

Approved: February 19, 1998
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on February 17, 1998 in Room 527-S of the Capitol.

All members were present except:

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Bud Grant, Kansas Chamber of Commerce and Industry
Paul J. Morrison, Johnson County Attorney
Pete McGill, McGill & Associates

Others attending: See attached list

The chairman presented the minutes of the February 10, 1998 meeting. Represented Grant made a motion to approve the minutes as presented. Represented Campbell seconded the motion. The motion carried.

The chairman said he would not be working HB 2772 or HB 2809.

The chairman opened the hearing on HB 2860 - Creating the crime of giving a check drawn against a closed account; penalties; giving a worthless check.

Proponents:

Bud Grant, KCCI, appeared on behalf of the Kansas Retail Council, a division of KCCI. The legislature, through the years, has been consistently very responsive to requests of the business community and retailers, particularly when it's come to problems associated with bad checks. Whether the checks are written by accident or deliberately, it still seems to be a very big problem. HB 2860 addresses many issues where the statutes are presently silent, i.e., closed accounts, stop payment, and false identification. Checks written against closed accounts and checks given when a stop payment order has been given to the bank are rapidly becoming the mode of operation for the professional bad check writers. He urged the committee to recommend the bill for favorable passage. (Attachment 1)

Paul J. Morrison, Johnson County District Attorney, appeared in support of HB 2860. He thinks one of the prime issues confronting the state, over the next few years, is the way economic and computer crime will be dealt with. In his opinion, the Kansas Legislature has done a pretty good job of giving law enforcement tools to deal with a lot of the violent crime issues. One of the big questions that remains is how are we going to deal with economic crime. His county deals with around 400 bad checks a month. In recent years, there have been increasing numbers of bad checks written on accounts which are closed. Some of these accounts were opened strictly for the purpose of writing bad checks. The bill imposes a stricter penalty for writing checks on closed accounts, as well as deals with cases of intent to defraud by stopping payment or using false identification. (Attachment 2)

Representative Campbell asked what the collection and conviction rates were on the 400 bad checks they deal with monthly. Mr. Morrison said the collection rate is about 50%. The conviction rate was harder to estimate because they have a very technical way of reporting, depending on the amount of the check, previous offenses, when they can dismiss, etc.

Pete McGill, appeared on a personnel basis because HB 2860 does not address his concerns. There's a real problem in Shawnee county, and he's told that it exists in other counties in the state. The problem being

that law enforcement personnel are not investigating many of the incidents of forged or bad checks, due to the high volume and their inability to do anything with the perpetrator, because the legislature has written a mandatory sentencing law that's resulted in a revolving door at the police station. It's called "presumptive probation". He relayed an experience he had due to a break in at his office last March. The thieves cashed more than \$8,000 worth of forged checks they wrote on blank checks they stole from his office during the break in. He asked the committee to address the problem in **HB 2860** by making the sentencing guidelines stiffer. He also suggested that principal parties of the Topeka Police Department be invited to the legislature to discuss the problem. (**Attachment 3**)

Representative Cox asked Bruce or Paul Morrison what severity level 9 is. Mr. Morrison answered that it is presumptive probation.

Representative Cox asked Paul Morrison if he would like to see the bill tougher. Mr. Morrison said a certain part of him says that all felons should go to prison. Another part of him knows the limitations of the system. This legislature has had to make some tough decisions over the last few years deciding who has to go to prison. Over the last few years, the capacity for housing inmates has increased from 2,200 to 8,000. The budget for the Department of correction has increased from \$32 million in 1980 to \$200 million today. In 1997 around half of the people in prison were there for property offenses. Most of the people in on property offenses are there because they cannot make it on probation. If you want to increase the prison capacity from 8,000 to 15,000 or 16,000, yes make the bill tougher. Right now, there's not space available. If we have to choose who goes to prison, it needs to be the violent crime offender. He thinks there is a problem with a lack of enforcement more than with the sentencing guidelines.

