

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on February 7, 2001 in Room 521-S of the Capitol.

All members were present except: Rep. John Ballou - excused  
Rep. Mary Kauffman - excused

Committee staff present: Bob Nugent, Revisor of Statutes  
Jerry Donaldson, Legislative Research Department  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Bud Grant, KS Merchants Security Assn.  
Charles Andrews, District Judge  
Rick Sells, Lawrence Athletic Club, Pres.  
Kent Laughman, Falley's, Pres.  
Todd Butler, Attorney  
Danny Brewer, Check Association, Junction City  
Judge Edwin Smith, Franklin Co., Ottawa  
Judge Robert Fairchild, 7<sup>th</sup> Judicial District, Lawrence

Others attending: See attached list

Rep. Long made a motion to approve the minutes of January 30 and 31 as written. Rep. Levinson seconded the motion. The motion passed.

Chairman Lane read the fiscal note on **HB 2130**, minimum wage, which was heard in this committee yesterday.

Rep. Ruff passed out to the committee a newspaper article from the Kansas City Star, February 3, 2001, written by Rich Hood, the Editorial Page Editor, "*A bad-check bill with a few big flaws.*"

**Hearing on: HB 2150 - Worthless checks.**

Bud Grant, Kansas Merchants Security Association, has worked as a lobbyist for retailers for 30 years. The bill he introduced would eliminate the certified mail provision to notify persons who have written bad checks. It also increases the service charge for writing a bad check to \$50. Other amendments include attorney fees of \$350 for the first bad check with \$50 for each additional check. He answered many questions from the committee.

Charles Andrews, District Court Judge from Shawnee County, explained further about the statutes concerning worthless checks. The most common plaintiffs to come into his court are large grocery chains. Their problem is a high volume of worthless checks, but since their markup is small, they need to have a higher service charge. Most of the people who write bad checks are not prosecuted, the stores contact the person and ask for their money back and they receive it. These are normal folks who just made a mistake. The biggest problem is the professional bad check writers. The ones who open an account and write a large number of checks in a short period of time. The attorneys in Shawnee County spend about three hours and receive attorney fees of \$270 for prosecuting the cases. He feels that it is important that attorneys receive reasonable fees to cover these cases. He believes that the real goal is to stop the writing of worthless checks. He ended his testimony by answering questions from the committee.

Rick Sells, President of the Lawrence Athletic Club, appeared as a proponent of the bill. It takes so much of his time to call and write to follow up on bad checks, he doesn't always have time to get out on the floor to work with his patrons. Bad checks means he has to raise the rates for his business. Many lawyers in Douglas County only award the amount of the check and this does not cover the costs that are incurred following up

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S Statehouse, at 9:05 a.m. on February 7, 2001.

on the bad check. He is not a big enough business to have the electronic check authorization machines.

Kent Laughman, President of Falley's, appeared as a proponent. Despite check readers and verification software in each of their stores, they continue to receive a large number of checks returned for either insufficient funds or accounts closed. They have an average of 1,825 checks returned each month without payment. In the year 2000, they had a total of 21,903 checks returned to the Falley's stores. They realize that honest mistakes can be made and these people come in and pay their checks and the case goes no further. They are after the hard core worthless check writers. Their costs of chasing down the owners would be lessened by not requiring the lawyer to send letters by certified mail. Increasing the return check service charge to \$50.00 would also help defray the costs of pursuing the bad check writer. The cost of every item you buy at Falley's has been increased to cover their losses due to bad check writers. (Attachment 1) He concluded his testimony by answering questions.

Todd Butler, an attorney from Topeka, appeared as a proponent of the bill. Collecting worthless checks is a significant part of his practice. His testimony explains the steps taken to recover the money for a worthless check. Notice of the returned check is sent to the check writer by the bank, two or three notices by mail or phone are attempted by the check recovery company or the merchant before the check is ever sent to an attorney. The attorney does not share in the return check service charge and the check amount is returned to the merchant. The merchant is responsible for all court costs and certified mail expense and recovers these amounts only if a recovery is made. (Attachment 2) He answered questions from the committee.

Danny Brewer, Check Associates, Junction City, appeared as a proponent of the bill. One of his main concerns is the requirement of the certified letter. He may not get an answer from that letter for 45 to 60 days after the letter is sent. By this time, the person has moved and there is an additional charge everywhere he goes to help him find the person who wrote the worthless check. The court costs have gone up which adds further to their expenses. He is still working on cases from 1992. He answered questions from the committee.

