



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

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	August 14, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Jason Moran-Bates Staff Attorney
<b>Analysis of:</b>	S.L. 2017-152		

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**OVERVIEW:** *S.L. 2017-152 allows 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. S.L. 2017-152 also makes several clarifying changes to the statute allowing for modification of a trust by the court.*

*This act has various effective dates. Please see the full summary for more detail.*

**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 the act adds Article 10 to Chapter 31 of the General Statutes. This new Article:

- Allows 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.
- Allows 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.
- Establishes 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 makes clarifying changes to G.S. 28A-2-4.

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

Section 4 amends 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 requires 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 became effective July 20, 2017. 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.

*Amy Darden, Staff Attorney, substantially contributed to this summary.*

Karen Cochrane-Brown  
Director



Legislative Analysis  
Division  
919-733-2578