

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2158
(Senators Krebsbach, Olafson, Larsen)
(Representatives Keiser, N. Johnson, Kingsbury)

AN ACT to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check with nonsufficient funds or without an account; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2, 4, and 5 of section 6-08-16 of the North Dakota Century Code are amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders.
 - a. The person is also liable for collection fees or costs, not in excess of ~~thirty~~thirty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. If the state's attorney or holder determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.
 - b. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency.
 - c. If the person does not pay the instrument in full and any collection fees or costs not in excess of ~~thirty~~thirty-five dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument.
 - d. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
4. A notice of dishonor may be mailed by the holder, or 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 _____,

_____, 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 ~~thirty~~thirty-five 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. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or order without sufficient funds under this section must be executed within not more than ~~ninetyone~~ ninetyone hundred twenty 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. Subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code are amended and reenacted as follows:

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~thirty~~thirty-five dollars per instrument, which are recoverable by the holder of the instrument, or the holder's agent or representative. If the state's attorney or holder determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection. 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 two hundred dollars or three times the amount of the instrument.
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. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. A criminal complaint for violating this section must be executed within ~~ninetyone~~ ninetyone hundred twenty days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed-account instrument.

6. A notice of dishonor may be mailed by the holder, or 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 _____,

_____, 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 or agent or representative)

sufficient moneys to pay such instrument in full and any collection

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2158.

Senate Vote: Yeas 38 Nays 8 Absent 0

House Vote: Yeas 66 Nays 25 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State