



# General Statutes Commission

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## MEMORANDUM

**To:** Senate Rules and Operations of the Senate  
**From:** General Statutes Commission  
**Re:** HB 229 (GSC Technical Corrections 2017)  
**Date:** June 19, 2017

### General Comments

Part I of this bill contains corrections of a technical nature to the General Statutes and session laws as recommended by the General Statutes Commission.

These amendments correct typographical, redlining, and other obvious drafting and stylistic errors, make conforming changes, make language gender neutral, update archaic phrasing, repeal duplicative and obsolete provisions, rephrase unclear provisions, recodify two statutes, correct an inadvertent omission from a law due to computer error in printing the ratified bill, authorize the Revisor of Statutes to alphabetize two lists and to publish drafters comments for two sections of the North Carolina Uniform Trust Code and two sections of the North Carolina Uniform Powers of Appointment Act, and add a cross-reference.

### Specific Comments

**Section 1** amends G.S. 1-117 primarily to update a citation. G.S. 2-42, referred to in G.S. 1-117, was revised and transferred to G.S. 7A-109 by Section 6 of Chapter 363 of the 1971 Session Laws. In addition, the reference to clerks of superior court is made gender neutral.

**Section 2** amends G.S. 7B-302(a) to insert the missing word "juvenile." Section 4 of S.L. 2016-115 amended G.S. 7B-302(a) to make amendments relating to the unlawful transfer of custody of a child. Part of the amendment added the word "juvenile," but the word was not underlined. Because the amendment was in the coded bill drafting format prescribed by G.S. 120-20.1, "juvenile" was technically not actually added by that amendment and now needs to be technically inserted.

**Section 3** amends G.S. 14-118.6(b1) to clarify the phrasing of the third sentence. S.L. 2015-87 added subsection (b1) to provide clerks of court with authority similar to the authority of registers of deeds to refuse to file what appear to be false liens or encumbrances against public officers or public employees or one of their immediate family members. If the clerk declines to file, the document may not be filed unless a judge approves filing. As drafted, however, the 2015 provision can be read to require the clerk to review the clerk's own actions, followed by a mandatory appeal to a judge, if the reader assumes that an "and" is missing between "by the clerk of superior court by any judge ...." The amendment in this section reverses the order of two phrases in this sentence and makes it clearer.

**Section 4** amends G.S. 14-159.3(a1) to correct an inadvertent error in the 2015 amendment to this section. Among other things, the 2015 amendment made references to "landowner" gender neutral by replacing references to "his" and "he" with references to "his or

hers" and "he or she." "Landowner" can, however, include corporations and other entities. Rather than use "his, her, or its" and similar phrases, the amendment in this section repeats the word "landowner."

**Section 5** amends G.S. 14-208.6 to make a conforming amendment in subdivision (5), the definition of "sexually violent offense."

S.L. 2015-181 recodified the sex offenses in former Article 7A of Chapter 14 of the General Statutes into a new Article 7B of that chapter and reorganized them to separate the rape offenses from the sexual assault offenses and also to separate the offenses against children from the offenses against adults. In the process, former G.S. 14-27.2 (First degree rape) was divided into two new statutes, G.S. 14-27.21 (First degree forcible rape) and G.S. 14-27.24 (First degree statutory rape).

G.S. 14-208.6(5) included former G.S. 14-27.2 in its list of sexually violent offenses. As a result, S.L. 2015-181 should have amended G.S. 14-208.6(5) to include both new G.S. 14-27.21 and new G.S. 14-27.24 in this list as part of its conforming amendments. The 2015 session law did insert a reference to new G.S. 14-27.21, but it inadvertently failed to include new G.S. 14-27.24. The amendment in this section corrects that oversight.

**Section 5.1(a)** amends G.S. 14-309.7 to make a conforming amendment to S.L. 2016-27, s. 3, that directed the Revisor of Statutes to replace any reference to the "Department of Public Safety" with the "State Bureau of Investigation" wherever it appears in Part 2 of Article 37 of Chapter 14 of the General Statutes. In G.S. 14-309.7, however, the reference was just to "Department" so the directive to the Revisor did not apply. Section 5.1(a) replaces "Department" with "Bureau". **Section 5.1(b)** corrects a citation in S.L. 2016-27, s. 4.

