

HOUSE BILL No. 2549

By Committee on Federal and State Affairs

3-6

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

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),~~ 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~~ *any incurred 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.~~ *The written demand shall*

1 include notice that, if the money is not paid within 14 days, triple damages
2 in addition to an amount of money equal to the sum of the amount of
3 the check, the incurred ~~court costs~~, service charge, ~~costs of restricted mail~~
4 ~~and court costs~~, *accrued interest*, the costs of collection, including but not
5 limited to, reasonable attorney fees unless the court otherwise orders,
6 may be incurred by the maker or drawer of the check.

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

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

1 shall make written findings of fact as to the specific reasons that the
2 amounts awarded are sufficient to adequately compensate the holder of
3 the check.

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

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

12 (g) *The service charge on a check which is dishonored by the drawee*
13 *because the maker or drawer had no deposits in or credits with the drawee*
14 *or has not sufficient funds in, or credits with, the drawee for the payment*
15 *of each check, order or draft in full upon its presentation, shall not exceed*
16 *\$30.*

17 ~~(g)~~ (h) As used in this section:
18 —(1)—, “giving a worthless check” means the making, drawing, issuing
19 or delivering or causing or directing the making, drawing, issuing or de-
20 livering of any check, order or draft on any bank, credit union, savings
21 and loan association or depository for the payment of money or its
22 equivalent:

23 ~~(A)~~ (1) With intent to defraud or in payment for a preexisting debt;
24 ~~and or~~

25 ~~(B)~~ (2) Which is dishonored by the drawee because the maker or
26 drawer had no deposits in or credits with the drawee or has not sufficient
27 funds in, or credits with, the drawee for the payment of such check, order
28 or draft in full upon its presentation; *and*

29 (3) *for which the maker or drawer has not tendered to the holder’s*
30 *agent the amount of money demanded and within the time allowed by the*
31 *demand required in subsection (b).*

32 ~~(2)~~ —“Restricted mail” means mail which carries on its face the en-
33 dorsements “restricted mail” and “deliver to addressee only.”

34 ~~(3)~~ —“Service charge” means \$10, or subject to limitations contained
35 in this subsection, if a larger amount is posted conspicuously, the larger
36 amount. In no event shall the amount of such insufficient check service
37 charge exceed \$30.

38 Sec. 2. K.S.A. 2000 Supp. 60-2610 is hereby repealed.

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

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