

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2158**

Introduced by

Senators Krebsbach, Olafson, Larsen

Representatives Keiser, N. Johnson, Kingsbury

1 A BILL for an Act to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and
2 subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to
3 issuing a check with nonsufficient funds or without an account; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsections 2, 4, and 5 of section 6-08-16 of the North Dakota
6 Century Code are amended and reenacted as follows:

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 person is also liable for collection fees or costs, not in excess of
11 ~~thirty~~thirty-five dollars, which are recoverable by the holder, or its agent or
12 representative, of the check, draft, electronic funds transfer authorization, or
13 order. If the holder of the check, draft, electronic funds transfer authorization, or
14 order or the holder's agent or representative uses the automated clearinghouse
15 network to collect the collection fees or costs, that person shall comply with the
16 network's rules and requirements. If the state's attorney, holder, or financial
17 institution determines the person identified as the issuer of the instrument did not
18 make, draw, utter, or deliver the instrument in violation of this section but instead
19 is the victim of fraud, that state's attorney, holder, or financial institution shall
20 provide the holder or its agent or representative written notice of the fraud and
21 upon receipt of the notice that holder or its agent or representative may not
22 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

1 by the depository bank of the check, draft, electronic funds transfer authorization,
2 or order not in excess of two dollars if recovered by the collection agency.

3 c. If the person does not pay the instrument in full and any collection fees or costs
4 not in excess of ~~thirty~~thirty-five dollars within ten days from receipt of the notice of
5 dishonor provided for in subsection 4, a civil penalty is also recoverable by civil
6 action by the holder, or its agent or representative, of the check, draft, electronic
7 funds transfer authorization, or order. The civil penalty consists of payment to the
8 holder, or its agent or representative, of the instrument of the lesser of two
9 hundred dollars or three times the amount of the instrument.

10 d. The court may order an individual convicted under this section to undergo an
11 evaluation by a licensed gaming, alcohol, or drug addiction counselor.

12 4. A notice of dishonor may be mailed by the holder, or the holder's agent or
13 representative, of the check upon dishonor. Proof of mailing may be made by return
14 receipt or by an affidavit of mailing signed by the individual making the mailing. The
15 notice must be in substantially the following form:

16 Notice of Dishonored Check

17 Date _____

18 Name of Issuer _____

19 Street Address _____

20 City and State _____

21 You are according to law notified that a check dated _____,

22 _____, drawn on the _____ Bank

23 of _____ in the amount of _____ has been returned

24 unpaid with the notation the payment has been refused because of

25 nonsufficient funds. Within ten days from the receipt of this

26 notice, you must pay or tender to _____

27 (Holder or agent or representative)

28 sufficient moneys to pay such instrument in full and any collection

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

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
11 ninetyone 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.** Subsections 4, 5, and 6 of section 6-08-16.2 of the North
15 Dakota Century Code are amended and reenacted as follows:

16 4. A person who issues an instrument under subsection 2 or 3 also is liable for collection
17 fees or costs, not in excess of ~~thirty~~thirty-five dollars per instrument, which are
18 recoverable by the holder of the instrument, or the holder's agent or representative. If
19 the state's attorney, holder, or financial institution determines the person identified as
20 the issuer of the instrument did not issue the instrument in violation of this section but
21 instead is the victim of fraud, that state's attorney, holder, or financial institution shall
22 provide the holder or its agent or representative written notice of the fraud and upon
23 receipt of the notice that holder or its agent or representative may not collect fees or
24 costs under this subsection. A civil penalty is also recoverable by civil action by the
25 holder, or its agent or representative, of the instrument. The civil penalty consists of
26 payment to the holder of the instrument of the lesser of two hundred dollars or three
27 times the amount of the instrument.

28 5. An agent acting for the receiver of an instrument issued in violation of this section may
29 present the instrument to the state's attorney for prosecution if the holder, or the
30 holder's agent or representative, mailed a notice under subsection 6. During the first
31 one hundred twenty days after the drawer received notice under this subsection the

1 state's attorney shall accept the instrument presented by the agent. A criminal
2 complaint for violating this section must be executed within ninetyone hundred twenty
3 days after the drawer receives notice from the holder, or its agent or representative, of
4 a no-account or closed-account instrument.

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

9 Notice of Dishonored Instrument

10 Date _____
11 Name of Issuer _____
12 Street Address _____
13 City and State _____
14 You are according to law notified that an instrument dated _____,
15 _____, drawn on the _____ Bank of
16 _____ in the amount of _____ has been
17 returned unpaid with the notation the payment has been refused
18 because (of nonsufficient funds) (the drawer does not have an
19 account). Within ten days from the receipt of this notice,
20 you must pay or tender to _____
21 (Holder or agent or representative)
22 sufficient moneys to pay such instrument in full and any collection
23 fees or costs not in excess of thirtythirty-five dollars.

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