

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 23, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff - Excused

Committee staff present:

Jerry Ann Donaldson, Department of Legislative Research

Jill Wolters, Department of Revisor of Statutes Office

Sherman Parks, Department of Revisor of Statutes Office

Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Susan Bechard, Kansas County & District Attorneys Association

Jeff Bottenberg, Kansas Peace Officers Association

Representative Garry Boston

Byron Motter, Harvey County Sheriff

Mike Pepoon, Sedgwick County

Bud Handsby, Wilson County Sheriff

Judy Moler, Kansas Association of Counties

Representative Kathe Lloyd

Marlee Carpenter, Kansas Retail Council

Representative Michael O'Neal

Susan Bechard, Kansas County & District Attorneys Association, appeared before the committee with two bill requests. The first would include a subsection for DUI-related aggravated battery in K.S.A. 21-3414, to address the decision in *State V Huser* 265 Kan 228. The second would amend K.S.A. 21-3715 as follows "with intent to commit a felony, theft, or any person crime therein."

Representative Patterson made the motion to have the two requests introduced as committee bills. Representative Lloyd seconded the motion. The motion carried.

Mike Pepoon, Sedgwick County, appeared before the committee requesting two bills which would repeal K.S.A. 20-613a, and 20-713. The second amends K.S.A. 28-176 to allow the Sedgwick County Regional forensic science center to charge a \$150 fee for forensic science/laboratory services.

Representative Crow made the motion to have the requests introduced as committee bills. Representative DeCastro seconded the motion. The motion carried.

Jeff Bottenberg, Kansas Peace Officers Association, requested a committee bill which would remove the sunset provision on the district court fee and raise the municipal court docket fee to \$4.00.

Representative Pauls made the motion to have the request introduced as a committee bill. Representative Lloyd seconded the motion. The motion carried.

A request was received from the Sedgwick County Judges regarding the code of limited actions.

Representative Lloyd made the motion to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

Representative Lloyd had a request from the Child Support Guideline Advisory Committee to repeal the opt-out provisions of paying child support thru the payment center. He made the motion to have the request introduced as a committee bill. Representative Owens seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on January 23, 2002 in Room 313-S of the Capitol.

Hearing on **HB 2630 - county general fund reimbursement for medical expenses of indigent prisoner,** were opened.

Representative Garry Boston appeared as the sponsor of the proposed bill. Current law requires a prisoner to pay for medical care and treatment they received while they are in custody unless they do not have the means to do so. He explained that there is no provision for a controlling authority to seek reimbursement from an individual for the costs of medical services provided. The proposed bill would allow the county to seek repayment from the individual when they are employed. ([Attachment 1](#))

Jill Wolters, Revisor of Statutes, commented that an error occurred when the bill was drafted. It needs to reference K.S.A. 19-1910. ([Attachment 2](#))

Byron Motter, Harvey County Sheriff, appeared before the committee as a proponent of the bill. He believes that it is beneficial to the county to be able to be reimbursed for those medical costs once the individual has financial means. He provided the committee with a spreadsheet of the costs of medical expenses in Harvey County Detention Center since 1998. ([Attachment 3](#))

Mike Pepoon, Sedgwick County, also supported the proposed bill because it will help counties pay for the medical expenses that have skyrocketed over the past few years. He provided a summary of medical and dental costs incurred by the Sedgwick County Adult Detention Facility from 1996 to 2000. These expenses have almost doubled in that time frame to \$2.5 million. ([Attachment 4](#))

Bud Handshy, Wilson County Sheriff, contacted the National Sheriffs Association, who also view this as a major problem for counties. They did not have any information where detention centers could get insurance to help cover these expenses. He commented that Missouri has a law that allows for the reimbursement of such costs. ([Attachment 5](#))

Chairman O'Neal suggested that they contact the Prison Health Services, who handles Kansas' prisons and Johnson County Detention Center, to see if they would be interested in contracting with the counties.

