

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2261

Introduced by

Senator Olafson

Representative N. Johnson

1 A BILL for an Act to create and enact a new section to chapter 5-02 of the North Dakota
2 Century Code, relating to costs of investigation, prosecution or defense, and hearing; to amend
3 and reenact section 5-02-10 of the North Dakota Century Code, relating to hearing of violations;
4 and to provide a continuing appropriation.

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

6 **SECTION 1.** A new section to chapter 5-02 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Costs of investigation, prosecution, and hearing - Continuing appropriation.**

- 9 1. If an adjudicative proceeding results in a finding of violation of this title, the local
10 governing body or the attorney general may assess the costs of the case to a
11 licensed retailer. If an adjudicative proceeding results in a finding of no violation of
12 this title, the licensed retailer is entitled to costs of the case from the local
13 governing body or the attorney general, as is appropriate. For the purposes of this
14 section, "costs of the case" means reasonable out-of-pocket costs, not including
15 any attorney's fees, actually incurred by the party, or the party's authorized
16 representatives, in the conduct of the investigation, prosecution or defense, or
17 hearing of a proceeding brought under section 5-02-10.
- 18 2. No later than thirty days after a finding in a hearing under section 5-02-10 and
19 before the issuance of an order suspending, revoking, or taking adverse action
20 against a retail alcoholic beverage license if that is the case, the party entitled to
21 costs of the case shall mail to the other party by registered mail an itemized list of
22 the costs of the case to be assessed. The other party may object to the
23 reasonableness of any cost. The other party shall deliver to the party seeking
24 costs of the case, no later than ten days after receipt of the itemized list of costs,

1 any written objection to each cost and the reason for the objection. Upon receipt
2 and review of the objection or the failure of the other party to object to a cost in the
3 manner and within the time required by this subsection, the party seeking costs of
4 the case is entitled to the lowest amount of each cost as determined by each party.
5 The party seeking costs of the case may seek disputed costs through a civil action
6 in district court.

7 3. An order after a hearing held pursuant to section 5-02-10 must require the
8 payment of assessed costs of the case. If the costs of the case are to be paid by
9 the licensed retailer, the hearing official shall require payment as a condition of
10 continued licensure, reinstatement of a suspended license, or the issuance of a
11 license, whether after revocation of a previous license or upon an application for a
12 new license.

13 4. Any costs paid by the licensed retailer to the attorney general must be paid into the
14 attorney general operating fund and are appropriated to the attorney general for
15 the purposes of defraying the costs of the case for which the costs were assessed.

16 **SECTION 2. AMENDMENT.** Section 5-02-10 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **5-02-10. Hearing on alleged violations.** Any person having information that a
19 licensed retailer of alcoholic beverages has violated any provisions of this title may file with the
20 attorney general, city attorney, or state's attorney an affidavit ~~specifically setting forth such of~~
21 facts constituting the violation. Upon receipt of ~~such the~~ affidavit, the city attorney or state's
22 attorney shall set the matter for hearing not later than the next regular meeting of the local
23 governing body or forward ~~such the~~ affidavit to the attorney general. Upon receipt of ~~any such~~
24 the affidavit, the attorney general ~~shall~~ may set the matter for hearing in the local county
25 courthouse with the hearing being held not less than ten days after copies of the affidavit and
26 notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by
27 the local governing body, a copy of this affidavit and notice of hearing must be mailed to the
28 licensee by registered mail not less than five days before ~~such the~~ hearing. ~~A~~ The person
29 holding the hearing shall record ~~of such hearings will be made~~ the hearing by stenographic
30 notes or the use of an electronic recording device.