

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by REPRESENTATIVE JOE KNOPP at
Chairperson

3:30 ~~xxx~~/p.m. on February 25, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Adam, Duncan, Luzzati, Roy, Solbach, Teagarden, Whiteman and Wunsch were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statute's Office
Becca Conrad, Secretary

Conferees appearing before the committee:

Representative Chronister
Jim Yonally, Director of Governmental Relations for the Kansas Chapter of
National Federation of Independent Businesses
Judge Bruce Harrington, Shawnee County Small Claims Court
Marjorie Van Buren, Judicial Administrator's Office
Gordon Hahn, The Associated Landlords of Kansas, Inc.
Representative Sughrue
Cheryl Koontz, Foster Parent
Jean Ann Melia, Foster Parent
Ethel Peterson, School Counselor
Pat Anders, Foster Parent
Stan Lind, Kansas Association of Finance Companies
Shirley Atteberry, Research & Data, Inc.
Francis Kastner, Director of Governmental Affairs for the Kansas Food
Dealers Association
Bob Perine, Checkrite, LTD
Jim Clark, Kansas County & District Attorneys Association
Dennis Moore, District Attorney of Johnson County
Representative O'Neal

HB 2272 - Amending the small claims procedure act; concerning information in aid to the enforcement of judgments.

Representative Chronister said that this bill is a result of a number of people's complaints about the ability to collect judgment in small claims court. She said the main problem is to find a low cost solution for the courts and that this bill does this by putting the burden on the defendants to provide a list of his or her assets. The plaintiff would then be responsible for collecting the assets if the defendant does not pay. The clerk of the court would not be responsible for a great deal of paper work, only a check list as to whether the asset list has been produced and then forwarding that asset list to the plaintiff. The plaintiff must then initiate further action in a request for a contempt of court citation.

Jim Yonally, Director of Governmental Relations for the Kansas Chapter of National Federation of Independent Businesses, spoke in favor of HB 2272. He said they represent over a half million members nationwide including small business people in this state in every county. He said they feel it is an important part of a program to assist small businesses. He said that 36% of their members said that they had used the small claims court process, however, only 29% of those said they were able to collect their money easily and 24% said they were unable to collect at all after they had received judgment in court. Mr. Yonally said they felt it would be helpful in being able to collect if the prevailing party knew where the person worked and specifically also knew where they had accounts either in a bank or savings or loan. He did think HB 2272 needed an amendment that this report form that is called for in the bill would not need to be filed if the person had paid the judgment.

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Judge Bruce Harrington, Shawnee County Small Claims Court spoke in favor of this bill and said it has been his concern for some period of time as to how many judgments that are rendered from that court are collected.

The Chairman asked Judge Harrington if he saw any problem with extending the Chapter 60 action and just requiring as a matter of course to force the losing party, the party to whom the judgment is owed, to submit this information. Judge Harrington said he saw no problem with that, but he questioned the fact that he, as small claims judge, has very limited powers and authority of jurisdiction. He wondered if the contempt procedure or failure to submit this go to him or the district court - if it goes to the district court, it would be defeating the purpose of the small claims bill in the first place, which is to alleviate the necessity of having all these matters being brought before him. The Chairman said that the theory is that 90% of them, if it is brought to their attention, will assume they have to do it, and sign it and few will contest or challenge the requirement if it comes on official court letterhead, etc.

Marjorie Van Buren, Judicial Administrator's office, said she was not testifying for or against the bill. She said the fiscal impact falls into three categories as follows: 1.) forms and postage of the county; 2.) clerk time; and 3.) judge time. She also had a concern about what is meant by "verified statement" in line 33 (verified by whom). She said if the committee passed this bill, they would be supportive of these amendments.

Gordon Hahn, representing The Associated Landlords of Kansas, Inc., said they supported this bill, but had one recommendation they would like to make which is explained in Attachment No. 1.

HB 2048 - Concerning the code for care of children; relating to reintegration of child into family; concerning termination of parental rights.

Representative Kathryn Sughrue spoke in favor of this bill as shown in Attachment No. 2.

Cheryl Koontz, a foster parent from Dodge City, gave testimony in favor of this bill. See Attachment No. 3.

Jean Ann Melia, a foster parent from Dodge City, also spoke in favor of HB 2048 as shown in Attachment No. 4.

Ethel Peterson, a school counselor from Dodge City, spoke in favor of this bill. Her testimony is shown in Attachment No. 5.

Pat Anders, a foster parent from Dodge City, was not able to appear in person, but sent written testimony. See Attachment No. 6.

The Chairman said that Secretary Harder and Commissioner Barnum testified earlier in the session that they intend to promulgate regulations that no child will be in foster care for more than 18 months without a permanent solution being sound. He asked what their group's response to that or experience with SRS had been as to their commitment to that goal, and where the problem lies. Representative Sughrue replied that possibly the county attorneys hadn't followed up on these situations. She said she feels like they need to have written into the law some kind of termination time. She said there may be a shortage of SRS people which would be part of the problem.

