

2011 SENATE JUDICIARY


SB 2158

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2158
1/17/11
Job #12969

Conference Committee

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| Committee Clerk Signature  |
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Explanation or reason for introduction of bill/resolution:

Relating to issuing a check with nonsufficient funds or without an account

Minutes:

Senator Olafson conducts committee work

Senator Nelson comments that she agrees with the States Attorney that 180 days is too long. She would be in favor of the 120 days. Senator Sorvaag concurs with that also. The committee is in agreement to have an amendment stating the 120 days. Senator Sitte said she would check with Senator Krebsbach about the changes. They think the "shall" has good reason to stay. Senator Sitte will come up with an amendment.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2158
1/17/11
Job #12970

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to issuing a check with nonsufficient funds or without an account

Minutes:

Attached written testimony

Senator Nething – Chairman

Senator Olafson – Vice Chairman – opens the hearing

Todd Kranda – Representing the ND Collector's Association – In support of this legislation.

Kirk Wullweber – Checkrite of Minot – See written testimony.

Senator Olafson – Asks Wullweber to walk thru some of the bill.

Wullweber – Explains the time frame involved from when a check writer writes a check. He said it will tend to take 2 to 4 business days to get to the bank and then another day or two to get to them. He said it can take up to a week or as little as three days. He said in some counties there is a 60 day window to collect that bad check. He explains how he handles the check with the debtor.

Senator Sorvaag – Ask about the time frame in other states.

Wullweber – Said each state has various time frames.

Senator Nelson – Asks why he wants to double the time.

Wullweber – He explains that there are certain counties in ND that have shorter time frames, state law requires 90 days. He says they are trying to give maximum benefit to their merchants by allowing for a 180 day cycle thus giving maximum dollar back to the merchants because it allows a longer time frame to collect the debt.

Senator Nelson – Asks if how many people are still writing checks.

Wullweber – Replies, in a study they did themselves, baby boomers grew up writing checks and there will continue to be check writing.

Senator Nelson – Said she finds herself writing less and less checks.

Wullweber – He believes that check recovery is on the decline but still has a 20 or 30 year shelf life.

Mike Lefor – President DCI Credit services, Inc. – See written testimony

Senator Krebsbach – District 40 – Introduces the bill she sponsored– She believes the \$5 request for increase is very justifiable.

Senator Lyson – Asks Lefor if he has any idea if they were to double the days for collection how many more he could collect on.

Lefor – Replies he would hope they could drop their prosecutions by 30 to 40%.

Senator Nelson – Asks about how many of his type of businesses are there.

Lefor – Says there are six he is aware of in ND but there are also national agencies. His testimony is based only on ND collection services. ND Collectors Association has 15 members and of those very few are check collection agencies.

Senator Nelson – Ask where the fee goes.

Lefor – Explains where the fee goes.

Opposition

Rosa Larson – President of the ND States Attorneys Association – Says they are not in complete opposition but they do think 180 days is too long of a time frame. She also talks of language clean up, changing from shall to may.

Senator Sorvaag – Asks if it is 90 days now and 180 days is too long what is the right time frame.

Larson – Said she does support a longer time frame but thinks 10 to 20 extra days is enough.

Close the hearing on SB 2158

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2158
1/18/11
Job #13036

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to issuing a check with nonsufficient funds or without an account

Minutes:

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Senator Olafson opens for committee work

Senator Olafson reads through the amendment that has been provided. He said there was some concern over the shall and may. Senator Sitte mentions that the information she received in an e-mail says if you replace shall with may there is no purpose for the bill.

Senator Sorvaag motions to move the amendment
Senator Lyson seconds
Verbal vote – all yes

Senator Lyson motions do pass as amended
Senator Sorvaag seconds

Roll call vote – 6 yes, 0 no

Senator Sitte will carry

January 19, 2011

JB
1-19-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2158

Page 2, line 27, replace "one hundred forty" with "ninety"

Page 2, line 29, replace "eighty" with "twenty"

Page 3, line 2, replace "eighty" with "twenty"

Page 3, line 17, replace "one hundred forty" with "ninety"

Page 3, line 18, replace "eighty" with "twenty"

Page 3, line 21, replace "eighty" with "twenty"

Renumber accordingly

Date: 1/18/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2158 amendment

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Lyson

| Senators | Yes | No | Senators | Yes | No |
|------------------------------|-----|----|----------------|-----|----|
| Dave Nething - Chairman | | | Carolyn Nelson | | |
| Curtis Olafson - V. Chairman | | | | | |
| Stanley Lyson | | | | | |
| Margaret Sitte | | | | | |
| Ronald Sorvaag | | | | | |
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Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Verbal yes

Date: 1/18/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2158

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Lyson Seconded By Senator Sorvaag

| Senators | Yes | No | Senators | Yes | No |
|------------------------------|-----|----|----------------|-----|----|
| Dave Nething - Chairman | X | | Carolyn Nelson | X | |
| Curtis Olafson - V. Chairman | X | | | | |
| Stanley Lyson | X | | | | |
| Margaret Sitte | X | | | | |
| Ronald Sorvaag | X | | | | |
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Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Sitte

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

REPORT OF STANDING COMMITTEE

SB 2158: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2158 was placed on the Sixth order on the calendar.

Page 2, line 27, replace "one hundred forty" with "ninety"

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Renumber accordingly

2011 HOUSE JUDICIARY

SB 2158

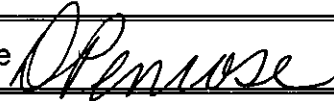
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2158
March 9, 2011
15195

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2158.

Sen. Karen Krebsbach: Sponsor, support. This is a bill that is going to allow the check collection agencies to increase their fee by \$5.00. They would be going from \$30 to \$35. These folks provide quite a valuable service to our business community here in the state. It is no different from any other business. They need an increase in their monetary fees because of the fact that they have increases in doing business, just like any other business. However, they don't have the luxury of being able to just raise it at their will. They have to come through the state because it is in statute as to what they are allowed to charge. Therefore, they are here to do that. Within the bill, you are also going to be hearing about a change in dates when presenting to the state's attorney's office. They will explain their reason for this and I want you to know that there was some question from the ND State's Attorney Association about this change. They, however, do support the change from 90 to 120 days, but there is some question that they may want to address even with this change. As I understand it, there's going to be someone here from one of the counties to address that for you. I support the bill. I think it is only fair that they be allowed to get an extra \$5 on the checks that they collect.

Rep. Delmore: Have they ever thought about pro-rating it on the amount of the check. Sometimes it seems strange to me that a \$5 check vs. a \$500 check is still \$35. I know how that works. Have we ever thought of pro-rating it and maybe getting more for a larger check that someone more willfully did than someone who did the \$5 check.

Sen. Krebsbach: I see your point on that, and I think that would be something for them to answer. However, if you're handling a check for \$1, \$100, \$1,000 or \$10,000, it may still take the same amount of paperwork to do the process.

Chairman DeKrey: Thank you. Further testimony in support of SB 2158.

Jay Rodenbiker, Burleigh Co. Assistant State's Attorney: Support. I would ask the committee to consider amending it specifically on page 2, lines 27 through 31. The language that's added in lines 27 through 31 on page 2 and on page 3, lines 16-20 is new language to the statute that governs dishonored or non-sufficient funds checks that the Burleigh County State's Attorney's Office doesn't feel is necessary. We do, as Sen. Krebsbach mentioned, supports the change from 90 to 120 days. I think that because we support that change, the language giving discretion to the State's Attorney to accept it beyond 90 days is not necessary. I think whenever the Legislature can avoid adding language to a statute that doesn't have an effect on the enforcement of the law, it's nice for the State's Attorneys to have a simpler statute. We support the change from 90 to 120 days, which I feel will facilitate keeping some of these cases out of court, which also adds significant fees to individuals who often times are facing financial difficulties.

