

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2370

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2370

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2370

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
1	x		40.6 to end
1		x	0 to 19.4
FEB. 07 3	x		18.8 to 30
MAR. 28 1	x		7.2 to 12.3
Committee Clerk Signature <i>Donis E. Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2370 relating to licensing businesses to allow currency exchange services and to amend and reenact sections of the ND century code relating to the licensing of businesses under the Consumer Finance Act.

SENATOR GARY NELSON, District 22. Cosponsor, introduced the bill. The bill relates to the ability of merchants to cash checks. Drafting put it in the wrong section of the code, placed it in lending instead of check cashing. Some amendments will be proposed. The primary intent is check cashing nothing else.

DARYN KAPAUN, small business owner. In favor of this bill. The purpose of this bill is to allow check cashing for a fee to places other than banks. Written testimony attached.

SENATOR ESPEGARD: Fiscal note mentions loans, will you be lending?

D KAPAUN: No, loans are not in our intent.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2370

Hearing Date January 29, 2001.

SENATOR MUTCH: Section 11 would allow you to make loans.

D KAPAUN: That is wrong, our only intent is to be able to cash checks for a fee.

SENATOR MUTCH:: The bill needs amendments to clean this up.

PARRELL D. GROSSMAN, Attorney General's Office. Neutral. Our primary concern is the loans section. We ask that this bill be significantly amended to exclude loans. We do not oppose check cashing.

SENATOR MUTCH: Another concern would be the amount of money charged for cashing checks.

P GROSSMAN: Yes.

GARY PRESZLER: Commissioner, Dept. of Banking and Financial Institutions, opposes this bill because it would allow check cashers to make loans. Written testimony attached.

SENATOR KREBSBACH: Right now it is illegal for a merchant to cash a check and charge a fee?

G. PRESZLER: Yes, without a fee it is allowable.

Hearing concluded. Committee recommended work on the amendment to clean up the bill.

Feb. 07/01 (Tape 3-A- 18.8 to 30) Committee reconvened, all members present except

SENATOR KLEIN.

KEN TUPA, ND PAWNBROKERS ASSN., introduced amendments discussed with attorney general's office and prepared by the legislative council, which in effect will replace the bill. It makes very clear that loans are not to be made, addresses the issue of postdated checks and adds a penalty.

Discussion held.

SENATOR KREBSBACH: Motion to adopt amendment. SENATOR D. MATHERN: Seconded

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2370

Hearing Date ~~January 29, 2001~~

2-7-01

Roll call vote 6 yes; 0 no; 1 absent not voting (SENATOR KLEIN).

SENATOR KREBSBACH: Motion: do pass as amended. SENATOR ESPEGARD: Seconded.

Roll call vote: 6 yes; 0 no; 1 absent. Carrier: SENATOR KREBSBACH

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2370

Hearing Date ~~January 29, 2001~~

March 28/01 Tape 1-A-7.2 to 12.3

Committee reconvened. All members present. Committee studied and discussed House amendments.

Senator Krebsbach: Ken Tupa worked with the sponsors and he agrees with the amendments, what they are doing is setting limits.

Senator Espegard: Motion to concur. **Senator Krebsbach:** Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Krebsbach.**

FISCAL NOTE

Requested by Legislative Council
02/09/2001

Bill/Resolution No.:

Amendment to: SB 2370

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		\$0
Expenditures				\$0		\$0
Appropriations				\$0		\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2370, as engrossed, has no fiscal impact on the Department of Banking and Financial Institutions.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Gary D. Preszler	Agency:	Dept. of Banking and Financial Institutions
Phone Number:	328-9933	Date Prepared:	02/12/2001

FISCAL NOTE

Requested by Legislative Council

01/26/2001

Bill/Resolution No.: SB 2370

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$49,120		\$34,720
Expenditures				\$141,008		\$141,008
Appropriations				\$141,008		\$141,008

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Revenue will be generated by the number of license fees, investigation fees, and examination fees collected from licensees. The Department anticipates licensing approximately 53 companies as check cashers and anticipates approximately 20 of those will also offer loans.

