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DESCRIPTION

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La Costa Rickford
Operator's Signature

10/15/03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2044

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Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2044

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 01-13-03

Tape Number	Side A	Side B	Meter #
1	xx		0-1725
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes:

All Senators were present. Chairman Mutch opened the hearing on SB 2044 relating to the collection of restitution for insufficient funds checks; and to provide for a continuing appropriation.

Testimony in support of SB 2044

Vonnette Richter of the Legislative Council introduced the bill on behalf of the Judiciary A committee. See attached testimony. Rep. Larry Klemin spoke in support of the bill. He said that most of the NSF checks are small and this bill would provide funds to courts and incentive to collect restitution. He further explained the bill. He spoke of the process of imposing a fine after the State's Attorney's office processes a case.

John Olson of the ND State's Attorney's Assoc. spoke in favor of the bill as well.

Patty Lewis of the ND Hospitality Assoc. spoke neither in opposition nor support of the bill. Her association however does not feel that this bill will address the problem with NSF

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10/15/03
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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2044

Hearing Date 01-013-03

checks. She stated that there shouldn't be a fee for something that is already a

requirement in the court system.

There was no opposing testimony.

The hearing was closed.

Senator Nething made a motion for a DO PASS. Senator Heitkamp seconded the motion.

Roll Call Vote: 6 Yes. 0 No. 1 Absent.

Carrier: Sen. Heitkamp

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La Costa Rickford

10/15/03

Date

FISCAL NOTE
 Requested by Legislative Council
 03/06/2003

Amendment to: SB 2044

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$161,000		\$161,000
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$641,000			\$641,000		

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

This bill proposes that the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The state-employed clerks of district court shall remit the funds collected to the state treasurer for deposit in the restitution collection assistance fund.

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.*

Data was collected from state funded clerks representing 75% of the caseload for October, 2002. Extrapolating to the remaining state funded counties, it is projected that in the biennium there would be: 4,600 cases with \$640,000 in restitution ordered. The average restitution per case is \$140. The average assessment would be \$35 x 4,600 cases = \$161,000.

Footnote to 1B - County Revenues - Data was collected from counties representing 72% of the caseload where the state's attorney collected the restitution or the clerk is a county employee. The data was collected for the month of October, 2002. Extrapolating to the remaining counties, it is projected that in a biennium there would be: 10,512 cases with \$2,592,000 in restitution ordered. The average restitution order was \$246. The average assessment would be \$61 x 10,512 = \$641,000 to the counties.

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:	Ted Gladden	Agency:	N.D. Supreme Court
Phone Number:	3284216	Date Prepared:	03/07/2003

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10/15/03
Date

FISCAL NOTE
 Requested by Legislative Council
 12/16/2002

Bill/Resolution No.: SB 2044

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$161,000		\$161,000
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$641,000			\$641,000		

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

This bill proposes that the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The state-employed clerks of district court shall remit the funds collected to the state treasurer for deposit in the restitution collection assistance fund.

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.

Data was collected from state funded clerks representing 75% of the caseload for October, 2002. Extrapolating to the remaining state funded counties, it is projected that in the biennium there would be:

4,600 cases with \$640,000 in restitution ordered. The average restitution per case is \$140. The average assessment would be $\$35 \times 4,600 \text{ cases} = \$161,000$.

Footnote to 1B - County Revenues - Data was collected from counties representing 72% of the caseload where the state's attorney collected the restitution or the clerk is a county employee. The data was collected for the month of October, 2002. Extrapolating to the remaining counties, it is projected that in a biennium there would be:

10,512 cases with \$2,592,000 in restitution ordered. The average restitution order was \$246. The average assessment would be $\$61 \times 10,512 = \$641,000$ to the counties.

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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:	Ted Gladden	Agency:	ND Supreme Court
Phone Number:	328-4216	Date Prepared:	12/20/2002

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10/15/03
Date

Date:
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2044

Senate IBL Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Nothing Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
7- Sen. Duane Mutch, Chairman	X		Sen. Michael Every <u>5</u>	X	
7- Sen. Jerry Klein, Vice Chairman	X		Sen. Joel Heitkamp <u>4</u>	X	
6- Sen. Duaine Espegard					
2- Sen. Karen Krebsbach	X				
3- Sen. Dave Nething	X				

Total (Yes) 6 No _____

Absent 1

Floor Assignment Heitkamp

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

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Operator's Signature LaCosta Rickford Date 10/15/03

REPORT OF STANDING COMMITTEE (410)
January 13, 2003 2:08 p.m.