HB 2440 - Concerning crimes and punishments; relating to giving a worthless check.

HB 2367 - Relating to crimes; concerning worthless checks.

The Chairman said that these bills are very similar. HB 2367 would change the service charge from \$3 to \$25 and HB 2440 would change it from \$3 to \$10.

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Stan Lind, Kansas Association of Finance Companies, proponent of HB 2440, gave reasons the committee should give consideration of this bill. He said the \$3 statutory fee is completely inadequate in light of present day normal bank charges handling an insufficient check. On the other hand, he said the court of appeals has addressed this issue and it held that permitting a \$5 charge plus 10% of whatever the amount of the check was over \$20 was not unconscionable. This opinion seemed to allow a floating charge. He said it appears to them that a charge that is set and determined by the legislature would be more desirable than the seeming floating charge that was prohibited. He said another aspect about the floating charge that is permitted by the case is that the plaintiff upon making a prima facie case could have the case rebutted by testimony on the part of the defendant that the defendant had not seen this card which is posted prominently in the place of business. He said everyone is aware of these cards which are all over every place and in various places of business it says that there is a \$5, \$10, or whatever charge. This becomes a contract by adhesion if a trier of the facts in a given case were to find that the information was in fact seen by the defendant in the case. So to remove all of these uncertainties, it would be best for the legislature to impose a flat fee that is consistant with the charges made by the banks today.

Jim Yonally, Director of Governmental Organizations of the National Federation of Independent Businesses, said that 84% of the people they represent said there was a need for greater protection from those who issue bad checks. He said they further asked if this was a serious problem in their own business and 34% said "yes". He said he thought anything that seriously affects the business of a third of those trying to operate in this state certainly deserves attention. He said he couldn't speak to the amount of the fee, whether it should be \$10 or \$25, but he said he was really not interested in collecting any fees. They are just interested in having people make their checks good.

Shirley Atteberry, Research & Data, Inc., spoke in favor of HB 2367 and against HB 2440. Her testimony is shown in Attachment No. 7.

Francis Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association, spoke in favor of HB 2367 and against HB 2440 as shown in Attachment No. 8.

Bob Perine, Checkrite, LTD in Topeka, spoke against HB 2440 and in favor of HB 2367. Concerning HB 2440, he said they do not charge merchants any fee or any percentage for collecting their checks. Their cost for this year would be a little over \$10 per check on their entire operation. He said if this \$10 limit was imposed, they would have to cut their services by at least 30% of the work they do. Attachment No. 9 shows a further cost breakdown on return checks in their business.

Gordon Hahn, The Associated Landlords of Kansas, Inc., spoke in favor of HB 2440. His testimony is shown in Attachment No. 10.

HB 2452 - Concerning the crime of theft.

Jim Clark, Kansas County & District Attorneys Association, said they recommended a simple change which states that large thefts of \$3,000 or over would be punished as a Class "D" felony instead of an "E" felony. He said they realize this is a parting from the great prison overcrowding of SB 858 which was passed last year, but they do think the impact in numbers isn't going to be that great. He said there is also a serious problem with a large amount of theft being called a Class D felony in a presumptive probation.

Dennis Moore, District Attorney of Johnson County, presented an amendment to HB 2452 as shown in Attachment No. 11. The Chairman asked if these were all non-violent, non-person crimes which are strickly crimes against property. Mr. Moore said that was correct, but he said some of the victims feel pretty violent when they find out the damage of the crime. He said they are primarily embezzlement situations.

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Francis Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association, spoke in favor of this bill with an amendment of \$500 for a Class D felony charge as shown in Attachment No. 12.

The Chairman stated that he had spoken with the Chamber of Commerce and Southwestern Bell who are concerned about their yellow page solicitors and he would like to hold off hearings that might be more acceptable to everybody.

The Chairman also announced that this is the deadline for requests for introduction of bills.

Representative O'Neal said he had a bill request that is similar to HB 2272 for a small claims procedure. He said he had a group of attorneys from Hutchinson ask him to present an amendment because the hearing in aid statute in his jurisdiction and in Sedgwick County were finding that their hearing in aids were conducted outside the courtroom. He said the court clerk simply swears them in and they run off to a room to have a hearing in aid. He said they would like to make it possible to continue that kind of procedure. He said they would like to have a procedure so they can have them served, have them appear, offer some counsel, have some judgment and have them appear before a person authorized under oath and have a notary public take down that information in their office and advise the court as to any no-show. He said he didn't think it was an amendment appropriate to add onto HB 2272 and asked that it be introduced as a separate bill.

The motion to introduce this bill request in the committee was made by Representative O'Neal and seconded by Representative Snowbarger. The motion carried.

