

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on January 26, 2010, in Room 548-S of the Capitol.

All members were present.

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:

Debbie Lindenmuth, Garnishment Supervisor, Tyson Foods, Inc.  
Marilyn Harp, Executive Director, Kansas Legal Services  
Jill Michaux, Neis & Michaux, P.A., Topeka  
John Hooge, Attorney  
Paul Post, Attorney  
Charles Yunker, Department Adjutant, American Legion Department of Kansas  
Ken Stodgell, State Adjutant, Veterans of Foreign Wars  
Wayne Bollig, Director, Veteran Services, Kansas Commission on Veterans' Affairs

Others attending:

See attached list.

Bill Introductions

Doug Smith, Kansas Legislative Policy Group, requested the introduction of a bill regarding the expedited validity of liens. The bill was introduced without objection.

Senator Derek Schmidt introduced a bill regarding remote testimony by expert witnesses. The bill was introduced without objection.

Senator Laura Kelly introduced two bills. The first pertains to violent predators. The second bill pertains to the Kansas Privacy Act. The bills were introduced without objection.

The hearing on **SB 234 - Civil procedure; garnishment** was opened. Jason Thompson, staff revisor reviewed the bill.

Debbie Lindenmuth testified in support stating the American Payroll Association and Kansas attorneys have worked together and recommend **SB 234** for passage. The bill will streamline the garnishment process for all parties involved and reduce the amount of money debtors will pay to settle their debts. This bill will benefit all parties involved. (Attachment 1)

Written support of **SB 234** was submitted by:

Duane Goosen, Secretary, Kansas Department of Administration (Attachment 2)

There being no further conferees, the hearing on **SB 234** was closed.

The hearing on **SB 363 - Allowing debtors to exempt earned income tax credits during bankruptcy proceedings** was opened. Jason Thompson, staff revisor reviewed the bill.

Senator John Vratil spoke in support providing background on the development of the bill. Senator Vratil noted the Earned Income Tax Credit is critical to low income Kansans and forfeiture is counterproductive to the debtor's ability to recover. (Attachment 3)

Marilyn Harp appeared in support stating the Kansas Legal Services represents low and moderate income persons, many facing bankruptcy. The purpose of the Earned Income Tax Credit (EITC) is not to transfer



CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on January 26, 2010, in Room 548-S of the Capitol.

federal income support to creditors of low income families but without enactment of SB 363 this is exactly what happens. Precious resources meant to help lift low income families out of poverty is distributed to creditors in partial payment of debts. (Attachment 4)

Jill Michaux appeared in support indicating as an attorney for a debtor, the Circuit Court stated a specific exemptions for Earned Income Credit (EIC) was required to exempt EIC funds from bankruptcy proceedings. The EIC is designed to encourage low income workers and has a significant positive impact on their lives. Many states have EIC exemptions and enactment of this bill would have a substantial impact on the state's lowest paid workers. (Attachment 5)

John Hooge spoke in favor stating a person who gets an Earned Income Credit (EIC) is almost always a wage earner with children. These funds most often are earmarked for basic necessities and rarely wasted. Too often a person loses their EIC due to inadequate or non-existent legal representation. Creditors receive only a small amount towards their debt with the majority of the money retained by a bankruptcy trustee. (Attachment 6)

Paul Post testified in support stating as part of the bankruptcy process the Earned Income Credit (EIC) is available only to working persons with minor children. Court rulings which allow bankruptcy trustees to require EIC funds be turned over, is at cross purposes with its intended purpose. Exemption of the EIC would allow low income families to keep this source of funds for the benefit of their children. (Attachment 7)

There being no further conferees, the hearing on **SB 363** was closed.

The hearing on **SB 370 - Enhanced civil penalties for consumer protection act violations when victim is a veteran, surviving spouse of a veteran or immediate family member of deployed military person** was opened. Jason Thompson, staff revisor, reviewed the bill.

Charles Yunker appeared in support stating enactment of this bill will increase consumer protection to some of our most vulnerable Kansas citizens. Mr. Yunker recommended two amendments to strengthen the intent of the bill. The first would add to the list of "*protected consumer*" service members who serve in the Kansas Army and Air National Guard. The seconded amendment would add "*Parent*" to the "*Immediate family member*" clause. The recommended amendments could play a vital role to ensure better protection for all consumers. (Attachment 8)

Ken Stogell spoke in support stating by including veterans as a protected consumer you are affording veterans and those on active duty protection from those that would take advantage of them. (Attachment 9)

Wayne Bollig testified in favor stating many who will fall into this category are elderly and/or disabled. This bill will ensure veterans are afforded protection from unfair credit practices. Mr. Bollig recommended the bill be amended to make certain to include all who served in the armed forces even those dishonorably discharged. (Attachment 10)

There being no further conferees, the hearing on **SB 370** was closed.

