

Testimony in favor of 2011 Senate Bill 12
Before the Kansas Senate Judiciary Committee
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by John R. Hooge, Lawrence, K.s

My name is John Hooge. I am a four-generation native Kansan. I attended Ottawa University, Kansas Univ. Law School and Indiana Univ. School of Law-Indianapolis. After graduating from IU in 1977 I returned to Lawrence where I have been an attorney for over 30 years.

I have always handled bankruptcy cases. Debtor bankruptcy has been practically the only thing I have handled for a # of years and I have filed thousands of bankruptcies.

I do not believe bankruptcy should be filed when unnecessary. The bankruptcy law now requires people to get credit counseling from non-profit credit counseling agencies before they can file bankruptcy. To see if they have another viable option. But, often, the people filing bankruptcy have no other reasonable choice in dealing with their debts.

The purpose of exemptions in bankruptcy is to allow people to have a fresh start and not have everything taken from them.

People with higher income generally possess more assets often with greater equity. In Kansas a person can have an unlimited amount of value in their homestead and retain that in a bankruptcy case. A person can have an unlimited amount in an IRA, a 401K, other tax qualified pensions and whole life insurance policies. They can keep a vehicle up to \$20,000, their household goods and furnishings. Up to \$7,500 value of trade-tools. Their homestead. But, folks with these type of assets don't generally have earned income credits.

A person only gets an earned income credit (EIC) if he or she is a wageearner with minor children—and if the wages are under a certain amount. It is almost always a working mother—often who is not receiving child support but is supporting her children.

A good bankruptcy lawyer usually can prevent his or her client from losing an EIC. I have a # of clients who need to file bankruptcy now but are waiting until they get their EIC to spend it wisely before they file bankruptcy. I require my clients to tell me how they wish to spend their EIC as well as their refund before they spend it. To make sure they don't run afoul of the bankruptcy law. And I also want to make sure they use their EIC wisely.

So I speak with clients—often single mothers—on how they intend to use their EIC. It is almost always for necessities. Last year, I was asked when testifying before this committee or the House Judiciary Committee how someone would actually spend this money. And I mentioned the 22 year old young woman I represented. Caitlin received an EIC of \$2,795. She spent that by purchasing a bed and dresser for her 2 year old son, a laptop computer, rent, gasoline and food and the rest was spent on car repair. She replaced a bad tire and purchased a spare tire she did not have, an oil change, new brakes, front axles and repaired her air conditioner.

This is very typical of how I see people spending their earned income credits. They get caught up on utilities, car repair or buy an inexpensive car, and buy groceries, pay rent or pay for dental work they need. Hardly ever is this money wasted. This is part of their annual budget. A necessity for them. They spend it locally—in our state, in their community, benefiting this state and its businesses. And granting this exemption costs our state government nothing.

Every person filing bankruptcy must file a budget showing how their current income is spent. It is always eye-opening to help a person with children put that budget together. A person with children making \$10 an hour or even less has difficult choices to make. \$1,600 a month does not go very far. Often the choice is doing without necessities. Not buying medicine, not getting dental work, not fixing the car, not getting basic necessities. Their annually received EIC helps them immeasurably.

The current recession has made the EIC even more important. The working poor have felt this recession more than any others. They pay a higher percentage of their income for rent, medical costs, food costs, necessities. They often cannot find employment with medical insurance provided. Many employers hire temporary workers for this reason. Income as well as benefits has been reduced. Overtime is harder to come by. People have been laid off and are trying to make it on unemployment benefits.

Sometimes a person must file a bankruptcy even though they know they will lose their refund or EIC. To stop a house from being foreclosed or a needed car from being repossessed.

But, all too often a person who loses their EIC is a mother who felt she couldn't afford a lawyer and filed bankruptcy on her own. Or who used an attorney who doesn't handle enough bankruptcy to give appropriate advice.

As Paul Post will testify, the creditors in a bankruptcy often get as their share only small amounts from an EIC taken from a Debtor. This has minimal benefit for them. But, the impact on the person or family with children and limited income can be devastating.

To watch a person be told by the bankruptcy judge that the court has no choice but to take that money from them because of the law, who did not understand they would lose it—who needed that money for their family--can be heart wrenching. Such should not happen. The lack of this exemption defeats the very purposes of the earned income tax credit—to encourage work and keep people out of poverty.

Respectfully submitted,

John Hooge