

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1238

Page 1, line 1, replace "subsections 2 and 3 of" with "subsection 1 of section 6-08-16 and"

Page 1, line 2, after "check" insert "without an account or"

Page 1, after line 3, insert:

"SECTION 1. AMENDMENT. Subsection 1 of section 6-08-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A person may not, for ~~himself~~ that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is ~~a class-B misdemeanor~~ an infraction."

Page 1, line 4, replace "Subsections 2 and 3 of section" with "Section"

Page 1, line 5, replace "are" with "is"

Page 1, after line 5, insert:

"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."

Page 1, line 14, overstrike "five" and insert immediately thereafter "ten"

Page 1, line 19, remove "or when"

Page 1, remove line 20

Page 1, line 21, remove "are payable to the county where the charge is prosecuted"

Page 2, line 9, remove "or when"

Page 2, remove line 10

Page 2, line 11, remove "are payable to the county where the charge is prosecuted"

Page 2, after line 11, insert:

- "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.

The person is also liable for collection fees or costs, not in excess of fifteen dollars per instrument, which are recoverable by civil action by the holder of the instrument.

5. A civil penalty is also recoverable by civil action by the holder 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-~~ 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. 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 nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. 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, or subdivision b of subsection 4.
- ~~6-~~ 7. A notice of dishonor may be mailed by the holder 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 hereby notified that an instrument 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) (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 fifteen 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