Rep. Hogan: What is that actually saying the State's Attorney would have to do, why are you objecting to that language.

Jay Rodenbiker: I think we're objecting to it because it is unclear. The Burleigh Co. State's Attorney's Office feels that the language as it is, already provides that we have to file the complaint within 120 days. So by adding the language that I'm recommending be struck from the bill, it's giving the State's Attorney 120 days, whereas the language that was added in there on lines 27-31, says we have to do it within 90 days, and we may do it after 90 days, between 90 and 120 days. I'm here to tell the committee that we're in agreement with doing it within 120 days, so we don't need to have that language.

Chairman DeKrey: Thank you. Further testimony in support of SB 2158.

Kirk Wullweber, Checkrite of Minot, Inc.: Support (see attached 1).

Rep. Delmore: How many companies are in the state, as far as collection agencies and people working within those agencies directly involved in this process.

Kirk Wullweber: Mike Lefor, who will be testifying next, that is part of his testimony. Several years ago, 35 collection agencies in the state of ND doing check recoveries, and we are now down to six.

Rep. Delmore: So there is a bit of a monopoly with those six companies.

Kirk Wullweber: I think that the other companies, through due process or recoveries by some of the other agencies have dwindled through time and because the fee has not been to the level of some of the other states, it is hard to maintain business, if you're not profitable.

Rep. Delmore: I would still think your volume per agency is going to be quite a bit larger when you take away the competition of other agencies. What was the increase in 2007, can you tell me.

Kirk Wullweber: It went from \$25 to \$30.

Rep. Delmore: Can you walk me through the process. You say that you've had a lot of cost increases in the last four years. A \$5 increase per check is quite an increase for someone to pay. Walk through the process with me, of why it is that you need a fee increase at this time.

Kirk Wullweber: We believe that some of the things that I outlined, such as fraud and some of the cases, as we all know, there is no cell phone directory out there in locating those people even through legitimate skip-tracing companies, such as Acura, Lexus-Nexus and even Facebook is a valuable tool nowadays. It is still very hard to locate these people. In the past if you had phone numbers for 50% of the checks placed with you, you were off to a good start. Nowadays, that location of people and the file you may get, you may only have 25 people that you can locate. The other 75% you have to incur significant skip-tracing costs, a letter series and things of that nature to locate these people. The cost of doing business has gone up but yet the good phone numbers have gone down because of so many homes throughout the country, where we don't have a land line anymore.

Rep. Delmore: There aren't addresses on many of the checks that you are processing.

Kirk Wullweber: Some of them do have legitimate addresses and some are not. In this industry, there are a lot of transient people. The most effective way to get a hold of somebody is still by means of the telephone. A lot of times those letters go unopened and just aren't as effective.

Rep. Delmore: Have you thought of pro-rating what it is that you're charging for checks rather than a flat fee. Of course, it's wrong for somebody to write a bad check, but if it is for \$5 or \$500, why is it that there is no difference in that.

Kirk Wullweber: I have worked for several corporations throughout the country, and this is the first time in which I haven't worked under a contingency fee where you do get a percentage of the fees. But Sen. Krebsbach, with her knowledge of our industry, did hit the name on the head, whether it's a \$10 bad check or a \$1000 bad check, the skip tracing and paperwork required to get the account to fruition is still the same.

Rep. Koppelman: You mentioned that the increase in 2007 was from \$25 to \$30. Do you have history beyond that.

Kirk Wullweber: I do, I reviewed that a bit. It is my understanding that there was an increase in 2003 and 2007. There have been 2 increases in the last ten year period from my understanding.

Rep. Koppelman: Both about \$5 each time.

Kirk Wullweber: Yes.

Rep. Koppelman: Do you see in your industry that there is a dwindling number of checks being written and therefore a lesser number of bad checks. It seems to me that a lot of people are using credit cards instead of checks.

Kirk Wullweber: We are seeing in the state of ND, is about a 20% reduction in overall checks placed in the state and surrounding states. However, I do believe that check collections will be a viable tool moving forward over the next 20 years. Anyone who is basically my age, basically a baby boomer on up, has always written checks. I think that it will remain a viable tool and with the increased dilemma surrounding credit cards and the credit card industry to include the rates are fairly scary and you may see checks again in an increase at some point in time in the near future as well.

Rep. Boehning: Do you collect any fees from the client. If I write a check to you and it bounces, do you collect any fees beside from the person who wrote the bad check, like the business owner or not.

Kirk Wullweber: No, we do not. The state allows for the \$30 fee and we give up the \$2 to the merchant required by the state. We do not get anything from the merchant.

Rep. Boehning: So they basically get reimbursed 100% if you collect the check and they don't have to give you anything out of that.

Kirk Wullweber: Let's say there is a \$100 check and we attach the \$30 fee. If we collect the face amount of the check, the merchant gets a full \$100 back and we would return the \$30 fee.

Rep. Hogan: Do you have a reaction to the proposed change from the State's Attorneys.

Kirk Wullweber: No, we do not. We are very comfortable with it. We went through it with Sen. Krebsbach right before the meeting and I did talk with Roza Larson, the Ward County State's Attorney last Friday regarding this proposed change and we are fine with it.

Rep. Steiner: Could you explain skip-tracing.

Kirk Wullweber: Skip-tracing is an effort by a collection agency, when you get an account in and you either have a bad address or a bad phone number or both. We go through various sources; the two most prominent in the country are probably Acura and Lexus-Nexus. Facebook has become very popular for locating contact information for the younger generation type debtor, because they put essentially their lives out on Facebook now. You've got the man hours associated with that. The letters that we send, the services themselves as they both charge a set fee per attempt, whether it is successful or not. There are products that you can purchase for your computer, where you pay a flat \$100 and they are guaranteeing that they will locate the customer. There are some fairly extensive costs built into that. Agencies, obviously, try to minimize those costs to be more productive and get better net gains/profits in the end. We start off doing the minimum but there are obviously merchant considerations here to; where you are trying to get money for your merchant to maintain them as a client or another agency might come along and take them away from me. On occasion you will lose money collecting an account as well.

Rep. Delmore: Do you have a large number of people who are repeat offenders. Is there a problem with that, they we have some people doing it again and again.

Kirk Wullweber: We do. I would say that's 50% of the portfolio that we have. The other 50% are people that are just writing their first bad check, or another significant impact right now if the oil industry in northwestern ND where we are seeing bounced checks from people that are working in the oil industry. Oil has been very positive to our state, but they write a few bad checks just like the rest of the communities.

Rep. Delmore: Once you track them down, are people most of the time pretty good about making restitution.

Kirk Wullweber: They are. We try to work well with them to try and get them paid within the time frames that are allowed by each county. In Ward County, we have 60 days to get it collected. Some counties are 90 days. It is at a county level. They are good at setting up arrangements and they know they have this obligation and a lot of times they are pretty good at committing to pay off these debts. I believe our recovery rates are near 75% for people that we do contact and actually speak with them.

Chairman DeKrey: Thank you. Further testimony in support of SB 2158.

Mike Lefor, President, DCI Credit Services Inc.: Support (see attached 2).

Rep. Delmore: I heard you say that you sold the service to 200 businesses within 18 months. So were you charging the businesses a fee to do the collection.