**Section 5.2(a)** amends G.S. 20-4.01(32b) to supply a bridging phrase between the introductory language and the listed entities. **Section 5.2(b)** authorizes the Revisor of Statutes to re-letter the definitions in G.S. 20-4.01(27) and G.S. 20-4.01(32b) to place them in alphabetical order.

**Section 6** amends G.S. 20-45 in subsection (a) to eliminate an unnecessary word as legalese; in subsection (b) to make a reference to the Commissioner of Motor Vehicles gender neutral; and in subsection (c) to make a conforming amendment. The conforming amendment replaces a reference to former G.S. 20-309(e) with a reference to G.S. 20-311; S.L. 2006-213 repealed G.S. 20-309(e) and enacted new, more detailed provisions on revocation of licenses due to the cancellation of insurance. Those provisions are now contained in G.S. 20-311.

**Section 7** amends the catch line of G.S. 20-171.24 to make a conforming amendment. Subsection (f) of G.S. 20-171.24, which formerly limited the application of that statute to certain listed municipalities and counties, was repealed by S.L. 2015-26. The statute therefore now applies statewide. The 2015 session law, however, failed to amend the catchline to reflect the change.

**Section 7.1** amends G.S. 20-179 to (i) make language gender neutral, (ii) supply missing subsection catch lines and bridging phrases between introductory paragraphs and lists, (iii) correct stylistic errors in referring to other subunits of the G.S. section, and (iv) remove a reference in subsection (f3) to subsection (h3). S.L. 2012-146, s. 9, repealed subsection (h3).

**Section 8** amends G.S. 24-10.1 to delete a reference to repealed G.S. 24-1.2. That statute dealt with a special interest rate cap for installment sales. There was apparently no successor provision.

**Section 9** amends G.S. 28A-2-4 to correct an obvious error in subdivision (a)(4) and one in subsection (c) and to add a cross-reference in subsection (c). G.S. 36C-2-203, the equivalent statute for trusts, was used as the model for this statute when it was enacted in 2011. Some of the changes to the text of G.S. 36C-2-203 that were needed to adapt the wording to estates rather than trusts and to allow for changes from the original text were not made. Specifically, in subdivision (a)(4), the reference in the last sentence to "a trust" proceeding should have been changed to "an estate" proceeding. The citation in the introductory language of subsection (c) to "subsection ... (c) of this section" is an obvious error; comparing the text of subsection (c) to the original model makes it apparent that the comparable reference in G.S. 28A-2-49(c) should be to subsection (b). In addition, this section adds a cross-reference to G.S. 28A-2-5.

**Section 10** amends G.S. 28A-19-5(b) to correct an obvious error by inserting a missing "not."

**Section 11** amends G.S. 31B-1(a) to make a conforming amendment. G.S. 31B-1(a) lists possible persons that may renounce an interest in property. Subdivision (8) lists specifically only an "[a]ppointee" under a power of appointment with references to powers of appointment. However, G.S. 31D-4-401 expressly also allows permissible appointees and takers in default under a power of appointment to renounce, and G.S. 31B-2.1 describes how an instrument of renunciation by a permissible appointee or taker in default must be delivered.

**Section 12(a)** amends G.S. 36C-8-816.1 in subdivision (c)(9) to clarify the wording of a requirement and to correct an obvious drafting error.

G.S. 36C-8-816.1 is termed a "decanting" statute, that is, it allows a trustee to transfer the assets of one trust into another trust ("decant" from one to another), subject to certain restrictions. Subdivision (c)(9) requires that the terms of the second trust must not jeopardize any existing tax benefits. However, the current wording does not reflect the possibility that the existence of the decanting statute itself may be regarded as sufficient to disqualify the first trust from tax benefits for which it was designed to qualify. The amendment to this provision clarifies that, even assuming the possibility that the decanting statute itself may disqualify the first trust from certain tax benefits, the existence of the decanting statute is not a bar to the ability to decant. The amendment follows the wording of the equivalent provision in the Uniform Trust Decanting Act. This section also changes references in subdivision (c)(9) to "Code" to "Internal Revenue Code." Chapter 36C defines "Internal Revenue Code" but does not define "Code"; for this reason, the full defined term should be included for precision.

**Section 12(b)** provides that if Senate Bill 450 becomes law, this section is repealed. Section 2.4 of Senate Bill 450 repeals G.S. 36C-8-816.1.

