

**FIRST ENGROSSMENT
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2164

Introduced by

Senators Krebsbach, Klein

Representatives N. Johnson, Keiser

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 increasing fees and costs for checks issued on closed accounts and
3 accounts with insufficient funds.

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

5 **SECTION 1. AMENDMENT.** Section 6-08-16 of the North Dakota Century Code is
6 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, or authorize an electronic funds
12 transfer, for the payment of money upon a bank, banker, or depository, if at the
13 time of the making, drawing, uttering, electronically authorizing, or delivery, or at
14 the time of presentation for payment, if the presentation for payment is made within
15 fourteen days after the original delivery thereof, there are not sufficient funds in or
16 credit with the bank, banker, or depository to meet the check, draft, electronic
17 funds transfer, or order in full upon its authorized presentation. Violation of this
18 subsection is:

- 19 a. An infraction if the amount of insufficient funds or credit is not more than fifty
20 dollars;
- 21 b. A class B misdemeanor if the amount of insufficient funds or credit is more
22 than fifty dollars but not more than two hundred fifty dollars, or if the individual
23 has pled guilty or been found guilty of a violation of this section within three
24 years of issuing an insufficient funds check, draft, or order;

- 1 c. A class A misdemeanor if the amount of insufficient funds or credit is more
2 than two hundred fifty dollars but not more than five hundred dollars, or if the
3 individual has pled guilty or been found guilty of two violations of this section
4 within three years of issuing an insufficient funds check, draft, or order; or
- 5 d. A class C felony if the amount of insufficient funds or credit is more than five
6 hundred dollars, or an individual has pled guilty or been found guilty of three
7 or more violations of this section within five years of willfully issuing an
8 insufficient funds check, draft, or order.
- 9 2. The grade of an offense under this section may be determined by individual or
10 aggregate totals of insufficient funds checks, drafts, electronic funds transfer
11 authorizations, or orders. The person is also liable for collection fees or costs, not
12 in excess of ~~twenty five~~ thirty dollars, which are recoverable by the holder, or its
13 agent or representative, of the check, draft, electronic funds transfer authorization,
14 or order. If the holder of the check or the holder's agent or representative uses the
15 automated clearinghouse network to collect the collection fees or costs, that
16 person shall comply with the network's rules and requirements. A collection
17 agency shall reimburse the original holder of the check, draft, electronic funds
18 transfer authorization, or order any additional charges assessed by the depository
19 bank of the check, draft, electronic funds transfer authorization, or order not in
20 excess of two dollars if recovered by the collection agency. If the person does not
21 pay the instrument in full and any collection fees or costs not in excess of
22 ~~twenty five~~ thirty dollars within ten days from receipt of the notice of dishonor
23 provided for in subsection 4, a civil penalty is also recoverable by civil action by the
24 holder, or its agent or representative, of the check, draft, electronic funds transfer
25 authorization, or order. The civil penalty consists of payment to the holder, or its
26 agent or representative, of the instrument of the lesser of two hundred dollars or
27 three times the amount of the instrument. The court may order an individual
28 convicted under this section to undergo an evaluation by a licensed gaming,
29 alcohol, or drug addiction counselor.
- 30 3. The word "credit" as used in this section means an arrangement or understanding
31 with the bank, banker, or depository for the payment of the check, draft, electronic

1 funds transfer authorization, or order. The making of a postdated check knowingly
2 received as such, or of a check issued under an agreement with the payee that the
3 check would not be presented for payment for a time specified, does not violate
4 this section.

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

9 Notice of Dishonored Check

10 Date _____

11 Name of Issuer _____

12 Street Address _____

13 City and State _____

14 You are according to law notified that a check dated _____,

15 _____, drawn on the _____ Bank

16 of _____ in the amount of _____ has been returned

17 unpaid with the notation the payment has been refused because of

18 nonsufficient funds. Within ten days from the receipt of this

19 notice, you must pay or tender to _____

20 (Holder or agent or representative)

21 sufficient moneys to pay such instrument in full and any collection

22 fees or costs not in excess of ~~twenty five~~ thirty dollars.

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

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

1 nonsufficient funds. The failure to execute a complaint within said time bars the
2 criminal charge under this section.

3 **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **6-08-16.2. Issuing check without account - Financial liability - Penalty -**
6 **Exceptions.**

- 7 1. As used in this section:
- 8 a. "Account" means any account at a bank or depository from which an
9 instrument could legally be paid.
- 10 b. "Dishonor" is synonymous with "nonpayment".
- 11 c. "Instrument" means any check, draft, electronic funds transfer authorization,
12 or order for the payment of money.
- 13 d. "Issues" means draws, utters, electronically authorizes, or delivers.
- 14 2. A person who, for that person or as agent or representative of another, willfully as
15 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if
16 that person has been previously convicted of issuing an instrument without an
17 account pursuant to section 6-08-16.1, and at the time of issuing the instrument
18 the drawer does not have an account with the bank or depository on which the
19 instrument is drawn.
- 20 3. A person who, for that person or an agent or representative of another, willfully as
21 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if
22 the instrument was for at least five hundred dollars or that person, agent, or
23 representative of another, issues more than one instrument wherein the aggregate
24 total of all instruments issued exceeds five hundred dollars, and at the time of
25 issuing the instrument, the drawer does not have an account with the bank or
26 depository on which the instrument is drawn.
- 27 4. A person who issues an instrument under subsection 2 or 3 also is liable for
28 collection fees or costs, not in excess of ~~twenty-five~~ thirty dollars per instrument,
29 which are recoverable by the holder of the instrument, or the holder's agent or
30 representative. A civil penalty is also recoverable by civil action by the holder, or
31 its agent or representative, of the instrument. The civil penalty consists of payment

1 to the holder of the instrument of the lesser of two hundred dollars or three times
2 the amount of the instrument.

3 5. An agent acting for the receiver of an instrument issued in violation of this section
4 may present the instrument to the state's attorney for prosecution if the holder, or
5 the holder's agent or representative, mailed a notice under subsection 6. A
6 criminal complaint for violating this section must be executed within ninety days
7 after the drawer receives notice from the holder, or its agent or representative, of a
8 no-account or closed-account instrument.

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

13 Notice of Dishonored Instrument

14 Date _____

15 Name of Issuer _____

16 Street Address _____

17 City and State _____

18 You are according to law notified that an instrument dated _____,

19 _____, drawn on the _____ Bank of

20 _____ in the amount of _____ has been

21 returned unpaid with the notation the payment has been refused

22 because (of nonsufficient funds) (the drawer does not have an

23 account). Within ten days from the receipt of this notice,

24 you must pay or tender to _____

25 (Holder or agent or representative)

26 sufficient moneys to pay such instrument in full and any collection

27 fees or costs not in excess of ~~twenty-five~~ thirty dollars.

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