

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 8, 2001 in Room 521-S of the Capitol.

All members were present except: Rep. Doug Patterson - excused
Rep. Rick Rehorn - excused

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

Conferees appearing before the committee: Hal Hudson, NFIB
Francis Kastner, Ks Food Dealers
Larry Oeding, Check Center
Brad Harper, Collection Agency in Manhattan
Stuart Kowalski, Attorney, Wichita
Marlee Carpenter, KCCI
Lu Probasco, Attorney, Topeka
Paul Davis, Kansas Bar Association
Kathy Porter, Office of Judicial Administration
Terry Humphries, KTLA

Others attending: See attached list

Continued Hearing on: HB 2150 - Worthless checks.

Chairman Lane asked that questions from the committee be held until after all the conferees have testified.

Proponents:

Hal Hudson, National Federation of Independent Business (NFIB), feels that the bill provides some assistance to the holders of worthless checks in getting their money to replace the check. Yet it provides ample opportunity for an honest person to correct their mistake, and make good on their worthless check. The NFIB believe we need the bill to help small and independent business owners stay in business. (Attachment 1)

Francis Kastner, Kansas Food Dealers, appeared as a proponent of the bill. The food dealers believe that the bill should help reduce the total amount of profit lost from uncollected bad checks. They feel that the honest consumer should not have to bear the burden of paying for those who deliberately try to escape a debt. (Attachment 2)

Larry Oeding, President of Check Center, appeared as a proponent of the bill. He explained how a worthless check is processed through his collection agency. They feel the elimination of the certified letter would save the merchant's checkwriter \$6.94, and more of the checkwriters would receive first class letters and pay for their bad checks. On the average it takes Check Center approximately five years to collect a judgement. (Attachment 3)

Brad Harper, Manhattan Check Service in Manhattan, appeared as a proponent of the bill. One of his main problems is getting attorneys who will work in collections. Ninety-nine percent of checks written are good checks. Of the one percent that are returned unpaid, 70-75% are collected without any problem, of the remainder, about 10% goes to the attorney and 5% of these end up being litigated. Only one out of three litigated cases get collected within five years. His three main expenses are filing fees, certified mail fees, and first class postage. These charges have gone up drastically the last few years but the service charge they can collect has remained the same.

CONTINUATION PAGE

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S Statehouse, at 9:05 a.m. on February 8, 2001.

Stuart Kowalski, Attorney, Wichita, appeared as a proponent of the bill. There is an incredible amount of costs in running a collection agency. His business have nine collectors, nine or ten skip tracers, and he also works with about 30 attorneys across the state. The parts of the bill he thinks will help him the most are getting rid of the certified letter requirement, allowing reasonable minimum attorney's fees, and changing the posting law that deals with service charges for returned checks.

Marlee Carpenter, Executive Director, Kansas Retail Council, Kansas Chamber of Commerce and Industry (KCCI), appeared as a proponent of the bill. The bill sets an attorney fee for the collection of worthless checks and increases the service charge for each bad check passed. The Kansas Retail Council supports the changes as it will make it easier for attorneys to collect on bad check debts. ([Attachment 4](#))

Lu Probasco, an Attorney in Topeka, shared two cases with the committee. The notes show the work that is done to process a case. She has a small office, but her expenses for December were \$22,122.53. How much money would she have to generate per hour to pay her overhead? She asks for reasonable attorney fees, let the judges decide, but not less than \$350. She feels that they need to be protected from the judges who refuse to be educated on the costs of bringing these cases to court. ([Attachment 5](#))

Opponents:

Paul Davis, Kansas Bar Association (KBA), appeared as an opponent to the bill. The KBA has been studying ways to improve the Kansas worthless check statutes. A bill was passed into law last year (part of **HB 2905**) that they believe will resolve more bad check disputes prior to litigation or judgment. They believe that fees should be set on a case by case basis. They do not believe the amendments in **HB 2150** will improve matters. ([Attachment 6](#))

Kathy Porter, Office of Judicial Administration brought letters from District Magistrate Judge Michael A. Frelove and John E. Bremer, President of Kansas District Magistrate Judges Association. Their position is that allowing attorney fees has historically been left to the discretion of the court. She questioned the amendment to the bill concerning the \$350 attorney fee for the first check and \$50 for each additional check, and the way cases are filed. If four worthless check from the same person are filed at once, the fee would be \$500. If each case is filed separately, the fees would total \$1400. ([Attachment 7](#))

Terry Humphries submitted testimony from Gary White, Kansas Trail Lawyers (KTLA). The KTLA is neither a proponent or an opponent of the bill. However, if the committee chooses to work the bill, they have two concerns. One is the amendment that removes judicial discretion to impose fines and attorney fees in bad check cases. Their other concern is removing the certified letter requirement. KTLA agrees that the holder of a worthless check should be properly reimbursed and that attorney fees should be awarded in appropriate cases, but they believe that such a result is already provided for under existing law. ([Attachment 8](#))

Written testimony was received from Wayne Michael, Kansas AFL/CIO, who was unable to return today. The AFL/CIO is opposed to two of the amendments in the bill. ([Attachment 9](#))

Marcia Lessenden submitted written testimony voicing her disapproval of removing the restricted mail requirement from the statute. ([Attachment 10](#)).

The conferees answered several questions from committee members.

No others were present to testify for or against **HB 2150** and Chairman Lane closed the hearing.

The meeting adjourned at approximately 10:45 a.m. The next meeting will be held February 9, 2001.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 8, 2001

NAME	REPRESENTING
Don Pearson	Atty - Proponent
Tom Corbett	KMSA
Harry DeLong	CHECK CENTER
Linda Davis	Check Center
Charles Davis	Check Center
Billy F. Neuman	BIBLER & NEUMAN, P.A.
Hal Hudson	NFIB/KS
Frances Kastner	Ks Food Dealers Assn
Marlee Carpenter	KCCI
Frank Kopycki	MARTIN, Pringle, Oliver, Wallace & ...
Thomas A. Blentier	Sure Check
Barb Covert	Ks Trial Lawyers Assoc
Tom Kempf	Ks Trial Lawyers Assoc.
Steve RARRICK	ATTORNEY GENERAL
Kathy Powell	Judicial Branch

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 8, 2001

NAME	REPRESENTING
Paul Davis	KS Bar Assn.
Edwards R. Smith	4th Judicial Dist. Dist. Magistrate Judge
McC Moore	Visitor
Kathy Olsen	KS Bankers Assn



KANSAS

**Testimony of
Hal Hudson, State Director
National Federation of Independent Business
Before the
House Business, Commerce and Labor Committee
on
House Bill 2150
February 7, 2001**

Mr. Chairman and members of the Committee: My name is Hal Hudson. I am the State Director for the 7,000 member Kansas Chapter of the National Federation of Independent Business.