**Section 12.1(a)** amends G.S. 36F-2 by deleting the word "Reserved," which was mistakenly enacted in two places. The word is being deleted from the enacted text to conform to the current practice. "Reserved" is normally an editorial insertion by the publishers of the statutes. If the word is enacted into a statute, there is no way for a later drafter to tell which instances of "Reserved" are actually part of the law that must be stricken before other material can be added or whether the word is an editorial insertion that should simply be dropped. Please

note that the publishers will reinsert "Reserved" as an editorial insertion, so the word will not actually disappear.

**Section 12.1(b)** substitutes "verified" for "certified" in G.S. 36F-13(2) in order to match G.S. 36F-12(2). The North Carolina Comment to G.S. 36F-12 states that the word "verified," rather than the word "certified," conforms to this State's practice.

**Section 13** repeals two statutes in Chapter 39 of the General Statutes that were made duplicative or obsolete by the enactment in 2015 of Chapter 31D of the General Statutes (Uniform Powers of Appointment Act) and recodifies two other statutes from that Chapter into Chapter 31D. Specifically, G.S. 39-33 provides a method of releasing a power of appointment that G.S. 39-34 makes non-exclusive. Essentially the same provision is now included in G.S. 31D-4-403, rendering the older statute duplicative and unnecessary. The repeal of G.S. 39-33 would in turn render G.S. 39-34 obsolete. Finally, subsections (b) and (c) of this section recodify G.S. 39-35 as G.S. 31D-5-505 and G.S. 39-36 as G.S. 31D-4-403.1.

**Section 13.1** amends G.S. 42A-4 by deleting the word "Reserved," which was mistakenly enacted. Section 13.1 also substitutes "the landlord's" for "his or her" to clarify that a landlord can also be a business entity.

**Section 14** is reserved.

**Section 14.1** amends various G.S. sections in Article 16B of Chapter 53 of the General Statutes (the North Carolina Money Transmitters Act) to (i) correct stylistic errors in referring to other subunits of a G.S. section, (ii) correct a stylistic error in using the wrong grammatical mood, (iii) supply missing words, (iv) re-format lists to conform to this State's drafting convention, and (v) clarify that the proceeds of civil penalties collected under the Article shall be paid to the Civil Penalty and Forfeiture Fund.

**Section 14.2(a)** amends G.S. 55-1-40(13a) to correct the format of the definition of "mail". **Section 14.2(b)** provides that if Senate Bill 622 becomes law, this section is repealed. Section 33.1 of Senate Bill 622 is identical to Section 14.2(a) of this bill.

**Section 14.3** amends G.S. 66-71.14(b) to correct an incomplete citation that is missing the chapter number of the citation.

**Section 14.4** amends G.S. 69-25.15(d) and G.S. 153A-304.1(d) to remove references to G.S. 160A-37.1. G.S. 69-25.15(d) and G.S. 153A-304.1(d) formerly referred to G.S. 160A-37.1 and G.S. 160A-49.1. G.S. 160A-37.1 and G.S. 160A-49.1 contained virtually identical language, but G.S. 160A-37.1 was located in a Part applying to cities of less than 5,000 people, and G.S. 160A-49.1 was located in a Part applying to cities of 5,000 or more people. Section 1 of S.L. 2011-396 repealed the Part in which G.S. 160A-37.1 was located, and Section 2 of S.L. 2011-396 recodified G.S. 160A-49.1 as G.S. 160A-58.57. In other words, the General Assembly replaced two former sections, G.S. 160A-37.1 and G.S. 160A-49.1, with a single section, G.S. 160A-58.57. G.S. 160A-58.57 applies to all cities regardless of population. Therefore, G.S. 69-25.15(d) and G.S. 153A-304.1(d) should be amended to refer only to G.S. 160A-58.57.

**Section 15** amends G.S. 97-25(f) to make two changes. First, the reference in the introductory language to filing motions and responses to the Industrial Commission "via electronic mail" is changed to "via electronic means"; the existing reference appears not to have

literally meant e-mail only, since elsewhere in this same subsection (subdivision (2)) transcripts may be "submitted electronically." Second, the dangling language at the end of the introductory paragraph is corrected.

**Section 15.1** amends G.S. 105-164.13(11b) to correct a reference to subdivision (45a) "of this subsection" to read "of this section," because G.S. 105-164.13 has no subsections.

**Section 15.2** amends G.S. 106-950 to supply language that the General Assembly intended to enact in S.L. 2015-286 but was not enacted due to a computer issue. The underlining in the phrase "burning of polyethylene ... related to" appeared in the electronic version of the ratified bill but it failed to appear in the printed paper copy actually signed by the Governor. As a result, that language was technically not actually added. Section 15.2 also updates legalese.

