

Sixty-first  
Legislative Assembly  
of North Dakota

**SENATE BILL NO.**

Introduced by

Senator Hogue

1 A BILL for an Act to amend and reenact subsection 1 of section 27-08.1-01 and sections  
2 27-08.1-02, 27-08.1-03, and 27-08.1-04 of the North Dakota Century Code, relating to small  
3 claims court actions.

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

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 27-08.1-01 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 1. All judges of the district courts may exercise the jurisdiction conferred by this  
8 chapter, and while sitting in the exercise of that jurisdiction must be known and  
9 referred to as the "small claims court". The jurisdiction of this court is confined to  
10 cases for recovery of money, or the cancellation of any agreement involving  
11 material fraud, deception, misrepresentation, or false promise, when the value of  
12 the agreement or the amount claimed by the plaintiff or the defendant does not  
13 exceed ~~five~~ twenty thousand dollars.

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

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

1 requests a hearing in small claims court, the hearing must be not less than ten days and not  
2 more than thirty days after receipt of the request. Except for an action under subdivision e of  
3 subsection 2 of section 27-08.1-01, the mailing or personal service may be made anywhere  
4 within the state. Forms used in small claims court actions must be approved by the state court  
5 administrator and obtained from, or at the direction of, the clerk of district court or in electronic  
6 form from the supreme court. An action commenced in small claims court may not be removed  
7 to district court.

8 **SECTION 3. AMENDMENT.** Section 27-08.1-03 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees -**  
11 **Examination of debtor.** No formal pleadings other than the claim affidavit and order for  
12 appearance ~~shall~~ may be required, and the hearing and disposition of actions ~~shall~~ must be  
13 informal. ~~No~~ A court reporter ~~shall be~~ is not required to be present to take the testimony unless  
14 arranged for and paid for by one of the parties to the action. The defendant may file an answer,  
15 and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed  
16 ~~five~~ twenty thousand dollars, which must be served upon the plaintiff by a person of legal age,  
17 not a party to or interested in the action, or mailed to the plaintiff by certified mail, not later than  
18 forty-eight hours before the hearing set for the appearance of the defendant. The compulsory  
19 counterclaim rule does not apply to counterclaims in excess of ~~five~~ twenty thousand dollars. At  
20 the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct  
21 the proceedings and may make its own inquiry before, during, or after the hearing. After the  
22 court has found that money is owing by any party to the proceeding, the court may, in the  
23 presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The  
24 court may examine the debtor concerning the property owned by the debtor, at the hearing, as  
25 would be made under chapter 28-25. The examination may be made without first having issued  
26 an execution against the property of the debtor and without further notice as otherwise provided  
27 in chapter 28-25. A trial by jury ~~shall~~ is not be allowed in small claims court. A fee as  
28 prescribed in subdivision c of subsection 1 of section 27-05.2-03 must be charged for filing the  
29 claim affidavit.

30 **SECTION 4. AMENDMENT.** Section 27-08.1-04 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **27-08.1-04. Election to proceed in small claims court irrevocable.** Election by the  
2 plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the  
3 plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and  
4 unless otherwise provided in the order the dismissal must be deemed to be with prejudice. By  
5 election to proceed in small claims court, the plaintiff waives the right to appeal to any other  
6 court from the decision of the small claims court. The defendant waives the right to appeal from  
7 the decision of the small claims court upon receiving the order for appearance as required  
8 herein, ~~unless the defendant elects to remove the action from the small claims court to district~~  
9 ~~court. If the defendant elects to remove the action to district court, the defendant must serve~~  
10 ~~upon the plaintiff a notice of the removal and file with the clerk of the court to which the action is~~  
11 ~~removed a copy of the claim affidavit and the defendant's answer along with the filing fee,~~  
12 ~~except for an answer fee, required for civil actions. If the defendant elects to remove the action~~  
13 ~~from small claims court to district court, the district court shall award attorney's fees to a~~  
14 ~~prevailing plaintiff.~~