Judge Edwin Smith, District Magistrate Judge of the Fourth Judicial District, is an opponent of **HB 2150**. Courts strongly endorse the merchants' rights in enforce collections and secure civil redress for bad checks. However, courts strongly enforce the defendants rights to due process of law in bad check actions as well as in all others civil and criminal cases that come before them. He feels that the proposed amendments to the worthless check statutes in **HB 2150** takes already poorly crafted legislation and makes a bad situation even worse. (Attachment 3) He also feels that if attorneys are paid a set fee of \$350 per case for worthless checks, there would be an explosion of court cases and there would not be enough courts or attorneys to handle them.

Judge Robert Fairchild, 7<sup>th</sup> Judicial District, Lawrence, appeared at the request of Judge Malone. Judge Fairchild is in favor of attorneys getting paid for their job and in favor of them getting a fair amount. But they need to justify the amount of time that they have spent and how much time they anticipate spending in the future and he will look at the fees on a case by case basis. He is opposed to the amendment that allows a flat \$350 attorney fee per case.

Chairman Lane adjourned the meeting at approximately 10:40 a.m. The hearing on **HB 2150** will continue tomorrow, February 8, 2001, at 9:00 a.m.

# HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 2, 2001

NAME	REPRESENTING
Mable Carpenter	KCCI
Kent Laughman	Falleys / Food 4 Less
TODD BUTLER	Butler & ASSOCIATES, P.A.
Hal Hudson	NFIB/KS
Stuart Kowalski	MARTIN, Pringle Oliver, WALLACE & SONS
Linda Davis	Check Center
Jerry Odling	Check Center
Allen Stiles	Bibler & Newman
Bill E. Newman	Bibler & Newman, P.A.
Charles Davis	Check Center
Frances Kastner	Ks Food Dealers Assn
Thomas Wolente	Sure Check
EDWARD B. FARRAR	→ 2001 Dist. Registration Badge
RUD GRANT	Ks MERCHANTS SECURITY ASSN

# HOUSE COMMITTEE ON COMMERCE AND LABOR

## TESTIMONY OF KENT LAUGHMAN, PRESIDENT FALLEY'S, INC.

**FEBRUARY 7, 2001**

Dear Members of the Committee:

My name is Kent Laughman and I am President/CEO of Falley's, Inc. Falley's, as some of you might know, sells groceries to Kansans and Missourians in 33 stores in Kansas and 3 in Missouri. Our experience with the return of worthless checks is no different than any other grocery store or other retailer in this state. I can tell you that the cost of every item you buy has been increased to cover our losses due to bad check writers.

In the past several years, we have spent \$12,306.00 to implement check readers and verification software in each of our stores. Our technology costs for all of our stores in Kansas is currently \$406,098.00.

In order to assist in the implementation of the check readers and verification software, we have had to hire Rocky Mountain Retail Systems (RMRS). Individuals who go through our stores have their checks verified for any outstanding checks on the RMRS system. There is a cost to us of about two cents for each check processed.

Despite our technology, we continue to receive a large number of checks returned for either insufficient funds or accounts closed. We have an average number of 1,825 checks returned each month to the Falley's stores without payment. In the year 2000, we had a total of 21,903 checks returned to the Falley's stores.

The dollar value of the checks returned to Falley's each month is an average of \$96,353.15 and for the year 2000, we received a total of \$1,158,237.84 in returned checks.

All of the returned checks are automatically forwarded by our bank to RMRS's agent to be posted on their check verification data base and for collection purposes. RMRS's collection efforts result in a small percentage of recovery for the total amount of outstanding checks. You can appreciate how important it is and why we forward checks to an attorney for the civil collection of bad checks. It is vital that you pass laws which make the bad check writer pay for the cost of collecting the bad check, and those laws should include attorney's fees.

This bill will have a dramatic affect for us if passed because of the provision which removes the requirement that the attorney make a certified demand via registered mail. Currently, we are spending an average of \$2,188.00 per month, or \$26,256.00 per year to pay for the registered mail postage. It is not fair that we be required to spend good money after bad in order to make demand on a bad check writer. It is clear why small town grocers and other merchants continue to shut down.

