



SENATE BILL 567: Reform/Correct/Wills and Trusts.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 25, 2017
Introduced by:	Sens. Barringer, Randleman, Daniel	Prepared by:	Amy Darden
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *Senate Bill 567 would provide for judicial reformation of wills to correct mistakes, the judicial modification of wills to achieve the testator's tax objectives, and revise the Uniform Trust Code to make the treatment of wills and trusts consistent. This bill is recommended by the General Statutes Commission.*

CURRENT LAW: The terms of a trust may be reformed to correct mistakes whether or not the terms are ambiguous. Trust terms may also be modified to achieve a settlor's tax objectives. Currently, the modification and reformation of wills is governed purely by case law.

BILL ANALYSIS:

Section 1: creates a new Article in Chapter 31 that would:

- Authorize the court to reform the terms of a will if they are ambiguous in order to conform with clear and convincing evidence of the testator's intent;
- Authorize the court to modify the terms of a will to achieve a testator's tax objective as long as it's not contrary to testator's probable intent;
- Direct that an action for reformation or modification of a will be filed in superior court;
- Make a personal representative a necessary party to an action for reformation or modification of a will; and,
- Bar an interested person from filing a caveat to the will if they had previously filed an action for reformation or modification of that will.

Section 2: would correct a reference from "trust" to "estate" to correct a subsection citation and would add a citation to G.S. 28A-2-5.

Section 3: would specify that the clerk of superior court does not have jurisdiction over actions for reformation or modification of wills under the new Article 10 of Chapter 31 (created in Section 1 of the bill).

Section 4: would rewrite G.S. 36C-4-415 to authorize a court to reform the terms of a trust, only if those terms are ambiguous, in order to conform with the settlor's intent. Intent must be proved by clear and convincing evidence and that the terms of the trust were affected by a mistake of fact or law.

Section 5: would direct the Revisor of Statutes to print all explanatory comments of the drafters of Section 4 of this act as the Revisor deems appropriate.

EFFECTIVE DATE: Section 2 of this act becomes effective when it becomes law. The remainder of this act becomes effective January 1, 2018. Sections 1 and 3 of this act apply to estates of decedents dying before, on, or after that date. Section 4 of this act applies to actions for the reformation of trusts filed on or after that date.

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