

## **Chapter 6.**

### **Liability for Court Costs.**

#### Article 1.

#### Generally.

##### **§ 6-1. Items allowed as costs.**

To the party for whom judgment is given, costs shall be allowed as provided in Chapter 7A and this Chapter. (Code, s. 528; Rev., s. 1249; C.S., s. 1225; 1955, c. 922; 1971, c. 269, s. 1.)

##### **§ 6-2. Repealed by Session Laws 1971, c. 269, s. 15.**

##### **§ 6-3. Sureties on prosecution bonds liable for costs.**

When an action is brought in any court in which security is given for the prosecution thereof, or when any case is brought up to a court by an appeal or otherwise, in which security for the prosecution of the suit has been given, and judgment is rendered against the plaintiff for the costs of the defendant, the appellate court shall also give judgment against the surety for said costs, and execution may issue jointly against the plaintiff and his surety. (1831, c. 46; R.S., c. 31, s. 133; R.C., c. 31, s. 126; Code, s. 543; Rev., s. 1251; 1913, c. 189, s. 1; C.S., s. 1227.)

##### **§ 6-4. Execution for unpaid costs; bill of costs to be attached.**

When costs are not paid by the party from whom they are due, the clerk of superior court shall issue an execution for the costs, and attach a bill of costs to each execution. The sheriff shall levy the execution as in other cases. (R.C., c. 102, s. 24; Code, s. 3762; Rev., s. 1252; C.S., s. 1228; 1969, c. 44, s. 17; 1971, c. 269, s. 2.)

##### **§§ 6-5 through 6-6. Repealed by Session Laws 1971, c. 269, s. 15.**

##### **§ 6-7. Clerk to enter costs in case file.**

The clerk of superior court shall enter in the case file, after judgment, the costs allowed by law. (Code, s. 532; Rev., s. 1255; C.S., s. 1231; 1971, c. 269, s. 3.)

##### **§§ 6-8 through 6-12. Repealed by Session Laws 1971, c. 269, s. 15.**

#### Article 2.

#### When State Liable for Costs.

##### **§ 6-13. Civil actions by the State; joinder of private party.**

In all civil actions prosecuted in the name of the State, by an officer duly authorized for that purpose, the State shall be liable for costs in the same cases and to the same extent as private parties. If a private person be joined with the State as plaintiff, he shall be liable in the first instance for the defendant's costs, which shall not be recovered of the State till after execution is issued therefor against such private party and returned unsatisfied. (Code, s. 536; Rev., s. 1259; C.S., s. 1236.)

##### **§ 6-14. Civil action by and against State officers.**

In all civil actions depending, or which may be instituted, by any of the officers of the State, or which have been or shall be instituted against them, when any such action is brought or defended pursuant to the advice of the Attorney General, and the same is decided against such officers, the cost thereof shall be paid by the State Treasurer upon properly drawn warrants. (1874-75, c. 154; Code, s. 3373; Rev., s. 1260; C.S., s. 1237; 1971, c. 269, s. 4.)

**§ 6-15. Actions by State for private persons, etc.**

In an action prosecuted in the name of the State for the recovery of money or property, or to establish a right or claim for the benefit of any county, city, town, village, corporation or person, costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted, and not against the State. (Code, s. 537; Rev., s. 1261; C.S., s. 1238.)

**§ 6-16. Repealed by Session Laws 1971, c. 269, s. 15.**

**§ 6-17. Costs of State on appeals to federal courts.**

In all cases, whether civil or criminal, to which the State of North Carolina is a party, and which are carried from the courts of this State, or from the district court of the United States, by appeal or writ of error, to the United States circuit court of appeals, or to the Supreme Court of the United States, and the State is adjudged to pay the costs, it is the duty of the Attorney General to certify the amount of such costs to the Treasurer, who shall pay them upon properly drawn warrants. (1871-2, c. 26; Code, s. 538; Rev., s. 1263; C.S., s. 1240; 1971, c. 269, s. 5.)

**§ 6-17.1. Costs and expenses of State in connection with federal litigation arising out of State cases.**

In all cases of litigation in any court of the United States arising out of or by reason of any cases pending or tried in any court of the State of North Carolina, or in any action originally instituted in any court of the United States, the expenses for State court costs, securing of court records and transcripts, and other necessary expenses in representing the State of North Carolina or any of its departments, officials or agencies shall be allocated from and paid out of the State Contingency and Emergency Fund. (1963, c. 844.)

