

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARYThe meeting was called to order by Representative Bob Frey at
Chairperson3:30 ~~am~~/p.m. on January 26, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
Frances Kastner, Kansas Food Dealers Association
Marjorie Van Buren, Office of Judicial Administration
Joyce Reeves, Clerk of the Shawnee County District Court
Bruce Harrington, Judge Pro Tem of the Shawnee County Small Claims Court
Sherlyn Sampson, Clerk of Douglas County District Court
Verle Swenson, District Magistrate Judge of Wabaunsee County
Neal Harrison, District Court Administrators for Leavenworth and Atchison Counties
Al Singleton, District Court Administrators for Riley and Clay Counties
Shirley Atteberry, owner of Research and Data
Ron Miles, Board of Indigents' Services
Bob Clester, Kansas Sheriffs Association

The Chairman presented several requests for proposals to be introduced as bills: three measures requested by the Board of Indigents' Services regarding criminal procedure and appeals (HB 2802), fees for witnesses from other states (HB 2801), and acquisition of investigative, expert, and other services (HB 2800); and several cleanup bills amending statutes governing the Department of Corrections.

Representative Knopp moved to introduce these proposals as bills, seconded by Representative Miller. Motion carried.

Hearings were held on HB 2656 and HB 2419 relating to worthless checks.

HB 2656

Representative Hoagland explained the intent of the bill. It brings writing worthless checks into conformity with other petty theft penalties by creating a civil penalty and raising the jurisdictional threshold for a felony charge from \$50 to \$100. This penalty would be in addition to the statutory penalty. The bill provides that these cases be handled only in small claims court. Because this limitation might create possible due process problems, he said district courts could be added. Representative Hoagland had no objection to including in the bill worthless checks for services such as rent. He said the bill does not assume there must be a conviction before the case can go to court. The intent was to avoid prosecution to relieve district attorneys from having to prosecute small worthless check cases. In regard to the bill creating additional duties and paperwork in aids of execution for court clerks, Representative Hoagland said raising the threshold might result in this, but he cautioned against over-simplifying the court procedure because more people would try it.

Jim Clark, Kansas County and District Attorneys Association, said the worthless check problem would not be solved even with a state-assisted, statewide, full-time prosecution system.

Frances Kastner, Kansas Food Dealers Association, gave a statement supporting the bill (Attachment No. 1), but added that the Association would not support raising the threshold from \$50 to \$100. Merchants, especially in small communities, have a difficult time getting district attorneys to file charges on checks up to \$50, and a \$100 threshold would be worse. People would write worthless checks for \$99.99 instead of \$49.99.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
 room 526-S, Statehouse, at 3:30 ~~am~~ p.m. on January 26, 1984.

Marjorie Van Buren, Office of Judicial Administration, gave a statement (Attachment No. 2) listing the concerns of that office regarding HB 2656. She said the bill would create a need for additional clerical and judicial personnel and space. An estimated fiscal impact (in Attachment No. 2) notes the net loss to Kansas would be approximately \$700,000.

Joyce Reeves, Clerk of the District Court, Shawnee County, estimated passage of HB 2656 would result in an increase of 6000 or 8000 worthless check cases a year in Shawnee County. She objected to the small claims court provision, saying the small claims law has become so complicated that clerks cannot help the people and lawyers are needed to do this. She believed the bill would take business away from private businesses that collect checks.

Bruce Harrington, Judge Pro Tem of the Shawnee County Small Claims Court, said it was not true there was no remedy for worthless check writers as he has these cases coming through his court everyday. He objected to the penalty in HB 2656. Providing a civil penalty that would exceed the jurisdictional limitations of the court would create a constitutional problem.

Sherlyn Sampson, Clerk of the District Court, Douglas County, opposed HB 2656, stating two additional employees would be required to handle small claims. It would take one judge six months to hear them all.

