

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS75148-LL-99 (2/19)

Short Title: Increase Access to Justice.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE ACCESS TO JUSTICE IN THE CIVIL COURTS, AS
3 RECOMMENDED BY THE CHIEF JUSTICE'S NORTH CAROLINA EQUAL ACCESS
4 TO JUSTICE COMMISSION.

5 Whereas, open and fair civil courts and tribunals of justice are one of the preminent
6 hallmarks of our constitutional democracy and an historic legacy of this State since its colonial
7 days; and

8 Whereas, many of our State's citizens cannot afford legal representation even for
9 cases in which vital decisions about their lives and families are being decided; and

10 Whereas, more than one-third – nearly 3.2 million – of North Carolinians are now
11 eligible for federally-subsidized legal assistance, which is not adequate to meet the great need;
12 and

13 Whereas, our courts and tribunals cannot be considered open and fair unless access
14 to competent legal assistance is more readily available; and

15 Whereas, civil legal representation helps tens of thousands of North Carolina
16 residents annually to meet such basic needs as adequate housing, health care, increased income,
17 and safety from domestic violence; and

18 Whereas, the General Assembly resolves to expand openness and fairness in our
19 State's courts and tribunals by making more readily available competent legal assistance to
20 those in financial need by enacting the following legislation; Now, therefore,

21 The General Assembly of North Carolina enacts:

22 **SECTION 1.1.** G.S. 7A-304(a)(4) reads as rewritten:

23 "(4) For support of the General Court of Justice, the sum of ninety-five dollars
24 and fifty cents (\$95.50) in the district court, including cases before a
25 magistrate, and the sum of one hundred two dollars and fifty cents (\$102.50)
26 in the superior court, to be remitted to the State Treasurer. For a person
27 convicted of a felony in superior court who has made a first appearance in
28 district court, both the district court and superior court fees shall be assessed.
29 The State Treasurer shall remit the sum of ~~two dollars and five cents (\$2.05)~~
30 ~~of each fee collected under this subdivision to the North Carolina State Bar~~
31 ~~for the provision of services described in G.S. 7A-474.4, and~~ ninety-five
32 cents (\$.95) of each fee collected under this subdivision to the North
33 Carolina State Bar for the provision of services described in ~~G.S. 7A-474.19.~~
34 G.S. 7A-474.19, and a portion of each fee collected under this subdivision,



in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4:

<u>Fiscal Year</u>	<u>Amount</u>
<u>2009-2010</u>	<u>\$4.05</u>
<u>2010-2011</u>	<u>6.05</u>
<u>2011-2012</u>	<u>8.05</u>
<u>2012-2013 and after</u>	<u>10.00."</u>

SECTION 1.2. G.S. 7A-305(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of ninety-three dollars (\$93.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars (\$200.00) shall be paid upon its assignment, and the sum of seventy-three dollars (\$73.00) in the district court except that if the case is assigned to a magistrate the sum shall be sixty-three dollars (\$63.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and five cents (\$2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4,~~ and ninety-five cents (\$.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.19.~~ G.S. 7A-474.19, and a portion of each fee collected under this subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4:

<u>Fiscal Year</u>	<u>Amount</u>
<u>2009-2010</u>	<u>\$4.05</u>
<u>2010-2011</u>	<u>6.05</u>
<u>2011-2012</u>	<u>8.05</u>
<u>2012-2013 and after</u>	<u>10.00."</u>

SECTION 1.3. G.S. 7A-306(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice the sum of forty dollars (\$40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars (\$100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars (\$100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars (\$200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit ~~the sum of two dollars and five cents (\$2.05)~~ a portion of each forty-dollar (\$40.00) General Court of Justice fee collected under this subdivision-subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.4.~~ G.S. 7A-474.4:

<u>Fiscal Year</u>	<u>Amount</u>
<u>2009-2010</u>	<u>\$4.05</u>
<u>2010-2011</u>	<u>6.05</u>
<u>2011-2012</u>	<u>8.05</u>
<u>2012-2013 and after</u>	<u>10.00."</u>

SECTION 1.4. G.S. 7A-307(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of fifty dollars (\$50.00), plus an additional forty cents (40¢) per one hundred dollars (\$100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars (\$6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars (\$15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of ~~two dollars and five cents (\$2.05)~~ a portion of each fifty-dollar (\$50.00) General Court of Justice fee collected under this ~~subdivision~~ subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.4~~. G.S. 7A-474.4:

<u>Fiscal Year</u>	<u>Amount</u>
<u>2009-2010</u>	<u>\$4.05</u>
<u>2010-2011</u>	<u>6.05</u>
<u>2011-2012</u>	<u>8.05</u>
<u>2012-2013 and after</u>	<u>10.00."</u>

SECTION 1.5. G.S. 7A-308(a)(1) reads as rewritten:

"(1) Foreclosure under power of sale in deed of trust or mortgage.....\$75.00
The State Treasurer shall remit the sum of fifty dollars (\$50.00) of each fee collected under this subdivision to the North Carolina State Bar for the provision of foreclosure services described in G.S. 7A-474.4. If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars (\$100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars (\$10.00), a minimum ten dollar (\$10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars (\$500.00), a maximum five hundred-dollar (\$500.00) fee will be collected."