House Business, Commerce & Labor Committee

2-7-01

Attachment 1

Additionally, House Bill 2150 increases the return check service charge from \$30.00 to \$50.00. Those monies that are collected by our attorneys identified as the return check service charge help us defray the costs of pursuing the bad check writer. At the time that this Act became law, the costs for filing a civil suit against a bad check writer was \$16.50 or, in the case of a check writer who has written multiple checks, \$36.50. With the legislative changes that occurred in the year 2000, our court costs have increased to \$26.00 and \$46.00. An increase in the return check service charge proposed by this bill is no greater than the percentage increase of court costs.

The problem with bad check writers is an ongoing one. It is a problem that has increased in the last several years despite the added technology. Additionally, we have seen in Shawnee County a reduction in the prosecution of worthless check writers. Today, we have a new District Attorney in Shawnee County who has informed local merchants that he will not prosecute bad check writers. While we will continue to apply pressure to the District Attorney's Office in an attempt to seek the prosecution of bad check writers, your assistance in preserving and protecting our ability to rely on the check as a form of payment is needed.

Thank you for your time.

## BAD CHECK ANALYSIS

YEAR 2000	# OF BAD CHECKS	\$ AMOUNT	ATTORNEY EXPENSE		TOTAL
			CERTIFIED MAIL (ANNUALIZED)	COURT COST (ANNUALIZED)	
JAN	1,825	\$96,353.15	\$2,188.00	\$7,774.00	\$9,962.00
FEB	445	\$21,504.48	\$2,188.00	\$7,774.00	\$9,962.00
MAR	1,825	\$96,353.15	\$2,188.00	\$7,774.00	\$9,962.00
APR	333	\$18,946.18	\$2,188.00	\$7,774.00	\$9,962.00
MAY	1,635	\$89,777.92	\$2,188.00	\$7,774.00	\$9,962.00
JUN	1,816	\$15,441.58	\$2,188.00	\$7,774.00	\$9,962.00
JUL	31	\$1,973.20	\$2,188.00	\$7,774.00	\$9,962.00
AUG	1,915	\$132,289.09	\$2,188.00	\$7,774.00	\$9,962.00
SEP	2,042	\$120,375.05	\$2,188.00	\$7,774.00	\$9,962.00
OCT	2,640	\$143,303.51	\$2,188.00	\$7,774.00	\$9,962.00
NOV	5,414	\$296,480.61	\$2,188.00	\$7,774.00	\$9,962.00
DEC	<u>2,082</u>	<u>\$123,439.94</u>	<u>\$2,188.00</u>	<u>\$7,774.00</u>	<u>\$9,962.00</u>
<b>TOTAL</b>	<b><u>21,903</u></b>	<b><u>\$1,158,237.84</u></b>	<b><u>\$26,256.00</u></b>	<b><u>\$93,288.00</u></b>	<b><u>\$119,544.00</u></b>
MO. AVG.	1,825	\$96,353.15			

## ADDITIONAL EXPENSES:

## FRAME RELAY INSTALLATION COSTS:

\$12,306.00	PER STORE
X 33	STORES
<u>\$406,098.00</u>	

## VENDOR EXPENSES FOR YEAR (APPROX.):

**\$145,655.00**

TODD B. BUTLER

BUTLER & ASSOCIATES, P.A.  
ATTORNEYS  
3706 S. TOPEKA BLVD., SUITE 300  
TOPEKA, KANSAS 66609  
(785) 267-6444  
FAX (785) 267-7341

\*GARY L. FANNING, JR.  
\*ADMITTED IN KANSAS AND MISSOURI

## **HOUSE COMMITTEE ON COMMERCE AND LABOR**

Re: House Bill 2150

Members of the committee:

My name is Todd Butler and I am a Lawyer. First, let me thank you for the opportunity to speak to you today on HB 2150. For 15 years I have practiced law. For most of that time, collections have been the mainstay of my practice. Collecting worthless checks is a significant part of my practice.

In every instances I am aware of, notice of the returned check is sent to the check writer by his or her bank, and two to three notices via mail or phone call are attempted by the check recovery company or merchant, before the check is ever sent to an attorney. After a check is received by an attorney he or she must send a 30 day demand for payment to comply with federal law, the Fair Debt Collection Practices Act and a 14 day demand for payment to comply with this Act, K.S.A. 60-2610. Nothing in this bill will alter the number of notices sent to the check writer.

It is only after the expiration to the 14 day demand that suit can be filed, if you want to take advantage of the attorney fees and damages provision allowed by this Act.

