

**SENATE BILL NO. 2044
with House Amendments**

Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2044

Introduced by

Legislative Council

(Judiciary A Committee)

1 A BILL for an Act to amend and reenact subsection 2 of section 6-08-16, subdivision p of
2 subsection 4 of section 12.1-32-07, and section 12.1-32-08 of the North Dakota Century Code,
3 relating to the civil penalty for issuing a check or draft without sufficient funds and the collection
4 of restitution for insufficient funds checks; and to provide for a continuing appropriation.

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

6 **SECTION 1. AMENDMENT.** Subsection 2 of section 6-08-16 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 2. The grade of an offense under this section may be determined by individual or
9 aggregate totals of insufficient funds checks, drafts, electronic funds transfer
10 authorizations, or orders. The person is also liable for collection fees or costs, not
11 in excess of twenty-five dollars, which are recoverable by the holder, or its agent or
12 representative, of the check, draft, electronic funds transfer authorization, or order.
13 A collection agency shall reimburse the original holder of the check, draft,
14 electronic funds transfer authorization, or order any additional charges assessed
15 by the depository bank of the check, draft, electronic funds transfer authorization,
16 or order not in excess of two dollars if recovered by the collection agency. A If the
17 person does not pay the instrument in full and any collection fees or costs not in
18 excess of twenty-five dollars within ten days from receipt of the notice of dishonor
19 provided for in subsection 4, a civil penalty is also recoverable by civil action by the
20 holder, or its agent or representative, of the check, draft, electronic funds transfer
21 authorization, or order. The civil penalty consists of payment to the holder, or its
22 agent or representative, of the instrument of the lesser of two hundred dollars or
23 three times the amount of the instrument. The court may order an individual

1 convicted under this section to undergo an evaluation by a licensed gaming,
2 alcohol, or drug addiction counselor.

3 **SECTION 2. AMENDMENT.** Subdivision p of subsection 4 of section 12.1-32-07 of the
4 North Dakota Century Code is amended and reenacted as follows:

5 p. Reimburse the costs and expenses determined necessary for the defendant's
6 adequate defense when counsel is appointed for the defendant. When
7 reimbursement of indigent defense costs and expenses is imposed as a
8 condition of probation, the court shall proceed as provided in subsection ~~3~~ 4
9 of section 12.1-32-08.

10 **SECTION 3. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
13 **indigent defense costs and expenses - Conditions - Collection of restitution for**
14 **insufficient funds checks - Continuing appropriation.**

15 1. Before imposing restitution or reparation as a sentence or condition of probation,
16 the court shall hold a hearing on the matter with notice to the prosecuting attorney
17 and to the defendant as to the nature and amount thereof. The court, when
18 sentencing a person adjudged guilty of criminal activities that have resulted in
19 pecuniary damages, in addition to any other sentence it may impose, shall order
20 that the defendant make restitution to the victim or other recipient as determined
21 by the court, unless the court states on the record, based upon the criteria in this
22 subsection, the reason it does not order restitution or orders only partial restitution.

23 In determining whether to order restitution, the court shall take into account:

24 a. The reasonable damages sustained by the victim or victims of the criminal
25 offense, which damages are limited to those directly related to the criminal
26 offense and expenses actually incurred as a direct result of the defendant's
27 criminal action. This can include an amount equal to the cost of necessary
28 and related professional services and devices relating to physical, psychiatric,
29 and psychological care. The defendant may be required as part of the
30 sentence imposed by the court to pay the prescribed treatment costs for a
31 victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.

- 1 b. The ability of the defendant to restore the fruits of the criminal action or to pay
2 monetary reparations, or to otherwise take action to restore the victim's
3 property.
4 c. The likelihood that attaching a condition relating to restitution or reparation will
5 serve a valid rehabilitational purpose in the case of the particular offender
6 considered.

