



General Statutes Commission

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MEMORANDUM

To: House Judiciary
From: General Statutes Commission
Re: HB 1072 (GSC Technical Corrections 2020)
Date: June 3, 2020

General Comments

This bill, which is recommended by the General Statutes Commission, contains corrections of a technical nature to the General Statutes and session laws. This bill also includes an amendment recommended by the N.C. Bar Association to provide that the register of deeds does not need to verify the capacity or authority of the person listed as the drafter of a deed or deed of trust.

Technical corrections in this bill consist of conforming changes, replacing legalese with plain English, adding a missing word, deleting extraneous language, correcting applicability language, correcting amendatory language, and adding specific authorization for the Revisor of Statutes to print drafters' comments as annotations to the General Statutes.

Specific Comments

Section 1 amends G.S. 28A-2-6(h) to make two conforming changes. G.S. 28A-2-6 is in the General Statutes chapter on decedents' estates. When G.S. 28A-2-6 was enacted in 2011 by S.L. 2011-344, s. 4, it was based on a section from the North Carolina Uniform Trust Code, G.S. 36C-2-205. In the process of copying and then adapting the language of the Trust Code section for G.S. 28A-2-6, two references in subsection (h) to a "trust" proceeding were inadvertently not changed to read "estate" proceeding. This section corrects those two places and also replaces legalese with plain English.

Section 2 amends G.S. 36C-8B-13(b) by deleting a phrase that contains the term "expanded distributive discretion" because "expanded distributive discretion" is not defined or used anywhere else in Article 8B of Chapter 36C of the General Statutes. Article 8B is based on the Uniform Decanting Act, which uses the term "expanded distributive discretion"; when the Uniform Act was enacted in this State, however, that term was not included.

Section 3 makes conforming changes and corrects obvious drafting errors arising from S.L. 2019-202. Specifically, Section 3:

- In the heading of Article 49 of Chapter 58 of the General Statutes, deletes the phrase "Regulation of Multiple Employer Welfare Arrangements," because Section 2 of S.L. 2019-202 recodified the multiple employer welfare arrangement statutes to a new Article 50A of Chapter 58 of the General Statutes.
- In G.S. 58-50-40(a)(1), 58-51-55(d), 58-65-90(d), and 58-67-75(d), fixes references to multiple employer welfare arrangements (MEWAs) "as defined in" G.S. 58-50A-60(a), which should instead be to G.S. 58-50A-1. The term "MEWA" was formerly defined in G.S. 58-49-30. S.L. 2019-202 recodified G.S. 58-49-30 as a new G.S. 58-50A-60 (*see*

Section 2(a) of the act), but the act removed the definition of MEWA from G.S. 58-50A-60 (*see Section 3(a) of the act*) and instead placed the definition in G.S. 58-50A-1 (*see Section 1 of the act*).

- In G.S. 58-50-61(a)(10), replaces a reference to Article 49 with a reference to the new Article 50A to conform to the recodification of the multiple employer welfare arrangement statutes.
- In G.S. 58-50-115(c), adds the missing word "to."
- In the section catchline of G.S. 58-50A-60, deletes the word "definition," because Section 3(a) of S.L. 2019-202 repealed the only definition in this section.

Section 4 amends G.S. 75A-5 by replacing legalese with plain English and making a conforming change to an internal reference about fees in subsection (c). The reference should be to subsection (a1), not subsection (a), because Section 14.22(b) of S.L. 2013-360 moved language about fees from subsection (a) to subsection (a1).

Section 5 amends G.S. 136-44.2E(e) by deleting the extraneous word "the" in the phrase "Department of the Transportation."

Section 6 fixes the following issues relating to S.L. 2018-80 and is recommended by the N.C. Bar Association:

- Section 6(a) amends Section 4.1 of S.L. 2018-80 to correct the applicability language for that act's amendments to G.S. 47-17.1 and G.S. 47-18.3. Specifically, the generic applicability provision in the act states that the act applies to "mortgages and deeds of trust" entered into before, on, or after the effective date, but G.S. 47-17.1 applies to deeds as well as deeds of trust, and G.S. 47-18.3 applies to all instruments filed with the registers of deeds, not just mortgages and deeds of trust.
- Section 6(b) amends G.S. 47-17.1 to delete language that was added by S.L. 2018-80 that has, in practice, not worked and to add a sentence clarifying that the register of deeds has no duty to verify or make inquiry about the capacity or the authority of the person or entity shown as the drafter on the face of a deed or deed of trust.

Section 7 authorizes the Revisor of Statutes to include drafters' comments to the amendments to G.S. 36C-2-203 and G.S. 36C-4-411 by Sections 5 and 6 of S.L. 2019-113, respectively.

Section 8 corrects amendatory language from S.L. 2019-158, s. 4(c), that mistakenly used old-style drafting language ("is rewritten to read") in conjunction with redlining and ellipses rather than using the phrase "reads as rewritten:", which is required under G.S. 120-20.1 for coded bill drafting (showing changes through redlining). The result was the codification of the redlining and ellipses into the amended provision, G.S. 15A-151.5(a), and the elimination of the existing subdivisions in that subsection. This section repeals S.L. 2019-158, s. 4(c), enacts the intended amendment using the coded bill drafting style correctly, and has an effective date to match the effective date of S.L. 2019-158, s. 4(c).

Section 9 corrects amendatory language from S.L. 2019-176, that mistakenly used non-coded bill drafting language ("is amended by adding a new subdivision to read") in conjunction with redlining. The obvious intent was to update the name of a fund from the "Public School Insurance Fund" to the "State Public Education Property Insurance Fund" as it appeared in a list in G.S. 147-69.2(a). The result, however, was the codification of the redlined name as a new entry

in that list rather than a change to the name as intended, so that both now exist in the statute. This section effectuates the intended amendment to G.S. 147-69.2(a)(15) by replacing the erroneous amendatory language with "reads as rewritten:", repeals the extraneous subdivision, and has an effective date to match the effective date of S.L. 2019-176.

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