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ROLL NUMBER

DESCRIPTION

2151

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2151

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2151**

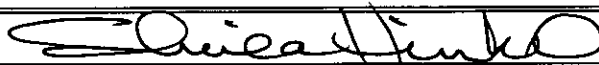
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 17, 2007**

Recorder Job Number: **1277**

Committee Clerk Signature



Minutes:

**Senator Karen Krebsbach – District 40, Minot – *In Favor***

Heard the bill last time and are seeking change. This is for check collection people to raise \$25 to \$30 increase.

**Q?**

**Mike Lefor – DCI Credit Services, Inc. – *In Favor***

**TESTIMONY # 1**

*[m 6:00 explanation ends]*

**S Andrist:** What is normal practice?

**M Lefor:** Two schools of thought. Small companies try to collect themselves, can't do it. Check recovery – sign bank authorization form, they allow the bank to send the checks directly to the agency. Agency sends out notice on day one letting them know there is a check returned.

**S Andrist:** They pay a substantial overdraft fee at the bank, is there no 10-day period?

**M Lefor:** Sometimes we get phone call from business to send the check back to us.

**S Adnrist:** What about large companies?

**M Lefor:** Small mom & pop businesses

**S Adrist:** National fee?

**M Lefor:** Same as ND fee.

**S Klein:** Check goes to the bank, works through the process. [uses personal experience]

It's the same people all the time, but sometimes you get one that was accidental.

Ex: Write \$10 at the grocery store, bank gets \$25, and collection agency gets \$25-\$30, that check gets to be an expensive way to do business. After 60 days, then sent...

**M Lefor:** Each organization has a different way. After 60 days give them an option.

Prosecution? [explain 10:15] Explains how it works.

**S Klein:** Do you get \$25?

**M Lefor:** Share fee.

**S Potter:** Business up or down? Fewer checks these days, fewer CC transactions?

**M Lefor:** Yes, there are more electronic transactions has skyrocketed.

**S Potter:** In national firms, are they regulated by the same law?

**M Lefor:** they are limited by law - where the check is written.

**S Potter:** Bank fees regulated in the same way?

**M Lefor:** No they're not, I believe they set their own rates.

**S Behm:** Every get a bad check from a CC company?

**M Lefor:** Not my business experience

**S Heitkamp:** Had the debate before. Was a Senate and House discussion, why a limit? Is there some sort of consumer protection, other states do not have a limit?

**M Lefor:** They have a maximum limit

**S Klein:** Senator Horn is the Sponsor in Dist. 3 in Support.

**Senator Robert Horn from District 3 – In Favor**

On record as support SB 2151

**M Lefor:** Debit card, are also subject to \$25 fee

**S Heitkamp:** Debit cards, I don't write checks anymore. They KNOW whether or not there's money there right before it's accepted.

**M Lefor:** Not necessarily. My business does not run into this very often at all.

**S Hacker:** If they would deliberately write a bad check, wouldn't it be helpful to have a percentage charge on amount of check? [m 0.16:51] Maybe it should be \$50 instead of \$30 if they are habitual.

**M Lefor:** It's all across the board.

**S Wanzek:** You're just increasing the amount. [explains 2<sup>nd</sup> section m17:26]

**M Lefor:** Legislative council drafted it.

**Q? Favor?**

**Mike Rud - Executive Director fo the ND Retail Association – In Favor**

**TESTIMONY #2 See Testimony**

**S Klein:** You get \$2.00 from merchant? How come you don't want to raise that?

**Mike Rud:** We haven't discussed that

**S Heitkamp:** Responsibility lies with the person who writes the check, What if you have an habitual bad check writer. Any sense to bring criminal action? Do you use them as part of them accounting practices instead of looking at the person.

**M Rud:** Most will post who can't write a check.

**S Heitkamp:** do you look at the criminal aspect of it?

**M Rud:** Lot of mom and pops don't want to prosecute, rather try to find someway round that, might be a check collection agency in some cases, or not taking the check.

[m 22:38]

**S Heitkamp:** [presents story on his experience m 22:20 – 22:38]

**S Wanzek:** Question whether \$25 or \$30, you have someone who doesn't have money anyway, how do you collect any more?

**M Rud:** If you'd have to spend time to collect, you'd spend a good portion of you day. Mom and pop businesses don't have the time to do that.

