

**SENATE BILL NO. 2257**

Introduced by

Senators Trenbeath, Lyson, Traynor

Representatives Delmore, Hawken, Klemin

1 A BILL for an Act to provide for a bad check diversion program established by the supreme  
2 court.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act, unless the context requires otherwise:

- 5 1. "Bad check" means an instrument issued in violation of section 6-08-16, 6-08-16.1,  
6 or 6-08-16.2.
- 7 2. "Offender" means a person charged with, or for whom probable cause exists to  
8 charge the person with, violation of section of 6-08-16, 6-08-16.1, or 6-08-16.2.
- 9 3. "Restitution" means all amounts payable to a victim of a bad check under the bad  
10 check diversion program, including the amount of the instrument and any victim  
11 financial transaction fees payable to a victim as provided under section 6 of this  
12 Act.

13 **SECTION 2. Bad check diversion program.** The supreme court may established a  
14 bad check diversion program, the purpose of which is to provide a system through which  
15 offenders may agree to participate in the program instead of undergoing prosecution. If the  
16 supreme court contracts with a private entity to perform any services in operating the program,  
17 the entity shall operate under the supervision, direction, and control of the supreme court. A  
18 private entity providing services under this Act is not a collection agency for purposes of chapter  
19 13-05.

20 **SECTION 3. Participation guidelines.**

- 21 1. The supreme court shall establish guidelines regarding whether a referred offender  
22 is appropriate for acceptance into the program. In establishing the guidelines, the  
23 supreme court may consult with a private entity. The guidelines may include  
24 consideration of the following factors:

- 1 a. The amount of the check that was drawn or passed;
  - 2 b. Prior referrals of the offender to the program;
  - 3 c. Whether other charges of bad checks are pending against the offender;
  - 4 d. The evidence presented to the state's attorney or supreme court regarding the
  - 5 facts and circumstances of the incident;
  - 6 e. The offender's criminal history; and
  - 7 f. The reason the check was dishonored by the financial institution.
- 8 2. An offender may not be considered for participation in the bad check diversion
  - 9 program unless the offender has been referred by a state's attorney.

10 **SECTION 4. Terms.**

- 11 1. The bad check diversion program may require an offender to do one or more of the
  - 12 following:
  - 13 a. Pay for and successfully complete an educational class approved by the
  - 14 supreme court.
  - 15 b. Make full restitution for the offense.
  - 16 c. Pay a per check administrative fee as set forth in this Act.
  - 17 d. Pay fees the victim has been assessed by the financial institution for
  - 18 attempting to process the bad check.
  - 19 e. Pay actual mail fees, actual certified mail fees, actual address search, and
  - 20 actual name search fees to locate the offender for serving notices or
  - 21 otherwise contacting the offender in relation to the bad check.
- 22 2. If a state's attorney diverts an offender to the program, the state's attorney shall
  - 23 agree not to prosecute the offender if the offender successfully completes the
  - 24 program.

25 **SECTION 5. Release of information.**

- 26 1. A financial institution shall release the information specified under this subsection
- 27 to any law enforcement representative or state's attorney who certifies in writing
- 28 the individual is investigating or prosecuting a complaint under this Act against the
- 29 offender.

- 1           2. A financial institution shall release, at no cost, the information requested under this  
2           section within ten days of the date of request made to the financial institution, the  
3           following information as the information applies to the offender's account:
- 4           a. Documents relating to the opening of the account by the offender and the  
5           closing of the account;
- 6           b. Notices regarding nonsufficient funds, overdrafts, and the dishonor of any  
7           check drawn on the account within a period of six months of the date request;
- 8           c. Periodic statements mailed to the offender by the financial institution for the  
9           periods immediately before, during, and after the issuance of any bad check  
10          that is the subject of the investigation or prosecution; and
- 11          d. The last-known home and business addresses and telephone numbers of the  
12          offender.
- 13          3. The financial institution shall release all of the information required under this  
14          section within ten days after receipt of a request conforming to all of the provisions  
15          of this section. A financial institution is not liable in a criminal or civil proceeding for  
16          releasing information in accordance with this section.

17          **SECTION 6. Fees.**

- 18          1. The supreme court may recover a fee from an offender referred to the bad check  
19          diversion program. The supreme court may require that the fee be paid directly to  
20          a private entity that administers the program. The supreme court or a private entity  
21          may accept recovery and restitution fees via credit card, debit card, money order,  
22          certified check, automated clearinghouse fund transfer, electronic fund transfer, or  
23          preauthorized check.
- 24          2. The amount of the fees charged under this program may not exceed the collection  
25          fees or costs allowed under sections 6-08-16 and 6-08-16.2 as an administration  
26          fee for each bad check; eighty-five dollars assessed educational class fees; actual  
27          victim financial transaction fees; actual certified mail fees; actual address search;  
28          and actual name search fees. The supreme court may increase the fees allowed  
29          under this section if the increase is justified by a cost study showing that the fees  
30          allowed by this section are not sufficient to cover the cost of providing the service.

- 1           3. The program may allow for a waiver of fees based upon a showing of economic  
2           hardship and may allow for an extended payment plan not to exceed twelve  
3           months from the written date on the face of the bad check or the first date of  
4           contact.

5           **SECTION 7. Private entity.**

- 6           1. If the supreme court contracts with a private entity, the private entity shall maintain  
7           adequate insurance, financial accounting controls, and fund disbursement  
8           procedures that have been approved by the supreme court.
- 9           2. In addition to any terms agreed upon by the parties, the supreme court may cancel  
10          a contract entered with a private entity under this Act for any of the following  
11          causes:
- 12          a. Conviction of the private entity or the principals of the private entity of any  
13          felony; misdemeanor, an essential element of which is dishonesty; or crime  
14          that directly relates to the practice of the profession.
- 15          b. Using or threatening to use force or violence to cause physical harm to an  
16          offender, an offender's family, or an offender's property.
- 17          c. Threatening the seizure, attachment, or sale of an offender's property if that  
18          action may be taken only pursuant to court order unless it is disclosed that  
19          prior court proceedings are required.
- 20          d. Disclosing or threatening to disclose information adversely affecting an  
21          offender's reputation for creditworthiness, with knowledge the information is  
22          false.
- 23          e. Communicating with the offender or any member of the offender's family at  
24          such a time of day or night and with such frequency as to constitute  
25          harassment of the offender or any member of the offender's family.
- 26          f. Threatening publication, or publication, of a list of offenders who allegedly  
27          refuse to pay restitution, except as authorized by law.
- 28          g. Disclosing or threatening to disclose information relating to an offender's case  
29          to any other person, except the victim and appropriate law enforcement  
30          personnel.

- 1           h. Using any badge, uniform, or other indicia of any governmental agency or  
2           official, except as authorized by the supreme court.
- 3           i. Recovering or attempting to recover any excess fee unless expressly  
4           authorized by the supreme court.
- 5           j. Communicating or threatening to communicate with an offender if the private  
6           entity has been informed in writing by an attorney that the attorney represents  
7           the offender concerning the claim, unless authorized by the attorney. If the  
8           attorney fails to respond within a reasonable period of time, the private entity  
9           may communicate with the offender.
- 10          k. Engaging in dishonorable, unethical, or unprofessional conduct of a character  
11          likely to deceive, defraud, or harm the public.