

Fifty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1064

Introduced by

Representatives Klemin, Sitte

1 A BILL for an Act to amend and reenact section 27-08.1-04 of North Dakota Century Code,
2 relating to the awarding of attorney's fees in cases removed from small claims court to district
3 court.

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

5 **SECTION 1. 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 the dismissal must be deemed to be with prejudice. By
11 election to proceed in small claims court, the plaintiff waives the right to appeal to any other
12 court from the decision of the small claims court. The defendant waives the right to appeal from
13 the decision of the small claims court upon receiving the order for appearance as required
14 herein, unless the defendant elects to remove the action from the small claims court to district
15 court. If the defendant elects to remove the action to district court, the defendant must serve
16 upon the plaintiff a notice of the removal and file with the clerk of the court to which the action is
17 removed a copy of the claim affidavit and the defendant's answer along with the filing fee,
18 except for an answer fee, required for civil actions. If the defendant elects to remove the action
19 from small claims court to district court, the district court may award attorney's fees to a
20 prevailing plaintiff if the court finds that the position of the defendant was without merit or was
21 otherwise not justified.