



HOUSE BILL 287: Repeal G.S. 1-113 and G.S.1-114.

2019-2020 General Assembly

Committee:	House Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	March 20, 2019
Introduced by:	Rep. Zachary	Prepared by:	Brad Krehely
Analysis of:	PCS to First Edition H287-CSRN-2		Committee Co-Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 287 would repeal G.S. 1-113 and G.S. 1-114. The changes in the PCS include: making a conforming change to delete G.S. 1-114, correcting the effective date, and changing the long and short titles of the bill.*

CURRENT LAW: Under G.S. 1-113, where an action is against two or more defendants, and the summons is served on one or more, but not on all of the defendants, the plaintiff may proceed as follows:

- **If the action is against defendants jointly indebted by a contract-** The plaintiff may proceed against the defendants served, unless the court directs otherwise. If the plaintiff recovers a judgment, it may be entered against all the defendants who are jointly indebted with the following limitations. It may be enforced against the joint property of all defendants and the separate property of the defendants served. If the defendants are subject to arrest, it may be enforced against the defendants served.
- **If the action is against defendants severally liable-** The plaintiff may proceed against the defendants served, in the same manner as if they were the only defendants.
- **If all the defendants have been served-** Judgment may be taken against any or either of them separately, when the plaintiff would be entitled to judgment against such defendant or defendants if the action has been against them or any of them alone.
- **If the name of one or more partners has been omitted in an action in which judgment has been rendered against the defendants named in the summons, the omission was not pleaded in action, and the judgment remains unsatisfied-** The plaintiff may recover against the partner separately, upon proving the partner's joint liability, even though the partner was not named in the original action. The plaintiff may have satisfaction of only one judgment for the same cause of action.

Under G.S. 1-114, when a judgment is recovered against one or more of several persons jointly indebted upon a contract in accordance with G.S. 1-113, those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment as if they had been originally summoned. A party so summoned may answer within the time specified denying the judgment, or setting up any defense thereto which has arisen subsequent to such judgment. The party may make any defense which the party might have made to the action if the summons had been served on the party originally.

BILL ANALYSIS: The PCS for House Bill 287 would repeal would repeal G.S. 1-113 and G.S. 1-114.

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EFFECTIVE DATE: The act would become effective October 1, 2019, and would apply to actions commenced on or after that date.