

1999 HOUSE JUDICIARY

HB 1243

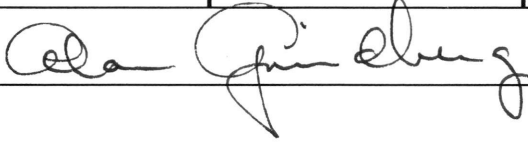
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1243

House Judiciary Committee

Conference Committee

Hearing Date January 18, 1999

Tape Number	Side A	Side B	Meter #
2	X		0
Committee Clerk Signature 			

Minutes:

REP L. THORESON This bill was introduced to try to slow up the flood of NSF checks which is upon us.

REP MAHONEY Since the legislature lowered the penalty for writing bad checks, many prosecutors won't charge the person who wrote the check and some judges won't issue a warrant for their arrest.

LONNIE OLSON (Ramsey Co. SA) There is a need to stiffen penalties for NSF checks so we can get judges to issue warrants.

ALLAN STENEHJEM (Hosp. Assn.) The Hospitality Association favors this bill. NSF checks are a large problem and the lowering of the penalty has cost our members a lot of money. We need to make the penalty more severe to cut into this problem.

RON NESS Presented written testimony, a copy of which is attached.

Page 2

House Judiciary Committee

Bill/Resolution Number 1243

Hearing Date January 18, 1999

DAVID FROELICH (Froelich Oil Co.) We must do something to stop the bad checks. My stations get \$5,000 to \$10,000 in bad checks we can't collect each year.

DICK PECK (NDPOA) The peace officers support this bill which will make the penalty for writing a bad check more severe.

JUDGE VUKELIC I am here to oppose this bill. This will only add to the work of the courts which are already overloaded.

COMMITTEE ACTION: January 25, 1999

REP MAHONEY move that the bill be amended, Rep. Klemin seconded and the motion passed on a unanimous voice vote.

REP. KOPPELMAN moved that the committee recommend that the bill DO PASS AS

AMENDED. Rep. Disrud seconded and the motion passed on a roll call vote with 8 ayes, 6 nays and 1 absent. Rep. Koppelman was assigned to carry the bill on the floor.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1243

Page 1, line 1, remove "subsection 1 of" and after "6-08-16" insert "and subsection 7 of section 6-08-16.2"

Page 1, line 2, after "funds" insert ", credit, or an account"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, replace lines 7 through 19 with:

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

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is ~~an infraction if the amount of insufficient funds or credit is not more than one hundred dollars,~~ a class B misdemeanor if the amount of insufficient funds or credit is ~~more than one hundred dollars and~~ not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars.
2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
4. A notice of dishonor ~~may~~ shall be mailed by the holder, or ~~its~~ the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

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

You are according to law notified that a check dated _____,
19 20 _____, drawn on the _____ Bank
of _____ in the amount of _____ has been returned
unpaid with the notation the payment has been refused because of
nonsufficient funds. Within ten days from the receipt of this
notice, you must pay or tender to _____

(Holder or Agent or Representative)
sufficient moneys to pay such instrument in full and any collection
fees or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of
this section and the possibility of a civil action to recover any collection fees
or costs or civil penalty authorized by this section.

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

SECTION 2. AMENDMENT. Subsection 7 of section 6-08-16.2 of the 1997
Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Notice of Dishonored Instrument

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

You are according to law notified that an instrument dated _____,
19 20 _____, drawn on the _____ Bank of
_____ in the amount of _____ has been
returned unpaid with the notation the payment has been refused
because (of nonsufficient funds) (the drawer does not have an
account). Within ten days from the receipt of this notice,
you must pay or tender to _____

(Holder)
sufficient moneys to pay such instrument in full and any collection
fees or costs not in excess of twenty dollars.

The notice may also contain a recital of the penal provisions of this section
and the possibility of a civil action to recover any collection fees or costs
authorized by this section."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1243

Page 1, line 1, replace "subsection 1 of section" with "sections" and after "6-08-16" insert "and 6-08-16.2"

Page 1, line 2, after "funds" insert ", credit, or an account"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

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

Page 1, after line 19, insert:

- "2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state's attorney of the county in which the charge is prosecuted. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
4. A notice of dishonor may be mailed by the holder, or ~~its~~ the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date _____
Name of Issuer _____
Street Address _____
City and State _____
You are according to law notified that a check dated _____,
19 _____, drawn on the _____ Bank
of _____ in the amount of _____ has been returned
unpaid with the notation the payment has been refused because of
nonsufficient funds. Within ten days from the receipt of this
notice, you must pay or tender to _____
(Holder or Agent or Representative)
sufficient moneys to pay such instrument in full and any collection

fees or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. A complaint may not be executed until at least ten days following mailing of the notice under subsection 4 and may not be executed if the person who issued the check, draft, or order has paid the amount owed under the check, draft, or order within those ten days. The failure to execute a complaint within said time bars the criminal charge under this section.

SECTION 2. AMENDMENT. Section 6-08-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

~~The person also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.~~

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:

- a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
- b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

~~The person also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.~~

4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class C felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:
 - a. At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or
 - b. At the time of issuing the instruments, or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.
5. The A person who issues an instrument under subsection 2, 3, or 4 also is liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state's attorney of the county in which the charge is prosecuted.
5. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
6. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 7. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder's agent or representative, of nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. A complaint may not be executed until at least ten days following mailing of the notice under subsection 7 and may not be executed if the person who issues the instrument has paid the amount owed under the instrument within those ten days. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2, subdivision b of subsection 3, or subdivision b of subsection 4.

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

Notice of Dishonored Instrument

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law notified that an instrument dated _____,
19 _____, drawn on the _____ Bank of
_____ in the amount of _____ has been
returned unpaid with the notation the payment has been refused
because (of nonsufficient funds) (the drawer does not have an
account). Within ten days from the receipt of this notice,
you must pay or tender to _____

(Holder)

sufficient moneys to pay such instrument in full and any collection
fees or costs not in excess of twenty dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section."

Renumber accordingly

BE REREFERRED to the Appropriations Committee (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1144 was placed on the Sixth order on the calendar.

Page 66, line 14, after the period insert "Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08."

Page 66, line 17, overstrike ", but the"

Page 66, overstrike line 18

Page 66, line 19, overstrike "prescribes by rule"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1167: Natural Resources Committee (Rep. Grosz, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1167 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1177: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1177 was placed on the Sixth order on the calendar.

Page 3, line 15, replace "fifty" with "twenty-five"

Page 3, line 16, replace "one hundred" with "fifty"

Page 3, line 17, replace "five hundred" with "seventy-five"

Page 3, line 18, replace "thousand" with "hundred fifty"

Page 3, line 20, replace "five hundred" with "seventy-five"

Page 3, line 23, replace "forty-five" with "twenty-five"

Page 3, line 24, replace "fifty" with "twenty-five"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1196: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1196 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "maintaining" with "operating"

Page 2, line 24, replace "Establishing and maintaining" with "Operating"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1199: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1199 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1224: Education Committee (Rep. R. Kelsch, Chairman) recommends DO PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1224 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1239: Education Committee (Rep. R. Kelsch, Chairman) recommends DO NOT PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1239 was placed on the Eleventh order on the calendar.

REPORT OF STANDING COMMITTEE

HB 1243: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1243 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection 1 of section" with "sections" and after "6-08-16" insert "and 6-08-16.2"

Page 1, line 2, after "funds" insert ", credit, or an account"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

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

Page 1, after line 19, insert:

2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state's attorney of the county in which the charge is prosecuted. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.

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

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

Notice of Dishonored Check

Date _____
Name of Issuer _____
Street Address _____
City and State _____
You are according to law notified that a check dated _____, 49 _____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because of nonsufficient funds. Within ten days from the receipt of this notice, you must pay or tender to _____

(Holder or Agent or Representative)
sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

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

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SECTION 2. AMENDMENT. Section 6-08-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

~~The person also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.~~

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

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The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section."

Remember accordingly

Date: 2/3
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1243

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number Do Pass as Am

Action Taken _____

Motion Made By Maragos Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1243: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1243 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection 1 of section" with "sections" and after "6-08-16" insert "and 6-08-16.2"

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Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

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Street Address _____
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19 _____, drawn on the _____ Bank
of _____ in the amount of _____ has been returned
unpaid with the notation the payment has been refused because of
nonsufficient funds. Within ten days from the receipt of this
notice, you must pay or tender to _____
(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. A complaint may not be executed until at least ten days following mailing of the notice under subsection 4 and may not be executed if the person who issued the check, draft, or order has paid the amount owed under the check, draft, or order within those ten days. The failure to execute a complaint within said time bars the criminal charge under this section.

