

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 374

HOUSE BILL NO. 1677
(Representatives Strinden, Kretschmar, Mertens)
(Senators Nething, Lashkowitz)
(Approved by the Committee on Delayed Bills)

COURT OF APPEALS

AN ACT to establish a temporary court of appeals; to amend and reenact subsection 5 of section 12.1-01-04, section 27-01-01, subsection 2 of section 27-23-01, and section 59-04-27 of the North Dakota Century Code, relating to references to the temporary court of appeals and judges of the temporary court of appeals; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Temporary court of appeals established - Jurisdiction - Writ authority - Administration. A temporary court of appeals is established to exercise appellate and original jurisdiction as delegated by the supreme court. Panels of the temporary court of appeals may issue original and remedial writs necessary to properly exercise jurisdiction in cases assigned to them. The panels of the temporary court of appeals are subject to administration by the supreme court pursuant to sections 3 and 8 of article VI of the Constitution of North Dakota.

SECTION 2. Number, assignment, and compensation of judges.

1. The supreme court may provide for the assignment of active or retired district court judges, retired justices of the supreme court, and lawyers, to serve on three-judge panels of the temporary court of appeals if the chief justice certifies to the governor that the supreme court has disposed of two hundred and fifty cases in the twelve months preceding September first of any year. Assignments may be made for a time certain, not to exceed one year from the date of assignment, or specifically for one or more cases on the docket of the supreme court.
2. An active or retired district court judge serving on the temporary court of appeals may not be assigned to hear cases in which the judge participated while serving on the district court. An active district court judge may not be

assigned to hear cases that originated in the judicial district of the judge.

3. An active district court judge serving on the temporary court of appeals is not entitled to additional compensation, but is entitled to reimbursement for expenses as provided by sections 44-08-04 and 54-06-09.
4. Retired justices of the supreme court, retired district court judges, and lawyers serving as judges on panels of the temporary court of appeals are entitled to receive as compensation for each day of service in the performance of duties pursuant to the assignment an amount equal to five percent of the gross monthly salary as provided for a regularly elected or appointed justice of the supreme court, or one-half of the daily compensation for services of one-half day or less. The compensation must be paid upon certification by the judge that the services were performed for the number of days shown on the certificate, and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.

SECTION 3. Assignment and reassignment of cases - Quorum for decision of cases - Authority in furtherance of jurisdiction.

1. Panels of the temporary court of appeals have jurisdiction to hear and to decide all cases assigned by the supreme court.
2. The supreme court may order reassignment of any case from a panel of the temporary court of appeals to the supreme court.
3. A majority of the three judges of a panel of the temporary court of appeals hearing a case is necessary to pronounce a decision.
4. When a judgment or order is reversed, modified, or confirmed by a panel of the temporary court of appeals, the reasons must be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court, and preserved with the record of the case. Any judge concurring or dissenting may give the reasons for the judge's concurrence or dissent in writing over the judge's signature.

SECTION 4. Administration - Employees and clerical assistance - Court of record - Place of sessions.

1. The clerk of the supreme court shall provide clerk services to panels of the temporary court of appeals.

2. Panels of the temporary court of appeals may hold court in any place the panel considers convenient and efficient for conducting its business.

3. All proceedings of the panels of the temporary court of appeals must be pursuant to the rules adopted by the supreme court.

SECTION 5. Chief judge. The chief justice of the supreme court shall designate a chief judge of each panel of the temporary court of appeals who shall preside pursuant to rules of the supreme court.

SECTION 6. Review of decisions of panels. Any party in interest who is aggrieved by a judgment or order of a panel of the temporary court of appeals may petition the supreme court for review of the judgment or order pursuant to rules of the supreme court. Upon the filing of a petition for review by the supreme court, the order or judgment and mandate of the panel of the temporary court of appeals is stayed pending action of the supreme court. The supreme court has discretion to grant or deny the petition.

