

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2265

2001 SENATE JUDICIARY

SB 2265

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2265

Senate Judiciary Committee

Conference Committee

Hearing Date February 5th, 2001

Tape Number	Side A	Side B	Meter #
1	x		0,0-24.4
3	x		26.1 - 45.2

Committee Clerk Signature

Minutes: **Senator Traynor** closed the hearing on SB 2265: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 2 OF SECTION 6-08-16 AND SUBSECTION 4 OF SECTION 6-08-16.2 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE CIVIL PENALTY FOR ISSUING A BAD CHECK OR DRAFT.

Senator Tim Flakoll, representing district 44, testifies in support of SB 2265. (testimony attached)

Senator Watne, if you wrote a 25 dollar check, you could be fined 100 dollars?

Senator Flakoll, yes.

Senator Trenbeath, that isn't correct. It would not be 100 dollars, the penalty would be 77 dollars.

Senator Watne, if the check is 5, 000, there is only a limit of 500 dollars.

Senator Flakoll, that is correct.

Page 2

**Senate Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date February 5th, 2001**

Senator Nelson, You say intentionally here, I don't see anything here that takes it intentionally or not intentionally. What about the little old lady who writes a bad check for ten dollars? Its going to cost her 200 dollars now instead of maybe thirty.

Senator Flakoll, burden of proof would be astronomical. The people who purposely write bad checks is the one we're after, not the little old lady. There is a large deal of paper work to get money back. The people who write bad checks do it all the time, and know they have closed accounts.

Senator Traynor, what's track record of the present law?

Senator Flakoll, I don't know.

Senator Trenbeath, how does this work on recovering the civil penalty? How does the collection work civilly, do you know?

Senator Flakoll, I don't know.

Mike Lefor, legislative director for ND collection agency, testifies in support of SB 2265.
(testimony attached)

Senator Traynor, ND is behind the times in regard to collecting?

Mike Lefor, problem is because of court costs, there is no enforcement. Most states have penalties.

Senator Traynor, bring action against someone who wrote an MSI check you can bring other creditors together.

Mike Lefor, yes.

Senator Watne, the present law on page 2, line 3-4. If our finding fees are \$80 dollars. Where does this twenty dollars come from?

Mike Lefor, service fees for collection agencies.

Page 3
Senate Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date February 5th, 2001

Senator Trenbeath, is the situation now that criminal action restitution is ordered. When businesses give MSF checks to the state.

Mike Lefor, yes.

Senator Trenbeath, this industry is changing so rapidly, should we change this to civil situation by decriminalizing it?

Mike Lefor, no. Most people are good people who are bad book keepers. The ones we are after are the ones who know they have no account and still write checks.

Senator Lyson, my problem is why don't we do the criminal thing. Why bother trying to collect.

Mike Lefor, the courts are overly burdened.

Senator Lyson, I think they are, the percentage of bad check writers are bad book keepers.

Senator Dever, aren't these a small claims matter?

Mike Lefor, a small claims court doesn't have enforcement power.

Senator Dever, aren't these small amounts?

Mike Lefor, yes. If you want enforcement power it must be from a district court.

Senator Nelson, I thought I heard that this bill doesn't go after people who write checks under 100 dollars. But yet they are going to get nailed the most percentage wise. I look down here and see that checks for 5,000 dollars get fined 10 percent. That's a better deal than those who pay a loan. It's cheaper.

Mike Lefor, this is an extreme case. 80 % of checks will be collected without having to do this. Most agencies try to collect money by 42 days.

Senator Bercier, will this increase collection agency fees?

Mike Lefor, yes.

Page 4

**Senate Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date February 5th, 2001**

Senator Bercler, what is the percentage per area you receive, then go after?

Mike Lefor, this is the first time I've seen this.

Senator Trenbeath, what would be the level of check so it would be up to three times the amount and not over 500 dollars.

Mike Lefor, it would be better than current law.

Senator Dever, what is the success rate?

Mike Lefor, it is slightly higher in Montana by a percentage point or two.

Galen Highley, small business owner from Fargo, concerned with apathy of pursuing MSF checks and closed checks. Customer wrote a bad check for 180 dollars. I couldn't get my money. I believe they do it intentionally, and they know they can get away with it.