Thank you for the opportunity to appear in support of enactment of House Bill 2150.

May I ask if any of you can distinguish the difference between passing a worthless \$50 check and passing a counterfeit \$50 bill? Spending counterfeit money is a crime. It is a crime that interests the FBI, the KBI, the District or County Attorney, the County Sheriff, local police department, and the courts.

Yet, none of the above seem to have any interest in stopping the fraudulent passing of worthless checks – just another form of counterfeit money -- or helping the holders recover their loss. Only the merchant or vendor who is left holding the worthless check seems to care.

House Bill 2150 provides some assistance to the holders of worthless checks in getting their money to replace the check. We need this bill enacted into law, because the avenues of recovery under current law lean too favorably toward the offender, rather than the victim.

Anyone can make a mistake. Is there anyone here who has never overdrawn his or her checking account? However, HB 2150 provides ample opportunity for an honest person to correct their mistake, and make good on their worthless check.

It is the dishonest person who writes a check knowing there is either no account open, or that there are not sufficient funds to cover the check that we are concerned about. It is the person who does not respond in a reasonable time or make an effort to make good that is the problem.

HB 2150 is designed to help the holders of worthless checks do what is necessary to recover their loss. We need HB 2150 to put the burden of recovery back on those who pass worthless checks. We need HB 2150 to help small and independent business owners stay in business.

Thank you.

**House Business, Commerce & Labor Committee
2-8-01**

National Federation of Independent Business

K a n s a s

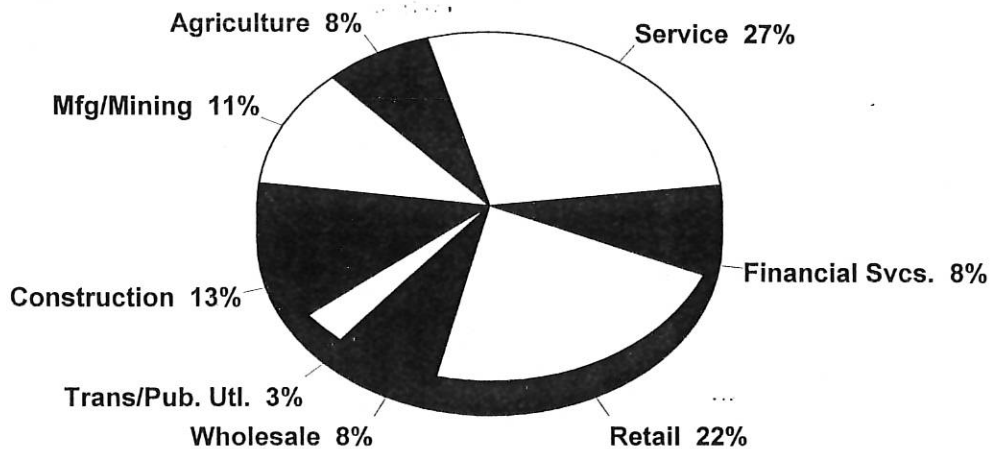
About NFIB-Kansas

Since 1943, business owners from all walks of commercial life have joined the National Federation of Independent Business to have a powerful, united voice in government decision making. Today, NFIB's Kansas chapter has more than 7,000 members, making it the largest small-business advocacy group in the state.

Each year, NFIB-Kansas polls its entire membership on a variety of state legislative and regulatory issues. The federation uses the poll results to set its legislative agenda and aggressively promotes those positions approved by a majority vote.

This democratic method of setting policy assures that the positions advanced by NFIB reflect the consensus view of the entire small-business community rather than the narrow interests of any particular trade group. Lawmakers wanting to know how proposed legislation and regulation will affect Main Street businesses can get the authoritative answer from NFIB's legislative office in Topeka.

