

NORTH CAROLINA GENERAL ASSEMBLY  
1975 SESSION

CHAPTER 76  
HOUSE BILL 201

AN ACT TO AMEND G.S. 1-75.7 AND G.S. 1A-1, RULE 12, TO PROVIDE THAT OBTAINING AN EXTENSION OF TIME WITHIN WHICH TO ANSWER OR OTHERWISE PLEAD SHALL NOT BE CONSIDERED A GENERAL APPEARANCE AND SHALL NOT CONSTITUTE A WAIVER OF ANY DEFENSE SET FORTH IN RULE 12(b).

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 1-75.7 is hereby amended to read as follows:

"§ 1-75.7. **Personal jurisdiction - grounds for without service of summons.** — A court of this State having jurisdiction of the subject matter may, without serving a summons upon him, exercise jurisdiction in an action over a person:

- (1) Who makes a general appearance in an action; provided, that obtaining an extension of time within which to answer or otherwise plead shall not be considered a general appearance; or
- (2) With respect to any counterclaim asserted against that person in an action which he has commenced in the State."

**Sec. 2.** G.S. 1A-1, Rule 12(b), is hereby amended to read as follows:

"(b) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter,
- (2) Lack of jurisdiction over the person,
- (3) Improper venue or division,
- (4) Insufficiency of process,
- (5) Insufficiency of service of process,
- (6) Failure to state a claim upon which relief can be granted,
- (7) Failure to join a necessary party.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. The consequences of failure to make such a motion shall be as provided in sections (g) and (h). No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. Obtaining an extension of time within which to answer or otherwise plead shall not constitute a waiver of any defense herein set forth. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

**Sec. 3.** This act shall become effective October 1, 1975 and shall not affect any pending litigation.

In the General Assembly read three times and ratified, this the 25th day of March, 1975.