Expenditures will consist of the cost to add an FTE to the Department to handle licensing, examinations, and investigate complaints. Additional expenditures will be travel involved in examining and investigating these companies.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

REVENUE

\$200 annual license fee- 53	\$21,200
\$300 Investigation fee- 53	\$15,900
Exam hours- 320	\$12,021
TOTAL REVENUE	\$49,121

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Expenses

Salary/Benefits \$97,176

General Operating \$10,088

Travel \$7,200

Legal hours \$10,523

Exam hours 320 \$12,021

Total Operating \$39,832

Equipment \$4,000 (every 4 years per IT Plan)

TOTAL EXPENSES \$141,008

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The Department would need an appropriation of \$141,008 in order to administer and enforce the requirements of this statute. The expenditures exceed revenue by \$91,887

Name:	Gary D. Preszler	Agency:	Dept. of Banking and Financial Institutions
Phone Number:	328-9933	Date Prepared:	01/24/2001

February 7, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2370

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for authorization of currency exchange businesses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Currency exchange - Penalty.

1. A nonbanking institution may engage in the business of a currency exchange if:
 - a. The institution does not contract with another person to manage the currency exchange business; however, this does not prohibit the business from employing individuals to operate a currency exchange business;
 - b. The institution displays in a prominent manner on the premises of the business the fees charged to exchange currency;
 - c. The maximum fees charged to exchange currency are limited to any direct cost of verification fees and:
 - (1) The greater of ten percent of the face amount or five dollars, for cashing a draft, personal check, traveler's check, or money order;
 - (2) The greater of five percent of the face amount or five dollars, for cashing a payment instrument such as a payroll check;
 - (3) The greater of six percent of the face amount or five dollars, for cashing a payment instrument such as a payroll check, without identification;
 - (4) The greater of three percent of the face amount or five dollars, for cashing a state public assistance check or a federal social security check; and
 - (5) The greater of four percent of the face amount or five dollars, for cashing a state public assistance check or a federal social security check, without proof of identification;
 - d. The institution does not accept money or currency for deposit or act as bailee or agent of persons to hold money or currency in escrow for others for any purpose; and
 - e. The institution does not exchange currency on the premises of a charitable gaming site.
2. For purposes of this section, "currency exchange" means cashing a check, draft, money order, or traveler's check or issuing a money order or traveler's check as an agent for another, for a fee. The term does not include providing these services incidental to a primary business if there is not a charge for cashing a check or draft.

3. This section does not authorize a business to make any type of loan, including a deferred presentment service transaction, payday loan, cash advance, payday cash advance, or motor vehicle title loan.
4. A nonbanking institution may not accept a postdated check in a currency exchange transaction.
5. A person violating this section is guilty of a class B misdemeanor."

Renumber accordingly

Date: 2/07/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2370

Senate Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt amendments

Motion Made By Sen Krebsbach Seconded By Sen Mathern

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	A		Senator Mathern	✓	
Senator Espegard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment S. Krebsbach

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

To eliminate loans, address past related checks issues to add a penalty

REPORT OF STANDING COMMITTEE

SB 2370: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2370 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for authorization of currency exchange businesses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 - (1) The greater of ten percent of the face amount or five dollars, for cashing a draft, personal check, traveler's check, or money order;
 - (2) The greater of five percent of the face amount or five dollars, for cashing a payment instrument such as a payroll check;
 - (3) The greater of six percent of the face amount or five dollars, for cashing a payment instrument such as a payroll check, without identification;
 - (4) The greater of three percent of the face amount or five dollars, for cashing a state public assistance check or a federal social security check; and
 - (5) The greater of four percent of the face amount or five dollars, for cashing a state public assistance check or a federal social security check, without proof of identification;
 - d. The institution does not accept money or currency for deposit or act as ballee or agent of persons to hold money or currency in escrow for others for any purpose; and
 - e. The institution does not exchange currency on the premises of a charitable gaming site.
2. For purposes of this section, "currency exchange" means cashing a check, draft, money order, or traveler's check or issuing a money order or traveler's check as an agent for another, for a fee. The term does not

include providing these services incidental to a primary business if there is not a charge for cashing a check or draft.

