

## SENATE BILL No. 232

By Committee on Judiciary

2-6

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9 AN ACT concerning civil procedure; relating to worthless checks;  
10 amending K.S.A. 60-2610 and repealing the existing section.

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

13 Section 1. K.S.A. 60-2610 is hereby amended to read as follows: 60-  
14 2610. (a) If a person gives a worthless check, the person shall be liable  
15 to the holder of the check for the amount of the check, the incurred court  
16 costs, the incurred service charge, interest at the statutory rate and the  
17 costs of collection including but not limited to reasonable attorney fees,  
18 plus an amount equal to the greater of the following:

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

21 (2) \$100.

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

29 (b) The amounts specified by subsection (a) shall be recoverable in a  
30 civil action brought by or on behalf of the holder of the check only if: (1)  
31 Not less than 14 days before filing the civil action, the holder of the check  
32 made written demand on the maker or drawer for payment of the amount  
33 of the check, the incurred service charge and accrued interest; and (2)  
34 the maker or drawer failed to tender to the holder, prior to the filing of  
35 the action, an amount not less than the amount demanded.

36 The written demand shall be sent by first class mail, to the person to  
37 be given notice at such person's address as it appears on such check, draft  
38 or order or to the last known address of the maker or drawer. The written  
39 demand shall include notice that, if the money is not paid within 14 days,  
40 triple damages in addition to an amount of money equal to the sum of  
41 the amount of the check, the incurred service charge, court costs, accrued  
42 interest, the costs of collection, including but not limited to, reasonable  
43 attorney fees unless the court otherwise orders, may be incurred by the

1 maker or drawer of the check.

2 Notice required by subsection (b)(1) shall state the exact amount and  
3 date due, as well as an estimate of the amount that may be incurred if  
4 the amount demanded is not paid by the specified date.

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

27 (d) If the trier of fact determines that the failure of the defendant to  
28 satisfy the dishonored check was due to economic hardship, the court  
29 may waive all or part of the damages provided for by this section, but the  
30 court shall render judgment against defendant for not less than the  
31 amount of the dishonored check, the incurred court costs, service charge  
32 and the costs of collection, including but not limited to reasonable attor-  
33 ney fees, unless otherwise provided in this subsection. The court may  
34 waive all or part of the attorney fees provided for by this subsection, if  
35 the court finds that the damages and other amounts awarded are suffi-  
36 cient to adequately compensate the holder of the check. In the event the  
37 court waives all or part of the attorney fees, the court shall make written  
38 findings of fact as to the specific reasons that the amounts awarded are  
39 sufficient to adequately compensate the holder of the check.

40 (e) Any amount previously paid as restitution or reparations to the  
41 holder of the check by or on behalf of its maker or drawer shall be cred-  
42 ited against the amount for which the maker or drawer is liable under  
43 subsection (a).

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

4 (g) The service charge on a check which is dishonored by the drawee  
5 because the maker or drawer had no deposits in or credits with the drawee  
6 or has not sufficient funds in, or credits with, the drawee for the payment  
7 of each check, order or draft in full upon its presentation, shall not exceed  
8 \$30.

9 (h) As used in this section, "giving a worthless check" means the  
10 making, drawing, issuing or delivering or causing or directing the making,  
11 drawing, issuing or delivering of any check, order or draft on any bank,  
12 credit union, savings and loan association or depository for the payment  
13 of money or its equivalent:

- 14 (1) With intent to defraud ~~or in payment for a preexisting debt~~, or  
15 (2) Which is dishonored by the drawee because the maker or drawer  
16 had no deposits in or credits with the drawee or has not sufficient funds  
17 in, or credits with, the drawee for the payment of such check, order or  
18 draft in full upon its presentation; and  
19 (3) for which the maker or drawer has not tendered to the holder's  
20 agent the amount of money demanded and within the time allowed by  
21 the demand required in subsection (b).

22 Sec. 2. K.S.A. 60-2610 is hereby repealed.

23 Sec. 3. This act shall take effect and be in force from and after its  
24 publication in the statute book.