

**SENATE BILL NO. 2326**

Introduced by

Senators Krebsbach, Klein, D. Mathern, Wardner

Representatives Keiser, Mahoney, Poolman

1 A BILL for an Act to amend and reenact sections 6-08-16, 6-08-16.1, and subsection 1 of  
2 section 6-08-16.2 of the North Dakota Century Code, relating to authorizing an electronic funds  
3 transfer without sufficient funds; and to provide a penalty.

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, or authorize an electronic funds  
12 transfer, for the payment of money upon a bank, banker, or depository, if at the  
13 time of the making, drawing, uttering, electronically authorizing, or delivery, or at  
14 the time of presentation for payment, if the presentation for payment is made within  
15 fourteen days after the original delivery thereof, there are not sufficient funds in or  
16 credit with the bank, banker, or depository to meet the check, draft, electronic fund  
17 transfer, or order in full upon its presentation. Violation of this subsection is an  
18 infraction if the amount of insufficient funds or credit is not more than one hundred  
19 dollars, a class B misdemeanor if the amount of insufficient funds or credit is more  
20 than one hundred dollars and not more than five hundred dollars, and a class A  
21 misdemeanor if the amount of insufficient funds or credit is more than five hundred  
22 dollars.
- 23 2. The person is also liable for collection fees or costs, not in excess of twenty dollars,  
24 which are recoverable by civil action by the holder, or its agent or representative, of

1 the check, draft, electronic funds transfer authorization, or order. A collection  
2 agency shall reimburse the original holder of the check, draft, electronic funds  
3 transfer authorization, or order any additional charges assessed by the depository  
4 bank of the check, draft, electronic funds transfer authorization, or order not in  
5 excess of two dollars if recovered by the collection agency. A civil penalty is also  
6 recoverable by civil action by the holder, or its agent or representative, of the  
7 check, draft, electronic funds transfer authorization, or order. The civil penalty  
8 consists of payment to the holder, or its agent or representative, of the instrument  
9 of the lesser of one hundred dollars or three times the amount of the instrument.

10 3. The word "credit" as used in this section means an arrangement or understanding  
11 with the bank, banker, or depository for the payment of the check, draft, electronic  
12 funds transfer authorization, or order. The making of a postdated check knowingly  
13 received as such, or of a check issued under an agreement with the payee that the  
14 check would not be presented for payment for a time specified, does not violate  
15 this section.

16 4. A notice of dishonor may be mailed by the holder, or its agent or representative, of  
17 the check upon dishonor. Proof of mailing may be made by return receipt or by an  
18 affidavit of mailing signed by the individual making the mailing. The notice must be  
19 in substantially the following form:

20 Notice of Dishonored Check

21 Date \_\_\_\_\_

22 Name of Issuer \_\_\_\_\_

23 Street Address \_\_\_\_\_

24 City and State \_\_\_\_\_

25 You are according to law notified that a check dated \_\_\_\_\_, 19\_\_\_\_,

26 drawn on the \_\_\_\_\_ Bank of \_\_\_\_\_ in the

27 amount of \_\_\_\_\_ has been returned unpaid with the notation the

28 payment has been refused because of nonsufficient funds. Within ten

29 days from the receipt of this notice, you must pay or tender to

30 \_\_\_\_\_

31 (Holder or Agent or Representative)

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

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

6           5.   An agent acting for the receiver of a check in violation of this section may present  
7           the check to the state's attorney for prosecution. The criminal complaint for the  
8           offense of issuing a check, draft, electronic funds transfer authorization, or ~~money~~  
9           order without sufficient funds under this section must be executed within not more  
10          than ninety days after the dishonor by the drawee of said instrument for  
11          nonsufficient funds. The failure to execute a complaint within said time bars the  
12          criminal charge under this section.

13           **SECTION 2. AMENDMENT.** Section 6-08-16.1 of the 1997 Supplement to the North  
14   Dakota Century Code is amended and reenacted as follows:

15           **6-08-16.1. Issuing check or draft without account - Penalty.** Any person who issues  
16   any check, draft, or order, or authorizes an electronic funds transfer, upon any bank or  
17   depository, for the payment of money, and, at the time of the issuance does not have an  
18   account with the bank or depository upon which the check, draft, electronic funds transfer  
19   authorization, or order was written, is guilty of a class A misdemeanor.

20           **SECTION 3. AMENDMENT.** Subsection 1 of section 6-08-16.2 of the 1997  
21   Supplement to the North Dakota Century Code is amended and reenacted as follows:

22          1.   As used in this section:

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

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

26           c.   "Instrument" means any check, draft, electronic funds transfer authorization,  
27           or order for the payment of money.

28           d.   "Issues" means draws, utters, electronically authorizes, or delivers.