**S Klein:** If the money goes in the bank, the bank get's their money first.

**S Andrist:** Are bad checks better or worse?

**M Rud:** This summer was bad cause of the cost of gas, \$3 a gal., with over \$100 in some cases.

**S Andrist:** Do they do this willingly or just screw up?

**M Rud:** You have habitual bad people, but sometimes poor bookkeeping skills.

**S Andrist:** If they need money, desperate, need the tank of gas, are they going to do it even though they know there's not enough money to cover it?

**M Rud:** Our experience would be, "yes" unfortunately

**S Behm:** Has there been a study on loses from bad checks? [personal experience 25:50]  
Cannot collect that money.

**M Rud:** People leave during the night.

## **OPPOSITION**

### **Tim Carske – Commissioner - Regulate Collection Agencies**

**S Klein:** These would fall under that category?

**M Rud:** Yes

**S Heitkamp:** Banks have associations with number of people with accounts with them.

**M Rud:** Banks have an amount of overdrafts that they carry on their books as loans.

**S Heitkamp:** By the time the bank send them back out, you usually have someone who is habitual or not very good a the bank.

**M Rud:** I would say this about Banks, Credit Unions and financial institutions that have checking accounts, in the old days they used to carry a lot more overdrafts and now days and now are faster in sending checks back.

**S Klein:** Now we also have "ready credit" – didn't have years ago where you can establish a line of credit. Does anyone regulate fees that bank charge?

**M Rud:** When you open your checking account, you sign a contract and agree with the bank that they will cover the check on an unsecured loan.

**S Potter:** S. Hacker's proposal thought about being some % fee, as opposed to a number?

**M Rud:** There would be costs to set up computer systems.

**S Andrist:** [personal experience 29:37] Curious if larger banks in larger cities have the same practice?

**M Rud:** Banks will carry it as an unsecured loan on their books.

**S Klein:** Banks encourage customers to sign up for that additional protection.

**M Rud:** Comment on the electronic transactions, they are covered. Those funds are not guaranteed just because you use electronic debit cards, it can be returned back to company, and then the company would have the right to collect the \$30 fee.

More and more companies are using electronic transfer.

**Comments?**

**CLOSE**

**S Hacker moves for a Do Pass on SB 2151**

**S Andrist seconds**

**S Heitkamp:** Why did the House kill this last time?

**S Klein:** Someone who should have been there to carry it, wasn't it. Debate arose and when in doubt, vote red.

**Roll for Do Pass on SB 2151 7-0**

**Carrier S Behm**





**REPORT OF STANDING COMMITTEE**

**SB 2151: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2151 was placed on the Eleventh order on the calendar.**

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2151

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2151

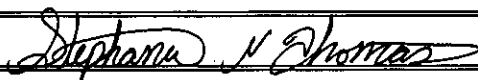
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 21, 2007

Recorder Job Number: 3602

Committee Clerk Signature



Minutes:

**Chair Keiser** opened the hearing on SB 2151.

**Sen. Karen Krebsbach, District 40:** I'm pleased to introduce this bill on behalf of the check collection agencies in our state. We need to keep them here, and we need to let them be viable. They were here two years ago, and all they're looking for is a \$5.00 increase in their charges. They are not able to establish their rates like another business in the state, they have to come to us to do this.

**Todd Kranda, ND Collectors Association:** Support SB 2151. These individuals that do business as an entity assist other businesses who may receive bad checks, or need accounts collected upon, and they're very helpful throughout the state. This bill really has one significant change. It moves the \$25.00 bad check fee to a \$30.00 rate. There's one other change that I'd like to bring to your attention. On page 4, line 7 Legislative Council saw it fit to add a clause unless the context otherwise requires. We didn't notice that at the hearing before the Senate committee, and so we went to Legislative Council, and they said it was housekeeping. So, the bill that's in front of you really looks at the increase of the NSF fee from \$25.00 to \$30.00, and we think it's appropriate again.

**Mike Lefor, DCI Credit Services, Inc.:** Support SB 2151. See written testimony #1.

**Rep. Ruby:** When bad checks turn over to you, do you reimburse the merchant for that amount at that time, or do you wait until you collect?

**Mike:** Typically, we wait until we're reimbursed. When we get our service fee, ND law says that we must give them a \$2.00 rebate. If a client has an NSF fee, that's the relationship between the bank and the client, ours is something separate.

