

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1243

Page 1, line 1, replace "subsection 1 of section" with "sections" and after "6-08-16" insert "and 6-08-16.2"

Page 1, line 2, after "funds" insert ", credit, or an account"

Page 1, line 5, replace "Subsection 1 of section" with "Section"

Page 1, after line 6, insert:

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

Page 1, after line 19, insert:

- "2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state's attorney of the county in which the charge is prosecuted. 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~~ 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 _____,
49 _____, 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 twenty 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. 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. A complaint may not be executed until at least ten days following mailing of the notice under subsection 4 and may not be executed if the person who issued the check, draft, or order has paid the amount owed under the check, draft, or order within those ten days. 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 1997 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 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 also is liable for collection fees or costs, not in excess of 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 also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, 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.
- 5. ~~The~~ A person who issues an instrument under subsection 2, 3, or 4 also is 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 or if criminal action is initiated, the court may assess costs of five dollars, which are payable to the state's attorney of the county in which the charge is prosecuted.
- 5. 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.
- 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 if the holder, or the holder's agent or representative, mailed a notice under subsection 7. 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. A complaint may not be executed until at least ten days following mailing of the notice under subsection 7 and may not be executed if the person who issues the instrument has paid the amount owed under the instrument within those ten days. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2, subdivision b of subsection 3, or subdivision b of subsection 4.

7. A notice of dishonor may be mailed by the holder, or ~~its~~ 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 _____,
49 _____, 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 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."

Renumber accordingly