SECTION 7. Right to appeal not created. Sections 1 through 9 of this Act do not provide or create a right of appeal where that right is not otherwise provided by law. An appeal assigned to a panel of the temporary court of appeals fulfills the right of appeal provided by section 28-27-02.

SECTION 8. Unitary appeal - Filing of appeal - Filing fee. All appeals must be treated as one appeal process under the jurisdiction of the supreme court. In any appeal there may be only one filing and one filing fee required. The filing fee is as prescribed by section 27-03-05.

SECTION 9. Publication of opinions. Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

SECTION 10. AMENDMENT. Subsection 5 of section 12.1-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Court" means any of the following courts: the supreme court, the temporary court of appeals, a district court, a county court, and where relevant, a municipal court.

SECTION 11. AMENDMENT. Section 27-01-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-01-01. Courts composing judicial system of state - Those constituting courts of record. The following are the courts of justice of this state:

1. The supreme court;
2. The temporary court of appeals;
3. The district courts;
- ~~3-~~ 4. The county courts; and
- 4- 5. Such other courts as are or may be created by law for cities.

Of these the supreme court ~~and~~, the temporary court of appeals, the district courts, and the county courts are courts of record.

SECTION 12. AMENDMENT. Subsection 2 of section 27-23-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Judge" means a justice of the supreme court, a judge of the temporary court of appeals, a judge of the district court, a judge of a county court, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.

SECTION 13. AMENDMENT. Section 59-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-27. Stay of proceedings. Upon the perfecting of an appeal in the manner prescribed in section 59-04-26, no further proceedings under the order or orders appealed from may be taken pending the appeal, unless the district court, county court, a panel of the temporary court of appeals, or supreme court may direct otherwise upon hearing, and upon such notice thereof as the court by order may prescribe. The court may prescribe the terms and conditions of a supersedeas bond, deposit, or other act in lieu thereof. Otherwise no bond shall be required, except the cost bond in the sum of two hundred fifty dollars, to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

SECTION 14. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$42,000 to the supreme court for the purpose of implementing panels of the temporary court of appeals for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, 1990, and after that date is ineffective.

Approved April 17, 1987
Filed April 20, 1987

CHAPTER 375

SENATE BILL NO. 2040
(Legislative Council)
(Interim Court Services Committee)

MUNICIPAL AND COUNTY COURTS

AN ACT to create and enact three new sections to chapter 40-18 of the North Dakota Century Code, relating to the clerk of municipal court and the transfer of cases from municipal court to county court; to amend and reenact sections 27-07.1-17, 29-07-01.1, 40-11-13, 40-18-01, 40-18-03, 40-18-06, 40-18-14, 40-18-15, 40-18-19, 40-18-20, 40-18-22, and 40-21-14 of the North Dakota Century Code, relating to jurisdiction of county courts, payment of expenses, fines for violations of municipal ordinances, qualifications of municipal judges, municipal court procedure, and notices to the supreme court; and to repeal section 40-08-21 of the North Dakota Century Code, relating to the authority of mayors to release imprisoned offenders from jail.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-17. Jurisdiction of county courts. A county court of any county of this state shall have jurisdiction in the following types of cases:

1. Civil cases with not more than ten thousand dollars in controversy. The jurisdiction of the county court extends to the following actions:
 - a. A garnishment action when the sum for which judgment is demanded in such action does not exceed ten thousand dollars.
 - b. An attachment action when the amount of damages claimed does not exceed ten thousand dollars.
 - c. An action for claim and delivery of property when the value of the property together with the sum, if any,

demanded as damages does not exceed ten thousand dollars.