Mike Lefor: No, after the service fee was enacted in 1981, we operated the business the same way that we do today. We collect the service fee and give the principal amount of the check back to the client.

Rep. Delmore: I suggest that you change your testimony a little bit, because it looks like you sold the service to over 200 businesses, looks like you asked for an amount of money to sell it to them in addition to the amount you're collecting.

Mike Lefor: That's not the case.

Rep. Delmore: Have you ever thought about doing a pro-rated amount that I asked about earlier. Have you thought about doing a sliding scale.

Mike Lefor: No, I haven't. It's been that way consistently for many years. I would have to put some more thought into how that would affect our ability to collect.

Rep. Koppelman: As you look at the way business has changed, do you think that check use will increase perhaps. Do you see that as a possibility.

Mike Lefor: I think decline is inevitable. I do believe it depends on the generation that you're talking about. The baby boomers and older, will continue to write checks, although it is getting to be less and less. Generation Y and X, I think it is going to be almost non-existent. I would project out in the next few years that the checks will continue to drop by 20-30%. It's going to be a big drop. We're going to be getting a lot less business.

Rep. Koppelman: How often do state's attorneys prosecute; this is breaking the law when someone writes a bad check.

Mike Lefor: I can't speak to the state's attorney portion of it. I can speak from a collection agency perspective, the frustration that I feel for our clients. When you get someone that wrote 17 NSF checks, and you ask how can that happen. It does happen, and they have no intention of paying that account. I know state's attorneys are in our area, we get along with them very well, work well with them, but it's difficult if you don't know where they are at. If they have a cell phone there is no way to communicate. You have no way to serve papers. It's difficult.

Rep. Koppelman: When you do the groundwork in trying to locate these folks, the initial investigatory work, are you then in a better position to be able to come to the state's attorney and say that you found an address, some of their prep work, and say look we found these people but they just don't want to pay, will you prosecute them. Is there a good rapport in the sense that these are being prosecuted or is it just one of those offenses that they put on the back burner because there are more important fish to fry.

Mike Lefor: I can only speak to a couple of counties that I deal with. It is a challenging, difficult environment, because they are busy with other matters. I can tell you that when we do come forth with good information, they do a pretty good job because they want to get them collected.

Rep. Onstad: A person writes an NSF check to a business, they turn it over to your company first and over a period of time, how many days do you spend trying to do that before you will turn it over to the state's attorney and is that when the 90 days starts or the 120 starts running. Or does the 120 days start when you get the account from the merchant.

Mike Lefor: The checks do come directly to us. We have the client sign a bank authorization form so that the NSF checks come directly to us. The second part of the question, I have to answer you with what is our company policy. Our policy is at the present time, to try and collect it for 45 days up to 60 days. We might allow some flexibility if it looks like it might be paid. But no, that time frame for the state's attorney is inclusive of the effort that we are trying to collect the account. We have limited time and then we have to move it.

Rep. Boehning: How helpful are the banks in trying to collect these accounts. Can you call the bank and ask where Joe is located?

Mike Lefor: Because of the Gramm-Leach-Bliley Privacy Act, banks are very hesitant to give us any information.

Rep. Boehning: Basically, the information could be at the fingertips of the banks, but with the federal law you can't get the information, correct.

Mike Lefor: That is correct.

Rep. Delmore: Does that mean the bank has already charged that individual for the NSF check through their part as well. Is that correct.

Mike Lefor: That is correct and that is why we'll have clients calling us, because banks will charge our clients a certain fee because an NSF check came through their business account. Our clients are calling us, wanting higher rebates to cover that cost. We're trying to explain to them that the bigger rebate we give to you, the less money we have to try and collect the checks in the first place.

Rep. Delmore: When your businesses are charged that fee, however, they don't get it back after you have collected. They just get the money back for the amount the check was written for.

Mike Lefor: That's correct; not across the board, but I have had clients call me and say that my bank is charging me for an NSF check that was run through my business account. So to the best of my knowledge, that's correct.

Rep. Delmore: What do those fees range, do you know.

Mike Lefor: I had a call from a client in MT yesterday that asked if we could increase your rebate because I am being charged \$6. I've heard anywhere from \$2 to 6 or \$7 on that end to our clients.

Rep. Delmore: Then the person that writes the check, however, what's the usual fee on his account.

Mike Lefor: \$20-30.

Rep. Delmore: So that is a minimum.

Chairman DeKrey: Thank you. Further testimony in support of SB 2158.

Mike Rud, ND Petroleum Marketers and the ND Retail Association: Support. We too stand in support on SB 2158. We simply view this fee increase as needed. We take the position that the previous two people talked about. In a lot of cases, this is just chronic behavior. These people have no intention of paying that money back. We view it as theft of property. We think these guys need the tools in place to continue to do what they do. They provide a valuable service to our industry and we appreciate their efforts very much. We don't always get the money back and as Rep. Boehning touched upon, with the banks it's a pretty tough deal if you get a check you think is questionable, you can call the bank if you have a number on there and the bank will tell you if there is money in that account in most cases, but as far as any other personal information, they aren't too open to doing anything in that regard. We think the bill is important.

Rep. Delmore: How many of your businesses have a little machine that they can run checks through which checks that account. Why don't we do more of those types of things to be proactive as businesses.

Mike Rud: I think the machine will tell you, in my understanding, if they've had a bad check in the last 30 days that does not necessarily tell you if there is money in the account at that time.

Rep. Delmore: There's more than one machine then because I've been told that it won't give you the exact balance but it will tell you if there is money there to cover the check.

Mike Rud: I haven't seen one of those machines. I'm not aware of that machine. They could be out there.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Rep. Dave Drovdal: I am a businessman; I used the services of one of the companies that were here before. When I received NSF checks, I had a form letter that I sent out. I had the privilege of doing that as a small businessperson. There are four kinds of people writing bad checks, 1) fraud; 2) deception; 3) dual account and one person wrote a check and didn't put it in the register; or 4) intellectually disabled. In other words, they don't quite understand their checking account. They aren't doing anything intentionally but they made mistakes. The last two of those categories are going to be the ones that are going to be charged and pay that fee; \$35 is a lot of money. I had the opportunity to send letters so that they could come in and I would save them that fee. Most businesses, because of their size, have it automatically sent from the bank to these agencies. When I was doing this, if the check got so old after I had turned it over to the agency, after so many days there was a percentage of that check that they actually kept. So I didn't get a full amount. Now, apparently has changed according to the testimony that was given here earlier. I went out of business in November 1999, so I'm sure that many things have changed since the turn of the century. I know a case that was reported to me of an intellectually disabled person who had their checks stolen from them. That's a crime and there were about five checks written, more than the person had in the bank and they bounced. A number of businesses, the checks were automatically sent in to a collection agency and a letter was sent out. The crime, as reported, was filed against the party that had taken the checks, they didn't have any money, so you couldn't recover from them. They had merchandise that didn't fit the party so couldn't get the merchandise and here these letters came from this check agency, that you pay \$30 plus the amount of the check. The party had already been a victim of theft and now facing the charge for these checks. The bank acknowledged that was not the party's signature. The party wrote back to the collection agency and stated what had happened, report number, case number, we'll cover the check but would you drop the charge. A second letter came 30 days later, you either pay or your credit rating is messed up. This party had worked hard to get a good credit rating and certainly didn't want to lose it; they wrote another letter and again no response from the collection agency. The letter didn't get returned but no response. The party borrowed money, paid the debt, so a victim twice. Since we are regulating what they put in, because they are actually going against the people that can least afford it, that are going to be paying these fines; not only pay this fine plus the bank fine and in some cases they are going to pay a fine to the business. They are getting it three times. It does cost money to do business and they probably deserve that raise, but I think they have a standard that they need to raise to as well. There's no place in the law saying that they make that standard. These disabled people that do not have the ability to hire a lawyer to countersue or do anything else. I think it is our responsibility to put in this law, some standards or some fees, or some way that the person can go back to that agency and say, you have to listen to my story. We don't have intermediary or mediation, and I hope you will consider that as you consider increasing this fee and that's my only gripe about the whole system. They are only going to be collecting from the last two categories because they want to

keep their credit rating; the first two categories don't care. I'll be glad to answer "no" questions.

