

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1243

Introduced by

Representatives L. Thoreson, Mahoney

Senators Krebsbach, Traynor

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 issuing a check without sufficient funds, credit, or an account; to
3 provide a penalty; and to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1997 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

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

9 1. A person may not, for that person, as the agent or representative of another, or as
10 an officer or member of a firm, company, copartnership, or corporation, make,
11 draw, utter, or deliver any check, draft, or order for the payment of money upon a
12 bank, banker, or depository, if at the time of the making, drawing, uttering, or
13 delivery, or at the time of presentation for payment, if the presentation for payment
14 is made within fourteen days after the original delivery thereof, there are not
15 sufficient funds in or credit with the bank, banker, or depository to meet the check,
16 draft, or order in full upon its presentation. Violation of this subsection is ~~an~~
17 ~~infraction if the amount of insufficient funds or credit is not more than one hundred~~
18 ~~dollars, a class B misdemeanor if the amount of insufficient funds or credit is more~~
19 ~~than one hundred dollars and not more than five hundred dollars, and a class A~~
20 ~~misdemeanor if the amount of insufficient funds or credit is more than five hundred~~
21 ~~dollars;~~

22 a. An infraction if the amount of insufficient funds or credit is not more than fifty
23 dollars;

- 1 b. A class B misdemeanor if the amount of insufficient funds or credit is more
2 than fifty dollars but not more than two hundred fifty dollars, or if the individual
3 has pled guilty or been found guilty of a violation of this section within three
4 years of issuing an insufficient funds check, draft, or order;
- 5 c. A class A misdemeanor if the amount of insufficient funds or credit is more
6 than two hundred fifty dollars but not more than five hundred dollars, or if the
7 individual has pled guilty or been found guilty of two violations of this section
8 within three years of issuing an insufficient funds check, draft, or order; or
- 9 d. A class C felony if the amount of insufficient funds or credit is more than five
10 hundred dollars, or an individual has pled guilty or been found guilty of three
11 or more violations of this section within five years of willfully issuing an
12 insufficient fund check, draft, or order.
- 13 2. The grade of an offense under this section may be determined by individual or
14 aggregate totals of insufficient fund checks, drafts, or orders. The person is also
15 liable for collection fees or costs, not in excess of twenty dollars, which are
16 recoverable by civil action by the holder, or its agent or representative, of the
17 check, draft, or order. A collection agency shall reimburse the original holder of
18 the check, draft, or order any additional charges assessed by the depository bank
19 of the check, draft, or order not in excess of two dollars if recovered by the
20 collection agency. A civil penalty is also recoverable by civil action by the holder,
21 or its agent or representative, of the check, draft, or order. The civil penalty
22 consists of payment to the holder, or its agent or representative, of the instrument
23 of the lesser of one hundred dollars or three times the amount of the instrument.
24 The court may order an individual convicted under this section to undergo an
25 evaluation by a licensed gaming, alcohol, or drug addiction counselor.
- 26 3. The word "credit" as used in this section means an arrangement or understanding
27 with the bank, banker, or depository for the payment of the check, draft, or order.
28 The making of a postdated check knowingly received as such, or of a check issued
29 under an agreement with the payee that the check would not be presented for
30 payment for a time specified, does not violate this section.

1 **6-08-16.2. Issuing check without account ~~or with insufficient funds~~ - Financial**
2 **liability - Penalty - Exceptions.**

3 1. As used in this section:

4 a. "Account" means any account at a bank or depository from which an
5 instrument could legally be paid.

6 b. "Dishonor" is synonymous with "nonpayment".

7 c. "Instrument" means any check, draft, or order for the payment of money.

8 d. "Issues" means draws, utters, or delivers.

9 2. A person who, for that person or as agent or representative of another, willfully as
10 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if
11 that person has been previously convicted of issuing an instrument without an
12 account pursuant to section 6-08-16.1 ~~or without sufficient funds in a bank or~~
13 ~~depository pursuant to section 6-08-16~~, and:

14 a. ~~At~~ at the time of issuing the instrument the drawer does not have an account
15 with the bank or depository on which the instrument is drawn; ~~or~~

16 b. ~~At the time of issuing the instrument or at the time of presentation for payment~~
17 ~~if made within ten business days after the original delivery of the instrument,~~
18 ~~the drawer does not have sufficient funds in the bank or depository, or credit~~
19 ~~with the bank, banker, or depository, to pay the instrument in full upon its~~
20 ~~presentation.~~

21 ~~The person also is liable for collection fees or costs, not in excess of twenty~~
22 ~~dollars, which are recoverable by civil action by the holder, or its agent or~~
23 ~~representative, of the instrument.~~

