

NORTH CAROLINA GENERAL ASSEMBLY  
1971 SESSION

CHAPTER 268  
SENATE BILL 93

AN ACT TO AMEND VARIOUS SECTIONS OF GENERAL STATUTES CHAPTER 1 (CIVIL PROCEDURE), TO CONFORM TO THE STRUCTURAL AND JURISDICTIONAL PROVISIONS OF THE GENERAL COURT OF JUSTICE AS SET FORTH IN CHAPTER 7A.

The General Assembly of North Carolina do enact:

**Section 1.** G.S. 1-80 is amended by deleting from the first sentence the words "superior court" and inserting in lieu thereof the words "appropriate trial court division"

**Sec. 2.** G.S. 1-84 is amended by deleting from the second line "criminal" and inserting in lieu thereof "district"; by deleting from the end of the first sentence the words "to the appellate division"; by deleting from the third sentence the words "appellate division" and inserting in lieu thereof the word "court"; and by deleting the last sentence.

**Sec. 3.** G.S. 1-109(3) is amended by inserting in the first line before the word "judge" the words "superior or district court".

**Sec. 4.** G.S. 1-110 is amended by inserting in the first line before the word "judge" the words "superior or district court" and by deleting the phrase "preceding section § 1-109" and by inserting in lieu thereof "provisions of G.S. 1-109".

**Sec. 5.** G.S. 1-148 is amended in line two by deleting the words "superior court" and inserting in lieu thereof the words "General Court of Justice" and in line three by deleting therefrom the words "justice of the peace" and inserting in lieu thereof the word "magistrate".

**Sec. 6.** G.S. 1-233 is amended in line two of the first paragraph by inserting the words "or district" after the word "superior"; in the first line of the second paragraph by inserting the words "or district" after the word "superior"; and in the second paragraph by deleting therefrom the word "term" and inserting in lieu thereof the word "session" wherever the former appears.

**Sec. 7.** G.S. 1-234 is amended by deleting from lines four and five the word "superior".

**Sec. 8.** G.S. 1-236.1 is amended by inserting in line two after the word "superior" the words "or district".

**Sec. 8.1.** G.S. 1-245 is amended by deleting the last sentence.

**Sec. 9.** G.S. 1-262 is hereby rewritten to read as follows:

**"§ 1-262. Hearing before judge where no issues of fact raised or jury trial waived; what judge may hear.** — Proceedings under this Article shall be tried at a session of court, as in other civil actions. If no issues of fact are raised, or if such issues are raised and the parties waive a jury trial, by agreement of the parties the proceedings may be heard before any judge of the trial division in which the proceeding is pending. If the parties do not agree upon a judge for the hearing and the proceeding is in the superior court division, then upon motion of the plaintiff, the proceeding may be heard by a resident superior court judge of the district, or a superior court judge holding the courts of the district, or by any judge holding a session of superior court within the district. If the parties do not agree upon a judge and the proceeding is in the district court division, then upon motion of the plaintiff, the proceeding may be heard by the chief district judge or by a district judge authorized by the chief judge to hear motions and

enter interlocutory orders. Such motion shall be in writing, with ten days' notice to the defendant, and the judge designated shall fix a time and place for the hearing and notify the parties. Upon notice given, the clerk of the court in which the action is pending shall forward the papers in the proceeding to the judge designated. The hearing by the judge shall be governed by the practice for hearings in other civil actions before a judge without a jury. References to judges of the superior court in this section include emergency and special judges."

**Sec. 10.** G.S. 1-277 is amended by inserting in the second line the words "or district" after the word "superior", and by deleting the word "term" in line four and inserting in lieu thereof the word "session".

**Sec. 11.** G.S. 1-287.1 is amended by deleting the word "superior" from line one; by deleting the words "superior court" from line four; and by rewriting the second sentence to read as follows:

"If the case be appealed from the district court division, the motion herein provided for may be heard by either a presiding judge or the chief district judge; if the case be appealed from the superior court division, the motion herein provided for may be heard by either a resident superior court judge, a presiding judge, or a special judge residing within the district or a judge assigned to hold the courts of the district, in session or out of session, in any county of the district."