The Chairman said that the Federal Land Bank of Wichita wanted to make a bill request as shown in Attachment No. 13. A motion was made to introduce this bill request, concerning voiding old mortgages unless extensions are filed, by Representative Shriver. It was seconded by Representative Douville and it carried.

The minutes of January 30, 1985 were approved.

The meeting was adjourned at 5:10 p.m.



(913)-232-4476

Commentary on House Bill 2272

February 25, 1985

The Associated Landlords of Kansas are especially interested in House Bill 2272, being heard today. We welcome this opportunity to provide you with commentary about the bill.

Our more than 1,200 members, represented through active local chapters in more than six Kansas cities, primarily purchase real estate as an investment outside their other employment, meaning that they are not "large businesses" with ample resources to pursue court cases. Unfortunately, it is sometimes necessary for a landlord to take a tenant to court for the payment of back rent, damages, or evictions. It is not uncommon for a landlord to receive judgement in the case, and then find there is even more work involved in securing the awarded judgement. This bill would speed the process noticeably, and we encourage its passage.

We would suggest one change though. Landlords usually pursue such cases as those described above in the Limited Actions Division of the District Court, and occasionally in the full District Court. This is because Small Claims Courts cannot provide awards in eviction cases, and it is most often the case that claims for funds are related to evictions. We would suggest that the bill be amended to provide that the information to be provided be a standard requirement in all District Court cases where awards are made. This approach would by definition include not only the full District Court proceedings, but also those heard in Limited Actions Division(s) and Small Claims Courts as well.

If there is other information or commentary you would like to have about the proposed bill, please let us know either by writing us or by leaving a message at our Topeka office phone (232-4476).

Attachment No. 1
House Judiciary
February 25, 1985

STATE OF KANSAS

KATHRYN SUGHRUE
REPRESENTATIVE, 116TH DISTRICT
FORD COUNTY
1809 LA MESA DRIVE
DODGE CITY, KANSAS 67801



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER FEDERAL AND STATE AFFAIRS
ENERGY AND NATURAL RESOURCES
GOVERNMENTAL ORGANIZATION

February 25, 1985

Mr. Chairman and members of the Judiciary Committee

H.B. 2048 concerns the code for care of children in Foster Homes. If after 2 years in Foster Homes the court determines that progress and improvement in the parents home is inadequate, the rights of parents would be terminated, thus allowing the children to be adopted.

This bill places the review burden on the courts rather than S.R.S. so it fits well into our statutes since the court reviews the child's placement every 6 months under the code.

The N.C.S.L. conducted a survey of child welfare issues. 37 states that responded, 27 cited statutes that include the condition of the parents as a part of their termination statutes. Five states mention the time of an out of home placement. Termination time mentioned were from reasonable, one year, to two years. States included Delaware, Hawaii, Louisiana, Mississippi and South Carolina.

We all heard Chief Justice Alfred Schroeder on Jan. 17. He stressed "Permanency Planning" for children in need of care to quote a portion of his address:

"A need coming to the court's attention involves children known under our Juvenile Code as "children in need of care."

Just as cases should not be permitted to "float" in the court

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system, so these children should not be permitted to "float" in the overall social service system. Yet, we encounter cases of children who are moved from foster home to foster home, year after year, or situations where the kind of active supervision which would be most beneficial to a child in need of care is not available.

In 1980 the Congress of the United States focused attention on the issue of permanency planning by passage of the Adoption Assistance and Child Welfare Act. This set of laws is designed to ensure that states properly address the need to minimize the use of foster care and move instead toward the placement of children in a permanent "home" situation, if possible. The implications of this effort are far-reaching, in terms of the overall welfare of society.

The humanitarian aspect of this problem is of paramount importance. Viewing the situation as a Monday morning quarter back, we can see the lack of appropriate action was penny wise and pound foolish. Why do I say this?

Wholly aside from the humanitarian aspects of the problem, lets talk money, a matter which we all understand.

Recent published reports suggest that up to 90% of killings, rapes, and other crimes against people in the United States were committed by persons who were victims of child abuse. These are the children under our juvenile code described as "children in need of care." These are the children for whom foster care funds are provided.

In Kansas each year for the past two years we have been spending approximately \$20 million on foster care. In Kansas each year for the past two years we have been spending approximately \$38 million on keeping prisoners in our penal institutions. So what we are talking about is \$58 million most of which is spent on what may be metaphorically described as attempting to close the barn door after the

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horse is stolen.

It seems to me shifting the emphasis of state action to prevention that is, routing the child in need of care on the path that leads to good citizenship, and diverting them from the road that leads to prison, is the sensible approach. This is the thrust of permanency planning for our children in need of care."

We urge your favorable consideration of H.B. 2048.

February 25, 1985

Mr. Chairman & Members of Committee:

My name is Cheryl Koontz. I'm from Dodge City, Kansas, Married and have three children. I operate a pre-school and my husband is a supervisor at EXCEL Corporation.

