

HOUSE BILL NO. 1251

Introduced by

Representatives Klemin, Kretschmar

Senator Trenbeath

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

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.**

- 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.
- 10 2. In civil actions the court ~~shall~~, upon a finding that a claim for relief or a defense was
11 frivolous or had no sound basis in fact or law, shall award reasonable actual and
12 statutory costs, including reasonable attorney's fees to the prevailing party. ~~Such~~
13 ~~costs must be awarded regardless of the good faith of the attorney or party making~~
14 ~~the claim for relief if there is such a complete absence of actual facts or law that a~~
15 ~~reasonable person could not have thought a court would render judgment in their~~
16 ~~favor, providing against the attorney or party advancing the claim or defense if the~~
17 prevailing party has in responsive pleading alleged the frivolous nature or unsound
18 basis of the claim or defense. This subsection does not require the award of costs
19 or fees against an attorney or party advancing a claim or defense unwarranted
20 under existing law, if it is supported by a good faith argument for an extension,
21 modification, or reversal of the existing law.