

Sixty-second  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2158

Introduced by

Senators Krebsbach, Olafson, Larsen

Representatives Keiser, N. Johnson, Kingsbury

1 A BILL for an Act to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and  
2 subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to  
3 issuing a check with nonsufficient funds or without an account; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsections 2, 4, and 5 of section 6-08-16 of the North Dakota  
6 Century Code are amended and reenacted as follows:

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 person is also liable for collection fees or costs, not in excess of  
11 thirtythirty-five dollars, which are recoverable by the holder, or its agent or  
12 representative, of the check, draft, electronic funds transfer authorization, or  
13 order. If the holder of the check, draft, electronic funds transfer authorization, or  
14 order or the holder's agent or representative uses the automated clearinghouse  
15 network to collect the collection fees or costs, that person shall comply with the  
16 network's rules and requirements. If the state's attorney or holder determines the  
17 person identified as the issuer of the instrument did not make, draw, utter, or  
18 deliver the instrument in violation of this section but instead is the victim of fraud,  
19 that state's attorney or holder shall provide the holder or its agent or  
20 representative written notice of the fraud and upon receipt of the notice that  
21 holder or its agent or representative may not collect fees or costs under this  
22 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

by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars 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~~thirty-five 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, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the 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.

4. A notice of dishonor may be mailed by the holder, or 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 \_\_\_\_\_,

\_\_\_\_\_, 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~~thirty-five 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 ninetyone hundred  
7 twenty days after the drawer received notice under this subsection the state's attorney  
8 shall, and thereafter until the expiration of one hundred twenty days after the drawer  
9 received notice under this subsection the state's attorney may, accept the instrument  
10 presented by the agent. The criminal complaint for the offense of issuing a check,  
11 draft, electronic funds transfer authorization, or order without sufficient funds under  
12 this section must be executed within not more than ninetyone hundred twenty days  
13 after the dishonor by the drawee of said instrument for nonsufficient funds. The failure  
14 to execute a complaint within said time bars the criminal charge under this section.

15 **SECTION 2. AMENDMENT.** Subsections 4, 5, and 6 of section 6-08-16.2 of the North  
16 Dakota Century Code are amended and reenacted as follows:

17 4. A person who issues an instrument under subsection 2 or 3 also is liable for collection  
18 fees or costs, not in excess of ~~thirty~~thirty-five dollars per instrument, which are  
19 recoverable by the holder of the instrument, or the holder's agent or representative.  
20 If the state's attorney or holder determines the person identified as the issuer of the  
21 instrument did not issue the instrument in violation of this section but instead is the  
22 victim of fraud, that state's attorney or holder shall provide the holder or its agent or  
23 representative written notice of the fraud and upon receipt of the notice that holder or  
24 its agent or representative may not collect fees or costs under this subsection. A civil  
25 penalty is also recoverable by civil action by the holder, or its agent or representative,  
26 of the instrument. The civil penalty consists of payment to the holder of the instrument  
27 of the lesser of two hundred dollars or three times the amount of the instrument.

28 5. An agent acting for the receiver of an instrument issued in violation of this section may  
29 present the instrument to the state's attorney for prosecution if the holder, or the  
30 holder's agent or representative, mailed a notice under subsection 6. During the first  
31 ninetyone hundred twenty days after the drawer received notice under this subsection

1 ~~the state's attorney shall, and thereafter until the expiration of one hundred twenty~~  
2 ~~days after the drawer received notice under this subsection the state's attorney may,~~  
3 ~~accept the instrument presented by the agent.~~ A criminal complaint for violating this  
4 section must be executed within ~~ninetyone~~ hundred twenty days after the drawer  
5 receives notice from the holder, or its agent or representative, of a no-account or  
6 closed-account instrument.

- 7 6. A notice of dishonor may be mailed by the holder, or the holder's agent or  
8 representative, of the instrument upon dishonor. Proof of mailing may be made by  
9 return receipt or by an affidavit of mailing signed by the individual making the mailing.  
10 The notice must be in substantially the following form:

11 Notice of Dishonored Instrument

12 Date \_\_\_\_\_

13 Name of Issuer \_\_\_\_\_

14 Street Address \_\_\_\_\_

15 City and State \_\_\_\_\_

16 You are according to law notified that an instrument dated \_\_\_\_\_,

17 \_\_\_\_\_, drawn on the \_\_\_\_\_ Bank of

18 \_\_\_\_\_ in the amount of \_\_\_\_\_ has been

19 returned unpaid with the notation the payment has been refused

20 because (of nonsufficient funds) (the drawer does not have an

21 account). Within ten days from the receipt of this notice,

22 you must pay or tender to \_\_\_\_\_

23 (Holder or agent or representative)

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

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

26 The notice may also contain a recital of the penal provisions of this section and the  
27 possibility of a civil action to recover any collection fees or costs authorized by this  
28 section.