We support H.B. 2048. As a foster family we have been concerned about the current foster care system. As a foster home for about three years we have encountered many and varied circumstances. From these experiences we see a great need for the rights of these children to be recognized. All too often, their needs and rights are ignored, while the social service system and court system play "see-saw" games with the natural parents.

As foster parents we were involved in a case where after 2½ years the mother made no notable improvement in her ability to care for her children. She is not capable of being responsible for herself, or any of her children. There are no guidelines as to how long this situation can continue, and this is frustrating.

Our foster son was three years old when he came to live with us. He's six now. He needs security. He needs acceptance. He needs a loving permanent home of his own. Isn't it wrong to deny him those rights?

Although the whole foster care system is supposedly designed to help solve family problems and reunite the child to his parents, I feel there is a point where indefinite, long-term foster care is detrimental to everyone concerned. All children need a family situation where they can feel secure and permanent.

It seems to me that current policies are primarily concerned with the natural parents' right to have their children back, no matter what, if any, effort or progress is being made. I feel a reasonable amount of time should be granted for parents to show they can alter and improve their family situation or personal problems. After that set period of time, I feel the court should be able to intervene and sever the rights for any children involved and see that they are adopted into permanent homes.

Shouldn't their rights be given an equal consideration?

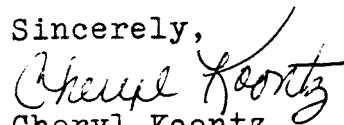
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A parent who truly wants to get her children back, will make an effort to improve, and it won't take two years to see it. For this reason, I feel the two year review plan allows too long of a period of time to let pass by before a court hearing takes place. Also, the appeal system built into the court system adds another couple of years to a severance case.

Foster care, as defined by the SRS is a temporary situation. Too often it develops into an indefinite "limbo", and is unfair not only to the children, but also to the foster parents. Most foster parents are not able to keep a child for an extended number of years. You don't know when a child is placed with you for a 3-6 month period that the actual time of placement could be 3-6 years! What family can foresee that far ahead? For this reason, most long-term foster children have been shuffled to many different foster homes. This has a profound effect on that child, his self-concept, and his concept of his place in the world.

I appreciate all the effort you have given to study and improve this situation. I also wish to thank-you for the opportunity to speak here today.

Sincerely,


Cheryl Koontz
100 Mellane
Dodge City, Kansas
67801

I am Jean Ann Melia, a foster parent from Dodge City. My husband and I have lived in Kansas all of our lives. We farm and have a cattle feeding operation. We have two children of our own who attend Dodge City schools. We have been foster parents for two years. We have two foster children in our care at this time-- a boy 6 and a girl 3 years of age.

I support House Bill 2048 in regard to placing a time limit on natural parents to demonstrate they are willing to make the changes necessary to return the children to them. However two years is still too long a time frame.

Children need and have the right to feel secure, loved and to be safe, emotionally and physically. A foster child will love their natural parents regardless of how cruel and neglectful they have been to them. It is hard as a foster parent to watch a child yearn for the day they can go home. It is hard to hear them fantasize about how lovely and perfect everything would be if only they could go home.

Not one of the children in the family that we are involved in has been in the same foster home the whole time. There are six children that have been in a total of 20 homes over the past $2\frac{1}{2}$ years. They have been in foster care $2\frac{1}{2}$ years already. Try to imagine how long $2\frac{1}{2}$ years is to a child! The little boy has been in foster care half of his life. The little girl does not remember her natural mother as her mother. How would you like to have spent one-half of your life somewhere knowing it was not your permanent home? Foster homes are temporary homes. I cannot tell them it is permanent much as I would like to. I love and care for these children just as I love and care for my own children. But when my six year old foster son asks me "Am I going to stay here forever and ever?" much as I would like to assure him "yes" I cannot give him the reassurance, the security, he so badly wants-

to know he really belongs, forever.

Do you understand a child's concept of a "long, long time"? It's not very long to us as adults but to a child, it is forever. You cannot place a child in foster care and say to yourself that now they are getting their needs met. It just doesn't work that way. They are getting their physical needs met but not their emotional needs. They spend that time mentally wondering "When am I going home?" or "What's going to happen to me?" My foster son asked the other day "When am I going to another foster home?" That's permanence?! You have to be kidding! Two years would be all right if you could have it all settled in two years but in order to do that, you need to shorten up the time limit in this bill ^{to allow the} _^ court to take action.

If you have children who are in foster care because of neglect, sexual abuse, physical abuse or incest, do you really think it will get any better in 2 years, 3 years, 4 years?