**Rep. Amerman:** You know that all of your expenses are going up, has it been an increase on the business end of it? Are bad checks becoming more and more of a problem?

**Mike:** Yes, there are more NSF checks. Electronic fund transfers are becoming more and more prevalent than paper checks, but we're seeing an increase in that, because generation wise is using electronic forms of payment, and there is an increase in that as well.

**Rep. Amerman:** Do you ever run across an instance, and if you do how do you handle it, when you have direct deposit, so you just get a slip. Say you have this slip, but the money hasn't quite made it to your account, and then in the process you write a check thinking the money was in there. How do you handle something like that?

**Mike:** Typically, if you don't have a history of writing NSF checks, the banks are going to cover that. They may charge you, but they're not going to return it as an NSF check. Our clients have the ability to call the check back from us, and typically we'll return it to our client.

**Rep. Boe:** You say 6 years ago they raised the fee, could you tell me how much they raised the fee, and how long it was before they had raised the fee?

**Mike:** It was raised \$5.00 from \$20.00 to \$25.00. The ND legislature created this in 1981, I believe, and it was a \$10.00 fee at that time. So, in 20 years it went up by a total of \$10.00.

**Rep. Kasper:** I'm assuming that you have other sources of revenue that you receive besides this \$25.00 fee to run your business, because when a business gives you a check to collect, isn't it typical that they receive the fee plus a percentage of what you collect?

**Mike:** I can only talk in terms of our business. There is civil procedure where we can collect three times in one check up to a certain dollar amount, but for our business we don't do that a whole lot, simply because you have to start a civil process to do that, and it's very costly.

**Rep. Kasper:** Let's say that I'm a business person, and I have \$100.00 bum check. I turn it over to you and say collect on this check for me. Under current law you're going to get a \$25.00 fee from the person that wrote the check, but of the \$100.00 let's say that you collect \$100.00, how much are you giving me back?

**Mike:** First of all a typical check recovery process, which is you add the \$25.00 service fee; you give the client the amount of the check, plus a \$2.00 rebate. The other process is called a collection process, and that is if a customer doesn't use a tradition check recovery service, and they say we got three checks for \$200.00 each, we took them a year ago, and we want to turn them over for collections, at that point in time we do not add a \$25.00 service fee. We'll charge a commission based on what our current rates are for that plan.

**Rep. Kasper:** This very range, will you charge any commission?

**Mike:** Our rates are anywhere from 30% to 50%.

**Mike Rud, ND Retailers Association & ND Petroleum Marketers:** Support SB 2151. As was stated before, the check collection agencies provide a valuable service to our industries, and we believe simply that a 5% increase in that was just simply cost of doing business increase. We as marketers feel comfortable that we could live with that as well. Our associations take the NSF checks very seriously from the gas standpoint. An NSF check sometimes poses a different problem, in that the gas is already in someone's tank, so when someone brings that check into the store, and it doesn't go through the machine properly, you've got a bad check. You either let them drive away with the gas in their tank, or you find some way to collect that money. Essentially, from a petroleum marketer's standpoint, we view

that as theft of property, and so that is a major concern for us. From a business standpoint, a lot of our retail and gas outlets are mom and pop operations, and if they had to spend this time without this service trying to collect these checks on their own working with the banks, it would take a lot of time away from what they need to do to service their customer.

**Rep. Amerman:** Tell me how this works. If I had a restaurant, and I had a number of bad checks, and I turn it over to the states attorney, yours is completely different, right?

**Mike:** Yes. Most of our business would go through a check collection agency where we don't see the bad check. The check goes to the bank, and then either the check write will notify us, or the bank will notify us that we've had a bad check.

**Rep. Amerman:** Do you know how the process works? What's the cost for an individual if it goes through the states attorney or something like that?

**Mike:** I'm not sure what the cost would be. I know for the most part that it's quite expensive, in the fact that by the time you go through the whole legal process, you probably don't get a lot of your money back out of the deal. So, a lot of people therefore steer away from that side of attacking the issue of collecting a bad check.

**Rep. Thorpe:** I think this is probably the most reasonable way to go as far collecting insufficient funds, is that not right?

