

Introduced by

1 A BILL for an Act to amend and reenact subsection 1 of section 6-08-16, subsection 3 of  
2 section 6-08-16.2, sections 12.1-23-02.1, 12.1-23-05, 12.1-23-06, 12.1-23-07, and 12.1-23-08,  
3 subsection 1 of section 12.1-23-09, and sections 12.1-24-01, 12.1-24-03, 26.1-02.1-05, and  
4 29-03-22 of the North Dakota Century Code, relating to the penalties for crimes for which a  
5 monetary amount triggers the level of penalty; and to provide a penalty.

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

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

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  
17 funds transfer, or order in full upon its authorized presentation. Violation of this  
18 subsection is:

- 19 a. An infraction if the amount of insufficient funds or credit is not more than ~~fifty~~  
20 one hundred dollars;
- 21 b. A class B misdemeanor if the amount of insufficient funds or credit is more  
22 than ~~fifty~~ one hundred dollars but not more than ~~two five~~ five hundred ~~fifty~~ dollars,  
23 or if the individual has pled guilty or been found guilty of a violation of this

- 1 section within three years of issuing an insufficient funds check, draft, or  
2 order;
- 3 c. A class A misdemeanor if the amount of insufficient funds or credit is more  
4 than ~~two~~ five hundred ~~fifty~~ dollars but not more than five hundred one  
5 thousand dollars, or if the individual has pled guilty or been found guilty of two  
6 violations of this section within three years of issuing an insufficient funds  
7 check, draft, or order; or
- 8 d. A class C felony if the amount of insufficient funds or credit is more than ~~five~~  
9 ~~hundred~~ one thousand dollars, or an individual has pled guilty or been found  
10 guilty of three or more violations of this section within five years of willfully  
11 issuing an insufficient funds check, draft, or order.

12 **SECTION 2. AMENDMENT.** Subsection 3 of section 6-08-16.2 of the North Dakota  
13 Century Code is amended and reenacted as follows:

- 14 3. A person who, for that person or an agent or representative of another, willfully as  
15 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if  
16 the instrument was for at least ~~five hundred~~ one thousand dollars or that person,  
17 agent, or representative of another, issues more than one instrument wherein the  
18 aggregate total of all instruments issued exceeds ~~five hundred~~ one thousand  
19 dollars, and at the time of issuing the instrument, the drawer does not have an  
20 account with the bank or depository on which the instrument is drawn.

21 **SECTION 3. AMENDMENT.** Section 12.1-23-02.1 of the North Dakota Century Code  
22 is amended and reenacted as follows:

23 **12.1-23-02.1. Disarming or attempting to disarm a law enforcement officer.**

24 Notwithstanding subdivision d of subsection ~~2~~ 3 of section 12.1-23-05, a person is guilty of a  
25 class C felony if, without the consent of the law enforcement officer, the person willfully takes or  
26 removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in  
27 the performance of official duties.

28 **SECTION 4. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30 **12.1-23-05. Grading of theft offenses.**

