

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2166
(Senators Vedaa, Hogue, O. Larsen, Larson)
(Representatives D. Anderson, Thomas)

AN ACT to amend and reenact sections 12.1-23-05 and 12.1-23-10 of the North Dakota Century Code, relating to theft offenses; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-23-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-05. Grading of theft offenses.

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.
2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a felony.
3. Theft under this chapter is a class C felony if:
 - a. The property or services stolen exceed one thousand dollars in value;
 - b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed one hundred dollars in value;
 - c. The property or services stolen exceed one hundred dollars in value and are acquired or retained by a public servant in the course of official duties;
 - d. The property stolen is a firearm, ammunition, or an explosive or destructive device;
 - e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
 - f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
 - g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
 - h. The property stolen consists of livestock taken from the premises of the owner;
 - i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access;
 - j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or

- k. The property stolen is a prescription drug as defined in section 43-15.3-01, except when the quantity stolen is five or fewer capsules, pills, or tablets.
4. All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection 5 are met.
5. a. Theft under this chapter of property or services of a value not exceeding five hundred dollars is a class B misdemeanor for a first offense if:
 - a- (1) The theft was committed by shoplifting; or
 - (2) The following three factors are met:
 - (a) The theft was not committed by threat;
 - ~~b-~~(b) The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
 - e-(c) The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.
- b. The special classification provided in ~~this subsection~~paragraph 2 of subdivision a applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.
- c. A second or third offense under paragraph 1 of subdivision a occurring within three years is a class A misdemeanor. A fourth or subsequent violation under paragraph 1 of subdivision a occurring within four years is a class C felony.
- d. A sentence imposed under this subsection must be accompanied by a written statement by the court providing notice of any offense under this section which provides an enhanced penalty, including the penalty for a subsequent offense.
6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
7. For purposes of grading, the amount involved in a theft under this chapter is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

SECTION 2. AMENDMENT. Section 12.1-23-10 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-10. Definitions for theft and related offenses.

In this chapter:

1. "Dealer in property" means a person who buys or sells property as a business.
2. "Deception" means:
 - a. Creating or reinforcing a false impression as to fact, law, status, value, intention, or other state of mind; or obtaining or attempting to obtain public assistance by concealing a

material fact, making a false statement or representation, impersonating another, concealing the transfer of property without adequate consideration, or using any other fraudulent method; but deception as to a person's intention to perform a promise may not be inferred from the fact alone that the person did not substantially perform the promise unless it is part of a continuing scheme to defraud;

- b. Preventing another from acquiring information which would affect his judgment of a transaction;
 - c. Failing to correct a false impression which the actor previously created or reinforced, or which he knows to be influencing another to whom he stands in a fiduciary or confidential relationship;
 - d. Failing to correct an impression which the actor previously created or reinforced and which the actor knows to have become false due to subsequent events;
 - e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained or in order to continue to deprive another of his property, whether such impediment is or is not valid, or is or is not a matter of official record;
 - f. Using a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (1) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, and (2) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument; or
 - g. Any other scheme to defraud. The term "deception" does not, however, include falsifications as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares in communications addressed to the public or to a class or group.
3. "Deprive" means:
- a. To withhold property or to cause it to be withheld either permanently or under such circumstances that a major portion of its economic value, or its use and benefit, has, in fact, been appropriated;
 - b. To withhold property or to cause it to be withheld with the intent to restore it only upon the payment of a reward or other compensation; or
 - c. To dispose of property or use it or transfer any interest in it under circumstances that make its restoration, in fact, unlikely.
4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation, limited liability company, or other organization which is a fiduciary.
5. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.
6. "Obtain" means:
- a. In relation to property, to bring about a transfer or purported transfer of an interest in the property, whether to the actor or another.

b. In relation to services, to secure performance thereof.

7. "Property" means any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents although the rights represented thereby have no physical location), contract right, chose-in-action, interest in or claim to wealth, credit, or any other article or thing of value of any kind. "Property" also means real property the location of which cannot be moved if the offense involves transfer or attempted transfer of an interest in the property.
8. "Property of another" means property in which a person other than the actor or in which a government has an interest which the actor is not privileged to infringe without consent, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person or government might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. "Owner" means any person or a government with an interest in property such that it is "property of another" as far as the actor is concerned.
9. "Receiving" means acquiring possession, control, or title, or lending on the security of the property.
10. "Services" means labor, professional service, transportation, telephone, mail or other public service, gas, electricity and other public utility services, accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other property.
11. "Shoplifting" means to willfully take possession of any merchandise owned, held, offered, or displayed for sale, by a merchant, store, or other mercantile establishment, with the intent to deprive the owner of the merchandise. The term includes:
 - a. Removing merchandise from a store or other mercantile establishment without paying for the merchandise;
 - b. Concealing a nonpurchased good or merchandise;
 - c. Altering, transferring, or removing a price marking on a good or merchandise;
 - d. Transferring a good from one container to another; and
 - e. Causing the amount paid for a good or merchandise to be less than the stated retail price.
12. "Stolen" means property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 12.1-23-06.
- ~~12.~~13. "Threat" means an expressed purpose, however communicated, to:
 - a. Cause bodily injury in the future to the person threatened or to any other person;
 - b. Cause damage to property;
 - c. Subject the person threatened or any other person to physical confinement or restraint;
 - d. Engage in other conduct constituting a crime;
 - e. Accuse anyone of a crime;

- f. Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person living or deceased, to hatred, contempt, or ridicule or to impair another's credit or business repute;
- g. Reveal any information sought to be concealed by the person threatened;
- h. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- i. Take or withhold official action as a public servant, or cause a public servant to take or withhold official action;
- j. Bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent;
- k. Cause anyone to be dismissed from his employment, unless the property is demanded or obtained for lawful union purposes; or
- l. Do any other act which would not in itself substantially benefit the actor or a group he represents but which is calculated to harm another person in a substantial manner with respect to his health, safety, business, employment, calling, career, financial condition, reputation, or personal relationship.

Upon a charge of theft, the receipt of property in consideration for taking or withholding official action shall be deemed to be theft by threat regardless of whether the owner voluntarily parted with his property or himself initiated the scheme.

~~13.~~14. "Traffic" means:

- a. To sell, transfer, distribute, dispense, or otherwise dispose of to another person; or
- b. To buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense, or otherwise dispose of to another person.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2166 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 44 Nays 2 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 63 Nays 30 Absent 1

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State