

**HOUSE BILL NO. 1243**

Introduced by

Representatives Dockter, Becker

Senator Poolman

1 A BILL for an Act to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota  
2 Century Code, relating to issuance of checks without sufficient funds or without an account.

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

4 **SECTION 1. AMENDMENT.** Section 6-08-16 of the North Dakota Century Code is amended  
5 and reenacted as follows:

6 **6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time**  
7 **limitation - Financial liability - Penalty.**

8 1. A person may not, for that person, as the agent or representative of another, or as an  
9 officer or member of a ~~firm, company, copartnership, or corporation~~ an organization,  
10 make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds  
11 transfer, for the payment of money upon a bank, banker, or depository, if at the time of  
12 the making, drawing, uttering, electronically authorizing, or delivery, or at the time of  
13 presentation for payment, if the presentation for payment is made within fourteen days  
14 after the original delivery thereof, there are not sufficient funds in or credit with the  
15 bank, banker, or depository to meet the check, draft, electronic funds transfer, or order  
16 in full upon its authorized presentation. Violation of this subsection is:

17 a. An infraction if the amount of insufficient funds or credit is not more than fifty  
18 dollars;

19 b. A class B misdemeanor if the amount of insufficient funds or credit is more than  
20 fifty dollars but not more than two hundred fifty dollars, or if the individual has  
21 pled guilty or been found guilty of a violation of this section within three years of  
22 issuing an insufficient funds check, draft, or order;

23 c. A class A misdemeanor if the amount of insufficient funds or credit is more than  
24 two hundred fifty dollars but not more than five hundred dollars, or if the individual

- 1           has pled guilty or been found guilty of two violations of this section within three  
2           years of issuing an insufficient funds check, draft, or order; or
- 3           d.    A class C felony if the amount of insufficient funds or credit is more than five  
4           hundred dollars, or an individual has pled guilty or been found guilty of three or  
5           more violations of this section within five years of willfully issuing an insufficient  
6           funds check, draft, or order.
- 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.
- 10          a.   ~~The~~In addition to the criminal penalty, the person is also liable for collection fees  
11          or costs; not in excess of ~~thirty-five~~forty dollars; which are recoverable by the  
12          holder, ~~or its agent or representative,~~ of the check, draft, electronic funds transfer  
13          authorization, or order or by the holder's agent or representative. If the holder of  
14          the check, draft, electronic funds transfer authorization, or order or the holder's  
15          agent or representative uses the automated clearinghouse network to collect the  
16          collection fees or costs, that person shall comply with the network's rules and  
17          requirements. If the state's attorney or holder determines the person identified as  
18          the issuer of the instrument did not make, draw, utter, or deliver the instrument in  
19          violation of this section but instead is the victim of fraud, that state's attorney or  
20          holder shall provide the holder or ~~its~~the holder's agent or representative written  
21          notice of the fraud and upon receipt of the notice that holder or ~~its~~the holder's  
22          agent or representative may not collect fees or costs under this subdivision.
- 23          b.   A collection agency shall reimburse the original holder of the check, draft,  
24          electronic funds transfer authorization, or order any additional charges assessed  
25          by the depository bank of the check, draft, electronic funds transfer authorization,  
26          or order if recovered by the collection agency.
- 27          c.   If the person does not pay the instrument in full and any collection fees or costs  
28          not in excess of ~~thirty-five~~forty dollars within ten days from receipt of the notice of  
29          dishonor provided for in subsection 4, ~~a civil penalty is also recoverable by civil-~~  
30          ~~action by the holder, or its agent or representative,~~ of the check, draft, electronic  
31          funds transfer authorization, or order or the holder's agent or representative is



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

4           5. An agent acting for the receiver of a check in violation of this section may present the  
5           check to the state's attorney for prosecution if the holder, or the holder's agent or  
6           representative, mailed a notice under subsection 4. During the first one hundred  
7           twenty days after the drawer received notice under this subsection the state's attorney  
8           shall accept the instrument presented by the agent. The criminal complaint for the  
9           offense of issuing a check, draft, electronic funds transfer authorization, or order  
10          without sufficient funds under this section must be executed within not more than one  
11          hundred twenty days after the dishonor by the drawee of said instrument for  
12          nonsufficient funds. The failure to execute a complaint within said time bars the  
13          criminal charge under this section.

14          **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the North Dakota Century Code is  
15          amended and reenacted as follows:

16          **6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.**

- 17          1. As used in this section unless the context otherwise requires:
- 18               a. "Account" means any account at a bank or depository from which an instrument  
19               could legally be paid.
- 20               b. "Dishonor" is synonymous with "nonpayment".
- 21               c. "Instrument" means any check, draft, electronic funds transfer authorization, or  
22               order for the payment of money.
- 23               d. "Issues" means draws, utters, electronically authorizes, or delivers.
- 24          2. A person ~~wh~~that, for that person or as agent or representative of another, willfully as  
25          defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that  
26          person has been previously convicted of issuing an instrument without an account  
27          pursuant to section 6-08-16.1, and at the time of issuing the instrument the drawer  
28          does not have an account with the bank or depository on which the instrument is  
29          drawn.
- 30          3. A person ~~wh~~that, for that person or an agent or representative of another, willfully as  
31          defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the

1 instrument was for at least five hundred dollars or that person, agent, or representative  
2 of another, issues more than one instrument ~~wherein~~for which the aggregate total of all  
3 instruments issued exceeds five hundred dollars, and at the time of issuing the  
4 instrument, the drawer does not have an account with the bank or depository on which  
5 the instrument is drawn.

6 4. A person ~~who~~that issues an instrument under subsection 2 or 3 ~~also~~ is liable for  
7 collection fees or costs, not in excess of ~~thirty-five~~forty dollars per instrument, which  
8 are recoverable by the holder of the instrument, or the holder's agent or  
9 representative. If the state's attorney or holder determines the person identified as the  
10 issuer of the instrument did not issue the instrument in violation of this section but  
11 instead is the victim of fraud, that state's attorney or holder shall provide the holder or  
12 ~~its~~the holder's agent or representative written notice of the fraud and upon receipt of  
13 the notice that holder or ~~its~~that holder's agent or representative may not collect fees or  
14 costs under this subsection. ~~A civil penalty is also recoverable by civil action by the~~The  
15 ~~holder, or its agent or representative,~~ of the instrument or the holder's agent or  
16 representative is entitled to bring a civil action to recover a civil penalty. The civil  
17 penalty ~~consists of~~is payment to the holder of the instrument of the lesser of two  
18 hundred dollars or three times the amount of ~~the~~each instrument.

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

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

Notice of Dishonored Instrument

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Date \_\_\_\_\_

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

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

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

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

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

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

returned unpaid with the notation the payment has been refused

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

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

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

(Holder or agent or representative)

sufficient moneys to pay such instrument in full and any collection

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

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