

**SENATE BILL NO. 2364**

Introduced by

Senator G. Nelson

1 A BILL for an Act to create and enact a new section to chapter 41-03 and a new subsection to  
2 section 41-03-42 of the North Dakota Century Code, relating to liabilities associated with the  
3 use of electronic funds transfer facilities; and to amend and reenact subdivision g of  
4 subsection 1 of section 41-03-03 of the North Dakota Century Code, relating to the care  
5 required of banks in accepting deposits from electronic funds transfer facilities.

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

7 **SECTION 1. AMENDMENT.** Subdivision g of subsection 1 of section 41-03-03 of the  
8 North Dakota Century Code is amended and reenacted as follows:

- 9 g. "Ordinary care" in the case of a person engaged in business means  
10 observance of reasonable commercial standards prevailing in the area in  
11 which that person is located with respect to the business in which that person  
12 is engaged. In the case of a bank that takes an instrument for process or  
13 collection or payment by or through an electronic funds transfer facility, the  
14 prevailing area in which that bank is located is the area within fifty miles  
15 [80.47 kilometers] of the electronic funds transfer facility where the transaction  
16 took place rather than where the instrument is processed. In the case of a  
17 bank that takes an instrument for processing for collection or payment by  
18 automated means, reasonable commercial standards do not require the bank  
19 to examine the instrument if the failure to examine does not violate the bank's  
20 prescribed procedures and the bank's procedures do not vary unreasonably  
21 from general banking usage not disapproved by this chapter or chapter 41-04.  
22 Processing an instrument for collection or payment by automated means does  
23 not include handling the instrument through an electronic funds transfer  
24 facility.

1           **SECTION 2.** A new section to chapter 41-03 of the North Dakota Century Code is  
2 created and enacted as follows:

3           **Electronic funds transfer facilities - Bank liability.** If a bank accepts an instrument  
4 by a bank through an electronic funds transfer facility, the accepting bank shall verify that the  
5 person endorsing the instrument and depositing the instrument into an account through an  
6 electronic funds transfer facility is authorized to endorse the instrument and authorized to  
7 deposit that instrument in the particular account. If the bank determines the person depositing  
8 the instrument is not authorized to endorse or deposit the instrument, the bank is negligent for  
9 accepting the instrument through the electronic funds transfer facility.

10          **SECTION 3.** A new subsection to section 41-03-42 of the North Dakota Century Code  
11 is created and enacted as follows:

12           Notwithstanding any provision of law, a person who pays an instrument or takes an  
13 instrument for value or for collection through an electronic funds transfer facility  
14 may not raise any provision under this section as a defense against an employer.