

**HOUSE BILL NO. 1387**

Introduced by

Representatives DeKrey, Carlson, Meyer, Weisz

Senators Mutch, Solberg

1 A BILL for an Act to amend and reenact section 28-26-01 of the North Dakota Century Code,  
2 relating to the awarding of attorney's fees.

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

4 **SECTION 1. AMENDMENT.** Section 28-26-01 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **28-26-01. ~~Attorney's fees by agreement—Exceptions—~~ Awarding of costs and  
7 attorney's fees to prevailing party - Definitions - Exceptions.**

8 1. ~~Except as provided in subsection 2, the amount of fees of attorneys in civil actions~~  
9 ~~must be left to the agreement, express or implied, of the parties. As used in this~~  
10 ~~section:~~

11 a. "Contract fee award action" means an action in which the parties agree that  
12 attorney's fees are to be awarded to the prevailing party.

13 b. "Fee recoverable action" means a civil action or proceeding in any court in  
14 this state or a civil action or proceeding in any court in which the laws of this  
15 state supply the rule of decision. The term does not include:

16 (1) An action between a prisoner and any governmental body, official, or  
17 employee.

18 (2) An action under section 14-05-23, 14-06-02, 14-17-15, subsection 1 of  
19 section 28-32-21.1, or section 38-14.1-36.

20 (3) An action arising out of a proceeding before a governmental body or  
21 officer in which the governmental body or officer determines a person's  
22 eligibility for or entitlement to a monetary benefit or its equivalent,  
23 adjudicates a dispute or issue between other parties, or establishes or  
24 fixes a rate.

- 1                   (4) An action in which the nonprevailing party is a nominal party, has no  
2   substantial interest, or does not substantially participate.
- 3           2. Except as provided in subsections 3 and 4, in a fee recoverable action filed after  
4                   July 31, 1999, the court shall award the prevailing party reasonable attorney's fees,  
5                   including the attorney's litigation expenses that the client reasonably reimbursed as  
6                   a part of the attorney's fee.
- 7           3. If the court awards attorney's fees pursuant to subsection 2, the court shall award  
8                   attorney's fees in the amount equivalent to the fair market value of the services for  
9                   which the award is made, subject to the following conditions:
- 10           a. The prevailing party's attorney reasonably rendered the services, reasonably  
11                   incurred the expenses, and the attorney acted in good faith and in courteous  
12                   pursuit of the truthful, economical, and lawful resolution of the action or in  
13                   reasonable response to actions by the nonprevailing party.
- 14           b. The court may not award attorney's fees in excess of the amount that the  
15                   prevailing party paid or agrees to pay for the services rendered.
- 16           c. If the services that were rendered in the action exceed what are otherwise  
17                   reasonable for the matter in controversy, the court shall award the prevailing  
18                   party the fair market value of the legal services rendered to the extent that the  
19                   nonprevailing party or the nonprevailing party's attorney caused the services  
20                   to exceed what are otherwise reasonable.
- 21           d. The court may not adjust the value of the services for or give other  
22                   consideration to the contingent nature of the attorney's right to payment from  
23                   the prevailing party.
- 24           4. In a contract fee award action or a fee recoverable action, in addition to any other  
25                   sanctions concerning offers of judgment, the prevailing party may not be awarded  
26                   attorney's fees that are incurred after an offer of settlement or judgment expires if  
27                   the prevailing party does not accept the settlement or judgment offer and the offer  
28                   is equally or more favorable to the prevailing party than the judgment the prevailing  
29                   party finally obtains. If the prevailing party is not awarded fees pursuant to this  
30                   subsection, the nonprevailing party may be awarded reasonable attorney's fees  
31                   that the nonprevailing party incurred after the offer expired.

1           5. Except as provided in subsection 4, this section does not limit the amount of  
2           attorney's fees awarded to a prevailing party pursuant to the terms of the parties'  
3           contract for the award of attorney fees.

4           2- 6. In ~~civil actions~~ any contested action, the court ~~shall~~, upon a finding that a claim for  
5           relief was frivolous, shall award reasonable actual and statutory costs, including  
6           reasonable attorney's fees to the prevailing party. ~~Such~~ The costs must be  
7           awarded regardless of the good faith of the attorney or party making the claim for  
8           relief if there is such a complete absence of actual facts or law that a reasonable  
9           person could not have thought a court would render judgment in their favor,  
10          providing the prevailing party has in responsive pleading alleged the frivolous  
11          nature of the claim. This subsection does not require the award of costs or fees  
12          against an attorney or party advancing a claim unwarranted under existing law, if it  
13          is supported by a good faith argument for an extension, modification, or reversal of  
14          the existing law.