NFIB-Kansas by Industry Classification

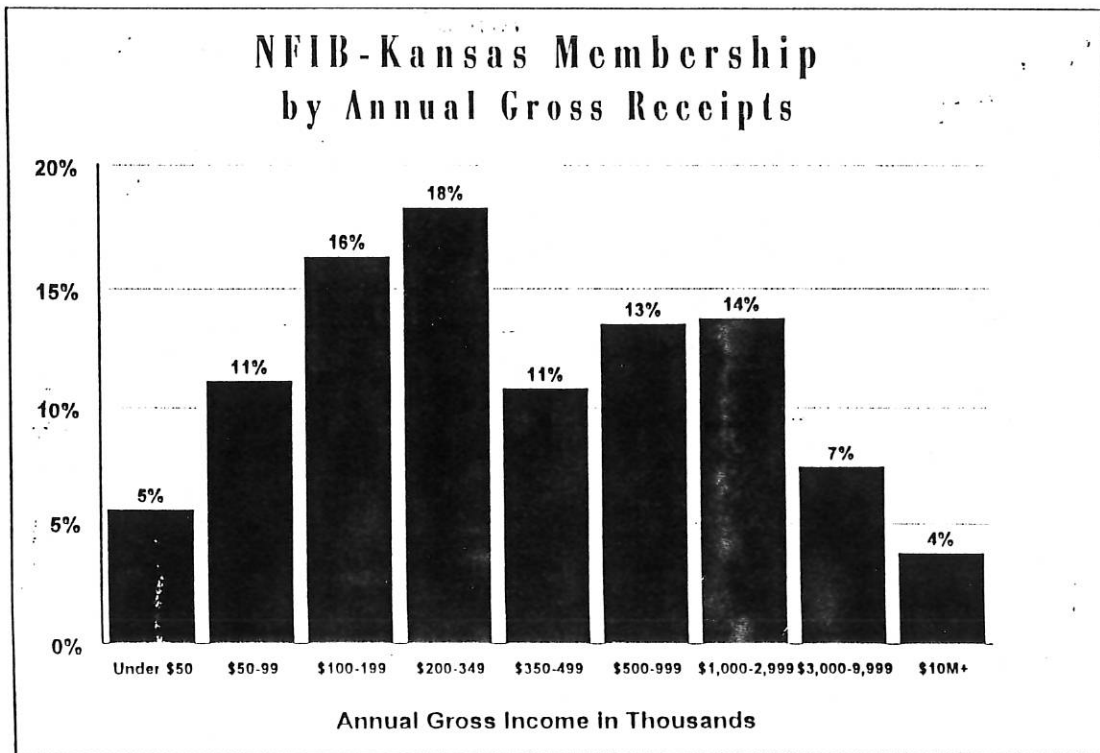
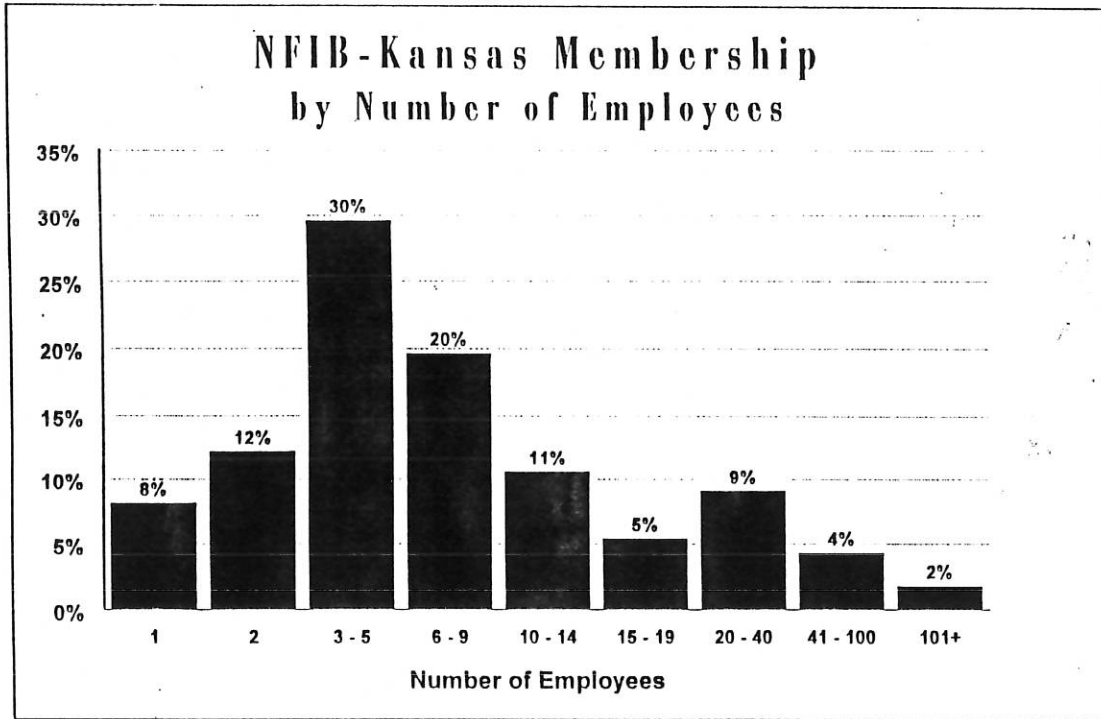


...and NFIB works for small business.

Hal Hudson, Kansas State Director
3601 S.W. 29th St. – Suite 116-B – Topeka, Kansas 66614-2015
Tel. 785/271-9449 – Fax. 785/273-9200 – E-mail: hal.hudson@nfib.org

NFIB-Kansas Membership Profile

NFIB-Kansas represents the entire spectrum of independent business, from one-person home-based operations to enterprises employing more than 100 people. The typical NFIB-Kansas member is quite small, employing six workers and ringing up gross sales of about \$340,000 per year. Yet, in aggregate, the membership is a potent economic force, employing more than 110,000 and earning about \$8 billion (gross) annually.





EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

OFFICERS

PRESIDENT
ARNIE GRAHAM
Emporia

ASST. TREASURER
JOHN CUNNINGHAM
Shawnee Mission

BOARD OF DIRECTORS

CHAIRMAN
DUANE CROSIER
Seneca

MIKE BRAXMEYER
Atwood

CARY BINNEY
Ulysses

MIKE FLOERSCH
Clay Center

DOUGLAS GARRETT
Sabetha

BRIAN GIESY
Osage City

SKIP KLEIER
Carbondale

GEORGANNA McCRRARY
Russell

JIM McGUFFEY
Cheney

JOHN McKEEVER
Louisburg

LEONARD McKINZIE
Overland Park

CLIFF O'BRYHIM
Overbrook

J. R. WAYMIRE
Leavenworth

BILL WEST
Abilene

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

HOUSE BUSINESS, COMMERCE & LABOR COMM. Feb. 7, 2001

SUPPORTING HB 2150

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our members include retailers, distributors and manufacturers of food products throughout the State.

Grocers have always tried to give their customers the most value for the dollars spent in their stores. However, there are some people who intentionally write worthless checks thereby causing the honest consumer, like you and me, to pay more for groceries.

If our customers write a bad check inadvertently they still cause a lot of time and expense to the grocer to collect on that check. We do not believe the \$50 fee asked for in HB 2150 is too much.

The customer who made the honest mistake pays the check and the fee, and is usually more careful about having the money in the bank.

When the writer of a worthless check ignores the written demand letter and further action is required the language in HB 2150 should help reduce the total amount of profit lost from uncollected bad checks.

The bottom line in any business is that ALL the expenses incurred have to be paid before the business can continue to operate. We see no reason for the honest consumer having to bear the burden of paying for those who deliberately try to escape a debt.

We urge your support of HB 2150. Thank you for allowing me to share our thoughts with you and will be happy to answer any questions you may have.

Frances Kastner, Director
Governmental Affairs KFDA

House Business, Commerce & Labor Committee
2-8-01
Attachment 2



CHECK CENTER™

YOUR PARTNER IN CHECK LOSS PREVENTION™

HOUSE COMMITTEE ON COMMERCE AND LABOR

TESTIMONY OF LARRY OEDING
PRESIDENT
NATIONAL RECOVERY SYSTEMS, LTD. OF AMERICA
DBA CHECK CENTER

FEBRUARY 8, 2001

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM LARRY OEDING, PRESIDENT OF CHECK CENTER.

I HAVE BEEN ACTIVE IN THE CHECK LOSS PREVENTION BUSINESS FOR THE PAST 16 YEARS.

CHECK CENTER RECOVERS BAD CHECK LOSSES FOR OVER 1,000 MERCHANTS IN KANSAS.

