

HOUSE BILL NO. 1243

Introduced by

Representatives Dockter, Becker

Senator Poolman

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 issuance of checks without sufficient funds or without an account.

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

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

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

8 1. A person may not, for that person, as the agent or representative of another, or as an
9 officer or member of a ~~firm, company, copartnership, or corporation~~ an organization,
10 make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds
11 transfer, for the payment of money upon a bank, banker, or depository, if at the time of
12 the making, drawing, uttering, electronically authorizing, or delivery, or at the time of
13 presentation for payment, if the presentation for payment is made within fourteen days
14 after the original delivery thereof, there are not sufficient funds in or credit with the
15 bank, banker, or depository to meet the check, draft, electronic funds transfer, or order
16 in full upon its authorized presentation. Violation of this subsection is:

17 a. An infraction if the amount of insufficient funds or credit is not more than fifty
18 dollars;

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

23 c. A class A misdemeanor if the amount of insufficient funds or credit is more than
24 two hundred fifty dollars but not more than five hundred dollars, or if the individual

- 1 has pled guilty or been found guilty of two violations of this section within three
2 years of issuing an insufficient funds check, draft, or order; or
- 3 d. A class C felony if the amount of insufficient funds or credit is more than five
4 hundred dollars, or an individual has pled guilty or been found guilty of three or
5 more violations of this section within five years of willfully issuing an insufficient
6 funds check, draft, or order.
- 7 2. The grade of an offense under this section may be determined by individual or
8 aggregate totals of insufficient funds checks, drafts, electronic funds transfer
9 authorizations, or orders.
- 10 a. ~~The~~In addition to the criminal penalty, the person is also liable for collection fees
11 or costs; not in excess of ~~thirty-five~~forty dollars; which are recoverable by the
12 holder, ~~or its agent or representative,~~ of the check, draft, electronic funds transfer
13 authorization, or order or by the holder's agent or representative. If the holder of
14 the check, draft, electronic funds transfer authorization, or order or the holder's
15 agent or representative uses the automated clearinghouse network to collect the
16 collection fees or costs, that person shall comply with the network's rules and
17 requirements. If the state's attorney or holder determines the person identified as
18 the issuer of the instrument did not make, draw, utter, or deliver the instrument in
19 violation of this section but instead is the victim of fraud, that state's attorney or
20 holder shall provide the holder or ~~its~~the holder's agent or representative written
21 notice of the fraud and upon receipt of the notice that holder or ~~its~~the holder's
22 agent or representative may not collect fees or costs under this subdivision.
- 23 b. A collection agency shall reimburse the original holder of the check, draft,
24 electronic funds transfer authorization, or order any additional charges assessed
25 by the depository bank of the check, draft, electronic funds transfer authorization,
26 or order if recovered by the collection agency.
- 27 c. If the person does not pay the instrument in full and any collection fees or costs
28 not in excess of ~~thirty-five~~forty dollars within ten days from receipt of the notice of
29 dishonor provided for in subsection 4, ~~a civil penalty is also recoverable by civil-~~
30 ~~action by the holder, or its agent or representative,~~ of the check, draft, electronic
31 funds transfer authorization, or order or the holder's agent or representative is

1 entitled to bring a civil action to recover a civil penalty. The civil penalty consists-
2 of payment to the holder, ~~or its agent or representative,~~ of the instrument ~~of~~
3 the holder's agent or representative the lesser of two hundred dollars or three
4 times the amount of ~~the~~each instrument.

5 d. The court may order an individual convicted under this section to undergo an
6 evaluation by a licensed gaming, alcohol, or drug addiction counselor.

7 3. The word "credit" as used in this section means an arrangement or understanding with
8 the bank, banker, or depository for the payment of the check, draft, electronic funds
9 transfer authorization, or order. The making of a postdated check knowingly received
10 as such, or of a check issued under an agreement with the payee that the check would
11 not be presented for payment for a time specified, does not violate this section.

