

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2068
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact subsection 3 of section 27-08.1-01, sections 27-08.1-02, 27-08.1-04, and 27-08.1-05 of the North Dakota Century Code, relating to small claims judgments and the commencement and removal of small claims actions; and to repeal section 27-08.1-06 of the North Dakota Century Code, relating to docketing and execution of small claims judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court are commenced whenever any person executes and files with the court a claim affidavit, and causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to the defendant by certified mail along with a form upon which the defendant must indicate whether a hearing is requested and whether the defendant ~~intends~~ elects to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing or an election to remove to district court, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing in small claims court, the hearing must be not less than ten days and not more than thirty days after receipt of the request. Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court.

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

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

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

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

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

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 Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2068.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 95 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State