In my contractual relationship with Merchants across Kansas I receive all of any attorney fees awarded by the court pursuant to K.S.A. 60-2610. I do not share in the return check service charge, and the check amount is returned in whole to the Merchant. The Merchant is responsible for all court costs and certified mail expense and recovers these amounts only if a recovery is made.

### **ATTORNEY FEES**

Like it or not, the attorneys fee provision is what makes this act work. In those instances where money is recovered, it allows the Merchant to be paid in full and places the burden of paying the attorney, squarely on the shoulder of the bad check writer. Currently, the law allows the court to award "reasonable attorney fees" in bad check cases. This bill proposes to set the attorney fees award at a fixed amount of \$350.00 and an additional \$50 for each additional check.

**House Business, Commerce & Labor Committee**

**2-7-01**

**Attachment 2**

Some will argue that fixing the attorney fees award will take away the judges discretion. This argument ignores the fact of the sheer volume of bad checks being written. First, in order to make an award of "reasonable attorney fees" the court must first know what effort and time was spent in preparing and filing the bad check case. Later, the court must know what effort and time was spent to obtain financial information on the bad check writer, to collect the court ordered judgment. This would require a motion, hearing and order in each bad check case filed before the court. I would submit to you that there are not enough hours in the day, nor do you want to hire the additional judges necessary to hear all of these motions.

Secondly, many judges have already done what is being asked of you today. In many counties the judges have set a standard amount for attorney fees. The amounts vary from county to county, and in some instances they vary from judge to judge in the respective county. These variations in the attorney fees award are responsible for creating unequal treatment of the bad check writer. For instance, attorney fees awarded in Johnson, Shawnee and Sedgwick Counties are currently at \$75, \$270 and \$250, respectively.

Lastly, the act currently requires that I estimate the potential attorney fees award, if suit is filed, when I send out the statutory fourteen (14) day demand. You can imagine the difficulty I have estimating the attorney fees award in the demand.

Some will argue that the bill will make the attorneys rich. Far from it. This type of wrong headed thinking ignores a basic fact of collections - you don't collect on every check and, like it or not, the court award of attorney fees and the judgment are only worth the piece of paper they are written on. A judgment does not insure payment. In fact, the American Collectors Association reports that the national average for bad check collections is 32%.

Some will argue that \$350 is too much. I am most familiar with Shawnee County. In 1989, after an extensive review of the time spent by an attorney in collecting a bad check and the associated costs to the merchant, our limited actions judge set the attorney fees award at \$270. In the last twelve (12) years I have not seen any mansions built by the attorneys whose practice focus on this act. Further, we like all businesses have seen inflation in our overhead. This bill proposes what amounts to a 23% increase in the current attorney fees award allowed in Shawnee County. That's less than a 2% increase for each of the last twelve (12) years.

What you must be aware of is this, in some counties, where the attorney fees are disproportionately low, the number of suits filed for bad checks are also low. The number of suits filed for bad checks is lower in those counties because of the decision by attorneys not to file in those judicial districts where the attorney fees award does not justify the effort. In effect, these judges have trumped the legislative mandate of K.S.A. 60-2610 and have established a roadblock for hard-working merchants who wish to recover their losses.



## REMOVAL OF THE WAIVER PROVISIONS

The act currently allows the court to waive the attorney fees award if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event of waiver, of all or part of the attorney fees, the court is to make written findings of fact as to the specific reasons that the amounts awarded are sufficient. I have had hundreds of awards of attorney fees for \$0 to \$150, when requesting attorney fees of \$270, and never have I received a written finding of fact as to the specific reasons that the amount awarded is sufficient to adequately compensate the holder of the check. Additionally, never has a court inquired of me as to the amount of labor and effort expended in getting to a judgment and ultimately collecting the judgment.

The act also allows the court to waive all or part of the damages provided by the act, if the court finds that the failure of the defendant to satisfy the dishonored check was due to an economic hardship. This provision of the act is in controversy with the spirit and intent of the act as a whole. The intent of the check writer is not relevant to this provision. I do not think that the legislature intended to give a paper gun to those experiencing an economic hardship. However, as the act currently reads a person who writes a bad check knowing that it will be returned can avoid the damages provided by this act if he or she is experiencing an economic hardship.

In order to establish fair and equal treatment of all check writers, when fixing an attorney fees award by this Act you must remove the waiver provision.

## RESTRICTED MAIL

Currently, the act requires that a demand for payment be sent to the debtor via registered mail advising him or her of the addition of attorney fees and damages, if the money is not paid within 14 days. This bill proposes that the demand be sent via first class mail.