- d. An action for eviction from real property irrespective of value when the amount demanded therein for rents and profits or damages does not exceed ten thousand dollars.
2. Criminal misdemeanor, infraction, and noncriminal traffic and game and fish cases.
 3. Criminal misdemeanor, infraction, and noncriminal traffic cases involving violations of city ordinances.
 4. Small claims cases.
 - 4- 5. Probate, guardianship, and other testamentary cases pursuant to title 30.1.
 - 5- 6. Trusts pursuant to title 30.1 and title 59.
 - 6- 7. Preliminary hearings and arraignments in felony criminal cases.
 - 7- 8. Commitment proceedings pursuant to chapter 25-03.1.
 - 8- 9. Any other cases as assigned by the presiding district judge of the judicial district in which the county is located; provided, however, that any party is entitled to have any matter assigned pursuant to this subsection heard by a district judge if a written request therefor is filed with the presiding district judge within three days after receiving notice of the assignment, and, provided further, that the trial of a criminal matter may not be assigned to a county judge who presided at the preliminary hearing except where a preliminary hearing has been waived.

* SECTION 2. AMENDMENT. Section 29-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-07-01.1. Payment of expenses for defense of indigents. Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 7 9 of section 27-07.1-17. A defendant with appointed counsel shall pay to the county or state such sums as the court shall direct. The state's attorney of the county wherein the action was prosecuted shall seek recovery of any such sums any time he the state's attorney determines the person for whom counsel

* NOTE: Section 29-07-01.1 was also amended by section 14 of House Bill No. 1050, chapter 73, by section 1 of Senate Bill No. 2105, chapter 39, and by section 1 of Senate Bill No. 2493, chapter 392.

was appointed may have funds to repay the county or state within six years of the date such amount was paid on ~~his~~ that person's behalf.

SECTION 3. AMENDMENT. Section 40-11-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-11-13. Fines and forfeitures for violation of ordinances paid into treasury. All fines, penalties, and forfeitures collected for offenses against the ordinances of a city, including those fines, penalties, and forfeitures collected as a result of a judgment of a ~~district court~~ or county court rendered pursuant to section 40-18-19, shall be paid into the city's treasury at such time and in such manner as may be prescribed by ordinance.

SECTION 4. AMENDMENT. Section 40-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-01. Jurisdiction and qualifications of municipal judge.

1. The municipal judge within a city having a population of three five thousand or more shall must be an attorney licensed to practice law in this state, unless no person so licensed is available in the city, and shall have exclusive jurisdiction of, and shall hear, try, and determine, all offenses against the ordinances of the city. The offices of county judge and municipal judge may not be held by the same person. In a city with a population of less than three five thousand, the municipal judge may be, but need not be, an attorney licensed to practice law in this state, nor shall he may the judge be required to be a resident of the city in which he is to serve. The offices of municipal judge and county judge may not be held by the same person, except pursuant to assignment of the presiding judge of the judicial district. The municipal judge has jurisdiction to hear, try, and determine offenses against the ordinances of the city.
2. In a city with a population of less than five thousand, the city may, by resolution or ordinance, require that municipal judges of the city be licensed to practice law in this state.
3. Notwithstanding any other provision of law, the municipal court or municipal judge has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the person charged with the offense has twice previously been convicted of violation of section 39-08-01 or equivalent ordinance within the five years preceding the commission of the offense charged or if the person charged with the offense has three times previously been convicted of violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the

offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of violation of section 39-08-01 or equivalent ordinance twice within the five years, or three times within the seven years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the person in the county court.

SECTION 5. AMENDMENT. Section 40-18-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-03. Vacancy in office of municipal judge - Temporary absence of municipal judge. If a vacancy exists in the office of municipal judge by death, resignation, or otherwise, it shall be filled by appointment by the executive officer, subject to confirmation by the governing body of the city. An appointee shall qualify, and he shall hold office until the next city election, and until his successor is elected and qualified. The governing body of a city may appoint an alternate municipal judge to serve when the municipal judge is unable to serve due to temporary absence, interest, disqualification, or disability. ~~Such~~ The alternate shall judge must be compensated ~~on a per diem basis~~ at a rate set by the governing body, and shall possess, as ~~nearly as is practicable,~~ the qualifications of ~~the regular~~ a municipal judge.

