

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

HOUSE BILL NO. 1223
(Representatives Keiser, Axtman, Skarphol)
(Senators Klein, Mutch)

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to the return of instruments issued without sufficient funds; and to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to collection on instruments issued without sufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-16 of the 1995 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 ~~himself~~ oneself, 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 ~~such~~ 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 a class B misdemeanor.
2. The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ 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.
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 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 ~~hereby~~ 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 ~~fifteen~~ twenty dollars.

The notice ~~may~~ 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. 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 1995 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 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 ~~is~~ also is liable for collection fees or costs, not in excess of ~~fifteen~~ 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 dollars, and:

- a. 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 ~~is~~ is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

4. 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.
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. 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, or its agent or representative, of nonpayment. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.
6. A notice of dishonor may be mailed by the holder, or its 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 ~~herby~~ 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 or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ 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. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Return of paid checks to the issuer. When the holder, or its agent or representative, of a check receives full payment for the amount of a check issued without sufficient funds or credit, or without account, the check must be returned to the issuer upon the payment of any civil penalty

assessed if the issuer appears and requests the return of the check or the issuer furnishes a self-addressed stamped envelope.

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-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1223.

House Vote: Yeas 72 Nays 19 Absent 6

Senate Vote: Yeas 40 Nays 4 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State