Judy Moler, Kansas Association of Counties, explained that for many small counties these are large bills for them to absorb. ([Attachment 6](#))

Written testimony in support of the proposed bill was provided from William Blundell, Labette County Sheriff and Mahlon Tuttle, Kansas Legislative Policy Group. ([Attachments 7 & 8](#))

Hearing on **HB 2630** were closed.

Hearing on **HB 2611 - criminal worthless checks, merchants receive a service charge of \$30, notice letters sent by first class mail,** were opened.

Representative Kathe Lloyd appeared on behalf of Douglas Martin, Clay County Attorneys, who requested the criminal statute K.S.A. 21-3707 regarding worthless check cases be amended to allow merchants to charge \$30 for their time and expenses, and allow merchants to send their "seven day letter" by regular mail instead of certified. ([Attachment 9](#))

Committee discussion followed on the provision of sending the letter by regular mail and who would the burden of proof fall upon. It was determined that the burden of proof would fall to the person who was to have received the letter.

Marlee Carpenter, Kansas Retail Council, supported the mirroring of the civil changes made last year. ([Attachment 10](#))

Frances Kastner, Kansas Food Dealers Association did not appear before the committee but requested her written testimony, in support of the bill, be included in the committee minutes. ([Attachment 11](#))

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on January 23, 2002 in Room 313-S of the Capitol.

Hearing on **HB 2611** were closed.

Hearing **HB 2610 - the court may order restitution from a previous conviction to be paid as part of probation for current convictions**, were opened.

Representative Michael O'Neal commented that Supreme Court ruled in *State v Hymer* judges cannot order payment of restitution that was previously ordered in a prior case but not paid, in a current case. The proposed bill would authorize a sentencing judge to order payment of restitution from a defendant's prior conviction.

Hearings on **HB 2610** were closed.

The committee meeting was adjourned. The next meeting is scheduled for January 24, 2002.



GARRY G. BOSTON  
REPRESENTATIVE, SEVENTY-SECOND DISTRICT  
14 CIRCLE DRIVE  
NEWTON, KANSAS 67114-1328



TOPEKA  
—  
HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
CHAIRMAN: HEALTH & HUMAN SERVICES  
MEMBER: FINANCIAL INSTITUTIONS  
FISCAL OVERSIGHT  
INSURANCE  
LONG TERM CARE TASK FORCE

**Substitute for HB 2630**

Chairman O'Neal and members of the Committee:

Thank you for the opportunity to appear before you regarding **Sub for HB 2630** and the need for this legislation as it relates to every county in Kansas.

A syllabus of the court in Haskell concluded that with no statute to the contrary, any prisoner in custody who had serious medical problems without health insurance, became the financial responsibility of the county where he was confined.

There is no provision for the controlling authority to seek reimbursement from the individual for the cost of medical services provided, and the county is then responsible for paying the medical costs from taxpayer funds and is not able to seek repayment.

This cost (County) \$50,000 and could impact many counties substantial and unbudgeted taxpayer expense. The bill would allow counties the authority to seek reimbursement from the individual recipient of the medical costs associated with the case.

Harvey County Sheriff Byron Motter brought this situation to my attention and he is here today to offer testimony and answer any questions you might have. At this time I would be happy to stand for any questions you might have for me, and then introduce Sheriff Motter.

Garry Boston  
Representative, 72<sup>nd</sup> District

HOUSE BILL No. 2630

By Representative Boston

1-11

AN ACT concerning counties; relating to medical expenses of prisoners amending K.S.A. 19-4444 and repealing the existing section 19-1910 and sections

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

Section 1. K.S.A. 19-4444 is hereby amended to read as follows: 19-4444. The agency shall approve all expenditures to be made by and claims to be paid on behalf of such agency and the law enforcement department and shall certify the same to the board of county commissioners of the county to be allowed from the funds provided for the operation of such agency and department, except that all costs incurred by the agency or department for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, the county may seek reimbursement of such expenses from the prisoner.

