90774.0200

Fifty-sixth Legislative Assembly of North Dakota

SENATE BILL NO. 2326 with House Amendments SENATE BILL NO. 2326

Introduced by

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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 Dakota Century Code is amended and reenacted as follows:
 - 6-08-16. Issuing check or draft without sufficient funds or credit Notice Time limitation Financial liability Penalty.
 - 1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic fund transfer, or order in full upon its authorized presentation. Violation of this subsection is an infraction if the amount of insufficient funds or credit is not more than one hundred dollars, a class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars and not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars.
 - 2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or

1		representative, of the check, draft, <u>electronic funds transfer authorization</u> , or order.
2		A collection agency shall reimburse the original holder of the check, draft,
3		electronic funds transfer authorization, or order any additional charges assessed
4		by the depository bank of the check, draft, electronic funds transfer authorization,
5		or order not in excess of two dollars if recovered by the collection agency. A civil
6		penalty is also recoverable by civil action by the holder, or its agent or
7		representative, of the check, draft, electronic funds transfer authorization, or order.
8		The civil penalty consists of payment to the holder, or its agent or representative,
9		of the instrument of the lesser of one hundred dollars or three times the amount of
10		the instrument.
11	3.	The word "credit" as used in this section means an arrangement or understanding
12		with the bank, banker, or depository for the payment of the check, draft, electronic
13		funds transfer authorization, or order. The making of a postdated check knowingly
14		received as such, or of a check issued under an agreement with the payee that the
15		check would not be presented for payment for a time specified, does not violate
16		this section.
17	4.	A notice of dishonor may be mailed by the holder, or its agent or representative, of
18		the check upon dishonor. Proof of mailing may be made by return receipt or by an
19		affidavit of mailing signed by the individual making the mailing. The notice must be
20		in substantially the following form:
21		Notice of Dishonored Check
22		Date
23		Name of Issuer
24		Street Address
25		City and State
26		You are according to law notified that a check dated, 19,
27		drawn on the Bank of in the
28		amount of has been returned unpaid with the notation the
29		payment has been refused because of nonsufficient funds. Within ten
30		days from the receipt of this notice, you must pay or tender to
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1			(Holder or Agent or Representative)			
2			sufficient moneys to pay such instrument in full and any collection fees or			
3			or costs not in excess of twenty dollars.			
4		The	notice of dishonor also may contain a recital of the penal provisions of this			
5		sect	tion and the possibility of a civil action to recover any collection fees or costs or			
6		civil	penalty authorized by this section.			
7	5.	An a	agent acting for the receiver of a check in violation of this section may present			
8		the	check to the state's attorney for prosecution. The criminal complaint for the			
9		offe	nse of issuing a check, draft, electronic funds transfer authorization, or money			
10		orde	er without sufficient funds under this section must be executed within not more			
11		thar	n ninety days after the dishonor by the drawee of said instrument for			
12		non	sufficient funds. The failure to execute a complaint within said time bars the			
13		crim	ninal charge under this section.			
14	SECTION 2. AMENDMENT. Section 6-08-16.1 of the 1997 Supplement to the North					
15	Dakota Cer	ntury	Code is amended and reenacted as follows:			
16	6-08	8-16. <i>′</i>	1. Issuing check or draft without account - Penalty. Any person who			
17	issues any check, draft, or order, or authorizes an electronic funds transfer, upon any bank or					
18	depository, for the payment of money, and, at the time of the issuance does not have an					
19	account with the bank or depository upon which the check, draft, electronic funds transfer					
20	authorization, or order was written, is guilty of a class A misdemeanor.					
21	SEC	CTIOI	N 3. AMENDMENT. Subsection 1 of section 6-08-16.2 of the 1997			
22	Supplement to the North Dakota Century Code is amended and reenacted as follows:					
23	1.	Asι	used in this section:			
24		a.	"Account" means any account at a bank or depository from which an			
25			instrument could legally be paid.			
26		b.	"Dishonor" is synonymous with "nonpayment".			
27		C.	"Instrument" means any check, draft, electronic funds transfer authorization,			
28			or order for the payment of money.			
29		d.	"Issues" means draws, utters, electronically authorizes, or delivers.			