Senator Lyson, do you know what the rate of arrests in other parts of ND. your generalizing.

Galen Highley, yes and no.

Senator Traynor closed the hearing on SB 2265.

SENATOR TRENBEATH MOTIONED TO AMEND SB 2265, SECONDED BY SENATOR LYSON. VOTE INDICATED 6 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SECOND MOTION WAS MADE BY SENATOR TRENBEATH TO DO PASS AS AMENDED, SECONDED BY SENATOR LYSON. VOTE INDICATED 6 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH VOLUNTEERED TO CARRY THE BILL.

Date: 2/5
Roll Call Vote #: (

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2265**

Senate Judiciary Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend ¶ 1.2c 19, 20, 21 on pg. 1; line 8+9 pg. 2.

Motion Made By Trebleath Seconded By Lysan

Total (Yes) 6 No 0

Absent /

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/5
Roll Call Vote #: 2

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2265**

Senate Judiciary Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended.

Motion Made By Trenouth Seconded By Lyon

Total (Yes) 6 No 0

Absent _____ /

Floor Assignment Trebleath

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2265: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2265 was placed on the Sixth order on the calendar.

Page 1, line 19, overstrike the second "the", remove "greater", and overstrike "of one hundred"

Page 1, line 20, overstrike "dollars or" and Insert Immediately thereafter "up to" and remove "except this penalty may not"

Page 1, line 21, remove "exceed the value of the instrument by more than five hundred dollars"

Page 2, line 8, overstrike the third "the", remove "greater", and overstrike "of one hundred dollars or" and insert Immediately thereafter "up to"

Page 2, line 9, remove ", except this penalty may not exceed the value"

Page 2, line 10, remove "of the instrument by more than five hundred dollars"

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2265

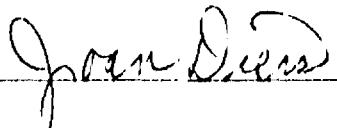
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2265

House Judiciary Committee

Conference Committee

Hearing Date 03-06-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	4991 to 6218
TAPE II	x		01 to 4214
Committee Clerk Signature			

Minutes: Chairman DeKrey opened the hearing on SB 2265. Relating to the civil penalty for issuing a bad check or draft.

Senator Lyson: Rep. dist 1. This bill was amended in the Senate and at best I'm neutral.

Rep Delmore: Do you know how nigh the dollar amount could be with the three times the amount.

Senator Lyson: If it is 25 dollar check it would be 75 dollars.

Rep Delmore: And after that.

: Sen Flakoll District 44, (see attached testimony)

Rep Onstad: Across the state, what do you think the average amount is.

Senator Flakoll: It is hard to say.

Vice Chr Kretschmar: Isn't the current law working.

Senator Flakoll: No, it is not.

Rep Delmore: As I read this bill, there is also an aggregate total.

Page 2

House Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date 03-06-01

Senator Flakoll: Up to three times the amount.

Rep Delmore: It could be that amount.

Senator Flakoll: That is why it was changed, because the smaller type checks are where the problem comes in.

Rep Delmore: With the aggregate total, could come up to a big amount.

Senator Falkoll: Certainly.

Rep Mahoney: You can currently have the lesser of 100 dollars or three times the amount of the instrument.

Senator Flakoll: The lesser of the two.

Rep Mahoney: Is that fee being collected under current law. Is the current law being used.

Senator Flakoll: He responds with the lesser of two, so for 25 bad check they can only get their 25 dollars, in the current law.

Rep Mahoney: If the lesser is one hundred or three times the amount of the instrument, that is current law.

Rep Mahoney: Have any of the businesses been using the current law. And have they been successful.

Senator Flakoll: Small amounts gain a lot less interest when it comes to collecting.

Rep Mahoney: I worked on this a couple of sessions ago, trying to make smaller checks an infraction, so they were easier to prosecute, then we increased the penalties, we have been all over the mat with this.

Rep Klemin: I don't know what kind of activity there is on civil action, trying to collect on small checks. It is probably an exercise in futility.

Page 3

House Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date 03-06-01

Senator Flakoll: There are certain individuals I would spend \$500.00 on to collect.

