

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1404

Introduced by

Representatives Kasper, Dosch, Ruby, Weiler

Senators Fischer, Klein

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 and 27-08.1-04 of the North Dakota Century Code, relating to small claims court
4 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. Any party to an action pending in small claims court may obtain a
23 change of judge or change of referee pursuant to section 29-15-21, except that either a district
24 judge or a referee may be appointed to act in place of the disqualified judge or referee.

1 **SECTION 2. AMENDMENT.** Section 27-08.1-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **27-08.1-04. ~~Election~~ Effect of election to proceed in small claims court**

4 **~~irrevocable.~~** ~~Election by the plaintiff to use the procedures provided for in this chapter is~~
5 ~~irrevocable. In the event~~ If the plaintiff elects to discontinue the proceedings, the court shall
6 enter its order accordingly, and unless otherwise provided in the order the dismissal must be
7 deemed to be with prejudice. By election to proceed in small claims court, the plaintiff waives
8 the right to appeal to any other court from the decision of the small claims court. The defendant
9 waives the right to appeal from the decision of the small claims court upon receiving the order
10 for appearance as required herein, unless the defendant elects to remove the action from the
11 small claims court to district court. If the defendant elects to remove the action to district court,
12 the defendant must serve upon the plaintiff a notice of the removal and file with the clerk of the
13 court to which the action is removed a copy of the claim affidavit and the defendant's answer
14 along with the filing fee, except for an answer fee, required for civil actions. If the defendant
15 elects to remove the action from small claims court to district court, the district court shall award
16 attorney's fees to a prevailing plaintiff.

17 **SECTION 3.** A new section to chapter 27-08.1 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Appeals from small claims court.** Either the plaintiff or the defendant may appeal
20 from the decision of a small claims court to the district court. The district court shall try the
21 matter de novo. The request for an appeal must be made within twenty days of the decision of
22 the small claims court. The party that requests an appeal shall pay all filing fees for the party
23 that does not request an appeal.