CHECK CENTER EMPLOYS 48 ASSOCIATES IN KANSAS.

FIRST I WOULD LIKE TO GIVE YOU SOME BACKGROUND ON THE MAGNITUDE OF "RETURNED CHECKS".

FOR EACH 100 CHECKS TAKEN BY A MERCHANT, 1 CHECK, ON THE AVERAGE, WILL BE RETURNED TO THE MERCHANT. SEE GRAPH ATTACHED.

THUS 99% OF THE CHECKS WRITTEN ARE NOT AFFECTED BY HB2150.

SECOND, I WOULD LIKE TO DESCRIBE THE LEGAL PROCESS USED AT CHECK CENTER/KOWALSKI & THOMPSON AND THE RESULTS OBTAINED.

ON THE AVERAGE:

FOR EACH 100 RETURNED CHECKS WE RECEIVE FROM OUR MERCHANTS FOR COLLECTION(SEE GRAPH ATTACHED):

10% OR ONLY 10 OF THESE CHECKS ARE STARTED IN THE LEGAL PROCESS WITH A CERTIFIED LETTER. THE OTHER 90% ARE EITHER COLLECTED OR ARE NOT ELIGIBLE FOR THE LEGAL PROCESS.

50% OR 5 OF THESE CHECKS WILL BE PAID OFF BY THE CHECKWRITER FROM THE CERTIFIED LETTER.

THE REMAINING 5 CHECKS PROCEED THRU THE LEGAL PROCESS BY FILING A CASE WITH THE PROPER JURISDICTION.

A DIVISION OF



House Business, Commerce & Labor Committee

2-8-01

Attachment 3

A Division of LML Payment Systems, Inc.

107411 West Street • Wichita, Kansas 67203 • Phone: 316-443-2900 • 1-800-291-0102

HOUSE COMMITTEE ON COMMERCE AND LABOR

TESTIMONY OF LARRY OEDING
PAGE 2

40% OR 2 OF THESE CHECKS ARE PAID OFF BY THE CHECKWRITER PRIOR TO THE DISPOSITION HEARING DATE.

THE REMAINING 3% OR 3 CHECKS GO THRU THE FULL JUDGEMENT PROCESS, FOR FURTHER COLLECTION WORK.

ON THE AVERAGE IT TAKES CHECK CENTER APPROXIMATELY 5 YEARS TO COLLECT A JUDGEMENT.

NOTE: KOWALSKI & THOMPSON FILES ON ONE CHECK AT A TIME. IN LESS THAN 5% OF THE CASES DOES KOWALSKI & THOMPSON HAVE TO FILE A SECOND CASE.

CHECK CENTER FEELS THE ELIMINATION OF THE CERTIFIED LETTER WOULD NOT ONLY SAVE THE MERCHANT'S CHECKWRITER \$6.94, BUT MORE OF THE CHECKWRITERS WOULD PAY FROM A FIRST CLASS LETTER.

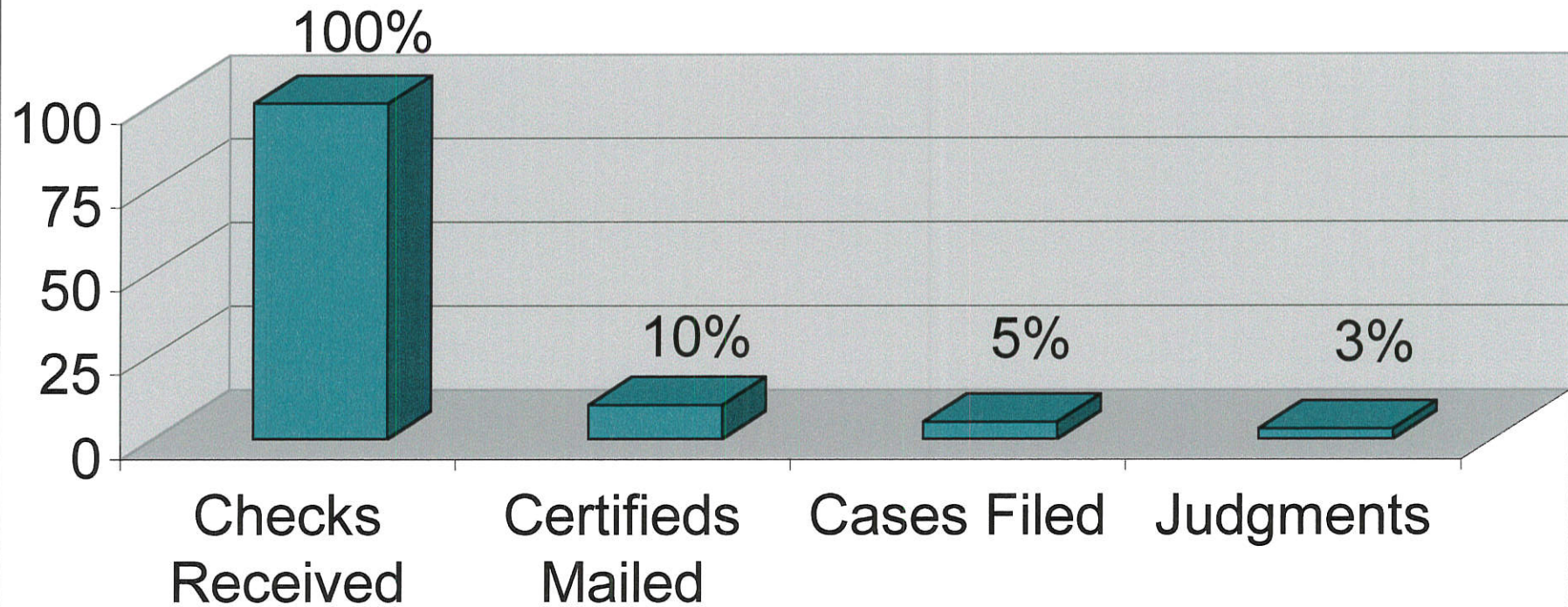
CHECK CENTER FEELS IT IS VERY IMPORTANT FOR THE \$10.00 NON-POSTED CHECK FEE TO BE RAISED TO \$30.00 OR TO ELIMINATE THE POSTING REQUIREMENT. THERE ARE MANY MERCHANT SITUATIONS THAT MAKE IT VERY DIFFICULT TO POST A SERVICE CHARGE. PIZZA DELIVERY, PRESCRIPTION DELIVERY, ETC..

