

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 955

Short Title: Proper Trial Division/Counsel Fees.

(Public)

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Sponsors: Senators Dalton; Clodfelter, Horton, and Martin of Guilford.

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Referred to: Judiciary II.

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April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO RAISE THE AMOUNT IN CONTROVERSY THAT DETERMINES THE  
PROPER DIVISION FOR TRIAL OF CIVIL ACTIONS AND TO ALLOW  
COUNSEL FEES AS PART OF COSTS IN CERTAIN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-243 reads as rewritten:

**"§ 7A-243. Proper division for trial of civil actions generally determined by amount  
in controversy.**

Except as otherwise provided in this Article, the district court division is the proper  
division for the trial of all civil actions in which the amount in controversy is ~~ten thousand~~  
~~dollars (\$10,000)-~~twenty thousand dollars (\$20,000) or less; and the superior court division  
is the proper division for the trial of all civil actions in which the amount in controversy  
exceeds ~~ten thousand dollars (\$10,000)-~~twenty thousand dollars (\$20,000).

For purposes of determining the amount in controversy, the following rules apply  
whether the relief prayed is monetary or nonmonetary, or both, and with respect to claims  
asserted by complaint, counterclaim, cross-complaint or third-party complaint:

(1) The amount in controversy is computed without regard to interest and  
costs.

(2) Where monetary relief is prayed, the amount prayed for is in  
controversy unless the pleading in question shows to a legal certainty

1 that the amount claimed cannot be recovered under the applicable  
2 measure of damages. The value of any property seized in attachment,  
3 claim and delivery, or other ancillary proceeding, is not in controversy  
4 and is not considered in determining the amount in controversy.

5 (3) Where no monetary relief is sought, but the relief sought would  
6 establish, enforce, or avoid an obligation, right or title, the value of the  
7 obligation, right, or title is in controversy. Where the owner or legal  
8 possessor of property seeks recovery of property on which a lien is  
9 asserted pursuant to G.S. 44A-4(a) the amount in controversy is that  
10 portion of the asserted lien which is disputed. The judge may require by  
11 rule or order that parties make a good faith estimate of the value of any  
12 nonmonetary relief sought.

13 (4) a. Except as provided in subparagraph c of this subdivision, where a  
14 single party asserts two or more properly joined claims, the claims are  
15 aggregated in computing the amount in controversy.

16 b. Except as provided in subparagraph c, where there are two or  
17 more parties properly joined in an action and their interests are  
18 aligned, their claims are aggregated in computing the amount in  
19 controversy.

20 c. No claims are aggregated which are mutually exclusive and in  
21 the alternative, or which are successive, in the sense that  
22 satisfaction of one claim will bar recovery upon the other.

23 d. Where there are two or more claims not subject to aggregation  
24 the highest claim is the amount in controversy.

25 (5) Where the value of the relief to a claimant differs from the cost thereof  
26 to an opposing party, the higher amount is used in determining the  
27 amount in controversy."

28 Section 2. G.S. 6-21.1 reads as rewritten:

29 **"§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

30 ~~In~~ When the proper division for trial is district court in any personal injury or property  
31 damage suit, or suit against an insurance company under a policy issued by the defendant  
32 insurance company and in which the insured or beneficiary is the plaintiff, upon a finding  
33 by the court that there was an unwarranted refusal by the defendant insurance company to  
34 pay the claim ~~which that~~ constitutes the basis of such the suit, instituted in a court of  
35 record, ~~where the judgment for recovery of damages is ten thousand dollars (\$10,000) or less,~~  
36 the presiding judge may, in ~~his the~~ judge's discretion, allow a reasonable attorney fee to  
37 the ~~duly licensed~~ attorney representing the litigant obtaining a judgment for damages in  
38 ~~said the~~ suit, said the attorney's fee to be taxed as a part of the court costs."

39 Section 3. This act becomes effective October 1, 1999, and applies to civil  
40 actions commenced on or after that date.