

Journal of the Senate

FIFTY-EIGHTH DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, March 30, 2001—9:30 a.m.

The Senate was called to order by President Dave Kerr.

The roll was called with thirty-nine senators present.

Senator Gooch was excused.

Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

I read things in the Bible
Which are awful hard to do;
Especially when my body's tired,
And my brain is groggy, too.

When I feel I've been mistreated,
And my spirit's getting weak;
The last thing that I want to do
Is turn the other cheek!

And when I'm being patronized.
And revenge You are forbidding;
My inclination is to tell You, Lord,
"You really must be kidding."

And when someone is cursing me,
I should forgive him I suppose.
But what I really want to do
Is punch him in the nose!

So what I'm praying for, O God,
When I'm tempted to be rude,
Is for You to help me have
A change of attitude.

Help me pay attention, Lord,
To everything You say.
Then I won't regret tomorrow
Anything I did today!

I ask this in the Name of Christ,

AMEN

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to Committees as indicated:

Assessment and Taxation: **HB 2030**.

Ways and Means: **HB 2557**.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Pugh as a member of the Conference Committee on **SB 97**; **HB 2084**; **S Sub for HB 2154**; and **HB 2208** to replace Senator Adkins.

CONFIRMATION OF APPOINTMENTS

In accordance with Senate Rule 56, the following appointments, submitted by the Governor to the senate for confirmation, were considered.

Senator Oleen moved the following appointments be confirmed as recommended by the Standing Senate Committees:

By the Governor:

On the appointment to the:

Kansas, Inc.:

Patricia L. Bossert, term expires January 15, 2004.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Gooch.

The appointment was confirmed.

On the appointment to the:

Kansas, Inc.:

Wayne H. Maichel, term expires January 15, 2005.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Gooch.

The appointment was confirmed.

On the appointment to the:

Kansas, Inc.:

Lawrence L. McCants, term expires January 15, 2005.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Gooch.

The appointment was confirmed.

On the appointment to the:

Kansas, Inc.:

Tamera J. Nelson, term expires January 15, 2005.

On roll call, the vote was: Yeas 39, Nays 0, Present and Passing 0, Absent or Not Voting 1.

Yeas: Adkins, Allen, Barnett, Barone, Brownlee, Brungardt, Clark, Corbin, Donovan, Downey, Emler, Feleciano, Gilstrap, Goodwin, Haley, Harrington, Hensley, Huelskamp, Jackson, Jenkins, Jordan, Kerr, Lee, Lyon, Morris, O'Connor, Oleen, Praeger, Pugh, Salmans, Schmidt, Schodorf, Steineger, Taddiken, Teichman, Tyson, Umbarger, Vratil, Wagle.

Absent or Not Voting: Gooch.

The appointment was confirmed.

INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS

Senator Emler introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1836—

A RESOLUTION celebrating Lindsborg's Swedish culture and art in its project
"Search for the Wild Dala Horse."

WHEREAS, The "Search for the Wild Dala Horse" is a cooperative venture of the Lindsborg Chamber of Commerce with major support from the city of Lindsborg, as well as help from Dala horse sponsors, Dala horse decorators and members of the Smoky Valley community. Lindsborg is creating and displaying a herd of specially decorated four-foot tall fiberglass Dala horses. The Wild Dala Horses will be displayed throughout Lindsborg in 2001 and will be featured at the city-wide Hyllningsfest celebration to be held in October; and

WHEREAS, The Dala horse originated in the central Swedish province of Dalarna where for generations craftsmen carved and painted little wooden horses. The little horse has come to symbolize Swedish culture and has been adopted by Lindsborg as its town symbol; and