Sec. 2. K.S.A. 19-4444 is hereby repealed. 19-1910 and

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book. are

Sec. 2. K.S.A. 19-1910 is hereby amended to read as follows: 19-1910. (a) When a prisoner is committed to a county jail in a criminal action, the board of county commissioners shall allow the sheriff reasonable charges for maintaining such prisoner. All costs incurred by the county jail for medical care and treatment of prisoners held within the county shall be paid from the county general fund when a determination has been made that the prisoner has no other resources. When medical expenses have been paid out of the county general fund of any county in this state for a prisoner held within such county, the county may seek reimbursement of such expenses from the prisoner.

(b) When a prisoner is delivered to a county jail pursuant to K.S.A. 75-5217 and amendments thereto, the costs of holding such prisoner shall be paid as provided in K.S.A. 19-1930 and amendments thereto.



## *Office of Sheriff, Harvey County, Kansas*

Byron L. Motter, Sheriff  
120 E. 7th • P.O. Box 231 • Newton, Kansas 67114  
(316) 284-6960 • Fax (316) 284-6967

### **SUPPORT OF HOUSE BILL 2630**

Mr. Chairman and members of the committee, I am Byron Motter, Sheriff of Harvey County. I wish to thank you for giving me the opportunity to address you today on House Bill 2630, which I support. In the past Harvey County as well as other counties in Kansas sought reimbursement for medical treatment it provided for prisoners in their custody. In 2000 we became aware of a Kansas Appeals Court case Haskell County Commissioners v. Sullivan that ended that practice. In the syllabus by the court it stated that absent a statute relating to reimbursement, a governmental agency is not entitled to seek reimbursement from a prisoner for cost of medical treatment received by the prisoner while in the agency's custody. When a determination has been made that the prisoner has no other resources, the prisoner's medical expense must be paid from the counties general fund.

I understand and agree if a prisoner requires medical treatment we must provide it, if that prisoner is indigent I understand the county is responsible for the payment of the treatment. What I do not agree with is the county can not seek reimbursement for that expense when the prisoner is returned to the community and may have other sources of income. Without this legislation the county is saddled with unlimited liability without recourse. Prisoners booked into jail are aware we are responsible for their medical and dental care, which they have neglected to address while in the community. But, once in jail that treatment in their mind is a medical emergency.

