



General Statutes Commission

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MEMORANDUM

To: Senate Rules and Operations of the Senate
From: General Statutes Commission
Re: HB 1072 (GSC Technical Corrections 2020)
Date: June 23, 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, fixing the numbering of subunits, rearranging the internal structure of a statute for better organization, replacing legalese with plain English, adding missing words, fixing the format of lists and citations, deleting extraneous or outdated language, adding references, making technical amendments to conform to this State's drafting conventions, reorganizing language for greater clarity, fixing punctuation, capitalization, and grammar, correcting a typographical error, making language gender neutral, 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1 amends G.S. 1C-1829 to fix the numbering of subunits and to make a conforming change by replacing a reference to a repealed article with a reference to the successor article. S.L. 2009-325 replaced Article 18 of Chapter 1C of the General Statutes (North Carolina Foreign Money Judgments Recognition Act) with Article 20 of Chapter 1C of the General Statutes (North Carolina Uniform Foreign-Country Money Judgments Recognition Act).

Section 1.5 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 5.1 amends G.S. 143B-135.234(c)(1) by supplying the missing word "and," which was inadvertently deleted by Section 1(a) of S.L. 2019-32.

Section 5.2 amends G.S. 143B-1406 to do the following:

- In subsection (b), replace legalese with plain English.
- In subsection (c), fix the format of a list.
- In subsection (d), fix the format of two internal citations.
- In subsection (f), fix the format of a list.
- In subsection (h), replace legalese with plain English.

Section 5.3(a) amends G.S. 146-30 to create a new subsection (d) and reorganize the section by recodifying two lists of exceptions contained in subsections (b1), (b2), (b3), (b4), and (c) into a single tabulated list of exceptions set out in the new subsection (d). **Section 5.3(b)** further amends G.S. 146-30 to:

- In subsection (a), tabulate a list, replace legalese with plain English, change the grammatical structure of a phrase to make items in a list parallel, and replace "may not" with "shall not" to conform to this State's drafting conventions.

- In subsection (b), fix the format of a list, replace legalese with plain English, and delete extraneous language.
- In subsection (c), replace legalese with plain English, add an internal reference, and delete extraneous language.
- In subsection (d), complete the tabulation of the recodified material from subsection (c) and, in subdivision (d)(7), replace legalese with plain English, replace "No . . . may" with "No . . . shall" to conform to this State's drafting conventions, and add a missing comma. In subdivision (d)(8), update language by adding a cross-reference to the definition of "Camp Butner reservation" in Chapter 122C of the General Statutes, deleting an illustrative list that contains outdated language, and deleting extraneous language. In subdivision (d)(9), add the word "net" before "proceeds" to conform to the rest of the section.

Section 5.4 amends G.S. 153A-441 by updating a reference to an obsolete chapter (Chapter 89 of the General Statutes), updating terminology (replacing "registered" with "licensed" and "land surveyor" with "professional land surveyor"), and restructuring a sentence for greater clarity. When Chapter 89 of the General Statutes was rewritten by Section 1 of Chapter 881 of the 1975 Session Laws, it was recodified as Chapter 89C of the General Statutes.

Section 5.5 amends G.S. 163-105 to conform to the repeal of G.S. 163-109, which divided the responsibility of producing official ballots between the State Board of Elections and county boards of elections, and the enactment of its successor statute G.S. 163-165.3, which instead places the responsibility of producing official ballots with the county boards of elections. S.L. 2002-159, s. 55(j), repealed G.S. 163-109 to conform to the enactment of G.S. 163-165.3 by S.L. 2001-460, s. 3.

Section 5.6 amends G.S. 163-234 to do the following:

- Throughout the section, updates references to G.S. 163-231(b)(ii) or (iii) with references to G.S. 163-231(b)(2)b. or c. to conform to the reorganization of G.S. 163-231 by S.L. 2013-381, s. 4.4.
- In the first paragraph, replaces legalese with plain English and supplies language to introduce a list.
- In subdivision (2), replaces legalese with plain English, fixes capitalization, and makes the word "resolutions" singular to better fit the surrounding language.
- In subdivision (3), deletes extraneous language and updates a reference to G.S. 163-230.1(c) and (c1) with a reference to G.S. 163-230.1(e) and (f) to conform to the current organization of G.S. 163-230.1. S.L. 2017-6 recodified G.S. 163-230.1 into a new Chapter 163A of the General Statutes, but S.L. 2018-146 later re-recodified it back to its old location. During the recodification, the Codifier re-lettered subsections to eliminate complex subsection designations, e.g. (a1).
- In subdivision (6), removes a reference to "herein" and replaces it with the correct specific reference and replaces other legalese with plain English.
- In subdivisions (8) and (9), replaces legalese with plain English.
- In subdivision (11), corrects a verb to agree with the number of its subject, replaces legalese with plain English, and corrects a typographical error by replacing "where" with "whether" in the phrase "to determine where the container-return envelopes for absentee ballots . . . [have] been properly executed."

Section 5.7 amends G.S. 164-16 to make the titles of two of the General Statutes Commission's officers gender neutral.

Section 6 fixes the following issues relating to S.L. 2018-80:

- Section 6(a) amends Section 4.1 of S.L. 2018-80 to correct the applicability language for Section 2.2 of that act's amendments to 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. 47-18.3 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 6(c) provides that this section becomes effective August 1, 2020.

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.