

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. The person is also liable for collection fees or costs, not in
10 excess of ~~thirty~~thirty-five dollars, which are recoverable by the holder, or its agent or
11 representative, of the check, draft, electronic funds transfer authorization, or order. If
12 the holder of the check, draft, electronic funds transfer authorization, or order or the
13 holder's agent or representative uses the automated clearinghouse network to collect
14 the collection fees or costs, that person shall comply with the network's rules and
15 requirements. A collection agency shall reimburse the original holder of the check,
16 draft, electronic funds transfer authorization, or order any additional charges assessed
17 by the depository bank of the check, draft, electronic funds transfer authorization, or
18 order not in excess of two dollars if recovered by the collection agency. If the person
19 does not pay the instrument in full and any collection fees or costs not in excess of
20 ~~thirty~~thirty-five dollars within ten days from receipt of the notice of dishonor provided
21 for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its
22 agent or representative, of the check, draft, electronic funds transfer authorization, or
23 order. The civil penalty consists of payment to the holder, or its agent or
24 representative, of the instrument of the lesser of two hundred dollars or three times the

amount of the instrument. 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.

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 ninety 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,

1 electronic funds transfer authorization, or order without sufficient funds under this
2 section must be executed within not more than ~~ninetyone~~ ninetyone hundred twenty days after
3 the dishonor by the drawee of said instrument for nonsufficient funds. The failure to
4 execute a complaint within said time bars the criminal charge under this section.

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

7 4. A person who issues an instrument under subsection 2 or 3 also is liable for collection
8 fees or costs, not in excess of ~~thirty~~ thirty-five dollars per instrument, which are
9 recoverable by the holder of the instrument, or the holder's agent or representative. A
10 civil penalty is also recoverable by civil action by the holder, or its agent or
11 representative, of the instrument. The civil penalty consists of payment to the holder of
12 the instrument of the lesser of two hundred dollars or three times the amount of the
13 instrument.

14 5. An agent acting for the receiver of an instrument issued in violation of this section may
15 present the instrument to the state's attorney for prosecution if the holder, or the
16 holder's agent or representative, mailed a notice under subsection 6. During the first
17 ninety days after the drawer received notice under this subsection the state's attorney
18 shall, and thereafter until the expiration of one hundred twenty days after the drawer
19 received notice under this subsection the state's attorney may, accept the instrument
20 presented by the agent. A criminal complaint for violating this section must be
21 executed within ~~ninetyone~~ ninetyone hundred twenty days after the drawer receives notice from
22 the holder, or its agent or representative, of a no-account or closed-account
23 instrument.

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

28 Notice of Dishonored Instrument

29 Date _____

30 Name of Issuer _____

31 Street Address _____

1 City and State _____

2 You are according to law notified that an instrument dated _____,

3 _____, drawn on the _____ Bank of _____

4 _____ in the amount of _____ has been

5 returned unpaid with the notation the payment has been refused

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

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

8 you must pay or tender to _____

9 (Holder or agent or representative)

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

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

12 The notice may also contain a recital of the penal provisions of this section and the

13 possibility of a civil action to recover any collection fees or costs authorized by this

14 section.