If you had your children removed from your home, wouldn't you do everything in your power to prove you could care for them adequately? You certainly wouldn't take your "sweet" time doing it, now would you? A year is long enough to demonstrate you are trying even if you are not able to achieve all your goals within that year. I know of foster children who have been in care for 4 years, 5 years, 6 years, 7 years and even longer! That is not temporary!

I realize it is a terrible decision to sever a parent's rights to their children and it is not a decision to be made lightly. But these children are not chess pawns; they are real live people with feelings. You have to have a time limit on these cases so that the child can be adopted by a family and that adopted family can give the child the assurance and security of knowing they are a part of that family and will stay there "forever and ever".

Jean Ann Melia

My name is Ethel Peterson. For the past nine years I have been an elementary school counselor in the Dodge City school system. Before that I was an elementary teacher for twenty-one years. In addition, I have worked for the city recreation commission, on the Board of Directors of Pals, Inc., as a Y-Teen sponsor, and as a coordinator of the Dodge City Coalition for the Prevention of Child Abuse. For the past thirty years, my professional life and much of my spare time has been spent with young people. It is this experience that compels me to testify on behalf of House Bill #2048.

The provisions in this bill are long overdue. Most people tend to regard childhood as some kind of golden time, viewing it through the filter of memory and rose-colored glasses. The testimony you have heard or will hear today from the Dodge City foster parents describes another kind of childhood---the childhood of "kids" whose homes were not the kind where children could thrive. Usually these children have been abused---physically, mentally, sexually, and/or emotionally. So they were placed in foster homes temporarily---temporarily---until conditions improved, or until it became evident that conditions could not, or would not improve.

Perhaps in urban areas there is more opportunity for quick review and decisions to move a child either back home or to adoptive status. In our more rural area, where workers are fewer and serve a wider geographic area, review is not happening with any resulting change in status. Too often children do not go home because improvement has not happened; but they do not go to adoptive status either. They go to another foster home, and another. Or they remain in one foster home so long they feel a permanent part of it, only to be uprooted, not six months later, but two years later!

Not only are these children impermanent in their homes, they move from school to school, from friends they knew to classmates they don't know. And their school work suffers. They become candidates for special education classes such as learning disabilities, emotionally disturbed, etc. They develop tendencies toward hypochondria, truancy, hostility, aggression, or withdrawal. They are referred to psychologists or to counselors for help. I visit with them and---believe me---they haunt my hours and days and sometimes my nights.

Remember, I said to you that most of these children were abused. Their treatment toward recovery is necessary not only for them, but for us all. Your children from safe and healthy homes are affected by what happens to these kids. The atmosphere in that school is partially shaped by these children. You and I today are affected by what has happened to our contemporaries in their youth. Street crime is only one dramatic example. To prove my point, I will quote a statistic that more than 80% of any given prison population is made up of people who were abused as children. Your taxes and mine pay to house them in jail. I don't know about you, but I would have preferred to pay for recovery.

Virtually every political assassination in this country since the death of Abraham Lincoln, has been the act of a person who was abused as a child. I would have preferred treating the child to having him change the entire course of history!

House Bill #2048 provides an opportunity for you to remedy a severe situation now, with an action that costs no cash to apply. It provides an investment in children that could possibly save the many dollar costs to which I just referred. The bill costs no additional dollars to implement because the court costs would come eventually without the bill.

The work you do in the legislature (to use a word our kids love) the work you do is AWESOME. So many of the things you do affect the future of Kansas citizens. Few, though, will affect it more profoundly or more humanely than this bill. I urge you to pass this bill out of committee and support it on the floor. We need it NOW. Thank you very much.

(There is a well-known quotation that says, "All the flowers of all the tomorrows are in the seeds of today." I believe this. But, Ladies and Gentlemen, I submit to you that these children, the foster kids, who are indeed part of the seeds of the future, are being left to lie dormant. How many of them can ever bloom into their full potential, if the seeds lie so long without permanency or sense of family, that those seeds wither and die?)

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Ed Peterson

My name is Pat Anders. With my husband, Lawrence Anders, I run a retail store in Dodge City. Our own children are grown and we are now foster parents. After having foster children in my home for the past nine months, I have come to realize how important it is to put a time limit on the natural parents to get their act together.

If, after the set length of time, the parents have not improved their home life or improved on the problem that was there when the children were removed, then sever their rights. A parent who truly wants to improve can do so in a short time.

Why are we giving parents more rights than children? The children I have in my home were even abused on their monthly visits home. Their rights have now been severed---only $2\frac{1}{2}$ years after the children were first removed. The mother has appealed, though. More time!

Becky is now almost five. She was taken from her home around the age of two. She has been in four foster homes! How can she commit herself to anyone? She never knows how long she'll be in one place. She could be removed and put in a different home at any time.

I wish there was some way I could show you how they hang in mid-air, dangling ---waiting for a permanent place in someone's heart and home. Even knowing their foster parents love them---they are still only foster children.

