



HOUSE BILL 226: 2019 AOC Legislative Changes.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2019-2020 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	June 21, 2019
Introduced by:	Rep. R. Turner	Prepared by:	Bill Patterson
Analysis of:	PCS to Third Edition H226-CSTG-33		Staff Attorney

OVERVIEW: *The Proposed Committee Substitute for House Bill 226 would make various changes and technical corrections to the laws governing the administration of justice as requested by the Administrative Office of the Courts (AOC) and the Conference of Superior Court Clerks.*

House Bill 226 would make the following fee changes:

- *Section 2 would establish a new fee (lesser of actual costs or \$2,500) assessed against any person who appeals an adverse determination to the Judicial Department's Dispute Resolution Commission and fails to appear at the hearing.*
- *Section 11 would impose a new fee of \$20 on certain estates and increases the fees from \$8 to \$20 for certain petitions.*
- *Section 12 would impose a new fee of \$300 for in rem foreclosures.*

The PCS deleted former Section 2 of the bill that would have prohibited waiver of court fines or costs unless notice and an opportunity to be heard was given to government entities directly affected. The PCS also added new Sections 3, 4, 10.(b), 10.(c), and 17, and made other technical and conforming changes.

BILL ANALYSIS:

PART I. PROPOSED STATUTORY CHANGES AS RECOMMENDED BY THE ADMINISTRATIVE OFFICE OF THE COURTS

Section 1 expands the circumstances in which an emergency judge may be assigned to include: absence on medical leave of a sitting judge; an emergency or disaster declaration; assignment by the Chief Justice of an exceptional case to an emergency judge; and a need created by holdover sessions, administrative responsibilities of the chief district court judge, or case in which a judge has a conflict or judicial educational responsibilities.

Section 2 establishes a new fee (lesser of Commission's actual expenses or \$2,500) assessed to any person who appeals an adverse determination to the Judicial Department's Dispute Resolution Commission and fails to appear at the hearing. This section would become effective July 1, 2019 and would apply to hearings held on or after that date.

Karen Cochrane-Brown
Director



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Section 3 (*added by PCS*) provides that whenever any matter is required or permitted to be supported, evidenced, established, or proved in writing under oath in a civil or criminal proceeding in the General Court of Justice, an unsworn written declaration made under penalty of perjury may be used instead for that purpose. This section also prescribes the form that will be deemed sufficient for this purpose, and provides that a person committing perjury in an unsworn declaration is subject to the same criminal punishment provided for perjury committed under oath or affirmation. This section would become effective 30 days after the AOC Director certifies to the North Carolina Supreme Court that the AOC is ready to implement an integrated case management system under the e-Courts initiative.

Section 4 (*added by PCS*) provides that there is no filing fee when an attorney designates a period of secure leave.

Section 5 reduces the number of reports to be submitted each year by AOC. Specifically, the section makes a previously semiannual report on the activities of each NC business court site an annual report. This section also eliminates 4 reports including: (1) a report on the viability of worthless check collection programs, (2) a report on remanded cases from Superior Court where a defendant has withdrawn a notice of appeal, (3) a report to show the types of dispositions for the State by county, judge, prosecutor, and defense attorney, and (4) a report on waivers of criminal court costs.

Section 6 clarifies that if a person fails to appear for fingerprinting to be performed by a designated agency other than a Sheriff, that agency will report the non-compliance to the court.

Section 7 clarifies procedures for clerks and district attorneys to follow in executing a judgment that imposed a suspended sentence when an appeal of the judgment is withdrawn or upon affirmation of the judgment on appeal. This section would become effective December 1, 2019 and would apply to any mandate of the appellate division received in the trial division on or after that date.

Section 8 makes a conforming change to the notification period for failure to pay required fines or costs.

Section 9 clarifies the procedures for docketing State Bar orders and final determinations.

Section 10.(a) would provide that a hearing in a contested setoff claim to a debtor's refund by a unit of the Judicial Department must be conducted under administrative procedures developed by the AOC Director in collaboration with the Director of Indigent Services. If the contested claim arose out of a docketed judgment, the clerk of superior court in any county where the judgment was docketed would have original jurisdiction to hear the claim. A contested claim not arising out of a docketed judgment would be heard by the AOC Director or the Director's designee. **Section 10.(b)** (*added by PCS*) would permit a party aggrieved by an order or decision of the hearing to appeal to the superior court for a *de novo* hearing. **Section 10.(c)** (*added by PCS*) would make a conforming change to the statutory responsibilities of the Director of Indigent Services. This section would become effective January 1, 2020 and would apply to notices of setoff claims given to the debtor on or after that date.

PART II. PROPOSED STATUTORY CHANGES AS RECOMMENDED BY THE CONFERENCE OF SUPERIOR COURT CLERKS

Section 11 imposes a new fee of \$20 on certain estates and increases the fees from \$8 to \$20 for petitions for year's allowance to surviving spouse or child. This section would become effective January 1, 2020, and would apply to petitions filed on or after that date.

Section 12 imposes \$300 fee for *in rem* foreclosures if the property is sold under execution. This section would become effective October 1, 2019, and would apply to execution sales conducted on or after that date.

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Section 13 eliminates the requirement to submit an annual report on the implementation of character recognition software by clerks and registers of deeds.

Section 14 authorizes retired clerks to administer oaths.

Section 15 clarifies a clerk will upon the clerk's own motion or upon the application of an interested party disburse funds owed to a decedent when no administrator has been appointed.

Section 16 makes a clarifying change to the time periods relating to the additional undertaking that must be made by an appellant in a summary ejection action in order to stay execution pending appeal.

Section 17 (*added by PCS*) provides that a lienor may not include more than one vehicle in a special proceeding seeking authorization to sell the vehicle to satisfy a possessory lien. This section would become effective December 1, 2019, and would apply to applications filed on or after that date.

Section 18 makes the petitioner, rather than the clerk, responsible for giving notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court.

PART III. TECHNICAL CORRECTIONS

Section 19 makes the statutes governing appellate clerks gender-neutral.

Section 20 makes a technical correction to clarify that ex-officio members of the Human Trafficking Commission are non-voting members.

Section 21 corrects a typographical error.

Sections 22 and 23 correct statutory citations.

Section 24 makes a conforming change to the requirements of a petition for spousal allowance to reflect the current maximum spousal yearly allowance.

Section 25 makes a technical correction to the North Carolina Uniform Power of Attorney Act.

Section 26 makes clarifying changes to the days when foreclosure sales are permitted.

Section 27 makes a technical correction to the residency requirement for filing a petition for a name change.

Section 28 makes a clarifying change to the effective date for increase of the maximum testamentary distribution to a minor. This section would be retroactively effective January 1, 2019.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

Greg Roney and Tawanda Foster with the Legislative Analysis Division substantially contributed to this summary.