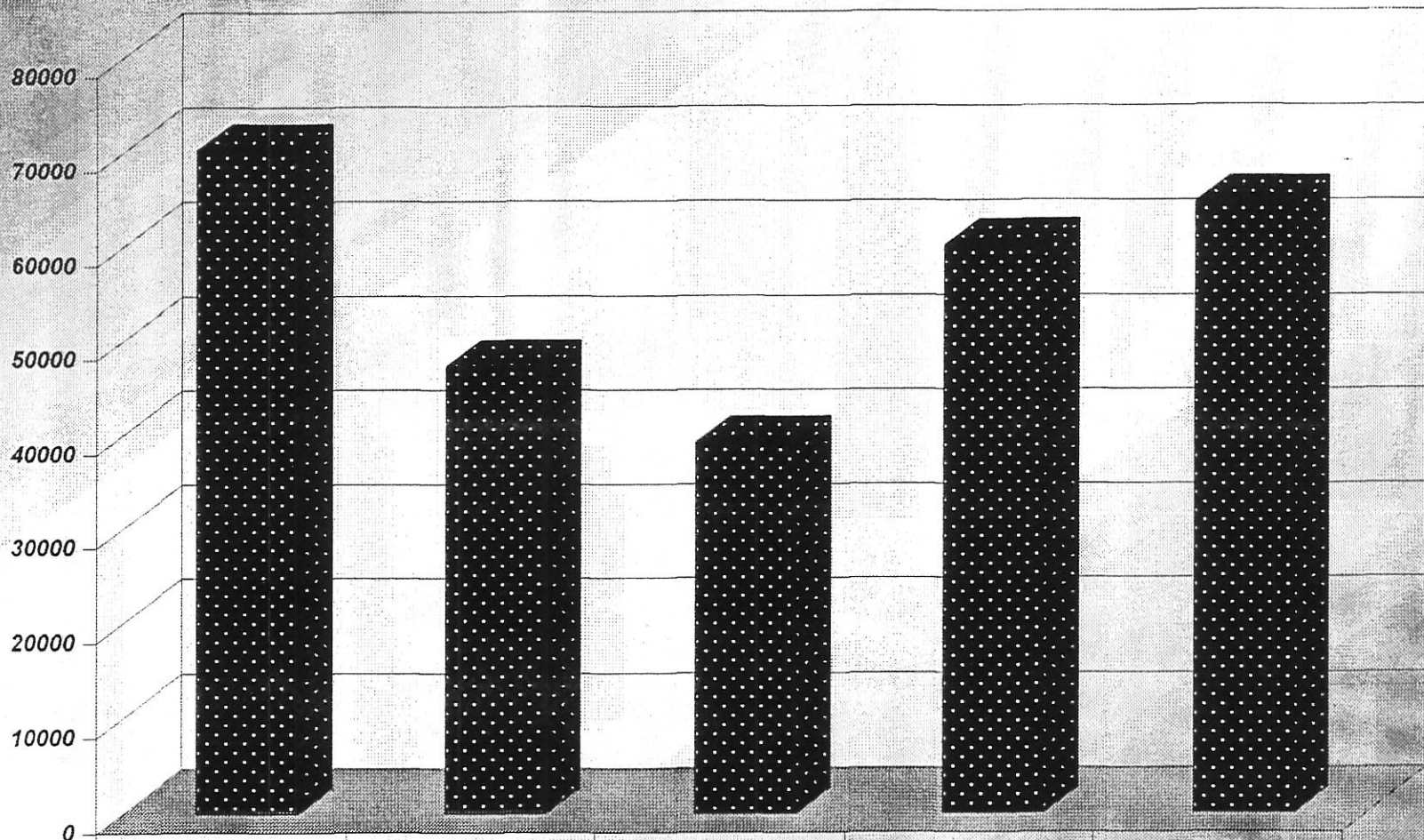
I believe this bill addresses the concerns of the appeals court in that a statute does not exist. I would appreciate your support of this bill. Thank you for your time and consideration.

Byron L. Motter  
Sheriff  
Harvey County, KS



Byron Motter

### Harvey County Detention Center Medical Expense



MEDICAL EXPENSE	70264	47267	39146	60000	64500
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\$281,177 in 5 years, Avg of \$56,235 a year



## GOVERNMENT RELATIONS

Sedgwick County Courthouse  
525 N. Main, Suite 365  
Wichita, KS 67203  
Phone: (316) 383-7552  
Fax: (316) 383-7946

Michael D. Pepoon  
Director

**TESTIMONY**  
**Before The House Judiciary Committee**  
**By Michael D. Pepoon, Director of Government Relations**  
**January 23, 2002**

Honorable Chairman O'Neal and members of the Committee, thank you for the opportunity to testify in support of Sub. H.B. 2630. This bill is intended to provide an opportunity for counties to seek reimbursement of medical expenses from inmates incarcerated in county jails. This proposed legislation is in response to several court decisions, most recently Haskell County Commissioners v. Sullivan, 27 Kan. App. 2d 852 (2000), as well as Attorney General opinions which stand for the proposition that absent statutory authority, a government agency is not entitled to reimbursement by an inmate for the costs associated with such incarceration.

