

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

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

9:00 a.m. ~~p.m.~~ on February 16, 1990 in room 423-S of the Capitol.

All members were present except: Representative Freeman
Representative Solbach, excused
Representative Wells

Committee staff present: Raney Gilliland, Legislative Research
Jill Wolters, Revisor of Statutes Office
Pat Brunton, Committee Secretary

Conferees appearing before the committee:

Chairman Roenbaugh announced that the committee would work HB 2581 concerning worthless and insufficient checks. The Chairman asked Jill Wolters, staff, to review the bill with amendments. (Attachment I)

Representative Jenkins moved to adopt the subcommittee report. It was seconded by Representative Ensminger. The motion passed.

Discussion was held on HB 2581.

Representative Mollenkamp made a motion to pass as amended HB 2581. Representative Flower seconded and the motion passed.

Chairman Roenbaugh asked for wishes from committee on HB 2270 - Kansas Prompt Payment Act.

A lengthy discussion was held.

Representative Amos made a motion for a conceptual amendment stating 75% would be due and payable on merchandise received. Representative Reinhardt seconded the motion. Motion passed.

Representative Amos stated there would be no penalty but an incentive to fulfill their agreement for merchandise with any government agency.

After discussion of importance of this bill, Representative Reinhardt withdrew his second. The motion died for lack of a second.

Representative Heinemann made a motion to appoint a subcommittee to see if this bill is truly needed. Representative Jenkins seconded the motion. The motion passed.

The meeting adjourned at 9:30 a.m. The next meeting of the House Agriculture and Small Business Committee will be February 20, 1990, at 9:00 a.m. in Room 423-S, State Capitol.

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HOUSE BILL No. 2581

By Special Committee on Agriculture and livestock

Re proposal No. 3

12-21

HH I

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AN ACT concerning worthless and insufficient checks; amending K.S.A. 16a-2-501 and K.S.A. 1989 Supp. 21-3707 and 60-2610 and repealing the existing sections.

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

Section 1. K.S.A. 1989 Supp. 60-2610 is hereby amended to read as follows: 60-2610. (a) If a person gives a worthless check, as defined by ~~K.S.A. 21-3707 and amendments thereto~~ subsection (g), 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~~ 14 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 the incurred service ~~costs~~*, 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 person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer and shall include notice that, if the money is not paid within ~~21~~ 14 days, triple damages in addition to 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, may be incurred by the maker or drawer of the check.*

charge

costs,

charge

(c) Subsequent to the commencement of an action under this section but prior to the ~~hearing~~ judgment of the court, the defendant

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ATTACHMENT I

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1 may tender to the plaintiff as satisfaction of the claim, an amount
2 of money equal to the sum of the amount of the check, the incurred
3 court ~~and~~ service ~~costs~~ and the costs of collection, including but not
4 limited to reasonable attorney fees.

costs,
charge

trier of fact

5 (d) If the ~~court or jury~~ determines that the failure of the de-
6 fendant to satisfy the dishonored check was due to economic hard-
7 ship, the court ~~or jury~~ may waive all or part of the damages provided
8 for by this section, but the court shall render judgment against
9 defendant for not less than the amount of the dishonored check, the
10 incurred court ~~and~~ service ~~costs~~ and the costs of collection, including
11 but not limited to reasonable attorney fees.

costs,
charge

12 (c) Any amount previously paid as restitution or reparations to
13 the holder of the check by its maker or drawer shall be credited
14 against the amount for which the maker or drawer is liable under
15 subsection (a).

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

: (1)

20 (g) As used in this section, "giving a worthless check" means the
21 making, drawing, issuing or delivering or causing or directing the
22 making, drawing, issuing or delivering of any check, order or draft
23 on any bank, credit union, savings and loan association or depository
24 for the payment of money or its equivalent:

(A)

25 ~~[(1)]~~ With intent to defraud or in payment for a preexisting debt;
26 and

(B)

27 ~~[(2)]~~ which is dishonored by the drawee because the maker or
28 drawer had no deposits in or credits with the drawee or has not
29 sufficient funds in, or credits with, the drawee for the payment of
30 such check, order or draft in full upon its presentation.

(2) "service charge" means the dollar charge authorized by subsection (2) of K.S.A. 1989 Supp. 21-3707 and subsection (1) (e) (iii) of K.S.A. 16a-2-501.

