

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1251

Introduced by

Representatives Klemin, Kretschmar

Senator Trenbeath

1 A BILL for an Act to amend and reenact section 28-26-01 of the North Dakota Century Code,  
2 relating to attorney's fees in frivolous cases.

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

4 **SECTION 1. AMENDMENT.** Section 28-26-01 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **28-26-01. Attorney's fees by agreement - Exceptions - Awarding of costs and**  
7 **attorney's fees to prevailing party.**

- 8 1. Except as provided in subsection 2, the amount of fees of attorneys in civil actions  
9 must be left to the agreement, express or implied, of the parties.
- 10 2. In civil actions the court ~~shall~~, upon a finding that a claim for relief or a defense  
11 was frivolous or had no sound basis in fact or law, shall award reasonable actual  
12 and statutory costs, including reasonable attorney's fees to the prevailing party:  
13 ~~Such costs must be awarded regardless of the good faith of the attorney or party~~  
14 ~~making the claim for relief if there is such a complete absence of actual facts or~~  
15 ~~law that a reasonable person could not have thought a court would render~~  
16 ~~judgment in their favor, providing~~ against the attorney or party advancing the claim  
17 or defense if the prevailing party has in an answer, reply to an answer, or other  
18 responsive pleading alleged the frivolous nature or unsound basis of the claim or  
19 defense. This subsection does not require the award of costs or fees against an  
20 attorney or party advancing a claim or defense unwarranted under existing law, if it  
21 is supported by a good faith argument for an extension, modification, or reversal of  
22 the existing law.