

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1243  
(Representatives L. Thoreson, Mahoney)  
(Senators Krebsbach, Traynor)

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuing a check without sufficient funds, credit, or an account; to provide a penalty; and to declare an emergency.

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

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

**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;~~
  - 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.
2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient fund checks, drafts, or orders. 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. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

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. 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 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~~ five hundred dollars 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:

- a. ~~At 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.~~

4. The A person who issues an instrument under subsection 2 or 3 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.

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. 5. 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 6. ~~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. 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. 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.~~

- 7. 6. 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.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1243 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas        98            Nays        0            Absent      0

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas        48            Nays        0            Absent      1

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State