

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2190

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2190

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2190

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 23, 2001

Tape Number	Side A	Side B	Meter #
1	x		0 to 20.8
Committee Clerk Signature <i>Donna E. Pring</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB2190 relating to issuing a check or draft without sufficient funds or account and notice of dishonor.

SENATOR KREBSBACH: Sponsor of this bill. Favors its passage.

SUE BURGER, co-owner Check Rite of Minot. Favors this bill. Requests change in wording: delete "by civil action" on the fee issue. Favors \$5.00 fee increase. Most merchants won't pursue civil action, simply raise prices. Written testimony attached.

DAVID KNUDSEN, Credit Bureau of Bismarck. We need to be profitable, it costs more to do business. We need to hold the check writer responsible and accountable by increasing the fee.

Ask that "by civil action" be removed, municipalities and state attorneys don't want to prosecute.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB2190

Hearing Date January 23, 2001.

TODD KRANDA, ND Collectors Assn. In favor of this bill. Ask for change in fee and for removal of requirement of litigation for recovery of collection fee. In page 1 line 16 remove overstrike of "civil action", do same in page 2 line 25.

RUSS HANSON ND Retail/Petroleum Marketers Assn., favor this bill.

TIMOTHY J. KARSKY, Asst. Commissioner, Dept. of Banking and Financial Institutions.

Neither support or oppose. To clarify. Includes proposed amendment.

SENATOR ESPEGARD: Motion: adopt amendment. SENATOR KREBSBACH: Second.

Roll call vote: 7 yes; 0 no; 0 absent.

SENATOR ESPEGARD: Motion: do pass as amended. SENATOR TOLLEFSON: Second.

Roll call vote: 7 yes; 0 no; 0 absent. Carrier: SENATOR KREBSBACH.

DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

PROPOSED AMENDMENTS TO Senate Bill 2190

Page 1, line 16, remove the overstrike over "civil action"

Page 2, line 25, remove the overstrike over "civil action"

Date 1/23/01

Roll Call Vote #:

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate Senate Industry, Business and Labor

Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken To pass on amendment

Motion Made By

Seconded

By

[illegible]

Total (Yes) _____ No _____

Absent

Floor Assignment

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

to remove "constriction"

Date: 1/23/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2190

Senate Senate Industry, Business and Labor

Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken *To Pass as Amended*

Motion Made By

Seconded
By

[illegible]

Total	(Yes)	7
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No 2

Absent ☐

Floor Assignment S. Krebsbach

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

REPORT OF STANDING COMMITTEE (410)
January 23, 2001 4:49 p.m.

Module No: SR-11-1482
Carrier: Krebsbach
Insert LC: 18272.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2190: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2190 was placed on the Sixth order on the calendar.

Page 1, line 16, remove the overstrike over "~~civil action by~~"

Page 2, line 25, remove the overstrike over "~~civil action by~~"

Renumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2190

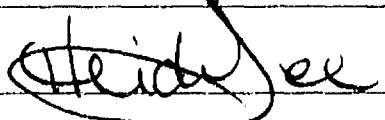
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
2	X		21.9
		X	-34.2
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. Karen Krebsbach: **Written testimony** as sponsor of bill to raise rate for NSF's and training for employees. Also to remove civil action from procedure.

Todd Kranda: *ND Collector's Assoc.* Support bill to aide collectors in receiving funds and to increase their funds.

Vice-Chairman Keiser: Does SB 2265 affect this bill?

Kranda: No, they are consistent with each other though.

Chairman Berg: What is the Attorney General's opinion?

Kranda: You need to litigate to collect.

Chairman Berg: What is the current practice?

Kranda: The consumer needs to pay a civil fee plus the amount the check is written for.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2190

Hearing Date March 12, 2001

Rep. Ruby: Has anyone refused to pay based on the current law?

Kranda: No, not based on the current law.

Sue Berger: *Check-Rite Minot* **Written testimony** in support.