**Sec. 12.** G.S. 1-288 is amended by inserting in line two the words "or district" after the word "superior"; by deleting from lines six, twelve, fourteen and fifteen the word "superior"; by deleting in line twenty-three the words "of the superior court" in two places; by deleting sentences four and five; and by deleting the word "term" and inserting in lieu thereof the word "session" wherever the former appears.

**Sec. 13.** G.S. 1-298 is amended by inserting in line two the words "or district" after the word "superior" and by deleting therefrom the word "term" and inserting in lieu thereof the word "session" wherever the former appears.

**Sec. 14.** G.S. 1-320 is amended by deleting from the fourth line the words "a justice of the peace," and inserting in lieu thereof the words "the district court," and by deleting from the end of the sentence the words "or justice."

**Sec. 15.** G.S. 1-322 is amended by deleting from the first sentence the words "or justice" and by deleting from the tenth line the words "justice or".

**Sec. 16.** G.S. 1-339.1 is amended by inserting in line two the words "or district" after the word "superior".

**Sec. 17.** G.S. 1-339.3(b) is amended by inserting in line two the words "or district" after the word "superior".

**Sec. 18.** G.S. 1-339.3(c); 1-339.3a; 1-339.8(c); 1-339.9(a); 1-339.10(a); 1-339.11(a); 1-339.18(b); 1-339.19; 1-339.20(d); 1-339.23(a) and (c); 1-339.26; 1-339.29(a) and (c); 1-339.32; 1-339.33(4); 1-339.38(a) and (b); 1-339.39 are hereby amended by deleting from the phrase "judge or clerk of the superior court", which appears in each of the aforesaid sections, the words "the superior" wherever the phrase appears therein so that such phrase will hereafter read "judge or clerk of court".

**Sec. 19.** G.S. 1-339.8 is amended by inserting in line four the words "or district" after the word "superior".

**Sec. 20.** G.S. 1-339.28(a) is rewritten to read as follows:

- "(a) No public sale of real property may be consummated until confirmed as follows:
- (1) If a public sale is ordered by a judge of the superior court division, it may thereafter be confirmed by a resident superior court judge of the district or a superior court judge regularly holding the courts of the district.
  - (2) If a public sale is ordered by a judge of the district court division, it may thereafter be confirmed by the judge so ordering, the chief district judge, or

any district judge authorized by the chief judge to hear motions and enter interlocutory orders.

- (3) If a public sale is ordered by a clerk of court, it may thereafter be confirmed by the clerk of court so ordering."

**Sec. 21.** G.S. 1-352 is amended by deleting from the fifth line the word "justice's".

**Sec. 22.** G.S. 1-364 is amended by deleting from line four the words "from justice's" and inserting in lieu thereof the word "of".

**Sec. 22.1.** G.S. 1-382 is amended by deleting from lines twelve and thirteen the words "or a justice of the peace".

**Sec. 23.** G.S. 1-386 is amended by deleting from line four the words "a justice of the peace" and inserting in lieu thereof the words "the clerk of superior court" and by deleting from line seven the word "justice" and inserting in lieu thereof the word "clerk".

**Sec. 24.** G.S. 1-387 is amended by deleting from line three the words "justice of the peace" and inserting in lieu thereof the words "clerk of superior court" and by deleting from line four the word "justice" and inserting in lieu thereof the word "clerk".

**Sec. 25.** G.S. 1-392 is amended by deleting from Form No. 2 its present heading and substituting in lieu thereof the following heading:

"Petition for Homestead Before The Clerk of Superior Court  
\_\_\_\_\_ County."