Chairman DeKrey: Thank you. Further testimony in opposition.

Rep. Boehning: Mike, when you go into a store, you will see a sign that says if you write a bad check, they will charge you \$20-30 or whatever the fee is. Who collects that fee? Does the business reimburse you some of that money or does the business collect all of that. You have the bank fee of \$25-30, the collection fee of \$30, plus the store owner can charge you \$20-30 plus the amount of the check. What happens to the amount that the store owner might collect?

Mike Lefor: The way that it works right now, if a merchant signs up with us, they are signing a bank authorization form, meaning that the check comes directly to us. The merchant is not dealing with it at all, so there is no fee from the merchant, unless the merchant is charging the service fee without using a collection agency. There's not a client fee and a collection agency fee, one or the other. So, there is a \$30 service fee right now and we are required by law to rebate at least \$2. So if there is a \$100 check, we send \$100 to the client, we send the \$2 rebate to the client, so they get a total of \$102.00 and we keep \$28.00.

Rep. Boehning: I'm confused. You can only charge the two fees, the bank fee and your fee. But can the business can collect the \$25-30 fee; you see a sign that says they will collect X dollars on an NSF check.

Mike Lefor: There is only one fee. The merchant can't charge a fee and a collection agency charge a fee. There is only one fee. So if a business has opted not to use a check collection agency and collecting on their own, they can collect the \$30 service fee, so there aren't two fees.

Rep. Boehning: So if they want to do their own collection they can charge the fee.

Mike Lefor: Yes, they can do the same thing we can, charge up to \$30 or charge \$0. It's up to them. In response to Rep. Drovdal's concern about somebody that was taken advantage of and the victim of a crime. In our business, we're upfront and ethical businesses. We wouldn't try to collect money from someone who is a victim of a crime, we would work with them. It is unfortunate that happened but I'm not aware of anything like that happening. Every once in a while, if somebody has a stolen check, they will sign an affidavit at the Police Dept. He also stated that there should be some standard for collection agencies. The Dept. of Financial Institutions in ND does regulate our industry so they can lodge a complaint with the Dept. of Financial Institutions. We believe safeguards are already in place.

Rep. Koppelman: You say that the recourse is to lodge a complaint with the Dept. of Financial Institutions, what is the procedure if that occurs. Secondly, is there any

recourse that a citizen has if it's a case where there is a forged check, or a bogus claim?

Mike Lefor: If an individual files a complaint with the police dept or sheriff's office and it's a forgery. When the check comes to us it will be stamped forgery, so we don't take any action, whatsoever, we send it back to our client so that they can deal with it along with the police or sheriff's department.

Rep. Koppelman: If a citizen finds himself the victim of that circumstance or where a collection agency is chasing down a bad check and isn't valid, and no response. You said they can file a complaint with the Dept. of Financial Institutions. What happens if they do that, and do they have any other recourse, civil recourse?

Mike Lefor: If a person files a complaint with the Dept. of Financial Institutions, the form asks them specifically what happened. Then we get a letter from the Dept showing what the complaint was. Then they will ask specific questions based on that complaint and we respond. Did a, b or c happen. Provide us with supporting documentation. So if a collection agency made an error, they'll be taken to task for that. The Fair Debt Collection Practices Act, and the State has a lot of the same provisions, and the Commissioner can act appropriately. I'm not aware of any problems, and the Dept. of Financial Institutions comes to our annual meeting. They are always complimenting us on how well we self-police. The example earlier was news to me, that if there was a situation like this where a collection agency in this state, wouldn't say that they had made a mistake. We've been in this business for 52 years, have we made mistakes, yes. But when we find out about those mistakes, we correct them as fast as we can.

Rep. Koppelman: If that does occur, and let's assume the best and it is resolved, the reference the Speaker made was to somebody's credit being damaged. What does an individual do to restore that?

Mike Lefor: The first thing that I always advise people to do is to go to annualcreditreport.com. That's the website that the federal law provides that people can get a copy of their credit report once a year by each one of the three entities and check it out. If somebody has a complaint about that, they can electronically send their complaint in, and we have a software program, because our agency deals with the healthcare debt, lists our information with the credit reporting repositories. They come to us and say, this is what the person is saying. We have 30 days to check it out. We typically check it out within 2-3 days. If there is an error made, and it doesn't happen very often, then we send corrected information to the credit reporting companies for them to make the change.

Rep. Delmore: It's my understanding that banks always do the checks before they do the deposits. That's gotten people in trouble once in a while, because they thought the deposit would beat the check there and it didn't. Do you see some people who have that happen to them and because of the fees charged by the bank,

etc. they were really short and so they really couldn't go through and cover that check.

Mike Lefor: In my personal experience, the situation you just described happened more years ago with the advent of electronic transmissions, where the money is moving a lot faster. That doesn't happen as much now.

Rep. Onstad: In a situation of an automatic filing with you and your company, an NSF check comes through, and then the following day a deposit comes in to cover that. I am assuming that the bank is going to charge a fee to that depositor of that account, but how would you handle that. Are you still going to assess the \$30 or \$35 fee?

Mike Lefor: We wouldn't necessarily know that a deposit has been made the next day. We have no way of knowing that. If something like that happens, sometimes the person will go and talk to our client, and then typically the client will call us and say they made a mistake in their checkbook, please return the check to us. We will do that, that's part of what we sell them on, because the clients want to have control over their checks because they don't want a good customer to become upset because we are trying to collect a fee. So in that case if the business calls us and tells us to stop action, we stop action.

Rep. Onstad: So when you stop action, there wouldn't be a service fee collected by your agency.

Mike Lefor: Yes, that's correct.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing. We will take a look at SB 2158.

Rep. Beadle: I move the amendment that we have in front of us, .03001.

Rep. Delmore: Second the motion. It concerns me a little bit as we talk about fees and costs to the public. I know these people are not doing the right thing, but they had an increase in 2003 and 2007 of 20% each time; this is the third increase. Maybe they are having problems; but there are probably a lot fewer of them. I would think that they would have more work to do.

Chairman DeKrey: The amendment takes care of the Speaker's problem if the bad check writer was a victim of fraud, the collection agency can't collect any fees. Voice vote on the amendment. Motion carried. We now have the bill before us as amended.

Rep. Kretschmar: The state's attorneys came in and objected to the language between 90 and 120 days. I see his point. I would like to know why we couldn't just

put 120 where the 90 is on line 27 and then scratch out the rest of the sentence. I move to amend that change.

Rep. Maragos: Second the motion.

Rep. Beadle: The same objection for page 2 should also be on page 3 as well.

Rep. Kretschmar: Correct, both places. Then the language that should be removed, the "an" on line 28, all of 29, and up to and including the word "may" on line 30. That happens on page 3 again the same wording. All that is doing is increasing the current law by 30 days.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended twice.

Rep. Maragos: I move a Do Pass as amended.

Rep. Steiner: Second the motion.

