

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 517
HOUSE BILL 526

AN ACT TO AMEND THE PROCEDURE IN THE ADJUDICATION OF SMALL
CLAIMS IN THE SUPERIOR COURT FOR LENOIR COUNTY.

The General Assembly of North Carolina do enact:

Section 1. The procedure for adjudicating small claims in the Superior Court for Lenoir County shall be as herein set forth. A small claim is defined as an action for a money judgment founded in contract or tort including the remedies both ancillary and otherwise of claim and delivery, attachment and garnishment in which the sum demanded or sought or the value of the property involved (exclusive of interest and costs of court) by the plaintiff, defendant or other party does not exceed one thousand five hundred dollars (\$1,500.00), and in which no jury trial is demanded, and failure to so demand a jury trial by plaintiff will be deemed a waiver of jury in all actions provided for in this Section.

Sec. 2. The Clerk of the Superior Court for Lenoir County shall maintain a small claims docket. The Clerk shall docket in the small claims docket any action in which the plaintiff in his complaint or proceeding (or application for extension of time in which to file complaint) demands only a money judgment or other relief as defined in Section 1, and does not demand a jury trial. No prosecution bond shall be demanded of plaintiff when instituting such action, and he shall be required to advance costs of the Clerk's office only as prescribed in the next Section.

Sec. 3. In all small claims action, the Clerk shall require the advance payment of costs by plaintiff, as in other actions. All fees for officers serving process shall be the same as provided for regular actions.

Sec. 4. If any party to such action files an answer or other pleading in which he demands a jury trial or in which affirmative relief is demanded for other than a money judgment or involving property valued in excess of one thousand five hundred dollars (\$1,500.00), the action shall be transferred to the regular civil issue docket, provided such party at the time of filing his pleading also files a prosecution bond for costs payable to the adverse party or parties in the sum of fifty dollars (\$50.00). The bond, except as herein specified, shall be controlled by the provisions of General Statutes, Section 1-109. If such party fails to file such prosecution bond, the portion of his pleading setting out his claim for affirmative relief shall be stricken on motion or ex mero motu, and the action will be retained as a small claim under the provisions of the

Act. Failure to demand a jury trial in defendant's first pleading or to comply with the provisions of this Section will be deemed a waiver of jury.

Sec. 5. No jury trial shall be had in such small claims action, unless a party thereto shall demand a jury trial in the first pleading filed by him, and shall also comply with the provisions of Sections 3 and 4 hereof as to advance cost and prosecution bond. That if the plaintiff shall demand a jury trial in his first pleading, then the action shall be started as other causes with payment of full cost and giving of prosecution bond and shall not be controlled by the provisions of this Act.

Sec. 6. As to any action within the concurrent jurisdiction of a justice of the peace, summons shall not be issued to run outside the County of Lenoir.

Sec. 7. All appeals from a justice of the peace to the Superior Court shall be tried in the Superior Court by the judge without a jury, unless at the time the appeal is docketed in the Superior Court or within two days thereafter a party to the action shall file with the Clerk a written demand for a jury trial and file the bond required in Section 4 hereof.

Sec. 8. That the law of this State applicable to and providing for in forma pauperis proceedings shall apply to plaintiffs and defendants in causes under this Act.

Sec. 9. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 10. This Act shall be in full force and effect from and after its ratification and shall not affect pending litigation except that parties litigant may, by consent, bring pending litigation under the provisions of this Act.

In the General Assembly read three times and ratified, this the 26th day of May, 1961.