I've attached for your review a summary of medical and dental costs incurred by the Sedgwick County Adult Detention Facility from 1996 to 2000 related to the housing of inmates. As you can readily see, the costs have almost doubled in a period of merely five years. In 2000 the total cost of medical and dental expenses for inmates exceeded \$2.5 million. This proposed legislation would allow counties to recoup some of these escalating costs in the event an indigent prisoner might later become financially able to pay a share of these costs. Why should the law-abiding taxpayers of Sedgwick County pay for a level of medical treatment and care for inmates (which some of these very citizens might not be eligible) with no opportunity to have such costs defrayed by the criminal?

For the above reasons Sedgwick County strongly supports legislation to provide for the reimbursement by prisoners to the County for the costs associated for their medical care.



Sedgwick County Sheriff's Dept

MEDICAL AND DENTAL SERVICES 1996 THROUGH 2000							
YEAR	AVG POP	MEDICAL CONTRACT	SUPPLIES	DRUGS	HOSPITAL COSTS	TOTAL COSTS	COST PER DAY PER INMATE***
1996	860	\$643,000.00	\$13,418.00	\$158,357.00	\$605,224.00*	\$1,419,999.00	\$2.60
1997	612	\$836,000.00	\$11,344.00	\$234,061.00	\$366,858.00	\$1,448,263.00	\$4.85
1998	638	\$894,000.00	\$14,509.00	\$178,367.00	\$290,133.00	\$1,377,009.00	\$4.67
1999	736	\$1,289,000.00	\$21,846.00	\$364,663.00	\$469,017.00	\$2,144,526.00	\$6.24
2000	1009	\$1,379,230.00	\$33,013.00	\$383,451.00	\$721,161.00**	\$2,516,855.00	\$4.88

\* \$291,522 gunshot wound  
 \$ 39,754 jumped out of window  
 \$ 13,496

\*\* \$ 12,000  
 \$112,332 chronic heart disease  
 \$ 10,991  
 \$ 14,509  
 \$ 17,433  
 \$ 10,321  
 \$17,112  
 \$14,330

\*\*\* Does not include hospital costs



THE OFFICE OF THE SHERIFF

## WILSON COUNTY

421 NORTH 7TH • FREDONIA, KANSAS 66736  
1-620-378-3622  
1-800-532-9054  
FAX # 1-620-378-4510

BUD HANDSHY  
SHERIFF

TONY ALBIN  
UNDERSHERIFF

January 23, 2002

To: Chairman and members of the House Judiciary

Thank you Mr. Chairman and members of the House Judiciary Committee for allowing me to speak on HB 2630. My name is Bud Handshy, I have been in law enforcement for over 27 years. As of January 8, 2001, I became the Sheriff of Wilson County, and have had 26 years experience with the Kansas Highway Patrol.

Medical expenses for prisoners have continue to soar throughout the years which results in increase in yearly taxes. Expenses, that are having to be paid for by the citizens of our counties.

This past November, I contacted the Kansas Sheriff's Association, the National Sheriff's Association and the Association of Missouri, Iowa, Nebraska, Arkansas, Texas, South Dakota and Colorado. During these conversations, I learned that this is not only a major problem for the state of Kansas but also a major problem that all of our states are having to deal with.

Twenty eight years ago we averaged maybe 3 inmates per week. We are now averaging 25-30 inmates per day with only a 16 bed jail. This is partly because of state mandated sentencing requiring longer terms in county jails and the increase in crime throughout the United States. Most terms were seldom more than 90 days, where as now 13 months are not uncommon.

Just in one year of serving our county, we have had incidents in which our medical expenses have come to over \$125,188.27. One incident alone came to \$68,113.63 in which an inmate in our custody became ill. He had a life threatening illness which forced us to spend on this alone. Another costly incident that came out of county general fund was \$29,336.80. Our dental expenses were \$5,921.00, other medical expenses including doctors visits, \$11,283.00, hospitalizations \$4,346.00 and prescriptions \$6,187.84 totaling \$125,188.27. This amount exceeds salaries of one of our departments.