Rep Klemin: You can do all of that right now.

Rep Maragos: In the previous statute, \$100.00 is the most you can collect. Now we have struck that to say that we can get three times. Is that where the penalty comes in.

Senator Flakoll: I believe so. I would not be opposed to putting a cap on the bill and your committee could so amend.

Chairman DeKrey: This is the third session in a row that this committee has heard about bad checks. If memory serves me right, it was an infraction so be made it a class B and now they came back and made it an infraction, we have tried it every way. It seems that the biggest problem comes out of Ward and Cass County.

Rep Delmore: It was there if they wanted to use it, people were just not going after it in the way that they could.

Senator Falkoll: The total amount of sales tax incurred in those two counties alone, would be substantial

Rep Grande: Can't we just resolve this.

Senator Flakoll: Makes a comment.

Rep Maragos: Makes a comment.

Chairman DeKrey: Are there any further questions, if no thank you for appearing.

Mike Lefor: North Dakota Credit Services, I have been in the collection business for about 25 years. I run a collection agency in Dickinson. We have clients in North Dakota and Montana. I am here to speak in favor of SB 2265. He explains his position on bad checks using examples.

This bill would hopefully send a message to bad check writers. My company does not take civil action lightly. We only do this when the client won't work with us.

Rep Delmore: What is the amount of most of these checks.

Mike Lefor: Most of the checks are for \$25.00 or less.

Rep Delmore: What is the average collection fee.

Mike Lefor: We charge \$20.00 service fee. Explains the difference between the check recovery fee and a bad check collection fee.

Rep Delmore: You would accept the collection if there were a series of checks.

Mike Lefor: Correct.

Rep Mahoney: Can you tell me what is going on in Montana.

Mike Lefor: I see a small increase in civil action.

Rep Mahoney: Wouldn't you agree that the problem out there, is all the small checks.

Mike Lefor: Correct.

Rep Mahoney: The current civil penalty , you don't see that being used.

Mike Lefor: I don't.

Rep Klemin: I see this bill as an increase cost, attorneys, filing fees, and going to court. This really only applies to checks that are big enough to justify the expense.

Mike Lefor: Yes, we review on a case by case basis, because if the person has a great credit report and has a bad check, if they refuse to work with us, we will garnish their wage. If they write a lot of bad checks, we may bundle them together and sue for more.

Rep Delmore: That number of checks that are bad would have to be written to the same place.

Mike Lefor: I don't believe so, I think we can lump them and sue once for a number of clients.

Page 5
House Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date 03-06-01

Rep Klemin: You can have multiple claims in a law suit.

Chairman DeKrey: What is the start date, what is the end date. Gives an example.

Rep Klemin: What is the statute of limitations, it is six years.

Rep Delmore: Fifteen businesses, we could do multiple filings.

Rep Klemin: One lawsuit with fifteen complaints against one person.

Chairman DeKrey: That would be done for two hundred dollars.

Rep Mahoney: There is confusion on lumping on lumping, have you gone after anyone in a civil penalty.

Mike Lefor: Very little.

Rep Mahoney: I am not sure that on a civil penalty you can take ten checks and go for three times the amount of the checks.

Mike Lefor: Correct.

Chairman DeKrey: Rep Mahoney, you wrote the current law, any further questions, thank you, anyone else wishing to appear in support.

Dave Knutson: Manager of a Credit Bureau of Bismarck, his testimony was on the number of checks and the recovery rate. He told the committee that he set up accounts for ninety nine checks ranging from 2.93 to 12,000.00. He explained that group law suits are done by assignment and gives the ability to sue, make a judgment and do an asset search for recovery.

Rep Delmore: When the average amount is 20 to 25 dollars how this will help and are most offenders, repeat offenders.

Dave Knutson: You hit the nail right on the head.

Rep Mahoney: I am wondering what is Cass Counties policy.

Page 6
House Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date 03-06-01

Dave Knutson: Cass County States Attorney doesn't want bad checks.

Rep Mahoney: Do they have a dollar amount.

Dave Knutson: Not that I am aware of. This bill will send a message to the people writing bad checks.

Rep Wrangham: With the increase of the use of debt accounts, do you see the problem of lesing with bad checks.

