

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 294

HOUSE BILL NO. 1298

(Representative Kretschmar)

COURT OF APPEALS EXTENDED

AN ACT to amend and reenact section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws and section 6 of chapter 24 of the 1993 Session Laws, relating to extending the expiration date for legislation that created a temporary court of appeals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws and section 6 of chapter 24 of the 1993 Session Laws, is amended and reenacted as follows:

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, ~~1996~~ 2000, and after that date is ineffective.

Approved April 7, 1995

Filed April 7, 1995

CHAPTER 295

SENATE BILL NO. 2119

(Judiciary Committee)

(At the request of the Supreme Court)

JUDGES HOLDING CONSECUTIVE JURY TERMS

AN ACT to repeal section 27-05-18 of the North Dakota Century Code, relating to judges holding consecutive jury terms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 27-05-18 of the North Dakota Century Code is repealed.

Approved March 1, 1995

Filed March 1, 1995

CHAPTER 296

HOUSE BILL NO. 1451 (Representatives Mahoney, Maragos) (Senators Lips, Traynor)

SMALL CLAIMS COURT ACTIONS

AN ACT to amend and reenact sections 27-08.1-01 and 27-08.1-02 of the North Dakota Century Code, relating to actions in small claims court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁸ **SECTION 1. AMENDMENT.** Section 27-08.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-01. Small claims court - Jurisdictional limits - Venue.

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction ~~shall~~ must be known and referred to as the "small claims court". The jurisdiction of such court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed three thousand dollars.
2. The proceedings in this court ~~shall~~ must be commenced:
 - a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
 - b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
 - c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
 - (1) In the county of the defendant's residence or place of business; or
 - (2) If the amount of the claim is less than five hundred dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.

¹⁵⁸ Section 27-08.1-01 was also amended by section 1 of House Bill No. 1458, chapter 297.

- d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
 - e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property, in the county where the defendant resides or in the county where the real property is located.
3. The Except for an action under subdivision e of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. No claim may be filed by an assignee of that claim. No garnishment or attachment may issue from this court.

¹⁵⁹ SECTION 2. AMENDMENT. Section 27-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court ~~shall be~~ are commenced whenever any person executes and files with the court a claim affidavit, and 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~~ the defendant by certified mail along with an order for appearance setting a hearing. The hearing must be not less than ten days and not more than thirty days after the service or receipt of the order. ~~The~~ Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere within the state.

Approved March 21, 1995

Filed March 23, 1995

¹⁵⁹ Section 27-08.1-02 was also amended by section 1 of Senate Bill No. 2118, chapter 298.

CHAPTER 297

HOUSE BILL NO. 1458

(Representatives Koppelman, Belter, Grumbo, Kretschmar)
(Senators Nalewaja, Christmann)

SMALL CLAIMS COURT JURISDICTION

AN ACT to amend and reenact subsection 1 of section 27-08.1-01 and section 27-08.1-03 of the North Dakota Century Code, relating to small claims court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 27-08.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Section 27-08.1-03 of the North Dakota Century Code is amended and reenacted 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 ~~three~~ five thousand dollars, which must be served upon the plaintiff 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 does not apply to counterclaims in excess of ~~three~~ five 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

¹⁶⁰ Section 27-08.1-01 was also amended by section 1 of House Bill No. 1451, chapter 296.

court. A fee as prescribed in subsection 2 of section 11-17-04 must be charged for filing the claim affidavit.

Approved March 21, 1995

Filed March 23, 1995

CHAPTER 298

SENATE BILL NO. 2118

(Judiciary Committee)

(At the request of the Supreme Court)

SMALL CLAIMS ACTION COMMENCEMENT

AN ACT to amend and reenact section 27-08.1-02 of the North Dakota Century Code, relating to commencement of small claims actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶¹ SECTION 1. AMENDMENT. Section 27-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court ~~shall be~~ are commenced whenever any person executes and files with the court a claim affidavit, and 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~~ the defendant by certified mail along with ~~an order for appearance setting a hearing.~~ The a form upon which the defendant must indicate whether a hearing is requested and whether the defendant intends to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing, the hearing must be not less than ten days and not more than thirty days after ~~the service or~~ receipt of the ~~order~~ request. The mailing, or personal service, may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court.

Approved March 17, 1995

Filed March 20, 1995

¹⁶¹ Section 27-08.1-02 was also amended by section 2 of House Bill No. 1451, chapter 296.

CHAPTER 299**HOUSE BILL NO. 1151**
(Transportation Committee)
(At the request of the Attorney General)**DUI TESTING OF MINORS**

AN ACT to amend and reenact subsection 10 of section 27-20-02 and section 39-20-01 of the North Dakota Century Code, relating to the definition of unruly child and to implied consent to determine alcohol and drug content of blood.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶² **SECTION 1. AMENDMENT.** Subsection 10 of section 27-20-02 of the North Dakota Century Code is amended and reenacted 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~~ the child's 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~~ the child or others;
 - c. Has committed an offense applicable only to a child;
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
 - e. Has committed an offense in violation of section 39-08-18 or ~~purchased; attempted to purchase; possessed; or consumed alcoholic beverages~~ 5-01-08; and
 - f. In any of the foregoing instances is in need of treatment or rehabilitation.

SECTION 2. AMENDMENT. Section 39-20-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁶² Section 27-20-02 was also amended by section 8 of Senate Bill No. 2264, chapter 124.