12 4. A notice of dishonor may be mailed by the holder, ~~or the holder's agent or~~
13 ~~representative,~~ of the check upon dishonor or by the holder's agent or representative
14 upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of
15 mailing signed by the individual making the mailing. The notice must be in
16 substantially the following form:

17 Notice of Dishonored Check

18 Date _____

19 Name of Issuer _____

20 Street Address _____

21 City and State _____

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

23 _____, drawn on the _____ Bank

24 of _____ in the amount of _____ has been returned

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

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

27 notice, you must pay or tender to _____

28 (Holder or agent or representative)

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

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

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

4 5. An agent acting for the receiver of a check in violation of this section may present the
5 check to the state's attorney for prosecution if the holder, or the holder's agent or
6 representative, mailed a notice under subsection 4. During the first one hundred
7 twenty days after the drawer received notice under this subsection the state's attorney
8 shall accept the instrument presented by the agent. The criminal complaint for the
9 offense of issuing a check, draft, electronic funds transfer authorization, or order
10 without sufficient funds under this section must be executed within not more than one
11 hundred twenty days after the dishonor by the drawee of said instrument for
12 nonsufficient funds. The failure to execute a complaint within said time bars the
13 criminal charge under this section.

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

16 **6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.**

- 17 1. As used in this section unless the context otherwise requires:
- 18 a. "Account" means any account at a bank or depository from which an instrument
19 could legally be paid.
- 20 b. "Dishonor" is synonymous with "nonpayment".
- 21 c. "Instrument" means any check, draft, electronic funds transfer authorization, or
22 order for the payment of money.
- 23 d. "Issues" means draws, utters, electronically authorizes, or delivers.
- 24 2. A person ~~wh~~that, for that person or as agent or representative of another, willfully as
25 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that
26 person has been previously convicted of issuing an instrument without an account
27 pursuant to section 6-08-16.1, and at the time of issuing the instrument the drawer
28 does not have an account with the bank or depository on which the instrument is
29 drawn.
- 30 3. A person ~~wh~~that, for that person or an agent or representative of another, willfully as
31 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the

1 instrument was for at least five hundred dollars or that person, agent, or representative
2 of another, issues more than one instrument ~~wherein~~ for which the aggregate total of all
3 instruments issued exceeds five hundred dollars, and at the time of issuing the
4 instrument, the drawer does not have an account with the bank or depository on which
5 the instrument is drawn.

6 4. A person ~~who~~ that issues an instrument under subsection 2 or 3 ~~also~~ is liable for
7 collection fees or costs, not in excess of ~~thirty-five~~ forty dollars per instrument, which
8 are recoverable by the holder of the instrument, or the holder's agent or
9 representative. If the state's attorney or holder determines the person identified as the
10 issuer of the instrument did not issue the instrument in violation of this section but
11 instead is the victim of fraud, that state's attorney or holder shall provide the holder or
12 ~~its~~ the holder's agent or representative written notice of the fraud and upon receipt of
13 the notice that holder or ~~its~~ that holder's agent or representative may not collect fees or
14 costs under this subsection. ~~A civil penalty is also recoverable by civil action by the~~ The
15 ~~holder, or its agent or representative,~~ of the instrument or the holder's agent or
16 representative is entitled to bring a civil action to recover a civil penalty. The civil
17 penalty ~~consists of~~ is payment to the holder of the instrument of the lesser of two
18 hundred dollars or three times the amount of ~~the~~ each instrument.

19 5. An agent acting for the receiver of an instrument issued in violation of this section may
20 present the instrument to the state's attorney for prosecution if the holder, or the
21 holder's agent or representative, mailed a notice under subsection 6. During the first
22 one hundred twenty days after the drawer received notice under this subsection the
23 state's attorney shall accept the instrument presented by the agent. A criminal
24 complaint for violating this section must be executed within one hundred twenty days
25 after the drawer receives notice from the holder, ~~or its agent or representative,~~ of a
26 no-account or closed-account instrument or the holder's agent or representative.

27 6. A notice of dishonor may be mailed by the holder, ~~or the holder's agent or~~
28 ~~representative,~~ of the instrument upon dishonor or by the holder's agent or
29 representative upon dishonor. Proof of mailing may be made by return receipt or by an
30 affidavit of mailing signed by the individual making the mailing. The notice must be in
31 substantially the following form:

Notice of Dishonored Instrument

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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-five~~ forty 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.