Article 3.

Civil Actions and Proceedings.

**§ 6-18. When costs allowed as of course to plaintiff.**

Costs shall be allowed of course to the plaintiff, upon a recovery, in the following cases:

- (1) In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial.
- (2) In an action to recover the possession of personal property.
- (3) In an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recovers less than fifty dollars (\$50.00) damages, he shall recover no more costs than damages.
- (4) When several actions are brought on one bond, recognizance, promissory note, bill of exchange or instrument in writing, or in any other case, for the same

cause of action against several parties who might have been joined as defendants in the same action, no costs other than disbursements shall be allowed to the plaintiff in more than one of such actions, which shall be at his election, provided the party or parties proceeded against in such other action or actions were within the State and not secreted at the commencement of the previous action or actions.

- (5) In an action brought under Article 1 of Chapter 19A. (R.C., c. 31, s. 78; 1874-5, c. 119; Code, s. 525; Rev., s. 1264; C.S., s. 1241; 1971, c. 269, s. 6; 1979, c. 808, s. 5.)

**§ 6-19. When costs allowed as of course to defendant.**

Costs shall be allowed as of course to the defendant, in the actions mentioned in G.S. 6-18 unless the plaintiff be entitled to costs therein. In all actions where there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor or any of them. (C.C.P., s. 277; Code, ss. 526, 527; Rev., s. 1266; C.S., s. 1242; 2007-212, s. 1.)

**§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

(a) In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the appropriate agency if:

- (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
- (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source.

- (b) Expired. (1983, c. 918, s. 1; 1987, c. 827, s. 1; 2000-190, s. 1; 2009-475, s. 8.)

**§ 6-19.2: Repealed by Session Laws 1995, c. 388, s. 6.**

**§ 6-20. Costs allowed or not, in discretion of court.**

In actions where allowance of costs is not otherwise provided by the General Statutes, costs may be allowed in the discretion of the court. Costs awarded by the court are subject to the limitations on assessable or recoverable costs set forth in G.S. 7A-305(d), unless specifically provided for otherwise in the General Statutes. (Code, s. 527; Rev., s. 1267; C.S., s. 1243; 2007-212, s. 2.)

**§ 6-21. Costs allowed either party or apportioned in discretion of court.**

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

- (1) Application for years' support, for surviving spouse or children.
- (2) Caveats to wills and any action or proceeding which may require the construction of any will or trust agreement, or fix the rights and duties of parties thereunder; provided, that in any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.
- (3) Habeas corpus; and the court shall direct what officer shall tax the costs thereof.
- (4) In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payment of such costs as may be incurred by either spouse from the sole and separate estate of either spouse, as may be just.
- (5) Application for the establishment, alteration or discontinuance of a public road, cartway or ferry. The board of county commissioners may order the costs incurred before them paid in their discretion.
- (6) The compensation of referees and commissioners to take depositions.
- (7) All costs and expenses incurred in special proceedings for the division or sale of either real estate or personal property under the Chapter entitled Partition.
- (8) In all proceedings under the Chapter entitled Drainage, except as therein otherwise provided.
- (9) In proceedings for reallocation of homestead for increase in value, as provided in the Chapter, Civil Procedure.
- (10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding children born out of wedlock.
- (11) In custody proceedings under Chapter 50A of the General Statutes.
- (12) In actions brought for misappropriation of a trade secret under Article 24 of Chapter 66 of the General Statutes.

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorneys' fees in such amounts as the court shall in its discretion determine and allow: provided that attorneys' fees in actions for alimony shall not be included in the costs as provided herein, but shall be determined and provided for in accordance with G.S. 50-16.4. (Code, ss. 533, 1294, 1323, 1422, 1660, 2039, 2056, 2134, 2161; 1889, c. 37; 1893, c. 149, s. 6; Rev., s. 1268; C.S., s. 1244; 1937, c. 143; 1955, c.

1364; 1965, c. 633; 1967, c. 993, s. 2; c. 1152, s. 5; 1977, c. 576; 1979, c. 110, s. 3; 1981, c. 809, s. 1; c. 890, s. 2; 2013-198, s. 1.)