Rep. Delmore: I think the amendments do, indeed make it a better bill, but I'm just concerned with three 20% increases since 2003, that's not very long, and I intend to oppose the bill.

Rep. Boehning: I am going to oppose the bill as well. One of the things, they are only allowed to collect \$35 and it's always on the backs of the bad check writer, which is probably understandable, but if they aren't making any money maybe we need to amend the law, where the check collection agency go to the business that has the bad check and maybe help by putting some money in, pay them as well, because now they are already taking anywhere from \$2-6 that they have to rebate back to the business owner for the bad check. I can see why they aren't making any money.

Rep. Beadle: I think all that discussion is fine, but it also is going to be moot. Based on what I know about my generation, we do everything on-line and with credit cards. No one is going to be writing checks in 20 years. It won't matter at that point.

Rep. Maragos: I'm going to support the bill, of course, the idea that banks can charge \$35 just for the check coming and going out and doing nothing, where the people that have to go and collect it, have to do a lot of work. I don't see the \$35 as being overly exorbitant in today's world of prices. I certainly appreciate Rep. Delmore's comments, but \$35 is not very much.

Chairman DeKrey: Clerk will call the roll on a Do Pass motion on SB 2158, as amended.

8 YES 5 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Beadle

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2158

Page 1, line 9, after the period insert:

"a."

Page 1, line 11, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.

"b."

Page 1, line 18, after the period insert:

"c."

Page 2, line 1, after the period insert:

"d."

Page 3, line 9, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection."

Renumber accordingly

March 9, 2011

VK
3/10/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2158

Page 1, line 9, after the period insert:

"a."

Page 1, line 15, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.

b."

Page 1, line 18, after the period insert:

"c."

Page 2, line 1, after the period insert:

"d."

Page 2, line 27, replace "ninety" with "one hundred twenty"

Page 2, line 28, remove ", and"

Page 2, remove line 29

Page 2, line 30, remove "notice under this subsection the state's attorney may."

Page 3, line 9, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection."

Page 3, line 17, replace "ninety" with "one hundred twenty"

Page 3, line 18, remove ", and thereafter until the expiration of one hundred twenty days after the drawer"

Page 3, line 19, remove "received notice under this subsection the state's attorney may."

Re-number accordingly

Date: 3/9/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2158

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Steiner

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey | ✓ | | Rep. Delmore | | ✓ |
| Rep. Klemin | | | Rep. Guggisberg | | ✓ |
| Rep. Beadle | ✓ | | Rep. Hogan | | ✓ |
| Rep. Boehning | ✓ | ✓ | Rep. Onstad | | ✓ |
| Rep. Brabandt | ✓ | | | | |
| Rep. Kingsbury | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Steiner | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Beadle

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

REPORT OF STANDING COMMITTEE

SB 2158, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2158 was placed on the Sixth order on the calendar.

Page 1, line 9, after the period insert:

"a."

Page 1, line 15, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.

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Page 3, line 17, replace "ninety" with "one hundred twenty"

Page 3, line 18, remove ", and thereafter until the expiration of one hundred twenty days after the drawer"

Page 3, line 19, remove "received notice under this subsection the state's attorney may."

ReNUMBER accordingly

2011 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2158

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2158

4/8/11

Job # 16453 starts at 9:55

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to issuing a check with nonsufficient funds or without an account

Minutes:

There is an attachment

Senators:

Site
Olafson
Sorvaag

Representatives:

Beadle
Kretschmar
Hogan

Senator Sitte – Begins by asking Marilyn Foss to present information.

Marilyn Foss – General Counsel, ND Bankers Association – She presents an amendment to remove financial institutions and keep them out of the check collection process when there has been an nsf check. See written testimony.

Senator Sitte – Remarks on where the changes will be in the bill.

Senator Olafson moves the Senate accede to House amendments and further amend
Rep. Beadle seconded

Roll call vote, 6 yes 0 no
Motion passes

Senator Sitte will carry

Correction made by John Walstad – Should be House recede from House amendments and amend as follows. Correction made for the record.

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 2158 as (re) engrossed

Date: 4-8-11

Roll Call Vote #: 1

- Action Taken**
- SENATE accede to House amendments
 - SENATE accede to House amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 753 ..

Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Olafson Seconded by: Beadle

| Senators | | | | Yes | No | | Representatives | | | | Yes | No |
|----------------|---|--|--|-----|----|--|-------------------|---|--|--|-----|----|
| <u>Sitte</u> | X | | | X | | | <u>Beadle</u> | X | | | X | |
| <u>Olafson</u> | X | | | X | | | <u>Koetschmar</u> | X | | | X | |
| <u>Sorvaaq</u> | X | | | X | | | <u>Hogan</u> | X | | | X | |
| | | | | | | | | | | | | |

Vote Count: Yes 6 No 0 Absent _____

Senate Carrier Sitte House Carrier Beadle

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2158, as engrossed: Your conference committee (Sens. Sitte, Olafson, Sorvaag and Reps. Beadle, Kretschmar, Hogan) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 753, adopt amendments as follows, and place SB 2158 on the Seventh order:

That the House recede from its amendments as printed on page 753 of the Senate Journal and page 950 of the House Journal and that Engrossed Senate Bill No. 2158 be amended as follows:

Page 1, line 9, after the period insert:

"a."

Page 1, line 15, after the period insert "If the state's attorney or holder determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.

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Page 3, line 17, replace "ninety" with "one hundred twenty"

Page 3, line 18, remove ", and thereafter until the expiration of one hundred twenty days after the drawer"

Page 3, line 19, remove "received notice under this subsection the state's attorney may."

Renumber accordingly

Engrossed SB 2158 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2158

Kirk Wullweber
Checkrite of Minot, Inc.
Testimony on Senate Bill 2158
Senate Judiciary Committee
January 17, 2011

Chairman Nething and members of the Senate Judiciary Committee, my name is Kirk Wullweber, and I am speaking on behalf of my business, Checkrite of Minot, Inc. We specialize in check recovery in Northwest North Dakota. I am here today to urge you to support SB 2158 increasing the return check fee from \$30.00 to \$35.00 and increase the number of days to collect/prosecute the writer of an insufficient funds check from ninety to one hundred-eighty days.

The North Dakota Legislature last increased the fee to thirty dollars in 2007. Since that time, we have seen continuing increased costs in wages, postage, payroll taxes, health care costs, mileage and errors and omissions insurance. There is a need for check recovery agencies. Because of us, there is less prosecution needed through the court system. The businesses we represent can concentrate on running and growing their businesses and let us specialize in our field.

South Dakota has had a \$40.00 fee in place for several years. There costs are comparable to ours. The bond requirements in South Dakota, Minnesota, and Montana are lower, plus they are not required to rebate \$2.00 for every check collected back to the merchant. Seven other state have a fee in excess of \$30.00 with the highest being \$50.00 in both Kentucky and Virginia (see attachment).

When other businesses are hit with higher expenses, they can raise their prices. Check recovery agencies do not have that option – we have to absorb the cost. Due to I.D. theft, debtors are becoming more difficult to find for legitimate reasons. We are spending more time finding debtors than ever before.

More and more customers are using cell phones and, there is no telephone directory for cell phone users making it more difficult to contact them. Not all fees are collected, either. Many are waved or reduced because a family member is helping, or a bankruptcy has been filed. We continue to see a rise in forgers and fraud, and even though we can't collect a fee on those, we process them as a service to our merchant. We work closely with the police department and states attorney's office.