3. This section does not authorize a business to make any type of loan, including a deferred presentment service transaction, payday loan, cash advance, payday cash advance, or motor vehicle title loan.
4. A nonbanking institution may not accept a postdated check in a currency exchange transaction.
5. A person violating this section is guilty of a class B misdemeanor."

Renumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2370

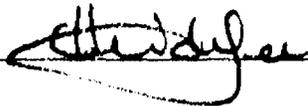
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2370

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 6, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-22.6
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Chairman Berg: Open the hearing on SB 2370.

Ken Tupa: *ND Pawnbrokers Assoc. Written testimony in favor of bill.*

Rep Ekstrom: My concern is the rate that will be charged. Do you have a feeling for what these may be?

Tupa: The fees that are listed in this legislation are similar to those for instance in Montana, that's where those fees came from.

Chairman Berg: Page 1, subsection 3 on line 17-18. It says 6% or \$5 for cashing the greater of payroll check without identification.

Tupa: The language was taking from Minnesota's law. That would reflect that without identification there's an assumed greater risk of cashing that check.

Rep Kasper: Line 13-14 where you say 10% per travelers check or money order. Where do you see the higher risk for that?

Tupa: I don't know that there would be a greater risk.

Chairman Berg: We're not really that concerned with what the pay structure is, it's just that we needed a fee structure put in here.

Tupa: It's more or less perimeters, currently there are businesses out there, mostly grocery stores and convenience stores that are doing this, that are cashing checks and charging a fee and currently it's not legal to do so. There is a demand for those services all we're doing is setting some perimeters and then operating with in those perimeters and then if anyone is going to violate those there's penalties for doing so.

Chairman Berg: If there's any question about how those fees should be structured that's not the primary concern we have.

Rep. Ekstrom: The idea of anybody walking along the street and finds an \$800 payroll check if a cashier is willing to take it with no id, he's going to be more than happy to spend the \$48 to get that check. Wouldn't your liability increase? He's obviously passing a bad check to you, you will never see him again.

Tupa: You make a good point, again I think when cashing a check it's probably going to follow the same verification procedures as any written personal check. I don't think the intent here is to accept anything that comes through the door and cash it.

Rep Severson: Do you have a problem if we were to amend out #3? The problem we have in most of our retail establishments is if we don't take proper identification and it is a bad check, we

have no where to go, the State's Attorney's won't touch it. Do you care if we were to amend that out?

Tupa: No, we're fine with that. What we have here is just modeled after Minnesota, we're just looking to set those perimeters.

Rep Koppang: Check cashing is an endangered species with all the debit cards, credit cards, direct deposit, the paper less society and so on.

Tupa: I think eventually you're probably right however right now there is a demand for it.

Jay Couture: *Pres. Of the ND Pawnbrokers Assoc. Written testimony in favor.*

Rep Lemieux: If someone comes to you to pay off something they pawned with a payroll check can you take that as a payment?

Couture: It depends on how big the check is, I don't like to stockpile a lot of cash. I would work with the individual to see what we can work out.

Rep Lemieux: What kind of fees do you think would be a fair fee?

Couture: I've never charged a fee. I don't know how this could grow. I won't cash a check unless I say an id and knew who I was dealing with. I believe payroll checks would be more secure, \$5 or 5% fee would be fair. Personal checks, if I get a good code from the check verification, I don't know what would be fair maybe 10%. I have customers that have been charged as high as 25%.