**§ 6-21.1. Allowance of counsel fees as part of costs in certain cases.**

(a) In any personal injury or property damage suit, or suit against an insurance company under a policy issued by the defendant insurance company in which the insured or beneficiary is the plaintiff, instituted in a court of record, upon findings by the court (i) that there was an unwarranted refusal by the defendant to negotiate or pay the claim which constitutes the basis of such suit, (ii) that the amount of damages recovered is twenty-five thousand dollars (\$25,000) or less, and (iii) that the amount of damages recovered exceeded the highest offer made by the defendant no later than 90 days before the commencement of trial, the presiding judge may, in the judge's discretion, allow a reasonable attorneys' fees to the duly licensed attorneys representing the litigant obtaining a judgment for damages in said suit, said attorneys' fees to be taxed as a part of the court costs. The attorneys' fees so awarded shall not exceed ten thousand dollars (\$10,000).

(b) When the presiding judge determines that an award of attorneys' fees is to be made under this statute, the judge shall issue a written order including findings of fact detailing the factual basis for the finding of an unwarranted refusal to negotiate or pay the claim, and setting forth the amount of the highest offer made 90 days or more before the commencement of trial, and the amount of damages recovered, as well as the factual basis and amount of any such attorneys' fees to be awarded. (1959, c. 688; 1963, c. 1193; 1967, c. 927; 1969, c. 786; 1979, c. 401; 1985 (Reg. Sess., 1986), c. 976; 2011-283, s. 3.1; 2011-317, s. 1.1; 2013-159, s. 5.)

**§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.**

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

- (1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.
- (3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.

- (4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.
- (5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.
- (6) If the attorneys' fees are for services rendered to an assignee or a debt buyer, as defined in G.S. 58-70-15, all of the following materials setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions:
- a. A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.
  - b. A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.
- Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the outstanding balance. (1967, c. 562, s. 4; 2000-169, s. 27; 2009-573, s. 7.)

### **§ 6-21.3. Remedies for returned check.**

(a) Notwithstanding any criminal sanctions that may apply, a person, firm, or corporation who knowingly draws, makes, utters, or issues and delivers to another any check or draft drawn on any bank or depository that refuses to honor the same because the maker or drawer does not have sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation or because the check has previously been presented and honored for the payment of money or its equivalent, and who fails to pay the same amount, any service charges imposed on the payee by a bank or depository for processing the dishonored check, and any processing fees imposed by the payee pursuant to G.S. 25-3-506 in cash to the payee within 30 days following written demand therefor, shall be liable to the payee (i) for the amount owing on the check, the service charges, and processing fees and (ii) for additional damages of three times the amount owing on the check, not to exceed five hundred dollars (\$500.00) or to be less than one hundred dollars (\$100.00). If the amount claimed in the first demand letter is not paid, the claim for the amount of the check, the service charges and processing fees, and the treble damages provided for in this subsection may be made by a subsequent letter of demand prior to filing an action. In an action under this section the court or jury may, however, waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check or draft was due to economic hardship.

The initial written demand for the amount of the check, the service charges, and processing fees shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a1) of this section. The subsequent demand letter demanding the amount of the check, the service charges, the processing fees, and treble damages shall be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in subsection (a2) of this section. If the payee chooses to send the demand letter set out in subsection (a2) of this section, then the payee may not file an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand set out in subsection (a2) of this section.

(a1) The first notification letter shall be substantially in the following form:

This letter is written pursuant to G.S. 6-21.3 to inform you that on \_\_\_\_\_, you made and delivered to the business listed above a check payable to this business containing your name and address in the sum of \$\_\_\_\_\_, drawn upon \_\_\_\_\_ (bank or institution), account #\_\_\_\_\_. [If the check was received in a face-to-face transaction insert this sentence: This check contained a drivers license identification number from a card with your photograph and mailing address, which was used to identify you at the time the check was accepted.] [If the check was delivered by mail insert this sentence: We have compared your name, address, and signature on the check with the name, address, and signature on file in the account previously established by you or on your behalf, and the signature on the check appears to be genuine.] Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

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As acceptor of the check, we give you notice to rectify any bank error or other error in connection with the transaction, and to pay the face value of the check, plus the fees as authorized under G.S. 25-3-506 and G.S. 6-21.3(a) as follows:

Face value of the check #	\$ _____
Processing fee authorized under G.S. 25-3-506	\$ _____
Bank service fees authorized under G.S. 6-21.3	\$ _____
Total amount due:	\$ _____

If the total amount due listed above is not paid within 30 days of the mailing of this letter, thereafter we may file a civil action to seek civil damages of three times the amount of the check (with a minimum damage of one hundred dollars (\$100.00) and a maximum damage of five hundred dollars (\$500.00)) for allegedly giving a worthless check in violation of law (G.S. 6-21.3), in addition to the amount of the check and the fees specified above.