Verle Swenson, District Magistrate Judge, Wabaunsee County, said district magistrate judges handle the bulk of worthless check cases. They believe civil penalties should be discretionary with the judge. Since no conviction is required, he questioned at what point the judge decides a check is bad. A vehicle for processing bad checks is already in place, and, if HB 2656 is not changed, it would create problems and substantially increase the small claims caseload.

Neal Harrison, District Court Administrator, Leavenworth/Atchison Counties, objected to the bill. He said Leavenworth merchants receive good service from the court on worthless checks with \$75,000 restitution being paid and \$19,000 in court costs being returned to the state.

Al Singleton, District Court Administrator, Riley and Clay Counties, opposed the bill. It places burdens on county government for additional space for state employees.

Shirley Atteberry, owner of Research and Data, a check collection firm, opposed changing the penalty from criminal to civil and raising the threshold to \$100. In her opinion, HB 2656 makes it easier on the bad check writer and tougher on the victim.

HB 2419

Frances Kastner opposed the bill (see Attachment No. 1). She did not believe that changing the penalty classification would make any difference in efforts to prosecute bad check cases. It was noted that the EE classification is a substantial change from present requirements.

Jim Clark saw no advantage in HB 2419 as it eliminates misdemeanor offenses on bad checks altogether and requires a preliminary hearing and counsel on every check charge. He saw no problem with confining worthless check writers in the county jail since felons, under this act, are not involved with the Department of Corrections. He supported the redrawn boundaries on page 2 of the bill as felony cases would be prosecuted across state lines whereas misdemeanor cases are not.

Ron Miles, Board of Indigents' Services, said HB 2419 would take all the money the Board has available for felony defense cases. It would have no choice but to represent these cases. He believed the counties should pay these costs. The Chairman noted the federal law stipulates that counsel must be provided and, if the state does not provide it, he questioned if counties would support this.

Bob Clester, Kansas Sheriffs Association, neither supported or opposed HB 2419. He gave figures regarding jail population if the bill is passed. Based on a survey of 55 counties including Sedgwick, Shawnee, and Reno but not including Wyandotte and Johnson, he said jails are running about one-half full with larger county jails running more to capacity.

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Shirley Atteberry opposed HB 2419, noting the misconception people have regarding the \$100 limit for classification. Provisions should make it tough on the worthless check writer and not on the victim.

HB 2688 and 2689 - Administrative Procedures Act.

Representative Duncan explained materials furnished members consisting of a list of state agencies and a copy of 1983 HB 2521 (not passed) which shows how a "trailer" bill could be drafted.

The meeting was adjourned at 5:05 p.m.

Attachment
No. 1
1-26-84



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205
PHONE: (913) 384-3838

January 26, 1984

Attachment # 1

OFFICERS

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KINGMAN

VICE-PRESIDENT
CHUCK MALLORY
TOPEKA

TREASURER AND SECRETARY
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OVERLAND PARK

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ABILENE

AFFILIATE DIRECTOR

BOB MACE
TOPEKA

DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

HOUSE JUDICIARY COMMITTEE

AGAINST HB 2419
FOR HB 2656

EXECUTIVE DIRECTOR
JIM SHEEHAN
SHAWNEE MISSION

Thank you, Mr. Chairman, and members of the Committee for allowing me this time to appear before you today. I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of manufacturers, distributors, and retailers of food products throughout the State of Kansas.

We have a long-standing record of being OPPOSED to any type of legislation that gives a COST OF LIVING INCREASE TO CRIMINALS. And, this is just what we see in HB 2419.

The penalty for misdemeanor offense doesn't appear to be any different than the one proposed in HB 2419 to make a new classification of Class EE felony. It DOES, however, INCREASE the present minimum from \$50 to \$100 before it becomes a felony instead of a misdemeanor offense.

We have reports that there appears to be little effort to prosecute bad check writers on a misdemeanor charge. We would anticipate no change in that practice at the local level just because the law is changes from one classification to another when the fine or imprisonment provisions could be the same.

We urge you to NOT pass HB 2419 out of this Committee.

