

**SENATE BILL NO. 2102**

Introduced by

Senator Larson

Representative Heinert

1 A BILL for an Act to amend and reenact section 29-15-21 of the North Dakota Century Code,  
2 relating to a written demand for change of judge; and to provide for application.

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

4 **SECTION 1. AMENDMENT.** Section 29-15-21 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **29-15-21. Demand for change of judge.**

- 7 1. Subject to the provisions of this section, any party to a civil or criminal action or  
8 proceeding pending in the district court may obtain a change of the judge before whom  
9 the trial or any proceeding with respect thereto is to be heard by filing with the clerk of  
10 the court in which the action or proceeding is pending the original of a written demand  
11 for change of judge, executed either:
- 12 a. By the personal signature of the party, if an individual, and by the personal  
13 signature of an authorized officer or manager, if a corporation, limited liability  
14 company, or association; or
  - 15 b. By the attorney for a party with the permission of the party, in which event the  
16 attorney shall file with the demand a certificate that the attorney has mailed a  
17 copy of the demand to such party.
- 18 2. The demand is invalid unless it is filed with the clerk of the court ~~not~~no later than ten  
19 days after the occurrence of the earliest of ~~any~~ one of the following events:
- 20 a. The date of the notice of assignment or reassignment of a judge for trial of the  
21 case;
  - 22 b. The date of notice that a trial has been scheduled; or
  - 23 c. The date of service of any ex parte order in the case signed by the judge against  
24 whom the demand is filed.

- 1           3. Any party who has been added, voluntarily or involuntarily, to the action or proceeding  
2           after the date of any occurrence in subsection 2 has the right to file a demand for  
3           change of judge within ten days after any remaining event occurs or, if all of those  
4           events have already occurred, within ten days after that party has been added. In any  
5           event, ~~an~~ demand for a change of judge may not be made after the judge sought to  
6           be disqualified has ruled ~~upon~~ any matter pertaining to the action or proceeding in  
7           which the demanding party was heard or had an opportunity to be heard. Any  
8           proceeding to modify an order for alimony, property division, or child support pursuant  
9           to section 14-05-24 or an order for child custody pursuant to section 14-05-22 must be  
10          considered a proceeding separate from the original action and the fact ~~that~~ the judge  
11          sought to be disqualified made any ruling in the original action does not bar a demand  
12          for a change of judge.
- 13          4. The demand for change of judge must state that ~~the demand~~ is filed in good faith and  
14          not for the purposes of delay. ~~The demand~~ must indicate the nature of the action or  
15          proceeding, designate the judge sought to be disqualified, the reason the change of  
16          judge is sought, and certify that that judge has not ruled ~~upon~~ any matter pertaining  
17          to the action or proceeding in which the moving party was heard or had an opportunity  
18          to be heard.
- 19          5. Upon the filing of the demand for change of judge, the clerk ~~shall~~ immediately shall  
20          send a copy of the demand for a change of judge to the presiding judge of the judicial  
21          district and the judge sought to be disqualified.
- 22          6. Upon receipt of a copy of a demand for change of judge, the judge sought to be  
23          disqualified has no authority or discretion to determine the timeliness or validity of the  
24          demand and ~~shall~~may not proceed ~~any~~ further or take any action in the action or  
25          proceeding and is thereafter disqualified from doing any further act in the cause unless  
26          the demand is invalidated by the presiding judge. The judge sought to be disqualified  
27          ~~shall~~ promptly shall submit to the presiding judge any comments the judge may have  
28          regarding the demand. If the presiding judge thereafter invalidates the demand  
29          because ~~the demand~~ was not ~~timely~~ filed timely, the reason for the change was not  
30          based on reasonable grounds, or for other reasons, the judge sought to be disqualified

1            ~~shall resume~~resumes jurisdiction in the case and shall hear and determine the case to  
2            conclusion.

3            7. If a demand for a change of judge has been made and another judge assigned by the  
4            presiding judge of the judicial district, the presiding judge may decline to grant another  
5            demand for a change of judge made by a party whose interests in the matter are not  
6            adverse to those of the party whose demand was granted. A judge assigned by the  
7            presiding judge pursuant to a demand for change of judge is not disqualified upon a  
8            subsequent demand for change of judge unless and until the subsequent demand is  
9            granted and notice thereof is given to that judge by the presiding judge. A subsequent  
10           demand for a change of judge may be made only within five days after receiving notice  
11           of the assignment of a judge by the presiding judge pursuant to a previous demand.

12           8. Upon receipt of a timely filed demand for a change of judge from the clerk of the court,  
13           the presiding judge of the judicial district in which the demand is filed ~~shall~~ promptly  
14           shall designate another judge to act in the place ~~and~~ ~~stead~~ of the judge disqualified.

15           9. The judge designated, after receiving ~~such~~the notice of the assignment from the  
16           presiding judge, ~~shall~~ promptly shall proceed with the hearing or trial, first giving to the  
17           parties or their attorneys reasonable notice of the date of the hearing or trial.

18           **SECTION 2. APPLICATION.** This Act applies to a civil or criminal action or proceeding  
19           commenced after the effective date of this Act.