

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

SENATE BILL NO. 2251
(Senators Armstrong, Schaible, Nelson)
(Representatives Steiner, Thoreson, Oversen)

AN ACT to amend and reenact subsection 1 of section 6-08-16, subsection 3 of 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, subsection 1 of section 12.1-23-09, and sections 12.1-24-01, 12.1-24-03, 12.1-32-01, 12.1-32-01.1, 26.1-02.1-05, and 29-03-22 of the North Dakota Century Code, relating to the penalties for crimes for which a monetary amount triggers the level of penalty; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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 funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
 - a. An infraction if the amount of insufficient funds or credit is not more than fiftyone hundred dollars;
 - b. A class B misdemeanor if the amount of insufficient funds or credit is more than fiftyone hundred dollars but not more than twofive hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
 - c. A class A misdemeanor if the amount of insufficient funds or credit is more than twofive hundred fifty dollars but not more than five hundredone thousand dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
 - d. A class C felony if the amount of insufficient funds or credit is more than five hundredone thousand dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order.

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

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

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

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

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

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

12.1-23-05. Grading of theft offenses.

1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the property or services stolen exceed fifty thousand dollars in value.
2. Notwithstanding the provisions of subsection ~~23~~, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value but do not exceed fifty thousand dollars or are acquired or retained by a threat to commit a ~~class A or class B~~ felony or to inflict serious bodily injury on the person threatened or on any other person.

~~2-3.~~ Theft under this chapter is a class C felony if:

- a. The property or services stolen exceed ~~five hundred~~ one thousand dollars in value;
- b. The property or services stolen are acquired or retained by threat and (1) are acquired or retained by a public servant by a threat to take or withhold official action, or (2) exceed ~~fiftyone hundred~~ one hundred dollars in value;
- c. The property or services stolen exceed ~~fiftyone hundred~~ one hundred dollars in value and are acquired or retained by a public servant in the course of official duties;
- d. The property stolen is a firearm, ammunition, explosive or destructive device, or an automobile, aircraft, or other motor-propelled vehicle;
- e. The property consists of any government file, record, document, or other government paper stolen from any government office or from any public servant;
- f. The defendant is in the business of buying or selling stolen property and the defendant receives, retains, or disposes of the property in the course of that business;
- g. The property stolen consists of any implement, paper, or other thing uniquely associated with the preparation of any money, stamp, bond, or other document, instrument, or obligation of this state;
- h. The property stolen consists of livestock taken from the premises of the owner;
- i. The property stolen consists of a key or other implement uniquely suited to provide access to property the theft of which would be a felony and it was stolen to gain such access;
- j. The property stolen is a card, plate, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit, or is a debit card, electronic fund transfer card, code, or other means of access to an account for the purposes of initiating electronic fund transfers; or
- k. The property stolen is a prescription drug as defined in section 43-15.3-01.

- ~~3.4.~~ All other theft under this chapter is a class A misdemeanor, unless the requirements of subsection ~~4~~5 are met.
- ~~4.5.~~ Theft under this chapter of property or services of a value not exceeding ~~two~~five hundred fifty dollars ~~shall be~~is a class B misdemeanor if:
- a. The theft was not committed by threat;
 - b. The theft was not committed by deception by one who stood in a confidential or fiduciary relationship to the victim of the theft; and
 - c. The defendant was not a public servant or an officer or employee of a financial institution who committed the theft in the course of official duties.

The special classification provided in this subsection ~~shall apply~~applies if the offense is classified under this subsection in the charge or if, at sentencing, the required factors are established by a preponderance of the evidence.

- ~~5.6.~~ Notwithstanding ~~the provisions of~~ subsection 3 of section 12.1-06-01, an attempt to commit a theft under this chapter is punishable equally with the completed offense when the actor has completed all of the conduct which the actor believes necessary on the actor's part to complete the theft except receipt of the property.
- ~~6.7.~~ For purposes of grading, the amount involved in a theft under this chapter ~~shall be~~is the highest value by any reasonable standard, regardless of the actor's knowledge of such value, of the property or services which were stolen by the actor, or which the actor believed that the actor was stealing, or which the actor could reasonably have anticipated to have been the property or services involved. Thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be charged as one offense and the amounts proved to have been stolen may be aggregated in determining the grade of the offense.

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

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

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

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

12.1-23-07. Misapplication of entrusted property.

1. A person is guilty of misapplication of entrusted property if the person disposes of, uses, or transfers any interest in property that has been entrusted to the person as a fiduciary, or in the person's capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that the person knows is not authorized and that

the person knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.

2. Misapplication of entrusted property is:
 - a. A class A felony if the value of the property misapplied exceeds fifty thousand dollars.
 - b. A class B felony if the value of the property misapplied exceeds ten thousand dollars but does not exceed fifty thousand dollars.
 - ~~b.c.~~ A class C felony if the value of the property misapplied exceeds five hundredone thousand dollars but does not exceed ten thousand dollars.
 - ~~c.d.~~ A class A misdemeanor if the value of the property misapplied exceeds twofive hundred fifty dollars but does not exceed five hundredone thousand dollars.
 - ~~d.e.~~ A class B misdemeanor in all other cases.

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

12.1-23-08. Defrauding secured creditors.