WHEREAS, Each Wild Dala Horse, made of cast fiberglass, will be painted and named by a local artist and will be on display throughout the year in Lindsborg. The project is the brainchild of Ken Swisher and Ken Sjogren, owners of The Hemslojd, a shop that makes wooden Dala horses and Dala horse signs and imports Swedish and Scandinavian merchandise. Wild Dala Horses completed to date are "Ole the EnDALAgered Species," "Queen Katerina Ditto," "The Dalallama Telecomma" and "Herd It Through the Grapevine." Today we are unveiling the newest Wild Dala Horse, "Fala the Dala Brick Road," which commemorates the heritage of brick streets in Lindsborg; Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the Lindsborg community in its project "Search for the Wild Dala Horse" and wish it every success in this endeavor; and

Be it further resolved: That the Secretary of the Senate be directed to send an enrolled copy of this resolution to Don Anderson, Mayor, City of Lindsborg, 101 South Main, Lindsborg, Kansas, 67456 and to Debra Imhoff, President, Lindsborg Chamber of Commerce, 104 East Lincoln, Lindsborg, Kansas 67456.

On emergency motion of Senator Emler **SR 1836** was adopted unanimously.

Guests from Lindsborg were Don Anderson, Mayor; Ken Swisher, Ken Sjogren, Kathy Peterson, Greg DuMars, Jerry Sperling, Kathy Richardson, Becky Anderson, Bob Lindholm, Joyce Lindholm and State Representative Clark Shultz.

Senator Umbarger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1837—

A RESOLUTION congratulating and commending the 2000
St. Paul High School football team.

WHEREAS, The St. Paul Indians' football team capped off a perfect 13-0 season with a memorable 8-Man Division I state championship in Salina on November 18, 2000. The championship season ended with a 54-8 triumph over Greeley County of Tribune with 2 minutes, 53 seconds left in the fourth quarter, under the 45-point mercy rule; and

WHEREAS, In pursuit of this state championship, the Indians defeated Little River who snatched a championship from their grasp in 1999. Greeley County had defeated the Indians in the 1998 state championship game. This was the second state title—the Indians won the Class 2-1A title in 1986. Historically, the Indians have garnered two football state championships and 3 runner-up finishes. This was St. Paul's thirteenth playoff appearance; and

WHEREAS, The Indians' journey to the state championship included a perfect 9-0 regular season and a Mineral Belt league championship. In playoff competition, St. Paul defeated Pleasanton, 64-26, in the district game. The Indians followed this with a 52-6 victory over Madison in the bidistrict contest and a 34-18 triumph at Little River in the sub-state game; and

WHEREAS, This year's championship season was a tribute to the coaches, the present athletes, and to all those past athletes who worked so hard to advance the program to this competitive level; and

WHEREAS, The Indians were coached by head coach Doug Tuck and assistant coaches Ken Hudiburg and Keith Wiatrak; Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we congratulate and commend the St. Paul high school football team upon being the 2000 8-Man Division I state champion; and

Be it further resolved: That the Secretary of the Senate be directed to provide four enrolled copies of this resolution to Felix Diskin, Principal, St. Paul High School, 1st and Washington, P.O. Box 68, St. Paul, Kansas 66771.

On emergency motion of Senator Umbarger **SR 1837** was adopted unanimously.

The St. Paul Indians' football coach and team members were guests for the resolution.

Senators Barnett, Adkins, Allen, Corbin, Huelskamp, Oleen, Salmans and Vratil introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1838—

A RESOLUTION congratulating and commending the 2001 Kansas Master Teachers.

WHEREAS, Seven educators have been selected from 47 of the state's best teachers as Kansas Master Teachers for 2001. The seven will be honored on April 4 at Emporia State University, the sponsor of the program; and

WHEREAS, The 2001 Kansas Master Teachers are Cathy Esquibel, first-grade teacher at Northwest Elementary School, Dodge City; Jeanne Evans, third-grade teacher at Lincoln Elementary School, El Dorado; Betty Lavery, physical education teacher at Stilwell Elementary School, Stilwell; Leona Madden, library media specialist at Lincoln Elementary School, Hays; Margaret McClatchey, chair of theatre arts at Shawnee Mission North High School, Overland Park; Rosemary A. Riordan, art teacher at Sunflower Elementary School, Lenexa; and Jane Sak, technology integration specialist at Blue Valley North High School, Overland Park; and

