

Approved Feb. 21, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:07 a.m./p.m. ~~on~~ February 16, 1989 in room 423-S of the Capitol.

All members were present except: Representatives Ensminger, Jenkins and Solbach who were excused.

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislatove Research Department
Lynne Holt, Legislative Research Department
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee: Richard D. Kready, Director of Governmental Affairs, KPL Gas Service
George Barber, Kansas Lodging Association
Bud Grant, Kansas Chamber of Commerce and Industry
Frances Kastner, Director, Kansas Food Dealers Association.

Hearings were declared open on House Bill 2101 by Chairman Roenbaugh. The Chair called upon Representative Heinemann to explain the bill. He said that this bill is basically the same bill as was presented last year---technically cleaning up the language of that bill, making it more clear and precise.

Chairman Roenbaugh acknowledged the first conferee on the agenda, Richard D. Kready, Director of Governmental Affairs, KPL Gas Service, who testified in behalf of House Bill 2101. (Attachment 1) He stated that inasmuch as the customer uses the gas and is billed thereafter, it is considered to be a "pre-existing" debt. Mr. Kready said that since this is considered a pre-exising debt, the law does not cover that situation. They hoped to close that loophole by suggesting the insertion at line 63, Section 1, a new subsection (g): "It shall not be a defense to any action brought pursuant to this section that the dishonored check was given as payment of a pre-existing debt."

Mr. Kready, on behalf of KPL Gas Service, also requested amending KSA 21-3707 as shown on their balloon by inserting the sentence, "Prima facie evidence of 'intent to defraud' as that term is used in this section, shall not be rebutted by evidence that the check, order or draft was given as payment of a pre-existing debt."

Mr. George Barber, Kansas Lodging Association, stated their support for the bill.

Mr. Bud Grant, Kansas Chamber of Commerce and Industry, voiced their support of the bill.

Ms. Frances Kastner, Director, Kansas Food Dealers Association, registered support for the bill.

After calling for any other persons wishing to speak regarding this bill, the Chairman announced the closing of hearings regarding House Bill 2101.

The meeting of the Committee was adjourned at 9:17 a.m. by the Chairman.

The next meeting of the Committee will be on February 21, 1989, at 9:00 a.m.

Testimony Before

HOUSE AGRICULTURE AND SMALL BUSINESS COMMITTEE

HB 2101

Liability For Giving A Worthless Check

By RICHARD D. KREADY
KPL GAS SERVICE
Director of Governmental Affairs

February 16, 1989

KPL Gas Service supports your effort to strengthen the state's worthless check laws, but we also ask that you close the loopholes which prevent many of us from being protected by these laws. We feel it has always been the intent of Kansas laws to deter the circulation of worthless checks, but the lack of more specific language in the statutes has created worthless check loopholes.

Our company receives approximately 1,600 bad checks each month, amounting to an average of \$96,000 from our Kansas customers. That adds up to 19,200 checks, amounting to \$1,152,000 each year. There is a tremendous cost of trying to collect on these checks, which becomes part of the cost of doing business, and that is reflected in higher electric and natural gas rates to our customers. The amount that we are not able to recover becomes bad debt, which also ultimately is paid by the other paying customers; just like shoplifting losses result in slightly higher prices for the honest customers in retail stores. We support HB 2101 and additional efforts needed to strengthen the state's worthless check laws, in order to cut down these losses and added costs to the honest consumers who pay their bills.

-more-

Ag. SB
02-16-89

Our problem is that this legislation doesn't yet apply to businesses that sell goods or services on credit. The way current Kansas law is interpreted, a merchant who receives a bad check in return for an article of merchandise, is entitled to recover the loss. However, the business that provides a product or service, and then later receives a worthless check in payment of the "pre-existing" debt, is not afforded the same protection.

In the case of a natural gas or electric utility company, the product is delivered to the customer in advance of payment. When we determine how much a customer has used during a month, we send a bill. Under the law, this is interpreted as a pre-existing debt, and if the customer gives us a worthless check, the law does not cover that situation. It is the same for a doctor or attorney, or anyone who provides a service, and then bills for it afterward.

We would like for you to close that loophole by inserting, at line 63 in Section 1, a new subsection (g): **"It shall not be a defense to any action brought pursuant to this section that the dishonored check was given as payment of a pre-existing debt."**

This same worthless check loophole exists in the criminal statutes for Kansas. We ask that this committee also amend K.S.A. 21-3707 as shown on our attachment by inserting the sentence, **"Prima facie evidence of 'intent to defraud' as that term is used in this section, shall not be rebutted by evidence that the check, order or draft was given as payment of a pre-existing debt."**

We appreciate your efforts to clarify the original intent of these statutes to deter the circulation of worthless checks.

21-3707. Giving a worthless check. (1) Giving a worthless check is 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 with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit 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.

(2) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding \$10 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check, draft or order.

(3) It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

- (a) Was postdated, or
- (b) was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation.

(4) Giving a worthless check is a class E felony if the check, draft or order is drawn for \$150 or more. Giving a worthless check is a class A misdemeanor if the check, draft or order is drawn for less than \$150.

History: L. 1969, ch. 180, § 21-3707; L. 1972, ch. 117, § 1; L. 1981, ch. 144, § 1; L. 1984, ch. 119, § 4; L. 1986, ch. 223, § 5; July 1.

Prima facie evidence of "intent to defraud," as that term is used in this section, shall not be rebutted by evidence that the check, order or draft was given as payment of a pre-existing debt.