**Sec. 26.** G.S. 1-422 is amended by deleting from line five the words ", justice of the peace,".

**Sec. 27.** G.S. 1-424 is amended by deleting from line two the words ", or a justice of the peace" and by deleting from lines four and five the words "judge or justice of the peace" and inserting in lieu thereof the words "or judge".

**Sec. 28.** G.S. 1-425 is amended by deleting therefrom the words ", judge or justice of the peace" and inserting in lieu thereof the words "or judge".

**Sec. 29.** G.S. 1-428 is amended by deleting from the second sentence the words "judge, court or justice of the peace" and inserting in lieu thereof the words "court or judge".

**Sec. 30.** G.S. 1-440.5 is rewritten to read as follows:

**§ 1-440.5. By whom order issued; when and where; filing of bond and affidavit.** — (a) An order of attachment may be issued by

- (1) the clerk of the court in which the action has been, or is being, commenced, or by
- (2) a judge of the appropriate trial division, as authorized in subsection (b) of this section.

(b) An order of attachment issued by a judge may be issued as follows:

- (1) If the action has been or is being commenced in the superior court division, a resident superior court judge of the district, or a judge regularly holding the superior courts of the district, may issue the order in open court or in chambers, in session or in vacation, and within or without the district. Any other judge holding a session of superior court in the county may issue the order in open court.
- (2) If the action has been or is being commenced in the district court division, the presiding judge, the chief district judge, or any district judge authorized by the chief to hear motions and enter interlocutory orders may issue the order in open court or in chambers, in session or in vacation.

(c) In those cases where the order of attachment is issued by the judge, such judge shall cause the bond required by G.S. 1-440.10 and the affidavit required by G.S. 1-440.11 to be filed promptly with the clerk of the court of the county in which the action is pending."

**Sec. 30.1.** G.S. 1-479 is amended by deleting from line five the words ", a judge or justice of the peace," and inserting in lieu thereof the words "or judge,".

**Sec. 30.2.** G.S. 1-482 is amended by deleting the fourth sentence and that portion of the fifth sentence that precedes the colon, and by deleting from the remainder of the sentence the words "Provided that," and inserting in lieu thereof the word "However,".

**Sec. 31.** G.S. 1-501 is amended by inserting in line one after the word "superior" the words "or district" and by deleting from the end thereof the period and inserting in lieu of the period a comma and the words "except only a judge of the superior court division has jurisdiction to appoint receivers of corporations."

**Sec. 32.** G.S. 1-505 is rewritten to read as follows:

"G.S. 1-505. Sale of property in hands of receiver. — In a case pending in the superior court division in which a receiver has been appointed, the resident superior court judge or a superior court judge regularly holding the courts of the district shall have power and authority to order a sale of any property, real or personal, in the hands of a receiver duly and regularly appointed. In a case pending in the district court division in which a receiver has been appointed, the chief district judge or a district judge designated by the chief district judge to hear motions and enter interlocutory orders shall have the power and authority to order a sale of any property, real or personal, in the hands of a duly appointed receiver. Sales of property authorized by this section shall be upon such terms as appear to be to the best interests of the creditors affected by the receivership. The procedure for such sales shall be as provided in Article 29A of Chapter 1 of the General Statutes."

**Sec. 33.** G.S. 1-534 is amended in line two by deleting therefrom the words "superior court" and inserting in lieu thereof the words "appropriate trial division of the General Court of Justice."

**Sec. 34.** G.S. 1-92, 1-93, 1-236, 1-244, 1-299, 1-300, 1-301, 1-440.47, 1-440.48, 1-440.49, 1-440.50, 1-440.51, 1-440.52, 1-440.53, 1-440.54, 1-440.55, 1-440.56, 1-440.57, 1-539.3, 1-539.4, 1-539.5, 1-539.6, 1-539.7, 1-539.8, and all other laws and clauses of laws in conflict with this act are hereby repealed.

**Sec. 35.** Partial Invalidity. — If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**Sec. 36.** This act shall become effective on July 1, 1971.

In the General Assembly read three times and ratified, this the 30th day of April, 1971.