And in summation, by coming here today, we hope to make a difference by requiring those people who prey upon our society to be held responsible for at least their own medical expenses, as we tax payers of Kansas must do. We realize this is not a solution, but an attempt that may help compensate our tax payers.

Thank you.

A handwritten signature in cursive script that reads "Bud Handshy".

Bud Handshy, Sheriff  
Wilson County Sheriff's Office  
Fredonia, Kansas

House Judiciary  
Attachment 5  
1-23-02

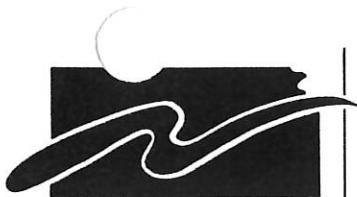
January 23, 2002

Inmate Medical Expenses From Sheriff's Offices in Southeast Kansas

ALLEN COUNTY:	\$72,000.00
ANDERSON COUNTY:	\$30,500.00
BOURBON COUNTY:	\$93,901.19
CHAUTAUQUA OCUNTY:	\$1,611.22
CHEROKEE COUNTY:	<del>-non available</del> \$ 134,653.25
CRAWFORD:	\$11,6793.00
ELK COUNTY:	-non available
GREENWOOD COUNTY:	\$30,000.00
LABETTE COUNTY:	\$45,000.00
MONTGOMERY COUNTY:	\$109,640.00
NEOSHO COUNTY:	\$15,000.00
LINN COUNTY:	\$16,363.59
LYON COUNTY:	-non available







**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

TESTIMONY  
House Judiciary Committee  
On  
HB 2630  
January 23, 2002

Thank you Chairman O'Neal and Members of the House Judiciary Committee for allowing me to speak today. I am Judy Moler, representing the Kansas Association of Counties. I am here today to voice support for HB 2630 on behalf of our member counties.

The Kansas Association of Counties adopted their platform at our Annual Meeting in November of 2001. Our number one state priority includes language that supports specific legislation that would allow counties to collect all medical and dental expenses for a prisoner while in a county jail. Increasingly, counties have been left paying for prisoner medical expenses that escalate in cost to the county. Chase County reports a recent medical bill for ONE prisoner of \$178, 000. Chase County is a county of less than 3000 people so this is a large bill for a small county to absorb. This issue will continue to be a problem for other counties as medical costs continue to soar.

The Kansas Association of Counties respectfully requests passage of HB 2630.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace  
Topeka, KS 66615  
785•272•2585  
Fax 785•272•3585  
email kac@ink.org

House Judiciary  
Attachment 6  
1-23-02

*Office of Sheriff*  
*Labette County*  
*718 5<sup>th</sup> Street*  
*Oswego, Kansas 67356*



*William C. Blundell*  
*Sheriff*

**Phones: Oswego (620)795-2565 Parsons (620)421-1400 Toll Free (800)247-4024 FAX (620)795-4664**

January 22, 2002

I send this letter in support for the passing of House Bill 2630 regarding the inmate medical expenses.

As I see the bill I believe the passage would greatly benefit counties all across the state of Kansas in recouping the expenses of inmates of the county jails. As some of you know persons taken into custody and held in the jails almost immediately develop a medical problem. We are bound to provide medical services to the inmates and most of you know that if the inmate was not incarcerated he or she would not have the medical problem treated.

During the past year (2001) my department alone spent a total of \$45,068, for a Nurse at the Jail, Office visits at the Physician Office, Dental Procedures, Mental Health visits, X-ray/Lab Procedures, Physician Prescriptions, and Mental Health Prescriptions.

This figure is 9.4% of my total jail operational budget for the year of 2001 at \$425,115. As you can see the funds if we are allowed to recoup from the inmate will make a large difference to the counties overall budget.

In closing, I would like to once again acknowledge my support for House Bill 2630.

