



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

2017-2018 General Assembly

Committee:	House Judiciary I	Date:	June 21, 2017
Introduced by:	Sens. Barringer, Randleman, Daniel	Prepared by:	Jason Moran-Bates
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 567 would allow courts to reform the terms of a will (1) to conform to the testator's intent if the original terms were affected by a mistake of law or fact, or (2) to achieve the testator's tax objectives if the modifications are not contrary to the testator's intent. Senate Bill 567 would also make several clarifying changes to the statute allowing for modification of a trust by the court.*

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 of Senate Bill 567 would add a new Article 10 to Chapter 31 of the General Statutes. This new Article would:

- Allow a court to reform the terms of a will to conform to the testator's intent if that intent can be demonstrated by clear and convincing evidence and the original terms were affected by mistake of law or fact.
- Allow a court to modify the terms of a will to conform to the testator's tax objectives, so long as the modification does not contradict the testator's probable intent.
- Establish a process to petition for reformation or modification and provide that an individual who files for reformation or modification is prohibited from filing a caveat to the will.

Section 2 would make clarifying changes to G.S. 28A-2-4.

Section 3 would prohibit the clerk of court from having jurisdiction over actions for reformation or modifications of wills under Article 10 of Chapter 31.

Section 4 would amend G.S. 36C-4-415 to allow a court to reform the terms of a trust, but only if those terms are ambiguous.

Section 5 would require the Revisor of Statutes, as the Revisor deems appropriate, to print all the explanatory comments of the drafters of Section 4.

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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