



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

July 18, 1986

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86-107

Robert A. Walsh  
Cloud County Attorney  
P.O. Box 394  
Cloud County Courthouse  
Concordia, Kansas 66901

Re: Procedure, Civil, For Limited Actions -- Small  
Claims Procedure -- 1986 House Bill Number 2849

Synopsis: The burden of proof in a small claims court proceeding is the same burden of proof in similar civil proceedings. The trial of all small claims shall be before the court, unless the judgment is appealed. The trial of an appeal is heard de novo and may be before a court or jury. Cited herein: 1986 House Bill No. 2849; K.S.A. 1985 Supp. 21-3707; K.S.A. 61-1716; 61-2701 et seq.; 61-2702; K.S.A. 1985 Supp. 61-2707; K.S.A. 61-2709.

\*

\*

\*

Dear Mr. Walsh:

As Cloud County Attorney, you request our opinion concerning 1986 House Bill No. 2849. Specifically, you are concerned with two issues. The first involves the burden of proof in a small claims proceeding. The second concerns the language of 1986 House Bill No. 2849, which refers to a trial by "court or jury," and whether this infers a right to a jury in a small claims proceeding.

House Bill No. 2849 states in part:

"New Section 1. (a) If a person gives a worthless check, as defined by K.S.A. 21-3707 and amendments thereto, the person shall be liable to the holder of the check for the amount of the check 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.

"(b) The amounts specified by subsection (a) shall be recoverable in a civil action . . . .

. . . .

"(d) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury 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 and service costs and the costs of collection, including but not limited to reasonable attorney fees.

. . . .

"(f) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707 and 21-3708, and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section."

"Sec. 2. K.S.A. 61-2703 is hereby amended to read as follows: 61-2703. As used in this act:

"(a) 'Small claim' means a claim for the recovery of money or personal property, where the amount claimed or the value of the property sought does not exceed ~~five hundred dollars (\$500)~~ \$500, exclusive of interest and, costs and any damages awarded pursuant to section 1." (Emphasis added)

1986 House Bill No. 2849 incorporates K.S.A. 1985 Supp. 21-3707 by reference for the purpose of defining the prohibited act of giving a worthless check. The Bill states that the provided remedies shall be "recoverable in a civil action." 1986 House Bill No. 2849, §1(b). New Section 1(f) expressly refers to criminal proceedings as separate from the small claims civil proceedings that 1986 House Bill No. 2849 addresses. Finally, Section 2 of the bill clearly indicates that New Section 1 is a small claims proceeding.

A small claims proceeding is a civil action. K.S.A. 61-2701 et seq. K.S.A. 61-2702 states:

"This act shall apply to and be an alternative procedure for the processing of small claims pursuant to the code of civil procedure for limited actions, and the provisions of this act shall be part of and supplemental to the code of civil procedure for limited actions, and any acts amendatory thereof or supplemental thereto. Except as otherwise specifically provided or where a different or contrary provision is included in this act, the code of civil procedure for limited actions shall be applicable to the processing of small claims and judgments under this act." (Emphasis added.)

The burden of proof in a small claims proceeding is thus the same burden of proof in similar civil proceedings for limited actions. In our opinion, a reference to a definition found in criminal procedure statutes does not alter the burden of proof in this civil proceeding.

Turning now to your question regarding whether 1986 House Bill No. 2849 creates a right to a jury trial at the small claims level, we note two relevant statutes. K.S.A. 61-2707(a) states in part:

"The trial of all actions shall be by the court, and no party in any such action shall be represented by an attorney prior to judgment."

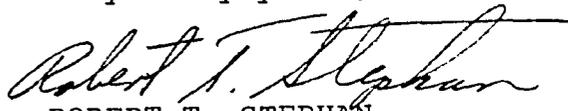
Further, K.S.A. 61-2709(a) states in part:

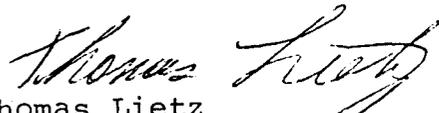
"An appeal may be taken from any judgment under the small claims procedure act . . . . All appeals shall be tried and determined de novo before a district judge or associate district judge, other than the judge from which the appeal is taken. The provisions of K.S.A. 60-2001 and 61-1716, and amendments thereto, shall be applicable to actions appealed pursuant to this subsection."

K.S.A. 61-1716 provides for a trial by jury for limited actions if such is demanded by one of the parties. K.S.A. 61-1716, 61-2707 and 61-2709 were not amended or repealed by 1986 House Bill No. 2849. In our opinion, therefore, small claims trials, including those initiated pursuant to 1986 House Bill No. 2849, shall be to the court; the bill's reference to a jury in section 1(d) relates to the district court's de novo jurisdiction on appeal.

In conclusion, the burden of proof in a small claims court proceeding is the same burden of proof in similar civil proceedings. The trial of all small claims shall be before the court, unless the judgment is appealed. The trial of an appeal is heard de novo and may be before a court or jury.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Thomas Lietz  
Assistant Attorney General