24 3. A person who, for that person or an agent or representative of another, willfully as
25 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if
26 the instrument was for at least ~~ten thousand~~ five hundred dollars or that person,
27 agent, or representative of another, issues more than one instrument wherein the
28 aggregate total of all instruments issued exceeds five hundred dollars, and:

29 a. ~~At~~ at the time of issuing the instrument, the drawer does not have an account
30 with the bank or depository on which the instrument is drawn; ~~or~~

1 ~~b. At the time of issuing the instrument, or at the time of presentation for~~
2 ~~payment if made within five business days after the original delivery of the~~
3 ~~instrument, the drawer does not have sufficient funds in the bank or~~
4 ~~depository, or credit with the bank, banker, or depository, to pay the~~
5 ~~instrument in full upon its presentation.~~

6 ~~The person also is liable for collection fees or costs, not in excess of twenty~~
7 ~~dollars, which are recoverable by civil action by the holder, or its agent or~~
8 ~~representative, of the instrument.~~

9 ~~4. A person who, for that person or as an agent or representative of another, willfully~~
10 ~~issues at least two instruments within a ninety day period is guilty of a class C~~
11 ~~felony if the total amount of the instruments was for at least five hundred dollars,~~
12 ~~and the drawer has violated subdivision a or b, or both, with respect to the~~
13 ~~instruments:~~

14 ~~a. At the time of issuing the instruments, the drawer does not have an account~~
15 ~~with the bank or depository on which the instruments are drawn; or~~

16 ~~b. At the time of issuing the instruments, or at the time of presentation for~~
17 ~~payment if made within ten business days after the original delivery of the~~
18 ~~instrument, the drawer does not have sufficient funds in the bank or~~
19 ~~depository, or credit with the bank, banker, or depository, to pay the~~
20 ~~instrument in full upon its presentation.~~

21 ~~4. The A person who issues an instrument under subsection 2 or 3 also is liable for~~
22 ~~collection fees or costs, not in excess of twenty dollars per instrument, which are~~
23 ~~recoverable by civil action by the holder of the instrument, or the holder's agent or~~
24 ~~representative.~~

25 ~~5. A civil penalty is also recoverable by civil action by the holder, or its agent or~~
26 ~~representative, of the instrument. The civil penalty consists of payment to the~~
27 ~~holder of the instrument of the lesser of one hundred dollars or three times the~~
28 ~~amount of the instrument.~~

29 ~~6. 5. An agent acting for the receiver of an instrument issued in violation of this section~~
30 ~~may present the instrument to the state's attorney for prosecution if the holder, or~~
31 ~~the holder's agent or representative, mailed a notice under subsection 6. A~~

1 ~~criminal complaint for violation of subdivision b of subsection 2 or subdivision b of~~
2 ~~subsection 3 must be executed within ninety days after the drawer of the~~
3 ~~instrument receives notice, from the holder, of nonpayment. A complaint for a~~
4 ~~violation of subsection 4 must be executed within ninety days after the drawer of~~
5 ~~the instrument receives notice, from the holder, of the holder's agent or~~
6 ~~representative, of nonpayment for the last instrument, if any, included under~~
7 ~~subdivision b of subsection 4 for a violation of subsection 4. Failure to execute a~~
8 ~~complaint within the time set forth in this subsection bars any criminal charges~~
9 ~~under subdivision b of subsection 2, subdivision b of subsection 3, or subdivision b~~
10 ~~of subsection 4. A criminal complaint for violating this section must be executed~~
11 within ninety days after the drawer receives notice from the holder, or its agent or
12 representative, of a no-account or closed account instrument.

13 7. 6. A notice of dishonor may be mailed by the holder, or ~~its~~ the holder's agent or
14 representative, of the instrument upon dishonor. Proof of mailing may be made by
15 return receipt or by an affidavit of mailing signed by the individual making the
16 mailing. The notice must be in substantially the following form:

17 Notice of Dishonored Instrument

18 Date _____
19 Name of Issuer _____
20 Street Address _____
21 City and State _____
22 You are according to law notified that an instrument dated _____,
23 ~~49~~ _____, drawn on the _____ Bank of
24 _____ in the amount of _____ has been
25 returned unpaid with the notation the payment has been refused
26 because (of nonsufficient funds) (the drawer does not have an
27 account). Within ten days from the receipt of this notice,
28 you must pay or tender to _____

29 (Holder)

30 sufficient moneys to pay such instrument in full and any collection
31 fees or costs not in excess of twenty dollars.

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

4 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.