THANK YOU FOR YOUR CONSIDERATION.

RESPECTFULLY,

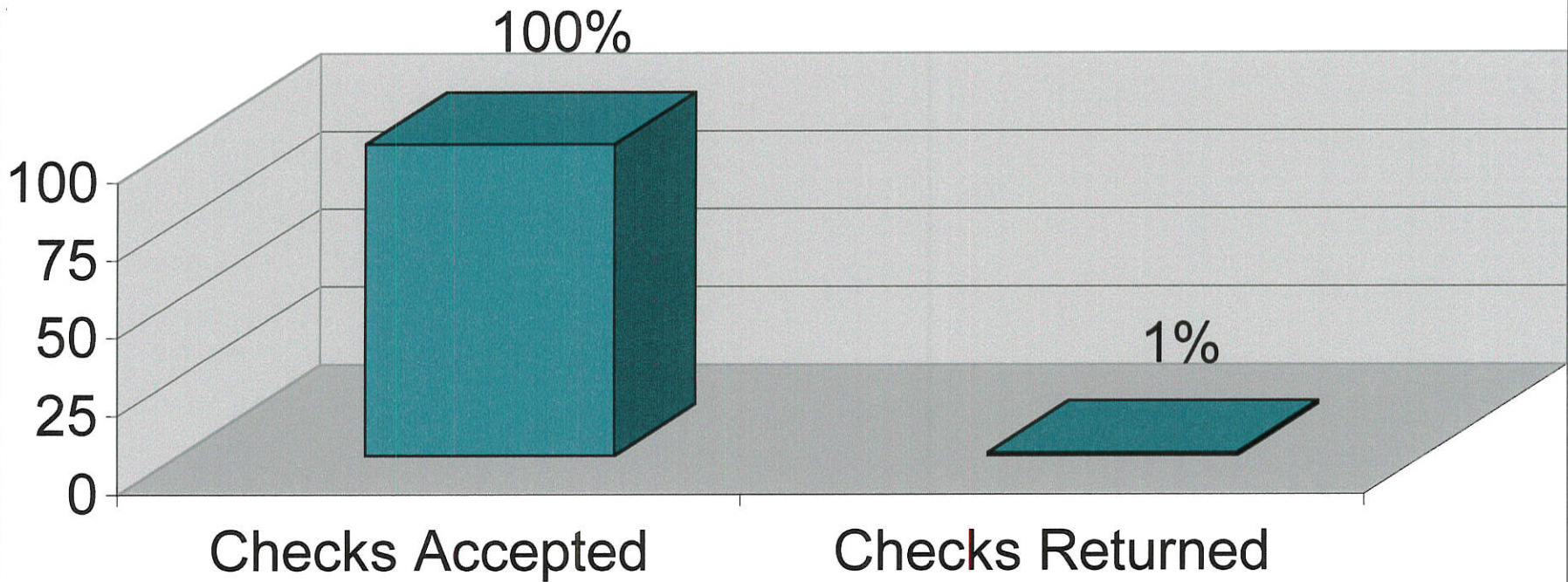
LARRY OEDING
PRESIDENT

*Check Center / Kowalski & Thompson
6 Month History
2/01/01*



CHECK INDUSTRY

Checks Accepted vs Checks Returned



LEGISLATIVE TESTIMONY



The Unified Voice of Business

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: kcci@kansaschamber.org • www.kansaschamber.org

HB 2150

February 7, 2001

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Business, Commerce and Labor Committee
by

Marlee Carpenter
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am the Executive Director of the Kansas Retail Council, an affiliate of the Kansas Chamber of Commerce and Industry. I am here today in support of HB 2150.

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 2,000 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 48% of KCCI's members having less than 25 employees, and 78% 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.

Worthless checks are a large problem for many retailers. HB 2150 sets an attorney fee for the collection of worthless checks and increases service charge for each bad check passed. These changes will make it easier for attorney's to collect on bad check debts. Hundreds of bad checks are passed each day in Kansas. The amounts of many of these bad checks are never recovered.

**House Business, Commerce & Labor Committee
2-8-01 Attachment 4**

Retailers have no choice but to pass the costs of worthless checks to customers, thus increasing prices or decreasing services.

The Kansas Retail Council supports any changes in Kansas' law to strengthen the penalties for passing a worthless check and we believe that setting a reasonable attorney fee in statute will increase the likelihood of the recovery of money to the retail establishment.

Thank you for your time today and we urge you to support HB 2150. I will be happy to answer any questions.

42

E. LOU BJORGAARD PROBASCO
Attorney at Law
615 South Topeka Blvd.
Topeka, Kansas 66603

-*-

(785) 233-2332

(785) 233-2384 FAX

ACTION NOTES

RE: Patrick J.
Case # 99- 28411

Date: 02/06/2001
Judgment Date: 01/08/2001

Client's case # 230
Forwarder's case # 230

02/16/99 - case opened.

Other:

Relative:

X:

02/16/1999 Letter BDCK-MAN.CT sent.

02/25/1999 LETTER WAS FORWARDED TO NEW ADD OA IS 951 ARKANSAS
F-2 LAWRENCE KS 66044

04/01/1999 Letter PETCKCIS.CT sent.

05/03/1999 Letter PETCKMAN.CT sent.

05/03/1999 Letter OUTSUM1.CT sent.

05/13/1999 recd f/s copy of petition f.s 5-7 set for 6-18

05/18/1999 cert letter returned undeliverable as addressed,
forwarding order expired.

05/18/1999 Letter POST1.CT sent.

05/26/1999 po bk no change of address on file

05/27/1999 Letter SKIPINK.CT sent.

07/07/1999 Recd Dismissed for Lack of Prosecution Notice for 7-16-
Need to get continued as we cant find

07/07/1999 Letter DISDOCK.CT sent.

07/16/1999 T\BUMP.CT sent. (-Can't find)

08/20/1999 T\BUMP.CT sent. (Cant' Find)

08/26/1999 Letter BCL1.CT sent. -(Is this his address)

09/30/1999 recd Order of Dismissal filed 9-15-99

10/25/1999 T\BUMP.CT sent. (Can't Find)

11/17/1999 Letter POST1.CT sent.