Respectfully Submitted

William C. Blundell  
Labette County Sheriff

**Testimony to the  
House Judiciary Committee  
Regarding House Bill No. 2630  
By  
Mahlon Tuttle  
Kansas Legislative Policy Group  
January, 23, 2002**

Chairman O'Neal and Members of the House Judiciary Committee:

Kansas Legislative Policy Group (KLPG) is pleased to appear before you today in support of House Bill No. 2630. My name is Mahlon Tuttle and I am submitting written remarks today in behalf of KLPG. Kansas Legislative Policy Group is an organization consisting of 35 counties located in western Kansas. I serve as County Commissioner in Gove County and as President of Kansas Legislative Policy Group.

Like all units of government, counties are challenged by the necessity of providing the required services to our residents, within our limited and sometimes declining resources. The cost of these services is a steadily increasing part of county government budgets.

In these financial times our members are struggling to provide affordable healthcare coverage for our own county employees and in many cases requiring the employees to shoulder more and more of the financial cost. It only makes sense to permit counties an opportunity to attempt recovery of the costs associated with medical care provided to prisoners while in custody of the county.

Kansas Legislative Policy Group supports House Bill No. 2630 and we ask that you act favorably on this measure.

Thank you for your time and consideration of this matter.

KATHE LLOYD  
417 NORTHBRIDGE COURT  
CLAY CENTER, KANSAS 67432  
(785) 632-5989  
FAX 785-632-5989  
Email: lloydsk@kansas.net



TOPEKA

HOUSE OF  
REPRESENTATIVES

REPRESENTATIVE SIXTY-FOURTH DISTRICT  
CLAY, DICKINSON, GEARY,  
RILEY COUNTIES

STATE CAPITOL  
ROOM 182-W  
TOPEKA 66614-1504  
(785) 296-7637

COMMITTEE ASSIGNMENTS  
VICE-CHAIR K-12 EDUCATION  
MEMBER CORRECTIONS & JUVENILE  
JUSTICE  
JUDICIARY  
PUBLIC SAFETY BUDGET

CLAY COUNTY, KANSAS  
**OFFICE OF THE COUNTY ATTORNEY**

DOUGLAS F. MARTIN  
COUNTY ATTORNEY

2ND FLOOR COURTHOUSE  
P.O. BOX 134  
CLAY CENTER, KANSAS 67432

(785) 632-3226  
Fax (785) 632-2651

July 12, 2001

The Honorable Kathe Lloyd  
417 N. Ridge Court  
Clay Center, Ks. 67432

Dear Kathe:

A number of merchants in Clay County have asked me to request that you propose an amendment to revise K.S.A. 21-3707 regarding criminal worthless check cases.

Currently, a merchant gets only the amount of the check back in restitution, plus \$10.

The Legislature recently changed the civil statute to allow the merchant to get restitution in a civil case, plus \$30 for their time and expenses. However, that statute does not apply to criminal cases for worthless checks brought by my office.

I strongly encourage you to support amending K.S.A. 21-3707 so that a merchant will recover the cost of their check plus \$30, so that this statute will be equal with the civil recovery statutes.

In addition, the criminal statute, K.S.A. 21-3707 should be revised to allow merchants to send their "7 day letter" by regular U.S. mail instead of certified mail.

Please let me know if you have questions.

Very truly yours,

Douglas F. Martin  
Clay County Attorney

House Judiciary  
Attachment 9  
1-23-02



**60-2610. Civil liability for worthless check.** (a) If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection including but not limited to reasonable attorney fees, 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.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney 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.

(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 14 days before filing the civil action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and accrued interest; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded.

The written demand shall be sent by first class mail, 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. The written demand shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred service charge, court costs, accrued interest, the costs of collection, including but not limited to, reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check.

Notice required by subsection (b)(1) shall state the exact amount and date due, as well as an estimate of the amount that may be incurred if the amount demanded is not paid by the specified date.

