

Introduced by

Senators Krebsbach, Olafson, Larsen

Representatives Keiser, N. Johnson, Kingsbury

1 A BILL for an Act to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and  
2 subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to  
3 issuing a check with nonsufficient funds or without an account; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsections 2, 4, and 5 of section 6-08-16 of the North Dakota  
6 Century Code are amended and reenacted as follows:

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

1 amount of the instrument. The court may order an individual convicted under this  
2 section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction  
3 counselor.

4 4. A notice of dishonor may be mailed by the holder, or the holder's agent or  
5 representative, of the check upon dishonor. Proof of mailing may be made by return  
6 receipt or by an affidavit of mailing signed by the individual making the mailing. The  
7 notice must be in substantially the following form:

8 Notice of Dishonored Check

9 Date \_\_\_\_\_

10 Name of Issuer \_\_\_\_\_

11 Street Address \_\_\_\_\_

12 City and State \_\_\_\_\_

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

14 \_\_\_\_\_, drawn on the \_\_\_\_\_ Bank

15 of \_\_\_\_\_ in the amount of \_\_\_\_\_ has been returned

16 unpaid with the notation the payment has been refused because of

17 nonsufficient funds. Within ten days from the receipt of this

18 notice, you must pay or tender to \_\_\_\_\_

19 (Holder or agent or representative)

20 sufficient moneys to pay such instrument in full and any collection

21 fees or costs not in excess of ~~thirty~~thirty-five dollars.

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

25 5. An agent acting for the receiver of a check in violation of this section may present the  
26 check to the state's attorney for prosecution if the holder, or the holder's agent or  
27 representative, mailed a notice under subsection 4. During the first ~~one hundred-~~  
28 ~~forty~~ninety days after the drawer received notice under this subsection the state's  
29 attorney shall, and thereafter until the expiration of one hundred ~~eighty~~twenty days  
30 after the drawer received notice under this subsection the state's attorney may, accept  
31 the instrument presented by the agent. The criminal complaint for the offense of

1 issuing a check, draft, electronic funds transfer authorization, or order without  
2 sufficient funds under this section must be executed within not more than ~~ninetyone~~  
3 hundred eightytwenty days after the dishonor by the drawee of said instrument for  
4 nonsufficient funds. The failure to execute a complaint within said time bars the  
5 criminal charge under this section.

6 **SECTION 2. AMENDMENT.** Subsections 4, 5, and 6 of section 6-08-16.2 of the North  
7 Dakota Century Code are amended and reenacted as follows:

8 4. A person who issues an instrument under subsection 2 or 3 also is liable for collection  
9 fees or costs, not in excess of ~~thirtythirty-five~~ dollars per instrument, which are  
10 recoverable by the holder of the instrument, or the holder's agent or representative. A  
11 civil penalty is also recoverable by civil action by the holder, or its agent or  
12 representative, of the instrument. The civil penalty consists of payment to the holder of  
13 the instrument of the lesser of two hundred dollars or three times the amount of the  
14 instrument.

15 5. An agent acting for the receiver of an instrument issued in violation of this section may  
16 present the instrument to the state's attorney for prosecution if the holder, or the  
17 holder's agent or representative, mailed a notice under subsection 6. During the first  
18 one hundred fortyninety days after the drawer received notice under this subsection  
19 the state's attorney shall, and thereafter until the expiration of one hundred  
20 eightytwenty days after the drawer received notice under this subsection the state's  
21 attorney may, accept the instrument presented by the agent. A criminal complaint for  
22 violating this section must be executed within ~~ninetyone~~ hundred ~~eightytwenty~~ days  
23 after the drawer receives notice from the holder, or its agent or representative, of a  
24 no-account or closed-account instrument.

25 6. A notice of dishonor may be mailed by the holder, or the holder's agent or  
26 representative, of the instrument upon dishonor. Proof of mailing may be made by  
27 return receipt or by an affidavit of mailing signed by the individual making the mailing.  
28 The notice must be in substantially the following form:

29 Notice of Dishonored Instrument

30 Date \_\_\_\_\_

31 Name of Issuer \_\_\_\_\_

1 Street Address \_\_\_\_\_

2 City and State \_\_\_\_\_

3 You are according to law notified that an instrument dated \_\_\_\_\_,

4 \_\_\_\_\_, drawn on the \_\_\_\_\_ Bank of

5 \_\_\_\_\_ in the amount of \_\_\_\_\_ has been

6 returned unpaid with the notation the payment has been refused

7 because (of nonsufficient funds) (the drawer does not have an

8 account). Within ten days from the receipt of this notice,

9 you must pay or tender to \_\_\_\_\_

10 (Holder or agent or representative)

11 sufficient moneys to pay such instrument in full and any collection

12 fees or costs not in excess of ~~thirty~~thirty-five dollars.

13 The notice may also contain a recital of the penal provisions of this section and the

14 possibility of a civil action to recover any collection fees or costs authorized by this

15 section.