**Mike:** I would say yes. It's by far from a business standpoint, and an owners standpoint, it's the least amount of hassle you could endure by having somebody else collect this money instead of spending your own time trying to do that work.

**Dave Maciver, ND Chamber of Commerce:** Support of SB 2151. See written testimony #2.

**Bill Butcher, National Federation of Independent Business:** Support SB 2151. We have nearly 3,000 small business owners, who are members of our organization, and they include businesses that are in the business of collecting bad checks, NSF checks, and bad accounts.

We also have members who utilize those services. I recommend a do pass on this to make our fees consistent with those states that are around us.

**Rep. Dietrich:** How many transactions take place in ND on an annual basis?

**Bill:** I have no idea. There's an awful lot.

**Rep. Keiser:** What are the options the business has, for example, they could take someone to small claims court. What's the cost associated with it? What's the hassle associated with doing that? I could go to your service, and what other options would I as a business owner have for checks now? What will the banks do, and what are the other options that they have?

**Mike:** Typically, when a business signs up for check recovery, they sign a bank authorization form. That authorized the bank to send that NSF check directly to our business, as opposed to a collection item which goes to the client first, and then is listed with us for collection. Some of the options, as you said small claims court, the problem with that is it might be fine if you have one or two, but typically businesses will have more than that, so there's no way they can keep on top of that. Small claims court actually is about \$15.00, and if you want to get a district court judgment that's \$90.00, and in the process, you have to appear in small claims court, so it's time consuming, and it is costly. When you win you get a small claims court judgment, or district court judgment and that gives you the opportunity to send out to an institution attorney's wages, etc, while all the while you're adding to your cost. In check recovery, because it's a fresh collection, we get it right away, and the recovery rates are typically anywhere from 70% to 90%, which is much higher than a collection.

**Rep. Keiser:** I come to you with my check for \$100.00. You're going to charge the customer \$25.00 or \$30.00. They're going to collect the check, but how much are you going to give me?



**Mike:** On \$100.00 check you have a \$25.00 service fee, and in ND law we have to do a \$2.00 rebate, so you're going to get \$102.00.

**Rep. Clark:** Aren't checks disappearing pretty soon?

**Mike:** I believe that they will be.

**Rep. Johnson:** The \$2.00 rebate where did that come in?

**Mike:** That came in about 1995 when the increase was going from \$10.00 to \$15.00, or \$15.00 to \$20.00. The legislature placed an amendment on that bill, so that there would be a \$2.00 rebate for merchants at that time.

**Rep. Johnson:** I move a do pass.

**Rep. Thorpe:** Second.

**Roll call vote was taken. 13 Yeas, 0 Nays, 1 Absent, Carrier: Rep. Boe**

Hearing closed.

Date: 2-21-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2151

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Rep Johnson Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad					
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Boe

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

**REPORT OF STANDING COMMITTEE (410)**  
February 21, 2007 4:02 p.m.

**Module No: HR-33-3636**  
**Carrier: Boe**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2151: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2151 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

SB 2151

Mike Lefor  
DCI Credit Services, Inc.  
Testimony on Senate Bill 2151  
Senate IBL Committee  
January 15, 2007

Chairman Klein and members of the Senate IBL committee, my name is Mike Lefor, and I am speaking on behalf of my business, DCI Credit Services, Inc. We specialize in check recovery in Southwest North Dakota. I am here today to urge you to support SB 2151 increasing the returned check fee from \$25.00 to \$30.00.

Our last increase was six years ago in July 2001. Since that time, we have seen continuing increases in wages, postage, payroll taxes, health care costs, mileage and errors and omissions insurance. There is a need for check recovery agencies. Because of us, there is less prosecution needed through the court system. The businesses we represent can concentrate on running and growing their businesses and let us specialize in our field.

The states that surround us – Minnesota, Montana and South Dakota have been at a \$30.00 returned check fee for many years, in the case of South Dakota since 1991. Their costs are comparable to ours. Their bond requirements are lower, plus they are not required to rebate \$2.00 for every check collected back to the merchant.

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

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

2151  
#1

SB 2151 Testimony

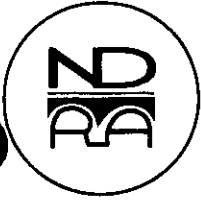
Page 2

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

We do not have luxury of raising our prices, and for the past six years we have had to continue to absorb the increasing costs associated with our business. Last year, collection agencies in this country returned almost \$40 billion to businesses throughout the United States that is a tremendous economic impact. Check recovery agencies in North Dakota collect ten's of thousands of returned checks annually to the benefit of our customer businesses. Profit margins in our business are small and getting smaller, we need this increase in order to remain a viable service to our clients.