Rep Severson: Do you really feel that there is a need for all these fees?

Couture: I'm not interested in making this a big part of my business but other businesses may need some incentive to provide this service.

Rep Froseth: I think this is going to be confusing to anyone that's going to cash or accept the check. There are so many different fees that apply.

Couture: I personally feel there should be a fee for personal checks and a fee for payroll type checks.

Vice-Chairman Keiser: What are the rules for banking institutions?

Gary Preszler: *Banking Commissioner* For banking institutions there are no limitations, they removed those and so it's up to the individual bank. Typically they'll charge a fee to cover the cost of the phone calls to call the makers of the checks bank to pay that check.

Rep. Lemieux: Do most banks typically charge a fee to cash checks that are written on there bank?

Preszler: If you don't have an account at the bank, it varies from bank to bank but I think the answer is no they would not. As long as there's sufficient money's in the account it is to come out of the bank has the duty and responsibility to pay it.

Rep. Lemieux: What are some of the normal fee structures on ND for cashing government checks, etc.?

Preszler: I believe that the federal law requires that the bank has to offer an account for those receiving government checks. If you don't have an account there is probably a minimal fee but I don't think very many banks charge anything because there is very minimal risk of a loss.

Vice-Chairman Keiser: We'll close the hearing on SB 2370.

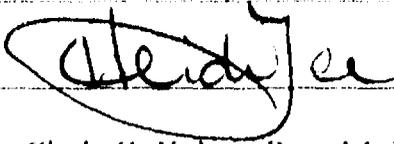
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2370(B)

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
1		X	36.2-52.5
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep. Ruby: Provided amendments and explained.

Rep. Severson: This has to be posted as per business, up to 5% or \$5.

Rep. M. Klein: Does this replace the previous amendment?

Chairman Berg: No, it includes those also.

Rep. Froelich: Why two different systems?

Rep. Severson: This just protects the lesser fixed income people more.

Rep. Froseth: There is a lower risk for state checks so a lower percentage is safe.

Rep. M. Klein: I move the amendments.

Rep. Pietsch: I second.

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2370
Hearing Date March 12, 2001

Rep. M. Klein: I move a do pass as amended.

Rep. Ruby: I second.

12 yea, 3 nay, 0 absent Carrier Rep. Ruby

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2370(C)

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 20, 2001

Tape Number	Side A	Side B	Meter #
1	X		50.4-56.9
Committee Clerk Signature <i>Deidra</i>			

Minutes: Chairman R. Berg, Vice-Chair G. Kelsor, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Ruby: We need to reconsider the amendments to adjust the language in SB 2370. I move.

Rep N. Johnson: Second.

Rep Ruby: I move to adopt these amendments.

Rep Severson: I second.

Rep Froseth: I move a do pass as amended.

Rep N. Johnson: I second.

13 yea, 2 nay, 0 absent

Carrier Rep Ruby

PROPOSED AMENDMENTS TO SB 2370

Page 1, line 13, replace "The greater of ten" with "Up to five"

Page 1, line 14, after "personal check," insert "payroll check."

Page 1, remove lines 15 through 18

Page 1, line 19, replace "The greater of" with "Up to"

Page 1, remove lines 22 through 24

Renumber accordingly

Date: 3/12/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2370

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By M. Klein Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓	✓	Rep. Jim Kasper	✓	✓
Vice-Chairman George Keiser	✓	✓	Rep. Matthew M. Klein	✓	✓
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	✓
Rep. Rod Froelich		✓	Rep. Doug Lemieux		✓
Rep. Glen Froseth	✓	✓	Rep. Bill Pietsch	✓	✓
Rep. Roxanne Jensen	✓	✓	Rep. Dan Ruby	✓	✓
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	✓
			Rep. Elwood Thorpe		✓

Total (Yes) 12 No 3

Absent 0

Floor Assignment Rep Ruby

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

PROPOSED AMENDMENTS TO SB 2370

Page 1, line 13, replace "ten" with "five"

Page 1, line 14, after "personal check," insert "payroll check." and after the semicolon insert "and"

Page 1, remove lines 15 through 18

Page 1, line 19, replace "(4)" with "(2)"

Page 1, line 20, replace "; and" with a period

Page 1, remove lines 22 through 24

Renumber accordingly

Date: 3-20-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2370

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended.