SECTION 2. AMENDMENT. Section 6-08-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

~~The person also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.~~

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

~~The person also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.~~

4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class C felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:
 - a. At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or
 - b. At the time of issuing the instruments, or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

~~5. The A person who issues an instrument under subsection 2, 3, or 4 also is liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state's attorney of the county in which the charge is prosecuted.~~

~~5. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.~~

6. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 7. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder's agent or representative, of

nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. A complaint may not be executed until at least ten days following mailing of the notice under subsection 7 and may not be executed if the person who issues the instrument has paid the amount owed under the instrument within those ten days. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2, subdivision b of subsection 3, or subdivision b of subsection 4.

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

Notice of Dishonored Instrument

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law notified that an instrument dated _____,
+9 _____, drawn on the _____ Bank of
_____ in the amount of _____ has been
returned unpaid with the notation the payment has been refused
because (of nonsufficient funds) (the drawer does not have an
account). Within ten days from the receipt of this notice,
you must pay or tender to _____

(Holder)

sufficient moneys to pay such instrument in full and any collection
fees or costs not in excess of twenty dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section."

Renumber accordingly

1999 SENATE JUDICIARY

HB 1243

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1243

Senate Judiciary Committee

Conference Committee

Hearing Date March 8, 1999

Tape Number	Side A	Side B	Meter #
1	x		1126 - 5596
3-17-99 1	x		0 - end
Committee Clerk Signature <i>Jackie Tillman</i>			

Minutes:

HB1243 relates to issuing a check without sufficient funds; to provide a penalty; and to declare a penalty.

SENATOR STENEHJEM opened the hearing on HB1243 at 11:00 A.M.

All were present except Senator C. Nelson.

REPRESENTATIVE L. THORESON, District 13, testified in support of HB1243. The burden is on the Court's is what is initiated with this bill. The Court system has not been consistent.

REPRESENTATIVE MAHONEY, District 33, testified in support of HB1243. We checked some statistics and there was a consensus to change this back to a Class B misdemeanor.

RON NESS, North Dakota Retailers Association, testified in support of HB1243. Testimony attached.

SENATOR STENEHJEM asked is there a problem with the law or are the States Attorneys' not prosecuting.

RON NESS stated that is partially correct. Specifically in Fargo, retailers were told checks under \$100 we will not prosecute.

LEROY WALKER, Walkers Jewelers, testified in support of HB1243. We received a bad check on December 13. I had to wait so my employee could sign the complaint. I would like to be the one to file the complaint.

CYNTHIA FELAND, Burleigh County State's Attorney's Office, testified in support of HB1243. Initially this came about because the State's Attorney's Association asked for it. We wanted some middle ground. We want to get rid of infractions on the penalty portion, there is no tracking mechanism on infractions.

SENATOR WATNE asked about the \$5 fee going to the State's Attorney Office.

CYNTHIA FELAND stated that this fee is for resources to put on additional staff for NSF checks.

SENATOR STENEHJEM asked are there States Attorney's Offices who will not prosecute on infractions.

CYNTHIA FELAND stated that there were some discussions on this at our meetings, but I don't know for sure. I believe there are some counties who will not prosecute on these infractions because of the frustration factor.

SENATOR STENEHJEM stated that the reason I like the current bill the second infraction becomes a Class B misdemeanor so we are really giving everybody one chance.

CYNTHIA FELAND stated that if you really want to give them one chance give them a deferred imposition of sentence the first time around. The problem with infractions we cannot track them.

DICK PECK, North Dakota Peace Officers Association, testified in support of HB1243. There is no tracking mechanism.

CY FIX, General Manager of Cenex Stations, testified in support of HB1243. We need some changes in this bill. We have a lot of NSF checks that we cannot collect on.

AL STENEHJEM, North Dakota Hospitality Association, testified in support of HB1243.

Business owners try to collect on these NSF checks on their own first. We need a solution now.

SENATOR STENEHJEM asked have you looked at the notice that the House has added to this bill.

AL STENEHJEM stated that the business owners try to collect these checks on their own. They usually notify the people anyway. It will be an extra hoop they have to go through.

JESS COOPER, GNDA, testified in support of HB1243.

LADD ERICKSON, Morton County State's Attorney's Office, testified in opposition of HB1243. This law is effective as it is now. I don't believe this addresses the problem. The underlying problems are liquor and gambling. With this new bill, the businesses will not get their money as fast. Our county is not having a problem.

SENATOR STENEHJEM CLOSED the hearing on HB1243.

Ladd Erickson, Hospitality Association and Cynthia Feland will work on amendments.

MARCH 17, 1999 TAPE 1, SIDE A

LADD ERICKSON proposed and explained some amendments. Amendments attached. These amendments straighten out the check law. Another set of amendments were proposed and explained relating to gaming. Amendments attached. This amendment is the same as the Minnesota law.

SENATOR WATNE asked if there is any way you can say that the State's Attorney will not collect checks given to bars, have them do their own collection.

LADD ERICKSON stated that the problem with the bars is you have the restaurant type bars. The States' Attorneys are going to meet with these people and tell them we will prosecute the bad checks but we will not collect restitution.

CYNTHIA FELAND stated the Burleigh County State's Attorney Office is in support of the proposed amendments. We are not in favor of infractions we figured with the changes that are made we will work with this for the next two years.

RON NESS, North Dakota Retailers Association, stated they are will support the amendments.

SENATOR STENEHJEM stated that the State's Attorneys do not have to prosecute any checks.

AL STENEHJEM, North Dakota Hospitality Association, stated they have concerns with the amendments. Our people are very contentious. For the most part, on the first set of amendments we are in agreement. The second set of amendments may be a problem. I believe they need an opportunity to be heard.

SENATOR WATNE asked where the ATM's are in the bars and what percentage of these bars have ATM machines.

AL STENEHJEM asked that he did not know the percentage.

SENATOR LYSON stated that this bill won't go into effect until the first of August, and that will give you some time to educate your people.

AL STENEHJEM stated that they still want to voice their opinion.

SENATOR STENEHJEM stated that the engrossed bill has an emergency clause.

TODD KRANDA, Charitable Gaming, testified with some concerns with the second amendment.

We would not support the second amendment.

SENATOR WATNE asked if we put the into the first amendment not to prosecute or collect restitution from gaming or bars.

TODD KRANDA stated where will this stop, next time take out the gas stations.

CHUCK KELLER, Attorney General's Office and State Gaming Commission, testified in opposition of the second amendment. Some information was handed. Attached. The Commission would like to work with the State's Attorneys and Mr. Erickson to work on some solutions to these problems.

SENATOR LYSON made a motion on the First Amendment, SENATOR WATNE seconded.

Discussion. Motion carried. 6 - 0 - 0

SENATOR LYSON made a motion on the Second Amendment, SENATOR TRAYNOR

seconded. Discussion. Motion failed. 1 - 5 - 0

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR TRAYNOR

seconded. Discussion. Motion carried. 6 - 0 - 0

SENATOR TRAYNOR will carry the bill.

March 17, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1243

Page 1, line 1, after "to" insert "create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to pay for games of change; to", replace the second "and" with a comma, and after "6-08-16.2" insert ", and subsection 10 of section 53-06.1-01"

Page 1, line 2, after "account" insert "and definition of gross proceeds applicable to games of change"

Page 6, after line 22, insert:

"SECTION 3. AMENDMENT. Subsection 10 of section 53-06.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. "Gross proceeds" means all cash and traveler's checks received from conducting games, sales tax on bingo cards, and admissions and for the purposes of raffles the term includes personal and business checks.

SECTION 4. A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Payment for the playing of games and other purposes. A gaming site may accept only United States currency, Canadian currency, and traveler's checks for the playing of games other than a raffle. A gaming site may not accept payment by a credit card nor accept or receive a personal or business check for any purpose other than purchasing raffle tickets.