39-20-01. Implied consent to determine ~~alcoholic alcohol~~ and drug content of blood. Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the ~~alcoholic alcohol~~, other drug, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the ~~alcoholic alcohol~~, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a ~~child~~ person under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall ~~diligently~~ attempt to contact the ~~child's person's~~ parent or legal guardian to explain the cause for the custody ~~and the implied consent chemical testing requirements~~. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the person in custody.

Approved April 5, 1995
Filed April 5, 1995

CHAPTER 300**SENATE BILL NO. 2044**

(Legislative Council)

(Interim Budget Committee on Youth Services)

(Senator Robinson)

(Representatives Kunkel, Boucher)

**SEVERELY EMOTIONALLY DISTURBED CHILD
TREATMENT SERVICES**

AN ACT to create and enact a new subdivision to subsection 2 of section 27-20-03 and a new section to chapter 50-06 of the North Dakota Century Code, relating to treatment services for severely emotionally disturbed children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 27-20-03 of the North Dakota Century Code is created and enacted as follows:

Proceedings arising under section 2 of this Act to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.

SECTION 2. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Treatment services for severely emotionally disturbed child. The department may establish a program in up to three human service regions to provide out-of-home treatment services for a severely emotionally disturbed child. Before a child may be placed in an out-of-home treatment program established under this section, the juvenile court must make a judicial determination that the placement is in the best interests of the child. The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems.

Approved April 12, 1995

Filed April 13, 1995

CHAPTER 301**SENATE BILL NO. 2347**
(Senators Watne, C. Nelson, Traynor)
(Representative Timm)**CHILD DEPRIVATION PROCEEDING VENUE**

AN ACT to amend and reenact section 27-20-11 of the North Dakota Century Code, relating to venue in child deprivation proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-11 of the North Dakota Century Code is amended and reenacted as follows:

27-20-11. Venue. A proceeding under this chapter may be commenced in the county in which the child resides. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based upon the best interests of the child.

Approved March 15, 1995
Filed March 15, 1995

CHAPTER 302**SENATE BILL NO. 2229**
(Senators Nalewaja, Scherber, Grindberg)
(Representatives Carlson, Kelsch, Price)**JUVENILE COURT COSTS AND EXPENSES**

AN ACT to amend and reenact subsection 2 of section 27-20-49 of the North Dakota Century Code, relating to costs and expenses of parties in juvenile court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 27-20-49 of the North Dakota Century Code is amended and reenacted as follows:

2. The supreme court shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be borne by that state agency at the state mileage rate excluding meals and lodging.

Approved March 15, 1995
Filed March 15, 1995

CHAPTER 303

SENATE BILL NO. 2093

(Senators Nalewaja, Solberg, Grindberg, Robinson)
(Representatives Kelsch, Carlisle)

JUVENILE COURT RECORD DISCLOSURE

AN ACT to amend and reenact section 27-20-51 of the North Dakota Century Code, relating to disclosure of juvenile court records; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶³ SECTION 1. AMENDMENT. Section 27-20-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-51. Inspection of court files and records.

1. Except as provided in subsection 2, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are confidential and may not be disclosed to the public. ~~Such~~ Juvenile court files and records are open to inspection only by:
 - a. The judge and staff of the juvenile court.
 - b. The parties to the proceeding or their counsel or the guardian ad litem of any party.
 - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
 - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who, ~~prior thereto~~ prior to the criminal case, had been a party to the proceeding in juvenile court.
 - e. The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
 - f. A staff member of the division of children and family services of the department of human services or a law enforcement officer when necessary for the performance of that person's duties under section

¹⁶³ Section 27-20-51 was also amended by section 16 of Senate Bill No. 2264, chapter 124, and section 1 of Senate Bill No. 2090, chapter 304.

50-11.1-06.2 or the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119 et seq.]

2. **Such Juvenile court files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:**
 - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
 - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act ~~which~~ that constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall; ~~within ten days,~~ report the finding to the director of the department of transportation within ten days.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 17, 1995
Filed March 20, 1995

CHAPTER 304

SENATE BILL NO. 2090

(Senators Nalewaja, Solberg, Grindberg, Robinson)
(Representative Carlisle)

JUVENILE COURT RECORD INSPECTION

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-51 of the North Dakota Century Code, relating to persons who may inspect juvenile court records; to amend and reenact section 50-11-02 of the North Dakota Century Code, relating to background checks of persons present in licensed foster care facilities while services are being provided; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁴ SECTION 1. A new subdivision to subsection 1 of section 27-20-51 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

An employee or agent of the department of human services when necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.

SECTION 2. AMENDMENT. Section 50-11-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11-02. License granted - Term - Conditions. A

1. The department shall grant a license for the operation of a facility receiving persons for foster care ~~must be granted~~, for a period of not more than two years, ~~by the department~~ to reputable and responsible persons upon showing that:
 - 1+ a. The premises to be used are in fit sanitary condition and properly equipped to provide good care for all persons who may be received;
 - 2+ b. The persons in active charge of the facility are properly qualified to carry on efficiently the duties required of them;
 - 3+ c. The facility is likely to be conducted for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all persons cared for ~~therein~~ in the facility; and

¹⁶⁴ Section 27-20-51 was also amended by section 16 of Senate Bill No. 2264, chapter 124, and section 1 of Senate Bill No. 2093, chapter 303.

4- d. The facility will be maintained according to the standards prescribed for its conduct by the rules of the department.

2. Before licensing a facility for foster care, the department may investigate the background of an individual living or working in the facility in accordance with rules of the department to determine whether any individual has a criminal record.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1995
Filed April 5, 1995