The next meeting is scheduled for January 27, 2010.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE:

1-26-10

NAME	REPRESENTING
Heather Sovern	KDOL
Angela Barlow	KDOL
Bob Lierz	KDOL
Joe Vining	KDOL
Judy Macy	KDOL
Charles in Yankee	The American Legion
Wayne Ballig	KO VA
Ken Fodgett	VEW
Gill A. Michaux	attorney
John Hooge	attorney
Maulum Harp	Kansas Legal Services
Paul Post	Attorney
Post Jubbeel	Tyson
John Rindemuth	Tyson
Go E. Malin	KS BAR ASSN.
Levi Henry	Sandstone Group -
Debbie Jones	J & A
Will Lawrence	Intern
Callie J Denton	KS Assoc. for Justice

STATEMENT  
American Payroll Association  
Debbie Lindenmuth

January 26, 2010

Good morning, Mr. Chairman. My name is Debbie Lindenmuth. I am the Garnishment Supervisor with Tyson Foods, Inc. I am also a native of rural Kansas.

As you may know, Tyson has plants in Holcomb, Hutchinson, and Emporia, and a distribution center in Johnson County. We currently have approximately 4900 team members in the state of Kansas.

I am the chairperson of the Garnishment Subcommittee for the American Payroll Association, a professional organization of 23,000 payroll professionals. The primary purpose of the APA is to educate payroll professionals on all aspects of properly paying employees as well as withholding and remitting taxes, healthcare benefits, child support, and other garnishments.

The secondary purpose of the APA is to work with federal, state, and local governments to reduce the administrative burden on employers while complying with all laws and achieving the goals set out by the government.

I appreciate the opportunity to be here today to support Senate Bill 234. After many hours of working in partnership with Kansas attorneys, the American Payroll Association would like to recommend the following changes to state law, which will streamline the garnishment process for everyone involved and also reduce the amount of money debtors will pay to settle their debts. The number of garnishments have been increasing with the downturn in the economy and we believe now is the time to pass this bill, which will benefit all parties involved.

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Attachment 1

SB234 addresses the following issues.

**Timely remittances:**

Currently, employers withhold money from debtor-employees' paychecks and remit the funds once a month to the creditor. Under SB 234, employers will remit the earnings withheld each payday. This serves three purposes:

1. It reduces the recordkeeping burden on employers,
2. It reduces the amount of interest that accumulates on the unpaid balance, thus benefiting the employee, and
3. Creditors and attorneys receive their money faster.

**Over withholding:**

Currently, over withholding – that is, withholding more than the amount actually owed – is common because garnishees are not aware of the actual amount owed and are required to continue to withhold until the order is released. Over withholding causes an unnecessary stress on our employees, which can affect their productivity and cause problems for their employers. SB234 calls for the creditor to inform the garnishee of the unsatisfied balance of the judgment at the time the order is issued.

Employers have mechanisms by which they can track the balance owed and so will know that the debt is expected to be paid in full in a certain pay period. If the employer has not received a timely release, it may choose to either contact the creditor or court itself or notify the employee to do so.

**Administrative burden:**

Currently, garnishees are required to submit an answer to the creditor each month detailing computation of the nonexempt portion of the judgment debtor's wages for the pay period or periods covered. This places an unnecessary paperwork burden on employers and creditors' attorneys. SB 234 eliminates the need for garnishees to send regular notices to the creditor once it acknowledges receipt of the order.

Since the attorneys will only receive one answer per writ, this will eliminate many hours of costly post-garnishment work.

In conclusion, Mr. Chairman, I believe passage of this bill will benefit all involved.

Thank you Mr. Chairman, members of the Committee for your attention. I will be happy to answer any questions you may have.