11/23/1999 rcvd po req no change of addr on file

11/24/1999 Letter BCL1.CT sent. (Is this his Address)

12/10/1999 Letter SKIPVAR1.CT sent. to cap fed at 700 se ks ave
tk 03

12/21/1999 credit bureau---done; add same as ours; had inquiry from
associated recovery systems on 11-29-99 skip var them; PO Box
463023 escondido ca 92046

12/21/1999 Letter SKIPVAR1.CT sent. to associated recovery
systems

House Business, Commerce & Labor Committee

2-8-01

Attachment 5

01/17/2000 case was dismissed the case number was 99L 000723
02/02/2000 Letter POST1.CT sent.
02/10/2000 po letr back name is good as adressed. oa 6441 summit
st kansas city 64113-1553
02/25/2000 Letter BCL1.CT sent.(Is this his address)

05/01/2000 Letter PETCKMAS.CT sent.
08/30/2000 Letter PETCKMAS.CT sent.
08/30/2000 Letter BCL1.CT sent.
09/05/2000 Letter BCL1.CT sent.
09/29/2000 rec fs copy of the pet on 9-11***
11/13/2000 Letter OUTASCKM.CT sent.
12/08/2000 rec cert mail service on the asum on 12-1****
12/28/2000 rec notice from the crt that the def did not appear
on the crt **
12/28/2000 Letter JEBDCK-V.CT sent.
01/17/2001 got fs copy of the je back she only gave us 60.00 for
atty fees
01/19/2001 Letter GAR-PRO1.CT sent.
01/31/2001 Letter GARNOTP1.CT sent.
02/02/2001 rec garnpro holding 0.00

E. LOU BJORGAARD PROBASCO
Attorney at Law
615 South Topeka Blvd.
Topeka, Kansas 66603

-*-

(785) 233-2332

(785) 233-2384 FAX

ACTION NOTES

RE: vs. Alexander
Case # 0- 33923

Date: 02/08/2001
Judgment Date: 01/08/2001

Client's case # 606
Forwarder's case # 71648

04/14/2000 - case opened.

X;

other:

landlord:

04/14/2000 DOB 4/14/63 HAPPY BIRTHDAY!!! check dates.
Husband, Mike

!!!!!!!!!!!!!!!!!!!! CHECK COUNTY ON FRONT SCREEN
!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
I WASNT SURE WHICH COUNTY IT WAS SUPPOSED TO BE FILED IN!!!!!!
HELP !!!

4/14/2000 Letter BDCK-LT.CT sent.
05/01/2000 cert card back signed Alexander Keller 4/28/00
06/01/2000 Letter PETCKCIS.CT sent.
06/29/2000 Letter PRAECIPE.CT sent.

07/27/2000 rec ret of service; need street address; n/s

07/27/2000 Letter POST1.CT sent.
08/18/2000 po letter back no change but also rcvs mail at pobox
2 changed rd from 538 to 2

08/21/2000 Letter ASUMGEN1.CT sent. (Try to Serve Again)
09/13/2000 rec ret of services; asum cm
09/29/2000 Letter REINSTAT.CT sent. (How could a case be dismissed
only 2 .5 mo old????)
10/05/2000 sent letter to judge on 9-29
10/06/2000 got my motion and order back and Judge stated that
they needed to be on seperate pages, (in their county)so re-doing
and sending back up there
10/06/2000 Letter REINSTAT.CT sent.***modified***
10/25/2000 rec order to re-instate f/s 10-13
10/25/2000 Letter ASUMBCK.CT sent.

11/22/2000 rec ret of service, cm
11/30/2000 called jamie (at courthouse) to see about the hearing,
left message on machine,
12/01/2000 mary called and said that she is in the office at
client office and does not have long distance and
wanted us to call her but she could not tell would her when she
would be home, she went into crying and wanted to
pay the princ and mary told her that she would have to talk to
us
12/01/2000 she called in and stated that she stated that she
would like to see what is the least amount to pay, she stated
that she stated that she put dispute on this, **so that she would
have additional time to pay**, I stated that if she is going to
file an she will need to send us a copy
12/08/2000 per jamie he appeared on 1st denied and has till 15
to file ans.
12/20/2000 we have not received an ans as of today, called Jamie
to see if he filled an ans.
12/20/2000 Letter JEBDCK-V.CT sent
01/12/2001 rec JE back, attry fee of 50.00, 10.00 per check, so
only giving 215.23 for je

02/07/2001 (client) called in and wanted the balance on this
account, he asked if we would settle on 150 on this acct. per
lou, ok-judge reduced to only 50!!!!

02/07/2001 called LA at Dg cty and asked who judge, Judge Malone
Div. 4. per Jamie

02/07/2001 gave note to maria (to write off fees per judge order)
02/07/2001 per (client), she is not paying after all, she walked
out before he could advise the 215.23,



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

**LEGISLATIVE TESTIMONY
HOUSE BILL 2150**

February 7, 2001

TO: Chairman Al Lane and Members of the House Business,
Commerce and Labor Committee

FROM: Paul Davis, KBA Legislative Counsel

Chairman Lane and Members of the Committee:

Thank you for this opportunity to present testimony on House Bill 2150. My name is Paul Davis and I serve as Legislative Counsel for the Kansas Bar Association. The Kansas Bar Association is composed of over 6,000 attorneys, judges, legal assistants and law students from all over the State. We appear today as an opponent of House Bill 2150.

For several years now, the Kansas Bar Association has been studying ways to improve the Kansas worthless check statutes. A special KBA committee chaired by Washburn University Law Professor Lynette Petty drafted a bill last year that was passed into law. This bill was enacted as part of 2000 House Bill 2905. The bill requires that a demand letter sent to a debtor clearly state the exact amount that is due and the date it is due, along with providing an estimate of the amount that may be incurred by the debtor if the amount demanded is not paid by the specified date. Furthermore, the new law requires a plaintiff to include in the petition an amount that may be tendered as satisfaction of the claim prior to a dispositional hearing. It specifies that the tender amount may not include triple damages or the \$100 damages that are provided for in the statute. We believe this legislation will help resolve more bad check

**House Business, Commerce & Labor Committee
2-8-01
Attachment 6**

disputes prior to litigation or judgment, thereby availing the debtor of the punitive penalties that are currently applicable.