Module No: SR-05-0503
Carrier: Heltkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2044: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS,
0 NAYS, 1 ABSENT AND NOT VOTING). SB 2044 was rereferred to the
Appropriations Committee.

(2) DESK, (3) COMM

Page No. 1

SR-05-0503

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Operator's Signature

10/15/03
Date

Date: 3-26-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate _____ 2044 _____ Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Concur

Motion Made By Klein Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Mitch	X				
Klein	X				
Krebs	X				
Nelking	X				
Heitkamp	X				
Evans	X				
Espey	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Heitkamp

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

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Operator's Signature Lacosta Rickford Date 10/15/03

2003 SENATE APPROPRIATIONS

SB 2044

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Salvatore Rickford
Operator's Signature

10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2044

Senate Appropriations Committee

Conference Committee

Hearing Date 1-21-03

Tape Number	Side A	Side B	Meter #
2		X	2022-3261

Committee Clerk Signature *Sandra Davison*

Minutes: Chairman Holmberg opened the hearing for SB 2044. (Meter 1999) Representative Larry Klemin, District 47: Bill rereferred to Appropriation from IB & L committee. This is our NSF bad check bill for the session. This bill tries to do two things: #1 Create an incentive for clerks of courts and states attorney offices to collect bad checks even in the event of small amounts. By the court imposing costs on that check at time that restitution is ordered and the costs would be in the amount of \$10 or 25% of the amount of restitution, which ever is greater. He gave an example. #2 This bill attempts to put money in the hand of the state and the county for the cost of collecting these bad checks and the bill has a positive effect. Bad checks have been in the past and continue to be problem with our citizens and business and this gives one more tool to help in the collection of those bad checks. We urge the committee to give a favorable consideration to this bill. (Meter 2213) Senator Robinson: Is there a maximum fee? (Meter 2233) Rep. Klemin: No, there is no maximum. (Meter 2247) Senator Kilzer: On page 3 line 2, it states, state-employed clerks of district court, does this include county employees? (Meter 2283) Rep.

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Lacosta Rickford 10/15/03
Operator's Signature Date

Page 2
Senate Appropriations Committee
Bill/Resolution Number SB 2044
Hearing Date 1-21-03

Klemin: There is a couple of different methods of having clerk of court of the state, most of them are state employees but we do have some counties that have elected not to go that route and they still have the county status not state. Some counties have contracts with employees also. (Meter 2421) Vice Chairman Bowman: Don't the banks charge \$24 -\$35 dollars for bad check and you are going to add this charge over and above what the bank charges? (Meter 2429) Rep. Klemin: The bank charge could be on there that is true, but there may not be bank charges if it is a closed account. That is some that is between the bank and its customer, this is when it is already after it has been turned over for prosecution. (Meter 2575) Senator Andrist: Some time ago there was discussion on bad check writing to take the government out of the collection business. Actually makes people apprehensive to take checks because a check becomes a sort of promissory note. (Meter 2706) John Olson, ND States Attorneys: He is representing the support of this bill and feels attorney see more resources and help to assist in these prosecutions of these cases. Without knowing every county and what they do, I do know that they are required to follow the law and precede with criminal prosecutions, however, some counties do it a little different. (Meter 2885) Terry Traynor, ND Association of Counties: Urges a favorable recommendation of this bill. This seems to be a growing caseload for our courts. There are 11 state employed clerks of court and the remaining clerks are employed by the counties. Restitution is handled differently in the four larger counties. Grand Forks, Fargo, and Bismarck, the states attorney handles all restitution collections and in Ward county the states attorney handles misdemeanor restitution collections and the clerk of court handles the felony collections. (Meter 3047) Senator Mathern: Does this process change between home rule counties and non-homerule counties? (Meter 3064) Terry Traynor: No, the function of following up on the bad checks is statutory requirement from the