Appropriate relief will then be sought before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.

(a2) If the total amount due in subsection (a1) has not been paid within 30 days after the mailing of the notification letter, a subsequent demand letter may be sent and shall be substantially in the following form:

On \_\_\_\_\_, we informed you that we received a check payable to this business containing your name and address in the sum of \$\_\_\_\_\_, drawn upon \_\_\_\_\_ (bank or institution), account #\_\_\_\_\_. This check contained identification information which was used to identify you as the maker of the check. Also, we have received no information that this was a stolen check, if that is the circumstance.

The check has been dishonored by the bank for the following reasons:

\_\_\_\_\_

We notified you that you were responsible for the face value of the check (\$\_\_\_\_\_) plus the fees authorized under G.S. 25-3-506 (\$\_\_\_\_\_) and G.S. 6-21.3(a) (\$\_\_\_\_\_) for a total amount due of \$\_\_\_\_\_. Thirty days have passed since the mailing of that notification letter, and you have not made payment to us for that total amount due.

Under G.S. 6-21.3, we claim you are now liable for the face value of the check, the fees, and treble damages. The damages we claim are three times the amount of the check or one hundred dollars (\$100.00), whichever is greater, but cannot exceed five hundred dollars (\$500.00). The total amount we claim now due is:

Face value of the check	\$ _____
Processing fee authorized under G.S. 25-3-506	\$ _____



Bank service fees authorized under G.S. 6-21.3	\$ _____
Three times the face value of the check, with a minimum of \$100.00 and a maximum of \$500.00	\$ _____
Total amount due:	\$ _____

Payment of the total amount claimed above within 30 days of the mailing of this letter shall satisfy this civil remedy for the returned check.

If payment has not been received within this 30-day period, we will seek appropriate relief before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the undersigned at the above business location. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the above business location as soon as possible.

(b) In an action under subsection (a) of this section, the presiding judge or magistrate may award the prevailing party, as part of the court costs payable, a reasonable attorney's fee to the duly licensed attorney representing the prevailing party in such suit.

(c) It shall be an affirmative defense, in addition to other defenses, to an action under this section if it is found that: (i) full satisfaction of the amount of the check or draft was made prior to the commencement of the action, or (ii) that the bank or depository erred in dishonoring the check or draft, or (iii) that the acceptor of the check knew at the time of acceptance that there were insufficient funds on deposit in the bank or depository with which to cause the check to be honored.

(d) The remedy provided for herein shall apply only if the check was drawn, made, uttered or issued with knowledge there were insufficient funds in the account, that no credit existed with the bank or depository with which to pay the check or draft upon presentation, or that the check was presented with the knowledge that the check had previously been presented and honored for the payment of money or its equivalent.

(e) A check or draft refused by a bank or depository, or the image of that check or draft, may be submitted as evidence for the remedy provided by this section if the bank or depository has returned it in the regular course of business stamped, marked, or with an attachment indicating the reason for the dishonor with terms that include, but are not limited to, the following: "insufficient funds," "no account," "account closed," "NSF," "uncollected," "unable to locate," "stale dated," "postdated," "endorsement irregular," "signature irregular," "nonnegotiable," "altered," "unable to process," "refer to maker," "duplicate presentment," "forgery," "noncompliant," or "UCD noncompliant." (1975, c. 129, s. 1; 1981, c. 781, s. 2; 1985, c. 643; 1993, c. 374, s. 1; 1995, c. 356, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 5; 2013-244, ss. 1-3.)

**§ 6-21.4. Allowance of counsel fees and costs in certain cases involving principals or teachers.**

In any civil action brought against a public school principal or teacher as defined in G.S. 115C-390 arising or resulting from the use of corporal punishment, upon a determination that the principal or teacher has prevailed and that the plaintiff's action was frivolous or without substantial merit, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the principal or teacher. The attorney's fee shall be taxed as part of the court costs. (1981, c. 381, s. 1; c. 682, s. 22.)

