

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	A		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.

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Senate Judiciary Committee
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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.

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 with out having to do this. Most agencies try to collect money by 42 days.

Senator Bercler, will this increase collection agency fees?

Mike Lefor, yes.

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Senate Judiciary Committee

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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 line 19, 20, 21 on pg. 1; line 8+9 pg. 2.

Motion Made By Trenbeath Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.		
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 6 No 0

Absent 1

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 Trenbeath Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.		
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Trenbeath

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 <i>Joan Deere</i>			

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

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

Rep Delmore: Do you know how high 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.

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 Flakoll: 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.

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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 Klemm: 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.