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10/15/03

Date

Page 3

Senate Appropriations Committee

Bill/Resolution Number SB 2044

Hearing Date 1-21-03

states attorney's stand point to prosecute if they are presented with the bad checks from the businesses or private persons. There is no requirement to actually administer restitution, the court can order it but currently in state statute it doesn't say the clerk of court shall collect restitution, it is just a system that has grown up and there is another bill states that who ever is doing it shall collect continue to do it. (Meter 3157) Senator Tallackson: Why is the wording of county employee even in the bill - why doesn't it just say clerks of district courts? (Meter 3198) Terry Traynor: It is for those clerks of courts that are state employees just to make it clear. (Meter 3261) Vonnette Richter, Legislative Council: Staff council of the Interim Judiciary Committee, see written testimony Exhibit 1.

Chairman Holmberg reminded the committee this bill came to the committee through the IB & L Committee Closes the hearing of SB 2044.

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Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2044 Votes

Senate Appropriations Committee

Conference Committee

Hearing Date February 7, 2003

Tape Number	Side A	Side B	Meter #
#1	x		3,569- 3007 4690

Committee Clerk Signature *Jan Hendrick's*

Minutes:

Senator Holmberg, chair had the committee look at SB 2044.

This was a rereferral from IL& B. The amounts are included in the Governor's budget.

Motion by Senator Grindberg, seconded by Senator Christmann for a do pass. Roll call vote is attached. 6 yes, 5 no 3 absent. Motion passed, and sent back to IB& L.

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10/15/03
Date

Date: 2/7/03
 Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2044

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Grindberg Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓	✓			
Senator Grindberg, Vice Chair	✓				
Senator Andrist					
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter		✓			
Senator Kringstad					
Senator Lindaas	✓				
Senator Mathern		✓			
Senator Robinson		✓			
Senator Schobinger		✓			
Senator Tallackson	✓				
Senator Thane					

Total (Yes) 6 No 5

Absent 3

Floor Assignment IBC - Senator Heitkamp

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

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Operator's Signature La Costa Rickford Date 10/15/03

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 11:22 a.m.

Module No: SR-24-1966
Carrier: Heltkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2044: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(6 YEAS, 5 NAYS, 3 ABSENT AND NOT VOTING). SB 2044 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-24-1966

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LaCosta Rickford

Date

10/15/03

2003 HOUSE INDUSTRY, BUSINESS AND LABOR
SB 2044

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La Costa Rickford 10/15/03
Operator's Signature Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2044

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
1		X	2851-end
2	X		0-1720
Committee Clerk Signature <i>Elizabeth R. Green</i>			

Minutes: **Chair Kelsner:** Opened hearing on SB 2044.

Yonette Richter (Legislative Council): Gave overview of bill. This deals with the collection of restitution on insufficient funds.

Rep. Dosch: Are you only talking about additional fees? Richter said that yes, these are fees that will cover the costs of the court in addition to the fees and penalties people already pay.

Rep. Kelsner: Who goes to court? Richter walked through the process. You write a check and do not pay the fees. It is then turned over to the States Attorney. Then it goes to court and the court issues a judgment. The fee is for the work that court does.

Rep. Froseth: Is the fee on ISF checks in Century Code? Richter said she believes that is a relationship with the bank and not sure it is in the Code.

Rep. Severson noted businesses can pose another fee. But if it goes to the courts, the court can not get the \$20 ISF charge from the person. Businesses do not get the money if it goes to court.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 2044

Hearing Date March 3, 2003

Rep. Keiser: If totals get high, is 25% too high of a percentage? Richter said that is a policy question the committee would have to answer.

Rep. Klamn: This bill deals with the criminal side of the "bad check" issue. This looks at the cases that go to the States Attorney and who collects that restitution. Some counties it is the clerk of the court. Some it is the States Attorney. Some it is both. The fees go to who collects. The \$10 fee is a floor. The 25% is a ceiling. However, there is civil side to this issue and he offered an amendment (see testimony). The amendment says that if you pay before 10 days, you are not subject to the civil penalty. The fees of the civil penalty can become outrageous.

Rep. Severson: Concerning the amendment, Rep. Severson wanted to know if this is a problem. Klamn said that it is.