- 1           1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the  
2           property or services stolen exceed fifty thousand dollars in value.
- 3           2. Notwithstanding the provisions of subsection ~~2~~ 3, theft under this chapter is a  
4           class B felony if the property or services stolen exceed ten thousand dollars in  
5           value but do not exceed fifty thousand dollars or are acquired or retained by a  
6           threat to commit a ~~class A or class B~~ felony ~~or to inflict serious bodily injury on the~~  
7           ~~person threatened or on any other person.~~
- 8       ~~2.~~ 3. Theft under this chapter is a class C felony if:
- 9           a. The property or services stolen exceed ~~five hundred~~ one thousand dollars in  
10          value;
- 11          b. The property or services stolen are acquired or retained by threat and (1) are  
12          acquired or retained by a public servant by a threat to take or withhold official  
13          action, or (2) exceed ~~fifty~~ one hundred dollars in value;
- 14          c. The property or services stolen exceed ~~fifty~~ one hundred dollars in value and  
15          are acquired or retained by a public servant in the course of official duties;
- 16          d. The property stolen is a firearm, ammunition, explosive or destructive device,  
17          or an automobile, aircraft, or other motor-propelled vehicle;
- 18          e. The property consists of any government file, record, document, or other  
19          government paper stolen from any government office or from any public  
20          servant;
- 21          f. The defendant is in the business of buying or selling stolen property and the  
22          defendant receives, retains, or disposes of the property in the course of that  
23          business;
- 24          g. The property stolen consists of any implement, paper, or other thing uniquely  
25          associated with the preparation of any money, stamp, bond, or other  
26          document, instrument, or obligation of this state;
- 27          h. The property stolen consists of livestock taken from the premises of the  
28          owner;
- 29          i. The property stolen consists of a key or other implement uniquely suited to  
30          provide access to property the theft of which would be a felony and it was  
31          stolen to gain such access; or

- 1           j.    The property stolen is a card, plate, or other credit device existing for the  
2                    purpose of obtaining money, property, labor, or services on credit, or is a debit  
3                    card, electronic fund transfer card, code, or other means of access to an  
4                    account for the purposes of initiating electronic fund transfers.
- 5    ~~3.~~ 4.   All other theft under this chapter is a class A misdemeanor, unless the  
6                    requirements of subsection ~~4~~ 5 are met.
- 7    ~~4.~~ 5.   Theft under this chapter of property or services of a value not exceeding ~~two~~ five  
8                    hundred ~~fifty~~ dollars ~~shall be~~ is a class B misdemeanor if:
- 9                    a.    The theft was not committed by threat;
- 10                   b.   The theft was not committed by deception by one who stood in a confidential  
11                    or fiduciary relationship to the victim of the theft; and
- 12                   c.   The defendant was not a public servant or an officer or employee of a  
13                    financial institution who committed the theft in the course of official duties.
- 14                    The special classification provided in this subsection ~~shall apply~~ applies if the  
15                    offense is classified under this subsection in the charge or if, at sentencing, the  
16                    required factors are established by a preponderance of the evidence.
- 17    ~~5.~~ 6.   Notwithstanding ~~the provisions of~~ subsection 3 of section 12.1-06-01, an attempt to  
18                    commit a theft under this chapter is punishable equally with the completed offense  
19                    when the actor has completed all of the conduct which ~~he~~ the actor believes  
20                    necessary on ~~his~~ the actor's part to complete the theft except receipt of the  
21                    property.
- 22    ~~6.~~ 7.   For purposes of grading, the amount involved in a theft under this chapter ~~shall be~~  
23                    is the highest value by any reasonable standard, regardless of the actor's  
24                    knowledge of such value, of the property or services which were stolen by the  
25                    actor, or which the actor believed that the actor was stealing, or which the actor  
26                    could reasonably have anticipated to have been the property or services involved.  
27                    Thefts committed pursuant to one scheme or course of conduct, whether from the  
28                    same person or several persons, may be charged as one offense and the amounts  
29                    proved to have been stolen may be aggregated in determining the grade of the  
30                    offense.

1           **SECTION 5. AMENDMENT.** Section 12.1-23-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **12.1-23-06. Unauthorized use of a vehicle.**

- 4           1. A person is guilty of an offense if, knowing that ~~he~~ the person does not have the  
5 consent of the owner, ~~he~~ that person takes, operates, or exercises control over an  
6 automobile, train, aircraft, motorcycle, motorboat, or other motor-propelled vehicle  
7 of another.
- 8           2. It is a defense to a prosecution under this section that the actor reasonably  
9 believed that the owner would have consented had ~~he~~ the owner known of the  
10 conduct on which the prosecution was based.
- 11          3. The offense is a class C felony if the vehicle is an aircraft or if the value of the use  
12 of the vehicle and the cost of retrieval and restoration exceeds ~~five hundred one~~  
13 thousand dollars. Otherwise the offense is a class A misdemeanor.