Representative Cox asked what severity level 7 is. Mr. Morrison said it carries a longer period of confinement than severity level 9, but it is still presumptive probation. When you talk about mandatory prison time, you are generally talking about severity level 5 and up.

Don Snodgrass and Frances Kastner, Kansas Food Dealers Association - Written testimony only. (**Attachment 4**)

The chairman closed the hearing on **HB 2860**.

The meeting was adjourned at 4:03 p.m.

The next meeting is scheduled for February 19, 1998.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2860

February 17, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Financial Institutions

by

Bud Grant
Vice President and General Manager

Mr. Chairman and members of the Committee:

My name is Bud Grant and I am appearing here today on behalf of the Kansas Retail Council, a division of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to comment in support of HB 2860.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The Kansas Legislature has consistently been responsive when asked to develop approaches to addressing the problem of worthless checks. At the request of the Kansas Retail Council, in 1986 the civil recovery statutes were enacted. This added civil remedies to the criminal remedies already available. Obviously, the problem has not gone away. Worthless checks, whether written by

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Attachment 1*

account, or purposely, have not diminished in volume. HB 2860 addresses many of the areas which the statutes are currently silent, i.e., closed accounts, stop payment, and false identification.

While insufficient fund checks remain the primary problem, checks written against closed accounts and checks given when a stop payment order has been given to the bank are rapidly becoming the choice of the professional bad check writer. My counterpart in the State of Alabama recently wrote to ask if Kansas had developed any solutions to these problems because their retailers were suffering a plague of similar scams. I had to reply in the negative.

Mr. Chairman, I am not an attorney, nor am I a banker. This committee must hear from both. I represent Kansas retailers, and this bill offers solutions to some very important and expensive problems. On their behalf, I urge the committee to recommend HB 2860 favorable for passage.

February 17, 1998

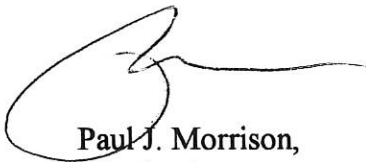
Members of the Financial Institution Committee

RE: House Bill 2860

I'm here today in support of House Bill 2860 as District Attorney of a large urban county, I can tell you that the volume of bad checks written on any given day is staggering. While check fraud has always been a problem, we all know that at least a certain amount of these bad checks have been written negligently, i.e., in that the account holder was doing a poor job of record keeping and oftentimes was simply irresponsible. In recent years, however, we have seen a more sinister trend with increasing numbers of bad checks being written on accounts that have long since been closed. Some of these accounts were opened strictly for the purpose of writing bad checks. Others were at one time legitimate accounts, but have been closed by the financial institution long ago. In both these instances we have seen more and more of our bad checks being written by "pros" whose only purpose is to defraud individuals and businesses. New Section 1 of House Bill 2860 provides for an increased penalty for individuals who knowingly write checks on closed accounts.

Section 2 adds additional language and provides for the situation where an individual, with intent to defraud, knowingly stops payment on a check order or draft. This has been a problem that has been very difficult to address in the past. In other words, this is designed for the situation where an individual stops payment on a check, knowing full well that he or she is going to do that at the time the check is tendered. Until now, this situation has not been covered by the Bad Check laws.

Respectfully submitted,



Paul J. Morrison,
District Attorney

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2-17-98
Attachment 2

TESTIMONY PRESENTED

TO THE

HOUSE

FINANCIAL INSTITUTIONS

COMMITTEE

BY

PETE MCGILL

OF

PETE MCGILL & ASSOCIATES

ON

HB 2860

FEBRUARY 17, 1998

House Financial Institutions
2-17-98
Attachment 3

Mr. Chairman and Members of the Committee:

As near as I can tell from reading HB 2860, it does not address my concerns and the reason I appear here today. I want to preface my remarks by saying I have no client that has asked me to address this subject.

