



# General Statutes Commission

300 N. Salisbury Street, Suite 401  
Raleigh, NC 27603-5925  
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis  
*Revisor of Statutes*

P. Bly Hall  
*Assistant Revisor of Statutes*

## MEMORANDUM

**To:** House Judiciary I  
**From:** General Statutes Commission  
**Re:** HB 1025 (GSC Technical Corrections 2018)  
**Date:** June 5, 2018

### General Comments

Part I of this proposed committee substitute (PCS) contains corrections of a technical nature to the General Statutes and session laws, and Part II of this PCS 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) alphabetize definitions, (v) replace legalese with plain English, (vi) make language gender neutral, (vii) add language to introduce lists, (viii) delete an extraneous definition, (ix) update references to the "Research Division" and "Bill Drafting Division" with the current names of the Legislative Analysis and Legislative Drafting Divisions, (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 primarily to add language that is missing from subsection (e) because of a redlining error in S.L. 2013-88, s. 1. It also 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, fixing drafting errors, 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)**. That subsection amends G.S. 20-37.7 primarily to remove "garbage language" in subdivision (d)(3) that was caused by a redlining error in S.L. 2013-381, s. 3.1. It also replaces legalese with plain English and adds 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 1989, c. 168, s. 4, which would have amended G.S. 20-111 to change a reference to "G.S. 130A-290(4)" but instead quoted from G.S. 20-118(c)(10). The amendment thus was not codified. **Section 5(b)** resolves this issue by replacing "G.S. 130A-290(4)" with the correct reference "G.S. 130A-290(a)(8)" in G.S. 20-118(c)(10). It also alphabetizes a definitions list, replaces legalese with plain English, makes language gender neutral, fixes drafting errors, and updates the use of commas in G.S. 20-118.

**Section 6(a)** amends G.S. 24-10(c) primarily to change a reference to "G.S. 24-1.1(1)" to conform to the current numbering structure of G.S. 24-1.1. It also 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) and to update 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 fixes drafting errors. **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 a drafting error, and replaces legalese with plain English.

**Section 10(b)** amends G.S. 53-208.56 to fix a citation error and to modernize 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 and format of the definitions. This section also fixes a drafting error and deletes an extraneous Roman numeral and comma.

**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), (r), and (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 primarily to delete duplicative references to legislative committees in subsection (l). It also modernizes the format of two lists, fixes a drafting error, adds the word "following" 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" 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."

**Section 17** recodifies G.S. 130A-26A as G.S. 130A-26.4, because G.S. 130A-26A is an invalid number under the General Statutes numbering system. 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, which 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, this Article is obsolete because there is no longer a need for this Commission.

**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 a drafting error.

**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) 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."

**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 2(c) of S.L. 2017-137 to fix citations to other parts of the session law.

**Section 26(a)** amends Section 2 of S.L. 2017-174 to fix a citation error. **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).

**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.