

Approved April 4, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

3:30 ~~xxx~~/p.m. on March 29, 1988 in room 313-S of the Capitol.

All members were present except:

Representative Snowbarger, who was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Bud Grant, Kansas Chamber of Commerce and Industry
Jim Clark, Kansas County and District Attorneys Association
Frances Kastner, Kansas Food Dealers Association, Inc.
Jim Robertson, Child Support Enforcement Administrator, Social and Rehabilitation Services

Hearing on H.B. 2372 -- Worthless checks for preexisting debts

Bud Grant testified there is a problem in Kansas with worthless checks in regard to previous debt. He proposed an amendment to H.B. 2372 on line 0028 by striking "and" and adding "created by a consumer credit sale or consumer loan as defined in 16a-a-301", (see Attachment I).

Jim Clark proposed a substitute bill that would amend 60-2610 by using language from the criminal statute, without referring to the actual statute, for the definition. Beginning at the end of line 0022 with the word "the" and ending with line 0033, insert this language in the first part of 60-2610 and delete reference to K.S.A. 21-3707.

Frances Kastner testified in support of H.B. 2372. She said the Kansas Food Dealers Association, Inc., would oppose increasing the \$150 amount for a Class A misdemeanor, (see Attachment II).

The hearing was closed on H.B. 2372.

During Committee discussion it was determined the amendment on line 0028 would not be needed in the substitute bill.

Representative Bideau moved and Representative Allen seconded to adopt a substitute bill for H.B. 2372. The motion passed.

A motion was made by Representative Bideau to report Substitute for H.B. 2372 favorable for passage. Representative Allen seconded the motion. The motion passed.

The Committee considered S.B. 566 -- Concerning children, relating to support and determination of parentage

Jim Robertson submitted amendments to pages 8 and 10 of S.B. 566, (see Attachment III).

Representative Solbach moved and Representative Whiteman seconded to adopt the proposed amendments. The motion passed.

A motion was made by Representative Bideau to report S.B. 566, as amended, favorable for passage. Representative Sebelius seconded the motion. The motion passed.

The Committee meeting was adjourned at 4:30 p.m.

History: L. 1976, ch. 250, § 1; L. 1986, ch. 231, § 7; June 1.

60-2610. Civil liability for worthless check. (a) If a person gives a worthless check, as defined by K.S.A. 21-3707 and amendments thereto, the person shall be liable to the holder of the check for the amount of the check 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.

(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 21 days before commencing the action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check; and (2) the maker or drawer failed to tender to the holder, prior to commencement of the action, an amount not less than the amount demanded. The written demand shall be sent by restricted mail, as defined by K.S.A. 60-103 and amendments thereto, to the last known address of the maker or drawer and shall include notice that, if the money is not paid within 21 days, triple damages may be incurred by the maker or drawer of the check.

(c) Subsequent to the commencement of an action under this section but prior to the hearing, 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 and service costs and the costs of collection, including but not limited to reasonable attorney fees.

(d) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury 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 and service costs and the costs of collection, including but not limited to reasonable attorney fees.

(e) Any amount previously paid as restitution or reparations to the holder of the check by 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.

History: L. 1986, ch. 223, § 1; July 1.

Attorney General's Opinions:
 Small claims procedure. 86-107.

Article 27.—RULES OF THE SUPREME COURT

Revisor's Note:

Rules of the supreme court relating to the supreme court, court of appeals and appellate practice and to district courts may be found in Article 31 of Chapter 20 of the Kansas Statutes Annotated.

Article 28.—SETTLEMENTS, RELEASES OR STATEMENTS

60-2801.

CASE ANNOTATIONS

3. Dismissal of action under 60-237(d) not proper sanction for mere inability to permit discovery. *Locke v. Kansas Fire & Cas. Co.*, 8 K.A.2d 678, 679, 665 P.2d 776 (1983).