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1243

Page 1, line 18, overstrike "a class B misdemeanor if the amount of insufficient funds or credit is"

Page 1, line 19, overstrike "not more than five hundred dollars, and a class A"

Page 1, overstrike line 20

Page 1, line 21, overstrike "dollars" and insert immediately thereafter ":

- a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;
- b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
- c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
- d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient fund check, draft, or order"

Page 1, line 22, after the period insert "The grade of an offense under this section may be determined by individual or aggregate totals of insufficient fund checks, drafts, or orders."

Page 1, line 24, remove "or if criminal action is initiated, the court"

Page 2, remove line 1

Page 2, line 2, remove "county in which the charge is prosecuted"

Page 2, line 9, after the period insert "The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor."

Page 3, line 10, remove "A complaint may not be"

Page 3, remove lines 11 and 12

Page 3, line 13, remove "paid the amount owed under the check, draft, or order within those ten days."

Page 3, line 18, overstrike "**or with insufficient funds**"

Page 3, line 29, overstrike "or without sufficient funds in a bank or"

Page 3, line 30, overstrike "depository pursuant to section 6-08-16" and overstrike the colon

Page 4, line 1, overstrike "a. At" and insert immediately thereafter "at"

Page 4, line 2, overstrike "; or"

Page 4, overstrike lines 3 through 6

Page 4, line 7, overstrike "presentation"

Page 4, line 13, overstrike "ten thousand" and insert immediately thereafter "five hundred", after "dollars" insert "or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars", and overstrike the colon

Page 4, line 14, overstrike "a. At" and insert immediately thereafter "at"

Page 4, line 15, overstrike "; or"

Page 4, overstrike lines 16 through 20

Page 4, overstrike lines 24 through 30

Page 5, overstrike lines 1 through 4

Page 5, line 5, overstrike "instrument in full upon its presentation"

Page 5, line 6, replace "5" with "4", replace the first underscored comma with "or", and remove ", or 4"

Page 5, line 9, remove "or if criminal action is initiated, the court may assess costs of five"

Page 5, remove line 10

Page 5, line 11, remove "is prosecuted"

Page 5, line 16, overstrike "6." and insert immediately thereafter "5."

Page 5, line 18, replace "7" with "6" and overstrike "A"

Page 5, overstrike lines 19 through 24

Page 5, line 25, overstrike "subdivision b of subsection 4 for a violation of subsection 4." and remove "A complaint may not"

Page 5, remove lines 26 and 27

Page 5, line 28, remove "paid the amount owed under the instrument within those ten days." and overstrike "Failure to"

Page 5, overstrike lines 29 and 30

Page 5, line 31, overstrike "subdivision b of subsection 4" and insert immediately thereafter "A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed account instrument"

Page 6, line 1, overstrike "7." and insert immediately thereafter "6."

Renumber accordingly

Date 3-17-99
Roll Call Vote = 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1243

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on ^{First} Amendment

Motion Made By Senator Lyson Seconded By Senator Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

Date 3-17-99
Roll Call Vote = 3

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL RESOLUTION NO. HB1343

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Senator Watne Seconded By Senator Traynor

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE

HB 1243, as engrossed: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1243 was placed on the Sixth order on the calendar.

Page 1, line 18, overstrike "a class B misdemeanor if the amount of insufficient funds or credit is"

Page 1, line 19, overstrike "not more than five hundred dollars, and a class A"

Page 1, overstrike line 20

Page 1, line 21, overstrike "dollars" and insert immediately thereafter ":

- a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;
- b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
- c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
- d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient fund check, draft, or order"

Page 1, line 22, after the period insert "The grade of an offense under this section may be determined by individual or aggregate totals of insufficient fund checks, drafts, or orders."

Page 1, line 24, remove "or if criminal action is initiated, the court"

Page 2, remove line 1

Page 2, line 2, remove "county in which the charge is prosecuted"

Page 2, line 9, after the period insert "The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor."

Page 3, line 10, remove "A complaint may not be"

Page 3, remove lines 11 and 12

Page 3, line 13, remove "paid the amount owed under the check, draft, or order within those ten days."

Page 3, line 18, overstrike "**or with insufficient funds**"

Page 3, line 29, overstrike "or without sufficient funds in a bank or"

Page 3, line 30, overstrike "depository pursuant to section 6-08-16" and overstrike the colon

Page 4, line 1, overstrike "a. At" and insert immediately thereafter "at"

Page 4, line 2, overstrike "; or"

Page 4, overstrike lines 3 through 6

Page 4, line 7, overstrike "presentation"

Page 4, line 13, overstrike "ten thousand" and insert immediately thereafter "five hundred", after "dollars" insert "or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars", and overstrike the colon

Page 4, line 14, overstrike "a. At" and insert immediately thereafter "at"

Page 4, line 15, overstrike "; or"

Page 4, overstrike lines 16 through 20

Page 4, overstrike lines 24 through 30

Page 5, overstrike lines 1 through 4

Page 5, line 5, overstrike "instrument in full upon its presentation"

Page 5, line 6, replace "5" with "4", replace the first underscored comma with "or", and remove ", or 4"

Page 5, line 9, remove "or if criminal action is initiated, the court may assess costs of five"

Page 5, remove line 10

Page 5, line 11, remove "is prosecuted"

Page 5, line 16, overstrike "6." and insert immediately thereafter "5."

Page 5, line 18, replace "7" with "6" and overstrike "A"

Page 5, overstrike lines 19 through 24

Page 5, line 25, overstrike "subdivision b of subsection 4 for a violation of subsection 4." and remove "A complaint may not"

Page 5, remove lines 26 and 27

Page 5, line 28, remove "paid the amount owed under the instrument within those ten days." and overstrike "Failure to"

Page 5, overstrike lines 29 and 30

Page 5, line 31, overstrike "subdivision b of subsection 4" and insert immediately thereafter "A criminal complaint for violating this section must be executed within ninety days after"

the drawer receives notice from the holder, or its agent or representative, of a no-account or closed account instrument"

Page 6, line 1, overstrike "7." and insert immediately thereafter "6."

Renumber accordingly

1999 TESTIMONY

HB 1243



1243

CHAIRMANROGER NELSON
NELSON'S FURNITURE, BOTTINEAUVICE CHAIRMANTOM RAUSCH
RAUSCH FURNITURE, BISMARCKSECRETARYDIANE KINZELL
SAX MATERNITY & CHILDREN'S, MINOTTREASURERMICHAEL CONLON
BUDGET HOME FURNISHINGS, FARGOIMMEDIATE PASTCHAIRPERSONPENNY KNUDSON
THE BRANDING IRON, DEVILS LAKEADDITIONAL EXECUTIVE
COMMITTEE MEMBERSKIESAU
OF ECONOMY, GRAND FORKSJIM NOWATZKI
OFFICELAND, JAMESTOWNLLOYD SCHNAIDT
THRIFTY WHITE DRUG, DICKINSONDALE SORENSON

VALLEY PAINT & GLASS, VALLEY CITY

DIRECTORSKURT BARKUS
COAST TO COAST, JAMESTOWNTOM BRUNS
SEARS, BISMARCKKEN HOFFERT
K-MART CORP., BISMARCKTRACY MICKLEY
WAL-MART STORES, FARGOBARBARA NIELSEN
JC PENNEY, BISMARCKRON RAUSCHENBERGER
KENMARE CLOTHING, KENMARETRACY SIPMA
COUNTRY GENERAL STORE, DICKINSONTHOMPSON
SIOUX CYCLE, MANDAN

HB1243
HOUSE JUDICIARY
CHAIRMAN DEKREY

Mr. Chairman and members of the committee my name is Ron Ness, I am the President of the North Dakota Retail Association and the North Dakota Petroleum Marketers Association. I appear before you today in support of HB1243.

Legislation in 1997 stiffened the penalties on most NSF checks. However, the penalty for NSF checks under \$100.00 was reduced to an infraction. The 1997 Legislation left a loophole that allowed some court jurisdictions to refuse to prosecute the infraction on the basis that it is not a jailable offense and therefore a warrant cannot be issued. Minimizing the penalty for checks under \$100.00 is causing major problems for retail businesses across the state. The majority of checks written are under \$100.00 and retailers who have no recourse in these jurisdictions are losing thousands of dollars a year to bad check writers.

The stigma of writing bad checks is gone. The penalties must be severe enough to send a message that writing NSF checks is theft. One employer in Bismarck reports that his business receives 8 - 12 bad checks a day. The cashiers are trained to get all the required information from the customer. However, prosecution usually doesn't occur for 60 days and sometimes the clerk is not around to testify on the issue. The States Attorney will not accept checks under ten dollars. The retailer says NSF checks are costing him about \$3,000.00 a year plus it is a full-time job trying to collect. The fact that the penalty is only an infraction has made the problem worse.