Vice-Chairman Keiser: How high would the fee have to be to go to court?

Berger: Small claims court, the average is \$60-70.

Rep. Lemieux: How do the leases work?

Berger: Supply and demand. \$10-30 per month.

Rep. Lemieux: How often are checks run through the bank?

Berger: Sometime three and four times but usually only once.

Rep. Koppang: Has there been a decrease in the last few years?

Berger: The general public hasn't moved on to electronic methods yet. Checks are still a popular method of payment.

David Krenden: (50.2) *ND Credit Bureau of Bismarck* The federal reserve stopped tracking NSF checks because of the quantity. Sixty-nine percent are generally collected within 60 days. The average check is \$25.

Michael LeFor: *NDCA* There are two-hundred plus collection agencies in the state and their licensing fee is \$200.

Russ Hansen: *ND Retail Assoc.* We support this bill.

Tim Karskey: *ND Dept of Banking* We are neutral but we support removing the civil action.

Rep. Lemieux: What is the first time licensing fee?

Karskey: It is \$500 for investigation and licensing. Eleven states have reciprocal laws that allow non-licensing.

Chairman Berg: We'll close the hearing on SB 2190.

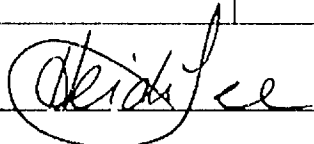
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2190(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 14, 2001

Tape Number	Side A	Side B	Meter #
2	X		42.6-54.8
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.

Vice-Chairman Keiser: I move a do pass.

Rep. M. Klein: I second.

Rep. Lemieux: I don't feel this is a deterrent.

Rep. Froseth: I think this is just as a pay increase for the collection companies.

Rep. Lemieux: Between bank fees and check fees their already paying an extreme amount.

Rep. Ruby: This is used to get attention that a bill needs to be paid.

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

E

Date: 3-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2190

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Keiser Seconded By M. Klein

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. Severson

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2001 2:39 p.m.

Module No: HR-44-5623
Carrier: Severson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2190, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2190 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2190

Testimony on Senate Bill 2190
January 23, 2001
Senate Industry, Business, & Labor Committee

Mr. Chairman and members of the Industry, Business, and Labor Committee, I am Sue Burger, and I'm speaking on my own behalf, as co-owner of CheckRite of Minot, Inc.

We specialize in check collection for a nine-county area in North Dakota. I am here today to urge you to support SB 2190 which would raise the check fee by five dollars and also perform a housekeeping change to clarify our right to collect that fee without taking civil action.

FEE INCREASE:

The last increase was four years ago, from \$15 to \$20. In that time, we have seen an increase in minimum wage, postal rates, payroll taxes and those of you who travel or have gotten your latest gas bill don't even want me to mention utilities or what it cost to fill up the car today. We do not retain all of that fee, as we are required by this bill to rebate up to \$2.00 back to the merchant for their bank charges. If some banks charge more than \$2.00 per returned check, many merchants expect us to give them back just a little bit more. **Not all fees are collected**, many are waived or reduced because a family members is helping, or a bankruptcy has been filed, or the bank unbelievably has made an error. Bouncing a check here is like getting a low interest loan. **The surrounding states have collection fees higher than ours** although we are required to carry a higher bond. They have been collecting those fees for many years, plus they don't have a rebate provision for the merchant - a map is attached.