**§ 6-21.5. Attorney's fees in nonjusticiable cases.**

In any civil action, special proceeding, or estate or trust proceeding, the court, upon motion of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. The filing of a general denial or the granting of any preliminary motion, such as a motion for judgment on the pleadings pursuant to G.S. 1A-1, Rule 12, a motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict pursuant to G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1, Rule 56, is not in itself a sufficient reason for the court to award attorney's fees, but may be evidence to support the court's decision to make such an award. A party who advances a claim or defense supported by a good faith argument for an extension, modification, or reversal of law may not be required under this section to pay attorney's fees. The court shall make findings of fact and conclusions of law to support its award of attorney's fees under this section. (1983 (Reg. Sess., 1984), c. 1039, s. 1; 2006-259, s. 13(l).)

**§ 6-21.6. Reciprocal attorneys' fees provisions in business contracts.**

(a) As used in this section, the following definitions apply:

- (1) **Business contract.** – A contract entered into primarily for business or commercial purposes. The term does not include a consumer contract, an employment contract, or a contract to which a government or a governmental agency of this State is a party.
- (2) **Consumer contract.** – A contract entered into by one or more individuals primarily for personal, family, or household purposes.
- (3) **Employment contract.** – A contract between an individual and another party to provide personal services by that individual to the other party, whether the relationship is in the nature of employee-employer or principal-independent contractor.
- (4) **Reciprocal attorneys' fees provisions.** – Provisions in any written business contract by which each party to the contract agrees, in the manner set out in subsection (b) of this section, upon the terms and subject to the conditions set forth in the contract that are made applicable to all parties, to pay or reimburse the other parties for attorneys' fees and expenses incurred by reason of any suit, action, proceeding, or arbitration involving the business contract.

(b) Reciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses only if all of the parties to the business contract sign by hand the business contract. Signature "by hand" is

not intended to prevent the application of this section to a business contract executed by either of the following:

- (1) A party's electronic signature, as defined in G.S. 66-312, if the party's electronic signature originates from an affirmative action on the part of the party to evidence acceptance and execution such as typing the party's signature or writing the party's signature with a finger or stylus on a touchscreen to indicate acceptance and execution.
- (2) A party's manual signature that is delivered by an electronic reproductive image thereof.

(c) If a business contract governed by the laws of this State contains a reciprocal attorneys' fees provision, the court or arbitrator in any suit, action, proceeding, or arbitration involving the business contract may award reasonable attorneys' fees in accordance with the terms of the business contract. In determining reasonable attorneys' fees and expenses under this section, the court or arbitrator may consider all relevant facts and circumstances, including, but not limited to, the following:

- (1) The amount in controversy and the results obtained.
- (2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.
- (3) The novelty and difficulty of the questions raised in the action.
- (4) The skill required to perform properly the legal services rendered.
- (5) The relative economic circumstances of the parties.
- (6) Settlement offers made prior to the institution of the action.
- (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.
- (8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action.
- (9) The timing of settlement offers.
- (10) The amounts of settlement offers as compared to the verdict.
- (11) The extent to which the party seeking attorneys' fees prevailed in the action.
- (12) The amount of attorneys' fees awarded in similar cases.
- (13) The terms of the business contract.

(d) Reasonable attorneys' fees and expenses shall not be governed by (i) any statutory presumption or provision in the business contract providing for a stated percentage of the amount of such attorneys' fees or (ii) the amount recovered in other cases in which the business contract contains reciprocal attorneys' fees provisions.

(e) Nothing in this section shall in any way make valid or invalid attorneys' fees provisions in consumer contracts or in any note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2. If the business contract is also a note, conditional sale contract, or other evidence of indebtedness that is otherwise governed by G.S. 6-21.2, then the parties that are entitled to recover attorneys' fees and

expenses may elect to recover attorneys' fees and expenses either under this section or G.S. 6-21.2 but may recover only once for the same attorneys' fees and expenses.

(f) In any suit, action, proceeding, or arbitration primarily for the recovery of monetary damages, the award of reasonable attorneys' fees may not exceed the amount in controversy.

