



General Statutes Commission

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MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: HB 1025 (GSC Technical Corrections 2018)
Date: December 3, 2018

General Comments

Part I of this bill contains corrections of a technical nature to the General Statutes and session laws, and Part II contains corrections of a technical nature to the North Carolina Uniform Power of Attorney Act (Chapter 32C of the General Statutes), enacted by S.L. 2017-153, and conforming changes. Both parts are recommended by the General Statutes Commission.

These amendments (i) correct typographical, redlining, citation, spelling, and other obvious drafting errors, (ii) make conforming changes, (iii) make stylistic and formatting updates, (iv) replace legalese with plain English, (v) make language gender neutral, (vi) add language to introduce lists, (vii) update references to the "Research Division" and "Bill Drafting Division" with the current names of the Legislative Analysis and Legislative Drafting Divisions, (viii) delete an extraneous definition, (ix) alphabetize a definitions list, (x) modernize the numbering of a definition, (xi) repeal an obsolete article, and (xii) resolve an internal conflict in a statute.

Specific Comments

Part I consists of Sections 1 through 26.

Section 1 amends G.S. 14-50.41 to conform to a change in the title of Article 13B of Chapter 14 of the General Statutes by S.L. 2017-194, s. 14.

Section 2(a) amends G.S. 14-151 as follows:

- It adds language that is missing from subsection (e). This language is missing because S.L. 2013-88, s. 1, which was in the coded bill drafting format, set out this language as new but did not underline it.
- It replaces legalese with plain English, makes language gender neutral, and updates the use of commas.

Section 2(b) provides that this section applies prospectively.

Section 3(a) amends G.S. 20-9 by replacing legalese with plain English, making language gender neutral, updating the use of commas, updating the format of an internal citation, adding language to introduce a list, and making conforming changes, including changes to conform to the amendments to G.S. 20-37.7 by **Section 3(b)**. Those amendments are as follows:

- They remove "garbage language" from subdivision (d)(3) that was caused when S.L. 2013-381, s. 3.1, which was in the coded bill drafting format, omitted this language instead of striking through it.

- They replace legalese with plain English, make language gender neutral, and add language to introduce a list.

Section 4 updates G.S. 20-79.3A(c) and (d), 90-414.5(b), 120-30.49(a), 120-32.01, 120-36.6, Article 7B of Chapter 120 of the General Statutes, and G.S. 120-233(a) to reflect the current names of the Legislative Analysis and Legislative Drafting Divisions. It also adds the word "than" which is missing from G.S. 20-79.3A(d), replaces legalese with plain English in G.S. 90-414.5(b), 120-32.01 and 120-36.6, modernizes the format of a list in G.S. 120-30.49(a), makes "data base" one word in G.S. 120-32.01, and updates the use of commas in G.S. 120-36.6.

Section 5(a) repeals Section 4 of Chapter 168 of the 1989 Session Laws, which stated that it was amending G.S. 20-111(c)(10) but instead quoted from G.S. 20-118(c)(10), amending a reference to "G.S. 130A-290(4)" in that subdivision. Because of this conflict, the amendment was not codified. **Section 5(b)** resolves this issue by amending G.S. 20-118(c)(10) to replace "G.S. 130A-290(4)" with the correct reference "G.S. 130A-290(a)(8)." It also alphabetizes a definitions list, replaces legalese with plain English, makes language gender neutral, updates the format of internal citations, and updates the use of commas in G.S. 20-118.

Section 6(a) amends G.S. 24-10(c) as follows:

- It replaces a reference to "G.S. 24-1.1(1)" with "G.S. 24-1.1(a)(1)" to conform to the current numbering structure of G.S. 24-1.1. Section 2 of Chapter 506 of the 1991 Session Laws added a subsection (a) designation to G.S. 24-1.1.
- It replaces legalese with plain English.

Section 6(b) amends G.S. 24-10(g) primarily to delete a reference to G.S. 24-1.2, which was repealed by S.L. 1998-119, s. 2, with no successor provision. It also replaces legalese with plain English and adds a missing comma. **Section 6(c)** amends G.S. 53-141 to delete another reference to G.S. 24-1.2.

Section 7(a) amends G.S. 39-23.1 primarily to delete the extraneous definition "voidable transaction" for Article 3A of Chapter 39 of the General Statutes, entitled the "Uniform Voidable Transactions Act." The term "voidable transaction" only appears in the title of the article. This subsection also updates the format of three lists.

