

KANSAS CREDIT ATTORNEY ASSOCIATION

SENATE BILL NO. 283

SENATE COMMITTEE ON JUDICIARY

January 25, 2012

Chairman Owens and Members of the Senate Committee on Judiciary:

I appreciate this opportunity to present remarks to you on behalf of the Kansas Credit Attorney Association.

Ensuring efficiency of the Kansas court system and access for citizens to its remedies is of utmost importance and requires careful balance of competing interests and, as often, unintended consequences of any shifts in process. What seems a tiny alteration in one procedure – as simple as a single word – can send unpredictable ripples through the process we struggle to maintain.

The proposed changes in Senate Bill No. 283 start simple enough – things cost more than they did in 2004 when the sheriff last had an increase in the fee they collect for service but we have not kept up. The \$5.00 service of process fee currently authorized for sheriffs is not enough and needs to be aligned with present economic realities. On that point, we agree with the proponents of Senate Bill No. 283.

We believe the best approach to ensuring the sheriffs see their deserved fee increase is to proceed cautiously, changing as little as necessary, to meet their need for additional funding while preserving predictability for the parties seeking relief and the court clerks managing the workflow as well as to the state, counties, and cities who endeavor to fulfill the Legislative Post-Audit Committee's instruction to improve recovery of accounts receivable.

To that end, we propose leaving the entirety of KSA 28-110 whole and intact as presently written changing only the number for service set at \$5.00 (line 15 of SB 283) to some higher number which would fund the sheriffs, retain revenues to the courts, and ensure parties have continued access to court remedies.

Specific concerns and uncertainties created by Senate Bill No. 283 due to tampering beyond changing that \$5.00 figure include:

- As originally introduced, all exemptions afforded municipalities under KSA 60-2005 were repealed. Any municipality would have to pay the \$30.00 service fee to pursue collection efforts – a budgetary item they are ill-equipped to manage.
- A proposed resolution through a balloon amendment endeavors to correct that but, in so doing, conflicts now with KSA 60-2005. The fee exemption was broadened in

2006 to provide incentive for district hospitals, school districts, library boards, etc. to increase collection efforts. SB 283 revokes that incentive.

- A clerk of the court would be expected to serve as “gatekeeper” in deciding whether an entity is entitled to the exemption before sending documents on to the sheriff to serve – a determination the Attorney General opined in opinion 2005-15 is a potentially complex question of fact.
- The new language in SB 283 dramatically broadens the items covered including citations in contempt where the plaintiff could be charged \$30.00 because the court’s order was ignored by the defendant.
- The service fee would be due and owing even if the sheriffs never served the item and simply filed a return as “no service, out of time” providing an actual incentive to hold service.
- While we understand that service of process is something that could be outsourced to the private sector, there is not a process for the appointment of process servers on a statewide basis. Currently each Judicial District or County controls the appointment and licensing of an individual as a process server on an annual basis. Thus, each individual would have to be approved and licensed 105 times each year. We are not aware of any companies that currently offer statewide service of process.

Considerable effort could be expended to reshape SB 283 to amend out contradictions and evaluate unintended consequences. More viable, in our opinion, would be to leave KSA 28-110 alone but for the fee amount.

An immediate 500% increase seems too much (it would be akin to waking up to discover milk costs \$17.00 per gallon). I do, however, feel amending that number in statute to \$15.00 (still a 200% increase) would provide much needed funding to the sheriff while producing no procedural changes with unpredictable effects about which we can only guess.

Larry Zimmerman
Legislative Chairperson
Kansas Credit Attorneys Association