<b><u>Company name</u></b>	<b><u>City</u></b>
Accenture	Wichita
Allen, Gibbs & Houlik, LC	Wichita
AVI Systems, Inc.	Lenexa
Benton County Community College	Great Bend
BG Products, Inc.	Wichita
Big Lakes Development Center Inc.	Manhattan
Black & Veatch Corp	Overland Park
Blue Cross Blue Shield of Kansas	Topeka
BNSF Railway	Topeka
Board of Pulic Utilities	Kansas City
Boilemakers National Funds	Kansas City
Bukaty Business & People Mgt Service	Leawood
Bukaty Companies	Leawood
CBIZ Acct Tax & Advisory	Topeka
CBIZ Inc	Leawood
CGF Industries, Inc.	Wichita
City of Topeka	Topeka
City of Topeka Fin Services	Topeka
City of Valley Center	Valley Center
Clara Barton Hospital	Hoisington
Community Healthcare System, Inc.	Onaga
Compass Minerals International, Inc.	Overland Park
Corefirst Bank & Trust	Topeka
County of Douglas Kansas	Lawrence
CPI Qualified Plan Consultants, Inc.	Great Bend
Danisco USA Inc.	New Century
DCCCA Inc	Lawrence
DEMDACO	Leawood
DPRA Incorporated	Manhattan
Ellsworth County Medical Center	Ellsworth
Exacta Aerospace, Inc.	Wichita
Friends University	Wichita
Geiger Ready-Mix Co	Leavenworth
Golf Course Superintendents Associat	Lawrence
Great Bend Recreation Commission	Great Bend
Greg C Huseeth, CPA PA	Topeka
Hawker Beechcraft Corporation	Wichita
Health Mgmt of Kansas	Coffeyville
Hills Pet Nutrition	Topeka
Hutchinson Clinic PA	Hutchinson
Hutchinson Comm College	Hutchinson
ICM, Inc.	Colwich
Intrust Bank	Wichita
Johnson County Community College	Overland Park

Johnson County KS Government	Olathe
Kidron Bethel Retirement Services	North Newton
Koch Business Solutions LP	Wichita
Kramer & Associates CPAs, LLC	Leavenworth
Kroger	Hutchinson
KSU Foundation	Manhattan
Lakemary Center Inc.	Paola
Lewis Hooper & Dick LLC	Garden City
McCormick-Armstrong	Wichita
Medical Admin Svcs of KUMED	Westwood
Meritrust Credit Union	Wichita
Miami County	Paola
Mize Houser & Co	Topeka
Morton County	Elkhart
Newman Regional Health	Emporia
Newton Medical Center	Newton
Paycor, Inc.	Lenexa
Payless Shoesource Inc.	Topeka
Payroll Plus of Kansas	Montezuma
Penton Media	Overland Park
Performance Contracting, Inc.	Lenexa
Pratt Regional Medical Center	Pratt
Pro Pay LLC	Overland Park
Protection One Alarm Monitoring	Lawrence
Q Services Company	Overland Park
Renzenberger, Inc.	Lenexa
Security Benefit	Topeka
Sedgwick County	Wichita
Silpada Designs	Lenexa
Sprint	Overland Park
SPX Cooling Technologies	Overland Park
ST&T Telephone Coop Assn	Brewster
Stanton Wholesale Electric Co	Pratt
Sunflower Bank NA	Salina
Syndeo Payroll Solutions	Wichita
TECT Aerospace	Wellington
The Coleman Company Inc.	Wichita
Tri-County Telephone	Council Grove
Tri-County Telephone	
U.S. Central	Lenexa
University of Kansas	Lawrence
US AgBank FCB	Wichita
USD 259	Wichita
Via Christi Health System, Inc.	Wichita
Wachter Management Company	Lenexa



Waddell & Reed Inc.	Shawnee Mission
Wallace Saunders Austin Brown & En	Overland Park
Westar Energy	Topeka
Westlake Hardware	Lenexa

**Kansas Department of Administration  
Duane A. Goossen, Secretary  
1000 S.W. Jackson, Suite 500  
(785) 296-3011**

**Senate Judiciary Committee  
Testimony on Senate Bill 234**

**Kent Olson, Director  
Division of Accounts and Reports  
January 26, 2010**

Thank you for the opportunity to discuss SB 234 with you. The Department of Administration is supportive of this legislation.

Passage of SB 234 would result in one-time costs for the design, programming, and testing required to implement the changes proposed by the bill. The Department of Administration estimates that the one-time cost would be \$7,960, which would represent 100 programmer analyst hours at \$60 per hour and 70 business analyst hours at \$28 per hour. These programming costs would be met with existing resources based on the anticipation of cost savings resulting from the changes.

The Department also anticipates ongoing savings will be realized due to the decrease in the cost to generate and mail the garnishment answers, which it estimates will decrease from 7,200 to 520 answers annually.

While it is impossible to estimate the potential costs or savings from the proposed changes to the explanation letter, the Department expects that any costs involved with passage of SB 234 would be offset by savings realized. The proposed changes will result in a more timely remittance of garnishment withholdings and a reduction in over-withholdings which require refund processing.

The Department of Administration supports this change for the efficiencies it will bring to the garnishment process and the potential for ongoing cost savings.

Thank you for your time and consideration of this issue.

