

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1472

Introduced by

Representatives Koppelman, DeKrey, Maragos

Senators Dever, Nelson

1 A BILL for an Act to create and enact a new section to chapter 27-08.1 of the North Dakota
2 Century Code, relating to appeals from small claims court; and to amend and reenact sections
3 27-08.1-02, 27-08.1-03, and 27-08.1-04 of the North Dakota Century Code, relating to small
4 claims court procedure.

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

6 **SECTION 1. AMENDMENT.** Section 27-08.1-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **27-08.1-02. Commencement of action - Claim affidavit.** Actions in the small claims
9 court are commenced whenever any person executes and files with the court a claim affidavit,
10 and causes the affidavit to be served by a person of legal age, not a party to or interested in the
11 action, on the defendant or mails it to the defendant by certified mail along with a form upon
12 which the defendant must indicate whether a hearing is requested ~~and whether the defendant~~
13 ~~elects to remove the action to district court.~~ If, within twenty days of service of the affidavit and
14 form, the court has not received a request for a hearing or ~~an election to remove to district~~
15 ~~court,~~ or if the defendant indicates that a hearing is not requested, a hearing will not be
16 scheduled and judgment may be entered against the defendant by default. If the defendant
17 requests a hearing in small claims court, the hearing must be not less than ten days and not
18 more than thirty days after receipt of the request. Except for an action under subdivision e of
19 subsection 2 of section 27-08.1-01, the mailing or personal service may be made anywhere
20 within the state. Forms used in small claims court actions must be approved by the state court
21 administrator and obtained from, or at the direction of, the clerk of district court or in electronic
22 form from the supreme court.

23 **SECTION 2. AMENDMENT.** Section 27-08.1-03 of the North Dakota Century Code is
24 amended and reenacted as follows:

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees -

Examination of debtor. ~~No formal~~ Formal pleadings other than the claim affidavit and order for appearance ~~shall be~~ are not required, and the hearing and disposition of actions ~~shall be~~ are informal. ~~No A~~ A court reporter ~~shall be~~ is not required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed five thousand dollars, which must be served upon the plaintiff by a person of legal age not a party to or interested in the action, or mailed to the plaintiff by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of five thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury ~~shall~~ is not be allowed in small claims court. A fee as prescribed in subdivision c of subsection 1 of section 27-05.2-03 must be charged for filing the claim affidavit.

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~~ Effect of 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~~ If the plaintiff elects to discontinue the proceedings in small claims court, the court shall enter its order accordingly, and unless otherwise provided in the order the dismissal must be deemed to be with prejudice. ~~By election to proceed in small claims court, the plaintiff waives the right to appeal to any other court from the decision of the small claims court. The defendant waives the right to appeal from the decision of the small claims court upon receiving the order for appearance as required herein, unless the defendant elects to remove the action from the small claims court to district court. If the defendant elects to remove~~

1 ~~the action to district court, the defendant must serve upon the plaintiff a notice of the removal~~
2 ~~and file with the clerk of the court to which the action is removed a copy of the claim affidavit~~
3 ~~and the defendant's answer along with the filing fee, except for an answer fee, required for civil~~
4 ~~actions.~~

5 **SECTION 4.** A new section to chapter 27-08.1 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Appeals.** The defendant may appeal from the decision of a small claims court to the
8 district court for a jury trial anew. The plaintiff may appeal to the district court for a bench trial
9 anew. The request for an appeal must be made within twenty days of the decision of the small
10 claims court. The party that requests an appeal may not appeal the decision of the district
11 court. The party that requests an appeal shall pay all filing fees for the party that does not
12 request an appeal.