1. An owner of property who creates a security interest in such property may not intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or otherwise deal with property that is subject to the security interest without the prior consent of the secured party if that action has the effect of hindering the enforcement of the security interest.
2. A person may not destroy, remove, damage, conceal, encumber, transfer, or otherwise deal with property that is subject to a security interest with the intent to prevent collection of the debt represented by the security interest.
3. A person may not, at the time of sale of property that is subject to a security interest, or is described in a certificate provided for under section 41-09-28, make false statements as to the existence of security interests in the property, or as to the ownership or location of the property.
4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value of more than five hundredone thousand dollars, as determined under subsection 67 of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor.

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

1. It is a defense to a prosecution under this chapter that:
 - a. The actor ~~honestly~~reasonably believed that ~~hethe actor~~ had a claim to the property or services involved which ~~hethe actor~~ was entitled to assert in the manner which forms the basis for the charge against ~~himthe actor~~; or
 - b. The victim is the actor's spouse, but only when the property involved constitutes household or personal effects or other property normally accessible to both spouses and the parties involved are living together. The term "spouse", as used in this section, includes persons living together as husband and wife.

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

12.1-24-01. Forgery or counterfeiting.

1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the government or another person, or with knowledge that ~~he~~the person is facilitating such deception or harm by another person, ~~he~~the person:
 - a. Knowingly and falsely makes, completes, or alters any writing; or
 - b. Knowingly utters or possesses a forged or counterfeited writing.
2. Forgery or counterfeiting is:
 - a. A class B felony if:
 - (1) The actor forges or counterfeits an obligation or other security of the government; or
 - (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars, but not in excess of fifty thousand dollars. If the value of the property exceeds fifty thousand dollars, the offense is a class A felony.
 - b. A class C felony if:
 - (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by ~~his~~the actor's office;
 - (2) The actor forges or counterfeits foreign money or other legal tender, or utters or possesses any forged or counterfeited obligation or security of the government or foreign money or legal tender;
 - (3) The actor forges or counterfeits any writing from plates, dies, molds, photographs, or other similar instruments designed for multiple reproduction;
 - (4) The actor forges or counterfeits a writing which purports to have been made by the government; or
 - (5) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one ~~hundred~~ thousand dollars.
 - c. A class A misdemeanor in all other cases.

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

12.1-24-03. Deceptive writings.

1. A person is guilty of an offense if, with intent to deceive or harm the government or another person, or with knowledge that ~~he~~the person is facilitating such a deception or harm by another person, ~~he~~the person knowingly issues a writing without authority to issue it or knowingly utters or possesses a deceptive writing.
2. The offense is a:
 - a. A class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars. ~~The offense is a~~
 - b. A class C felony if:

- a. (1) The actor is a public servant or an officer or employee of a financial institution and the offense is committed under color of office or is made possible by ~~his~~the actor's office; or
- b. (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of one ~~hundred~~ thousand dollars.

~~Otherwise it is a~~

- c. A class A misdemeanor in all other cases.

SECTION 11. AMENDMENT. Section 12.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-01. Classification of offenses - Penalties.

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ~~ten~~twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ~~five~~ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of ~~two~~three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of ~~five hundred~~one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

SECTION 12. AMENDMENT. Section 12.1-32-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-01.1. Organizational fines.

Any organization, as defined in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine in accordance with the following classification:

1. For a class A felony, a maximum fine of ~~forty~~fifty one hundred thousand dollars.
2. For a class B felony, a maximum fine of ~~thirty-five~~seventy thousand dollars.
3. For a class C felony, a maximum fine of ~~twenty-five~~fifty thousand dollars.
4. For a class A misdemeanor, a maximum fine of ~~fifteen~~thirty thousand dollars.
5. For a class B misdemeanor, a maximum fine of ~~ten~~twenty thousand dollars.

Nothing in this section shall be construed as preventing the imposition of the sanction provided for in section 12.1-32-03, nor as preventing the prosecution of agents of the organization under section 12.1-03-03.

SECTION 13. AMENDMENT. Section 26.1-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-05. Penalties - Restitution.

1. A violation of section 26.1-02.1-02.1 is a class C felony if the value of any property or services retained exceeds five thousand dollars and a class A misdemeanor in all other cases. For purposes of this section, the value of any property and services must be determined in accordance with subsection ~~6~~7 of section 12.1-23-05.
2. In the event that a practitioner is adjudicated guilty of a violation of section 26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state of the adjudication. The appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against the practitioner.
3. In addition to any other punishment, a person who violates section 26.1-02.1-02.1 must be ordered to make restitution to the insurer or to any other person for any financial loss sustained as a result of the violation of section 26.1-02.1-02.1. The court shall determine the extent and method of restitution.

SECTION 14. AMENDMENT. Section 29-03-22 of the North Dakota Century Code is amended and reenacted as follows:

29-03-22. Venue of multiple theft offenses involving credit cards.

If any of a series of thefts can be charged as one offense for purposes of grading under subsection ~~6~~7 of section 12.1-23-05, if each of those thefts involved the use of a credit card, and if the total value of the property or services stolen is at least fifty dollars, venue for the criminal action, in which the series of thefts is charged as one offense, is in any county where any of the thefts was committed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2251.

Senate Vote: Yeas 44 Nays 3 Absent 0

House Vote: Yeas 84 Nays 7 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State