31 Sec. 2. K.S.A. 1989 Supp. 21-3707 is hereby amended to read
32 as follows: 21-3707. (1) Giving a worthless check is the making,
33 drawing, issuing or delivering or causing or directing the making,
34 drawing, issuing or delivering of any check, order or draft on any
35 bank, credit union, savings and loan association or depository for
36 the payment of money or its equivalent with intent to defraud and
37 knowing, at the time of the making, drawing, issuing or delivering
38 of such check, order or draft, that the maker or drawer has no
39 deposit in or credits with the drawee or has not sufficient funds in,
40 or credits with, the drawee for the payment of such check, order
41 or draft in full upon its presentation.

42 (2) In any prosecution against the maker or drawer of a check,
43 order or draft payment, of which has been refused by the drawee

1 on account of insufficient funds, the making, drawing, issuing or
2 delivering of such check shall be prima facie evidence of intent to
3 defraud and of knowledge of insufficient funds in, or on deposit with,
4 the drawee unless the maker or drawer pays the holder thereof the
5 amount due thereon and a service charge not exceeding \$10 for each
6 check, within ~~seven~~ 14 days after notice has been given to the
7 maker or drawer that such check, draft or order has not been paid
8 by the drawee. *Prima facie evidence of "intent to defraud," as that*
9 *term is used in this section, shall not be rebutted by evidence that*
10 *the check, order or draft was given as payment of a preexisting*
11 *debt.* As used in this section, "notice" includes oral or written notice
12 to the person entitled thereto. Written notice shall be presumed to
13 have been given when deposited as restricted matter in the United
14 States mail, addressed to the person to be given notice at such
15 person's address as it appears on such check, draft or order *or to*
16 *the last known address.*

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

19 (a) Was postdated, or

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

24 (4) Giving a worthless check is a class D felony if the check,
25 draft or order is drawn for \$50,000 or more. Giving a worthless
26 check is a class E felony if the check, draft or order is drawn for
27 at least \$500 but less than \$50,000. Giving a worthless check is a
28 class A misdemeanor if the check, draft or order is drawn for less
29 than \$500.

30 Sec. 3. K.S.A. 16a-2-501 is hereby amended to read as follows:
31 16a-2-501. (1) In addition to the finance charge permitted by the
32 parts of this article on maximum finance charges for consumer credit
33 sales and consumer loans (parts 2 and 4), a creditor may contract
34 for and receive the following additional charges in connection with
35 a consumer credit transaction:

36 (a) Official fees and taxes;

37 (b) charges for insurance as described in subsection (2);

38 (c) annual fees payable in advance or monthly fees, delinquency
39 charges, insufficient check charges as provided in paragraph (e) of
40 this subsection, over-limit fees and cash advance fees, for the priv-
41 ilege of using a lender credit card which entitles the user to purchase
42 goods or services from at least 100 persons not related to the issuer
43 of the lender credit card, under an arrangement pursuant to which

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1 the debts resulting from the purchases are payable to the issuer;

2 (d) charges for other benefits, including insurance, conferred on
3 the consumer, if the benefits are of value to the consumer and if
4 the charges are reasonable in relation to the benefits, are of a type
5 which is not for credit, and are excluded as permissible additional
6 charges from the finance charge by rules and regulations adopted
7 by the administrator;

8 (e) ~~charges~~ for an insufficient check as defined and authorized.
9 by this subsection:

10 (i) For the purposes of this subsection, "insufficient check" means
11 any check, order or draft drawn on any bank, credit union, savings
12 and loan association, or other financial institution for the payment
13 of money and delivered in payment, in whole or in part, of preex-
14 isting indebtedness of the drawer or maker, which is refused payment
15 by the drawee because the drawer or maker does not have sufficient
16 funds in or credits with the drawee to pay the amount of the check,
17 order or draft upon presentation, provided that any check, order or
18 draft which is postdated or delivered to a payee who has knowledge
19 at the time of delivery that the drawer or maker did not have
20 sufficient funds in or credits with the drawee to pay the amount of
21 the check, draft or order upon presentation shall not be deemed an
22 insufficient check.

23 (ii) "Written notice" shall be presumed to have been given a
24 drawer or maker of an insufficient check when notice is deposited
25 in the United States mail sent by restricted mail as defined by
26 K.S.A. 60-103, and amendments thereto, addressed to the person to
27 be given notice of such person's address as it appears on the in-
28 sufficient check or to such person's last known address.

