

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 264

HOUSE BILL NO. 1419

(Representatives Kretschmar, Klemin, Maragos)
(Senators Traynor, Trenbeath)

TEMPORARY COURT OF APPEALS EXTENSION

AN ACT to amend and reenact sections 27-02.1-01, 27-02.1-02, 27-02.1-03, 27-02.1-04, 27-02.1-05, 27-02.1-06, 27-02.1-07, 27-02.1-08, and 27-02.1-09 of the North Dakota Century Code, relating to the temporary court of appeals; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-01. (Effective through January 1, 2004 2008) 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. AMENDMENT. Section 27-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-02. (Effective through January 1, 2004 2008) 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. AMENDMENT. Section 27-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-03. (Effective through January 1, 2004 2008) 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. AMENDMENT. Section 27-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-04. (Effective through January 1, 2004 2008) 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. AMENDMENT. Section 27-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-05. (Effective through January 1, ~~2004~~ 2008) 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. AMENDMENT. Section 27-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-06. (Effective through January 1, ~~2004~~ 2008) 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. AMENDMENT. Section 27-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-07. (Effective through January 1, ~~2004~~ 2008) Right to appeal not created. This chapter does 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. AMENDMENT. Section 27-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-08. (Effective through January 1, ~~2004~~ 2008) 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. AMENDMENT. Section 27-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

27-02.1-09. (Effective through January 1, ~~2004~~ 2008) Publication of opinions. Opinions of the panels of the temporary court of appeals may be published pursuant to rules of the supreme court.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 265**HOUSE BILL NO. 1390**

(Representative DeKrey)

COURT ELECTRONIC FILING FEES

AN ACT to amend and reenact section 27-03-05 of the North Dakota Century Code, relating to fees collected by the clerk of the supreme court; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-03-05 of the North Dakota Century Code is amended and reenacted as follows:

27-03-05. Fees to be charged and collected by clerk of supreme court - Electronic filing administration fund - Continuing appropriation. The clerk of the supreme court shall charge and collect in advance a fee of one hundred twenty-five dollars upon the filing in the supreme court of the record in any cause upon appeal or upon the filing in ~~such the~~ court of a petition in any cause seeking the exercise of the original court's jurisdiction ~~thereof~~. In addition to the fee required by this section, the clerk of the supreme court shall charge and collect any electronic filing processing fee established by court rule for any matter filed in an electronic format. The electronic filing administration fund is established in the state treasury. The clerk of the supreme court shall remit electronic filing processing fee revenue to the state treasurer for deposit in the electronic filing administration fund. All moneys in the fund are appropriated on a continuing basis to the judicial branch to be used to cover the actual costs of maintaining an electronic filing system and managing documents filed in an electronic format.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 266

HOUSE BILL NO. 1088

(Judiciary Committee)

(At the request of the Supreme Court)

COURT FACILITIES IMPROVEMENT FUND AND COMMITTEE

AN ACT to create and enact three new sections to chapter 27-05.2 of the North Dakota Century Code, relating to establishment of a court facilities improvement and maintenance fund and court facilities improvement advisory committee; to amend and reenact sections 12-48-15, 12-48.1-03, 29-26-22, 39-08-20, and 51-04-03.1 of the North Dakota Century Code, relating to court administration fees; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-15 of the North Dakota Century Code is amended and reenacted as follows:

12-48-15. Disposition of moneys earned - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. Not more than fifty percent of an inmate's penitentiary earnings, as provided by penitentiary rules, must be withheld from an inmate and deposited in a separate account for the inmate and may not be made available to the inmate until the inmate's release from the penitentiary, except as authorized by the warden. The remainder of an inmate's earnings must be made available to the inmate on a regular basis.
2. Inmates may, in writing, authorize the warden or designee to deposit any of their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account must be a two-signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. The warden may directly deposit an inmate's funds from sources outside of the penitentiary in any bank or account the inmate may designate. If a court order does not allow an inmate to designate a bank or account other than a Bank of North Dakota account or if it is necessary for the benefit and protection of the inmate, the warden, upon written explanation to the inmate, shall deposit an inmate's funds from sources outside the penitentiary into a Bank of North Dakota account. The department of corrections and rehabilitation and its divisions, departments, officers, and employees may not be held responsible or liable for any inmate income or funds deposited into a bank or account designated by an inmate.

