

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 944

Short Title: Time to Appeal/Paupers.

(Public)

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Sponsors: Representative Hensley.

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Referred to: Judiciary III.

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April 19, 1991

A BILL TO BE ENTITLED

1 AN ACT TO AMEND G.S. 1-288 REGARDING THE TIME FOR TAKING APPEAL  
2 IN FORMA PAUPERIS IN ORDER TO CONFORM THIS STATUTE TO THE  
3 RULES OF APPELLATE PROCEDURE.  
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5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 1-288 reads as rewritten:

7 "**§ 1-288. Appeals in forma pauperis; clerk's fees.**

8 When any party to a civil action tried and determined in the superior or district court  
9 at the time of trial or special proceeding desires an appeal from the judgment rendered  
10 in the action to the Appellate Division, and is unable, by reason of his poverty, to make  
11 the deposit or to give the security required by law for said appeal, it shall be the duty of  
12 the judge or clerk of said court to make an order allowing said party to appeal from the  
13 judgment to the Appellate Division as in other cases of appeal, without giving security  
14 therefor. The party desiring to appeal from the judgment ~~shall, during the session at which~~  
15 ~~the judgment was rendered or within 10 days from the expiration by law of the session, or~~  
16 order in a civil action or special proceeding shall, within 30 days after the entry of the  
17 judgment or order, make affidavit that he is unable by reason of his poverty to give the  
18 security required by law, and that he is advised by a practicing attorney that there is  
19 error in matter of law in the decision of the court in said action. The affidavit must be  
20 accompanied by a written statement from a practicing attorney of said court that he has  
21 examined the affiant's case, and is of opinion that the decision of the court, in said  
22 action, is contrary to law. Nothing contained in this section deprives the clerk of the  
23 superior court of his right to demand his fees for his certificate and seal as now allowed  
24 by law in such cases. Provided, that where the judge or the clerk has made an order

1 allowing the appellant to appeal as a pauper and the appeal has been filed in the  
2 Appellate Division, and an error or omission has been made in the affidavit or  
3 certificate of counsel, and the error is called to the attention of the court before the  
4 hearing of the argument of the case, the court shall permit an amended affidavit or  
5 certificate to be filed correcting the error or omission."

6           Sec. 2. This act is effective upon ratification and applies to all appeals in  
7 forma pauperis from a judgment or order entered on or after that date.