Atch. 1

January 26, 1984

We FAVOR HB 2656, as well as any other legislation that would make it more difficult to avoid paying for goods or services by giving the retailer or honest individual a worthless check.

We like the idea of being able to collect on worthless checks by going through the small claims process.

Statistics given to us by a four-store corporation in a metropolitan area, shows that they have to plan on setting aside about \$45,000 each year to use for covering bad checks. That amount has to be designated for cash flow until the face value of bad checks can be collected by their collection agency.

Even so they had to write off over \$17,000 in 1983 for bad checks which were NOT collectable. This amount had to be added to their cost of doing business. In turn this is figured into the prices of goods sold to honest people who do NOT write bad checks.

We feel that any method or tool made available to retailers for recovering money due them because of bad checks is going to help the honest consumer.

Usually the retailer does not have the time to try to recover the amount due him when a bad check is sent back to his business. Some collection agencies keep up to 50% of the face value of the bad check that they collect. This was not done in the case we used above, but if it had, we would then add another \$22,500 to the \$17,000 figure for a loss of nearly \$40,000 which would have to be passed on as a cost of doing business.

We appreciate your giving this matter serious consideration and we ask you to recommend HB 2656 for passage.

Frances Kastner, Director
Governmental Affairs, KFDA
3310 SW 7th, # 2
Topeka, Kansas 66606

(913) 232-3310

Attachment # 2
1-26-84



Attachment # 2

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612

(913) 296-2256

SUMMARY OF TESTIMONY

on House Bill 2656

by Marjorie J. Van Buren

before the House Judiciary Committee

We believe the passage of H.B. 2656 would have a substantial impact on the caseload of the district courts of Kansas, with a resulting need for significant increases in personnel, both clerical and judicial. Our estimates are based on current caseload statistics as well as informal discussions with Kansas judges, clerks of the court, prosecuting attorneys, collection agents, and merchants, as well as with representatives of the court systems in Texas and California. If, as we estimate, 60,000 new small claims cases were filed, this would represent a 400% increase in such cases. Our fiscal note is attached. (Not included in our fiscal note is the probable effect on facility needs in those counties where storage and courtroom space are already cramped).

H.B. 2656 appears to be modeled after a California statute which went into effect January 1, 1984. Since the new California statute has gone into effect less than 30 days ago, no information is yet available on the actual impact on the California court system.

In any case, there are several significant variations between H.B. 2656 and California law:

1. The California statute (attached) requires the claimant to deliver a demand for payment by certified mail, whereupon the writer of the check has 30 days in which to make payment. Only after this procedure has failed to produce payments is the new civil penalty available. This provision is not included in H.B. 2656.

Atch. 2

2. In the California statute, total damages are limited to \$500. With the current limit of \$500 on small claims, a penalty of up to \$1,000 could be assessed under H.B. 2656 for a total award of \$1,500.

Legislative policy in recent years has been to limit use of the courts as a collection agency. However, passage of H.B. 2656 would reverse this policy by removing worthless checks from the limitation of five small claims per year to be filed by one party. If this reversal becomes public policy, it will be necessary for the legislature to provide adequate funding to carry it out.



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612

(913) 296-2256

January 23, 1984

To: Lynn Muchmore, Director of the Budget
Executive Branch

From: Jerry Sloan, Fiscal Officer
Judicial Branch

Re: House Bill 2656

This bill would allow the recipient of a worthless check amounting to \$500 or less to seek recovery of the amount of the check plus a penalty of at least the amount of the check but not more than twice the amount of the check. It would also eliminate the restriction of no more than five small claims being filed in a year in these cases. This would impact the Judicial Branch's work load by substantially increasing the number of small claims filed.

Current statutes (K.S.A. 21-3707) make giving a worthless check subject to criminal prosecution. This bill would not change this. However, it is possible that fewer criminal proceedings would be initiated if the small claims procedure were available to the recipient of a worthless check.