Mr. Chairman and members of the committee, this is a serious issue that is costing retailers thousands of dollars a year. Small businesses in North Dakota cannot afford these additional costs. The stigma that writing bad checks is not a major offense must be changed, we believe this bill is a move in the right direction. HB1243 if passed will make all checks under \$500.00 a class B misdemeanor. Theft is theft whether it is \$25.00 or \$125.00.

We urge a do pass recommendation from the committee on HB1243. I would be happy to answer any questions.

Ladd

Proposed Amendments to HB 1243

1) Page 1, lines 16-21, after “Violation of this subsection is” delete “~~an infraction if the amount of insufficient funds or credit is not more than one hundred dollars, a class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars and not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars~~”, and insert:

- a) an infraction if the amount of insufficient funds or credit is not more than fifty dollars;
 - b) a class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of subsection (a) of this section within three years of issuing an insufficient funds check, draft, or order;
 - c) a class A misdemeanor if the amount of insufficient funds or credit is more than two hundred and fifty dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order;
 - d) a class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient fund check, draft, or order.
2. The grade of an offense under this section maybe determined by individual or aggregate total of insufficient fund checks, drafts, or orders.
 3. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

2) Page 1, line 24, delete after “order”, “~~or if criminal action is initiated, the court~~”.

3) Page 2, lines 1-2, delete, “~~may assess costs of five dollars, which are payable to the state’s attorney of the county in which the charge is prosecuted~~”.

4) Page 3, lines 10-13, delete “~~A complaint may not be executed until at least ten days following mailing of the notice under subsection 4 and may not be executed if the person who issued the check, draft, or order within those ten days~~”.

5) Page 3, line 18, delete, “~~or with insufficient funds~~”

6) Page 3, lines 29-30, delete “~~or without sufficient funds in a bank or depository pursuant to section 6-08-16~~”.

7) Page 4, lines 3-7, delete, “~~b. At the time of the instrument or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation~~”.

8) Page 4, line 13, replace “~~ten thousand~~”, with “five hundred”, and insert after “dollars”, “or that person, agent, or representative of another, issues more than one instrument wherein the aggravate total of all instruments issued exceeds five hundred dollars”.

9) Page 4, lines 16-20, delete “~~b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation~~”.

10) Page 4, lines 24-30, page 5, lines 1-5, delete, “~~4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class C felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:~~

- ~~a. At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or~~
- ~~b. At the time of issuing the instruments, or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.~~

11) Page 5, lines 9-11, delete “~~or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state’s attorney of the county in which the charge is prosecuted~~”.

12) Page 5, lines 18-31, delete “~~A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, or its agent or representative, of nonpayment. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder’s agent or representative, of nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2, subdivision b of subsection 3, or subdivision b of subsection 4.~~” Replace with “A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative of a no account or closed account instrument.”

Amend and re-number according

**REPORT TO THE SENATE JUDICIARY COMMITTEE ON
NONSUFFICIENT FUND CHECKS**

This statistic's represent the NONSUFFICIENT fund checks brought to the Morton County State's Attorney's Office for prosecution in 1998 after collection of the checks had failed in the private sector.

<u>Industry</u>	<u># of businesses</u>	<u># of checks</u>	<u>Total check amount</u>	<u>Ave. check</u>
1. Gas stations	8	358	7360.08	20.56
2. Bars	11	128	3954.02	30.89
3. Liquor Stores	2	25	845.06	33.81
4. Super Market	1	117	4854.00	41.49
5. Char. Gaming	9	119	6834.00	57.43
6. Big Retail	3	8	2402.45	300.31
7. Rental	1	2	1200.00	600.00
8. Misc. Retail	26	105	6713.78	63.94
TOTAL	61	923	34,163.39	143.55

NSF checks for Charitable Gaming equal 20% of the gross check amount received. NSF check total received for cases where the check writer also bounced a check to Charitable Gaming in the same time frame, therefore the person was charged in the same criminal case equals \$5296.32.

Total Charitable Gaming (\$6834.00), and Charitable Gaming related (\$5296.32) cases equal \$12,130.32 or 36 percent of the gross amount of NSF checks received and dealt with by law enforcement, state's attorney's, clerks of court, the judiciary, and the criminal records administrators in Morton County in 1998.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

)

Criminal No. 30-98-K- 1615

)

Plaintiff,

)

)

CRIMINAL

vs.

)

COMPLAINT

)

Heidi Stroh,

)

S.S.N. 502-78-7025,

)

)

Defendant.

)

The undersigned complainant, being first duly sworn and upon his oath, states and alleges the following:

That from on or after the 7th day of May, 1997, to on or after the 6th day of August, 1997, and onward, in Morton County, North Dakota, the Defendant committed the Offense of THEFT OF PROPERTY [BY DECEPTION] in violation of Section 12.1-23-02 of the North Dakota Century Code by then and there:

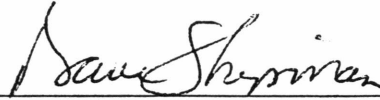
Knowingly obtains the property of another by deception, with the intent to deprive the owner of that property, or intentionally deprives another of property by the use of deception, as deception is defined at Section 12.1-23-10 N.D.C.C., in an aggregate amount exceeding \$500.00 U.S.

Penalty Section: 12.1-23-05 N.D.C.C.

Class C Felony

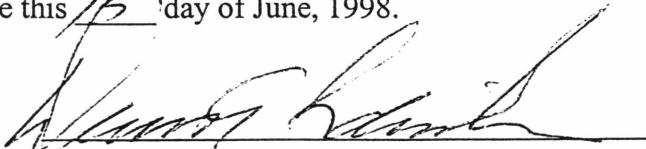
All of this contrary to the Statute in such cases made and provided and against the peace and dignity of the State of North Dakota.

WHEREFORE, Complainant prays that Defendant may be arrested and dealt with according to law.



Complainant

Subscribed and sworn to before me this 15 day of June, 1998.



District Judge

Complaint Approved:



Allen Kopy, State's Attorney
Morton County, North Dakota

Summoned to Appear: July 20, 1998

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: Stamart #17 Phone: 1463-6985
 Business Address: Street: 1300 E Main
 City: Manvel
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Becky Miller Phone: 1463-6985
 Home Address: 1300 E Main

3. CHECK: NSF NO ACCOUNT Check No.: 534
 Pay to the Order of: Stamart Date: 5-15-97
 Bank: BNC National Bank Amount: 11.30

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 701-221-2754
 Address: 1930 E Capitol Ave #3110

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:

Identification Type: Drivers License State: _____
 Identification Number: 502-78-7025 Expiration: 7-25-99

Oth _____

- 6. a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.

HEIDI STROH		Exp 7-25-99	77-1075/913 01210145	534
502-78-7025		<input checked="" type="checkbox"/> NSF	104	5-15-97
1930 E. CAPITOL AVE., #316 BISMARCK, ND 58501		<input type="checkbox"/> Presented Twice		
Pay to the order of: <u>Stamart</u>		<input checked="" type="checkbox"/> Other closed account	\$ 11.30	
<u>Eileen and</u>		30/100		
		322 East Main Bismarck, ND 58501 (701) 229-3099		
<u>17</u>		<u>Heidi Stroh</u>		
⑆091310754⑆		⑆1210145⑆	0534	⑆0000001130⑆

Turning this matter over to the State's Attorney I am requesting a criminal prosecution, not a collection. I understand that I will have no control over any prosecution.