(g) Nothing in this section shall in any way make valid or invalid attorneys' fees provisions in a contract of insurance governed by Chapter 58 of the General Statutes. (2011-341, s. 2; 2015-264, s. 32.5.)

#### **§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

In any action in which a city or county is a party, upon a finding by the court that the city or county acted outside the scope of its legal authority, the court may award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs. (2011-299, s. 1.)

#### **§ 6-22. Petitioner to pay costs in certain cases.**

The petitioner shall pay the costs in the following proceedings:

- (1) In petitions for draining or damming lowlands where the petitioner alone is benefited.
- (2) In petitions for condemnation of water millsites when the petitioner is allowed to erect the mill; but when he is not allowed to erect the mill, the costs shall be paid by the person who is allowed to do so.
- (3) In petitions for condemnation of land for railroads, street railways, telegraph, telephone or electric power or light companies, or for water supplies for public institutions, or for the use of other quasi-public or municipal corporations; unless in the opinion of the superior court the defendant improperly refused the privilege, use or easement demanded, in which case the costs must be adjudged as to the court may appear equitable and just.
- (4) When the petition is refused. (Code, ss. 1299, 1855, 2013; 1893, c. 63; 1903, c. 562; Rev., s. 1269; C.S., s. 1245; 1945, c. 635.)

#### **§ 6-23. Defendant unreasonably defending after notice of no personal claim to pay costs.**

In case of a defendant, against whom no personal claim is made, the plaintiff may deliver to such defendant with the summons, a notice subscribed by the plaintiff or his attorney, setting forth the general object of the action, a brief description of the property affected by it, if it affects real or personal property, and that no personal claim is made against such defendant. If a defendant on whom such notice is served unreasonably defends the action, he shall pay costs to the plaintiff. (Code, s. 216; Rev., s. 1270; C.S., s. 1246.)

#### **§ 6-24. Suits by an indigent; payment of costs by an indigent.**

A person who sues as an indigent is not required to advance the required court costs and no officer shall require any fee of the person. If a court enters a judgment in favor of a person suing as an indigent and does not require another party to the suit to pay the costs of the suit, the court may require the indigent person to pay any costs of the suit that were not required to be paid

because the person was indigent. (1868-9, c. 96, s. 3; Code, s. 212; 1895, c. 149; Rev., s. 1265; C.S., s. 1247; 1993, c. 435, s. 5.)

**§ 6-25. Party seeking recovery on usurious contracts; no costs.**

No costs shall be recovered by any party, whether plaintiff or defendant, who may endeavor to recover upon any usurious contract. (1895, c. 69; Rev., s. 1271; C.S., s. 1248.)

**§ 6-26. Costs in special proceedings.**

The costs in special proceedings shall be as allowed in civil actions, unless otherwise specially provided. (Code, s. 541; Rev., s. 1272; C.S., s. 1249.)

**§ 6-27. Repealed by Session Laws 1971, c. 269, s. 15.**

**§ 6-28. Costs of laying off homestead and exemption.**

The costs and expenses of appraising and laying off the homestead or personal property exemptions, when the same is made under execution, shall be charged and included in the officer's bill of fees upon such execution or other final process; and when made upon the petition of the owner, they shall be paid by such owner, and the latter costs shall be a lien on said homestead. (Code, s. 510; Rev., s. 1274; C.S., s. 1251.)

**§ 6-29. Costs of reassessment of homestead.**

If the superior court at term shall confirm the appraisal or assessment, or shall increase the exemption allowed the debtor or claimant, the levy shall stand only upon the excess remaining, and the creditor shall pay all the costs of the proceeding in court. If the amount allowed the debtor or claimant is reduced, the costs of the proceeding in court shall be paid by the debtor or claimant, and the levy shall cover the excess then remaining. (Code, s. 521; Rev., s. 1275; C.S., s. 1252.)

**§ 6-30. Costs against infant plaintiff; guardian responsible.**

When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor. (Code, s. 534; Rev., s. 1276; C.S., s. 1253.)

**§ 6-31. Costs where executor, administrator, trustee of express trust, or person authorized by statute a party.**

In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by and against a person prosecuting or defending in his own right; but such costs shall be chargeable only upon or collected out of the estate, fund or party represented, unless the court directs the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in such action or defense. And when any claim against a deceased person is referred, the prevailing party shall be entitled to recover the fees of referees and witnesses, and other necessary disbursements, to be taxed according to law. (Code, s. 535; Rev., s. 1277; C.S., s. 1254.)