For the month of January, I have kept track of the results of the registered mail returns. The results are as follows:

- 46% of the registered letters were received by the check writer or someone at the home of the check writer,
- 38% of the registered letters were returned unclaimed, and
- 16% of the registered letters were returned for other reasons.

When you are in debt or in trouble with the law, no good news comes in certified mail. As you can see, a large percentage of our registered mail is returned unclaimed. That means that the postal carrier believes that the individual is accepting mail at the address and at least two notices

have been left by the postal carrier, notifying the individual that a registered letter needs to be picked up.

The 14 day letter notifies the check writer that suit is eminent and warns them of the addition of court costs, attorney fees and damages to the claim. If the intent is to put the check writer on notice, first class mail will accomplish the legislative goal of providing notice more effectively.

I thank you for your time.

Respectfully,

A handwritten signature in cursive script, appearing to read "Todd B. Butler".

Todd B. Butler

**Testimony  
of the  
Hon. Edwin R. Smith,  
District Magistrate Judge  
before  
the  
Committee on Business, Commerce and Labor  
Wednesday, February 7, 2001.**

Mr. Chairman and May it Please the Committee:

I am District Magistrate Judge Edwin Smith of the Fourth Judicial District, which encompasses the counties of Franklin, Anderson, Coffey and Osage. I preside principally over courts in Franklin and Anderson counties. In 1999 there were 1,054 limited cases filed before me in these two counties. I am here to voice my objections and opposition to the changes to K.S.A. 60-2610 which are being proposed by House Bill 2150.

Let there be no misunderstanding. Courts, including mine, strongly endorse merchants' rights to enforce collections and secure civil redress for bad checks. Courts, including mine, just as strongly enforce defendants' rights to due process of law in bad check actions as well as in all other civil and criminal actions that come before us. As judges we are bound by our profession, by law and by oath to perform that role. As a judge as well as being licensed for the practice of law, I am also obligated to ensure ethical attorney conduct and to report instances of believed violations of standards of professional conduct.

House Bill 2150, if enacted into law, would represent the eighth legislative enactment or amendment of Kansas' civil bad check statute in its 15 years on the books. Few laws enacted by the legislative branch receive such adjusting, readjusting, fine-tuning and tampering. The statute on execution of the death penalty, for instance, since being resurrected has only been amended 4 times in 11 years. The controversial sexual predator statute has been changed 5 times since 1994. One might ask: "Why this frequency?" An examination of the various changes from time to time shows a consistent pattern of collection interests making it more restrictive for check writers to be able to make good on overdraft checks prior to suit being filed against them and collection interests making it more punitive on check writers once suit is instituted.

This latest proposed amendment further ups the ante. It raises the check service charge maximum from \$30 to \$50. It also reduces fundamental due process notice requirements by requiring only that a first class mailing of overdraft notice and 14-day payment demand be made. It also displaces the ancient common law concept that a fraud be knowing, deliberate or intentional for it eliminates a court's ability to find the check holder's injury was inflicted collateral to a check writer's economic hardship or to find that judgment awards are sufficiently compensatory in certain cases. Instead, a notion of strict liability is imposed -- a standard of accountability at common law reserved detonators of explosives and for other ultra-hazardous activities such as handling toxic wastes. Most importantly, for purposes of my testimony, this proposed measure would sharply curtail the role of the judiciary and therefore restrict the ability of judges to extend the due process protections afforded by the judiciary to all party litigants.

The Kansas Supreme Court -- not the Legislative Branch -- regulates standards and the practice of law. It is well established that the trial court itself is expert in the area of attorney's fees and can draw on and apply its own knowledge and expertise in evaluating reasonableness. With all due deference to this honorable committee, I practiced law for twenty-three years before coming on the bench, I have presided for nearly five years over a combined civil and criminal caseload of approximately 2,000 cases per year, I have tried or argued cases in both state courts, federal district courts, the United States Court of Appeals, state supreme courts and before the United States Supreme Court. I have some ability to determine the quality and the value of an attorney's work product.

On a broader perspective, not all judges may have my level or more of experience or expertise. Not all magistrate judges are even law trained. But all judges are governed by established rules promulgated by the Kansas Supreme Court setting forth factors to be considered as guidelines in determining the reasonableness of an attorney's fees. Again, I submit with all due deference, that this proposed legislative defining of "reasonable attorneys fees" does not and cannot rationally correlate to those standards of analysis and application our Supreme Court rules require.