Section 7(b) amends G.S. 39-23.8(b), (d), and (e) to add the word "from" that was mistakenly deleted from subsection (e) by S.L. 2017-204, s. 3.3(b). It also updates the format of three lists.

Section 8(a) amends G.S. 44A-11.2 primarily to replace the incorrect word "affect" with "effect" in subsection (v). It also replaces legalese with plain English and replaces the incorrect word "will" with "shall" in two places. **Section 8(b)** provides that the amendments to G.S. 44A-11.2(v) become effective October 1, 2018, the postponed effective date of G.S. 44A-11.2(v). It also provides that the remainder of this section is effective when it becomes law.

Section 9 amends G.S. 48-3-303(g) to correct a typographical error by changing "replacement assessment" to "preplacement assessment."

Section 10(a) amends G.S. 53-208.45 primarily to conform to Article 14A of Chapter 66 of the General Statutes, entitled the "Assumed Business Name Act," which was enacted by S.L. 2016-100 and S.L. 2017-23. It also adds the word "the" which is missing from subdivision (a)(4),

modernizes the format of two lists, fixes the format of an internal citation, and replaces legalese with plain English.

Section 10(b) amends G.S. 53-208.56 to fix the format of a citation by replacing "§ 53-208.55" with "G.S. 53-208.55." It also modernizes the format of two lists.

Section 10(c) amends G.S. 53-208.62 to fix a typographical error in the phrase "or other person" in subsection (b) and to replace legalese with plain English.

Section 11 amends G.S. 59-32 primarily to modernize the numbering of the first definition in a list and to modernize the format of the entire list of definitions. This section also deletes unnecessary legalese in the introductory language, deletes an extraneous Roman numeral and comma in subdivision (4g), and changes "both of the following" to "all of the following" in the introductory language in subdivisions (9) and (11).

Section 12 amends G.S. 89F-20(a), 89G-5, and 106-1041 to correct the misspelling "General Statues."

Section 13(a) amends G.S. 96-35, 143B-431.01(d)(1), 143B-431.01(f), 143B-434.2(d), 143B-435.1(d), 143B-437.02(k), 143B-437.012(m), 143B-438.10(a)(7a), 143B-438.10(a)(8), 143B-438.14(d), 143B-472.35(l), and 143B-1285(3) to delete an extraneous "the" that was added by Section 14.1(q), Section 14.1(r), and Section 14.1(s) of S.L. 2017-57.

Section 13(b) amends G.S. 115D-11.6 to substitute a list of legislative committees for the term "legislature." S.L. 2017-57, s. 14.1(o), made this substitution in G.S. 94-2, but G.S. 94-2 was repealed and replaced with G.S. 115D-11.6 by S.L. 2017-57, s. 15.13(b) and (c).

Section 13(c) amends G.S. 143B-434.01 as follows:

- It deletes duplicative references to legislative committees in subsection (l), which was caused by Section 14.1(q) and Section 14.1(y) of S.L. 2017-57 adding the same legislative committees to a list.
- It modernizes the format of two lists, shifts the subsection (d) catchline to appear before the first subdivision of that subsection, adds the word "following" in subdivision (e)(2) to improve intelligibility, and adds language to introduce a list.

Section 14 amends G.S. 106-702(b) to reflect that the plaintiff of a private nuisance action can be an entity and amends G.S. 106-702(c) to replace legalese with plain English.

Section 15 amends G.S. 113A-134.12 primarily to remove "garbage language" from subsection (b) that was caused by conflicting amendment to this statute by S.L. 2015-241, s. 14.30(u), and S.L. 2017-10, s. 4.9. It also replaces "handicapped access" with "access for individuals with a disability" in subdivision (a)(10).

Section 16 amends G.S. 115C-296.2(b) to delete a duplicative reference to "the Division of Adult Correction and Juvenile Justice of the Department of Public Safety." This duplication was caused by S.L. 2017-186, which consolidated the former divisions of Adult Correction and Juvenile Justice into a single division. Section 2(ddddd) of the session law changed the name of one division, and Section 3(a) of the session law changed the name of the other division, resulting in duplicative references to the new division.

Section 17 recodifies G.S. 130A-26A as G.S. 130A-26.4, because G.S. 130A-26A is an invalid G.S. number. It also modernizes punctuation in two lists and updates the use of commas.

