

**SENATE BILL NO. 2068**

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact sections 27-08.1-02 and 27-08.1-04 of the North  
2 Dakota Century Code, relating to commencement and removal of small claims actions.

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

4 **SECTION 1. AMENDMENT.** Section 27-08.1-02 of the 1995 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **27-08.1-02. Commencement of action - Claim affidavit.** Actions in the small claims  
7 court are commenced whenever any person executes and files with the court a claim affidavit,  
8 and causes to be served by a person of legal age, not a party to or interested in the action, the  
9 affidavit on the defendant or mails it to the defendant by certified mail along with a form upon  
10 which the defendant must indicate whether a hearing is requested and whether the defendant  
11 ~~intends~~ elects to remove the action to district court. If, within twenty days of service of the  
12 affidavit and form, the court has not received a request for a hearing or an election to remove to  
13 district court, or if the defendant indicates that a hearing is not requested, a hearing will not be  
14 scheduled and judgment may be entered against the defendant by default. If the defendant  
15 requests a hearing in small claims court, the hearing must be not less than ten days and not  
16 more than thirty days after receipt of the request. Except for an action under subdivision e of  
17 subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere  
18 within the state. Forms used in small claims court actions must be approved by the state court  
19 administrator and obtained from, or at the direction of, the clerk of district court.

20 **SECTION 2. AMENDMENT.** Section 27-08.1-04 of the North Dakota Century Code is  
21 amended and reenacted as follows:

1           **27-08.1-04. Election to proceed in small claims court irrevocable.** Election by the  
2 plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the  
3 plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and  
4 unless otherwise provided in the order ~~such~~ the dismissal must be deemed to be with prejudice.  
5 By election to proceed in small claims court, the plaintiff waives ~~his~~ the right to appeal to any  
6 other court from the decision of the small claims court. The defendant waives ~~his~~ the right to  
7 appeal from the decision of the small claims court upon receiving ~~his~~ the order for appearance  
8 as required herein, unless ~~he~~ the defendant elects to remove the action from the small claims  
9 court to a district court ~~which would have jurisdiction over said matter in the absence of the~~  
10 ~~small claims court by filing with the small claims court and serving.~~ If the defendant elects to  
11 remove the action to district court, the defendant must serve upon the plaintiff a notice of ~~such~~  
12 the removal; and filing file with the clerk of the court to which ~~said~~ the action is removed a copy  
13 of the claim affidavit and the defendant's answer ~~thereto~~ along with the filing fee and answer  
14 fee required for civil actions ~~in said court, not later than forty-eight hours before the hearing set~~  
15 ~~for the appearance of the defendant.~~