Furthermore, the provision defining "reasonable attorneys' fees of \$350.00" also, in my judgment, may in many of these cases even be in violation of the ethical requirement that a lawyer's fee shall be reasonable. Were this committee to recommend that provision and the legislature were to pass the enactment and it to be enacted into law, it would override KRDC Rule 1.5(e) which makes all fee contracts subject to review and approval by the court and nullify their authority to determine whether the contract is reasonable.

This past Sunday's editorial in *The Kansas City Star* recounted one attorney's abusive claims which my court examined and in which a projected \$800,000.00 per year of attorneys fees was determined and the article concluded that by this proposed legislation that attorney would have been mandatorily court entitled to \$3,500,000 for the same work. Inflated claims for attorneys fees awards in many of these cases are already a reality courts have to fend.

Under your proposed amendment, with a probable 75,000 bad check cases currently filed in this state, attorneys fees awards would approximate \$26,250,000 annually. Yet if \$350.00 were awarded on the first count filed against a defendant and only twenty-five additional dollars on each additional bad check count in a complaint, how long -- I would posit retorically to this honorable committee -- do you think it would take even the slowest of collections attorneys to figure out that with, say, ten bad checks on a single defendant that a single complaint could be filed and an attorneys fee award of \$575.00 could be secured or ten separate complaints could be filed and \$3,500 in attorneys fees could be procured?

Based on my experience, I would project that the Chapter 61 bad check caseload would increase by perhaps an additional 50,000 to 100,000 cases per year. Our courts are not currently staffed to handle such a caseload increase, our clerks already woefully underpaid, understaffed and overworked. They would be stretched even thinner. And the judiciary, which is affirmatively charged by *Court Standards in Case Processing* which were adopted by the Kansas Supreme Court effective December 11, 1980 in paragraph 3 of which it states: "The ultimate judicial goal should be justice, not speed, in the disposition of cases...[c]ases should be determined on an individual basis, not on an assembly line" would find it functionally impossible to meet these criteria. Is this legislation to also be reviewed by the Committee on the Judiciary and is it realistic to expect new court staff and judicial positions to be created to handle this further glut of bad check filings?

Editor Richard Hood's Sunday editorial commentary focused so entirely on the abusive claim of attorneys fees entitlements computing to \$800,000 that a larger implication of this court's opinion was missed: namely that those merchants who were victimized by accepting bad checks and whose interests were purportedly being represented by that counsel were further victimized in those 10,000 cases to the tune of at least \$1,000,000 annually by the improper and unethical miscontracting of damages awards away from the merchants and into the coffers of the collections company interests in violation of public policy and forbidden champertous practices. Compensatory damages are to be awarded only to defrauded parties -- not assigned away to collection companies that fail in their efforts to recoup the check amount and service charge. Non-party collection companies cannot thereafter pay court filing fees and engage a lawyer to file suit nominally on behalf of the merchant but in actuality in promotion of their own speculative pecuniary interests within our state's system. Yet that, this court determined, was what was transpiring and this determination was made in the course and scope of the judicial role of extending due process protections and ensuring professional standards of conduct by the judiciary to all party litigants. The proposed amendments would make that task virtually impossible to maintain by so curtailing these basic judicial functions in determining and awarding attorneys fees.

In sum and substance, the proposed amendments take already poorly crafted legislation and make a bad situation even worse. These amendments would further open the door to fraudulent collections under color of court proceedings. They would promote the victimization of check recipients. They would promote the victimization of check writers. They would vicimize the courts themselves.

There are doubtlessly many collections companies that provide to merchants an invaluable service in recovering funds on bad checks. There are unquestionably many attorneys who file civil bad check collection actions and secure valid judgments while adhering to the highest ethical standards of the professional practice of law. Theirs is a vital contribution to our state's business and commerce. Their reputations should be not sullied by the egregious actions of unscrupulous counterparts.

If this committee truly desires a legislative fix in this area of concern, it should open hearings and investigations into current collection abuses as they are being carried out all too pervasively by a few unscrupulous profiteers under current law and see to their exposure. Only after gaining a fuller understanding of what is actually now taking place with a few attorney/collection company combinations should it consider further amendatory actions to K.S.A. 60-2610.

I thank you for your patient consideration of my remarks.

Respectfully submitted,



Hon. Edwin R. Smith  
District Magistrate Judge