SECTION 2.1. The General Assembly finds that homeownership is the primary means by which families and individuals of low and moderate incomes build wealth. The General Assembly further finds that homeownership and a healthy housing market are essential to the health and economic vitality of North Carolina.

SECTION 2.2. There is appropriated from the General Fund to the North Carolina State Bar the sum of one million eight hundred thousand dollars (\$1,800,000) for the 2009-2010 fiscal year and the sum of one million eight hundred thousand dollars (\$1,800,000) for the 2010-2011 fiscal year in recurring funds to be allocated to the established legal services programs under G.S. 7A-474.2 to provide access to legal assistance to low-income consumers in cases involving predatory mortgage lending, mortgage broker and loan services abuses, foreclosure defense, and other legal issues that relate to helping low-income consumers avoid foreclosure and home loss.

SECTION 3.1. Section 22.6 of S.L. 2008-107 reads as rewritten:

1 "SECTION 22.6.(a) The Office of State Budget and Management, in consultation with the
2 Department of Administration, shall study the level of State assistance provided to county
3 veterans service programs by the Aid to Counties program within the Department of
4 Administration pursuant to G.S. 165-6(9). The Office will collect data from county programs,
5 including a five-year analysis of county spending, the number and type of veteran claims filed,
6 and the number of FTE staff assigned to the county programs, to assess the level of services
7 provided. The study should examine the effect of changing the amount of assistance that a
8 county is eligible to receive pursuant to G.S. 165-6(9). The study should include an analysis of
9 the number of claims filed with each veterans service program; total county spending for the
10 programs; the number of cases requiring appeal; whether the assistance of an attorney was
11 provided on appeals; and the county veteran population. The study should also include a
12 section on recommended statutory changes, budgetary increases, distribution reallocations, and
13 administrative changes to the Division of Veterans Affairs.

14 SECTION 22.6.(b) The Office of State Budget and Management shall submit a final
15 report of its findings and recommendations to the House Appropriations Subcommittee on
16 General Government, the Senate Appropriations Subcommittee on General Government and
17 Information Technology, and the Fiscal Research Division no later than ~~March 1, 2009.~~ March
18 1, 2010."

19 SECTION 3.2. The General Assembly finds that:

- 20 (1) Approximately 150,000 veterans reside in North Carolina;
- 21 (2) North Carolinians have over 19,000 claims for veterans benefits pending
22 with the Veterans Administration; and
- 23 (3) The resolution of these claims affects veterans as well as thousands of family
24 members in the State.

25 Therefore, it is fitting and appropriate that the State of North Carolina ensure that
26 veterans and their families are provided with adequate legal assistance to pursue their just
27 claims for benefits against the Veterans Administration and other federal agencies that provide
28 veterans with benefits, including claims for disability. Veterans from across this State and from
29 all branches of the armed services deserve adequate review and representation for their claims.

30 SECTION 3.3. There is appropriated from the General Fund to the Division of
31 Veterans Affairs, Department of Administration, the sum of three million dollars (\$3,000,000)
32 for the 2009-2010 fiscal year and the sum of three million dollars (\$3,000,000) for the
33 2010-2011 fiscal year in recurring funds to contract with one or more of the established legal
34 services programs under G.S. 7A-474.2 and Disability Rights of North Carolina to provide
35 adequate legal representation to veterans and their families in all 100 counties of the State in
36 cases involving appeal of denials beyond the administrative level to the appropriate federal
37 agency, administrative law process, or appellate court as well as in cases involving other legal
38 issues as the Division of Veterans Affairs concludes is most helpful to veterans and their
39 immediate families residing in North Carolina.

40 SECTION 4.1. G.S. 7A-474.2(1) reads as rewritten:

- 41 "(1) "Eligible client" means a resident of North Carolina financially eligible for
42 representation under the Legal Services Corporation Act, regulations, and
43 interpretations adopted thereunder (45 C.F.R. § 1611, and subsequent
44 revisions), or a person entitled to State benefits or services pursuant to
45 G.S. 14-43.11(d). G.S. 14-43.11(d), or to a veteran of the United States
46 armed forces, reserves, or national guard, who is a resident of the State."