In Becky's case, if there had been a limit on the length of time children could be out of the home before the rights were severed, she would now be happily adopted by some lucky couple and be well on her way to a better life.

I wish, too, there were some way I could show you the look on my 11 year old foster son's face when I told him of course we would go to the Blue & Gold Banquet as a family. He still does not dare to trust or hope that he is part of our family. This, after nine months of living with us!

Pleas don't neglect the children. These same children that we so readily stand by and watch while they are abused and neglected, are our future. which is worse--- the parents' abuse and neglect, or the courts who remove them from a bad environment and place them on a shelf and forget them? Please put a time limit on the parents. A parent who truly wishes to improve can do so quickly if they know their time is limited.

Thank you.

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Attachment No. 6
House Judiciary
February 25, 1985

2-25-85.

PHONES
TOPEKA, KAN. (913) 267-4931
LAWRENCE, KAN. (913) 841-3902
LELAND W. ATTEBERRY, President

To: Kansas Legislatures

RE: House Bill 2367--Raising service charge for CRIMINAL court cases to \$25 for each check. We are for this.

House Bill 2440--Raising service charge for CRIMINAL court cases to \$10 for each check--but NOT EXCEEDING \$10 as per line 55, item 4. We are against this.

The costs of collection and just being a victim of bad checks has risen at a rapid rate in the last 5 years. There are few laws regarding crimes which make it necessary for the victim to be out additional expense and time of his own AFTER the crime has been committed, other than the reporting of the crime to the law enforcement agencies and going to court on the crime.

The bad check law requires that the victim notify the passer or writer of the bad check by RESTRICTED mail. This not only is a cost NOW of \$3.12 (Certified mail), plus the time of writing the letter, and taking the letter to the post office, and the additional book work involved in bad checks. Many times the costs of this TIME is well over \$12.00 itself, as the cost of an employee to do this job has to be paid for, so about \$15 is involved in just ONE letter.

This does not figure the additional time involved in other ways and letters to notify that individual that his check is bad (though that is not written into the law). Many times it is unknown to the victim if that person who wrote the check intended to have the check bounce or not. Even if the check is NOT taken to the District Attorney, because it is paid AFTER the certified is received by the check writer, the expense is still there. Since only the \$3 service charge is written into the CRIMINAL LAW KSA 21-3707, many check writers will not pay over that amount because they know that most victims will not take him to CIVIL court to pay an additional CIVIL service charge of whatever amount that victim had posted in his business. Many times the check writer will not even pay the \$3.00, but just the face amount of the check, knowing that a district attorney will not usually file a criminal warrant on just the \$3.00 unpaid service charge.

If the civil unpaid service charge is \$10 or so, the check writer figures that the victim will be out more in time and expenses to try to recover this in a civil court. Some banks now charge their bad check writer customers \$8 to \$15 for each time a check is returned. If the check is run thru twice, this is \$16 to \$25 by the bank on maybe a \$4.15F check. AND THE BANK IS NOT OUT THE FACE AMOUNT OF THE CHECK.

When a business accepts a check from an individual, instead of cash, that business expects the check to be good. It is a "courtesy" to accept checks instead of cash. Some businesses no longer except checks because of the costs of collection and the increased amounts of bad checks.

The COSTS TO THE BUSINESS-VICTIM. Forever they are rising. These victims NEED HELP. The present \$3 service charge was in affect in 1973. Since then increases have been:

POSTAGE:

First class: In 1975 was 8¢. Now in 1985 it is \$22¢ per letter. 175% increase.

Certified mail: In 1977 it was \$1.58. Same letter now is \$3.12--97% increase.

LABOR: In 1974 \$2.20 to \$2.90 was pretty good clerical help.

Now in 1985, \$3.35 is minimum but \$5.00 per hour is similar to the \$2.90. Labor Expenses--such as taxes, insurance, benefits, have all increased greatly in addition to this 81% in wages.

BANKS: They used to NOT charge their client-victim for the return of bad checks to them. NOW in 1984 and 1985 most banks in Topeka charge 50¢ to \$3.00 for EACH CHECK RETURNED TO THEIR CLIENT-business, victim. One store last month had a \$700 service charge by their bank for just the return of bad checks. This \$700 charge is NEW and in addition to all the other bad check expenses in the last couple of years.

Some businesses in Topeka area get over \$4000 a month back in bad checks. Of this usually 75% is FINALLY recoverable--BUT NOT THE EXPENSES involved with that recovery. This 75% costs far more than any service charge, so the added costs of these bad checks (sometimes it is far greater the the face amounts of the checks) has to be paid by the "HONEST" consumer in higher prices, IF THAT BUSINESS IS TO STAY IN BUSINESS.

Much is still involved in the expenses of the UNCOLLECTED 25% in attempts to collect, besides that face amount of each check. This loss is from \$2000 to \$13,000 for some Topeka stores. Some of this goes to the District Attorney.

