

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2166**

Introduced by

Senators Vedaa, Hogue, O. Larsen, Larson

Representatives D. Anderson, Thomas

1 A BILL for an Act to amend and reenact sections 12.1-23-05 and 12.1-23-10 of the North
2 Dakota Century Code, relating to theft offenses; to provide a penalty; and to declare an
3 emergency.

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

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

7 **12.1-23-05. Grading of theft offenses.**

- 8 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the
9 property or services stolen exceed fifty thousand dollars in value.
- 10 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B
11 felony if the property or services stolen exceed ten thousand dollars in value but do
12 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a
13 felony.
- 14 3. Theft under this chapter is a class C felony if:
 - 15 a. The property or services stolen exceed one thousand dollars in value;
 - 16 b. The property or services stolen are acquired or retained by threat and (1) are
17 acquired or retained by a public servant by a threat to take or withhold official
18 action, or (2) exceed one hundred dollars in value;
 - 19 c. The property or services stolen exceed one hundred dollars in value and are
20 acquired or retained by a public servant in the course of official duties;
 - 21 d. The property stolen is a firearm, ammunition, or an explosive or destructive
22 device;
 - 23 e. The property consists of any government file, record, document, or other
24 government paper stolen from any government office or from any public servant;

- 1 f. The defendant is in the business of buying or selling stolen property and the
2 defendant receives, retains, or disposes of the property in the course of that
3 business;
- 4 g. The property stolen consists of any implement, paper, or other thing uniquely
5 associated with the preparation of any money, stamp, bond, or other document,
6 instrument, or obligation of this state;
- 7 h. The property stolen consists of livestock taken from the premises of the owner;
- 8 i. The property stolen consists of a key or other implement uniquely suited to
9 provide access to property the theft of which would be a felony and it was stolen
10 to gain such access;
- 11 j. The property stolen is a card, plate, or other credit device existing for the purpose
12 of obtaining money, property, labor, or services on credit, or is a debit card,
13 electronic fund transfer card, code, or other means of access to an account for
14 the purposes of initiating electronic fund transfers; or
- 15 k. The property stolen is a prescription drug as defined in section 43-15.3-01,
16 except when the quantity stolen is five or fewer capsules, pills, or tablets.
- 17 4. All other theft under this chapter is a class A misdemeanor, unless the requirements of
18 subsection 5 are met.
- 19 5. a. Theft under this chapter of property or services of a value not exceeding five
20 hundred dollars is a class B misdemeanor for a first offense if:
- 21 a. (1) The theft was committed by shoplifting; or
22 (2) The following three factors are met:
- 23 (a) The theft was not committed by threat;
- 24 ~~b.~~(b) The theft was not committed by deception by one who stood in a
25 confidential or fiduciary relationship to the victim of the theft; and
- 26 ~~e.~~(c) The defendant was not a public servant or an officer or employee of a
27 financial institution who committed the theft in the course of official
28 duties.
- 29 b. The special classification provided in ~~this subsection~~paragraph 2 of subdivision a
30 applies if the offense is classified under this subsection in the charge or if, at

1 sentencing, the required factors are established by a preponderance of the
2 evidence.

3 c. A second or third offense under paragraph 1 of subdivision a occurring within
4 three years is a class A misdemeanor. A fourth or subsequent violation under
5 paragraph 1 of subdivision a occurring within four years is a class C felony.

6 d. A sentence imposed under this subsection must be accompanied by a written
7 statement by the court providing notice of any offense under this section which
8 provides an enhanced penalty, including the penalty for a subsequent offense.

9 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft
10 under this chapter is punishable equally with the completed offense when the actor
11 has completed all of the conduct which the actor believes necessary on the actor's
12 part to complete the theft except receipt of the property.

13 7. For purposes of grading, the amount involved in a theft under this chapter is the
14 highest value by any reasonable standard, regardless of the actor's knowledge of such
15 value, of the property or services which were stolen by the actor, or which the actor
16 believed that the actor was stealing, or which the actor could reasonably have
17 anticipated to have been the property or services involved. Thefts committed pursuant
18 to one scheme or course of conduct, whether from the same person or several
19 persons, may be charged as one offense and the amounts proved to have been stolen
20 may be aggregated in determining the grade of the offense.

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

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

24 In this chapter:

25 1. "Dealer in property" means a person who buys or sells property as a business.

26 2. "Deception" means:

27 a. Creating or reinforcing a false impression as to fact, law, status, value, intention,
28 or other state of mind; or obtaining or attempting to obtain public assistance by
29 concealing a material fact, making a false statement or representation,
30 impersonating another, concealing the transfer of property without adequate
31 consideration, or using any other fraudulent method; but deception as to a