I do not charge the merchants for my check collection services because I believe that **the person causing the problem should bear the cost**. Collection fees are 97% of my income, but we cannot raise the cost for our services arbitrarily. Many of you are business owners and have the luxury of determining what you will charge for your services or goods. **Imagine if you could not raise your prices while you watch most of your basic business expenses rise**. You know that difference will show up in your bottom line, plus any thoughts of future growth must take the back burner. **If the fee is not raised now, you have just frozen our income for the next two years. We already have absorbed the last four years increases, and cannot imagine what the next two years will bring in the areas of payroll, supplies, utilities, travel, and interest rates. If our income is frozen, we'd like our expenses frozen also.**

During the next two years, I will also be required to train new employees in customer service and debtor counseling, while keeping up on the latest concerns involving the Fair Debt Collection Practices Act. Because this is a select field, it is very unusual for any potential employee walk in with any knowledge of the FDCPA. That employee is a lawsuit threat for us until we train them. **Because of frivolous lawsuits, our cost for Errors and Omissions insurance has risen drastically. It's not just a matter of the wrong change being given.**

WORDING CHANGE NEEDED:

Senator Krebsbach asked for an Attorney General's opinion on the check law last month on my behalf because our States Attorney had refused to prosecute a check because the debtor had paid a previous fee on another check which would have covered some or all of that check. I was surprised to learn that under the present wording the AG would interpret this to mean we HAVE to take civil action to demand the fee, not just that we could. The law states that the person is "liable" for a collection fee or cost, which is recoverable "by civil action." It then goes on to read "A civil penalty is ALSO recoverable by civil action".....this seems to indicate that the **collection fee is one penalty, and the civil penalty which provides triple damages is a backup penalty in case the debtor does not pay the smaller collection cost for which the law states they are liable.**

The wording "by civil action" needs to be deleted on the fee issue only. If you consider the original intent of the law we believe it was to assess a penalty and I don't believe we need more court cases. District judges are already asking for a raise because of the reduction in judges from 54 to 42 in past few years, a reduction of 22%, while caseload has increased an average of 1,000 cases per judge, or an increase of 50%.

What does "liable" mean? Doesn't that mean we have to pay it? If we are caught speeding aren't we "liable" for the ticket? If you pick up a can of corn in a grocery store, aren't you "liable" to pay for it before you walk out of the store? The civil action wording interpretation means that the **merchant who is already out the amount of the check or their representative should now have to spend additional time and money to educate themselves on the guidelines for civil action, and possibly hire an attorney.** How many of you have ever tried to recover a debt through the court system? **Do you know how** to go about requesting an execution, judgment, garnishment? You probably know more because of the seat you're sitting in today, but most merchants know less - they will simply write it off, raise prices, and hope to recover their loss. **Writing bad checks is a crime, it's not just a crime if you get caught.** If you are liable for the fee, you should have to pay it.

The debtor seems to have more protection than the merchant who has done nothing wrong. Collection agencies can be sued if we don't abide by the Fair Debt Collection Practices Act. We send more notices than the law requires, and also make phone calls because **we want to get our merchants paid back and keep these debts out of the court system.** If we have to take civil action, we will then have to collect those additional fees from the debtor, resulting in more than \$25 per check. **Other states do not require civil action.** Minnesota's law states that the fee is "imposed immediately" regardless of mailing an notice of dishonor - all they have to do is display a notice of the charge.

I came to North Dakota 28 years, and have co-owned a business here for the last ten. I hope to still be able to operate that business in the future because the merchants need me. I urge you to vote unanimously for a DO PASS recommendation on SB 2190. Thank you.

..Reasonable handling fee, and when not paid within 15 days, a collection cost not to exceed \$40 or face amount of check, whichever is less and interest at 12% per year.

\$20 posted conspicuously or 5% of the face, whichever is greater. Up to \$50 if check is presented twice.

\$20 posted at point-of-sale or actual cost of collections, not to exceed \$30.

\$25 or all costs and expenses including reasonable attorney's fees incurred in collection of check.

\$25 to be paid within 7 days, excluding weekends & holidays, after notice was mailed. If not paid as requested above, but within 30 days after notice was mailed, the service fee is \$35.

An amount not to exceed \$20, plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument.

All reasonable costs and expenses in connection with the collection of the amount for which check or draft was written.

Up to \$25, if posted at point-of-sale and check is not paid within 10 days after notice to check writer.