Article 30.—UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Law Review and Bar Journal References:

"Is Kansas Probate Non Claim Statute Unconstitutional?" John F. Kuether, 54 J.K.B.A. 115, 129 (1985).
 "Kansas Enacts New Provisions for Child Support Enforcement—Mandatory Wage Withholding," Yvonne C. Anderson, Richard A. Forster, 25 W.L.J. 91, 102 (1985).

60-3001.

CASE ANNOTATIONS

10. Cited; revival of foreign judgment by that jurisdiction which creates new judgment entitled to Kansas recognition. *Worthington v. Miller*, 11 K.A.2d 396, 399, 727 P.2d 928 (1986).

60-3002.

CASE ANNOTATIONS

6. Registration of enforceable foreign judgment creates new and additional five years to execute. *Warner v. Warner*, 9 K.A.2d 6, 8, 668 P.2d 193 (1983).

60-3003.

CASE ANNOTATIONS

5. Noted; rebuttable presumption of ownership in joint accounts, damages for wrongful retention of funds discussed. *Miller v. Clayco State Bank*, 10 K.A.2d 659, 661, 708 P.2d 997 (1985).

HOUSE BILL No. 2372

By Representative Vancrum

2-11

0017 AN ACT concerning the crime of giving a worthless check;
0018 amending K.S.A. 1986 Supp. 21-3707 and repealing the exist-
0019 ing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1986 Supp. 21-3707 is hereby amended to
0022 read as follows: 21-3707. (1) Giving a worthless check is the
0023 making, drawing, issuing or delivering or causing or directing
0024 the making, drawing, issuing or delivering of any check, order or
0025 draft on any bank, credit union, savings and loan association or
0026 depository for the payment of money or its equivalent:

0027 (a) With intent to defraud or in payment for a preexisting
0028 debt, and

0029 (b) knowing, at the time of the making, drawing, issuing or
0030 delivering of such check, order or draft, that the maker or drawer
0031 has no deposit in or credits with the drawee or has not sufficient
0032 funds in, or credits with, the drawee for the payment of such
0033 check, order or draft in full upon its presentation.

0034 (2) In any prosecution against the maker or drawer of a check,
0035 order or draft payment, of which has been refused by the drawee
0036 on account of insufficient funds, the making, drawing, issuing or
0037 delivering of such check shall be prima facie evidence of intent
0038 to defraud and of knowledge of insufficient funds in, or on
0039 deposit with, the drawee unless the maker or drawer pays the
0040 holder thereof the amount due thereon and a service charge not
0041 exceeding \$10 for each check, within seven days after notice has
0042 been given to the maker or drawer that such check, draft or order
0043 has not been paid by the drawee. As used in this section,
0044 "notice" includes oral or written notice to the person entitled
0045 thereto. Written notice shall be presumed to have been given

created by a consumer credit sale or consumer loan as
defined in 16a-1-301.

- (e) appraisal fees; and
 (f) credit reports.
- (8) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the trier of fact.
- (9) "Consumer" means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.
- (10) "Consumer credit sale":
 (a) Except as provided in paragraph (b), a "consumer credit sale" is a sale of goods, services, or an interest in land in which:
 (i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a credit card other than a lender credit card,
 (ii) the buyer is a person other than an organization,
 (iii) the goods, services, or interest in land are purchased primarily for a personal, family or household purpose,
 (iv) either the debt is payable in installments or a finance charge is made, and
 (v) with respect to a sale of goods or services, the amount financed does not exceed \$25,000.
 (b) A "consumer credit sale" does not include:
 (i) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card; or
 (ii) unless the sale is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a sale of an interest in land, other than sales governed by subsection (11)(b)(iii) of this section, if the finance charge does not exceed 12% per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or
 (iii) a sale by contract for deed of real estate the interest rate of which is governed by subsection (b) of K.S.A. 16-207.
- (11) "Consumer credit transaction" means a consumer credit sale, consumer lease, or consumer loan or a modification thereof including a refinancing, consolidation, or deferral.
- (12) "Consumer lease": A "consumer lease" is a lease of goods:

