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## Sometimes, there really ought to be a new law

*By Frederic Smith for the Tribune*

Not every bill before the Legislature is a blockbuster, but some of the more modest ones still have their useful work to do and illustrate why, after 116 years of statehood, we still need new laws.

Take HB1064, described by local Associated Press writer James Warden in a good story March 20. Here is a modest little bill if there ever was one. Authored by Rep. Lawrence Klemin, R-Bismarck, it navigated two legislative hearings and three floor votes -- two in the House, where it was returned for concurrence in a Senate amendment -- without attracting a single nay vote. One can probably safely assume that debate was minimal.

But, if HB1064 is self-evident wisdom, how was it 116 years in impressing its inevitability upon the Legislature?

The bill came out of a problem encountered by a Klemin constituent, who had sued a contractor for recovery of the cost of a poor-quality job. His venue was the state small-claims court, which is for disputes of under \$5,000. There, a judge listens to the two sides and rules for one or the other. There are usually no lawyers, and there is no resort to a jury. Also no appeal.

In the case of Klemin's client, the contractor defendant exercised his right to have the venue moved to state district court, where you need a lawyer to navigate. The plaintiff won his \$4,186 award, but his lawyer was going to cost him \$2,390. He asked the judge to make the defendant pick up his legal bill, too.

The judge agreed, believing the move to district court and the necessity of a lawyer had been intended to scare the plaintiff into dropping his suit. But he was reversed by the state Supreme Court, which said that there was no authority in state law for the judge's order.

Klemin's bill, for which the next stop is the desk of Gov. John Hoeven, repairs that deficiency. It provides that a defendant who causes a case to be moved to district court, and loses, must pick up the cost of the plaintiff's lawyer.

The AP's Warden encountered doubters. A court official told him that, of about 500 small-claims cases filed in the South Central district every year, maybe 20 or 25 are moved to district court.

OK, that's only 5 percent. But, statewide, small claims are no small potatoes; there were 5,828 of them in North Dakota last year. Five percent of that is 291 possible cases in which, without HB1064, a defendant might be confronted with legal costs that degrade the value of his award.

Besides, court jumping as a strategy for discouraging claims is one that could catch on and grow, defeating the whole idea of recovery of small claims.

So, we can have gotten along perfectly well without HB1064 for 116 years -- and still need it today.

Occasionally, you hear somebody say that the Legislature should meet for two days every 80 years instead of for 80 days every two years. Such a person thinks that, after all this time, it has nothing to do but pass superfluous and therefore burdensome laws.

Of course, this ignores constitutional legislative responsibilities, such as setting the budget that must be shouldered every two years. But enter HB1064 as evidence that, as long as human nature remains endlessly inventive, so must the law that follows after it to clean up.