We are proud of the work that we do for businesses in this state. I urge your committee to look favorably on Senate Bill 2151 by giving it a "do-pass" recommendation. Thank you for your time, I would be happy to answer any questions you may have.

2151  
#1



ND Petroleum Marketers Association  
ND Retail Association



**Testimony SB 2151**  
January 17, 2007 – Senate IBL

Chairman Klein and members of the Committee:

For the record, my name is Mike Rud. I'm the executive director of the North Dakota Retail Association and the North Dakota Petroleum Marketers Association. NDRA and NDPMA represent hundreds of retail and petroleum business outlets across the state. I'm here urging you to recommend a "DO PASS" on SB 2151.

NDRA and NDPMA members stand in support of SB 2151 for a numbers of reasons. The check collection companies have provided a vital service to the state's business community over the years. We believe the \$5 increase in check recovery costs they're seeking is more than fair. It's simply a cost of doing business increase.

Our associations take the issue of NSF checks very seriously. Our retailers view bad checks as theft of property for the goods or services they provide. In fact, many of our members would like to see the NSF fee taken even higher in hopes of providing more of a deterrent when it comes to people writing bad checks. Without the check collection services, many North Dakota retailers would be forced to spend long and extremely frustrating periods of time working with their local banker in hopes of recovering money that rightfully belongs to the merchant.

Again, NDRA and NDPMA members urge a "DO PASS" recommendation on SB 2151. This concludes my brief testimony. Thank you for your time and consideration on this very important matter.

2151  
#2

Mike Lefor  
DCI Credit Services, Inc.  
Testimony on Senate Bill 2151  
House IBL Committee  
February 21, 2007

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Our last increase was six years ago in July 2001. Since that time, we have seen continuing increases in wages, postage, payroll taxes, health care costs, mileage and errors and omissions insurance. There is a need for check recovery agencies. Because of us, there is less prosecution needed through the court system. The businesses we represent can concentrate on running and growing their businesses and let us specialize in our field. Our business and those of many check recovery companies in North Dakota provide check verification services for a nominal fee to our clients to verify whether or not an individual currently has a returned check item in our database.

The states that surround us – Minnesota, Montana and South Dakota have been at a \$30.00 returned check fee for many years, in the case of South Dakota since 1991. Their costs are comparable to ours. Their bond requirements are lower than in North Dakota.

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

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SB 2151 Testimony

Page 2

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We are proud of the work that we do for businesses in this state. I urge your committee to look favorably on Senate Bill 2151 by giving it a "do-pass" recommendation. Thank you for your time, I would be happy to answer any questions you may have.



**TESTIMONY OF DAVE MACIVER**  
**President, North Dakota Chamber of Commerce**  
**In Support of SB 2151**  
**February 21, 2007**

Chairman Keiser and members of the Industry, Business and Labor Committee, I am Dave MacIver, president of the North Dakota Chamber of Commerce.

The North Dakota Chamber is the principal business advocacy group in North Dakota. Our organization's membership is an economic and geographic cross section of North Dakota's private sector, including statewide associations and local chambers of commerce, development organizations, and convention and visitors associations and public sector organizations.

During this legislative session, 16 local chambers of commerce in North Dakota are part of a coalition representing 7,235 business members that support the Legislative Policy Statements of the North Dakota Chamber.

One of our legislative objectives is that we advocate pro-business concerns. A basic pro-business concern is that businesses be allowed to be successful in their line of work. SB 2151 increases the increase of collection fees from \$25 to \$30 on returned checks. Check

recovery services provide a valuable service in North Dakota by helping businesses collect NSF checks and by reducing the need for prosecution thorough the court system.

The last fee increase was in July 2001, and general offices expenses have increased since then. SB 2151 will help check recovery businesses better meet the rising expenses of running their businesses, and it will make North Dakota fees be more in line with the fees charged in neighboring states.

I encourage you to support SB 2151 and help check recovery businesses to continue to provide their valuable service to the business community in North Dakota.

Thank you.