One first class letter and the book-keeping involved with a return check easily costs the victim-store over \$8.00. Only 13.4% pay ISF cks after 1st letter.

There has also been increases in phone "information" services to 50¢ per inquiry. The address corrections for each return letter has increased from 10¢ back in the 1970s to 30¢ now.

"CITIZEN"-- is defined by Webster as: "a person who owes allegiance to a government and is ENTITLED TO RECIPROCAL PROTECTION from it."

But last year legislature turned this around by making those citizens be victims of MORE crimes by lessening the penalties on crimes against businesses and citizens. We noted an alarming increase in the OUT OF TOWN check writers coming to Kansas as well as our own local people taking advantage of these "lesser" penalties.

BUT WHO PAYS THE TAXES? You are always looking for more tax money--Here it is-- Or there it goes----- Do those in the Pen pay taxes, do the other criminals?

It is estimated Topeka losses \$10.5 in shrinkage--theft--in addition to about \$1,000,000 in bad checks last year. This is the businesses-victims losses.

OF THIS \$10,500,000, for example, we loose:

1. Loss of jobs--one of the first cutbacks in most businesses is the employees.
2. Loss of state and local sales tax.

On 10.5 million dollars, this equals to about \$450,000.

3. Loss of earning taxes on employees that are laid off.
4. Income tax is lost if the businesses are still operating and if they made a profit. The income taxes on \$10,5 million could be \$3 million. --for a year.

We are for House Bill 2367--raising service charge for CRIMINAL court cases to \$25.00 for each check.

We are NOT for House Bill 2440--raising service charge for CRIMINAL court cases to \$10, especially BEACUSE of line 55, item 4--is not clear. It evidentially states that the victim cannot charge anymore than \$10 (including the civil penalties). This does not begin to cover all the expenses on most returned checks.

Stiffer penalties are needed on these crimes. Please look and consider the VICTIMS problems and HELP THEM.

Thank you,


Shirley Atteberry



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

February 25, 1985

HOUSE JUDICIARY COMMITTEE

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DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

RE: HB 2367, HB 2440

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of wholesalers, distributors and retailers of food products throughout Kansas.

HB 2367 allowing a service charge on a worthless check prosecution is the bill that we favor since it allows up to \$25 service charge for worthless check prosecution.

We always felt that \$3 was a grossly inadequate amount. The cost for restricted mail today is \$3.12, and several years ago one of our trade association magazines quoted \$7.50 as the cost for processing one routine letter which is less complicated than trying to collect on a bad check.

HB 2440 makes a modest increase in the \$3 amount but, as we read it, the limitation of \$10 is also on a check not going through the court system. That is LESS than the \$12 currently being charged by CHECKRITE which some of our members are associated with in trying to recover bad check losses.

We do NOT believe that such a limit should be placed on the merchant since it may be easier for some people to pay that \$10 for "float" time rather than going through the expense of borrowing money until they can get funds into their account to cover the amount of the purchase or needed cash. This is especially true now that the amount has been raised to \$150 before it becomes a felony charge and one likely to be subject to prosecution.

Several years ago, the Supreme Court determined that any amount of service fee that was PROPERLY POSTED at the point where the check is cashed or written that did not shock the conscience of the Court would be acceptable. We agree with that decision and are NOT in favor of decision. For that reason we are NOT in favor of HB 2440.

Attachment No. 8
House Judiciary
February 25, 1985

NORTHWESTERN BELL COST STUDY
COST BREAKDOWN ON RETURN CHECKS (1)

<u>COST DESCRIPTION</u>	<u>AMOUNT</u>	<u>%</u>
1. Collection Labor	\$ 9.97	61.1
2. Notice and Mail Labor	2.64	16.2
3. Reconciliation Clerk	1.07	6.5
4. Bank Service Charge	1.00	6.0
5. Lost Interest on Deposit	.29	2.0
6. Controller Cost	.24	1.5
7. Postage of Returned Check to Customer After Check is Paid	.09	.6
8. Re-Entering Payment	.98	6.0
9. Draft Issued to Cover Returned Check	.01	.06
10. Clerical Time	.01	.06
	\$16.30	100.00%

(1) Source: Northwestern Bell Telephone Company
Public Service Commission
Proceedings on Application #C-207 Filed 12/0
Hearing dated 02/02/82



(913)-232-4476

Commentary on House Bill 2440
February 25, 1985

The Associated Landlords of Kansas are especially interested in House Bill 2440, being heard today. We welcome this opportunity to provide you with commentary about the bill.

Our more than 1,200 members, represented through active local chapters in more than six Kansas cities, primarily purchase real estate as an investment outside their other employment, meaning they are primarily individuals working with other individuals (tenants) and hoping to continue good relations with their customers (tenants) over a long period of time. Unfortunately, even tenants sometimes write insufficient funds checks, and many landlords have built a "bounced check fee" into their lease agreements for such situations.