Senate Judiciary

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Attachment 2

State of Kansas

JOHN VRATIL  
SENATOR, ELEVENTH DISTRICT  
JOHNSON COUNTY  
LEGISLATIVE HOTLINE  
1-800-432-3924



Vice President  
Kansas Senate

COMMITTEE ASSIGNMENTS  
VICE CHAIR: EDUCATION  
WAYS AND MEANS  
MEMBER: JUDICIARY  
ORGANIZATION, CALENDAR  
AND RULES  
INTERSTATE COOPERATION  
KANSAS CRIMINAL  
CODE RECODIFICATION  
COMMISSION

Testimony Presented to  
Senate Judiciary Committee  
By Senator John Vratil  
January 26, 2010  
Concerning Senate Bill 363

Good morning! Thank you for the opportunity to appear before the Senate Judiciary Committee in support of Senate Bill (SB) 363. The language in SB 363 would protect the Earned Income Tax Credit by exempting it from a bankruptcy proceeding.

The Earned Income Tax Credit (EITC) is a critical tool for low income Kansans as they struggle to maintain and improve their lives. Under current law, the debtor can be forced to forfeit the EITC. Such forfeiture is counterproductive and further inhibits the debtor's ability to recover, making it more likely that the debtor will come to require state services.

I ask that you support SB 363.

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9534 LEE BLVD.  
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(913) 341-7559  
jvratil@lathropgag.com

DISTRICT OFFICE  
10851 MASTIN BLVD.  
SUITE 1000  
OVERLAND PARK, KS 66210-2007  
(913) 451-5100  
FAX (913) 451-0875

STAT TO Senate Judiciary  
1-26-10  
joh Attachment 3

Testimony in support of

Senate Bill 363

I am Marilyn Harp, Executive Director of Kansas Legal Services, a statewide program providing legal services to low and moderate income persons. I am here today to testify in support of Senate Bill 363.

In 2009, we provided advice and legal representation to over 20,000 low income Kansans. In that regard, we have contact daily with low income Kansans who qualify for and may receive Federal Earned Income Tax credits (EITC). This program was designed to replace the Federal support for low income families, which was delivered through direct monthly payments in the Aid to Families with Dependent Children (AFDC) program. Unlike the AFDC program, which was administered in Kansas by the Kansas Department of Social and Rehabilitation Services, the EITC program is administered through the Federal Income Tax program. Families file a federal income tax return. If they qualify for EITC, they receive a payment larger than the amount of their earnings withheld for Federal Income tax payments. Eligible families (parent and one minor child) have annual incomes of \$35,063. Those with the least amount of earnings would receive a credit of \$3,043. This is applied to taxes due from the worker and can be received as a "refund".

Since 1975, the Earned Income has become the largest income transfer from the Federal government to low income Americans. In 2007, 24 million Americans received \$48 billion through the EITC program. The state of Kansas provides a credit figured at 17% of the Federal EITC for Kansas low income workers.

One concern about the EITC program is that about 20% of the eligible participants do not file a Federal income tax return, and, therefore, don't qualify for the payment through this program. The requirement of paying a tax preparer to complete a return in order to participate has been an obstacle for low income workers. As one response to this, legal services programs nationwide have worked together to create and distribute an easy to use program designed to maximize the EITC benefit available. There is no charge for accessing this program, called I CAN e-file. A link to this program can be found on the Kansas Legal Services website, [www.kansaslegalservices.org](http://www.kansaslegalservices.org).

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Attachment 4

Kansas Legal Services advises and represents clients who are contemplating filing for bankruptcy. Because of an unpaid debt, perhaps a child's hospital bill, they have been sued and their wages have been garnished. They are regularly losing 25% of their very limited income to garnishment. The only solution that will end the garnishment is filing for bankruptcy. However, under the law today, they face the loss of perhaps \$3,000 in a EITC enhanced income tax return.

The purpose of the EITC is not to transfer Federal income support to the creditors of low income persons. Yet, without the law change, this is exactly what happens. Federal income support directed toward low income persons goes to their creditors. When a low income person files for bankruptcy, the income tax return due them at that point (or a pro rata portion of their annual return, based on when they file) becomes the property of the bankruptcy trustee. This money is distributed to the creditors by the trustee, in partial payment of the creditor's debts.

Marilyn Harp, Executive Director  
Kansas Legal Services, Inc.  
712 S. Kansas Avenue, Suite 200  
Topeka, KS 66603  
785-233-2068  
harpm@klsinc.org

January 25, 2010  
Testimony in favor of Senate Bill 363  
by Jill A. Michaux, Neis & Michaux, P.A., Topeka

I was the attorney for the debtor in the 10<sup>th</sup> Circuit Montgomery case (In Re Montgomery, 224 F.3d 1193, 1194 (10th Cir. 2000)).