Motion Made By Froseth Seconded By N. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux		✓
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe		✓

Total (Yes) 13 No 2

Absent 0

Floor Assignment Rep Ruby

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

REPORT OF STANDING COMMITTEE (410)
March 21, 2001 8:23 a.m.

Module No: HR-49-6206
Carrier: Ruby
Insert LC: 10316.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2370, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2370 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "ten" with "five"

Page 1, line 14, after the first "check" Insert ", payroll check" and after the semicolon Insert "and"

Page 1, remove lines 15 through 18

Page 1, line 19, replace "(4)" with "(2)"

Page 1, line 21, remove "and"

Page 1, remove lines 22 through 24

Renumber accordingly

2001 TESTIMONY

SB 2370

Introduction

I want to introduce myself, I am Daryn Kapaun and I own two small businesses in North Dakota. It came to my attention while cashing checks, a small part of my business, that I was not allowed to do this – that is why I am here. I hope to see this bill passed and be able to continue with my normal operations. A NDCC that was written in 1890 is at the heart of why I would like to see this bill passed.

The NDCC 6-02-01, passed in 1890, 110 years ago, was written during a time when everyday transactions were seldom done using a check – now most everyday transactions can and are done with the use of a check. The century code makes provisions only for banks to cash checks...however for the last 22 years that I have had a checking account and probably for the last 20 years some of you have had checking accounts you have cashed a check somewhere other than the bank. For instance, have you ever bought gas at a convenience store and at the last minute thought you needed an extra \$10 dollars? You just wrote your check for \$10 over the amount and got your cash! How about when you were at the grocery store and needed an extra \$50 cash – if you knew the grocer you were probably able to write your check for \$50 over the amount. Also, bars and non-profit gaming will cash checks. In each case the merchant was "cashing a check". It is standard practice at many grocery stores in the Fargo area to cash a check without the purchase of groceries for a nominal fee. I give these examples only to suggest that the bill I support merely reflects the financial transactions that are done today; while acknowledging that parameters need to be placed on those businesses that wish to continue cashing checks, including myself. Businesses that cash checks are often referred to as Checking Cashing Outlets or CCOs.

I. What is a CCO? And what service does it supply?

- check-cashing outlets (CCOs)
- Much of the information I will be giving is from John P. Caskey's book *Fringe Banking* – basically an economic study of the need for banking alternatives and the role they play in today's society. I have found the information he presents to be true in North Dakota as well.
- "CCOs provide a simple service. A customer endorses a third party check payable to the customer (generally paycheck or government benefit check) and presents that to the CCO for cash. The CCO pays less than full face value of the check; this discount is the CCOs fee for the check-cashing service."

II. Why are CCOs needed? -

- **Most have longer open hours than do banks**
- **Usually a CCO can process the check cashing transaction more quickly than a bank**
- **But MOST IMPORTANTLY.... CCOs are willing to assume the risk that the check they cash will bounce, banks are not. Banks generally refuse to cash checks drawn on other banks for non-depositors (those who do not have an account with them), even government checks with little default risk. Banks will cash checks for depositors, but most banks require the customer either to maintain sufficient funds in an account to cover the check or to wait a few days for the check to clear. If the check the bank cashes bounces and the customer's account contains sufficient funds to cover it, the account is docked for the amount of the check. Many banks also charge the customer a fee for handling a "returned" deposit.**

This is straight from John Caskey's book and does sum up the check-cashing business.