- 1 person's intention to perform a promise may not be inferred from the fact alone
2 that the person did not substantially perform the promise unless it is part of a
3 continuing scheme to defraud;
- 4 b. Preventing another from acquiring information which would affect his judgment of
5 a transaction;
- 6 c. Failing to correct a false impression which the actor previously created or
7 reinforced, or which he knows to be influencing another to whom he stands in a
8 fiduciary or confidential relationship;
- 9 d. Failing to correct an impression which the actor previously created or reinforced
10 and which the actor knows to have become false due to subsequent events;
- 11 e. Failing to disclose a lien, adverse claim, or other impediment to the enjoyment of
12 property which he transfers or encumbers in consideration for the property
13 obtained or in order to continue to deprive another of his property, whether such
14 impediment is or is not valid, or is or is not a matter of official record;
- 15 f. Using a credit card, charge plate, or any other instrument which purports to
16 evidence an undertaking to pay for property or services delivered or rendered to
17 or upon the order of a designated person or bearer (1) where such instrument
18 has been stolen, forged, revoked, or canceled, or where for any other reason its
19 use by the actor is unauthorized, and (2) where the actor does not have the
20 intention and ability to meet all obligations to the issuer arising out of his use of
21 the instrument; or
- 22 g. Any other scheme to defraud. The term "deception" does not, however, include
23 falsifications as to matters having no pecuniary significance, or puffing by
24 statements unlikely to deceive ordinary persons in the group addressed. "Puffing"
25 means an exaggerated commendation of wares in communications addressed to
26 the public or to a class or group.
- 27 3. "Deprive" means:
- 28 a. To withhold property or to cause it to be withheld either permanently or under
29 such circumstances that a major portion of its economic value, or its use and
30 benefit, has, in fact, been appropriated;

- 1 b. To withhold property or to cause it to be withheld with the intent to restore it only
2 upon the payment of a reward or other compensation; or
- 3 c. To dispose of property or use it or transfer any interest in it under circumstances
4 that make its restoration, in fact, unlikely.
- 5 4. "Fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other
6 person acting in a fiduciary capacity, or any person carrying on fiduciary functions on
7 behalf of a corporation, limited liability company, or other organization which is a
8 fiduciary.
- 9 5. "Financial institution" means a bank, insurance company, credit union, safety deposit
10 company, savings and loan association, investment trust, or other organization held
11 out to the public as a place of deposit of funds or medium of savings or collective
12 investment.
- 13 6. "Obtain" means:
- 14 a. In relation to property, to bring about a transfer or purported transfer of an interest
15 in the property, whether to the actor or another.
- 16 b. In relation to services, to secure performance thereof.
- 17 7. "Property" means any money, tangible or intangible personal property, property
18 (whether real or personal) the location of which can be changed (including things
19 growing on, affixed to, or found in land and documents although the rights represented
20 thereby have no physical location), contract right, chose-in-action, interest in or claim
21 to wealth, credit, or any other article or thing of value of any kind. "Property" also
22 means real property the location of which cannot be moved if the offense involves
23 transfer or attempted transfer of an interest in the property.
- 24 8. "Property of another" means property in which a person other than the actor or in
25 which a government has an interest which the actor is not privileged to infringe without
26 consent, regardless of the fact that the actor also has an interest in the property and
27 regardless of the fact that the other person or government might be precluded from
28 civil recovery because the property was used in an unlawful transaction or was subject
29 to forfeiture as contraband. Property in possession of the actor shall not be deemed
30 property of another who has a security interest therein, even if legal title is in the
31 creditor pursuant to a conditional sales contract or other security agreement. "Owner"

1 means any person or a government with an interest in property such that it is "property
2 of another" as far as the actor is concerned.

3 9. "Receiving" means acquiring possession, control, or title, or lending on the security of
4 the property.

5 10. "Services" means labor, professional service, transportation, telephone, mail or other
6 public service, gas, electricity and other public utility services, accommodations in
7 hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or
8 other property.

9 11. "Shoplifting" means to willfully take possession of any merchandise owned, held,
10 offered, or displayed for sale, by a merchant, store, or other mercantile establishment,
11 with the intent to deprive the owner of the merchandise. The term includes:

12 a. Removing merchandise from a store or other mercantile establishment without
13 paying for the merchandise;

14 b. Concealing a nonpurchased good or merchandise;

15 c. Altering, transferring, or removing a price marking on a good or merchandise;

16 d. Transferring a good from one container to another; and

17 e. Causing the amount paid for a good or merchandise to be less than the stated
18 retail price.

19 12. "Stolen" means property which has been the subject of theft or robbery or a vehicle
20 which is received from a person who is then in violation of section 12.1-23-06.

21 ~~12.13.~~ "Threat" means an expressed purpose, however communicated, to:

22 a. Cause bodily injury in the future to the person threatened or to any other person;

23 b. Cause damage to property;

24 c. Subject the person threatened or any other person to physical confinement or
25 restraint;

26 d. Engage in other conduct constituting a crime;

27 e. Accuse anyone of a crime;

28 f. Expose a secret or publicize an asserted fact, whether true or false, tending to
29 subject a person living or deceased, to hatred, contempt, or ridicule or to impair
30 another's credit or business repute;

31 g. Reveal any information sought to be concealed by the person threatened;

- 1 h. Testify or provide information or withhold testimony or information with respect to
2 another's legal claim or defense;
- 3 i. Take or withhold official action as a public servant, or cause a public servant to
4 take or withhold official action;
- 5 j. Bring about or continue a strike, boycott, or other similar collective action to
6 obtain property or deprive another of his property which is not demanded or
7 received for the benefit of the group which the actor purports to represent;
- 8 k. Cause anyone to be dismissed from his employment, unless the property is
9 demanded or obtained for lawful union purposes; or
- 10 l. Do any other act which would not in itself substantially benefit the actor or a
11 group he represents but which is calculated to harm another person in a
12 substantial manner with respect to his health, safety, business, employment,
13 calling, career, financial condition, reputation, or personal relationship.

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

17 ~~13-14.~~ "Traffic" means:

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

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