The circuit said an specific exemption for EIC was required. Many states have EIC exemptions or an exemption for any property up to a certain limit that can be used for EIC. The status of other state laws is listed on page 38-41 of "When Welfare Becomes Work Support: Exempting Earned Income Tax Credit Payments in Consumer Bankruptcy", American Bankruptcy Law Journal, Summer, 2004.

Senate Judiciary

1-26-10

Attachment 5

## Earned Income Tax Credit

**Earned Income Tax Credit (EITC or EIC)** is a **refundable tax credit** designed to encourage low-income workers and offset the burden of U.S. payroll taxes. Both the United States and the State of Kansas have the EITC.

EIC recipients must have a minimum amount of earned income and at least one qualifying child sharing their residence. The credit phases out for earned income over \$43,352. Maximum credit is \$4050 to \$5666 depending on income and number of children.

There is a much more modest EIC for persons and couples without children with earned income of \$5980 to \$13,460. The maximum EIC is \$457.

Enacted in 1975, the EIC has been expanded many times, including the more widely-publicized Reagan EIC expansion of 1986. Today, the EITC is one of the largest anti-poverty tools in the United States, and enjoys broad bipartisan support.

Kansas is one of at least 20 states with their own EIC. Kansas residents claiming an EIC on their Federal return, may claim an EIC on their Kansas income tax return. Nonresidents cannot claim the Kansas EIC. The Kansas EIC is 17% of the federal EIC. <http://www.ksrevenue.org/faqs-taxii.htm>

The EIC has significant impact on the lives and the communities of the nation's lowest paid workers. The EIC encourages more work during the phase in period to qualify for a larger EIC. It lifts the lowest paid working people above the federal poverty line. Dollars are spent in local communities on commodities and services.

Economists suggest that every increased dollar received by low and moderate-income families has a multiplier effect of between 1.5 to 2 times the original amount, in terms of its impact on the local economy and how much money is spent in and around the communities where these families live.

Source: [http://en.wikipedia.org/wiki/Earned\\_Income\\_Tax\\_Credit](http://en.wikipedia.org/wiki/Earned_Income_Tax_Credit)

## EIC Table, 2009

The credit is characterized by a three-stage structure that consists of phase-in, plateau, and phase-out.

Size of credit (tax year 2009)<sup>[1]</sup>

### Earned income (x) Stage Credit (3+ children)

\$0-\$12,570 phase in  $45\% * x$   
\$12,570-\$16,420 plateau \$5,657  
\$16,420-\$43,279 phase out  $\$5,657 - 21.06\% * (x - \$16,420)$   
 $\geq \$43,279$  no credit \$0

### Earned income (x) Stage Credit (2 children)

\$0-\$12,570 phase in  $40\% * x$   
\$12,570-\$16,420 plateau \$5,028  
\$16,420-\$40,295 phase out  $\$5,028 - 21.06\% * (x - \$16,420)$   
 $\geq \$40,295$  no credit \$0

### Earned income (x) Stage Credit (1 child)

\$0-\$8,950 phase in  $34\% * x$   
\$8,950-\$16,420 plateau \$3,043  
\$16,420-\$35,463 phase out  $\$3,043 - 15.98\% * (x - \$16,420)$   
 $\geq \$35,463$  no credit \$0

### Earned income (x) Stage Credit (no children)

\$0-\$5,970 phase in  $7.65\% * x$   
\$5,970-\$7,470 plateau \$457  
\$7,470-\$13,440 phase out  $\$457 - 7.65\% * (x - \$7,470)$   
 $\geq \$13,440$  no credit \$0

The same data, in words: for a person with two qualifying children, the credit is equal to 40% of the first \$12,570 of earned income, thus reaching a plateau of \$5,028 and staying there until earnings increase beyond \$16,420, at which point the credit begins to phase out at 21.06%, reaching zero as earnings pass \$40,295. The dollar amounts are indexed annually for inflation.

For married filing jointly, the plateaus travel \$5,000 further.

This table, and the graph below, might make it appear as though EITC moves smoothly. In actuality, the amount of the credit is given by an IRS table that divides earned income into fifty dollar increments from \$1 to \$43,279.

<http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?DocID=36&Topic2id=40&Topic3id=42>



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.

Although I have handled many types of civil and criminal cases, 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. To my knowledge, I am the only bankruptcy lawyer in Kansas who has a credit counselor who helps people avoid filing bankruptcy. The bankruptcy law now also requires people to get credit counseling from designated 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. 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. That is because if they pay back a loan from a family member or pay over \$600 on an old debt or use it in some other mistaken way, their bankruptcy trustee can compel the recipient to reimburse that payment to the trustee. And I also want to make sure they use their EIC wisely.