4. The warden is responsible for guiding inmates in making proper use of their funds to pay their obligations, including the payment of ~~court costs~~ any administration fee, court-appointed counsel fees, court-ordered restitution, support for dependent relatives, or to provide for their own medical, surgical, eye care, or dental treatment or services not generally provided by the state. The warden may withdraw funds from an inmate's penitentiary account or Bank of North Dakota two-signature account, without the inmate's signature, to meet the inmate's legitimate financial obligations. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a penitentiary administrative hearing with the right to penitentiary staff assistance and the right to appeal to the director of the department of corrections and rehabilitation. An inmate is not entitled to prior written notice, administrative hearing, or right to an appeal to the department of corrections and rehabilitation when funds are to be withdrawn for payment of a court-ordered obligation, including child support, provided the inmate has had notice and an opportunity to be heard in the court proceedings.
5. The warden may pay an inmate all funds in the inmate's account, less the inmate's outstanding obligations to the penitentiary, when the inmate is transferred to a county jail or regional correctional center or placed in community corrections confinement. The warden shall pay an inmate all funds in the inmate's account less the inmate's outstanding obligations to the penitentiary when the inmate is transferred to a correctional facility outside of this state, released on parole, or discharged from the penitentiary.

SECTION 2. AMENDMENT. Section 12-48.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-03. Use of funds earned on work release. The plan for the inmate shall provide that any funds earned in outside employment will be used in the following order: for necessary expenses of the inmate, including room and board costs of the institution; ~~court costs or~~ any administration fee and fine; restitution if a part of the sentence; necessary support of dependents; and credited to inmate's personal account to be paid the inmate on release.

SECTION 3. A new section to chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

Court facilities improvement and maintenance fund - Administration - Continuing appropriation. The court facilities improvement and maintenance fund is a special fund in the state treasury. The state treasurer shall deposit in the fund certain fees collected under section 29-26-22. All moneys in the fund are appropriated on a continuing basis to be used as provided in this chapter.

SECTION 4. A new section to chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

Court facilities improvement advisory committee - Members.

1. The court facilities improvement advisory committee consists of:

- a. One member appointed by the North Dakota association of counties to represent counties with a population fewer than seven thousand five hundred.
 - b. One member appointed by the North Dakota association of counties to represent counties with a population of seven thousand five hundred or more.
 - c. One member, who shall serve as chairman of the committee, appointed by the chief justice of the supreme court.
 - d. One member appointed by the state bar association of North Dakota.
 - e. One member appointed by the chairman of the legislative council.
2. The term of each member is three years. Initially, as determined by lot, one member shall serve for one year, two members shall serve for two years, and two members shall serve for three years. At the end of the member's term, the appointing authority shall appoint a successor for a full three-year term. A member may not serve more than two 3-year terms. A vacancy must be filled by the appointing authority for the remainder of the term.
 3. At the initial meeting of the committee, the committee shall adopt rules of operation and procedure for the committee. The committee shall submit the rules to the supreme court for approval. The rules of operation must provide that a quorum of the committee consists of at least four members.
 4. The members of the committee are entitled to reimbursement for travel and expenses as provided by law for other state officers. Travel and expense costs must be paid from funds from the court facilities improvement and maintenance fund.
 5. The supreme court shall provide staff services for the committee.