47 SECTION 4.2. G.S. 7A-474.3(b) reads as rewritten:

48 "(b) Eligible Cases. Legal assistance shall be provided to eligible clients under this
49 Article only in the following types of cases:

- 50 (1) Family violence or spouse abuse;
- 51 (2) ~~Assistance for the disabled in obtaining federal Social Security benefits;~~

- 1 (2a) Assistance for eligible clients in obtaining benefits or assistance under any
2 federal law or program providing benefits or assistance for human
3 trafficking victims.
- 4 (2b) Representation of eligible veterans and their families in cases involving
5 appeal of denials of veterans benefits beyond the administrative level to the
6 appropriate federal agency, administrative law process, or appellate court as
7 well as in cases involving other legal issues as the Division of Veterans
8 Affairs concludes is most helpful to veterans and their immediate families
9 residing in North Carolina.
- 10 (3) Representation of eligible farmers faced with the potential of farm
11 foreclosure;
- 12 (4) Representation of eligible clients who are disabled or over the age of 60
13 regarding the following matters:
14 a. Wills and estates;
15 b. Safe and sanitary housing;
16 c. Pensions and retirement rights;
17 d. Obtaining Social Security Security, Supplemental Security Income,
18 Medicaid, and Medicare rights; rights and benefits; and
19 Access to health care;
20 Food and nutrition; and
21 g. Transportation.
- 22 (5) Representation of eligible clients designed to enable them to obtain the
23 necessary skills and means to obtain meaningful employment at a decent
24 wage and reduce the public welfare rolls; and
- 25 (6) Representation of eligible clients under the age of 21 or eligible families
26 with legal problems affecting persons under the age of 21 regarding the
27 following matters:
28 a. Financial support and custody of children;
29 b. Child care;
30 c. Child abuse or neglect;
31 d. Safe and sanitary housing;
32 e. Food and nutrition; and
33 f. Access to health care.
- 34 (7) Legal assistance to consumers in cases involving predatory mortgage
35 lending, mortgage broker and loan services abuses, foreclosure defense, and
36 other legal issues that relate to helping consumers avoid foreclosure and
37 home loss.
- 38 (8) Representation of eligible clients in cases involving access to health care,
39 food, and nutrition.
- 40 (9) Assistance and advocacy support in special education matters to at-risk
41 students from low-income families."

42 **SECTION 5.1.** The General Assembly finds that:

- 43 (1) The completion of a high school education is essential to the maintenance of
44 a competitive workforce;
- 45 (2) Dropout prevention is a necessary component to ensure adequate high school
46 graduation rates;
- 47 (3) Children with learning disabilities constitute twenty-one and eight-tenths
48 percent (21.8%) of students subject to short-term suspensions and thirty-
49 three percent (33%) of students charged with criminal offenses involving
50 other students and school staff, factors that contribute to increased dropout
51 rates among these students.

- 1 (4) Providing legal assistance in special education matters to these at-risk
2 students would decrease the dropout rate for this vulnerable population. The
3 General Assembly further finds that education is a protective factor in
4 helping to improve the employment rate of students with disabilities and to
5 reduce juvenile delinquency, unemployment, and incarceration.

6 Therefore, it is fitting that the State of North Carolina will improve the educational
7 opportunities and outcomes of children with disabilities with training, collaboration, and legal
8 assistance.

9 **SECTION 5.2.** There is appropriated from the General Fund to the North Carolina
10 State Bar the sum of one million dollars (\$1,000,000) for the 2009-2010 fiscal year and the sum
11 of one million dollars (\$1,000,000) for the 2010-2011 fiscal year in recurring funds to reduce
12 school suspension, dropout rates, and juvenile court referrals by providing advocacy support in
13 special education matters to at-risk students from low-income families. These funds are to be
14 allocated to the established legal programs under G.S. 7A-474.2, Disability Rights of North
15 Carolina and other organizations providing legal services to low-income families and
16 individuals as may be approved by the North Carolina State Bar.

17 **SECTION 6.** Section 1.1 of this act becomes effective July 1, 2009, and applies to
18 all costs assessed or collected on or after that date, except that in misdemeanor or infraction
19 cases disposed of on or after that date by written appearance, waiver of trial or hearing, and
20 plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in
21 which the citation or other criminal process was issued before that date, the cost shall be the
22 lesser of those specified in G.S. 7A-304(a), as amended by Section 1.1 of this act, or those
23 specified in the notice portion of the defendant's or respondent's copy of the citation or other
24 criminal process, if any costs are specified in that notice. Sections 1.2 through 1.5 of this act
25 become effective July 1, 2009, and apply to fees assessed or collected on or after that date. The
26 remainder of this act becomes effective July 1, 2009.