Becky Miller Bookkeeper 8-8-97
 Name Position Date

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: Stamart #17 Phone: 1663-6985
 Business Address: Street: 1300 E Main
 City: Mandan
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Heather Roberson Phone: 1663-6985
 Home Address: 1300 E Main, Mandan

3. CHECK: NSF NO ACCOUNT Check No.: 565
 Pay to the Order of: Stamart Date: 5-25-97
 Bank: BNC National Bank Amount: 18.52

4. PERSON PASSING CHECK

Name: Heidi Stron Phone: 221-2754
 Address: 1930 E. Capitol Ave # 316

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:

Identification Type: Drivers license State: _____
 Identification Number: 502-78-7025 Expiration: 7-25-99
 Other: _____

6. **HEIDI STROM** Exp 7-25-99 7-1075/913 1315.08 565
 502-78-7025 01210145
 1930 E. CAPITOL AVE., #316 701-221-2754
 BISMARCK, ND 58501 DATE 5-25-97

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NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: TP Motel Phone: 663-6436
 Business Address: Street: 1008 W. Union
 City: Mandan N.D.
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Glen Rutledge Phone: 663-6436
 Home Address: _____

3. CHECK: NSF () NO ACCOUNT (X) Check No.: 578

Pay to the Order of: TP Motel Date: 5/27/97
 Bank: BNC Amount: 28.34

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 221-4754
 Address: 1930 E. Capitol Ave #316 Bismarck N.D.

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:


Identification Type: D.L. State: ND
 Identification Number: 509-79-7835 Expiration: 7/25/97
 Other: _____

- 6. ADI
- a. Was
- b. Was
- c. Was
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- h. Was

HEIDI STROH Exp 7-25-97
 502-78-7025 117-1075/913 11176 578
 1930 E. CAPITOL AVE., #316 701-221-2754 01210145
 BISMARCK, ND 58501

NSF DATE 5-27-97
 Presented Twice 28.34/
 Other

Pay TO THE ORDER OF Tepee Motel
Twenty-eight + 34/100 DOLLARS

 **BNC** National Bank
 322 East Main Bismarck, ND 58501 (701) 250-3000

Heidi Stroh

MEMO
 @bc91310754 crue 01210145 0578 '0000002834'

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 collectic

Glen Rutledge Clerk 8/4/97
 Name Position Date

W.V.

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

Exp 7-25-99

77-1075/913
01210145

694

Pay to The ORDER OF MHC
One hundred + no/100

RETURNED NOT PAID 7-24-99

by _____ DATE _____

Endorsement _____

Account Closed

Signature _____

Other

Date _____

Heidi Stroh



BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

MEMO

⑆091310754⑆ 01210145 0694 ⑆0000010000⑆

W.B.

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

Exp 7-25-99

77-1075/913
01210145

691

Pay to The ORDER OF Mandan Hockey
One hundred + no/100

RETURNED NOT PAID 7-22-99

by _____ DATE _____

Endorsement _____

Account Closed

Signature _____

Other

Date _____

Heidi Stroh



BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

MEMO

⑆091310754⑆ 01210145 0691 ⑆0000010000⑆

W.B.

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

Exp 7-25-99

77-1075/913
01210145

689

Pay to The ORDER OF MHC
One hundred + no/100

RETURNED NOT PAID 7-21-99

by _____ DATE _____

Endorsement _____

Account Closed

Signature _____

Other

Date _____

Heidi Stroh



BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

MEMO

⑆091310754⑆ 01210145 0689 ⑆0000010000⑆

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: Double D Phone: 663-3631
 Business Address: Street: 118 W. Main
 City: Mandan, N.D.
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Kaynee Wetzel Phone: 663-3631
 Home Address: 705 3rd Ave. S.E.
MANDAN

3. CHECK: NSF () NO ACCOUNT (X) Check No.: 520
 Pay to the Order of: Double D Date: 5-7-97
 Bank: BNC NATIONAL BANK Amount: 34.85
BISMARCK

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 221-2754
 Address: 1939 E. Capitol Ave. # 318
BISMARCK WORKS AT DAV'S SUPERVALU E

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK: WASHINGTON
 Identification Type: N.D.D.H. State: N.D.
 Identification Number: 502-78-7025 Expiration: 7-25-99

Other: Heidi Stroh 502-78-7025

HEIDI STROH 502-78-7025 1939 E. CAPITOL AVE., #316 701-221-2754 BISMARCK, N.D. 58501	<input checked="" type="checkbox"/> NSF <input type="checkbox"/> Presented Twice <input type="checkbox"/> Other	77-1075/913 01210145	No. 520
Pay to the order of: <u>Double D</u>	DATE: <u>5/7/97</u>	\$34.85/	
<u>Thirty-four + 85/100</u>		<u>Heidi J. Stroh</u> MP	
BNC National Bank 322 East Main Bismarck, ND 58501 (701) 250-3000		91310754 01210145 0520 0000003485	

turning t collection. I understand that I will have no control over any prosecution.

Kaynee Wetzel manager 7-29-97
 Name Position Date

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: Barlow's of Mandan Phone: 701-663-9885
 Business Address: Street: 504 West Main St.
 City: Mandan ND 58554
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Margie Geis Phone: _____
 Home Address: _____

3. CHECK: NSF () NO ACCOUNT (✓)

Pay to the Order of: Barlow's of Mandan Date: 7-24-97
 Bank: BNC Bismarck, N.D. Check No.: 693

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 701-221-2754
 Address: 1930 E. Capitol Ave. #316 Bismarck, ND 58501

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:

Driver's License Number: 502-78-7025 State: N.D. exp 7-25-99
 Photo Identification: Number: _____ Type: _____
 Other _____

- 6. A
- a. V
- b. V
- c. V
- d. V
- e. V
- f. W
- g. W
- h. W

HEIDI STROH Exp 7-2599 77-1075/913 01210145 693
 502-78-7025
 1930 E. CAPITOL AVE., #316 701-221-2754
 BISMARCK, ND 58501

DATE 7-24-97

RETURNED NOT PAID
 by Value \$ 80.39/1
 Endorsement
 Account Closed
 Signature
 Other
 Date 7-25-97

MEMO

091310754 is to 01210145 0693 "0000008039"

by tur _____ prosecution, not a
 check collection. I understand that I will have no control over any prosecution.

Lu Fleck ofc mgr. 8-6-97
 Name Position Date

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: Barlow's of Mandan Phone: 701-663-9885
 Business Address: Street: 504 West Main St.
 City: Mandan ND 58554
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Jaimi Pochant Phone: _____
 Home Address: _____

3. CHECK: NSF () NO ACCOUNT (✓)

Pay to the Order of: Barlow's of Mandan Date: 7-21-97
 Bank: BNC Bismarck, ND Check No.: 690

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 701-221-2754
 Address: 1930 E. Capitol Ave. #316 Bismarck, ND 58501

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:

Driver's License Number: 502-78-7025 State: N.D. exp 7-25-99
 Photo Identification: Number: _____ Type: _____
 Other: _____

6. HEIDI STROH Exp 7-25-99 77-1075/913 690
 502-78-7025 01210145
 1930 E. CAPITOL AVE., #316 701-221-2754
 BISMARCK, ND 58501

Returned Not Paid 7-21-97
 by _____
 Endorsement
 Account Closed 31/10
 Signature _____
 Other _____
 Date _____
 BNC National Bank 322 East Main Bismarck, ND 58501 (701) 250-3000
 DOLLARS 100

MEWC _____
 ⑆091310754⑆⑆01210145⑆to 0690 ⑆000001553⑆

by t
 check collection. I understand that I will have no control over any prosecution.

Lu Fleck ofc. mgr. 8-6-97
 Name Position Date

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: Barlow's of Mandan Phone: 701-663-9885
 Business Address: Street: 504 West Main St.
 City: Mandan ND 58554
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: Robin Leingang Phone: _____
 Home Address: _____

3. CHECK: NSF () NO ACCOUNT (✓)

Pay to the Order of: Barlow's of Mandan Date: 7-24-97
 Bank: BNC Bismarck ND Check No.: 695

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 701-221-2754
 Address: 1930 E. Capitol Ave. #316 Bismarck ND 58501

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:

Driver's License Number: 502-78-7025 State: N.D. exp 7-25-99
 Photo Identification: Number: _____ Type: _____
 Other: _____

- 6. A
- a. V
- b. V
- c. V
- d. V
- e. V
- f. V
- g. V
- h. V

HEIDI STROH Exp 7-25 99 77-1075/913 01210145 695
 502-78-7025
 1930 E. CAPITOL AVE., #316 701-221-2754
 BISMARCK, ND 58501

RETURNED NOT PAID
 by _____
 Endorsement _____
 Account _____
 Signature _____
 Other _____
 Date _____

