

**FIRST ENGROSSMENT
with Conference Committee Amendments**

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1238

Introduced by

Representatives Olson, Mahoney

Senator Sand

1 A BILL for an Act to amend and reenact subsection 1 of section 6-08-16 and section 6-08-16.2
2 of the North Dakota Century Code, relating to issuing a check without an account or without
3 sufficient funds; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-08-16 of the 1995 Supplement
6 to the North Dakota Century Code is amended and reenacted as follows:

7 1. A person may not, for ~~himself~~ that person, as the agent or representative of
8 another, or as an officer or member of a firm, company, copartnership, or
9 corporation make, draw, utter, or deliver any check, draft, or order for the payment
10 of money upon a bank, banker, or depository, if at the time of such making,
11 drawing, uttering, or delivery, or at the time of presentation for payment if the
12 presentation for payment is made within fourteen days after the original delivery
13 thereof, there are not sufficient funds in or credit with the bank, banker, or
14 depository to meet the check, draft, or order in full upon its presentation. Violation
15 of this subsection is an infraction if the amount of insufficient funds or credit is not
16 more than one hundred dollars, a class B misdemeanor if the amount of
17 insufficient funds or credit is more than one hundred dollars and not more than five
18 hundred dollars, and a class A misdemeanor if the amount of insufficient funds or
19 credit is more than five hundred dollars.

20 **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1995 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **6-08-16.2. Issuing check without account or with insufficient funds - Financial**
23 **liability - Penalty - Exceptions.**

24 1. As used in this section:

- 1 a. "Account" means any account at a bank or depository from which an
2 instrument could legally be paid.
3 b. "Dishonor" is synonymous with "nonpayment".
4 c. "Instrument" means any check, draft, or order for the payment of money.
5 d. "Issues" means draws, utters, or delivers.

6 2. A person who, for that person or as agent or representative of another, willfully as
7 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if
8 that person has been previously convicted of issuing an instrument without an
9 account pursuant to section 6-08-16.1 or without sufficient funds in a bank or
10 depository pursuant to section 6-08-16, and:

- 11 a. At the time of issuing the instrument the drawer does not have an account
12 with the bank or depository on which the instrument is drawn; or
13 b. At the time of issuing the instrument or at the time of presentation for payment
14 if made within ~~five~~ ten business days after the original delivery of the
15 instrument, the drawer does not have sufficient funds in the bank or
16 depository, or credit with the bank, banker, or depository, to pay the
17 instrument in full upon its presentation.

18 The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty
19 dollars, which are recoverable by civil action by the holder of the instrument.

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 ten thousand dollars, and:

- 23 a. At the time of issuing the instrument, the drawer does not have an account
24 with the bank or depository on which the instrument is drawn; or
25 b. At the time of issuing the instrument, or at the time of presentation for
26 payment if made within five business days after the original delivery of the
27 instrument, the drawer does not have sufficient funds in the bank or
28 depository, or credit with the bank, banker, or depository, to pay the
29 instrument in full upon its presentation.

30 The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty
31 dollars, which are recoverable by civil action by the holder of the instrument.

4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class C felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:

a. At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or

b. At the time of issuing the instruments, or at the time of presentation for payment if made within ten 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 liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative.

5. A civil penalty is also recoverable by civil action by the holder 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-~~ 6. 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, of nonpayment. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder's agent or representative, of nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. 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, or subdivision b of subsection 4.

6- 7. A notice of dishonor may be mailed by the holder 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 hereby 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)

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.