SECTION 5. A new section to chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

Application for grants from court facilities improvement and maintenance fund. Moneys in the court facilities improvement and maintenance fund may be used by the court facilities improvement advisory committee to make grants to counties to provide funds for court facilities improvement and maintenance projects. The committee shall review applications to determine if the purpose of a grant is consistent with the purposes of the fund and if the proposed project is a necessary improvement to court facilities or essential to remodel or maintain existing court facilities in the applicant county. A grant may be awarded to a county only if the applicant county agrees to provide local funding for the project in an amount at least equal to twenty-five percent of the total cost of the project. The committee shall ensure that at least twenty-five percent of funds granted during a biennium are allocated to counties with a population fewer than seven thousand five hundred. Grants disbursed under this section may be used only to improve or provide essential remodeling or maintenance to facilities used for chambers, courts, and court-related services.

SECTION 6. AMENDMENT. Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

29-26-22. Judgment for fines, ~~costs~~, and court administration fee - ~~Statement to be filed by court~~ **Special fund - Docketing and enforcement.**

In all criminal cases except infractions, upon a plea or finding of guilt, a the court shall impose a court administration fee in lieu of the assessment of court costs. The court administration fee must include a fee of up to thirty percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs one hundred twenty-five dollars for a class B misdemeanor, two hundred dollars for a class A misdemeanor, four hundred dollars for a class C felony, six hundred fifty dollars for a class B felony, and nine hundred dollars for a class A or AA felony. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. In addition, in all criminal cases except infractions, the court administration fee must include one hundred dollars. Of the additional one hundred dollar court administration fee, the first seven hundred fifty thousand dollars collected per biennium must be deposited in the indigent defense administration fund, which must be used to contract for indigent defense services in this state, and the next four hundred sixty thousand dollars collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund. A court may waive the administration fee upon a showing of indigency as provided in section 25-03.1-13. District court ~~costs~~, administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A judgment that the defendant pay a fine, ~~costs~~, or court administration fee, or ~~any combination thereof both~~, may be docketed, and ~~thereafter if docketed~~ constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed ~~costs or administrative~~ administration fee in installments. When a defendant is assessed ~~costs or administrative~~ administration fees, the court may not impose at the same time an alternative sentence to be served if the ~~costs~~ fees are not paid.

¹²⁶ **SECTION 7. AMENDMENT.** Section 39-08-20 of the North Dakota Century Code is amended and reenacted as follows:

39-08-20. Driving without liability insurance prohibited - Penalty.

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be

¹²⁶ Section 39-08-20 was also amended by section 1 of House Bill No. 1238, chapter 324.

charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days of the date of the request. If that person produces a valid policy of liability insurance in effect at the time of violation of this section to the officer, officer's agency, or a court, that person may not be convicted or assessed any ~~court costs~~ administration fee for violation of this section. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within an eighteen-month period must be fined at least three hundred dollars which may not be suspended.

2. Upon conviction for a violation of this section or equivalent ordinance, the person who has been convicted shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of three years and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
3. A person who has been convicted for violation of this section or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.
4. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

SECTION 8. AMENDMENT. Section 51-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

51-04-03.1. License to be carried by licensee and exhibited on demand.

Every transient merchant licensed under this chapter shall have the license in immediate possession at all times when engaging in or transacting any business regulated by this chapter. The licensee shall display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed ~~court costs~~ the administration fee if the license is produced in court or to the arresting officer and if the license was valid at the time of the arrest.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 267

HOUSE BILL NO. 1090

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

JUVENILE RECORDS

AN ACT to amend and reenact subsection 1 of section 27-20-51 and section 27-20-52 of the North Dakota Century Code, relating to juvenile records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 27-20-51 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in this section, 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 closed to the public. 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 to the criminal case, had been a party to the proceeding in juvenile court.
 - e. The professional staff of the uniform crime victims compensation 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 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.].
 - g. 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.

- h. A criminal justice agency if the juvenile is required to register under section 12.1-32-15.

SECTION 2. AMENDMENT. Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement and correctional facility records. Law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, these records and files may not be open to public inspection; but inspection of these records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is or may be committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of ~~penal institutions and other penal~~ correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
6. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4; and
7. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.

Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, nothing in this section may be construed to limit the release of general information not identifying the identity of the child.

Approved March 25, 2003

Filed March 25, 2003