WHEREAS, Since Emporia State University established the Kansas Master Teacher Awards in 1954, more than 400 educators have been honored. The awards are presented annually to teachers who have "served the profession long and well and who also typify the good qualities of earnest and conscientious teachers"; and

WHEREAS, Local teacher associations, educational organizations and school faculties nominate candidates for the awards. In February, a committee representing educational organizations from across Kansas selected the 2001 winners; Now, therefore,

Be it resolved by the Senate of the State of Kansas: That the Senate congratulates and commends the seven 2001 Kansas Master Teachers for their excellence in their profession and devotion to the children of Kansas; and

Be it further resolved: That the Secretary of the Senate be directed to send an enrolled copy of this resolution to Cathy Esquibel, Northwest Elementary School, 2100 Sixth, Dodge City, KS 67801; Jeanne Evans, Lincoln Elementary School, 522 Fifth, El Dorado, KS 67042; Betty Lavery, Stilwell Elementary School, 6410 W 199th Street, Stilwell, KS 66085; Leona Madden, Lincoln Elementary School, 1906 Ash, Hays, KS 67601; Margaret McClatchey, Shawnee Mission North High School, 7401 Johnson Drive, Shawnee Mission, KS 66202; Rosemary A. Riordan, Sunflower Elementary School, 8955 Loiret Blvd., Shawnee Mission, KS 66219 and Jane Sak, Blue Valley North High School, 12200 Lamar, Overland Park, KS 66209.

On emergency motion of Senator Barnett **SR 1838** was adopted unanimously.

Senator Barnett introduced 2001 Kansas Master Teachers Cathy Esquibel, Northwest Elementary School, Dodge City and Betty Lavery, Stilwell Elementary School, Stilwell.

Senator Schmidt introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1839—

A RESOLUTION in memory of Walter H. Wulf.

WHEREAS, Walter H. Wulf was born January 10, 1900, at Garden Plain and died March 2, 2001, at the age of 101 in Humboldt; and

WHEREAS, Mr. Wulf was a graduate of Humboldt High School and attended the University of Kansas and Northwestern University in Evanston, Illinois. Mr. Wulf served in the United States Army during World War I and was a past commander of the Algy Doty Post No. 118 American Legion at Humboldt; and

WHEREAS, Mr. Wulf began working at Monarch Cement Company in Humboldt in 1914 during school vacations and eventually worked in every department before becoming president of the company from 1945 to 1969. After stepping down as president of Monarch Cement Company, Mr. Wulf continued to serve as chairman of the company's Board of Directors for the rest of his life. Mr. Wulf was a business leader in Kansas and served three years as a director of the Kansas State Chamber of Commerce; two terms as president of the Associated Industries of Kansas; and two years as Kansas representative to the National Association of Manufacturers; and

WHEREAS, Mr. Wulf served for 30 years on the Board of Control of St. John's College in Winfield and was a lifelong member of St. Peter's Lutheran Church in Humboldt; and

WHEREAS, Mr. Wulf's life was marked by service to others and his many acts of kindness and charity are renowned not only in Humboldt but among all who knew him. The people of Humboldt loved the "Old Man" of Monarch Cement Company and showed their affection in many ways, including naming the street in front of his house "Wulf Drive"; and

WHEREAS, Mr. Wulf married May Kreitzer of Wichita on May 1, 1924. Mr. Wulf is survived by three children: Walter H. Wulf, Jr.; Eileen M. Robertson; and Dolores M. "Dodie" Copley, all of Humboldt; nine grandchildren; and a great grandchild: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we honor the life of Walter H. Wulf and the public service he gave to Humboldt and the State of Kansas.

On emergency motion of Senator Schmidt **SR 1839** was adopted unanimously.