Rep. Froseth wanted clarification that you still pay the \$25 ISF fee and Klamn said that yes, you still pay the original fee.

Rep. Severson: Will the counties keep what they collect? Klamn said they will, but it does cost money to collect the fees. If the counties cover their costs and have extra, they use the money as they see fit. However, Klamn doubts they will come out ahead because not everything is collected.

Rep. Boe: What is the average cost of the checks? The Supreme Court says the average checks right now is \$140-\$246.

Rep. Keiser: Wanted to know if you plea bargain from a felony to a misdemeanor, do you still have the ceiling of 25%. Klamn said that yes, you would. Keiser then noted that many times it is parents who are paying. Should the courts say "up to 25%" instead of mandating the 25%?

Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number 2044
Hearing Date March 3, 2003

Klamin noted that if you give the court the discretion, the counties have to collect and not get the restitution if the court decides not to charge.

Rep. Boe: Why not a cap not to exceed \$1000? Klamin said he does not have a problem with a cap.

Terry Traynor (ND Assoc. of Counties): Supports with written testimony.

Chair Keiser: Closed hearing on SB 2044

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10/15/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2044

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
2		X	2704-4543

Committee Clerk Signature *Elizabeth R. Green*

Minutes: **Chair Kelser:** Opened discussion on SB 2044

Rep. Dosch: Handed out amendment .0203. The retailers and other interested parties did not have a problem with this amendment. Rep. Ekstrom asked if he spoke to the Senate and he said he did not.

Rep. Dosch moved to adopt amendment .0203. 2nd by Klein

Rep. Kelser: Noted this is unusual because we did not have a hearing on the amendment offered by Rep. Klemin. Rep. Klein said that he feels this closes a loophole.

Voice vote on amendment .0203. Amendment adopted.

Rep. Dosch: Handed out amendment .0202. This caps restitution.

Rep. Thorpe: Said he was hoping for this. He had LC draft amendment .0201 because he has a problem with mandating. Rep. Thorpe's amendment would change the words to "may."

Rep. Dosch: Feels the change to "may" will allow the judge to decide not to do it. This is a problem because restitution will not be collected for their time and effort.

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10/15/03
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 2044

Hearing Date March 3, 2003

Rep. Klein: This goes back to drivers without auto insurance. The Legislature had to put a "shall" into law so judges actually prosecuted.

Rep. Nottestad: Likes the "shall" because of consistency. Some counties would do it and some would not.

Rep. Keiser: This is a problem in larger counties. They do not look at bad checks because they have bigger cases to handle. This gives incentive for people to collect.

Rep. Kasper: Does this solve people writing bad checks? Rep. Keiser said this is part of it.

Rep. Dosch: In large counties, they do not have the resources to collect. This gives them the resources.

Rep. Boe moved to adopt .0202. 2nd by Rep. Nottestad.

Vote on amendment: 10 Yes 3 No 1 Absent and not voting

Rep. Klein: Not sure if they need this amendment.

Rep. Severson: Does not think we need a cap. They have not been generating that kind of money.

Chair Keiser: Closed hearing on SB 2044

Rep. Dosch moved DP as amended. 2nd by Rep. Boe

Vote: 13 Yes 0 No 1 Absent and not voting

Carrier: Dosch

30171.0201
Title.

Prepared by the Legislative Council staff for
Representative Dosch
March 3, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2044

Page 2, line 31, replace "shall" with "may"

Page 3, line 1, after the underscored period insert "The costs imposed under this subsection, however, may not exceed one thousand dollars."

Renumber accordingly

Page No. 1

30171.0201

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Operator's Signature

LaCosta Rickford

10/15/03

Date

30171.0202
Title.

Prepared by the Legislative Council staff for
Representative Dosch
March 3, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2044

Page 3, line 1, after the underscored period insert "The costs imposed under this subsection, however, may not exceed one thousand dollars."

Renumber accordingly

Page No. 1

30171.0202

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LaCosta Rickford

10/15/03

Date

30171.0203
Title.

Prepared by the Legislative Council staff for
Representative Dosch
March 3, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2044

Page 1, line 1, after "reenact" insert "subsection 2 of section 6-08-16," and after "12.1-32-07"
insert a comma

Page 1, line 2, after "to" insert "the civil penalty for issuing a check or draft without sufficient
funds and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 6-08-16 of the North
Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. A If the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor."