Pay to The ORDER OF Barlow's
Eighteen + 45/100 \$ 18.45/100 DOLLARS

BNC National Bank 322 East Main Bismarck, ND 58501 (701) 250-3000

MEMO _____

⑆091310754⑆ is 01210145 to ⑆0695⑆ ⑆0000001845⑆

by Lu Fleck Ops. Mgr 8-6-97
 Name Position Date

NON-SUFFICIENT FUNDS/NO ACCOUNT CHECK REPORT

1. WHERE CHECK WAS RECEIVED:

Business Name: AM West Truck Stop Phone: 701-663-6922
 Business Address: Street: 3825 Highway 25
 City: Mandan
 County: Morton State: North Dakota

2. PERSON THAT ACCEPTED CHECK:

Name: _____ Phone: _____
 Home Address: _____

3. CHECK: NSF () NO ACCOUNT (X)

Pay to the Order of: AM West Date: 8-6-97
 Bank: BNC National Bank Check No.: 660

4. PERSON PASSING CHECK

Name: Heidi Stroh Phone: 701-221-2754
 Address: 1930 E Capitol Ave. # 316 Bismarck ND 58501

5. VERIFICATION/IDENTIFICATION OF PERSON PASSING CHECK:

Driver's License Number: _____ State: _____
 Photo Identification: Number: _____ Type: _____
 Other: DL Exp. Date

6. AD HEIDI STROH Exp 7-25-99 77-1075/913 660
 502-78-7025 01210145
 a. VM 1930 E. CAPITOL AVE., #316 701:221-2754
 b. VO BISMARCK, ND 58501 DATE 8-6-97

c. V
 d. V Pay to the AM West NSF \$22.36/1
 e. V ORDER OF Twenty-two + 36/100 Presented Twice
 f. W Other account closed
 g. V
 h. V



Heidi Stroh

MEMO _____
 by tui check
 ⑆091310754⑆ 01210145⑆ 0660 ⑆0000002236⑆

Lyle Wood Manager 8-22-97
 Name Position Date

AUG 14 1997

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

77-1075/913
01210145

60851
592

Exp 7-25-99
NSF
530.97

Pay to the order of Broken Car
Twenty-five + no/100
Presented Twice
Other Closed
25.00
100150

 BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0592 0000002500

OR HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

77-1075/913
01210145

60825
589

Exp 7-25-99
NSF
528.97

Pay to the order of Broken Car
Twenty-five + no/100
Presented Twice
Other Closed
25.00
100150

 BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0589 0000002500

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

77-1075/913
01210145

60824
588

Exp 7-25-99
NSF
528.97

Pay to the order of Broken Car
Twenty-five + no/100
Presented Twice
Other Closed
25.00
100150

 BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0588 0000002500

OK

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

60526
590
77-1075/913
01210145

exp 7/25/99
NSF
DATE 5-28-97

Pay to The ~~Order of~~ Broken Car ~~Other~~ Presented Twice \$20.00
Twenty and no/100 ~~closed~~

BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0590 0000002000

OK

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

60521
585
77-1075/913
01210145

exp 7/25/99
NSF
DATE 5-28-97

Pay to The Broken Car ~~Other~~ Presented Twice \$25.00
Twenty-five + no/100 ~~closed~~

BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0585 0000002500

OK

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

60522
586
77-1075/913
01210145

exp 7/25/99
NSF
DATE 5-28-97

Pay to The Broken Car ~~Other~~ Presented Twice \$25.00
Twenty-five + no/100 ~~closed~~

BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0586 0000002500

OK

HEIDI STROH
502-78-7025
1930 E. CAPITOL AVE., #316 701-221-2754
BISMARCK, ND 58501

60823
587
77-1075/913
01210145

exp 7/25/99
NSF
DATE 5-28-97

Pay to The Broken Car ~~Other~~ Presented Twice \$25.00
Twenty-five + no/100 ~~closed~~

BNC National Bank
322 East Main
Bismarck, ND 58501
(701) 250-3000

Heidi Stroh

91310754 01210145 0587 0000002500

**Office of Attorney General
Gaming Division
Information on Player Checks Accepted by the Largest 20 Gaming Organizations
March 17, 1999**

Organization	% of Gross Proceeds as		Consequence if no checks would be allowed
	Contact	Checks	
North Dakota Association for the Disabled - Grand Forks	Nicky	31%	Would lower sales - opposes concept
Plains Art Museum - Fargo	David	19.50%	Unknown
Prairie Public Broadcasting Inc - Fargo	Todd	45%	Customers will not like it and it would cause loss of sales
Souris Valley Humane Society Inc - Minot	Jim	20%	Good for player - won't get in as deep - Would negatively affect org. bottom line as the gross proceeds would be lower
The ARC Upper Valley Inc - Grand Forks	Jeff	51%	Sites would have to rely on bars to take checks - players would only go to places that take checks
North Dakota Special Olympics Grand Forks	Hal	43%	Activity would slow down - people won't gamble
Minot Elks Lodge # 089 - Minot	Alan	20%	
Grand Forks Blue Line Club Inc - Grand Forks	Bert	57%	
James River Aerie #2337 FOE - Jamestown	Leroy	85%	Would need to have bigger cash banks on hand - would deter 20% to 25% of customers
Fargo Moorhead Community Theatre - Fargo	Rick	5%	
American Foundation for Wildlife - Bismarck	Pete	20%	
Bismarck-Mandan Convention & Visitors Bureau - Bismarck	Ken	15%	
Fort Abraham Lincoln Foundation - Mandan	Sheila	40%	Would hurt charitable gaming
Dickinson Charities - Dickinson	Peggy	55%	
Teamsters Union Local #116 Building Club - Fargo	Kevin	82%	Would kill business - organization experiences less than 1% in NSF checks
Team Makers Club - West Fargo	Jenni	50%	Would expect a 50% loss of gaming activity
Share House Inc - Fargo	Robert	40%	A stupid proposal
Jamestown Knights of Columbus - Jamestown	Randy	50%	Would cause substantial loss
Development Homes Inc - Grand Forks	Brent	45%	Would expect a substantial loss for the organization
Progress Enterprises Inc - Jamestown	Jeff	45%	No good cant estimate expected loss

Average % checks of Gross

37%

OFFICE OF ATTORNEY GENERAL
GAMING DIVISION

Forecasted Gaming Activity for the 1999-2001 Biennium
(Excludes Parimutuel Wagering)
January 5, 1999

	<u>Gross Proceeds</u>	<u>Prizes</u>	<u>Adj Gross Proceeds</u>	<u>Gross Profit %</u>
Bingo - Regular	\$ 97,467,000	\$ 74,075,000	\$ 23,392,000	24%
Bingo - Disp. Dev.	160,000	136,000	24,000	15%
Raffles	4,132,000	1,777,000	2,355,000	57%
Pull Tabs - Jars	263,810,000	208,410,000	55,400,000	21%
Pull Tabs - Disp. Dev.	111,064,000	86,630,000	24,434,000	22%
Board Games	2,779,000	1,973,000	806,000	29%
Punchboards	41,000	29,000	12,000	29%
Sports Pools	250,000	190,000	60,000	24%
Twenty-one	73,737,000	59,727,000	14,010,000	19%
Calcuttas	240,000	204,000	36,000	15%
Paddlewheels	1,729,000	1,487,000	242,000	14%
Poker	<u>6,000</u>	<u>0</u>	<u>6,000</u>	<u>100%</u>
Totals	\$ 555,415,000	\$ 434,638,000	\$ 120,777,000	22%
Add: Interest Earned				
			\$ 167,000	
Less: ND Excise Tax				
			16,401,000	
			320,000	
			5,458,000	
			<u>78,000</u>	
Total Adjusted Gross Proceeds			\$ 98,687,000	
Less: Gaming Tax				
			\$ 6,691,000	
			<u>57,692,000</u>	
Total Expenses			\$ 64,383,000	
Net Proceeds Earned			<u>\$ 34,304,000</u>	
Eligible Use Contributions			<u>\$ 34,304,000</u>	
<u>Taxes Summary</u>				
ND 4.5% Excise Tax			\$ 16,401,000	
Gaming Tax			<u>6,691,000</u>	
Total			\$ 23,092,000	
<u>Other Revenue</u>				
Monetary Fines			\$ 53,000	
Interest and Penalty			26,000	
Gaming Stamps, License and Record Check Fees			<u>391,000</u>	
Total			\$ 470,000	
Total Taxes and Other Revenue			<u>\$ 23,562,000</u>	

OFFICE OF ATTORNEY GENERAL
Gaming Division

Guideline for an Organization in Determining a Good Faith Effort of Collection
of a Player Check

North Dakota Administrative Code (N.D.A.C.) Section 99-01.3-03-04(5)

May 1, 1998

BACKGROUND INFORMATION: N.D.A.C. section 99-01.3-03-04(5) (Restrictions and Requirements) states:

5. A player check returned by a bank as unpaid for any reason and which is uncollectible after a good faith effort of collection by an organization is a deduction toward adjusted gross proceeds.