Section 18 repeals Article 18A of Chapter 136 of the General Statutes as obsolete. This Article consists of a compact that establishes the South Carolina and North Carolina Interstate Freight Rail Compact Commission. According to the Rail Division of the North Carolina Department of Transportation, (i) the purpose of this Commission was to evaluate how to bring the Carolina Southern shortline railroad back into service after its bankruptcy, (ii) a private company purchased the railroad and significantly improved its infrastructure, (iii) the South Carolina Department of Transportation reported that South Carolina did not take steps to set up the Commission because of the private company's recovery efforts, (iv) there is no longer a need for this Commission, and (v) this article thus is obsolete.

Section 19 amends G.S. 143-157.1(a) to delete the extraneous word "or" that was left in by S.L. 2007-167 and to replace legalese with plain English. It also amends G.S. 143-157.1(b) to fix the format of an internal citation.

Section 20 amends G.S. 143-723 primarily to correct a citation to the article on open meetings law. It also replaces legalese with plain English.

Section 21 amends G.S. 150B-1(d)(6) to remove "garbage language" that was caused by two conflicting amendments to this subdivision by S.L. 2015-198, s. 3, and S.L. 2017-186, s. 2(dddddddd).

Section 22 amends G.S. 150B-21.11 to remove "garbage language" that was caused by two conflicting amendments to this statute by S.L. 2011-291, s. 2.59, and S.L. 2011-398, s. 7.

Section 23 makes two conforming changes that were missed last year when the substance of the Second Edition of House Bill 280 was transferred to S.L. 2017-57 (2017 budget bill) as Section 16D.4. **Section 23(a)** amends Section 16D.4(dd) by replacing a reference to "subsections (a) and (b) of this section" with the correct reference to "subsections (bb) and (cc) of this section." **Section 23(b)** amends Section 16D.4(tt), which was based on the effective date section for the Second Edition of House Bill 280, by replacing two references to "this act" with correct references to "this section" and replacing a reference to "any particular section of this section" with the correct reference to "any particular subsection of this section." These changes reflect that the substance of the Second Edition of House Bill 280 was transferred into a single section.

Section 24(a) makes a date change in Section 36.7(b) of S.L. 2017-57 (2017 budget bill), which is applicable to the current fiscal biennium. S.L. 2017-206, s. 7(b), made the same date change in a parallel provision in S.L. 2015-241 (2015 budget bill), but that provision applied only during the 2015-2017 fiscal biennium. **Section 24(b)** repeals S.L. 2017-206, s. 7(b).

Section 25 amends Section 2(b) and Section 2(c) of S.L. 2017-137 to fix citations to other parts of the session law. It specifically replaces references to "Section 1(a) of this act" and "Section 1(b) of this act" with "Section 2(a) of this act" and "Section 2(b) of this act," respectively. There is no Section 1(a) or Section 1(b) of that act, and in context, it is clear that Section 2(a) and Section 2(b) are the correct references.

Section 26(a) amends Section 2 of S.L. 2017-174 to fix a citation error by replacing "Chapter 113E of the General Statutes" with "Chapter 131E of the General Statutes." There is no Chapter 113E of the General Statutes, and in context, it is clear that Chapter 131E is the correct

reference. **Section 26(b)** provides that this section is effective July 21, 2017, which matches the effective date of S.L. 2017-174.

Part II consists of Sections 27 through 36, which contain technical corrections to the North Carolina Uniform Power of Attorney Act (Chapter 32C of the General Statutes) and conforming changes.

Section 27(a) amends G.S. 32C-1-108(b) to remove a reference to the clerks of court "limit[ing]" a power of attorney, because G.S. 32C-1-116(b) expressly states that the clerks do not have jurisdiction to modify or amend a power of attorney. It also adds language to reference a guardian of the principal's estate and general guardian's power to terminate a power of attorney under G.S. 32C-1-110(a)(7) and power to terminate an agent's authority under G.S. 32C-1-110(b)(5). The addition of this language conforms to G.S. 32C-1-110.

Section 27(b) amends G.S. 32C-116 as follows:

- In subsection (a), this section removes a reference to the clerks of court "limit[ing]" a power of attorney, because G.S. 32C-1-116(b) expressly states that the clerks do not have jurisdiction to modify or amend a power of attorney.
- In subsection (c), this section clarifies that once proceedings relating to a power of attorney are commenced before the clerk of court using the procedures for estate proceedings under G.S. 28A-2-6, the proceeding continues to be conducted under the procedures for estate proceedings.
- In subsection (e), this section makes a technical correction to a verb.

