members for your deliberations. Several years ago, our members adopted the following statement:

“KASB supports the role of an independent judiciary in enforcing constitutional provisions. We oppose either changing the selection process for judges or limiting the ability of the courts to enforce those provisions, which would weaken the traditional separation of powers in Kansas.”

We believe the sentiments expressed in this resolution limit the ability of our members to pursue legal action they believe necessary to protect the interests of the students, patrons and taxpayers of their districts. Please understand this position neither endorses nor opposes the new lawsuit. Over 70 school districts have joined in the suit; but over 200 have not. The school board members who made those decisions are ultimately accountable to the voters, who can change those members in elections held every two years. What is at issue is not the wisdom of those decisions but the right to make those decisions.

We believe it is completely consistent with the role of public bodies to use public funds seeking to enforce or clarify constitutional rights. Article 6 of the Kansas Constitution gives the Legislature not merely the right, but the responsibility, to make suitable provisions for the finance of the education interests of the

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Attachment 7

state. State funding is generally made by appropriation. Limiting the ability of the courts to evaluate and remedy the amount of appropriation would weaken the protection Article 6 provides.

Furthermore, to prohibit the use of public funds for such litigation would make it much harder to seek remedies for alleged violations of constitutional protections. Certainly it would be hoped that the legislative process itself would be sufficient. But as we know, constitutions are written to provide a higher standard than the legislative process alone. To argue that the legislature alone should determine what is suitable funding would weaken the checks and balances the judicial branch provides by interpreting the constitution.

Thank you for your consideration.



AMERICANS FOR PROSPERITY

K A N S A S

January 25, 2010

Senate Concurrent Resolution No. 1621

Mr. Chairman and members of the committee,

I am proudly before you today, representing the nearly 40,000 members of Americans for Prosperity-Kansas.

AFP supports passage of SCR 1621, concerning the expenditure of public moneys to finance certain litigation against the Legislature or the State of Kansas.

AFP firmly believes in the power of the legislative branch, in representing the people of Kansas, to appropriate funds for purposes not restricted by the state constitution. Unfortunately recent history in Kansas has shown that the judicial branch will reach beyond its role by ordering the legislature to make certain appropriations.

The highly visible court case of *Montoy v. State of Kansas* is the perfect example of a branch of our government ignoring the separation of powers set forth in our constitution. The recent threat of another lawsuit from the Schools for Fair Funding group has the majority of Kansans and many press outlets upset with the notion of taxpayer dollars being used to sue the state for more taxpayer dollars.

The people of Kansas are watching closely. The actions of this committee will go a long ways towards determining whether the Kansas Legislature truly believes in the Separation of Powers. Declaring that public moneys should not be used in financing cases of litigation, such as what the Schools for Fair Funding group is calling for, that would challenge the legislature's power to appropriate funds will be viewed upon favorably by the taxpayers of Kansas.

Derrick Sontag
State Director