\$25 or 5% of instrument, whichever is greater. The payee may charge the maker of the check, draft, or order a service charge not to exceed \$25.00 or 5 percent of the instrument, plus the amount of any fees charged to the holder of the instrument by a bank or financial institution as a result of the instrument not being honored.

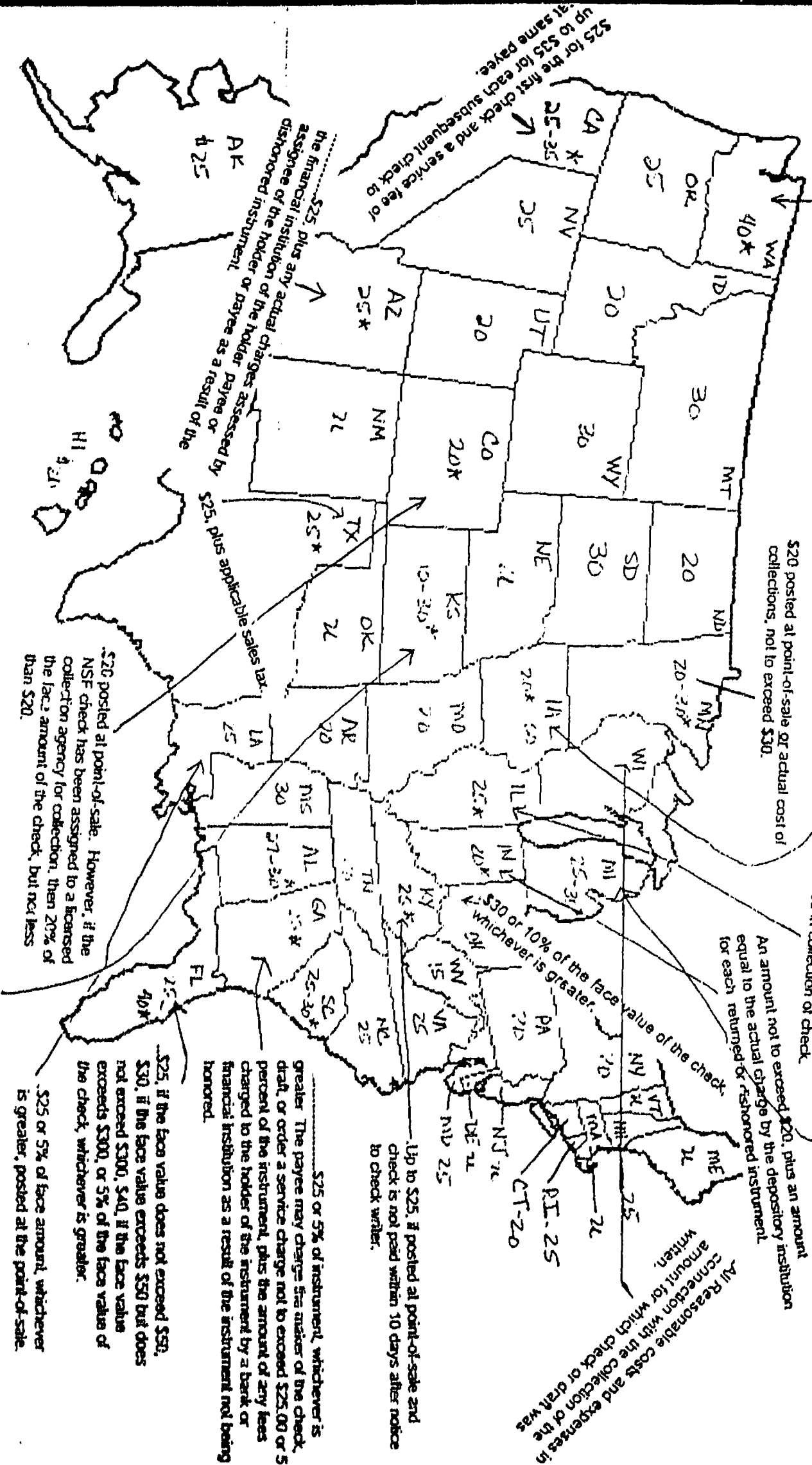
\$25, if the face value does not exceed \$50.
\$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or 5% of the face value of the check, whichever is greater.