**Section 16** makes a conforming amendment to the catch line of G.S. 108A-70.21. Former subsections (g) and (h) of that statute provided for the purchase of extended coverage in the North Carolina Health Insurance for Children Program. With their repeal in 2015, the reference in the catch line to "purchase of extended coverage" is no longer relevant and should be deleted.

**Section 17** amends G.S. 115C-112.6(b1)(2)d. to delete an extraneous "the" in the last sentence.

**Section 18** amends G.S. 120-4.16(b) by codifying the second paragraph as subsection (b1). Please note that this second paragraph has what appears to be intended as a subsection catch line.

**Section 19** repeals G.S. 120-57, which sets out duties for the now-repealed Legislative Intern Program Council and is therefore obsolete.

**Section 19.1** amends G.S. 120-70.106(d) to clarify that the reference to "Department" is to the Department of Revenue. As enacted by S.L. 2016-23, s. 2(b), this language was uncodified. The Codifier, however, determined that this language should be codified. From the context of the session law, it is clear the reference is to the Department of Revenue.

**Section 20** amends G.S. 136-41.2(c) to update a reference. G.S. 160-410.3 was repealed long ago. The comparable provisions are G.S. 159-8 and G.S. 159-13.

**Section 20.1(a)** amends G.S. 143-58.5 to conform the rulemaking authority for the fund created by this section by substituting the Secretary of Environmental Quality for the Secretary of Administration. In 2011, the General Assembly directed the State Energy Office to establish an energy credit banking and selling program and a revolving fund to finance the program, with the goal of enhancing State use of alternative fuels. The fund was created in this section (G.S. 143-58.5). The State Energy Office was at that time located in the Department of Administration, and the Secretary of Administration was given rulemaking authority over the program (in G.S. 143-58.4) and the fund. Since then, however, the State Energy Office has been transferred, first to the Department of Commerce and most recently to the Department of Environmental Quality. *See* S.L. 2013-360, s. 15.22. Currently, the Department of Environmental Quality administers the energy credit banking and selling program under G.S. 143-58.4 and transfers monies received from it to this fund. Although conforming amendments were made to the rulemaking authority in G.S. 143-58.4 (dealing with the program) to match the transfers, the need for a similar amendment in this section was apparently overlooked. Section

20.1(a) also corrects the format of a date. **Section 20.1(b)** directs the Codifier of Rules to make any conforming rule changes necessary to reflect name changes and any recodifications resulting from the name change made by this section.

**Section 21** amends G.S. 143-215.31(a1)(6) to correct a typographical error in the reference to a section of the Code of Federal Regulations. There is no 18 C.F.R. § 333.112; the correct reference is to 18 C.F.R. § 388.112.

**Section 22** amends G.S. 143-341.2(b)(3) to correct a spelling error. The word "preforming" should have been "performing."

**Section 23** amends G.S. 143B-168.5 to update the reference to G.S. 110-105.2, which was repealed in 2015. The comparable, more detailed, provisions are in G.S. 110-105.3, 110-105.4, 110-105.5, and 110-105.6. In addition, this section inserts a specific reference to the Division within the Department of Health and Human Services where the special unit established in this statute is located.

**Section 24** amends G.S. 143B-394.15(c) to remove a duplicate entry in the list of ex officio members of the Domestic Violence Commission. The duplication occurred in 2011 when the former Departments of Correction, Crime Control and Public Safety, and Juvenile Justice were combined to create the Department of Public Safety. The ex officio members of the Domestic Violence Commission included the Secretaries of Correction and of Crime Control and Public Safety. S.L. 2011-145, which created the Department of Public Safety, included conforming amendments to change the titles of the respective Secretaries to the new title (in Sections 19.1(g) and 19.1(i)). As a result, the Secretary of Public Safety appears twice in the list in G.S. 143B-394.15(c)(4). The amendment also (i) conforms the total number of Commission members in the introductory language of subsection (c) to reflect that the Secretary of Public Safety is only one person and (ii) conforms other titles in the list.

**Section 24.1** amends G.S. 143B-437.56(b) to add a bridging phrase at the end of the introductory paragraph of the subsection.

**Section 25** amends G.S. 143B-931(b) to update references to G.S. 115C-238.56N to reflect the current G.S. number, G.S. 115C-238.73.