So I speak with folks--often single mothers--on how they intend to use their EIC. It is always for necessities. Buying shoes and clothes once a year for growing children. Stocking up on groceries. Buying a car for \$3,000--you can't get much of a vehicle for that--or paying for the needed repairs to the car they have. Getting caught up on utilities. Paying for needed dental work for themselves or their children that they can't otherwise afford. Hardly ever is this money

wasted. This is part of their annual budget. A necessity for them.

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 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 this budget 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 a tax preparer—a non-lawyer who doesn't understand the exemption laws, or an attorney who doesn't handle enough bankruptcy to give appropriate advice.

If a chapter 7 bankruptcy trustee takes an EIC, the trustee gets 25% of the first \$5,000 and 10% of the next \$5,000. The remaining amount is divided up between unsecured creditors. These creditors often get as their share only small amounts which has little impact on them. But, the impact on the single woman losing this once a year lifeline can be devastating.

I have attached two pages that Jill Michaux has composed that provides a very helpful summary of the earned income credit requirements.

John Hooge

## **Earned Income Tax Credit**

**Earned Income Tax Credit (EITC or EIC)** is a **refundable tax credit** designed to encourage low-income workers and offset the burden of U.S. payroll taxes. Both the United States and the State of Kansas have the EITC.

EIC recipients must have a minimum amount of earned income and at least one qualifying child sharing their residence. The credit phases out for earned income over \$43,352. Maximum credit is \$4050 to \$5666 depending on income and number of children.

There is a much more modest EIC for persons and couples without children with earned income of \$5980 to \$13,460. The maximum EIC is \$457.

Enacted in 1975, the EIC has been expanded many times, including the more widely-publicized Reagan EIC expansion of 1986. Today, the EITC is one of the largest anti-poverty tools in the United States, and enjoys broad bipartisan support.

Kansas is one of at least 20 states with their own EIC. Kansas residents claiming an EIC on their Federal return, may claim an EIC on their Kansas income tax return. Nonresidents cannot claim the Kansas EIC. The Kansas EIC is 17% of the federal EIC. <http://www.ksrevenue.org/faqs-taxii.htm>

The EIC has significant impact on the lives and the communities of the nation's lowest paid workers. The EIC encourages more work during the phase in period to qualify for a larger EIC. It lifts the lowest paid working people above the federal poverty line. Dollars are spent in local communities on commodities and services.

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### Earned income (x) Stage Credit (2 children)

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\$16,420–\$40,295 phase out  $\$5,028 - 21.06\% * (x - \$16,420)$   
 $\geq \$40,295$  no credit \$0

### Earned income (x) Stage Credit (1 child)

\$0–\$8,950 phase in  $34\% * x$   
\$8,950–\$16,420 plateau \$3,043  
\$16,420–\$35,463 phase out  $\$3,043 - 15.98\% * (x - \$16,420)$   
 $\geq \$35,463$  no credit \$0

### Earned income (x) Stage Credit (no children)

\$0–\$5,970 phase in  $7.65\% * x$   
\$5,970–\$7,470 plateau \$457  
\$7,470–\$13,440 phase out  $\$457 - 7.65\% * (x - \$7,470)$   
 $\geq \$13,440$  no credit \$0

The same data, in words: for a person with two qualifying children, the credit is equal to 40% of the first \$12,570 of earned income, thus reaching a plateau of \$5,028 and staying there until earnings increase beyond \$16,420, at which point the credit begins to phase out at 21.06%, reaching zero as earnings pass \$40,295. The dollar amounts are indexed annually for inflation.

For married filing jointly, the plateaus travel \$5,000 further.

This table, and the graph below, might make it appear as though EITC moves smoothly. In actuality, the amount of the credit is given by an IRS table that divides earned income into fifty dollar increments from \$1 to \$43,279.

<http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?DocID=36&Topic2id=40&Topic3id=42>

**SUMMARY OF TESTIMONY IN SUPPORT OF S.B. 363**

My name is Paul Post. I have been a lawyer for over 35 years, and in private practice in Topeka since 1978. A significant percentage of my private practice involves representing persons and families filing for bankruptcy. I generally represent debtors rather than creditors. My bankruptcy practice for debtors is about evenly divided between filing Chapter 7 bankruptcies and Chapter 13 repayment plans.

As part of the bankruptcy process, debtors are required to list all of their assets, which includes income tax refunds which they expect to receive. The refunds also include the earned income credit. If a tax refund is received after the case is filed, the debtor is usually required to turn the tax refund over to the bankruptcy trustee, for distribution by the trustee to unsecured creditors. It is also possible for me to accept an income tax assignment to pay all or a portion of my attorney fees in connection with the case.