The number of lawsuits filed due to worthless checks are ever increasing. This is a matter of concern to the KBA. However, we don't believe the amendments that are made in House Bill 2150 will improve matters. We are troubled by the allowance of accrued interest on the amount of the check. This seems to only serve as a duplication of the damages that are already provided for in the current law. We also believe that the restricted mail requirements should not be deleted. However, the provision of the bill that we find most objectionable is that last two lines of Section 1 of the bill (found on page 3 of the bill). This provision states as follows:

“Reasonable attorney fees” shall be \$350 for a single check with an additional \$50 for each additional check

First of all, we believe that \$350 in attorney fees for a single check is excessive. We also object to this provision because it takes away a judge's discretion to award attorney fees. The awarding of attorney fees may vary from case to case depending entirely upon the circumstances of a specific case. Therefore, a uniform amount for attorney fees simply isn't good public policy. We believe these decisions are best made by a judge who understands the circumstances of a case.

I have attached an editorial that appeared in the Sunday edition of the *Kansas City Star*. We concur with many of the points that Mr. Hood makes in this editorial. I hope you will have the wisdom to not act favorably on this legislation. Thank you for your time.

KANSAS DISTRICT MAGISTRATE JUDGES ASSOCIATION

LEGISLATIVE COMMITTEE

February 6, 2001

Hon. Keith Whitney
Chairman
P O Box 623
Meade, Ks 67864
316-873-8760 office
316-873-8759 fax
whitneyk@midusa.net

I am Michael A. Freelove, District Magistrate Judge from the 16th Judicial District. I represent the District Magistrate Judges Association.

Our association stands in opposition of House Bill 2150.

Hon. John Barker
P O Box 127
Abilene, Ks 67410
785-263-3041 office
785-263-4407 fax
mj1@oz-online.net

As district magistrate judges, mostly in rural Kansas, we see the majority of these cases when they come through court.

Our association opposes this bill for two reasons. First, the bill would take away the discretion of the judge in allowing attorneys fees. Second, the bill would add a greater burden on the defendants to pay a judgment that they cannot afford in the first place.

Hon. John Bremer
P O Box 102
Oberlin, Ks 67749
785-475-8108 office
785-475-8170 fax
dcmj@theclassic.net

The way the statute is now it allows the judge to set reasonable attorneys fees. I hear an average of 1,500 limited actions cases per year, and approximately 97% of those cases are check cases filed under K.S.A. 60-2610. The age of computers has advanced the ability of the collection attorneys and credit bureaus to "cookie cutter" these cases. In other words, secretaries can crank out a case in about 10 minutes. All follow-up work takes even less time once the names and case numbers are submitted.

Hon. Mike Freelove
P O Box 825
Ashland, Ks 67831
316-635-2717 office
316-635-2155 fax
juez@ucom.net

Many times attorneys do not appear for hearings because many defendants default. It is simply a matter of paper work.

Hon. Keith Hooper
P O Box 273
Smith Center, Ks 66967
785-282-5140 office
785-282-5145 fax

Allowing attorney fees has historically been left to the discretion of the court. In probate cases, the executor is allowed a reasonable fee for payment of attorneys fees, and it is up to the court to determine if these fees are in fact reasonable. In criminal cases, although there is a set hourly fee, some set by the state, some set by the district, there is a review of the time submitted and a determination as to the reasonableness of the fee. The judge has the ability to allow or disallow the fee after review.

Hon. Philip Kyle
P O Box 187
Jetmore, Ks 67854
316-357-8434 office
316-357-6216 fax
hgdistct@p1d.com

Hon. Leonard Mastroni
P O Box 308
Lacrosse, Ks 67548
785-222-2718 office
785-222-2748 fax
jmastroni@ruraltel.net

If this bill passes there is no review, and no discretion as to what to allow for fees. The bill allows \$350 for the first check and \$50 for each additional check. The intent of the bill is ambiguous under some circumstances, such as the following scenario. A defendant writes two checks on two separate dates to the same business, and both checks are returned and turned over for collection. Under the provisions of HB 2150, if the collection attorney files a case that includes both checks his fees would be \$400, but if the attorney files each check as a separate case the fees would be \$700. What would you do? Place yourself in the position of the defendant. You would probably not be happy with the judgment, but you would feel like you received a fair judgment if you knew that the fees that were allowed were set at the discretion of the judge after considering all relevant facts.

Hon. James Vano
100 N. Ks Ave
Olathe, Ks 66061-3273
913-715-3572 office
913-715-3317 fax
james.vano@jocoks.com

Hon. Timarie Walters
P O Box 365
St. John, Ks 67576
316-549-3295 office
316-549-3298 fax
magistrate@stjohns.net

Thank you for your attention to this matter.

House Business, Commerce & Labor Committee

2-8-01

Attachment 7

DECATUR COUNTY DISTRICT COURT
120 E. Hall, P. O. Box 89
Oberlin, Kansas 67749
(785)-475-8108

Seventeenth Judicial District

Hon. John E. Bremer

District Magistrate

5 February, 2001

Hon. Al Lane, Chairman
Committee on Business, Commerce & Labor
Kansas House of Representatives

re: HB 2150
An Act Concerning Worthless
Checks

Dear Mr. Chairman:

I have just recently become aware of HB 2150 and its contents addressing attorney fees concern me.

Costs traditionally are a part of the burden of litigation and there is not a constitutional right to litigate without expense to the litigants. The right to recover costs exists only by virtue of statutory authority authorizing that recovery or authorizing the courts to establish rules governing such recovery. These statutes can be generally described as serving public policy by being punitive in nature with the apparent intent to punish bad conduct or unnecessary delay.

With this in mind, here are my observations:

1. Virtually none of the worthless check cases go to trial.
2. Most defendants do not deny that they owe money to the plaintiff because one of their checks was not honored by their bank.
3. Most defendants show that a change of circumstances such as a illness or accident, divorce or loss of employment prevented them from learning that the check had been dishonored or from picking up the check.
4. Most defendants want to work out a payment schedule prior to coming to court but can't because the matter has already been turned over to a collection agency.
5. In some, but not all cases, the assessment of additional costs and fees to the defendant would impose a substantial hardship.
6. A small minority of defendants are repeat offenders who abuse the system and shouldn't have checkbooks.

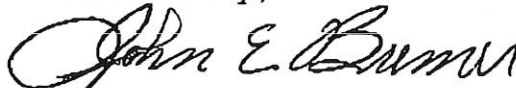
In light of these observations, I would request that the courts be allowed to exercise the following discretion:

- a. to weigh the desirability of assessing a penalty upon the

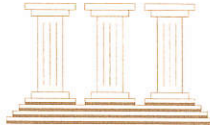
- defendant;
- b. to determine whether the assessment of an additional penalty upon the defendant would impose a substantial hardship;
 - c. to determine the reasonableness of attorney fees by receiving competent evidence of actual time and costs, particularly in circumstances when no trial was required.