**Section 26** amends G.S. 143C-6-4(b)(2) to make a conforming change in the references to G.S. 166A-19.40, which was reorganized in the 2015 budget bill (S.L. 2015-241).

**Section 27** amends G.S. 146-9(b)(4) to delete an extra word ("to").

**Section 28** amends G.S. 147-12(a)(12) to update the citation to G.S. 143B-373. In 1989, the then-existing text of G.S. 143B-373 was designated as subsection (a) of that section and new subsections (b) through (d) were added. No conforming amendment, however, was made to the citation in G.S. 147-12(a)(12).

**Section 28.1(a)** amends G.S. 147-69.2(b) to add a bridging phrase at the end of the introductory paragraph of the subsection. Section 28.1(a) also updates legalese. **Section 28.1(b)** amends G.S. 147-69.12(c) by deleting the word "Reserved," which was mistakenly enacted.

**Section 29** amends G.S. 153A-340(h) to remove "garbage language" caused by a redlining error in S.L. 2011-286 that caused the phrase "county development approval required by law" to be inserted twice.

**Section 30** amends the introductory language of G.S. 160A-332(a) to update a citation. The definition formerly at subdivision (1) of G.S. 160A-331 was renumbered as (1b) in 1997. This section also changes the parentheses to commas.

**Section 31** amends G.S. 160A-372(e) and (f) to change references to "paragraph" to "subsection," which is now the correct term after the previously undesignated paragraphs in subsection (c) were given their own subsection designation.

**Section 31.1** amends G.S. 160A-536(d)(2) to codify the existing applicability provision relating to the second sentence. S.L. 2016-8, which enacted that sentence, provided in Section 7 of the act that the sentence applied only to contracts entered into on or after the effective date of the act. Without the amendment in this section, it is not clear from the codified statute that the sentence does not apply to contracts that predate the 2016 act. Because the referenced contracts can last for more than five years, the applicability provision should be codified. Section 31.1 also supplies a missing catch line for subsection (d1).

**Section 32(a)** amends Section 7.1 of S.L. 2014-107 to make it clear that the amendment by Section 5.1 of that act applies to all trusts, regardless of when created. The 2014 act clarified that the common-law rule against accumulations no longer applies to trusts in this State. **Section 32(b)** makes this section retroactive to the effective date of S.L. 2014-107.

**Section 33** amends the introductory language of Section 54.5(b) of S.L. 2015-264 to correct a typographical error in the citation. Section 54.5(b) stated that it was amending "Section 32.2(c)" of S.L. 2015-241, but there was no such section and the provision actually set out was Section 32.3(c).

**Section 33.1** amends S.L. 2016-102, s. 2, to correct a citation. From the context of the session law, it is clear the General Assembly intended to cite to "G.S. 14-208.18(a)(3)," not "G.S. 14-408.18(a)(3)."

**Section 33.2** amends the introductory language of S.L. 2016-108, s. 6(c), to replace "G.S. 136-6(o)" with "G.S. 135-6(o)". It is clear the General Assembly intended to amend G.S. 135-6(o), because the session law quotes G.S. 135-6(o) and G.S. 136-6 was repealed in 1957.

**Section 33.3** amends S.L. 2016-117, s. 2(m), to format the section in coded bill drafting to properly effectuate the intended amendment to the title of Article 1D of Chapter 90 of the General Statutes.

**Section 33.4** amends the introductory language of S.L. 2016-123, s. 6.1(a) and s. 6.1(b), to correct two citations. Section 14.11(b) and (c) of last year's budget bill amended G.S. 113-202.1 and G.S. 113-202.2.

**Section 34** authorizes the printing of (i) a drafter's comment to G.S. 36C-1-112, prepared by the Estate and Fiduciary Planning Section of the North Carolina Bar Association, the body that recommended the enactment of that section, and (ii) drafters' comments to the amendments

to Chapters 36C and 31D of the General Statutes in keeping with the practice of the Estate and Fiduciary Planning Section of the North Carolina Bar Association.

**Part II** of the bill was added in the Senate.

The **final section** of the bill is the effective date section for the entire bill. It provides that, except as otherwise provided in the bill, the bill is effective when it becomes law. The retroactive effective date for Section 5, making the amendment in that section effective on the same date that S.L. 2015-181 was effective, was added by the General Assembly to the equivalent amendment in last year's technical corrections bill that was not enacted; that change has accordingly been incorporated in this year's bill.