- (a) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose;
 (b) in which the amount payable under the lease does not exceed \$25,000;
 (c) which is for a term exceeding four months; and
 (d) which is not made pursuant to a lender credit card.
- (13) "Consumer loan":
 (a) Except as provided in paragraph (b), a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:
 (i) The debtor is a person other than an organization;
 (ii) the debt is incurred primarily for a personal, family or household purpose;
 (iii) either the debt is payable in installments or a finance charge is made; and
 (iv) either the amount financed does not exceed \$25,000 or the debt is secured by an interest in land.
 (b) Unless the loan is made subject to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, by agreement (section 16a-1-109), a "consumer loan" does not include:
 (i) A loan secured by a first real estate mortgage; or
 (ii) a loan secured by a second or other subordinate mortgage if the second or other subordinate mortgage is granted to the same lender as the first mortgage; or
 (iii) a loan made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant.
- (14) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (15) "Credit card" means an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing goods or services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons.
- (16) "Creditor" means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but, use of the term does not in itself impose on an assignee any obligation of such as-

- signee's assignor. In the case of credit granted pursuant to a credit card, the person who grants credit" is not another person honored by the card issuer.
- (17) "Earnings" means the amount paid or payable to an individual's account for services rendered or to be rendered, whether denominated as salary, commission, bonus, or otherwise, and includes periodic payments from a pension, retirement, or annuity plan.
- (18) "Finance charge":
 (a) "Finance charge" means the charge for the use of money.
 (i) All charges payable directly by the consumer or indirectly by the creditor or as a condition of the loan, including any of the following: a finance charge, a fee, a charge which is applied to the amount payable under another system of charges, a charge for a late payment; time price differential; a charge for a premium or other charge or insurance protecting the consumer's default; and
 (ii) charges incurred by the consumer or for commission for obtaining the credit, or a charge payable, unless the credit card provides otherwise, for the charges when the credit is used.
 (b) The term does not include:
 (i) Charges as a result of a financing plan, such as frequency charges (section 16a-1-109), deferral charges (section 16a-1-109), or
 (ii) if a lender makes a loan, charges incurred by purchasing or satisfying the debt pursuant to a credit card and the purchase or satisfaction of the debt is less than the face amount of the credit, or
 (iii) closing costs as defined in section 16a-1-301(7).
- (19) "Goods" include any tangible personal property at the time the transaction is made, including money, chattel paper, title, and instruments.
- (20) Except as otherwise provided, the term "lender" includes an assignee of a creditor's right to payment but use of

3-29-88 HB 2372

We support any legislation that will help business in cutting the huge losses suffered thru worthless checks or shoplifting.

These amounts are paid for by the honest consumer and we would oppose any consideration to increase the \$150 amount.

We were shocked and dismayed by the action of this Committee when SB 534 was amended to increase theft (which includes shoplifting) to \$1000⁰⁰ before being considered a Class E felony. Since that portion was amended into SB 534 without a hearing concerning theft of Property we're trying to cover the bases by letting you know in advance of

Attachment II

Committee Deliberation that we
would object to any change which
would increase the worthless
check statutes.

We appreciate the opportunity
of appearing before you today
to voice our concerns about
increasing bad check and shop-
lifting amounts.



Kansas Food Dealers' Association, Inc.

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Frances Kastner

Director of Governmental Affairs
2201 S.W. Wilmington Ct.
Topeka, KS 66606

K.F.D.A. Office
913-384-3838

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Attachment III

0268 requested to do so.

0269 (b) The provisions of subsection (a) shall not apply to child
0270 support judgments until after the child for whom support was
0271 ordered attains age 18 or is emancipated pursuant to K.S.A.
0272 38-101 and amendments thereto. The provisions of this subsec-
0273 tion shall apply only to those child support judgments which
0274 have not become dormant or void as of July 1, 1986.