SECTION 6. AMENDMENT. Section 40-18-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-06. Salary of municipal judge - Payment of fees into funds to treasury. The municipal judge shall ~~must~~ be paid a salary by the ~~municipality~~ city and shall ~~may~~ not be paid in relation to fees or fines collected by the municipal court. The municipal judge's salary shall not be reduced during his term of office. ~~in all criminal actions and in all actions instituted under any ordinance of the city,~~ however, he shall collect the following fees-

- 1- For issuing summons or warrant of arrest and all proceedings prior to trial, two dollars-
- 2- For entry of default judgment or sentence upon plea of guilty or order binding over on waiver, two dollars-
- 3- For trial of issue of fact or preliminary hearing, four dollars-
- 4- For issuing execution and all proceedings subsequent to entry of judgment, one dollar-
- 5- For taking affidavit or acknowledgment other than in pending proceedings, twenty-five cents-

The fees shall be paid by him into the city treasury at the end of each month. At the end of each month, the municipal judge shall

make and file with the city auditor a written report under oath showing an account of all fees, fines, costs, forfeitures, and any other monetary consideration collected by him in such actions the court during the preceding month and showing the actions in which the fees were collected. ~~His~~ The municipal court shall pay the amount of fees, fines, costs, forfeitures, and any other monetary consideration collected to the city treasury at the end of each month. The judge's salary shall may not be paid to him until he the judge has complied with this section.

SECTION 7. A new section to chapter 40-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Municipal court clerk - Appointment - Salary - Authority. The governing body of a city may appoint any qualified person to serve as municipal court clerk for municipal ordinance violations. A municipal court clerk is entitled to receive a salary as fixed by the governing body and has that authority which may be assigned by a judge having jurisdiction over municipal ordinance cases of the city. The supreme court may adopt rules for the qualifications of municipal court clerks, the extent and assignment of authority by municipal court judges, and the conduct of the office, including rules for training sessions and for continuing education.

SECTION 8. A new section to chapter 40-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of municipal ordinance cases to county court. With the agreement of the governing body of the county, or the counties of the multicounty agreement area pursuant to section 27-07.1-02, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the county court of the county in which the city is located. These cases are deemed county court cases for purposes of appeal.

SECTION 9. AMENDMENT. Section 40-18-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-14. Municipal judge may enforce orders and judgments and punish for contempt. A municipal judge shall have has the power to enforce due obedience to his the court's orders and judgments. He The judge may fine or imprison for ~~civil~~ contempt ~~offered to him~~ committed in the judge's presence while holding court, ~~or to~~ as well as for contempt of process issued, ~~or~~ and of orders made by him the judge. When an act or omission constituting a contempt in a municipal court is not committed in the ~~immediate~~ view and presence of the municipal judge, an affidavit alleging the facts may be filed and a warrant of arrest thereupon may issue on which the person accused may be arrested and brought before the municipal judge immediately. ~~Such~~ The person must be given a reasonable opportunity to employ counsel and ~~excuse~~ ~~or~~ defend against the alleged contempt. After hearing the allegations and proofs, the municipal judge may discharge him the person or adjudge him the person guilty and may punish by fine or imprisonment or both. The fine in any case shall may not be more

than ~~one~~ five hundred dollars and the imprisonment ~~shall~~ may not be more than ~~one day~~ thirty days.

SECTION 10. AMENDMENT. Section 40-18-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-15. Trials in nonjury cases arising under the ordinance ordinances of a city. An action for the violation of a city ordinance shall for which the right to a jury trial does not otherwise exist or in which the defendant has timely and appropriately waived a right to a jury trial in writing pursuant to rules of the supreme court, may be tried and determined by the municipal judge, without the intervention of a jury. Nothing in this section shall deprive a defendant of the right to a trial by jury. In the event of an adverse verdict in a municipal court trial, a defendant may exercise his right of appeal as provided for in section 40-18-19 and a defendant shall have the right to a trial by jury upon appeal from the determination of a municipal judge, but a waiver of jury trial in the municipal court proceeding also constitutes a waiver of jury trial in the county court.

