

NORTH CAROLINA GENERAL ASSEMBLY
1975 SESSION

CHAPTER 391
SENATE BILL 571

AN ACT TO AMEND CHAPTERS 1 AND 15 OF THE GENERAL STATUTES AND RELATED PROVISIONS DEALING WITH APPELLATE PROCEDURE IN THE COURTS, TO CONFORM TO THE RULES OF APPELLATE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-285 is amended by deleting the last two sentences.

Sec. 2. G.S. 1-287 is repealed.

Sec. 3. G.S. 1-279 is deleted and rewritten to read as follows:

"§ 1-279. Manner and time for taking appeal in civil action or special proceeding — (a) From Judgments and Orders Rendered in Session. Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding during a session of court may take appeal by:

- (1) giving oral notice of appeal at trial, or at any hearing of a timely motion under G.S. 1A-1, Rule 59, for a new trial or to alter or amend a judgment, or under G.S. 1A-1, Rule 50, for judgment notwithstanding the verdict with or without a motion for a new trial; or
- (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c).

(b) From Judgments and Orders Rendered Out of Session. Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding out of session may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c).

(c) Time When Taken by Written Notice. If not taken by oral notice as provided in subsection (a)(1), appeal from a judgment or order in a civil action or special proceeding must be taken within 10 days after its entry. The running of the time for filing and serving a notice of appeal in a civil action or special proceeding is tolled as to all parties by a timely motion filed by any party pursuant to the Rules of Civil Procedure enumerated in this subdivision, and the full time for appeal commences to run and is to be computed from the entry of an order upon any of the following motions: (i) a motion under G.S. 1A-1, Rule 50(b), for judgment n.o.v. whether or not with conditional grant or denial of new trial; (ii) a motion under G.S. 1A-1, Rule 52(b), to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (iii) a motion under G.S. 1A-1, Rule 59, to alter or amend a judgment; (iv) a motion under G.S. 1A-1, Rule 59, for a new trial. If a timely notice of appeal is filed and served by a party, any other party may file and serve a notice of appeal within 10 days after the first notice of appeal was served on such party.

(d) Content and Service of Notice of Appeal. The content and mode of service of the notice of appeal required by this section are as prescribed by the rules of appellate procedure."

Sec. 4. G.S. 1-280 is repealed.

Sec. 5. G.S. 15-180 is amended by deleting the clause following the last semicolon, replacing that semicolon with a period, and adding after that period the following:

"The manner and time for taking appeal are as provided in G.S. 15-180.3. The procedure for perfecting and prosecuting the appeal after its taking are as provided by the rules of appellate procedure."

Sec. 6. A new section, G.S. 15-180.3, is added to read as follows:

"§ 15-180.3. Manner and time for taking appeal in criminal action. — (a) Any party entitled by law to appeal to the appellate division from a judgment or order of a superior or district court rendered in a criminal action may take appeal by:

- (1) giving oral notice of appeal at trial, or
- (2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within 10 days after the last day of the session at which rendered.

(b) Content and Service of Notice of Appeal. The content and mode of service of the notice of appeal required by this section are as prescribed by the rules of appellate procedure."

Sec. 7. G.S. 1-282 is repealed.

Sec. 8. G.S. 1-283 is deleted and rewritten to read as follows:

"§ 1-283. Trial judge empowered to settle record on appeal; effect of leaving office or of disability. — Except as provided in this section, only the judge of superior court or of district court from whose order or judgment an appeal has been taken is empowered to settle the record on appeal when judicial settlement is required. A judge retains power to settle a record on appeal notwithstanding he has resigned or retired or his term of office has expired without reappointment or reelection since entry of the judgment or order. Proceedings for judicial settlement when the judge empowered by this section to settle the record on appeal is unavailable for the purpose by reason of death, mental or physical incapacity, or absence from the State shall be as provided by the rules of appellate procedure."

Sec. 9. G.S. 1-284 is repealed.

Sec. 10. G.S. 1-287.1 is repealed.

Sec. 11. G.S. 58-9.5 is amended as follows:

- (1) By deleting subsection (4) and rewriting it to read as follows:
"(4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure."
- (2) By repealing subsections (5) and (6).
- (3) By renumbering subsections (7), (8), (9), and (10) to be subsections (5),(6), (7), and (8) respectively.
- (4) By deleting in the first and last sentences of renumbered subsection (6) the words "the Court of Appeals" and substituting therefor in each sentence the words "appellate procedure."

Sec. 12. G.S. 62-90 is amended as follows:

- (1) By deleting subsection (d) and rewriting it to read as follows: "(d) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure."
- (2) By repealing subsections (e) and (f).
- (3) By relettering subsection (g) to be subsection (e).

Sec. 13. G.S. 62-91 is amended by deleting in the first and last sentences thereof the words "the Court of Appeals" and substituting therefor in each sentence the words "appellate procedure."

Sec. 14. G.S. 62-94(a) is amended by deleting, wherever it appears, the words "the Court of Appeals" and substituting therefor in each instance the words "appellate procedure."

Sec. 15. G.S. 97-86 is amended by deleting all of the first unnumbered paragraph except the first sentence thereof, all of the second unnumbered paragraph, and all of the third

unnumbered paragraph; and by substituting for the deleted matter the following: "The procedure for the appeal shall be as provided by the rules of appellate procedure."

Sec. 16. This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date.

In the General Assembly read three times and ratified, this the 26th day of May, 1975.