"A useful way to think of the check-cashing business is to view it as "unbundling" the payment and savings services offered by banks. Banks provide payment services, such as check cashing and checkwriting privileges, to customers who maintain deposits -- and almost exclusively to these customers. In this sense, banks' payment services in other words (check cashing) are bundled with their savings services in other words (savings accounts and checking accounts); the payment services (check cashing) cannot be purchased separately. CCOs separate these two services, offering check cashing unlinked to any other savings services—again, savings account or checking accounts.

Banks can cover part or all of the cost of the payment services they offer depositors by paying artificially low interest rates on customers' deposit accounts. CCOs, on the other hand, must charge a set fee for the payment services they provide. The fee is intended to provide the CCO owner with a profit after covering expenses, which include personnel and insurance costs as well as bank service fees and the cost of maintaining a storefront. Moreover, because the check casher advances funds on checks that must subsequently be cleared through the banking system, CCOs incur interest expenses on the funds

advanced and run the risk that some cashed checks will be uncollectible because of insufficient funds or fraud.

Some of the reasons why my customers choose to cash a check with me include the following—

- **They don't have an account at a bank and therefore can't get the check cashed at a bank.**
- **Some need the money from a check immediately and don't want to wait for the check to clear the bank**
- **The check may be drawn on a bank account from out of state, so they can't get a bank to cash it without an account**
- **The customer has just moved here – or is temporarily living here**
- **Some say it is more convenient and quicker at my store to cash a check**
- **Some of our customers just feel more comfortable in my store than in a bank**

As long as the fee for cashing a check at a CCO is clearly posted, I believe that people should have the right to choose where they cash a check. That is what this bill supports.

TESTIMONY FOR SENATE BILL NO. 2370

Senate Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions in opposition of Senate Bill No. 2370.

Check cashing is considered one of three core banking functions that defines a bank, and consequently check cashing activity can only be conducted with specific legislative authority.

Senate Bill No. 2370 places the responsibility on the Department to issue licenses, conduct examinations and enforce the provisions of the Consumer Finance Act for check cashing and sale of checks. Although I am not opposed to legislative authority to allow check cashing, I am opposed to allowing check cashiers to make loans for the following reasons:

1. With the passage of this bill, the issuance of a Consumer Finance License will allow a check cashing service to make loans up to \$35,000. Some states have allowed "payday" lenders to conduct activity under already existing check cashing authority. Those states that have taken that position regard the holding and possible depositing of a post-dated check as in substance the cashing of a check if the loan is not paid. I do not share that position, as instead I

support the Federal Reserve Board's position that a payday loan is a loan. Further, if SB No. 2370 allows for the making of a payday loan then HB No. 1273 will be in conflict with SB No. 2370.

The proponents have not discussed this bill or the intent of this bill with me prior to its last minute introduction. I suspect that the intent of the bill may also be to allow for the making of "title" loans. Title loans are predatory in nature as the loans strip the borrower of any equity in a vehicle through the making short-term (30-day) high interest (300-420 APR) rate loans. I am strongly opposed to any authorization for title lending.

2. The Department believes that a number of grocery and convenience store locations are currently cashing checks for a fee. Senate Bill No. 2370 will require that they must all be licensed. Some may not be allowed to continue due to the one-half mile restriction in the bill. We are estimating over 50 licenses that will be issued as a result of SB No. 2370. But the bigger question is, whom are we protecting?
3. Section 15 of SB No. 2370 requires the Department to not issue a license if the location is within ½ mile of another license. This places the Department in a position of likely having to hire a land surveyor.

One of the regulatory concerns with check cashing activity might be if a check payee is overcharged a check-cashing fee. Another regulatory concern might be cases of fraudulent cashing of stolen checks. Traveler's check and money order issuers also may have claims against a currency exchange in the case of stolen instruments. The Department should not be placed in a position of having to adjudicate these types of claims, which requires handwriting analysis and having to determine whether any party has been harmed.