(c) Subsequent to the filing of an action under this section but prior to the commencement of a dispositional hearing by the court, the defendant may tender to the plaintiff as satisfaction of the

claim, an amount of money equal to the sum of the amount of the check, the incurred service charge, accrued interest, the costs of collection including, but not limited to, reasonable attorney fees and court costs. The plaintiff shall include in the petition a statement alleging that the defendant may tender such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. For purposes of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (a)(1) and (2). For purposes of this subsection, a dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney 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.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney 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.

(e) Any amount previously paid as restitution or reparations to the holder of the check by or on behalf of its maker or drawer shall be credited

against the amount for which the maker or drawer is liable under subsection (a).

(f) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707, and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section.

(g) The service charge on a check which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of each check, order or draft in full upon its presentation, shall not exceed \$30.

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

(1) With intent to defraud or in payment for a preexisting debt; or

(2) Which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation; and

(3) for which the maker or drawer has not tendered to the holder's agent the amount of money demanded and within the time allowed by the demand required in subsection (b).

**History:** L. 1986, ch. 223, § 1; L. 1990, ch. 209, § 1; L. 1991, ch. 72, § 2; L. 1994, ch. 273, § 14; L. 1995, ch. 230, § 3; L. 1996, ch. 203, § 2; L. 2000, ch. 175, § 8; L. 2001, ch. 186, § 3; May 24.

**Law Review and Bar Journal References:**

"Are We Not Treating the Judiciary as the 'Ugly Duckling' of Government?" Ed Collister, 9 Kan. J.L. & Pub. Pol'y, No. 2, 302 (1999).

"1999 Legislative Wrap Up," Ron Smith, 68 J.K.B.A. No. 7, 16 (1999).

**Attorney General's Opinions:**

Giving worthless check; prima facie evidence of intent to defraud: demand for service charge. 94-141.

# 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](mailto:kcci@kansaschamber.org) • [www.kansaschamber.org](http://www.kansaschamber.org)

HB 2611

January 23, 2002

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Judiciary Committee

by

Marlee Carpenter  
Executive Director – Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am 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 2611.

Last session, legislation passed that made changes to the civil worthless check statute. We testified in favor of those changes and thank this Committee and the Legislature for making significant

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.

and beneficial changes to the worthless check statute. HB 2611 would make those changes in the criminal worthless check statute, making the two laws conform.

The bill makes two changes. First, the bill increases the worthless check service charge from \$10 to \$30. Secondly, the bill allows notice to be sent by first class mail instead of registered mail. These two changes mirror the changes made last session.

As we stated last session, worthless checks are a large problem for many retailers. In 1999, U.S. consumers wrote 68 billion checks of which 612 million personal checks bounced. These worthless checks totaled \$19.9 billion.

The number of checks written each year is increasing, as is the number of checks that bounce. Retailers lose millions of dollars each year processing and prosecuting bad check claims. Retailers do not recover their costs in many cases, which increases the cost of doing business. Retailers have no choice but to pass the costs of worthless checks to the consumers by increasing prices or decreasing services.

Thank you for your time today and we urge you to support HB 2611. I will be happy to answer any questions.





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HOUSE JUDICIARY COMMITTEE Jan. 23, 2002

**SUPPORTING HB 2611**

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

We would like to thank Repr. Lloyd for introducing HB 2611, which allows written notice to a writer of a worthless check to be sent by "first class mail" instead of restricted mail.

We believe HB 2611 will reduce the cost of trying to collect on a worthless check not only by reducing the mailing cost, but also eliminate the time involved going to the postal facility to use restricted mail for written "notice".

Last year this Committee, and the Legislature approved the service charge of \$30, and we appreciated that action. We respectfully request that you now recommend HB 2611 for passage.

Frances Kastner, Director  
Governmental Affairs KFSA

House Judiciary  
Attachment 11