

## HOUSE BILL No. 2565

By Committee on Judiciary

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AN ACT concerning civil procedure; relating to worthless checks; amending K.S.A. 2003 Supp. 60-2610 and 60-2611 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 60-2610 is hereby amended to read as follows: 60-2610. (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

1 attorney fees unless the court otherwise orders, may be incurred by the  
2 maker or drawer of the check.

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

6 (c) Subsequent to the filing of an action under this section but prior  
7 to the commencement of a dispositional hearing by the court, the de-  
8 fendant may tender to the plaintiff as satisfaction of the claim, an amount  
9 of money equal to the sum of the amount of the check, the incurred  
10 service charge, accrued interest, the costs of collection including, but not  
11 limited to, reasonable attorney fees and court costs. The plaintiff shall  
12 include in the petition a statement alleging that the defendant may tender  
13 such amount as satisfaction of the claim as provided in this subsection. If  
14 the amount alleged in the petition is tendered to the plaintiff in full sat-  
15 isfaction of the debt prior to the commencement of the dispositional  
16 hearing by the court, the case shall be dismissed by the plaintiff. For  
17 purposes of this subsection only, the amount tendered as satisfaction of  
18 the claim shall not include triple damages or damages of \$100 as provided  
19 in subsections (a)(1) and (2). For purposes of this subsection, a dispo-  
20 sitional hearing means a trial or other hearing by the court in which the  
21 plaintiff is seeking the entry of judgment against the defendant. The court  
22 may waive all or part of the attorney fees provided for by this subsection,  
23 if the court finds that the ~~damages and other amounts awarded are~~  
24 *amount tendered* is sufficient to adequately compensate the holder of the  
25 check. In the event the court waives all or part of the attorney fees, the  
26 court shall make written findings of fact as to the specific reasons that  
27 the ~~amounts awarded are~~ *amount tendered* is sufficient to adequately  
28 compensate the holder of the check.

29 (d) If the trier of fact determines that the failure of the defendant to  
30 satisfy the dishonored check was due to economic hardship, the court  
31 may waive all or part of the damages provided for by this section, but the  
32 court shall render judgment against defendant for not less than the  
33 amount of the dishonored check, the incurred court costs, service charge,  
34 ~~costs of restricted mail~~ and the costs of collection, including but not lim-  
35 ited to reasonable attorney fees, unless otherwise provided in this sub-  
36 section. The court may waive all or part of the attorney fees provided for  
37 by this subsection, if the court finds that the damages and other amounts  
38 awarded are sufficient to adequately compensate the holder of the check.  
39 In the event the court waives all or part of the attorney fees, the court  
40 shall make written findings of fact as to the specific reasons that the  
41 amounts awarded are sufficient to adequately compensate the holder of  
42 the check.

43 (e) Any amount previously paid as restitution or reparations to the

1 holder of the check by or on behalf of its maker or drawer shall be cred-  
2 ited against the amount for which the maker or drawer is liable under  
3 subsection (a).

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

7 (g) The service charge on a check which is dishonored by the drawee  
8 because the maker or drawer had no deposits in or credits with the drawee  
9 or has not sufficient funds in, or credits with, the drawee for the payment  
10 of each check, order or draft in full upon its presentation, shall not exceed  
11 \$30.

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

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

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

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

25 Sec. 2. K.S.A. 2003 Supp. 60-2611 is hereby amended to read as  
26 follows: 60-2611. In any civil action to enforce payment of or to collect  
27 upon a check, order or draft on any bank, credit union, savings and loan  
28 association or depository for the payment of money or its equivalent,  
29 payment upon which such instrument has been refused because of in-  
30 sufficient funds or no account, the party prevailing on such cause of action  
31 shall be awarded reasonable attorney fees. Such fees shall be assessed by  
32 the court as costs against the losing party. The fees shall not be allowed  
33 unless the plaintiff offers proof during the trial of such action that prior  
34 to the filing of the petition in the action demand for payment of the check,  
35 order or draft had been made upon the defendant by ~~restricted~~ *first class*  
36 mail not less than 14 days prior to the filing of such suit.

37 Sec. 3. K.S.A. 2003 Supp. 60-2610 and 60-2611 are hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its  
39 publication in the statute book.

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