

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1243
(Representatives Dockter, Becker)
(Senator Poolman)

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuance of checks without sufficient funds or without an account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-16 of 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~~ an organization, make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, 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, electronic funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
 - 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 funds check, draft, or order.
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~~ In addition to the criminal penalty, the person is also liable for collection fees or costs, not in excess of thirty-five ~~forty~~ dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order or by the holder's agent or representative. 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~~ the holder's agent or

representative written notice of the fraud and upon receipt of the notice that holder or ~~its~~ the holder's 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 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-five~~ forty 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,~~ or the holder's agent or representative is entitled to bring a civil action to recover a civil penalty. The civil penalty ~~consists of~~ is payment to the holder, ~~or its agent or representative,~~ of the instrument ~~or the holder's agent or representative~~ the lesser of two hundred dollars or three times the amount of ~~the~~ each 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.
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, electronic funds transfer authorization, 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 the holder's agent or representative,~~ or by the holder's agent or representative 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-five~~ forty 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 one 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. Section 6-08-16.2 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section unless the context otherwise requires:
 - 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, electronic funds transfer authorization, or order for the payment of money.
 - d. "Issues" means draws, utters, electronically authorizes, or delivers.
2. A person ~~who~~that, 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, and 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.
3. A person ~~who~~that, 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 five hundred dollars or that person, agent, or representative of another, issues more than one instrument ~~whereinfor which~~ the aggregate total of all instruments issued exceeds five hundred dollars, and 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.
4. A person ~~who~~that issues an instrument under subsection 2 or 3 ~~also~~ is liable for collection fees or costs, not in excess of ~~thirty-five~~forty 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~~the holder's agent or representative written notice of the fraud and upon receipt of the notice that holder or ~~its~~that holder's agent or representative may not collect fees or costs under this subsection. ~~A civil penalty is also recoverable by civil action by the~~The holder, or its agent or representative, of the instrument or the holder's agent or representative is entitled to bring a civil action to recover a civil penalty. The civil penalty ~~consists of~~is payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of ~~the~~each 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 one hundred twenty days after the drawer receives notice from the holder, ~~or its agent or representative,~~ of a no-account or closed-account instrument or the holder's agent or representative.

6. A notice of dishonor may be mailed by the holder, ~~or the holder's agent or representative,~~ of the instrument upon dishonor or by the holder's agent or representative 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-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.

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 Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1243.

House Vote: Yeas 79 Nays 12 Absent 3

Senate Vote: Yeas 43 Nays 4 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State