0275 (1) If a judgment for the support of a child becomes dormant
0276 before the child's emancipation, it shall be the duty of the clerk
0277 of the court to release the judgment of record when requested to
0278 do so only if the judgment has remained dormant for the period

prior to

Delete

0279 of the child's minority plus two years. If a judgment for the

emancipation

0280 support of a child becomes dormant after the child's emancipa-

Delete

0281 tion, the provisions of subsection (a) shall apply.

When, after the child's emancipation, a judgment for the support of a child becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so.

0282 (2) The provisions of this subsection shall apply only to those
0283 judgments which have not become void as of July 1, 1988.

0284 Sec. 3. K.S.A. 60-2404 is hereby amended to read as follows:

0285 60-2404. A dormant judgment may be revived and have the same
0286 force and effect as if it had not become dormant if, within two

0287 (2) years of the date on which such judgment became dormant,

0288 the holder thereof files a motion for revivor and a request for the

0289 immediate issuance of an execution thereon if such motion is

0290 granted. Notice of the filing of the motion shall be given as for a

0291 summons under article 3 of this chapter, and on the hearing

0292 thereof the court shall enter an order of revivor unless good

0293 cause to the contrary be shown, and thereupon the execution

0294 shall issue forthwith. On the hearing of a motion to revive a

0295 child support judgment which has remained dormant for more

Delete

0296 than two years, the court may enter an order to prevent the

0297 unjust enrichment of any party or to ensure that payments will

0298 be disbursed to the real party in interest. A judgment may also

0299 be revived by the filing of a written stipulation of revivor signed

0300 by all of the parties affected thereby. For the purpose of this

0301 section and K.S.A. 60-2403 and amendments thereto, attach-

, income withholding

0302 ment or garnishment process shall have the same effect as the

0303 issuance of an execution.

0304 Sec. 4. K.S.A. 75-5268 is hereby amended to read as

0342 account and shall be made available to the inmate in such
 0343 manner and for such purposes as are authorized by the secretary.
 0344 New Sec. ~~11~~ 5. (a) Except as provided in subsection (b), a
 0345 child's parent, parents or guardian shall be liable to repay to the
 0346 secretary of social and rehabilitation services any assistance
 0347 expended on the child's behalf, regardless of the specific pro-
 0348 gram under which the assistance is or has been provided. When
 0349 more than one person is legally obligated to support the child,
 0350 liability to the secretary shall be joint and several. The secretary
 0351 shall have the power and authority to file a civil action in the
 0352 name of the secretary for repayment of the assistance, regardless
 0353 of the existence of any other action involving the support of the
 0354 child.

0355 (b) With respect to an individual parent or guardian, the
 0356 provisions of subsection (a) shall not apply to:

0357 (1) Assistance provided on behalf of any person other than
 0358 the child of the parent or guardian;

0359 (2) assistance provided during a month in which the needs of
 0360 the parent or guardian were included in the assistance provided
 0361 to the child; or

0362 (3) assistance provided during a month in which the parent or
 0363 guardian has fully complied with the terms of an order of support
 0364 for the child, if ~~the issue of the child's support was fully and~~ Delete
 0365 ~~fairly litigated before~~ a court of competent jurisdiction.

0366 Amounts paid for a particular month pursuant to a judgment
 0367 under this act shall be credited against the amount accruing for
 0368 the same month under any other order of support for the child,
 0369 up to the amount of the current support obligation for that month.

0370 (c) When the assistance provided during a month is on behalf
 0371 of more than one person, the amount of assistance provided on
 0372 behalf of one person for that month shall be determined by
 0373 dividing the total assistance by the number of people on whose
 0374 behalf assistance was provided.

0375 (d) Except as provided in subsection (b), a child's parent,
 0376 parents or guardian shall be liable to repay to an agency or
 0377 subdivision of another state any assistance substantially similar
 0378 to that defined in subsection (d) of K.S.A. 39-702 and amend-

has considered the issue of support. For purposes of this subsection, if an order is silent on the issue of support, it shall not be presumed that the court has considered the issue of support.