14           **SECTION 6. AMENDMENT.** Section 12.1-23-07 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **12.1-23-07. Misapplication of entrusted property.**

- 17          1. A person is guilty of misapplication of entrusted property if the person disposes of,  
18 uses, or transfers any interest in property that has been entrusted to the person as  
19 a fiduciary, or in the person's capacity as a public servant or an officer, director,  
20 agent, employee of, or a person controlling a financial institution, in a manner that  
21 the person knows is not authorized and that the person knows to involve a risk of  
22 loss or detriment to the owner of the property or to the government or other person  
23 for whose benefit the property was entrusted.
- 24          2. Misapplication of entrusted property is:
- 25           a. A class A felony if the value of the property misapplied exceeds fifty thousand  
26 dollars.
- 27           b. A class B felony if the value of the property misapplied exceeds ten thousand  
28 dollars but does not exceed fifty thousand dollars.
- 29          ~~b.~~ c. A class C felony if the value of the property misapplied exceeds ~~five hundred~~  
30 one thousand dollars but does not exceed ten thousand dollars.

1           e. ~~d.~~ A class A misdemeanor if the value of the property misapplied exceeds ~~two~~  
2                     five hundred fifty dollars but does not exceed ~~five hundred~~ one thousand  
3                     dollars.

4           e. ~~e.~~ A class B misdemeanor in all other cases.

5           **SECTION 7. AMENDMENT.** Section 12.1-23-08 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **12.1-23-08. Defrauding secured creditors.**

- 8           1. An owner of property who creates a security interest in such property may not  
9                     intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or  
10                    otherwise deal with property that is subject to the security interest without the prior  
11                    consent of the secured party if that action has the effect of hindering the  
12                    enforcement of the security interest.
- 13           2. A person may not destroy, remove, damage, conceal, encumber, transfer, or  
14                    otherwise deal with property that is subject to a security interest with the intent to  
15                    prevent collection of the debt represented by the security interest.
- 16           3. A person may not, at the time of sale of property that is subject to a security  
17                    interest, or is described in a certificate provided for under section 41-09-28, make  
18                    false statements as to the existence of security interests in the property, or as to  
19                    the ownership or location of the property.
- 20           4. A violation of subsection 2 or 3 must be prosecuted as theft under section  
21                    12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the  
22                    property has a value of more than ~~five hundred~~ one thousand dollars, as  
23                    determined under subsection ~~6~~ 7 of section 12.1-23-05. In all other cases,  
24                    violation of this section is a class A misdemeanor.

25           **SECTION 8. AMENDMENT.** Subsection 1 of section 12.1-23-09 of the North Dakota  
26 Century Code is amended and reenacted as follows:

- 27           1. It is a defense to a prosecution under this chapter that:
- 28                    a. The actor ~~honestly~~ reasonably believed that ~~he~~ the actor had a claim to the  
29                    property or services involved which ~~he~~ the actor was entitled to assert in the  
30                    manner which forms the basis for the charge against ~~him~~ the actor; or

- 1           b. The victim is the actor's spouse, but only when the property involved  
2           constitutes household or personal effects or other property normally  
3           accessible to both spouses and the parties involved are living together. The  
4           term "spouse", as used in this section, includes persons living together as  
5           husband and wife.

