FIRST ENGROSSMENT

Sixty-second Legislative Assembly of North Dakota

ENGROSSED SENATE BILL NO. 2158

Introduced by

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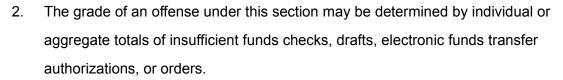
Senators Krebsbach, Olafson, Larsen

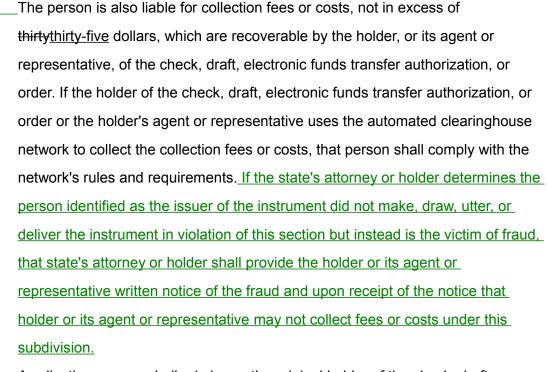
Representatives Keiser, N. Johnson, Kingsbury

- 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:

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





__A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed

1		by the depository bank of the check, draft, electronic funds transfer authorization,
2		or order not in excess of two dollars if recovered by the collection agency.
3		c. If the person does not pay the instrument in full and any collection fees or costs
4		not in excess of thirtythirty-five dollars within ten days from receipt of the notice of
5		dishonor provided for in subsection 4, a civil penalty is also recoverable by civil
6		action by the holder, or its agent or representative, of the check, draft, electronic
7		funds transfer authorization, or order. The civil penalty consists of payment to the
8		holder, or its agent or representative, of the instrument of the lesser of two
9		hundred dollars or three times the amount of the instrument.
10		d. The court may order an individual convicted under this section to undergo an
11		evaluation by a licensed gaming, alcohol, or drug addiction counselor.
12	4.	A notice of dishonor may be mailed by the holder, or the holder's agent or
13		representative, of the check upon dishonor. Proof of mailing may be made by return
14		receipt or by an affidavit of mailing signed by the individual making the mailing. The
15		notice must be in substantially the following form:
16		Notice of Dishonored Check
17		Date
18		Name of Issuer
19		Street Address
20		City and State
21		You are according to law notified that a check dated,
22		, drawn on the Bank
23		of in the amount of has been returned
24		unpaid with the notation the payment has been refused because of
25		nonsufficient funds. Within ten days from the receipt of this
26		notice, you must pay or tender to
27		(Holder or agent or representative)
28		sufficient moneys to pay such instrument in full and any collection
29		fees or costs not in excess of thirtythirty-five 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 ninetyone hundred twenty days after the drawer received notice under this subsection the state's attorney shall, and thereafter until the expiration of one hundred twenty days after the drawer received notice under this subsection the state's attorney may, 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 ninetyone 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. Subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code are amended and reenacted as follows:

- 4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of thirtythirty-five 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 agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection. 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 two 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 if the holder, or the holder's agent or representative, mailed a notice under subsection 6. <u>During the first ninety</u>one 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 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 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 in the amount of _____ has been 18 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 thirtythirty-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.