The subject matter is appropriate and probably my comments should have been made before the Judiciary Committee, but there is a real problem in Shawnee County and I am told exists in most other counties in the state.

On March 3, 1997, my office was broken into allegedly by people unknown. They stole several dollars from petty cash and a small 13 inch TV that I had in my office. They stopped in the kitchen and ate a few peanut butter sandwiches and that is all the damage we could detect. That was on a Monday and the same week of the start of the NCAA basketball tournaments and I wanted to watch KU play. I asked one of the men in the office the next day to go out and purchase me another small TV which they did.

That Saturday they broke into our office again. This time they stole my new TV, some beer out of the refrigerator, but they also took about ten books of my personal checks out of my office desk. We immediately notified the police, the bank and every check cashing service in Topeka. I didn't lose any money, but it caused me severe problems.

Within two or three days, the police caught someone trying to cash a forged check on my blank checks at Montgomery Wards here in Topeka. They were trying to buy an eight hundred dollar refrigerator, but no one was charged and to this day, to the best of my knowledge, no one has been prosecuted.

During the same week, they purchased a computer for \$1,200 at another store, made an \$800 purchase at Marlings, bought several dollars worth of groceries at various stores in Topeka, and numerous other items. This went on for two or three months and every time it happened I had to go to the bank and sign an affidavit that this was a forged check.

I had numerous calls from merchants who were irate because they had been given them a forged check that was returned to them. Each time I asked if they had requested proper identification and each time the answer was "no."

After about two weeks I went to the Topeka police department and asked to see the officer or the division in charge of this type of activity. I was directed to a Sergeant who just laughed at me. He looked on the computer and two weeks later, no one had been assigned to look into this offense. I was advised by that particular Sergeant that they don't make much of an effort to find these culprits because there isn't anything they can do about it if they catch the thieves.

He said the legislature has written the mandatory sentencing laws so that it is a revolving door at the police station. They walk in the front door and within minutes are released right out the back door. This sergeant told me they have car thieves who are apprehended one week, released, and back in the next week for the same offense. I realize car thieves are not of concern to this committee in addressing this banking bill, but stolen forged checks should be of more concern to banking interests than what is addressed in this bill.

Several weeks later and after many trips to the bank, the thieves have now cashed more than \$8,000 worth of forged checks. I can say we haven't had any calls in the last three or four months.

I made three more trips back to the police station and each time got referred to someone one notch higher. Four Topeka police officers confirmed they weren't very serious about apprehending forged check writers because of the sentencing guidelines. Each officer said, and apparently believed, it was the fault of the legislature. I didn't believe that then and don't believe it now, but apparently there are law enforcement agencies hiding behind sentencing guidelines and not doing their duty.

Those officers all confirmed that they don't have many armed robberies as the thieves have found it much easier to steal personal or company checks and forge them.

Back to the issue at hand, I wish someone could address this problem in HB 2860, by making the sentences much stiffer and if there is a problem with sentencing guidelines -- correct them.

I respectfully suggest some of the principal parties in the Topeka Police Department be invited to the legislature and let them vent their frustrations to you as they consistently point the finger at you.

Thank you Mr. Chairman for listening to my sad tale and I will be happy to respond to any questions.



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DIRECTOR OF
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FRANCES KASTNER

SUPPORTING HOUSE BILL 2860 -- FRAUDULENT CHECKS

The Kansas Food Dealers Association supports HB 2860 and applauds the introduction of this measure. We have always, and will continue to support prosecutors in their efforts to eliminate the writing of fraudulent checks.

Our membership includes retailers, distributors and manufacturers of food products throughout the State of Kansas.

Many of you have heard from our members over the years about their desire to reduce or completely eliminate losses from checks cashed in our retail stores. We hope this bill will enhance collection of insufficient fund checks.

We ask you to recommend HB 2860 for passage.

Don Snodgrass

Don Snodgrass

Frances Kastner

Frances Kastner

House Financial Institutions
2-10-98
Attachment 4