Senators Lee and Praeger introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. 1840—

A RESOLUTION congratulating and commending Jackie Stiles.

WHEREAS, Jackie Stiles of Claflin and a senior at Southwest Missouri State continues to build her legend in women's basketball. Her obsession with basketball started when at five years of age she accompanied her father, Pat Stiles, the Claflin boys' high school coach, to basketball practice and started dribbling the basketball. Jackie soon advanced to shooting, much shooting in fact, going with her father to scout games and reading about the sport. Her connection to Southwest Missouri State came at an AAU meet when Southwest Missouri assistant coach, Lynette Robinson, noted 12 year old Jackie's great ball handling skills while sitting next to Jackie's father; and

WHEREAS, Jackie Stiles received many honors and awards as a high school basketball player based in part on her practice of making 1,000 baskets daily. As a Freshman, she was named All State 1st Team and All Class 1A 1st Team by the Associated Press, the Topeka Capital-Journal and Kansas Sports Magazine; Great Bend Tribune All Area 1st Team and Player of the Year; and USA Today Top 10 Frosh America; as a Sophomore, All State 1st Team by the Associated Press, Wichita Eagle, KBCA and Kansas Sports Magazine; as a Junior, All Class 1A 1st team and Player of the Year by the Wichita Eagle, Topeka Capital-Journal, KBCA and the Associated Press; as a Senior, All State 1st Team and Kansas Player of the Year by the Associated Press, Wichita Eagle, Hutchinson News, Kansas Sports Magazine and KBCA; Parade Magazine All-America 1st Team, USA Today 1st Team All-American; all time state leading scorer (3603 points) for both boys and girls, most points scored in a season (1252), most points scored in a game (71), highest scoring average per game (35.7). Her high school jersey, Number 45, was retired by Claflin High School in 1997. Her high school grade point average was 3.36 and she was named as a National Honor Society member her Junior and Senior Years; and

WHEREAS, Jackie Stiles was also active in other high school sports. She competed in cross country for four years recording 17 wins. In tennis she was the regional singles champion her Sophomore, Junior and Senior years. In track and field she excelled setting school records in the 3200 meter run, 1600 meter run, 800 meter run, 400 meter run, the triple jump and long jump, and earning 14 gold medals at state championship track meets plus many regional gold medal performances; and

WHEREAS, At Southwest Missouri State Jackie Stiles has concentrated on basketball. As a freshman she averaged 20.6 points per game; as a sophomore 25.7 and as a junior 27.8 points per game. Now as a Senior at Southwest Missouri State she is the NCAA leading scorer in women's basketball, has conference career and single-season scoring records and has been named the Missouri Valley Conference's most valuable player three times this year. She has been named to the Verizon Academic All-American women's basketball team—to be eligible the athlete must be a varsity starter and maintain a cumulative grade point average of at least 3.20. Jackie's grade point average is 3.45. She has averaged 30.7 points per game with a 57.8% accuracy; and

WHEREAS, Southwest Missouri State is poised to compete in the final four competition for the national championship. It is her lifelong dream to represent the United States at the Olympic Games, preferably in 2004. After college she plans to play professionally; and

WHEREAS, Her commitment to excellence in life is demonstrated by her humility, dedication to others and her achievements as a student-athlete: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we commend and congratulate Jackie Stiles upon her outstanding career as a student-athlete and wish her every success at the national championship competition, in the Olympics and in her professional career; and

Be it further resolved: That the Secretary of the Senate be directed to provide five enrolled copies of this resolution to Senator Lee for presentation to Jackie Stiles.

On emergency motion of Senator Lee **SR 1840** was adopted unanimously.