Renumber accordingly

30171.0204
Title.0300

Adopted by the Industry, Business
and Labor Committee
March 4, 2003

YR
3/4/03

HOUSE AMENDMENTS TO SENATE BILL NO. 2044 IBL 3-4-03

Page 1, line 1, after "reenact" insert "subsection 2 of section 6-08-16," and after "12.1-32-07"
insert a comma

Page 1, line 2, after "to" insert "the civil penalty for issuing a check or draft without sufficient
funds and"

Page 1, after line 4, insert:

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HOUSE AMENDMENTS TO SB 2044

IBL 3-4-03

Page 3, line 1, after the underscored period insert "The costs imposed under this subsection, however, may not exceed one thousand dollars."

Renumber accordingly

Page No. 1

30171.0204

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Jacosta Rickford
Operator's Signature

10/15/03
Date

Date: 3/3 /03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2044

House INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number 02071 30171.0204

Action Taken Adopt amendment

Motion Made By Boe Seconded By Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson		✓	Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	Absent	
Johnson	✓				
Kasper		✓			
Klein		✓			
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Doersch

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

Date: 3/3/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2044

House INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number 30171.0204

Action Taken DP as amended (0202+0203)

Motion Made By Dosch Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	Absent	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment _____

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

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10/15/03
Date

REPORT OF STANDING COMMITTEE (410)
March 4, 2003 3:21 p.m.

Module No: HR-38-3892
Carrier: Dosch
Insert LC: 30171.0204 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2044: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2044 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 2 of section 6-08-16," and after "12.1-32-07" insert a comma

Page 1, line 2, after "to" insert "the civil penalty for issuing a check or draft without sufficient funds and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. A if the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

Page 3, line 1, after the underscored period insert "The costs imposed under this subsection, however, may not exceed one thousand dollars."

Renumber accordingly

2003 HOUSE APPROPRIATIONS

SB 2044

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10/15/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2044

House Appropriations Committee

Conference Committee

Hearing Date 03-19-03

Tape Number	Side A	Side B	Meter #
2		X	41.9
3	X		6
Committee Clerk Signature <i>Chris J. Nylund</i>			

Minutes:

Chairman Svedjan Opened SB 2044 for discussion. A quorum was present.

Rep. Kaiser This bill corrects a problem dealing with writing bad checks. It provides a criminal penalty for those who choose to consciously write bad checks.

Rep. Delzer Most of these don't have money in the first place. What if they don't pay this fine? Will there be more jail time?

Rep. Kaiser Yes, jail time or restitution.

Rep. Delzer What if they don't pay?

Rep. Kaiser The same penalty would apply that applies today.

Rep. Aarsvold Does intent play into this?

Rep. Kaiser Yes.

Rep. Wald I move a Do Pass. 2nd by Rep. Warner.

Rep. Delzer Has this discussion been on the floor?

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10/15/03
Date

Page 2

House Appropriations Committee

Bill/Resolution Number SB 2044

Hearing Date 03-19-03

Rep. Kaiser Not to my knowledge.

Rep. Warner We put late fees on the civil side.

Motion Carries 20-1-2. Rep. Dosch will carry this bill on the floor.

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10/15/03
Date

REPORT OF STANDING COMMITTEE (410)
March 19, 2003 2:32 p.m.

Module No: HR-49-5230
Carrier: Dosch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2044: Appropriations Committee (Rep. Svedjan, Chairman) recommends DO PASS
(20 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2044 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-49-5230

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Date

10/15/03

2003 TESTIMONY

SB 2044

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10/15/03
Date

Vonnette Richter

Judiciary A Committee

2001-2002 Interim

Restitution Collection Efforts

During the course of its study regarding who has the responsibility for the collection of restitution, concerns were raised about the success of the restitution collection efforts being made by the state's attorneys and clerks of district court and whether the amount owed is being collected, especially in the case of insufficient funds checks. Testimony received from collection agencies indicated a professional collection service could be used to assist state government in collecting accounts that remain delinquent. According to the testimony collection agencies have a vast knowledge of collection techniques, technology, and compliance issues. It was reported that several state agencies use collection agencies for the collection of delinquent accounts. A member of the committee expressed an interest in legislation that would allow the state's attorneys or clerks of district court to keep a percentage of the amount collected to be used for the operating costs of the respective office. Other members expressed concerns that the retention of a percentage of the amount collected would take money away from victims.