At the present time, returned insufficient funds checks, originally intended for the payment of rent, are considered to be payment on a pre-existing debt, and therefore a civil matter rather than a criminal one. It is therefore impossible for a landlord to prefer criminal charges for such checks in the judicial system. We do not know of a landlord who has had a check fee denied under a requirement that such checks be handled as a criminal matter, but if this is happening in other situations, we are concerned that it might set a precedent causing us to be in a "Catch-22" situation, unable to request criminal prosecution, and thereby unable to collect bounced check fees. This would not be fair, and the bill would remove the possibility that it could be a problem for landlords. We would encourage passage of the bill.

If there is other information or commentary you would like to have about the proposed bill, please let us know, either by writing us or by leaving a message at our Topeka office phone (232-4476).

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, EXT. 333

December 14, 1984

PROPOSED AMENDMENT TO 1984 SESSION LAWS, CH.119, SEC. 2

Sec. 2. K.S.A. 21-3701 is hereby amended to read as follows: 21-3701. Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

- (a) Obtaining or exerting unauthorized control over property; or
- (b) Obtaining by deception control over property; or
- (c) Obtaining by threat control over property; or
- (d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of \$150 or more but less than \$3,000 is a class E felony. Theft of property of the value of \$3,000 or more is a class D felony. Theft of property of the value of less than \$150 is a class A misdemeanor, except that theft of property of the value of less than \$150 is a class E felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of theft two or more times.

Nothing herein shall prohibit the removal in a

Attachment No. 11
House Judiciary
February 25, 1985

lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

COMMENT:

Under present law a person convicted the first time of theft in any amount more than \$150 is guilty of a class E felony. The presumptive sentence is probation. Even if the Court denies probation, the prison term is a minimum of one year and a maximum of two to five years. The defendant would normally be paroled after serving about ten months.

In cases involving a very large theft, e.g., \$50,000 or \$100,000 or more, the punishment does not fit the crime. The proposed amendment would make theft of \$3,000 or more a class D felony, punishable by a minimum of one to three years and a maximum of five to ten years.

Dennis W. Moore
District Attorney

STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

DENNIS W. MOORE
DISTRICT ATTORNEY

February 22, 1985

JOHNSON COUNTY COURTHOUSE
P.O. Box 728, 6TH FLOOR TOWER
OLATHE, KANSAS 66061
913-782-5000, Ext. 333

The following are theft cases which have been filed by the Johnson County District Attorney's Office in the past twenty-four months. All involve alleged thefts of money or property valued over \$10,000. All are first offenders and under present law, upon conviction, the presumptive sentence is probation.

<u>DEFENDANT</u>	<u>DATE CHARGED</u>	<u>PENDING OR CONVICTED</u>	<u>APPROX. AMOUNT OF ALLEGED THEFT</u>
Larry Dwyer	2/19/85	pending	\$ 14,000
Michael Morgan	11/13/84	pending	92,000
James Martin	9/12/84	convicted	140,000
Steve Anderson	1/10/85	pending	11,000
James Fuester	10/2/84	convicted	8,000 (\$25,000)
Jaye Weekley	10/1/84	pending	20,000
Jane Nyberg	9/20/84	pending	16,000
Jim Loyd	5/10/83	pending	300,000
Tammy Wingert	6/18/84	convicted	30,000
George Wojcik	10/24/84	convicted	94,000
Gary Hunter	10/23/84	pending	59,000



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

February 25, 1985

HOUSE JUDICIARY COMMITTEE RE: HB 2452

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FRANCES KASTNER

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JIM SHEEHAN
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers. Our membership consists of wholesalers, distributors and retailers of food products throughout the State of Kansas.

Last year many of you heard me say we did NOT want the amount of theft OR bad checks raised to \$150 before it became a Class E Felony. However, because of prison overcrowding, it appeared to be necessary to raise the amount of bad checks from the \$50 amount and theft from the \$100 amount.

I have not seen any information to indicate that there either was a decrease or increase of criminals sent to Lansing because of changing that amount.

Statistics were given to the various committees hearing SB 858 last year that the average amount of the value of goods stolen or checks written by those who were in the penal system was about \$269. And of the total number of prisoners, less than a dozen were in there who did not have a string of previous records for various thefts or were convicted for habitually writing worthless checks.

It would appear that if indeed you are going to show the criminal element in Kansas that you are ready to use a tougher approach against them, the amount of \$3,000 is much too high.

Perhaps an amount of \$500.00 for a Class D Felony charge might send a better message to the criminals and with such an amendment, our association would be more inclined to support **HB 2452**.

Any time a loss is incurred by a business, whether by theft or worthless check, that cost has to be added to the cost of doing business and ultimately passed on to the honest consumer.

Attachment No. 12
House Judiciary
February 25, 1985