\$25 or 5% of face amount, whichever is greater, posted at the point-of-sale.

\$10, or, if a larger amount is posted conspicuously, the larger amount to be paid within 14 days. In no event shall the service charge exceed \$30.

7L = UNDEFT REMITT

* = SEE EXPLANATION





AMERICAN COLLECTORS
ASSOCIATION, INC.

Statistics on Checks

January 15, 2001

General Information

- The Federal Reserve Bank expects the **volume** of checks written to increase by 1-2% each year for the next 6 years.
- The average retail store handles a paper check 6 times. This totals 62.69 seconds of handling time per check. - *BankServ.*
- Checks handled electronically by retail stores required 37.12 seconds per check transaction for in-store handling. - *BankServ.*

Check Statistics from 1999

- U.S. consumers wrote 68 billion checks.
- The average household writes 14.6 check per month. *NACHA - Consumer Survey, Aug. 31, 2000.*
- Check writing volume climbs with income. Households with less than \$15,000 annual income write about 6.5 check per month. Those with income exceeding \$75,000, write 20.6 checks per month. *NACHA - Consumer Survey, Aug. 31, 2000.*
- In 1999, the U.S. payment system for "Direct Payment" only, paper checks accounted for \$2.245 trillion, which was 46% of the entire payment system dollar value (down from 49.3% in 1998). This accounted for 29.37 billion check transaction. The average amount of each check was \$76. Direct Payments **excludes** checks written for mortgage payments, child support and alimony or to pay credit card statements. *Nilson Report, Dec. 2000*
- In 1999, the total monetary value of checks written for direct payments **and including** checks to pay credit card statements was \$3.513 trillion, up 2.3% from 1998. *Nilson Report, Dec. 2000*
- For the third year in a row, total consumer check transactions declined by 0.5%. *Nilson Report, Dec. 2000*
- There is no statistical difference on check writing by gender. *NACHA - Consumer Survey, Aug. 31, 2000.*
- More than 1.2 million bad checks are written daily by U.S. consumers- *Nilson Report.*
- Bad consumer checks totaled \$55.8 million per day.
- ACA estimates that by the end of year 2000, 70 billion checks will be processed, and of those, 675 million will prove to be worthless.

1/22/01 10:30:05 AM

Check Fraud Statistics for 1999

- Attempted check fraud at U.S. commercial banks doubled between 1998 and 1999. It now exceeds \$2.2 billion a year. Actual dollar losses in 1999 were \$679 million, up from \$512 million in 1997.
- The number of check fraud cases rose more than 60 % totaling 447,342 cases in 1999, yet losses per case decreased. Average losses per case went from \$1,775 in 1997 to \$1,151 in 1999.
America Bankers Association Fraud Survey, December 2000.

Checks at Retail Locations

- Those in the 35-49 age range are most likely to write checks at retail locations (75.7%), while those over age 65 are least likely (48.5%). *NACHA - Consumer Survey, Aug. 31, 2000.*

Future Estimates

The six paper-based systems, cash, checks, money orders, travelers checks, food stamps and official checks accounted for \$3.342 trillion of Personal Consumption Expenditures in 1999. This is equal to 68.7% of all PCE purchases. By 2010 that share is expected to fall to 35.5% with most of the loss transferred to debit and credit cards. Check conversion and pre-authorized payment will account for the rest of the increase. *Nilson Report, Dec. 2000*

By 2005, paper check volume for Personal Consumption Expenditures (PCE) will be \$1.915 trillion, which is 28.3% of the total PCE dollars. This will account for 19.28 billion transactions. The average check written will be \$81. *Nilson Report, Dec. 2000*