The committee considered a bill draft that would have authorized the state's attorney or the clerk of district court to retain 25 percent of the amount of restitution collected from insufficient funds checks. According to testimony in explanation of the bill draft, the percentage retained by the state's attorney or clerk of district court would reduce the amount paid to the person to whom the check was written.

Testimony in support of the bill draft indicated the bill draft would give an incentive to state's attorneys or clerks to collect from what would otherwise be an uncollectible judgment. It was also argued the bill draft also would provide a source of funding for the expenses of collection. A committee member expressed concern that a government employee should not need an incentive to do that person's job.

Testimony in opposition to the bill draft indicated that clerks who collect restitution have been successful in collecting restitution for bad checks. In other testimony in opposition to the bill draft, it was noted the bill draft would reduce the amount collected by the state in the cases of bad checks that are written for child support obligations. It was suggested that a two-tiered system could be established which would exclude government agencies from having a percentage of the amount collected retained, but noted the committee may want to consider if it wants the government to be treated differently. According to the testimony the custodial parent could be asked to give the money back in the case of a bad check; however, this would be a difficult process, and it would take money away from the child. In other testimony in opposition to the bill draft, it was suggested a preferred option may be the imposition of an additional fee rather than the retention of a percentage of the amount collected.

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The committee considered a bill draft that required the court, when ordering restitution in insufficient funds check cases, to impose as costs the greater of the sum of \$10 or 25 percent of the amount of restitution ordered and to provide that those costs are to be used by the state's attorney or clerk of district court to offset operating expenses.

According to the one committee member, the intent of the bill draft is to provide money to the court to cover the costs of collection.

Testimony in opposition to the bill draft expressed concern about the additional costs being imposed by this bill draft. The costs imposed would be in addition to the fine imposed by the court. If the court is required to impose 25 percent in costs, the court may not assess as large a fine as it would without the additional costs. Thus, less fine money would be deposited in the common schools fund.

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**TESTIMONY TO THE
HOUSE INDUSTRY, BUSINESS, & LABOR COMMITTEE**
Prepared March 3, 2003, by
Terry Traynor, Assistant Director
North Dakota Association of Counties

CONCERNING SENATE BILL NO. 2044

Mr. Chairman, and members of the Committee, the North Dakota Association of Counties asks for your favorable consideration of Senate Bill 2044. As was testified during the interim, the collection of restitution can be a time-consuming responsibility, often performed for the benefit of business owners and for-profit collection agencies.

It is the intent of this bill to provide the agency doing the work of collecting on these NSF and "no account" checks, (the county or the court) the revenue to cover their actual costs. The philosophy of the bill is that the people creating the costs, the defendants, should pay the costs. Very often, by the time the court is involved, many defendants have multiple NSF offenses.

It is important to note that the assessment of this cost would only occur when there is a conviction. This is similar to when a sheriff levies on a judgment and an auction is held, the sheriff retains a fee on behalf of the county.

We believe this to be a fair and reasonable proposal, and hope that this Committee will give SB2044 a Do Pass recommendation.

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House Industry, Business and Labor Committee

March 3, 2002

Rep. Lawrence R. Klemin

Proposed amendment to Senate Bill No. 2044

Add a new Section 3 to the bill to amend Subsection 2 of Section 6-08-16

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:

a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;

b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;

c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or

d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order.

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty-five dollars, which are recoverable by the holder, or its agent or

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representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. **If the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4 of this section, a** civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, electronic funds transfer authorization, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.

4. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date _____
Name of Issuer _____
Street Address _____
City and State _____

You are according to law notified that a check dated _____, _____, drawn on the _____ Bank of _____ in the amount of _____

_____ has been returned unpaid with the notation the payment has been refused because of nonsufficient funds. Within ten days from the receipt of this notice, you must pay or tender to _____

(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of twenty-five dollars. The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

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