Currently, consumer finance companies must be examined at least every 30 months. An examination of a consumer finance license is appropriate for small loan activity and ensures compliance with lending restrictions.

It is my recommendation that if the legislature wants to authorize check-cashing activity it should be allowed without the need to issue a license. Alternatively, should the legislature choose to require a license before check cashing is authorized it should be done solely as check cashing by including it in a separate chapter in the Code rather than combining check cashing with consumer finance lending activity.

FISCAL NOTE

The Department fiscal note is estimating as many as 53 licenses issued statewide. The Fiscal note requests an additional FTE to administer and investigate license applications and to conduct the mandatory examinations. The

FTE is in addition to the FTE already requested under the Department's appropriation request, SB No. 2008, and an FTE included in the Fiscal Note for HB No. 1273, the payday lending bill.

Since the Department is a fully self-supporting agency, the \$92,000 revenue shortfall can only be made up in one of two ways:

1. Increase the license fee for check cashing sufficient to cover expenses;
2. Reduce the transfer from the Department Regulatory Fund to the general fund by \$91,887. The Office of Management and Budget has suggested a transfer of \$300,000 to the general fund.

Thank you.

SB 2370
Testimony before the House IB&L Committee
Presented by the
ND Pawnbrokers Association

Chairman Berg and members of the House Industry Business and Labor Committee:

My name is Ken Tupa. I am a registered lobbyist for the ND Pawnbrokers Association and appear before you today to ask for your favorable recommendation of SB 2370.

SB 2370, which authorizes the cashing of checks, drafts, money orders, or traveler's checks for a fee, was introduced to allow non-banking institutions to conduct such activities.

Because check cashing is considered one of three core banking functions, businesses currently may not cash a check for a fee, though they may cash a check. Check cashing law- was written at a time when everyday transactions were seldom done using a check - now most everyday transactions can and are done with the use of a check.

Initially, SB 2370, which defines "currency exchange" as the cashing of a check for a fee, addressed licensing those businesses wishing to charge a fee. In order to license these businesses, it would have required the Department of Banking and Financial Institutions to do so as well as conduct examinations of those businesses and enforce the provisions of the Consumer Finance Act. This would have meant that even your local grocery store and convenience store would have to be licensed to cash a check for fee. At the request of the Department of Banking, SB 2370 was amended in the Senate IB&L Committee to allow non-banking businesses to cash a check for a fee without the need of license. Additionally, specific language was added at the request of the AG's Office to prohibit accepting a postdated check. Consequently, the current bill before you reflects the striking of most of the original bill language without affecting the intent of the legislation.

Some of the benefits of currency exchange services include:

- Longer hours than banks
- Can process the check cashing transaction more quickly
- Currency exchange businesses are willing to assume the risk of cashing checks. Banks generally refuse to cash checks drawn on other banks for non-depositors. Banks will cash checks for depositors, but most banks require the customer to maintain sufficient funds in the account to cover the check or to wait a few days for the check to clear. If the check the bank cashes bounces and the customer's account contains sufficient funds to cover it, the account is generally charged for the amount of the check. Many banks also charge the customer a fee for handling a returned check.

Some of the reasons customers use currency exchange services include:

- Customer does not have an account at a bank and cannot cash the check
- Customer needs the money immediately and cannot wait for the check to clear the bank
- The check may be drawn on another bank or an account from out of state so a bank may not cash the check
- The customer has recently relocated to the area and does not have a bank account

Some of you may be aware of grocery stores and convenience stores currently cashing checks for a fee, therefore SB 2370 reflects financial transactions that are being done today, while acknowledging parameters need to be placed on those businesses that wish to continue to cash checks for a fee, parameters addressed in this bill and similar to our surrounding states.

Mr. Chairman and members of the committee:

Thank you for the opportunity to testify before you this morning. I ask for your favorable recommendation of SB 2370. I will be happy to answer any questions the Committee may have.