Of course, the court's ability to assess additional costs and fees is within the sound discretion of the Legislature and the courts will strive to give full effect to your legislative intent. Thank you for your consideration.

Yours truly,



John E. Bremer, President
Kansas District Magistrate
Judges Assn.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Feb. 7, 2001

TO: Members of the House Committee on Business Commerce and Labor

FROM: Gary White
Kansas Trial Lawyers Association

RE: **2001 HB 2150**

Chairman Lane and members of the House Committee on Business Commerce and Labor: The Kansas Trial Lawyers Association appreciates the opportunity to provide our comments on House Bill 2150. As you are aware, this bill amends existing Kansas law contained in K.S.A. 60-2610 and K.S.A. 60-2611 and removes judicial discretion to impose fines and attorney fees in bad check cases. We believe that these amendments to existing state law are unnecessary and are contrary to the best interests of Kansas citizens.

The amendments contained in HB 2150 remove the discretion a judge currently has to alleviate the impact of fines and penalties on a person writing a bad check. Instead of allowing a judge to fashion an appropriate remedy, based on the underlying facts and circumstances of the case, HB 2150 mandates a "one size fits all" approach resulting in fines, interest penalties, court costs and preset mandatory attorney fees being imposed, regardless of whether such fines and fees are warranted. HB 2150 will remove important judicial safeguards that exist to ensure a proper balance between punishing those who purposefully write bad checks and protecting the elderly and the poor from Draconian fines, penalties and attorney fees for making a mathematical mistake with their checking account or inadvertently writing a check with insufficient funds.

KTLA agrees that the holder of a worthless check should be properly reimbursed and that attorney fees should be awarded in appropriate cases. However, such a result is already provided for under existing law. K.S.A. 60-2610(a)(1) clearly provides that the holder of a check that is worthless has a right to recover the costs of collection, which includes reasonable attorney's fees. An important safeguard regarding the imposition of attorney's fees is included in the statute. In the event the Court waives all or part of the attorney's fees, the Court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check."

House Business, Commerce & Labor Committee

2-8-01

Attachment 8

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw@ink.org

As widely documented in the press, some child support checks recently have been sent late by the Payment Center of the Department of Social and Rehabilitation Services. Clearly, through no fault of their own, individuals are not receiving child support checks to which they are entitled and counting on to feed their children. If these individuals were to write checks to buy food assuming that payment is forthcoming, checks could bounce and they would be burdened with paying mandatory attorney's fees as well as the costs of collection. Such a result is clearly unfair. KTLA urges the committee to continue to allow Kansas judges to reduce attorney's fees and reduce costs in appropriate cases where there are specific findings that the amounts awarded are indeed sufficient to adequately compensate the holder of the check.

HB 2150 also amends K.S.A. 60-2610(b) by removing the requirement that the demand for payment shall be sent by restricted mail and instead only requiring first class mail. This could easily result in actual notice not being received by the person who wrote the check and default judgment taken, including mandatory attorney's fees. It is the view of KTLA that the current version of the statute should remain intact, requiring that restricted mail notice must be given to the writer of the check before a judgment can be taken.

For the reasons stated above, KTLA opposes the amendment of K.S.A. 60-2610 as set forth in HB 2150. As written the bill will eliminate the important due process protection of restricted mail service, as well as the important safeguards providing a judge the ability to reduce fines and attorney's fees in appropriate cases. Justice is best served by providing Kansas judges the discretion required to do their job.

Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-0919



President
Ron Eldridge

Executive Secretary
Treasurer
Jim DeHoff

Executive Vice
President
Wayne Maichel

Executive Board

*Ken Alexander
Melany Barnes
Clyde Bracken
Jim Clapper
Dan Fairbanks
Barbara Fuller
David Han
Jim Hastings
Jerry Helmick
Fred Kaminska
Lloyd Lavin
Wil Leiker
Adrain Loomis
Pam Pearson
Emil Ramirez
Bruce Reves
Debbie Snow
Betty Vines*

Feb. 7, 2001

TO: Members of the House Committee on Business, Commerce and Labor

FROM: Wayne Maichel
Executive Vice President

RE: 2001 HB 2150

Chairman Lane and members of the House Committee on Business Commerce and Labor: the AFL-CIO appreciates the opportunity to comment on HB 2150 that amends Kansas statutes dealing with bad checks. We oppose two of the amendments proposed in this bill.

First, we believe the Court's discretion to impose fines and attorney's fees should not be eliminated. This bill would mandate fines, interest penalties, court costs and preset mandatory attorney's fees regardless of the facts of the situation. These mandates remove the safeguards that ensure a fair balance between punishing those who knowingly write bad checks and those who unintentionally or inadvertently writes a check without the funds in the bank to cover it.

HB 2150 also amends current law by removing the requirement that the demand for payment be sent by restricted mail. The amendment requires the demand for payment be sent, instead, by first class mail. This change could result in a default judgment of fines and penalties against the check writer if they don't receive the notice for some reason such a change of address or it was sent to the wrong address.

The AFL-CIO opposes the amendments to K.S.A. 60-2610 that I have identified. This bill removes the important due process protection of restricted mail service as well as the safeguards providing a judge the ability to reduce fines and attorney's fees in cases where he/she finds it appropriate to do so.

Thank you for the opportunity to offer our comments.

House Business, Commerce & Labor Committee

2-8-01

Attachment 9



2-6-01

Dear Committee Members,

RE: House Bill 2150

My interest in this bill is the proposed change to delete restricted mail and insert first class mail. I believe if this is done it will be a giant downward step for due process. The lower income people in this state already have very little due process rights, and going to first class will surely worsen the situation. I have no doubt there will be a good amount of demand letters going to the wrong addresses. Line 43 reads 'or to the last known address'. This seriously conflicts with due process. If the person never gets the demand letter they will be stuck with all kinds of charges. I don't think this is fair unless they for sure get notified and that won't happen if it goes to first class mailings. Please make sure everyone is notified and keep restricted mail.

Thank you for the opportunity to present this letter.



Marcia Lessenden
1512 Wayne
Topeka, Kansas 66604
(785)233-9994

House Business, Commerce & Labor Committee

2-8-01

Attachment 10