**§ 6-32. Costs against assignee after action brought.**

In actions in which the cause of action becomes by assignment after the commencement of the action, or in any other manner, the property of a person not a party to the action, such person shall

be liable for the costs in the same manner as if he were a party. (Code, s. 539; Rev., s. 1278; C.S., s. 1255.)

Article 4.

Costs on Appeal.

**§ 6-33. Costs on appeal generally.**

On appeal from a magistrate or any court of the General Court of Justice, if the appellant recovers judgment, he shall recover the costs of the appeal and also those costs he ought to have recovered below had the judgment of that court been correct. If in any court of appeal there is judgment for a new trial, or for a new jury, or if the judgment appealed from is not wholly reversed, but partly affirmed and partly disaffirmed, the costs shall be in the discretion of the appellate court. (Code, s. 540; Rev., s. 1279; C.S., s. 1256; 1969, c. 44, s. 19; 1971, c. 269, s. 7.)

**§§ 6-34 through 6-35. Repealed by Session Laws 1971, c. 269, s. 15.**

Article 5.

Liability of Counties in Criminal Actions.

**§§ 6-36 through 6-39. Repealed by Session Laws 1971, c. 269, s. 15.**

Article 5.

Liability of Counties in Criminal Actions.

**§ 6-40. Liability of counties, where trial removed from one county to another.**

When a prisoner is sent from one county to another to be held for trial, or for any other cause or purpose, the county from which he is sent shall pay his jail expenses, unless they are collected from the prisoner. (1889, c. 354; 1901, c. 718; Rev., s. 1285; C.S., s. 1263; 1971, c. 269, s. 8.)

**§§ 6-41 through 6-44. Repealed by Session Laws 1971, c. 269, s. 15.**

Article 6.

Liability of Defendant in Criminal Actions.

**§§ 6-45 through 6-46. Repealed by Session Laws 1971, c. 269, s. 15.**

Article 6.

Liability of Defendant in Criminal Actions.

**§ 6-47. Judgment confessed; bond given to secure fine and costs.**

In cases where a court permits a defendant convicted of any criminal offense to give bond or confess judgment, with sureties to secure the fine and costs which may be imposed, the acceptance of such security shall be upon the condition that it shall not operate as a discharge of the original judgment against the defendant nor as a discharge of his person from the custody of the law until

the fine and costs are paid. (1879, c. 264; Code, s. 749; 1885, c. 364; Rev., s. 1293; C.S., s. 1269; 1971, c. 269, s. 9.)

**§ 6-48. Arrest for nonpayment of fine and costs.**

In default of payment of such fine and costs, it is the duty of the court at any subsequent term thereof, on motion of the solicitor of the State, to order a *capias* to issue to the end that such defendant may be again arrested and held for the fine and costs until discharged according to law. (1879, c. 264; Code, s. 750; 1885, c. 364; Rev., s. 1294; C.S., s. 1270; 1971, c. 269, s. 10.)

Article 7.

Liability of Prosecuting Witness for Costs.

**§ 6-49. Prosecuting witness liable for costs in certain cases; court determines prosecuting witness.**

In all criminal actions in any court, if the defendant is acquitted, *nolle prosequi* entered, or judgment against him is arrested, or if the defendant is discharged from arrest for want of probable cause, the costs, including the fees of all witnesses whom the judge before whom the trial took place shall certify to have been proper for the defense and prosecution, shall be paid by the prosecuting witness, whether marked on the bill or warrant or not, whenever the judge is of the opinion that there was not reasonable ground for the prosecution, or that it was not required by the public interest. If a greater number of witnesses have been summoned than were, in the opinion of the court, necessary to support the charge, the court may, even though it is of the opinion that there was reasonable ground for the prosecution, order the prosecuting witness to pay the attendance fees of such witnesses, if it appear that they were summoned at the prosecuting witness's special request.