GUIDELINE: An organization may not deduct a player's check, as provided by N.D.A.C. section 99-01.3-03-04(5), unless the organization has established and complied with an adequate written check acceptance and collection policy that contains these factors.

1. A limit on the number of checks a player may write on one day or in a certain period of time.
2. A limit on the amount of a single check or aggregate amount of several checks written on one day or in a certain period of time.
3. Whether a player may buy back the player's check with cash. (See N.D.A.C. § 99-01.3-02-8(1) Currency of play, credit play and borrowing from gaming funds.)
4. Whether an organization's policy is to return a player's check to the player as part of a prize payout on any day until the check is deposited. (See N.D.A.C. § 99-01.3-02-8(1) Currency of play, credit play and borrowing from gaming funds.)
5. An organization may not accept a new check from a player who has an outstanding unpaid check.
6. A player's check must be run through the player's account twice unless the check is assigned to a check collection agency. An organization may arrange for a bank to hold a player's check until the check clears the player's account.
7. A player's check must be dated on or after August 1, 1996.
8. A check should be deducted on the current quarter's tax return. If a player's check was deducted on a return and is subsequently collected, the amount must be reported as other income on the return for the quarter in which it was collected.
9. A cost benefit determination of various collection efforts based on the amount of a check and the estimated cost of successfully collecting on it.

If an organization's policy is inadequate or not being complied with, the organization may not deduct a player's check as a deduction toward adjusted gross proceeds on the tax return. An organization's cost of collecting on a check, including a bank's service fee, is not a deduction toward adjusted gross proceeds on the tax return.

COMPARATIVE STATEMENT OF ACTIVITY

ADJUSTED GROSS PROCEEDS

	JUNE 30 1998	SEPT. 30 1998	DOLLAR INCREASE (DECREASE)	PERCENTAGE INCREASE (DECREASE)
BINGO	\$ 2,688,330	\$ 2,555,524	\$ (132,806)	(4.9)
BINGO (DISPENSING DEV.)	3,342	3,977	635	19.0
RAFFLES	245,329	254,884	9,555	3.9
PULL-TABS (JAR BAR)	6,595,701	6,052,365	(543,336)	(8.2)
PULL-TABS (DISPENSING DEV.)	2,981,061	2,891,769	(89,292)	(3.0)
CLUB SPECIALS, GAME BOARDS	73,341	57,233	(16,108)	(22.0)
PUNCHBOARDS*	696	1,745	1,049	150.7
SPORTS POOLS	2,020	3,503	1,483	73.4
TWENTY-ONE	1,607,323	1,587,339	(19,984)	(1.2)
CALCUTTAS	1,979	11,502	9,523	481.2
PADDLEWHEELS	29,886	36,790	6,904	23.1
OTHER-INT., CASH LONG, POKER	20,059	14,228	(5,831)	(29.1)
	-----	-----	-----	-----
SUBTOTALS	\$ 14,249,067	\$ 13,470,859	\$ (778,208)	(5.5)
LESS: N.D. EXCISE TAX	1,962,743	1,831,030	(131,713)	(6.7)
FEDERAL EXCISE TAX	38,387	35,446	(2,941)	(7.7)
BINGO SALES TAX	691,252	680,742	(10,510)	(1.5)
UNCOLLECTED CHECKS	19,895	2,828	(17,067)	(85.8)
	-----	-----	-----	-----
TOTAL ADJUSTED GROSS PROCEEDS	\$ 11,536,790	\$ 10,920,813	\$ (615,977)	(5.3)
LESS EXPENSES:				
GAMING TAX	773,056	726,132	(46,924)	(6.1)
ALLOWABLE EXPENSE LIMIT	6,797,646	6,408,006	(389,640)	(5.7)
	-----	-----	-----	-----
TOTAL EXPENSES	\$ 7,570,702	\$ 7,134,138	\$ (436,564)	(5.8)
	-----	-----	-----	-----
NET PROCEEDS	\$ <u>3,966,088</u>	\$ <u>3,786,675</u>	\$ (<u>179,413</u>)	(4.5)
	-----	-----	-----	-----
ELIGIBLE USE CONTRIBUTIONS	\$ <u>4,406,112</u>	\$ <u>3,833,067</u>	\$ (<u>573,045</u>)	(13.0)

State of North Dakota, Plaintiff and Appellee
vs.
Carlos M. Zeno, Defendant and Appellant

Criminal No. 920111
 SUPREME COURT OF NORTH DAKOTA
 490 N.W.2d 711, 1992 N.D. LEXIS 212
 November 5, 1992, Filed

Appeal from the District Court for Ward County, Northwest Judicial District, the Honorable Wallace D. Berning, Judge.

COUNSEL

Robert P. Bennett, Assistant Attorney General, Attorney General's Office, 600 East Boulevard Avenue, Bismarck, ND 58505-0040, for plaintiff and appellee.

Carlos Marcell Zeno, pro se, North Dakota State Penitentiary, P.O. Box 5521, Bismarck, ND 58502-5521.

JUDGES

Opinion of the Court by J. Philip Johnson, Justice. Gerald W. VandeWalle, Herbert L. Meschke, Beryl J. Levine, Ralph J. Erickstad, Chief Justice.

AUTHOR: JOHNSON

OPINION

JOHNSON, Justice.

Carlos M. Zeno appealed from a district court¹ memorandum opinion of April 6, 1992, denying Zeno's petition for post-conviction relief. We will treat the appeal as one from the judgment entered on April 13, 1992. We affirm the judgment.

While Dennis Harris, a Minot cab driver, was transporting Zeno to Zeno's apartment on January 30, 1991, Zeno "stated that he was on a 'mission' to kill someone and that if Harris went to the police Zeno would kill him, too." **State v. Zeno**, 490 N.W.2d 707 (N.D. 1992). While waiting for Zeno to return to the cab, "Harris heard the sound of a firearm being discharged in the apartment building." **Id.**, at . Zeno returned to the cab with a dufflebag, which he unzipped "and displayed to Harris the butt end of a sawed-off shotgun . . . pointed toward Harris." **Id.**, at . When Zeno again left the cab, "Harris drove away and went to the Minot Police Department." **Id.**, at . Zeno was arrested, charged with terrorizing, and bound over for trial. The district court² ordered dismissal of the information. The State appealed. We reversed and remanded the matter for trial. **Id.**

While Zeno was in jail in connection with the terrorizing charge, a complaint was issued charging him with theft in violation of §§ 12.1-23-02, 12.1-23-03, and 12.1-23-05(6), N.D.C.C. The complaint was supported by an affidavit asserting that the Ward County State's Attorney's Office had received 56 checks totaling \$ 1,367.57, issued by Zeno between January 8, 1991, and

January 29, 1991, which had been returned by Norwest Bank, Minot, North Dakota, marked "Insufficient Funds."

The information charging Zeno with theft was filed with the district court on April 15, 1991. It alleged that Zeno knowingly obtained the property of another by deception or intentionally obtained services by deception by issuing checks to various merchants on an account with a Minot bank when he did not have either "sufficient funds in or credit with said bank" or the "ability or the intention to make the checks so issued good."

After several writs, motions, briefs, affidavits, and letters were filed and changes were made in the attorneys appointed to represent Zeno, an amended information was filed on September 10, 1991, and Zeno pleaded guilty to theft pursuant to a plea agreement. Zeno was given a suspended imposition of judgment and sentence and placed on probation for five years.

On September 27, 1991, Zeno's probation officer filed a petition to revoke Zeno's probation for allegedly "writing nine (9) Account Closed Checks in the amount of \$ 335.00." On October 1, 1991, Zeno's probation officer filed a supplemental petition for revocation of Zeno's probation, alleging that Zeno had violated the conditions of his probation by "writing nine (9) account closed or Non-Sufficient Funds Checks" for \$ 335.00 and by being convicted of simple assault. At a hearing on October 2, 1991, Zeno admitted the allegations in the supplemental petition and his probation was revoked on October 4, 1991. Zeno was then sentenced to imprisonment for three years, with credit for 216 days served, and with one year suspended for a period of three years.