Dave Knutson: With electronic banking having grown, the amount of bad checks has gone up.

Chairman DeKrey: People use the electronic card and if that doesn't work then they write a check.

Dave Knutson: Businesses are going to a new system with checks. He give an example in detail.

Rep Klemin: Where are you getting your figures from that you quoted earlier in your testimony.

Dave Knutson: Gives the figures again and where he got his figures from.

Rep Klemin: Where did you get those figures.

Dave Knutson: FDIC.\

Rep Klemin: If that is a national figure, we may or may not be in that number.

Dave Knutson: FDIC is none by district.

Rep Klemin: We also have to comply with the Fair Debt Collection Practices Act.

Dave Knutson: Explains the notice that is required under that act.

Rep Onstad: If this bill passes, what will help with the tribal issue.

Dave Knutson: That is another world. There is an attempt to obey the law. Explains further how they try to work with them.

Rep Delmore: Gives an example of an honest error, how would this effect that.

Page 7

House Judiciary Committee
Bill/Resolution Number SB 2265
Hearing Date 03-06-01

Dave Knutson: We try to work with them, we ask them to call the bank and have the bank call us to notify that it is an error, we do not charge for bank error.

Rep Delmore: This would be the policy of most of the collection agencies.

Dave Knutson: It is our policy, we try to do the right thing, we are reasonable people.

Chairma DeKrey: Gives a personal story.

Dave Knutson: If it is an honest mistake, we are not after honest people.

Rep Disrud: The part I am not understanding, where is the business responsible for not taking the check.

Dave Knutson: I think the business has the right to say we will not take your check. What they are trying to do is make it more convenient for you. What the scanner does is check the data base in the store, it is not state wide data base.

Rep Disrud: Now the law is that you have to show your ID.

Dave Knutson: That is the States Attorney equipment. It is becoming less convenient to write a check.

Chairman DeKrey: Are there any further questions, if not thank you for appearing, is there anyone else wishing to testify, in opposition or neutral.

Tim Karsky: Assistant Commissioner for the Department of Banking, we have direct supervisory authority over charter banks, credit unions, collection agencies, small loan companies and money brokers and anyone that mentions the word interest. There are a couple things that we would like to bring to your attention, there is a companion bill SB 2190, that would change the 25 dollar collection fee.

Chairman DeKrey: The senate passed two bills.

Page 8

House Judiciary Committee

Bill/Resolution Number SB 2265

Hearing Date 03-06-01

Tim Karsky: One just dealt with the fee on returned checks and then we also took out the word that covers the civil action, explained some other items that were changed. He explained the bill further.

Rep Maragos: Could the banks become collection agencies, could they make the amount three times the amount.

Tim Karsky: They have the same right to sue if the bank is the holder.

Rep Klemin: The penalty is up to three times the amount, the court may not necessarily give that amount.

Tim Karsky: That's right.

Rep Klemin: You are entitled to claim that amount, but not always awarded that amount.

Tim Karsky: You are correct.

Chairman DeKrey: Are there any further questions, thank you for appearing, anyone else wishing to testify for, against, or neutral. We are going to close the hearing on SB 2265.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2265b

House Judiciary Committee

Conference Committee

Hearing Date 03-13-01

Tape Number	Side A	Side B	Meter #
TAPE I		X	3360 to 4240

Committee Clerk Signature *J. van Diers*

Minutes: Chairman DeKrey called the committee to order on SB 2265.

COMMITTEE ACTION

Chairman DeKrey: let's take up SB 2265.

DISCUSSION

Chairman DeKrey: what are your wishes. Rep Maragos moved an amendment that would put a cap of \$500.00 on the bill, seconded by Rep Delmore.

DISCUSSION

Voice vote on the amendments, motion carries. We have SB 2265 before us, what are your wishes. Rep Mahoney moved a DO PASS as amend, seconded by Rep Maragos. The clerk will call the roll on a DO PASS as amend. The motion passes with a vote of 12 YES, 1 NO and 2 ABSENT. Carrier Rep Maragos.