Section 28(a) and **(b)** amends G.S. 32C-1-109(c) and G.S. 32C-1-116(f) to correct a citation error that appears in both statutes. In an earlier draft of the bill that was enacted as S.L. 2017-153, the definition of "incapacity" was located at subdivision (5) of G.S. 32C-1-102, but in the final version, that definition had been moved to subdivision (6). The reference to that definition in G.S. 32C-1-109(c) and G.S. 32C-1-116(f) were not corrected at that time.

Section 29 amends G.S. 32C-1-112 to conform a request for reimbursement by an agent under a power of attorney to the requirements of G.S. 32-59, which governs such requests by a fiduciary other than a trustee.

Section 30(a) amends G.S. 32C-1-114 to resolve an internal conflict in that statute. G.S. 32C-1-114(b) contains a list of default duties imposed on an agent in the exercise of a power granted to the agent in a power of attorney; these duties do not need to be included in a power of attorney but will apply unless the power of attorney expressly waives them. Subsection (b) was amended during the act's process through the General Assembly to add subdivision (7), a duty to account to the principal or a person designated by the principal in the power of attorney. However, the addition of subdivision (7) to the list of default duties conflicts with the provisions of subsection (h) of G.S. 32C-1-114, which provides in essence that the agent has no duty to account unless the power of attorney includes this duty or unless the agent is ordered to do so by a court or requested by a guardian of the estate of the principal or an executor or administrator of the estate of a deceased principal. This section resolves this conflict by deleting subdivision (b)(7) but including the principal or a person designated by the principal in subsection (h)'s list of persons who can obtain an accounting on request.

Section 30(b) amends G.S. 32C-3-301, which contains the statutory short form power of attorney, to conform to the amendment to G.S. 32C-1-114 in Section 30(a).

Section 31(a), (b), and (c) amend G.S. 32C-2-201, 32C-2-202, and 32C-2-203 to delete references to G.S. 32C-2-220, a statute that had been included in an earlier draft of the bill that was enacted as S.L. 2017-153, but was not included in the final version.

Section 32 amends G.S. 32C-3-303 to add a line that is missing from the statutory short form limited power of attorney for real property, specifically the line to indicate when the notary's commission expires.

Section 33 amends G.S. 32C-4-403(a)(4) to make it clear that when G.S. 32C-4-403(a)(1) states that Chapter 32C of the General Statutes applies to already-existing powers of attorney, that includes G.S. 32C-1-104, which reverses the prior law and provides that a power of attorney is durable unless it does not so state. The amendment also clarifies that G.S. 32C-1-104 is a rule of construction or presumption.

This section amends G.S. 32C-4-403(c) to correct an obvious drafting error. "References to prior statutes *and* powers of attorney" should have been "References to prior statutes *in* powers of attorney," and this section corrects that error.

Section 34 amends G.S. 47-43 to replace references to "attorney in fact" with "agent" to conform to new Chapter 32C of the General Statutes. It also replaces legalese with plain English and makes language gender-neutral.

Section 35(a) and (b) correct essentially the same error in G.S. 90-21.13(c) and G.S. 90-322(b), respectively, by removing a reference to new Chapter 32C of the General Statutes.

G.S. 90-21.13(c) contains a list of persons who are statutorily authorized to consent to medical care on behalf of a person who is comatose or lacks capacity to make his or her own decisions. G.S. 90-322(b) similarly contains a list of persons who may agree to the discontinuance of life-prolonging measures in the absence of a declaration of a desire for a natural death. Before the enactment of S.L. 2017-153 (which enacted Chapter 32C), each list included an entry for an attorney in fact under former Articles 1 or 2 of Chapter 32A of the General Statutes if the attorney in fact had the power to make health care decisions for the patient. S.L. 2017-153, ss. 2.6 and 2.7, made conforming amendments to those provisions by substituting the new term "agent" for "attorney in fact" and updating the statutory references. However, new Chapter 32C prohibits a power of attorney governed by that Chapter from including the power to make health care decisions, so the conforming amendments were incorrect. Because some powers of attorney under the former statutes did have this power and remain valid, the proposed amendment simply removes the statutory reference.

Section 36 authorizes the Revisor of Statutes to include drafters' comments to the amendments in this Part.

The **final section** provides that except as otherwise provided, the act is effective when it becomes law.