On October 15, Zeno filed an application for post-conviction relief pursuant to Ch. 29-32.1, N.D.C.C., seeking permission to withdraw his guilty plea. In a memorandum opinion filed on April 6, 1992, denying Zeno's petition for post-conviction relief, the district court made the following findings of fact:

"3. On October 4, 1991, the Defendant was sentenced to a term in the North Dakota State Penitentiary based upon a revocation of probation caused by Defendant's issuance of no account checks subsequent to his release from custody. The Defendant was neither illegally arrested nor illegally detained. The prosecution and imprisonment of the Defendant was not a prosecution or imprisonment for debt in violation of state or federal constitutions.

"4. The Defendant was not a victim of selective or discriminatory enforcement.

* * *

"6. There existed a factual basis to support the Defendant's plea of guilty of September

10, 1991.

" 7. The Defendant's representation by Attorney Steven Farhart and other counsel was competent and professional.

"8. The Defendant, at the time of his plea of guilty, informed the Court that he understood the theft charge, discussed his plea of guilty with his counsel, that he was satisfied with his representation and that his plea was freely and voluntarily made with no threats or promises other than set forth in the plea agreement."

In denying the petition, the court concluded that Zeno was not prejudiced by amendment of the information, that the trial court complied with Rule 11(e), N.D.R.Crim.P., and that Zeno failed to meet his burden of establishing valid claims for relief.

Zeno appealed, asserting that: (1) the trial court erred in requiring him to plead to the initial information charging him with theft; (2) he received ineffective assistance of counsel; (3) the state's attorney's alleged administrative practice of encouraging merchants to send notices demanding payment to issuers of non-sufficient funds checks unconstitutionally creates an agency relationship between state's attorneys and merchants; and (4) the merchants' policy of sending notices demanding payment to issuers of NSF checks or face prosecution creates an unconstitutional classification based on wealth.

"The burden of establishing a basis for post-conviction relief rests upon the petitioning defendant." **State v. Kunkel**, 366 N.W.2d 799, 803 (N.D. 1985). An application for post-conviction relief to withdraw a guilty plea "is generally treated as a Rule 32(d), N.D.R.Crim.P., motion." **Houle v. State**, 482 N.W.2d 24, 25 (N.D. 1992). Withdrawal of a guilty plea is allowed when necessary to correct a manifest injustice. Rule 32(d), N.D.R.Crim.P.; **Houle v. State, supra**. The determination of whether or not there has been a manifest injustice supporting withdrawal of a guilty plea lies within the trial court's discretion and will not be reversed on appeal except for an abuse of discretion. **State v. Houle, supra**; **State v. Werre**, 325 N.W.2d 172 (N.D. 1982). In reviewing denial of post-conviction relief to determine if the trial court abused its discretion, "we may be required to review the trial court's preliminary findings of fact," which, because proceedings under Ch. 29-32.1, N.D.C.C., "are essentially civil in nature . . . will not be disturbed unless clearly erroneous pursuant to Rule 52(a), N.D.R.Civ.P." **Houle v. State, supra**, 482 N.W.2d at 25-26.

Zeno contends that the trial court erred in requiring him to plead to the initial theft information and in entering a not guilty plea. Under Rule 10, N.D.R.Crim.P., a defendant is to plead to the information at the arraignment. Rule 11(a)(1), N.D.R.Crim.P., requires a court to enter a plea of not guilty if a defendant refuses to plead. The trial court's entry of a plea of not guilty was proper.

Zeno attempts to link the theft charge to the terrorizing charge (the dismissal of which was reversed in **State v. Zeno, supra**) or the alleged unlawful arrest for discharging a firearm. He contends that all of the State's evidence of theft was the product of an illegal search based upon his unlawful arrest for terrorizing or discharging a firearm, and contends that there was no admissible evidence of theft.

We need not consider whether Zeno's property was illegally searched under an unlawful arrest. Even if there was police misconduct with respect to Zeno's arrest and the search of his property, there is independent evidence of theft untainted by police misconduct.³ "Evidence discovered or discoverable wholly apart from unlawful official conduct is admissible in a criminal prosecution." **State v. Thordarson**, 440 N.W.2d 510, 513 (N.D. 1989). "Evidence of a crime, sufficiently distinguishable from and independent of the taint of official misconduct, is not suppressed. An independent crime is not shielded by the rule of exclusion." **State v. Ritter**, 472 N.W.2d 444, 450 (N.D. 1991).

Michael Knoop of the Minot Police Department testified that the Ward County State's Attorney's Office had received from various merchants unpaid checks issued by Zeno. Officer Knoop presented a document listing 108 NSF checks issued by Zeno between January 8, 1991, and January 29, 1991, in the total amount of \$ 2,723.54. This was independent evidence of the crime of theft unrelated to any allegedly unlawful arrest and search.

Zeno contends that two of the attorneys appointed to represent him rendered ineffective assistance of counsel. Under **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), a defendant claiming ineffective assistance of counsel "must establish two elements: that counsel's performance was deficient, and that the deficient performance prejudiced the defense." **State v. Kunkel**, 366 N.W.2d 799, 801 (N.D. 1985). "Under the **Strickland** standard, a 'defendant must show that counsel's representation fell below an objective standard of reasonableness' and that the defendant was prejudiced by such ineffective representation, that is 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" **Houle v. State**, 482 N.W.2d 24, 26 (N.D. 1992), quoting **Strickland v. Washington, supra**, 466 U.S. at 688 and 694, 104 S.Ct. at 2064 and 2068, 80 L.Ed.2d at 693 and 698. In evaluating counsel's performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." **Strickland**, 466 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694.

Zeno has asserted that counsels' failure to object to an exhibit at his arraignment on the theft charge and their failure to "RAISE THE ISSUE ON THE OUTRAGEOUS, REPREHENSIBLE GOVERNMENTAL MISCONDUCT" constituted ineffective assistance of counsel. Zeno has not demonstrated that the exhibit in question (the list of NSF checks referred to earlier) was subject to objection and has not drawn our attention to evidence from which we can fairly conclude that counsels' performance was in any way deficient. Zeno's conclusory allegations about deficient performance by his attorneys "do not constitute a showing sufficient to overcome the 'strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'" **State v. Kunkel, supra**, 366 N.W.2d at 802, quoting **Strickland v. Washington**,

supra, 466 U.S. at 689, 104 S.Ct. at 2065, 80 L.Ed.2d at 694.

Zeno asserts that the state's attorney has adopted an administrative practice of encouraging merchants to send notices demanding payment to issuers of NSF checks that unconstitutionally creates an agency relationship between the state's attorney and merchants. Zeno's argument is unsupported by persuasive reasoning or legal authorities.

Zeno contends that merchants' policy of sending notices to issuers of NSF checks demanding that the issuer make payment or face prosecution creates an unconstitutional classification based on wealth. Zeno relies on **State v. Fischer**, 349 N.W.2d 16 (N.D. 1984) and **State v. Carpenter**, 301 N.W.2d 106 (N.D. 1980), which held that §§ 6-08-16 and 6-08-16.2, N.D.C.C., created a classification based on wealth by affording an issuer of an NSF check an opportunity to pay for an affirmative defense of payment, and that the classification based upon wealth constituted a denial of equal protection. However, as in **State v. Wilt**, 371 N.W.2d 159, 160 (N.D. 1985), Zeno has not shown that any of the criminal statutes applicable to writers of NSF checks are "being enforced against only those NSF checks writers who are unable to pay, because of indigency, as opposed to those who are simply unwilling to pay or unable to pay for reasons other than indigency. Consequently, [Zeno] has not met the heavy burden of proof necessary to demonstrate a constitutionally impermissible enforcement of a statute."

We have considered other issues raised and find them to be without merit.

We conclude that Zeno has not met his burden of establishing a basis for post-conviction relief and that the district court did not abuse its discretion in denying Zeno's petition.

Affirmed.

J. Philip Johnson

Gerald W. VandeWalle

Herbert L. Meschke

Beryl J. Levine

Ralph J. Erickstad, C.J.

DISPOSITION

AFFIRMED.

OPINION FOOTNOTES

1 Honorable Wallace D. Berning.

2 Honorable Jon R. Kerian.

3 We do not mean to imply that any police conduct in this case was improper.