The increase in number of days for collection/prosecution would allow for a more positive outcome from the following perspective:

- allows the holder of an insufficient funds check additional time to secure the funds to pay off their check obligation
- increase in merchants' recovery of funds
- fewer cases presented to the state's attorney for prosecution

Many of you are business owners – if collection agencies cannot afford to effectively collect your bad checks, you have the choice of absorbing the loss or passing it on to your customers by raising your prices.

We do not have the luxury of raising our prices, and for the past four years we have had to continue to absorb the increasing costs associated with our business. Last year, collection

[Recipient Name]
January 14, 2011
Page 2

agencies in this country returned almost \$50 billion to businesses throughout the United States which is a tremendous economic impact. Check recovery agencies in North Dakota collect tens of thousands of returned checks annually to the benefit of our customer businesses. Profit margins in our business are small and getting smaller, we need this increase in order to remain a viable service to our clients. Amending the bill will benefit all levels of the community by assisting citizens, business owners, collection agencies, and local government agencies.

We are proud of the work that we do for businesses in this state. I urge your committee to look favorably on Senate Bill 2158 by giving it a "do-pass" recommendation. Thank you for your time. I would be happy to answer any questions you may have.



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Password



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State Returned Check Fees

Customer Service:

The following are the maximum consumer fees allowable per state for returned checks.

| State | Fee |
|----------------------|------|
| Alabama | \$30 |
| Alaska | \$30 |
| Arizona | \$25 |
| Arkansas | \$25 |
| California | \$25 |
| Colorado | \$20 |
| Connecticut | \$20 |
| Delaware | \$40 |
| District of Columbia | \$15 |
| Florida | \$25 |
| Georgia | \$30 |
| Hawaii | \$30 |
| Idaho | \$20 |
| Illinois | \$25 |
| Indiana | \$20 |
| Iowa | \$30 |
| Kansas | \$30 |
| Kentucky | \$50 |
| Louisiana | \$25 |
| Maine | \$25 |
| Maryland | \$35 |
| Massachusetts | \$25 |
| Michigan | \$25 |
| Minnesota | \$30 |
| Mississippi | \$40 |
| Missouri | \$25 |
| Montana | \$30 |
| Nebraska | \$30 |
| Nevada | \$25 |

- [Frequently Asked Questions \(FAQs\) for Check Writers](#)
- [E-mail Customer Service](#)
- [For Check Writers](#)
- [For Our Customers](#)
- [State Returned Check Fees](#)

| | |
|----------------|--------------------|
| New Hampshire | \$25 |
| New Jersey | \$30 |
| New Mexico | \$25 |
| New York | \$20 |
| North Carolina | \$25 |
| North Dakota | \$30 |
| Ohio | \$30 |
| Oklahoma | \$25 |
| Oregon | \$25 |
| Pennsylvania | \$25 |
| Rhode Island | \$25 |
| South Carolina | \$30 |
| South Dakota | \$40 ⁰⁸ |
| Tennessee | \$30 |
| Texas | \$30 |
| Utah | \$20 |
| Vermont | \$25 |
| Virginia | \$50 ⁰⁸ |
| Washington | \$40 |
| West Virginia | \$25 |
| Wisconsin | \$25 |
| Wyoming | \$30 |

This list was last updated: June, 2008.

This information is provided for the convenience of our customers only. This information is not intended as legal advice and may not be used as legal advice. Any information contained in this material is subject to change and interpretations of the statutes may vary. This information should not be used to replace the advice of your own legal counsel. The above information is a summary of the applicable statutes. The statutes should be reviewed in their entirety for a complete understanding of the law regarding service fees.

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Senate Judiciary Committee

Senate Bill 2158

Testimony of: Mike Lefor, President DCI Credit Services, Inc.

January 17, 2011

Good morning, Chairman Nething and members of the Senate Judiciary Committee. My name is Mike Lefor, I am the president of DCI Credit Services, Inc. a collection agency with offices in Dickinson and Williston. I have been in the collection business for over thirty years.

I am here to testify in support of Senate Bill 2158 which increases the NSF check fee from \$30.00 to \$35.00 and extends the time frame to prosecute from 90 days to 180 days. In 1981, three people in our industry worked to get a service fee on NSF checks. These individuals were my dad, Bob Lefor, a gentleman from Jamestown, Chuck Axtman and myself. Prior to that time, there really wasn't a cost effective way for collection agencies to collect NSF checks in North Dakota.

The state legislature did approve a service fee that year. Prior to that, businesses really didn't have anywhere to go. They tried to collect the checks themselves by sending out notices and making telephone calls. However, without collection experience and effective follow-up, these efforts were largely ineffective.

In August, 1981, after the service fee became law, I was a salesman for our company and I sold this service to over 200 businesses within 18 months. There was a tremendous need for this service. I can remember the owner of the local McDonalds thanking me for the high recovery rate on his NSF checks that his staff no longer had to handle.

In 1983, there were approximately 23 businesses that collected NSF checks in North Dakota. Now, there are just a handful. The reason for this is because of declining check volumes and it is a low profit margin business. Check collection was much easier than it is today. More people would pay from a collection agency sending out a notice or making a telephone call. The Baby Boomer generation cared more about paying their accounts. Checks were the #1 form of payment.

Today, checks are third behind ACH and Electronic Fund Transfers. There are less checks being written. The use of debit cards, credit cards and online bill pay continues to skyrocket. The NSF check writer of today is different from the NSF check writer of 1981 in that there is an increasing number of these check writers who have no intention of making these checks good making check collection more difficult.

Today, they are more difficult to communicate with as 22% of the residences in this country no longer have landlines and that number is growing very rapidly. The number of cell phones has exploded in the past 10 years. If our client does not get the cell phone number on the check and we do not have it in our data base, it is difficult to get that number. Less communication = Less chance for collecting the check.

This means we are putting more resources toward collecting checks and collecting less. Most businesses can increase their prices if they feel they need the revenue. In order to get an increase in our revenue we need to come to the legislature to seek a fee increase. If my memory serves me correctly, there has been 1 fee increase in the past 10 years.

No one likes fee increases, however, costs associated with our business have increased in the past ten years. These increased expenses include salaries, health insurance, utilities, postage and other costs. We are in an environment where margins are low in the check collection business.

In 2009, collection agencies throughout the country returned over \$42 Billion to our business clients. These are dollars, that if they were not recovered, would have resulted in higher costs to the rest of us.

Our organization also collects past due accounts, sells mortgage reporting products to financial institutions and a few other revenue streams, if we had to rely on the income we received from our check collection activities we wouldn't be in the business today.

Today, we are spending more time and resources trying to collect checks, which is narrowing our margins. We spend time trying to collect checks that we ultimately do not collect. National statistics will show that if you collect 70% of the checks that come into your office, you are doing a good job for our clients. That means you are spending time and resources on 30% where you will not get paid for your services.

Check collection services serve as a safeguard for small businesses, we perform a valuable service. Senate Bill 2158 also extends the time frame for prosecution of NSF checks from 90 to 180 days. This time frame has been the same for as long as I can remember. The 90 day time frame is very short from a collection agency perspective. There are many times when you are trying to make a decision on how to proceed to get your client paid.

Senate Bill 2158

Page 3

The agency might be trying to contact the individual to make arrangements and then, be forced to prosecute on the check due to the timing involved. By allowing more time to prosecute, it will give collection agencies or businesses more time to try to collect prior to sending the check to the states attorney for prosecution.

From a collection agency perspective, we do not want to send the checks to the states attorney as we do the paperwork and do not get paid for our services, we would much rather collect the check as well as the fee.