While a slight decrease in criminal prosecutions might result, the number of filings in small claims would dramatically increase. Currently, the district and county attorneys are responsible for either collecting on a worthless check or filing criminal charges if it is referred to them. While I do not have exact figures, based on a sampling, it is estimated that 13,000-15,000 worthless checks are written each year which result in criminal charges. It is also estimated that approximately four times this number of checks are originally referred to the prosecuting attorney. Thus a potential increase of 60,000 small claims cases might be expected. This is probably a very conservative estimate since it does not include any worthless checks that are currently rectified by merchants or collection agencies and not referred to the district or county attorney but which might be filed under the small claims procedure.

Mr. Muchmore
Re: HB 2656

-2-

January 23, 1984

Due to the fact that most small claims are not filed by an attorney, these filings often take more staff time than many other cases. It is estimated that it would require at least an additional 41 positions at a cost of \$537,102 including fringe benefits in FY 1985, excluding any cost-of-living adjustments. This would allow for one additional position in each district with two positions each in the 3rd, 7th, 8th, 10th, 11th, 20th, 28th, and 29th judicial districts and three additional positions in the 18th Judicial District. Obviously, there would be an impact on judicial work load also. Estimating 15 minutes per case of judge time would require over seven full-time judges. Seven additional district judges would cost \$411,038 in salaries and fringe benefits.

The additional revenue generated from an estimated 60,000 case filing increase would be \$600,000. Of this amount, approximately \$210,000 would go to the State General Fund and \$300,000 would go to the counties; approximately \$90,000 would go to the county law libraries. This State General Fund increase might be somewhat reduced if criminal filings decreased as mentioned above.

There would also be an additional cost to the counties. Since most district courts order their forms on an annual basis, if this bill were to become law on July 1, the remainder of the existing forms would have to be discarded and new forms purchased. For small claims forms, it is estimated this would cost, in the aggregate, \$19,610.

JS:dm

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MIXED STATES

WEST'S CALIFORNIA LEGISLATIVE SERVICE 1983

FILED 1983-1984 REGULAR SESSION

In this issue-

1983 Regular Session- Chapters 325 to 564

Laws Approved to July 26, 1983 and
Filed July 28, 1983

SLIP 20-183

WEST LIBRARY

WEST
PUBLISHING
COMPANY

10309066 0270
STATE OF KANSAS
SUPREME COURT
LAW LIBRARY
KANSAS JUDICIAL CENTER
301 W 10TH
TOPEKA KS 66612

accordance with regulations prescribed by the Director of Social Services.

(5) Any condition which results in the violation of the rights or physical, mental, or moral welfare of a child or jeopardizes the child's present or future health, opportunity for normal development, or capacity for independence.

(d) Nothing in this section shall be construed to permit a foster parent to administer any corporal punishment to a foster child.

DISHONORED CHECKS—PUNITIVE DAMAGES

Assembly Bill No. 1226

CHAPTER 522

An act to add Section 1719 to the Civil Code, relating to commercial paper.

[Approved by Governor July 28, 1983. Filed with Secretary of State July 28, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1226, Katz. Bad checks: punitive damages.

Existing law makes it a crime to fraudulently write a bad check, knowing that it is made upon insufficient funds.

This bill would create a cause of action for treble the amount owing but in no case less than \$100 or more than \$500 for failure to pay upon a dishonored check, in cash, within 30 days of demand for payment, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1719 is added to the Civil Code, to read:

1719. Notwithstanding any penal sanctions which may apply, any person who makes, utters, draws, or delivers any check, or draft, or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, which refuses to honor the same for lack of funds or credit to pay, or because the maker has no account with the drawee, and who fails to pay the same amount in cash to the payee within 30 days following a written demand therefor delivered to the maker by certified mail, shall be liable to the payee, in addition to the amount owing upon such check or draft or order damages of treble the amount so owing, but in no case less than one hundred dollars (\$100), and in no case more than five hundred dollars (\$500).

A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

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