REPORTS OF STANDING COMMITTEES

Committee on **Education** recommends **HB 2051** be amended by substituting a new bill to be designated as "Senate Substitute for HOUSE BILL No. 2051," as follows:

"SENATE Substitute for HOUSE BILL No. 2051

By Committee on Education

AN ACT concerning school district finance; authorizing and providing state aid and grants for various educational performance programs; relating to school district ad valorem taxes and other taxes for educational enhancement financing; making and concerning appropriations for the fiscal year ending June 30, 2002, for the department of education; amending K.S.A. 41-501, 72-1106, 72-6413, 79-3310, 79-3311, 79-3312, 79-3371, 79-3378, 79-4101, 79-41a02 and 79-41a03 and K.S.A. 2000 Supp. 72-1398, 72-6407, 72-6410, 72-6412, 72-6414, 72-6431, 72-6442, 79-201x, 79-2959, 79-2964, 79-34,147, 79-3603, 79-3620, 79-3635, 79-3703 and 79-3710 and repealing the existing sections."; and the substitute bill be passed.

Also **HB 2094**, as amended by House Committee, be amended as recommended by the Committee on Education, and the bill be passed as amended.

HB 2408, as amended by House Committee of the Whole, be amended on page 2, in line 32, before "either", by inserting "shall"; in line 33, by striking "shall"

On page 3, in line 38, after "levy", by inserting a comma; in line 40, after "budget", by inserting a comma;

On page 4, by striking all of lines 10 through 14;

On page 5, in line 30, by striking all after "purchased"; in line 31, by striking all before "by"; in line 34, by striking all after "district"; by striking all of lines 35, 36 and 37; in line 38, by striking "area"; in line 39, by striking "and"; following line 39, by inserting a new paragraph as follows:

"(l) acquire sites and construct, equip, repair, remodel and refurnish improvements for recreation system purposes and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto; and";

Also on page 5, in line 40, by striking "(l)" and inserting "(m)"; by striking all of lines 42 and 43;

On page 6, by striking all of lines 1 through 31;

By renumbering sections 4 and 5 as sections 3 and 4, respectively;

Also on page 6, in line 35, by striking "Kansas register" and inserting "statute book";

In the title, in line 14, by striking the comma and inserting "and"; also in line 14, by striking "and 12-1935"; in line 15, after "sections", by inserting "; also repealing K.S.A. 2000 Supp. 12-1935"; and the bill be passed as amended.

REPORT ON ENGROSSED BILLS

SB 342 reported correctly engrossed March 30, 2001.

Also, **SB 58** correctly re-engrossed March 30, 2001.

FINAL ACTION OF BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator Oleen an emergency was declared by a $\frac{2}{3}$ constitutional majority, and **S Sub for HB 2034** was advanced to Final Action, subject to amendment, debate and roll call.

S Sub for HB 2034, An act concerning emergency telephone systems; relating to extension of such systems to include wireless service and cable telephony service; providing for financing thereof; establishing a wireless enhanced 9-1-1 advisory board; amending K.S.A. 2000 Supp. 12-5301 and repealing the existing section, was considered on final action.

S Sub for HB 2034 was amended by adoption of the committee amendments, and further amended by motion of Senator Brownlee on page 3, line 40, starting with "No additional money. . . ." strike through the end of the sentence on line 42, Add on line 35: "All charges for E911 services shall be so identified."

On roll call, the vote was: Yeas 21, Nays 18, Present and Passing 0, Absent or Not Voting 1.

Yeas: Barnett, Brownlee, Brungardt, Clark, Donovan, Emler, Goodwin, Jackson, Jenkins, Jordan, Kerr, Lee, O'Connor, Oleen, Praeger, Salmans, Schodorf, Taddiken, Teichman, Tyson, Umbarger.

Nays: Adkins, Allen, Barone, Corbin, Downey, Feleciano, Gilstrap, Haley, Harrington, Hensley, Huelskamp, Lyon, Morris, Pugh, Schmidt, Steineger, Vratil, Wagle.

Absent or Not Voting: Gooch.

The substitute bill passed, as amended.

On motion of Senator Oleen, the Senate recessed until 2:00 p.m.

