

HOUSE BILL No. 2150

By Committee on Business, Commerce and Labor

1-24

AN ACT concerning worthless checks; amending K.S.A. 2000 Supp. 60-2610 and repealing the existing section; also repealing K.S.A. 2000 Supp. 60-2611.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 60-2610 is hereby amended to read as follows: 60-2610. (a) If a person gives a worthless check, as defined by subsection ~~(g)~~ (f), the person shall be liable to the holder of the check for the amount of the check, ~~the incurred court costs, the costs of restricted mail and the service charge and the costs of collection, including but not limited to reasonable attorney fees~~ *the service charge, interest at the statutory rate, the costs of collection, including but not limited to, reasonable attorney fees and court costs*, plus an amount equal to the greater of the following:

(1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or

(2) \$100.

~~The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.~~

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the civil action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check ~~and, the incurred service charge and the costs of restricted mail~~ *accrued interest*; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded. The written demand shall be sent by ~~restricted mail, as defined by subsection (g)~~ *first class mail*, to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer and shall include

1 notice that, if the money is not paid within 14 days, triple damages in
2 addition to an amount of money equal to the sum of the amount of the
3 check, the incurred ~~court costs~~, service charge, ~~costs of restricted mail~~
4 ~~and accrued interest~~, the costs of collection including but not limited to
5 reasonable attorney fees ~~unless the court otherwise orders~~, and *court*
6 *costs* may be incurred by the maker or drawer of the check. Notice re-
7 quired by subsection (b)(1) shall state the exact amount and date due, as
8 well as an estimate of the amount that may be incurred if the amount
9 demanded is not paid by the specified date.

10 (c) Subsequent to the filing of an action under this section but prior
11 to the ~~commencement of a dispositional hearing by the court date for~~
12 ~~filing a written answer with the court~~, the defendant may tender to the
13 plaintiff as satisfaction of the claim, an amount of money equal to the
14 sum of the amount of the check, the incurred ~~court costs~~, service charge,
15 ~~costs of restricted mail and accrued interest~~, the costs of collection, in-
16 cluding, but not limited to, reasonable attorney fees and *court costs*. The
17 plaintiff shall include in the petition a statement alleging that the de-
18 fendant may tender such amount as satisfaction of the claim as provided
19 in this subsection. If the amount alleged in the petition is tendered to the
20 plaintiff in full satisfaction of the debt prior to the ~~commencement of the~~
21 ~~dispositional hearing by the court date for filing a written answer with~~
22 ~~the court~~, the case shall be dismissed by the plaintiff. For purposes of
23 this subsection only, the amount tendered as satisfaction of the claim shall
24 not include triple damages or damages of \$100 as provided in subsections
25 (a)(1) and (2). ~~For purposes of this subsection, a dispositional hearing~~
26 ~~means a trial or other hearing by the court in which the plaintiff is seeking~~
27 ~~the entry of judgment against the defendant. The court may waive all or~~
28 ~~part of the attorney fees provided for by this subsection, if the court finds~~
29 ~~that the damages and other amounts awarded are sufficient to adequately~~
30 ~~compensate the holder of the check. In the event the court waives all or~~
31 ~~part of the attorney fees, the court shall make written findings of fact as~~
32 ~~to the specific reasons that the amounts awarded are sufficient to ade-~~
33 ~~quately compensate the holder of the check.~~

34 ~~—(d) If the trier of fact determines that the failure of the defendant to~~
35 ~~satisfy the dishonored check was due to economic hardship, the court~~
36 ~~may waive all or part of the damages provided for by this section, but the~~
37 ~~court shall render judgment against defendant for not less than the~~
38 ~~amount of the dishonored check, the incurred court costs, service charge,~~
39 ~~costs of restricted mail and the costs of collection, including but not lim-~~
40 ~~ited to reasonable attorney fees, unless otherwise provided in this sub-~~
41 ~~section. The court may waive all or part of the attorney fees provided for~~
42 ~~by this subsection, if the court finds that the damages and other amounts~~
43 ~~awarded are sufficient to adequately compensate the holder of the check.~~

1 ~~In the event the court waives all or part of the attorney fees, the court~~
2 ~~shall make written findings of fact as to the specific reasons that the~~
3 ~~amounts awarded are sufficient to adequately compensate the holder of~~
4 ~~the check.~~

5 ~~(e)~~ (d) Any amount previously paid as restitution or reparations to the
6 holder of the check by *or on behalf of* its maker or drawer shall be credited
7 against the amount for which the maker or drawer is liable under sub-
8 section (a).

9 ~~(f)~~ (e) Conviction of giving a worthless check or habitually giving a
10 worthless check, as defined by K.S.A. 21-3707 and 21-3708 and amend-
11 ments thereto, shall not be a prerequisite or bar to recovery pursuant to
12 this section.

13 ~~(g)~~ (f) As used in this section:

14 (1) "Giving a worthless check" means the making, drawing, issuing
15 or delivering or causing or directing the making, drawing, issuing or de-
16 livering of any check, order or draft on any bank, credit union, savings
17 and loan association or depository for the payment of money or its
18 equivalent:

19 ~~(A) With intent to defraud or in payment for a preexisting debt, and~~
20 ~~(B)~~ (A) Which is dishonored by the drawee because the maker or
21 drawer had no deposits in or credits with the drawee or has not sufficient
22 funds in, or credits with, the drawee for the payment of such check, order
23 or draft in full upon its presentation; *and*

24 (B) *for which the maker or drawer has not tendered to the holder's*
25 *agent the amount of money demanded and within the time allowed by the*
26 *demand required in subsection (b).*

27 ~~(2) "Restricted mail" means mail which carries on its face the en-~~
28 ~~dorsements "restricted mail" and "deliver to addressee only."~~

29 ~~(3)~~ (2) "Service charge" means \$10, or subject to limitations con-
30 tained in this subsection, if a larger amount is posted conspicuously, the
31 larger amount. In no event shall the amount of such insufficient check
32 service charge exceed ~~\$30~~ \$50.

33 (3) "*Reasonable attorney fees*" shall be \$350 for a single check with
34 an additional \$50 for each additional check.

35 Sec. 2. K.S.A. 2000 Supp. 60-2610 and 60-2611 are hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the Kansas register.

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