Chairman Nething and members of the Senate Judiciary Committee, North Dakota's collection agencies perform a much needed service to small business in this state, this benefits consumers as well. Many of our members speak to high school and university students about finance to help them move in the right direction when it comes to paying your accounts on time and understanding the value of a good credit reporting history.

In closing, I ask for your support for Senate Bill 2158 and I am ready to answer any questions. Thank you for your time.

March 09, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2158

Page 1, line 9, after the period insert:

"a."

Page 1, line 15, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.

b."

Page 1, line 18, after the period insert:

"c."

Page 2, line 1, after the period insert:

"d."

Page 2, line 27, replace "ninety" with "one hundred twenty"

Page 2, line 28, remove ", and"

Page 2, remove line 29

Page 2, line 30, remove "notice under this subsection the state's attorney may."

Page 3, line 9, after the period insert "If the state's attorney, holder, or financial institution determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney, holder, or financial institution shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection."

Page 3, line 17, replace "ninety" with "one hundred twenty"

Page 3, line 18, remove ", and thereafter until the expiration of one hundred twenty days after the drawer"

Page 3, line 19, remove "received notice under this subsection the state's attorney may."

Renumber accordingly

Kirk Wullweber
Checkrite of Minot, Inc.
Testimony on Senate Bill 2158
March 8, 2011

Chairman and members of the House Judiciary Committee, my name is Kirk Wullweber, and I am speaking on behalf of my business, Checkrite of Minot, Inc. We specialize in check recovery in Northwest North Dakota. I am here today to urge you to support SB 2158 increasing the return check fee from \$30.00 to \$35.00 and increase the number of days to collect/prosecute the writer of an insufficient funds check from ninety to one hundred-twenty days.

The North Dakota Legislature last increased the fee to thirty dollars in 2007. Since that time, we have seen continuing increased costs in wages, postage, payroll taxes, health care costs, mileage and errors and omissions insurance. There is a need for check recovery agencies. Because of us, there is less prosecution needed through the court system. The businesses we represent can concentrate on running and growing their businesses and let us specialize in our field.

South Dakota has had a \$40.00 fee in place for several years. There costs are comparable to ours. The bond requirements in South Dakota, Minnesota, and Montana are lower, plus they are not required to rebate \$2.00 for every check collected back to the merchant. Several other states have a fee in excess of \$30.00 with the highest being \$50.00 in both Kentucky and Virginia (see attachment).

When other businesses are hit with higher expenses, they can raise their prices. Check recovery agencies do not have that option – we have to absorb the cost. Due to I.D. theft, debtors are becoming more difficult to find for legitimate reasons. We are spending more time finding debtors than ever before.

More and more customers are using cell phones and, there is no telephone directory for cell phone users making it more difficult to contact them. Not all fees are collected, either. Many are waved or reduced because a family member is helping, or a bankruptcy has been filed. We continue to see a rise in forgers and fraud, and even though we can't collect a fee on those, we process them as a service to our merchant. We work closely with the police department and states attorney's office.

The increase in number of days for collection/prosecution would allow for a more positive outcome from the following perspective:

- Allows the holder of an insufficient funds check additional time to secure the funds to pay off their check obligation
- Increase in merchants' recovery of funds
- Fewer cases presented to the state's attorney for prosecution

March 8, 2011

Page 2

Many of you are business owners – if collection agencies cannot afford to effectively collect your bad checks, you have the choice of absorbing the loss or passing it on to your customers by raising your prices.

We do not have the luxury of raising our prices, and for the past four years we have had to continue to absorb the increasing costs associated with our business. Last year, collection agencies in this country returned almost \$50 billion to businesses throughout the United States which is a tremendous economic impact. Check recovery agencies in North Dakota collect tens of thousands of returned checks annually to the benefit of our customer businesses. Profit margins in our business are small and getting smaller, we need this increase in order to remain a viable service to our clients. Amending the bill will benefit all levels of the community by assisting citizens, business owners, collection agencies, and local government agencies.

We are proud of the work that we do for businesses in this state. I urge your committee to look favorably on Senate Bill 2158 by giving it a “do pass” recommendation. Thank you for your time. I would be happy to answer any questions you may have.

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State Returned Check Fees

The following are the maximum consumer fees allowable per state for returned checks.

Customer Service

| State | Fee |
|----------------------|------|
| Alabama | \$30 |
| Alaska | \$30 |
| Arizona | \$25 |
| Arkansas | \$25 |
| California | \$25 |
| Colorado | \$20 |
| Connecticut | \$20 |
| Delaware | \$40 |
| District of Columbia | \$15 |
| Florida | \$25 |
| Georgia | \$30 |
| Hawaii | \$30 |
| Idaho | \$20 |
| Illinois | \$25 |
| Indiana | \$20 |
| Iowa | \$30 |
| Kansas | \$30 |
| Kentucky | \$50 |
| Louisiana | \$25 |
| Maine | \$25 |
| Maryland | \$35 |
| Massachusetts | \$25 |
| Michigan | \$25 |
| Minnesota | \$30 |
| Mississippi | \$40 |
| Missouri | \$25 |
| Montana | \$30 |
| Nebraska | \$30 |
| Nevada | \$25 |

- [Frequently Asked Questions \(FAQs\) for Check Writers](#)
- [E-mail Customer Service](#)
- [For Check Writers](#)
- [For Our Customers](#)
- [State Returned Check Fees](#)

| | |
|----------------|------|
| New Hampshire | \$25 |
| New Jersey | \$30 |
| New Mexico | \$25 |
| New York | \$20 |
| North Carolina | \$25 |
| North Dakota | \$30 |
| Ohio | \$30 |
| Oklahoma | \$25 |
| Oregon | \$25 |
| Pennsylvania | \$25 |
| Rhode Island | \$25 |
| South Carolina | \$30 |
| South Dakota | \$40 |
| Tennessee | \$30 |
| Texas | \$30 |
| Utah | \$20 |
| Vermont | \$25 |
| Virginia | \$50 |
| Washington | \$40 |
| West Virginia | \$25 |
| Wisconsin | \$25 |
| Wyoming | \$30 |

This list was last updated: June, 2008.

This information is provided for the convenience of our customers only. This information is not intended as legal advice and may not be used as legal advice. Any information contained in this material is subject to change and interpretations of the statutes may vary. This information should not be used to replace the advice of your own legal counsel. The above information is a summary of the applicable statutes. The statutes should be reviewed in their entirety for a complete understanding of the law regarding service fees.

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House Judiciary Committee

Senate Bill 2158

Testimony of: Mike Lefor, President, DCI Credit Services, Inc.

March 8, 2011

Good morning, Chairman DeKrey and members of the House Judiciary Committee. My name is Mike Lefor; I am the president of DCI Credit Services, Inc. a collection agency with offices in Bismarck, Dickinson and Williston. I have been in the collection business for over thirty years.

I am here to testify in support of Senate Bill 2158 which increases the NSF check fee from \$30.00 to \$35.00 and extends the time frame to prosecute from 90 days to 120 days. In 1981, three people in our industry worked to get a service fee on NSF checks. These individuals were my dad, Bob Lefor, a gentleman from Jamestown, Chuck Axtman and I. Prior to that time, there really wasn't a cost effective way for collection agencies to collect NSF checks in North Dakota.

The state legislature did approve a service fee that year. Prior to that, businesses really didn't have anywhere to go. They tried to collect the checks themselves by sending out notices and making telephone calls. However, without collection experience and effective follow-up, these efforts were largely ineffective.