By 2010, paper check volume for Personal Consumption Expenditures (PCE) will be \$1.589 trillion, which is 18.2% of the total PCE dollars. This will account for 23.79 billion transactions. The average check written will be \$82. *Nilson Report, Dec. 2000*

Historical Information



- In 1999, there were 612 million bounced personal checks written in the U.S. totaling \$19.9 billion.
- That same year, the collection industry collected \$31.8 billion dollars in debt including bad checks and other debt. 25% of bad checks are turned over for collection each year with a total value of \$4.73 billion.
- In 1998, checks were used in 22% of supermarket transactions constituting 45% of the dollar volume of supermarket sales. - *BankServ.*
- In 1995, 18.8 billion checks were written at the point of sale. 11.75 billion checks were written to pay bills. - *Nilson Report.*
- Between 1990-1995, the number of checks processed increased about 29%.

- In 1994, there were about 60.98 billion checks written in the U.S. This number breaks down into:
 - Personal Checks - 57%
 - Commercial Checks - 40%
 - Government Checks - 3%

Statistics on check volume, dollar amount and transaction number vary. No one organization, including the Federal Reserve Bank, has been found which compiles a complete listing of all these figures. The information herein reflects the best estimates we have compiled from a variety of sources. This list is updated as often as new information is received, which is deemed reliable.

ACA's Check Services Program

ACA's Check Services Program (CSP) was created in July 1990 to help ACA members become aware of the opportunities in check collection and to assist them in developing an understanding of the check industry. CSP has more than 400 members throughout the United States, Canada, England and Guam.

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TESTIMONY FOR SENATE BILL NO. 2190

Senate Industry, Business, and Labor Committee

Testimony of Timothy J. Karsky, Assistant Commissioner, Department of Banking and Financial Institutions, neither in support or opposition of Senate Bill No. 2190.

Chairman Mutch, and members of the Senate Industry, Business, and Labor Committee, I am here today to neither support or oppose Senate Bill No. 2190. The Department has no objection to removing the collection fee recoverable by civil action on line 10. However, on line 16 of Section 1, the Department feels that deleting the words "civil action" allows the check holder to recover an additional fee without commencing civil action. Webster defines the terms "civil" as "law relating to the private rights of individuals and to legal actions involving these". The Department feels since this penalty has been clearly a civil penalty in the past, it can only be collected through civil action. The Department believes if the amendment is allowed to stand, collection agencies and other individuals would be able to use this penalty as a threat to collect the \$25 fee as proposed or randomly assess the larger penalty, when that was clearly not the intent of the legislation.

The Department wishes to strike the words "civil action" on line 25, page 2 of the bill, for the same reasons.

I would also like to make the Committee aware of Senate Bill No. 2265, which will address the civil penalty amount for issuing a bad check or draft. In that bill the language "civil action" is left in the bill, which would imply that the penalty can only be recovered by civil action. The bill will change the civil penalty from a lesser of \$100 or three times the amount of the instrument, to the greater of \$100 or three times the instrument, except the penalty may not exceed the value of the instrument by more than \$500.

Thank you Mr. Chairman and members of the Committee. If you have any questions, I would be willing to answer them at this time.

Testimony on Senate Bill 2190
March 12, 2001
House Industry, Business, & Labor Committee

Mr. Chairman and members of the Industry, Business, and Labor Committee, I am Sue Burger, and I'm speaking on my own behalf, as co-owner of CheckRite of Minot, Inc.

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Anybody can get a check blank - banks are competing for accountholders, and because they don't absorb the cost on a bad check, there is no reason to be careful to obtain only responsible account holders.

WORDING CHANGE NEEDED:

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I came to North Dakota 28 years ago, and have co-owned a business here for the last ten. I hope to still be able to operate that business in the future because the merchants need me. I urge you to vote unanimously for a DO PASS recommendation on SB 2190. Thank you.