SECTION 11. A new section to chapter 40-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer to county court if jury trial not waived - Expenses of prosecution - Division of funds between city and county. If within fourteen days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the county court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county or any individual or entity for prosecution or defense services. If the city and the county do not otherwise agree by resolutions of the respective governing bodies, the city is entitled to sixty-five percent and the county is entitled to thirty-five percent of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section. The share of fees, fines, costs, forfeitures, and any other monetary consideration due to the city must be paid to the city treasury at least once each quarter, while the share due to the county must be paid to the county general fund at least once each quarter. At the time of payment, the county court shall account under oath to the city auditor for all money collected.

*** SECTION 12. AMENDMENT.** Section 40-18-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-19. Appeals from determinations of municipal judge. An appeal may be taken to the district court or the county court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North Dakota Rules of Criminal Procedure. An appeal shall be is perfected by notice of

* NOTE: Section 40-18-19 was also amended by section 4 of Senate Bill No. 2105, chapter 393.

appeal. No appeal, bail, or supersedeas bond may be required on an appeal from a determination in a municipal judge's court. An A perfected appeal to the district court or county court, when perfected, transfers the action to such county court for trial anew. That trial shall be conducted in accordance with procedures provided by rules promulgated by the supreme court. On all appeals from a determination in a municipal court, the appellate court shall take judicial notice of all of the ordinances of the city. No filing fee shall may be required in county court for the filing of an appeal from a judgment of conviction for the violation of a municipal ordinance.

SECTION 13. AMENDMENT. Section 40-18-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-20. Affidavit of prejudice. When the defendant in an action in a municipal court, or his attorney, or the municipality by the municipality's attorney or any other attorney acting for the municipality, before the trial commences, files an affidavit in writing stating that he has reason to believe and does believe that a fair and impartial trial of the action cannot be had before the judge about to try the same by reason of the bias or prejudice of such judge, the judge shall be disqualified. Demand for change of judge. Any party to a proceeding pending in any municipal court may obtain a change of judge pursuant to section 29-15-21, except that either a district judge, a county judge pursuant to section 40-18-01, or a municipal judge may be appointed to act in place of the disqualified judge. The alternate municipal judge, if any, is automatically appointed to preside in the case.

SECTION 14. AMENDMENT. Section 40-18-22 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-22. Continuing education of municipal judge and alternate judge required. Each municipal judge shall be required, and alternate judge shall at least twice within one year after his election taking office, and at least once twice each calendar year thereafter, to attend and participate in an educational session designated for that purpose by the supreme court, unless the judge is excused from such attendance by the supreme court. Such judge The city shall be reimbursed reimburse the judge for his necessary expenses of travel and subsistence as other city officials are so reimbursed.

If any such judge shall fail to attend such educational session within any calendar year fails to fulfill the requirements of this section, without being excused therefrom by the supreme court, the state court administrator shall report such fact the judge's failure to the commission on judicial conduct for such appropriate action as it deems appropriate.

SECTION 15. AMENDMENT. Section 40-21-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-21-14. City auditor to notify of election or appointments. The city auditor, within five days after the result of an election is declared or the appointment of an officer is made within the municipality, shall notify each person elected or appointed to municipal office of his that person's election or appointment. Within the same period of time, the city auditor shall also notify the state supreme court of the election or the appointment of any municipal judge or alternate judge.

SECTION 16. REPEAL. Section 40-08-21 of the North Dakota Century Code is hereby repealed.