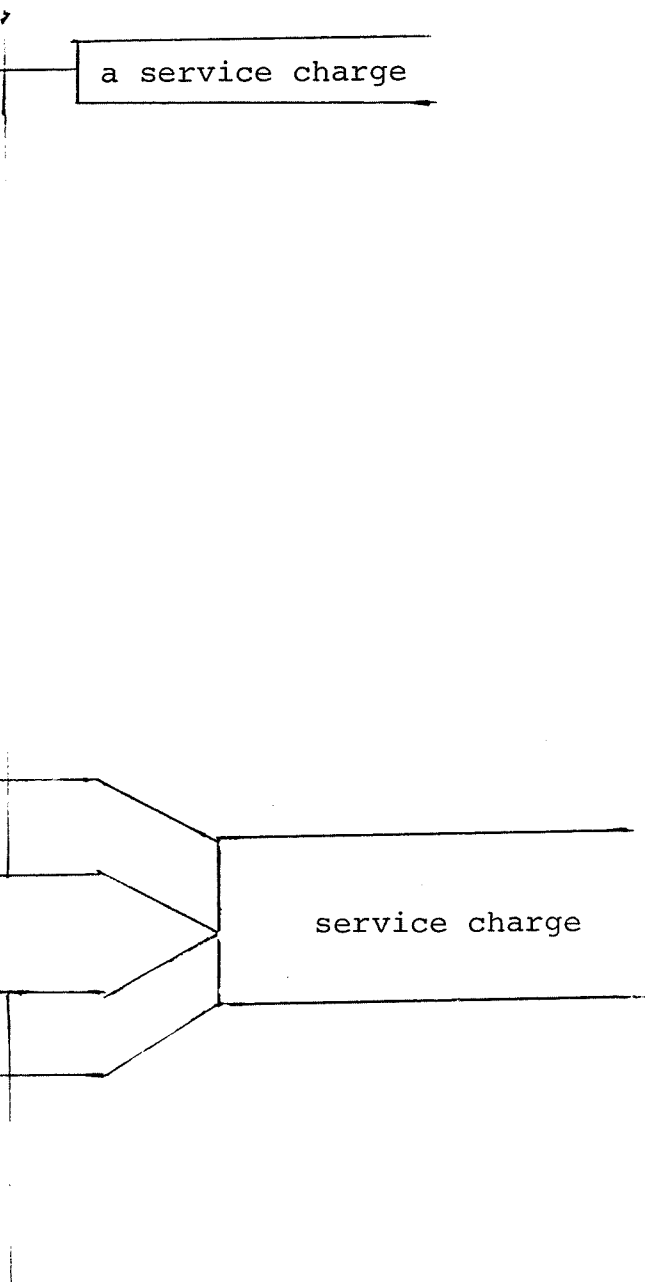
29 (iii) When an insufficient check has been given to a payee, the
30 payee may charge and collect a \$10 insufficient check ~~fee~~ from the
31 drawer or maker if the payee has given the drawer or maker oral
32 or written notice of demand that the amount of the insufficient check
33 plus the \$10 insufficient check ~~fee~~ be paid to the payee within seven
34 14 days from the giving of notice.

35 (iv) If the drawer or maker of an insufficient check does not pay
36 the amount of the insufficient check plus the insufficient check ~~fee~~
37 provided for in subsection (iii) to the payee within seven 14 days
38 from the giving of notice as provided in subsection (iii), the payee
39 may add the \$10 insufficient check ~~fee~~ to the outstanding balance
40 of the preexisting indebtedness of the drawer or maker to draw
41 interest at the contract rate applicable to the preexisting
42 indebtedness.

43 (2) An additional charge may be made for insurance written in

a service charge

service charge



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1 connection with the transaction, including vendor's single interest
2 insurance with respect to which the insurer has no right of subro-
3 gation against the consumer but excluding other insurance protecting
4 the creditor against the consumer's default or other credit loss:

5 (a) With respect to insurance against loss of or damage to prop-
6 erty, or against liability, if the creditor furnishes a clear and specific
7 statement in writing to the consumer setting forth the cost of the
8 insurance if obtained from or through the creditor and stating that
9 the consumer may choose the person through whom the insurance
10 is to be obtained; and

11 (b) with respect to consumer credit insurance providing life, ac-
12 cident and health, or loss of employment coverage, if the insurance
13 coverage is not a factor in the approval by the creditor of the ex-
14 tension of credit, and this fact is clearly disclosed in writing to the
15 consumer, and if, in order to obtain the insurance in connection
16 with the extension of credit, the consumer gives specific affirmative
17 written indication of the consumer's desire to do so after written
18 disclosure to the consumer of the cost thereof.

19 Sec. 4. K.S.A. 16a-2-501 and K.S.A. 1989 Supp. 21-3707 and
20 60-2610 are hereby repealed.

21 Sec. 5. This act shall take effect and be in force from and after
22 its publication in the Kansas register.