

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 on the bad check. He is not

CONTINUATION SHEET

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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.