In August, 1981, after the service fee became law, I was a salesman for our company and I sold this service to over 200 businesses within 18 months. There was a tremendous need for this service. I can remember the owner of the local McDonalds thanking me for the high recovery rate on his NSF checks that his staff no longer had to handle.

In 1983, there were approximately 23 businesses that collected NSF checks in North Dakota. Now, there is just a handful. The reason for this is because of declining check volumes and it is a low profit margin business. Check collection was much easier than it is today. More people would pay from a collection agency sending out a notice or making a telephone call. The Baby Boomer generation cared more about paying their accounts. Checks were the #1 form of payment.

Today, checks are third behind ACH and Electronic Fund Transfers. There are less checks being written. The use of debit cards, credit cards and online bill pay continues to skyrocket. The NSF check writer of today is different from the NSF check writer of 1981, in that there is an increasing number of these check writers who have no intention of making these checks good making check collection more difficult.

Today, they are more difficult to communicate with as 22% of the residences in this country no longer have landlines and that number is growing rapidly. The number of cell phones has exploded in the past ten years. If our client does not get the cell phone number on the check and we do not have it in our data base, it is difficult to get that number. Less communication = Less chance for collecting the check.

This means we are putting more resources toward collecting checks and collecting less. Most businesses can increase their prices if they feel they need the revenue. In order to get an increase in our revenue we need to come to the legislature to seek a fee increase. If my memory serves me correctly, there has been a fee increase in the past 10 years.
1-2003 + 1-2007

No one likes fee increases, however, costs associated with our businesses has increased in the past ten years. These increased expenses include salaries, health insurance, utilities, postage and other costs. We are in an environment where margins are low in the check collection business.

In the past twelve months, collection agencies have recovered nearly \$50 billion to our business clients. These are dollars that if they were not recovered, would have resulted in higher costs to the rest of us.

Our organization also collects past due accounts, sells mortgage credit reports to financial institutions and a few other revenue streams, if we had to rely on the income we receive from our check collection activities, we would not be in the check collection business today.

Today, we are spending more time and resources trying to collect checks, which are narrowing our margins. We spend time trying to collect checks we ultimately do not collect. National statistics will show that if you collect 70% of the checks that come into your office, you are doing a good job for your clients. That means you are spending time and resources on 30% where you will not get paid for your services.

Senate Bill 2158 also extends the time frame for prosecution of NSF checks from 90 days to 120 days. The ninety day time frame has been the same for as long as I can remember. The 90 day time frame is very short from a collection agency perspective. There are many times when you are trying to make a decision on how to proceed to get your client paid.

House Judiciary Committee
Senate Bill 2158
Page 3

The agency might be trying to contact the individual to make arrangements and then, be forced to prosecute on the check due to the timing involved. By allowing more time to prosecute, agencies will be able to collect more of these checks and not have to send them on to prosecution. This would reduce the number of prosecutions states attorneys have to deal with.

From a collection agency perspective, we do not want to send the checks to the states attorney as we do the paperwork and do not get paid for our services; we would rather collect the check as well as the fee.

Chairman DeKrey and members of the House Judiciary Committee, North Dakota's collection agencies perform a much needed service to small business in this state, this benefits consumers as well. Many of our members speak to high school and university students about finance to help them move in the right direction when it comes to paying your bills on time and understanding the value of a good credit reporting history.

In closing, I ask for your support of Senate Bill 2158 and I am ready to answer any questions. Thank you for your time.

MEMORANDUM

April 7, 2011

TO: Chairman Sitte and Conference Committee Members, S.B. 2158
FR: Marilyn Foss, General Counsel, North Dakota Bankers Association
RE: House Amendments to S.B. 2158, Further Amendment Suggested

As introduced and passed by the Senate, S.B. 2158 did not affect banks; it increased the fee that collection agencies or other holders of an NSF check can charge from \$30 to \$35 and enlarged the time period for collection of that NSF check. In the House there was testimony about a collection agency that pursued a legislator's constituent to collect an NSF check that had been forged. The collection agency continued to seek payment of the check and fees even after the forgery was established. The described actions by the collection agency would violate current law and have placed the collection agency at financial risk for way more than a \$30 or \$35 collection fee.

As it happens, we weren't at that committee hearing. NDBA is participating now because the House amendments draw banks into the merchant's NSF collection process even though the bank is not a party to that process.

The House amendments are at page 1, lines 16-22 and page 3, lines 18-24 of the First Engrossment with House Amendments. They cover states' attorneys, holders of NSF checks and financial institutions and require any of them that "determines" . . . "the person identified as the issuer" of an NSF check is the victim of fraud to notify the holder of the check or its agent of the fraud. The notified holder is then no longer permitted to collect the \$35 otherwise allowed as fees or costs, but the collection process is not necessarily stopped.

Of these groups, states' attorneys are reasonably involved because of the criminal law for NSF checks and fraud. It is a states' attorney's job to investigate and determine there has been a crime. The state's attorney is also in contact with the holder. A holders is properly involved because the holder is either the merchant or collector that has obtained right to collect the check from the merchant. If the collection is being pursued despite a fraud, that is being done by a holder. But banks are not properly involved in these statutes because banks are not part of the criminal process or collection process at all.

The bank that returns the check doesn't have an address or telephone number for the merchant and doesn't know whether a collection agency is working on the check or not. The bank that has received the returned check has no information about the victimized account

holder or circumstances other than that a check written was returned NSF. And, the evidence, which is the check, is in the control of the merchant. That returned check has all the information the bank has – the account on which the check was drawn, the name of the payee, the amount, the signature and, on the back, information that shows deposit data. Again, all that the bank “knows” about a situation is shown on the returned check, now in the merchant’s possession.

Under our system of law, when a possible crime has occurred, it is law enforcement and the courts that “determine” whether a forgery or other fraud has occurred. Banks, like other private citizens publically claim via notice that some else has committed a crime are not immune from suit or damages caused by the errors. Banks should not be placed in the position of law enforcement or a court without having the same protection that the law gives to law enforcement and courts from liability when a criminal charge is wrong. The House amendments don’t include this protection.

Accordingly, we propose the attached, further amendments to limit the notice requirement to states attorneys and holders of a fraudulent NSF check.

Whether or not banks are involved, we think consideration should be given to the possibility that the remedy found in House version of the bill may confuse victims of fraud about how to stop collection when the victim does not owe the debt. To us, other laws already in place provide better remedies for the problem than is found in Engrossed SB 2158 even with the House amendments.

Under the federal Fair Debt Collection Practices Act (FDCPA), collection agencies must inform a consumer that he or she has the right to dispute the debt by written notice to the collector. The collection agency must then verify the disputed debt and stop collection until a proper verification is made. If the collection agency negligently verifies a debt that is not owed the collection agency may be held liable to the consumer for substantial damages and attorneys fees. (This is not an idle threat. Within the last year, a North Dakota law firm acting as a collection agency has been ordered to pay more than \$300,000 to compensate a consumer because the firm continued to try to collect a debt that wasn’t owed by the consumer.)

N. D.C.C. section 51-31-04 is a consumer friendly process for a judicial determination of the actual innocence of a victim of identity fraud. That judicial determination could be used to dispute and stop a collection proceeding and to restore a good name.

PROPOSED AMENDMENTS TO THE FIRST ENGROSSMENT WITH HOUSE AMENDMENTS OF
ENGROSSED S.B. 2158

Page 1, line 16, replace the first comma with "or" and after "holder" remove ", or financial"

Page 1, line 17, remove "institution"

Page 3, line 19, replace the first comma with "or" and after "holder" remove ", or financial
institution"

Renumber accordingly