7 The court shall fix the amount of restitution or reparation, which may not exceed an
8 amount the defendant can or will be able to pay, and shall fix the manner of
9 performance of any condition or conditions of probation established pursuant to
10 this subsection. The court shall order restitution be paid to the division of adult
11 services for any benefits the division has paid or may pay under chapter 54-23.4
12 unless the court, on the record, directs otherwise. Any payments made pursuant
13 to the order must be deducted from damages awarded in a civil action arising from
14 the same incident. An order that a defendant make restitution or reparation as a
15 sentence or condition of probation may, unless the court directs otherwise, be filed,
16 transcribed, and enforced by the person entitled to the restitution or reparation or
17 by the division of adult services in the same manner as civil judgments rendered
18 by the courts of this state may be enforced.

19 2. When the restitution ordered by the court under subsection 1 is the result of a
20 finding that the defendant issued a check or draft without sufficient funds or without
21 an account, the court shall impose as costs the greater of the sum of ten dollars or
22 an amount equal to twenty-five percent of the amount of restitution ordered. The
23 costs imposed under this subsection, however, may not exceed one thousand
24 dollars. The state-employed clerks of district court shall remit the funds collected
25 as costs under this subsection to the state treasurer for deposit in the restitution
26 collection assistance fund. The funds deposited into the restitution collection
27 assistance fund are appropriated to the judicial branch on a continuing basis for
28 the purpose of defraying expenses incident to the collection of restitution, including
29 operating expenses and the compensation of additional necessary personnel. The
30 state's attorneys and county-employed clerks of district court shall remit the funds

1 collected as costs under this subsection to the county treasurer to be deposited in
2 the county general fund.

3 3. The court may order the defendant to perform reasonable assigned work as a
4 condition of probation, which assigned work need not be related to the offense
5 charged, but must not be solely for the benefit of a private individual other than the
6 victim.

7 ~~3.~~ 4. a. Under section 12.1-32-07, the court may order that the defendant reimburse
8 indigent defense costs and expenses as a condition of probation. The court
9 shall notify the defendant, the defendant's probation officer, and the
10 prosecuting attorney of the amount of costs and expenses to be reimbursed
11 and of the defendant's right to a hearing on the reimbursement amount. It is a
12 rebuttable presumption that reasonable reimbursement of costs and
13 expenses consists of seventy-five dollars per hour for appointed counsel
14 services plus reasonable expenses. The reimbursement amount must
15 include an application fee imposed under section 29-07-01.1 if the fee has not
16 been paid before disposition of the case and the court has not waived
17 payment of the fee. If the defendant requests a hearing within thirty days of
18 receiving notice under this subdivision, the court shall schedule a hearing at
19 which the basis for the amount to be reimbursed must be demonstrated. In
20 determining the amount and method of reimbursement, the court shall
21 consider the financial resources of the defendant and the nature of the burden
22 that reimbursement of costs and expenses will impose.

23 b. A defendant who is required to reimburse indigent defense costs and
24 expenses as a condition of probation and who is not willfully in default in that
25 reimbursement may at any time petition the court that imposed the condition
26 to waive reimbursement of all or any portion of the costs and expenses. If the
27 court is satisfied that reimbursement of the amount due will impose undue
28 hardship on the defendant or the defendant's immediate family, the court may
29 waive reimbursement of all or any portion of the amount due or modify the
30 method of payment.

1 c. If at any time the court finds that the defendant is able to reimburse costs and
2 expenses and has willfully failed to do so, the court may continue, modify, or
3 enlarge the conditions of probation or revoke probation as provided in
4 subsection 6 or 7, as applicable, of section 12.1-32-07.

5 4. 5. If the court finds that the defendant is unable to pay a fine, supervision fee,
6 reimbursement for indigent defense costs and expenses, or restitution or
7 reparations, the court may order the defendant to perform reasonable assigned
8 work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent
9 defense costs and expenses, or restitution or reparations. The defendant may not
10 perform reasonable assigned work in lieu of restitution or reparations unless the
11 person entitled to restitution or reparations has consented in writing or on the
12 record.