VR
3/13/01

HOUSE AMENDMENTS TO ENGRAVED SB 2265 HOUSE JUDICIARY 03-14-01
Page 1, line 19, remove the overstrike over "the lesser of", after "one" insert "five", remove the overstrike over "hundred dollars or"

Page 1, line 20, remove "up to"

HOUSE AMENDMENTS TO ENGRAVED SB 2265 HOUSE JUDICIARY 03-14-01
Page 2, line 6, remove the overstrike over "the lesser of", after "one" insert "five", remove the overstrike over "hundred dollars or", and remove "up to"

Renumber accordingly

Date: 03-13-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-226S

House JUDICIARY Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amend

Motion Made By Rep Mahoney Seconded By Rep Maragos

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham		✓			

Total (Yes) 12 No 1

Absent 2

Floor Assignment Rep Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2265, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2265 was placed on the Sixth order on the calendar.

Page 1, line 19, remove the overstrike over "~~the lesser of~~", after "one" insert "five", remove the overstrike over "~~hundred dollars or~~"

Page 1, line 20, remove "up to"

Page 2, line 6, remove the overstrike over "~~the lesser of~~", after "one" insert "five", remove the overstrike over "~~hundred dollars or~~", and remove "up to"

Renumber accordingly

2001 SENATE JUDICIARY
CONFERENCE COMMITTEE

SB 2265

Date: 4/02/01

Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 7165**

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number

Action Taken Amend to \$200 on line 6 pg. 2 line 14 pg. 1 Senate Acade

Motion Made By Rep. Mahaney Seconded By Rep. Kretschmer

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

REPORT OF CONFERENCE COMMITTEE

SB 2265, as engrossed: Your conference committee (Sens. Trenbeath, Lyson, C. Nelson and Reps. Kretschmar, Mahoney, Brekke) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 854, adopt amendments as follows, and place SB 2265 on the Seventh order:

That the House recede from its amendments as printed on page 854 of the Senate Journal and page 913 of the House Journal and that Engrossed Senate Bill No. 2265 be amended as follows:

Page 1, line 19, remove the overstrike over "~~the lesser of~~", after "one" insert "two", and remove the overstrike over "~~hundred dollars or~~"

Page 1, line 20, remove "up to"

Page 2, line 6, remove the overstrike over "~~the lesser of~~", after "one" insert "two", remove the overstrike over "~~hundred dollars or~~", and remove "up to"

Renumber accordingly

Engrossed SB 2265 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2265

SB 2265 -> -> Bad check or draft Penalty
January 5, 2001 Sen. Tim Flakoll

Chairman Traynor and members of the Senate Judiciary Committee. For the record my name is Senator Tim Flakoll of District 44 in Bargo.

SB 2265 is a pro business bill that differentiates a criminal penalty to those who write bad checks and or drafts with insufficient funds.

This problem has a tremendous negative impact on businesses and communities of all sizes. There is no doubt that businesses across the state lose many, many more dollars to these type of offenders than are ever lost to robbery.

A typical business will budget ½ of one percent annually for bad debt which includes bad checks. That is a significant amount. If we were to apply that percentage to the current State's general fund appropriation of \$1.7 billion it would translate to \$8,500,000 per biennium.

Current law does not have enough teeth in it to discourage would be perpetrators. The bill before you increases the penalty and replaces current law in Montana.

Please note that there is a cap on the penalty of \$500 per instrument.

Examples of limits are:

A check of \$25.00 would have a limit of \$100.00 (due to minimum limit)

A check of \$33.33 would have a limit of \$100.00

A check of \$50.00 would have a limit of \$150.00

A check of \$150.00 would have a limit of \$450.00

A check of \$1000.00 would have a limit of \$1,500.00

A check of \$5,000.00 would have a limit of \$5,500.00

It is time that we get tougher on those who intentionally abuse the system. With today's programs of [redacted] on our tolerance needs swing toward protecting our businesses. Too many people are writing checks on closed accounts and State's Attorneys have little incentive to have aggressive actions in the matter.

SB 2265 will go a long way toward discouraging those who abuse the system. I would be happy to stand for any questions you may have.

must state that the issuer is required to pay the value of the check, draft, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of \$100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than \$500.