The amount of the income tax refund and earned income credit required to be turned over to the trustee varies depending on when the case is filed. If a bankruptcy is filed early in the year, but after the previous year's tax refund or earned income credit is received, then the trustee will only require turnover of that portion of the refund or EIC that was "earned" prior to the time that the case was filed. In other words, if a case is filed on April 1, which is one fourth of the way through the year, then one fourth of the tax refund or EIC must be turned over. As the year progresses, more or the refund or EIC must be turned over. If a bankruptcy is filed after the new year begins, but before the tax return is filed and the refund received, then all of the tax refund and EIC from the previous year is subject to turnover to the trustee.

A trustee has discretion to decline to accept a refund or the EIC. If the refund is small, then a trustee may allow the debtor to keep the refund, since there would not be a meaningful payment

to unsecured creditors arising out of the refund. In my experience, if the refund is less than \$1,000.00, then the trustee may decline to administer the refund for the benefit of creditors. However, this is not always true, especially if there are other potential non-exempt assets which the debtor owns that may be required to be turned over.

Court decisions in the 1990's determined that the earned income credit was subject to turnover to the trustee. This credit is available to the "working poor" who have minor children dependent upon the working parent for support. A person cannot receive the earned income credit if he or she does not work or if there are no minor children at home. Oftentimes, depending upon the number of children in the family and the amount of income received, the EIC can be substantial, oftentimes amount to several thousand dollars. A working parent can receive the EIC even if no taxes were withheld on account of employment, which oftentimes happens with a parent who has a low wage and several children in the home. Since the EIC is available only to working parents, it is specifically intended to encourage persons with minor children to work outside the home – it is a work-incentive program that is part of our federal welfare system, and when combined with the Temporary Aid to Needy Families program (TANF), is intended to assist those families in meeting their basic needs after the TANF payments expire.

The court rulings which allowed bankruptcy trustees to require turnover of the earned income credit are at cross-purposes with the national welfare assistance programs. The effect of these decisions is to remove the money from families who need the funds essentially to survive, and allow the money to be distributed to creditors. The question becomes whether it is fair result to redirect money away from low incomes families who need the funds for essential survival, and pay it to creditors. This question can be answered by looking how unsecured creditors receive money from the bankruptcy estate. The trustee is allowed to base a fee on 25% of the first \$5,000.00 of recovered

assets in a Chapter 7 case, with a 10% fee charged for sums received thereafter on amounts up to \$50,000.00. A \$5,000.00 earned income credit refund would result in a fee of \$1,250.00 to the trustee. A Chapter 7 trustee may also charge additional expenses against the recovered asset. Most trustee's charge separately, and usually at an hourly rate, for actual legal work that benefits the estate, and this on top of the trustee fee previously discussed. The attorney fee charges usually add an additional \$500.00 to \$1,000.00 to the total bankruptcy estate expenses, which are deducted from the recovered asset. Again, using the hypothetical \$5,000.00 earned income credit, fees could easily exceed \$2,000.00, leaving the balance for unsecured creditors, who share *pro rata* in the net recovered assets based upon the amount of each claim compared to the entire recovery.

It is not uncommon for unsecured creditors to receive small distributions amounting to only a few dollars. Oftentimes, the original creditor has sold its claim to a collection agency or a company that buys claims in bankruptcy for cents on the dollar. Thus, the small amount of money paid to creditors in Chapter 7 may end up in the coffer of a speculator who has purchased another company's bankruptcy claim. This comes at the expenses of working parents who would otherwise use the earned income tax exemption to purchase needed goods and services in the local economy. Exemption the earned income credit would allow those low income families to keep this source of funds for the benefit of their children.

**Senate Bill 370**  
**An Act Concerning the Kansas Consumer Protection Act**

Testimony on behalf of The American Legion Department of Kansas

Presented by

Charles M. Yunker, Department Adjutant

Before the

Senate Committee on Judiciary  
State Capitol Building, Room 548S

9:30am, January 26, 2010

*Thank you for providing The American Legion this opportunity to provide testimony in favor of Senate Bill 370 which would, if enacted, increase consumer protection to some of our more vulnerable Kansas citizens.*

Since its founding in 1919, the motto for The American Legion has been "For God and Country". For over 90 years, our organization has been known for its service to veterans, our communities, state, and nation. Although the issues The American Legion addresses change over time, we remain true to our mission to be a "consumers' advocate for veterans".

We applaud your Committee for its desire to strengthen Kansas' consumer protection laws and The American Legion fully embraces your Committee's effort to hopefully deter, and if necessary punish, those convicted of preying upon the vulnerable consumers as defined in SB 370.

We would however recommend two amendments for your consideration. We believe our recommendations will not only strengthen the intent of SB370 and the protection it seeks to provide, but will also broaden and clarify the law to more precisely protect those who wear or have worn the uniform of the Armed Forces of the United States, their family members, as well as the elderly and disabled.