6           **SECTION 9. AMENDMENT.** Section 12.1-24-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **12.1-24-01. Forgery or counterfeiting.**

- 9           1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the  
10           government or another person, or with knowledge that ~~he~~ the person is facilitating  
11           such deception or harm by another person, ~~he~~ the person:
- 12           a. Knowingly and falsely makes, completes, or alters any writing; or  
13           b. Knowingly utters or possesses a forged or counterfeited writing.
- 14           2. Forgery or counterfeiting is:
- 15           a. A class B felony if:
- 16               (1) The actor forges or counterfeits an obligation or other security of the  
17               government; or
- 18               (2) The offense is committed pursuant to a scheme to defraud another or  
19               others of money or property of a value in excess of ten thousand  
20               dollars, but not in excess of fifty thousand dollars. If the value of the  
21               property exceeds fifty thousand dollars, the offense is a class A felony.
- 22           b. A class C felony if:
- 23               (1) The actor is a public servant or an officer or employee of a financial  
24               institution and the offense is committed under color of office or is made  
25               possible by ~~his~~ the actor's office;
- 26               (2) The actor forges or counterfeits foreign money or other legal tender, or  
27               utters or possesses any forged or counterfeited obligation or security of  
28               the government or foreign money or legal tender;
- 29               (3) The actor forges or counterfeits any writing from plates, dies, molds,  
30               photographs, or other similar instruments designed for multiple  
31               reproduction;

- 1                   (4)    The actor forges or counterfeits a writing which purports to have been  
2                                    made by the government; or
- 3                   (5)    The offense is committed pursuant to a scheme to defraud another or  
4                                    others of money or property of a value in excess of ~~one~~ five hundred  
5                                    dollars.
- 6                   c.    A class A misdemeanor in all other cases.

7                   **SECTION 10. AMENDMENT.** Section 12.1-24-03 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9                   **12.1-24-03. Deceptive writings.**

- 10                  1.    A person is guilty of an offense if, with intent to deceive or harm the government or  
11                                    another person, or with knowledge that ~~he~~ the person is facilitating such a  
12                                    deception or harm by another person, ~~he~~ the person knowingly issues a writing  
13                                    without authority to issue it or knowingly utters or possesses a deceptive writing.
- 14                  2.    The offense is a class B felony if it is committed pursuant to a scheme to defraud  
15                                    another or others of money or property of a value in excess of ten thousand  
16                                    dollars. The offense is a class C felony if:
- 17                                  a.    The actor is a public servant or an officer or employee of a financial institution  
18    and the offense is committed under color of office or is made possible by ~~his~~  
19    the actor's office; or
- 20                                  b.    The offense is committed pursuant to a scheme to defraud another or others  
21    of money or property of a value in excess of ~~one~~ five hundred dollars.
- 22                                  Otherwise it is a class A misdemeanor.

23                  **SECTION 11. AMENDMENT.** Section 26.1-02.1-05 of the North Dakota Century Code  
24 is amended and reenacted as follows:

25                  **26.1-02.1-05. Penalties - Restitution.**

- 26                  1.    A violation of section 26.1-02.1-02.1 is a class C felony if the value of any property  
27                                    or services retained exceeds five thousand dollars and a class A misdemeanor in  
28                                    all other cases. For purposes of this section, the value of any property and  
29                                    services must be determined in accordance with subsection ~~6~~ 7 of section  
30                                    12.1-23-05.

1           2.    In the event that a practitioner is adjudicated guilty of a violation of section  
2                   26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state  
3                   of the adjudication. The appropriate licensing authority shall hold an administrative  
4                   hearing to consider the imposition of administrative sanctions as provided by law  
5                   against the practitioner.

6           3.    In addition to any other punishment, a person who violates section 26.1-02.1-02.1  
7                   must be ordered to make restitution to the insurer or to any other person for any  
8                   financial loss sustained as a result of the violation of section 26.1-02.1-02.1. The  
9                   court shall determine the extent and method of restitution.

10           **SECTION 12. AMENDMENT.** Section 29-03-22 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **29-03-22. Venue of multiple theft offenses involving credit cards.** If any of a series  
13 of thefts can be charged as one offense for purposes of grading under subsection 6 7 of section  
14 12.1-23-05, if each of those thefts involved the use of a credit card, and if the total value of the  
15 property or services stolen is at least fifty dollars, venue for the criminal action, in which the  
16 series of thefts is charged as one offense, is in any county where any of the thefts was  
17 committed.