AFTERNOON SESSION

The Senate met pursuant to recess with President Kerr in the chair.

INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS

The following bill was introduced and read by title:

SB 360, An act concerning credentialing of health care providers; allowing health care providers to apply for credentialing with the appropriate state agency; amending K.S.A. 65-5001, 65-5002, 65-5003, 65-5005, 65-5006, 65-5007, 65-5008, 65-5009 and 65-5011 and repealing the existing sections, by Committee on Ways and Means.

CHANGE OF CONFERENCE

The President announced the appointment of Senator Brungardt to replace Senator Harrington and Senator Vratil to replace Senator Brungardt as members of the Conference Committee on **S Sub for SB 192**.

REPORTS OF STANDING COMMITTEES

Committee on **Commerce** recommends **HB 2515** be amended on page 2, after line 6, by inserting the following:

"New Sec. 3. Prior to July 1, 2002, all municipalities in the state of Kansas shall refrain from enacting or enforcing any franchise or right-of-way ordinances or agreements pursuant to chapters 12 and 17 of the Kansas Statutes Annotated, home rule powers, or any other authority, that substantially modify the relationship between telecommunications providers and municipalities as those relationships existed on January 1, 2001, except that municipalities may reach franchise or right-of-way ordinances or agreements with new telecommunications providers on terms and conditions consistent with the original provisions of ordinances or agreements between municipalities and other telecommunications providers in existence prior to December 31, 2000. Subsequent to the effective date of this act, representatives of municipalities and telecommunications providers shall confer and shall provide to the joint committee on economic development at least three progress reports of their discussions prior to December 31, 2001.";

And by renumbering sections accordingly;

In the title, in line 9, by striking "cities and counties" and inserting "municipalities"; in line 10, after the semicolon, by inserting: "concerning franchise agreements between telecommunications providers and municipalities; relating to access by telecommunications providers to public rights-of-ways;"; and the bill be passed as amended.

Committee on **Judiciary** recommends **HB 2296**, as amended by House Committee, be amended on page 6, by striking all in lines 33 through 43;

On page 7, by striking all in lines 1 through 18 and inserting the following:

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

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

(c) Subsequent to the filing of an action under this section but prior to the commencement of a dispositional hearing by the court, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, the incurred ~~court costs~~, service charge, ~~costs of restricted mail and~~ *accrued interest*, the costs of collection; including, but not limited to, reasonable attorney fees *and court costs*. The plaintiff shall include in the petition a statement alleging that the defendant may tender

such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. For purposes of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (a)(1) and (2). For purposes of this subsection, a dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. 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.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. 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.

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

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

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

~~(h)~~ (h) As used in this section:

~~(1)~~ "giving a worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

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

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

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

~~(2)~~ "Restricted mail" means mail which carries on its face the endorsements "restricted mail" and "deliver to addressee only."

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

Also on page 7, in line 19, by striking "60-4104" and inserting "60-2610";

On page 1, in the title, in line 10, after "concerning" by inserting "written instruments; relating to"; also in line 10, after the semicolon by inserting "worthless checks;"; in line 11, by striking "60-4104" and inserting "60-2610"; and the bill be passed as amended.

Committee on **Ways and Means** recommends **HB 2283**, as amended by House Committee, be passed.

Also **HB 2493**, as amended by House Committee of the Whole, be passed.

Substitute for HB 2532, as amended by House Committee of the Whole, be amended on page 3, in line 16, by striking all following the period; by striking all in lines 17 through 19; in line 23, by striking all following the period; by striking all in lines 24 through 26; in line 27, by striking all preceding "The"; in line 28, by striking "for cause"; and the substitute bill be passed as amended.

On motion of Senator Oleen the Senate adjourned until 9:30 a.m., Wednesday, April 4, 2001.

HELEN A. MORELAND, *Journal Clerk*.

PAT SAVILLE, *Secretary of Senate*.