Approved April 7, 1987
Filed April 9, 1987

CHAPTER 376

HOUSE BILL NO. 1469
(Representative Kelly)
(Senator Waldera)

SMALL CLAIMS COURT PROCESS

AN ACT to amend and reenact sections 27-08.1-02 and 27-08.1-03 of the North Dakota Century Code, relating to service of process in small claims court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court shall be commenced whenever any person executes and files with the court a claim affidavit, and serves causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to him by certified mail along with an order for appearance setting a hearing. The hearing shall be not less than ten days and not more than thirty days after the service or receipt of the order. The mailing, or personal service, may be made anywhere within the state.

SECTION 2. AMENDMENT. Section 27-08.1-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed two thousand dollars, which shall be delivered to served upon the plaintiff in person by a person of legal age not a party to or interested in the action, or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule

shall not apply to counterclaims in excess of two thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee as prescribed in subsection 2 of section 11-17-04 shall be charged for filing the claim affidavit.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 377

HOUSE BILL NO. 1402
(Anderson)

SMALL CLAIMS COURT REFEREES

AN ACT to amend and reenact section 27-08.1-08 of the North Dakota Century Code, relating to residency requirements for small claims court referees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-08. Referees; appointment of small claims court - Appointment - Term - Method of qualifying - Powers and duties - Compensation. The board of county commissioners may authorize a judge of a county court to appoint a referee of the small claims court who shall hold office at the pleasure of the judge. The referee shall qualify in the same manner as other civil officers, except that the referee need not be a qualified elector of the county, and ~~his~~ the duties and powers of the referee in the conduct of trials in the small claims court shall be governed by the provisions of rule 53(c), North Dakota Rules of Civil Procedure, insofar as ~~such~~ those provisions are not in conflict with the provisions of this chapter. The referee appointed ~~shall~~ must be a person versed in the law. The board of county commissioners shall determine the salary or fee of ~~said~~ the referee.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 378

HOUSE BILL NO. 1322
(Rydell, J. DeMers, Ulmer, Gates)

JUROR AND WITNESS EMPLOYMENT PROTECTION

AN ACT to amend and reenact section 27-09.1-17 of the North Dakota Century Code, relating to protection of employment of jurors and witnesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-09.1-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-09.1-17. Protection of jurors' and witnesses' employment.

1. An employer ~~shall~~ may not deprive an employee of ~~his~~ an employee employment, or threaten or otherwise coerce ~~him~~ an employee with respect thereto, because the employee receives a summons or subpoena, responds thereto, serves as a juror or witness, or attends court for ~~prospective~~ jury service or to give testimony pursuant to a subpoena.
2. Any employer who violates subsection 1 is guilty of a class B misdemeanor.
3. If an employer discharges an employee in violation of subsection 1, the employee within ninety days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable ~~shall~~ may not exceed lost wages for six weeks. If ~~he~~ the employee prevails, the employee ~~shall~~ must be allowed a reasonable attorney's fee fixed by the court.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 379

HOUSE BILL NO. 1307
(Representatives Shaft, Schneider)
(Senator Maxson)

BAR ASSOCIATION MEMBERSHIP

AN ACT to amend and reenact sections 27-12-02 and 27-12-03 of the North Dakota Century Code, relating to membership of the state bar association of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-12-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-12-02. Membership of state bar association. The membership of the state bar association of North Dakota shall consist of all persons who have paid their annual license fees to and have received their licenses from the secretary-treasurer of the state bar board, as provided by law, every person:

1. Who has secured an annual license to practice law in this state from the state bar board in accordance with section 27-11-22; or
2. Who has an unrevoked certificate of admission to the bar of this state and who has paid an annual membership fee to the state bar association. The annual fee must be established by the state bar association at its annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed eighty percent of the maximum fee for an annual license to practice law in this state as prescribed in section 27-11-22.