(4) The remedy provided by subsection (3) is available only if:

- (a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and
- (b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

- (a) may be pursued notwithstanding the provisions of 27-1-312;
- (b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and
- (c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

Mont. Code § 32-5-407 (1999) - Attorney fees – bad check charge

(1) If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of \$25 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason.

STATUTE OF LIMITATIONS

Note: The applicability of statutes of limitations vary from state-to-state and from case to case depending on the cause of action in the lawsuit. We have listed one here which may apply to check actions. It is a part of the state's UCC regarding actions on negotiable instruments. Check with your own legal counsel to determine which, if either, is applicable to a given case and specific facts of the case.

SB 2265 -> -> Bad check or draft Penalty >>> Prairie Room
March 6, 2001 Sen. Tim Flakoll

Chairman DeKrey and members of the House Judiciary Committee. For the record my name is Senator Tim Flakoll of District 44 in Fargo.

SB 2265 is a pro business bill that stiffens the potential penalty to those who write bad checks and or drafts with insufficient funds.

This problem has a tremendous negative impact on businesses and communities of all sizes. There is no doubt that businesses across the state lose many, many times more dollars to these type of offenders than are ever lost to robbery.

A typical business will budget $\frac{1}{2}$ of one percent annually for bad debt which includes bad checks. That is a significant amount. If we were to apply that percentage to the current State's general fund appropriation of \$1.7 billion it would translate to \$8,500,000 per biennium.

Current law does not have enough teeth in it to discourage would be perpetrators. The bill before you increases the penalty and reflects the wishes of businesses across the state.

The bill was modified in the senate to reduce the financial penalty of those who write small checks and have them bounce. So on a \$10.00 check, the engrossed bill now would have a penalty of up to \$30 rather than the \$100 as proposed in the original bill.

It is time that we get tougher on those who intentionally abuse the system. With today's programs of overdraft protection our tolerance needs swing toward protecting our businesses. Too many people are writing checks on closed accounts and State's Attorneys have little incentive to have aggressive actions in the matter.

SB 2265 will go a long way toward discouraging those who abuse the system. I would be happy to stand for any questions you may have.

Senate Judiciary Committee
Hearing on SB 2265
Testimony of Mike Lefor

mlefor@dcicredit.com

Good morning, Chairman DeKrey and members of the House Judiciary Committee, my name is Mike Lefor. I manage a collection agency in Dickinson, we have clients in North Dakota and Montana. I am here to speak in favor of SB 2265.

Each month, North Dakota businesses take checks for good and services. And every month, ten of thousands of these checks are returned to these businesses for non sufficient funds. Nearly all businesses in North Dakota accept checks in payment for goods and services.

However, when a check is returned to the business with non sufficient funds, the business is forced to begin efforts to collect the returned check. This process is time consuming and an effort which very few businesses have the expertise or the time necessary to do a credible job.

This forces the business to list the check with a collection agency for collection or the states attorney for prosecution. Either of those options takes time and also many of those checks are never collected.

Collection agencies will attempt to collect returned checks for the service fee which is allowed by North Dakota law, however, if the individual refuses to pay the check the alternative is prosecution or attempting to collect through civil action. With the cost of a district court judgment at \$80.00, and with attorney fees and the cost of the service, it does not make it feasible for us or North Dakota businesses to attempt to collect through civil action.

SB 2265 Testimony
Page 2

SB 2265 would make it feasible (in some cases) for businesses to attempt civil action against the individual. For example, if a person wrote a check for \$75.00, would you attempt civil action, for \$75.00, probably not, however, if you can attempt civil action on three times the amount of the check, or \$225.00 you might. This could also send a message to checkwriters, hopefully, not to write an NSF check. However, if they do, they will realize they need to work with the business to pay the check to avoid civil action.

Collection agencies do not take civil action lightly. My company will take civil action if we believe the individual has the ability to pay and refuses to do so or, if they have assets, we might obtain a judgment to protect our clients interests. We would only do so if the individual refuses to work with us.

We are reasonable people looking for a satisfactory solution, short of that, sometimes we are left with no other alternative but for civil action. This bill is very similar to the Montana statute which does allow for collecting three times the amount of the check or \$100 whichever is greater. As I said, it does make some progress in allowing for agencies and businesses to take civil action on some checks.

Thank you for your consideration.