

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1243

Introduced by

Representatives L. Thoreson, Mahoney

Senators Krebsbach, Traynor

1 A BILL for an Act to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota
2 Century Code, relating to issuing a check without sufficient funds, credit, or an account; to
3 provide a penalty; and to declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time**
8 **limitation - Financial liability - Penalty.**

- 9 1. A person may not, for that person, as the agent or representative of another, or as
10 an officer or member of a firm, company, copartnership, or corporation, make,
11 draw, utter, or deliver any check, draft, or order for the payment of money upon a
12 bank, banker, or depository, if at the time of the making, drawing, uttering, or
13 delivery, or at the time of presentation for payment, if the presentation for payment
14 is made within fourteen days after the original delivery thereof, there are not
15 sufficient funds in or credit with the bank, banker, or depository to meet the check,
16 draft, or order in full upon its presentation. Violation of this subsection is ~~an~~
17 ~~infraction if the amount of insufficient funds or credit is not more than one hundred~~
18 ~~dollars~~, a class B misdemeanor if the amount of insufficient funds or credit is ~~more~~
19 ~~than one hundred dollars and~~ not more than five hundred dollars, and a class A
20 misdemeanor if the amount of insufficient funds or credit is more than five hundred
21 dollars.
- 22 2. The person is also liable for collection fees or costs, not in excess of twenty
23 dollars, which are recoverable by civil action by the holder, or its agent or
24 representative, of the check, draft, or order or if criminal action is initiated, the court

- 1 fees or costs not in excess of twenty dollars.
- 2 The notice of dishonor also may contain a recital of the penal provisions of this
- 3 section and the possibility of a civil action to recover any collection fees or costs or
- 4 civil penalty authorized by this section.
- 5 5. An agent acting for the receiver of a check in violation of this section may present
- 6 the check to the state's attorney for prosecution if the holder, or the holder's agent
- 7 or representative, mailed a notice under subsection 4. The criminal complaint for
- 8 the offense of issuing a check, draft, or money order without sufficient funds under
- 9 this section must be executed within not more than ninety days after the dishonor
- 10 by the drawee of said instrument for nonsufficient funds. A complaint may not be
- 11 executed until at least ten days following mailing of the notice under subsection 4
- 12 and may not be executed if the person who issued the check, draft, or order has
- 13 paid the amount owed under the check, draft, or order within those ten days. The
- 14 failure to execute a complaint within said time bars the criminal charge under this
- 15 section.

16 **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1997 Supplement to the North

17 Dakota Century Code is amended and reenacted as follows:

18 **6-08-16.2. Issuing check without account or with insufficient funds - Financial**

19 **liability - Penalty - Exceptions.**

- 20 1. As used in this section:
- 21 a. "Account" means any account at a bank or depository from which an
- 22 instrument could legally be paid.
- 23 b. "Dishonor" is synonymous with "nonpayment".
- 24 c. "Instrument" means any check, draft, or order for the payment of money.
- 25 d. "Issues" means draws, utters, or delivers.
- 26 2. A person who, for that person or as agent or representative of another, willfully as
- 27 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if
- 28 that person has been previously convicted of issuing an instrument without an
- 29 account pursuant to section 6-08-16.1 or without sufficient funds in a bank or
- 30 depository pursuant to section 6-08-16, and:

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

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

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

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

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

- 24 4. A person who, for that person or as an agent or representative of another, willfully
25 issues at least two instruments within a ninety-day period is guilty of a class C
26 felony if the total amount of the instruments was for at least five hundred dollars,
27 and the drawer has violated subdivision a or b, or both, with respect to the
28 instruments:

- 29 a. At the time of issuing the instruments, the drawer does not have an account
30 with the bank or depository on which the instruments are drawn; or

- 1 b. At the time of issuing the instruments, or at the time of presentation for
2 payment if made within ten business days after the original delivery of the
3 instrument, the drawer does not have sufficient funds in the bank or
4 depository, or credit with the bank, banker, or depository, to pay the
5 instrument in full upon its presentation.
- 6 5. ~~The~~ A person who issues an instrument under subsection 2, 3, or 4 also is liable
7 for collection fees or costs, not in excess of twenty dollars per instrument, which
8 are recoverable by civil action by the holder of the instrument, or the holder's agent
9 or representative or if criminal action is initiated, the court may assess costs of five
10 dollars, which are payable to the state's attorney of the county in which the charge
11 is prosecuted.
- 12 ~~5-~~ A civil penalty is also recoverable by civil action by the holder, or its agent or
13 representative, of the instrument. The civil penalty consists of payment to the
14 holder of the instrument of the lesser of one hundred dollars or three times the
15 amount of the instrument.
- 16 6. An agent acting for the receiver of an instrument issued in violation of this section
17 may present the instrument to the state's attorney for prosecution if the holder, or
18 the holder's agent or representative, mailed a notice under subsection 7. A
19 criminal complaint for violation of subdivision b of subsection 2 or subdivision b of
20 subsection 3 must be executed within ninety days after the drawer of the
21 instrument receives notice, from the holder, of nonpayment. A complaint for a
22 violation of subsection 4 must be executed within ninety days after the drawer of
23 the instrument receives notice, from the holder, of the holder's agent or
24 representative, of nonpayment for the last instrument, if any, included under
25 subdivision b of subsection 4 for a violation of subsection 4. A complaint may not
26 be executed until at least ten days following mailing of the notice under
27 subsection 7 and may not be executed if the person who issues the instrument has
28 paid the amount owed under the instrument within those ten days. Failure to
29 execute a complaint within the time set forth in this subsection bars any criminal
30 charges under subdivision b of subsection 2, subdivision b of subsection 3, or
31 subdivision b of subsection 4.

