

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1223

Introduced by

Representatives Keiser, Axtman, Skarphol

Senators Klein, Mutch

1 A BILL for an Act to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota
2 Century Code, relating to collection costs on instruments issued without sufficient funds.

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

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

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

- 8 1. A person may not, for ~~himself~~ oneself, as the agent or representative of another, or
9 as an officer or member of a firm, company, copartnership, or corporation make,
10 draw, utter, or deliver any check, draft, or order for the payment of money upon a
11 bank, banker, or depository, if at the time of ~~such~~ the making, drawing, uttering, or
12 delivery, or at the time of presentation for payment if the presentation for payment
13 is made within fourteen days after the original delivery thereof, there are not
14 sufficient funds in or credit with the bank, banker, or depository to meet the check,
15 draft, or order in full upon its presentation. Violation of this subsection is a class B
16 misdemeanor.
- 17 2. The person is also liable for collection fees or costs, not in excess of ~~fifteen~~
18 twenty-five dollars, which are recoverable by civil action by the holder of the check,
19 draft, or order. A collection agency shall reimburse the original holder, or its agent
20 or representative, of the check, draft, or order any additional charges assessed by
21 the depository bank of the check, draft, or order not in excess of two dollars if
22 recovered by the collection agency. A civil penalty is also recoverable by civil
23 action by the holder, or its agent or representative, of the check, draft, or order.
24 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 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 ~~hereby~~ notified that a check 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. 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 ~~fifteen~~ twenty-five dollars.

The notice ~~may~~ 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. 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. 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 1995 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 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 ~~is~~ also is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty-five 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 ~~is~~ is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty-five dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

4. 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.

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. 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. 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.

6. A notice of dishonor may be mailed by the holder, or its 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 _____

1 You are according to law ~~hereby~~ notified that an instrument dated
2 _____, 19____, drawn on the _____ Bank of
3 _____ in the amount of _____ has been returned
4 unpaid with the notation the payment has been refused because (of
5 nonsufficient funds) (the drawer does not have an account). Within ten days
6 from the receipt of this notice, you must pay or tender to
7 _____
8 (Holder or Agent or Representative)
9 sufficient moneys to pay such instrument in full and any collection fees or
10 costs not in excess of ~~fifteen~~ twenty-five dollars.
11 The notice may also contain a recital of the penal provisions of this section and the
12 possibility of a civil action to recover any collection fees or costs authorized by this
13 section.