Every judge is authorized to determine who the prosecuting witness is at any stage of a criminal proceeding, whether before or after the bill of indictment has been found, or the defendant acquitted: Provided, that no person shall be made a prosecuting witness after the finding of the bill, unless he shall have been notified to show cause why he should not be made the prosecuting witness of record. (1799, c. 4, s. 19, P.R.; 1880, c. 558, P.R.; R.C., c. 35, s. 37; 1868-9, c. 277; 1874-5, c. 151; 1879, c. 49; Code, s. 737; 1889, c. 34; Rev., s. 1295; C.S., s. 1271; 1947, c. 781; 1953, c. 675, s. 1; 1971, c. 269, s. 11.)

**§ 6-50. Imprisonment of prosecuting witness for willful nonpayment of costs if prosecution frivolous.**

Every such prosecuting witness may be adjudged not only to pay the costs, but he shall also be imprisoned for the willful nonpayment thereof, when the judge before whom the case was tried shall adjudge that the prosecution was frivolous or malicious. (1800, c. 558; R.C., c. 35, s. 37; 1879, c. 49; 1881, c. 176; Code, s. 738; Rev., s. 1297; C.S., s. 1272; 1971, c. 269, s. 11.1.)

Article 8.

Fees of Witnesses.

**§ 6-51. Not entitled to fees in advance.**

Witnesses are not entitled to receive their fees in advance; but no witness in a civil action or special proceeding, unless summoned on behalf of the State or a municipal corporation, shall be compelled to attend more than one day, if the party by or for whom he was summoned shall, after one day's attendance, on request and presentation of a certificate, fail or refuse to pay what then may be due for traveling to the place of examination and for the number of days of attendance. (1868-9, c. 279, subch. 11, s. 3; Code, s. 1368; Rev., s. 1298; C.S., s. 1273.)

**§ 6-52. Repealed by Session Laws 1971, c. 269, s. 15.**

**§ 6-53. Witness to prove attendance; action for fees.**

Every person summoned, who shall attend as a witness in any suit, shall, before the clerk of the court, or before the referee or officer taking the testimony, ascertain by his own oath or affirmation the sum due for traveling to and from court, attendance and ferriage, which shall be certified by the clerk; and on failure of the party, at whose instance such witness was summoned (witnesses for the State and municipal corporations excepted), to pay the same previous to the departure of the witness from court, such witness may at any time sue for and recover the same from the party summoning him; and the certificate of the clerk shall be sufficient evidence of the debt. (1777, c. 115, s. 46, P.R.; 1796, c. 458, P.R.; R.C., c. 31, s. 73; 1868-9, c. 279, subch. 11, ss. 2, 4; Code, s. 1369; Rev., s. 1299; C.S., s. 1274; 1971, c. 269, s. 12.)

**§§ 6-54 through 6-56. Repealed by Session Laws 1971, c. 269, s. 15.**

**§ 6-57. Repealed by Session Laws 1947, c. 781.**

**§§ 6-58 through 6-59. Repealed by Session Laws 1971, c. 269, s. 15.**

**§ 6-60. No more than two witnesses may be subpoenaed to prove single material fact; liability for fees of such witnesses; one fee for day's attendance.**

No district attorney shall direct that more than two witnesses be subpoenaed for the State to prove a single material fact, nor shall the State or defendant in any such prosecution be liable for the fees of more than two witnesses to prove a single material fact, unless the court, upon satisfactory reasons appearing, otherwise directs. And no witness subpoenaed in a criminal action shall be paid by the State for attendance in more than one case for any one day. (1871-2, c. 186; 1879, c. 264; Code, s. 744; Rev., s. 1303; C.S., s. 1284; 1971, c. 269, s. 13; 1973, c. 47, s. 2.)

**§ 6-61. Repealed by Session Laws 1971, c. 269, s. 15.**

**§ 6-62. District attorney to announce discharge of State's witnesses.**

It is the duty of all district attorneys prosecuting in the several courts, as each criminal prosecution is disposed of by trial, removal, continuance or otherwise, to call, in open court, and announce the discharge of witnesses for the State, either finally or otherwise as the disposition of the case may require. (1879, c. 264; 1881, c. 312; Code, s. 746; Rev., s. 1305; C.S., s. 1286; 1935, c. 26; 1971, c. 269, s. 14; 1973, c. 47, s. 2.)

**§ 6-63. Repealed by Session Laws 1971, c. 269, s. 15.**



Article 9.

Criminal Costs before Justices, Mayors, County or Recorders' Courts.

**§§ 6-64 through 6-65. Repealed by Session Laws 1971, c. 269, s. 15.**