The American Legion suggests the following amendments for your consideration to be added to Senate Bill 370:

1. Add in the "*Protected consumer*" list an additional definition that affirmatively includes all active duty service members which also includes service members who serve in the Kansas Army and Air National Guard, as well as those Kansans in the Reserve components of the Armed Forces. In sum, The American Legion considers the present legislation could exclude these service members who serve on active duty or in active service because they may not be considered '*veterans*' in the bill as it presently stands.

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1-26-10

Attachment 8



These service members and their dependents deserve this added consumer protection because both active duty and Reserve component service members could be deployed at any given time. Those Kansans could be called away from their loved ones with little advanced notice and not be available to protect their loved ones while they are deployed in defense of the country or serving the State of Kansas in a local emergency.

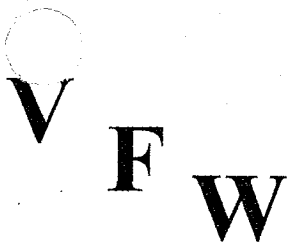
2. Add '*Parent*' as an additional category to the "*Immediate family member*" clause.

The American Legion is a strong supporter of the American family and we believe this legislation should recognize the important role that parents often provide to the members of America's Armed Forces. Also, often members of the Guard and Reserve forces are their parent's providers and the service member's absence makes the parents venerable. Consequently, The American Legion believes these parents should be protected accordingly in the law along with a service member's child, stepchild and spouse.

We believe the State of Kansas should regard the consumer protection policy in SB 370 as part of the protection provided to those in any status of military service, veterans, and their families as well as the elderly and disabled. Much like the American Legion authored original Serviceman's Readjustment Act of 1944 more commonly known as the GI Bill; we believe our suggested amendments could play a vital role to ensure better protection for all consumers.

That is, just as the original GI Bill provided a wide range of opportunities to veterans that were soon mimicked by the private sector; honest sellers of goods and services may resort to extraordinary measures to persuade all consumers of their integrity and the value of their products and services. Such action by retailers, manufacturers, and the service industry will facilitate competition and a stronger Kansas economy.

Again I thank you for allowing me this opportunity to testify in favor of SB370. The American Legion renders its wholehearted support of Senate Bill 370 in its present form. We stand ready to assist you in any way to advance this important legislation; but we do ask that our suggested amendments be given consideration.



**SENATE BILL NO. 370**  
**By Committee on Judiciary**

An Act concerning the Kansas consumer protection act; relating to certain victims; enhanced civil penalties.

Testimony by

Chairman Owens and members of the Committee, I am Ken Stodgell, the State Adjutant and Legislative Chairman for the Veterans of Foreign Wars (VFW). We would like to thank you for the opportunity to appear before this committee today in support of SB-370.

The VFW has a long and rich history supporting our fellow veterans in need. For example, we have an "Unmet Needs" program that can provide limited relief to those individuals on active duty. However, these funds are limited. Even with the support we provide veterans, especially disabled veterans find themselves at a tremendous disadvantage. By including veterans in this bill as a "protected consumer" you are affording veterans and those on active duty protection from those that would take advantage of them. And unfortunately there are many that do this.

Senator Owens and members of this committee you are to be commended for this initiative and the VFW stands in support of Senate Bill 370.

Again, thank you and I will stand for questions.

**Kansas Commission on Veterans' Affairs  
Wayne Bollig, Director, Veteran Services**

Senate Judiciary Committee:

**RE: SB-370** - concerning the Kansas consumer protection for Kansas citizens.

Chairman and members of the Committee, I am Wayne Bollig, the Director of the Veterans Services for the Kansas Commission on Veterans' Affairs. Thank you for the opportunity to testify as a proponent of **SB-370**

The mission of Veteran Services is to provide advocacy and resources to the veterans of Kansas, their families, and/or their survivors, and to assist them in acquiring and utilizing the benefits to which they are entitled under law, resulting in a better standard of life for those veterans, dependents and survivors. Part of this mission I believe is ensure veterans are afforded protection from unfair credit practices. Many for these veterans, their survivors and dependents are elderly and/or disabled. Many are disabled as a result of their service to our country. While we can never repay them for their sacrifice, we can use this opportunity to say thank you to the veteran and their family for their sacrifices.

I believe that including veterans in this bill sends a positive message to those that serve. It shows that Kansas holds their service in high regard.

While the Kansas Commission on Veterans Affairs supports this bill in its present form we do want to make certain of the intent in defining a veteran as *a person who has served in the armed forces of the United States of America*. This definition would include all who served even those given a dishonorable discharge from the armed forces. Most federal and state statutes typically exclude those dishonorably discharged from federal and state benefits.

Thank you for your time.