SECTION 2. AMENDMENT. Section 27-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-12-03. Rights of members of bar association. Members The members of the state bar association of North Dakota who have secured an annual license to practice law in this state shall be entitled to all of the rights and privileges of said the association and shall be entitled to vote and to participate in all of the meetings thereof. The members of the association who have not secured an annual license to practice law in this state are entitled to all of the rights and privileges of the association, except that they are not entitled to vote at the meetings or to serve as an officer of the association.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 380

SENATE BILL NO. 2404
(Senators Stenehjem, Mushik)
(Representatives Ulmer, Wentz, Schneider)

JUVENILE COURT TRAFFIC OFFENSES

AN ACT to amend and reenact subsection 9 of section 27-20-02 and section 27-20-31 of the North Dakota Century Code, relating to the jurisdiction of the juvenile court over traffic offenses committed by a child and the disposition of a delinquent child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 27-20-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and manslaughter resulting from the operation of a motor vehicle driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.

SECTION 2. AMENDMENT. Section 27-20-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-31. Disposition of delinquent child. If the child is found to be a delinquent child, or admits to a traffic-related offense in an informal adjustment hearing, the court may make any of the following orders of disposition best suited to his the child's treatment, rehabilitation, and welfare:

1. Any order authorized by section 27-20-30 for the disposition of a deprived child;

2. Placing the child on probation under the supervision of the juvenile supervisor, probation officer, or other appropriate officer of the court or of the court of another state as provided in section 27-20-41 or the director of the county ~~welfare~~ social service board under conditions and limitations the court prescribes;
3. Ordering the child to pay a fine if the delinquent act committed by the child constitutes manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a fine imposed pursuant to this subsection upon such terms and conditions as the court may determine. Fines collected pursuant to this subsection must be paid into the county treasury for disposition pursuant to section 29-27-02.1;
4. Placing the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority; or
- 4- 5. Committing the child to the state industrial school or to a state department to which commitment of delinquent or unruly children may be made.

Approved April 15, 1987
Filed April 17, 1987

CHAPTER 381

SENATE BILL NO. 2443
(Senators Stenehjem, Mushik)
(Representatives Ulmer, Wentz)

UNRULY CHILD

AN ACT to amend and reenact subsection 10 of section 27-20-02 of the North Dakota Century Code, relating to the definition of an unruly child under the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 27-20-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of himself or others;
- c. Has committed an offense applicable only to a child;
~~or~~
- d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; ~~and~~ or
- e. Has committed an offense in violation of section 39-08-18; and
- f. In any of the foregoing instances is in need of treatment or rehabilitation.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 382

HOUSE BILL NO. 1606
(O'Connell, Skjerven, Wilkie, Laughlin, D. Olsen)

UNRULY CHILD DETENTION

AN ACT to amend and reenact section 27-20-16 of the North Dakota Century Code, relating to the detention of delinquent, unruly, and deprived children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-16 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-16. Place of detention.

1. A child alleged to be delinquent or unruly may be detained only in:
 - a. A licensed foster home or a home approved by the court;
 - b. A facility operated by a licensed child welfare agency;
 - c. A detention home or center for delinquent or unruly children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court;
 - d. Any other suitable place or facility, including a medical facility for the treatment of mental illness, alcoholism, or drug addiction, designated by the court; or
 - e. A jail or other facility for the detention of adults only if the facility in subdivision c is not available, the detention is in a room separate and removed from those for adults, it appears to the satisfaction of the court or the juvenile supervisor, intake officer, or other authorized officer of the

court, that public safety and protection reasonably require detention, and it is so authorized.

2. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be a child is received at the facility and shall bring ~~him~~ the person before the court upon request or deliver ~~him~~ the person to a detention or shelter care facility designated by the court.
3. If a case is transferred to another court for criminal prosecution the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.
4. A child alleged to be deprived may be placed in shelter care only in the facilities stated in subdivisions a, b, and d of subsection 1 and ~~shall~~ may not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent or unruly.
5. Effective ~~July~~ January 1, ~~1987~~ 1988, a child alleged to be unruly may be detained only in the facilities listed in subdivisions a, b, c, and d of subsection 1.

Approved April 4, 1987
Filed April 6, 1987