

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2068

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact subsection 3 of section 27-08.1-01, sections
2 27-08.1-02, 27-08.1-04, and 27-08.1-05 of the North Dakota Century Code, relating to small
3 claims judgments and the commencement and removal of small claims actions; and to repeal
4 section 27-08.1-06 of the North Dakota Century Code, relating to docketing and execution of
5 small claims judgments.

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

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 27-08.1-01 of the 1995
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 3. Except for an action under subdivision e of subsection 2, the defendant may elect
10 to remove the action to a small claims court in the defendant's county of residence.
11 ~~No~~ A claim may not be filed by an assignee of that claim. ~~No~~ A garnishment or
12 attachment may not issue from this court until after judgment is entered.

13 **SECTION 2. AMENDMENT.** Section 27-08.1-02 of the 1995 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **27-08.1-02. Commencement of action - Claim affidavit.** Actions in the small claims
16 court are commenced whenever any person executes and files with the court a claim affidavit,
17 and causes to be served by a person of legal age, not a party to or interested in the action, the
18 affidavit on the defendant or mails it to the defendant by certified mail along with a form upon
19 which the defendant must indicate whether a hearing is requested and whether the defendant
20 ~~intends~~ elects to remove the action to district court. If, within twenty days of service of the
21 affidavit and form, the court has not received a request for a hearing or an election to remove to
22 district court, or if the defendant indicates that a hearing is not requested, a hearing will not be
23 scheduled and judgment may be entered against the defendant by default. If the defendant
24 requests a hearing in small claims court, the hearing must be not less than ten days and not

1 more than thirty days after receipt of the request. Except for an action under subdivision e of
2 subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere
3 within the state. Forms used in small claims court actions must be approved by the state court
4 administrator and obtained from, or at the direction of, the clerk of district court.

5 **SECTION 3. AMENDMENT.** Section 27-08.1-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **27-08.1-04. Election to proceed in small claims court irrevocable.** Election by the
8 plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the
9 plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and
10 unless otherwise provided in the order ~~such the~~ dismissal must be deemed to be with
11 prejudice. By election to proceed in small claims court, the plaintiff waives ~~his the~~ right to
12 appeal to any other court from the decision of the small claims court. The defendant waives ~~his~~
13 the right to appeal from the decision of the small claims court upon receiving ~~his the~~ order for
14 appearance as required herein, unless ~~he the defendant~~ elects to remove the action from the
15 small claims court to a district court ~~which would have jurisdiction over said matter in the~~
16 ~~absence of the small claims court by filing with the small claims court and serving. If the~~
17 defendant elects to remove the action to district court, the defendant must serve upon the
18 plaintiff a notice of such the removal; and filing file with the clerk of the court to which said the
19 action is removed a copy of the claim affidavit and the defendant's answer thereto along with
20 the filing fee and answer fee required for civil actions in said court, not later than forty-eight
21 hours before the hearing set for the appearance of the defendant.

22 **SECTION 4. AMENDMENT.** Section 27-08.1-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **27-08.1-05. Judgment.** The court ~~will~~ shall enter a written judgment indicating its
25 decision on all cases filed with the court on the basis of the evidence presented. A judgment
26 must be entered even if either party fails to appear at the hearing. The court may award the
27 costs of the action to the prevailing party. A judgment of the small claims court has the same
28 force, effects, and attributes of a judgment of the district court.

29 **SECTION 5. REPEAL.** Section 27-08.1-06 of the 1995 Supplement to the North
30 Dakota Century Code is repealed.