

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 687

Short Title: Funds Held for Minors and Incompetents/Fee. (Public)

Sponsors: Representatives Moore; and Faison.

Referred to: Judiciary II, if favorable, Finance.

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE FEE ASSESSED BY THE CLERK OF COURT FOR
3 FUNDS TO BE INVESTED BY THE CLERK AND TO PROVIDE FOR THE
4 PRIVATE MANAGEMENT OF FUNDS HELD FOR MINORS AND
5 INCOMPETENT ADULTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 7A-308.1(2) reads as rewritten:

8 "(2) On all funds to be invested by the clerk pursuant to G.S. 7A-112, a fee
9 equal to ~~five percent (5%)~~ two and one-half percent (2.5%) of each
10 fund shall be assessed and collected, subject to the following
11 conditions:

- 12 a. The fee shall be charged and deducted from each fund before
13 the fund is invested, and only the balance shall be invested;
- 14 b. Over the life of an account, the fees charged on the initial funds
15 and all funds subsequently placed with the clerk for that
16 account shall not exceed the investment earnings on the account
17 or one thousand dollars (\$1,000), whichever is less;
- 18 c. All fees collected pursuant to this subsection shall be remitted
19 to the State Treasurer for the support of the General Court of
20 Justice; and
- 21 d. Any fees charged in excess of the cumulative investment
22 earnings on an account shall be refunded and all investment
23 earnings in excess of the prescribed fee shall be remitted to the
24 beneficial owner or owners when all funds in that account are
25 finally withdrawn and distributed by the clerk."

26 **SECTION 2.** Chapter 7A of the General Statutes is amended by adding a
27 new section to read:

28 **"§ 7A-114. Private management of funds held for minors and incompetent adults.**

1 Whenever a minor or an incompetent adult is awarded a judgment in a civil action or
2 is otherwise in receipt of funds:

3 (1) If a general guardian or guardian of the estate has been appointed to
4 represent the minor or incompetent adult, the court shall direct the
5 guardian to receive, manage, and control those funds.

6 (2) If no guardian has been appointed to represent the minor or
7 incompetent adult, the court shall, with the consent of the parties,
8 direct the clerk to appoint a general guardian or guardian of the estate
9 under Chapter 35A of the General Statutes to receive, manage, and
10 control those funds, unless the court finds it would not be in the best
11 interest of the minor or incompetent adult to do so. If receipt of the
12 funds by the clerk becomes necessary in advance of the appointment
13 and bonding of the guardian, the clerk may not invest the funds and
14 assess a fee under G.S. 7A-308.1(2) but shall hold the funds for the
15 benefit of the minor or incompetent adult pending disbursement to the
16 guardian upon appointment.

17 A guardian managing funds under this section has the authority granted, and duties
18 imposed, under Article 9 of Chapter 35 of the General Statutes to manage and invest the
19 funds in a reasonable and prudent manner and in the best interest of the minor or
20 incompetent ward."

21 **SECTION 3.** Section 1 of this act becomes effective July 1, 2007, and
22 applies to funds invested by the clerk on or after that date. The remainder of this act
23 becomes effective July 1, 2007.