

March 24, 2005

S 1029. CLARIFY/ENHANCE DOMESTIC VIO. & TENANCY LAWS. TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE AND TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY. Amends GS 50B-3(a) to provide that court must grant a protective order restraining defendant from further acts of domestic violence if the court finds that an act of domestic violence has occurred. (was, court may grant a protective order to bring about a cessation of acts of domestic violence.) Provides that consent protective orders, except for mutual orders, are not required to contain findings of fact that an act of violence occurred. If the defendant is ordered to stay away from the child's school, requires a copy of the order to be issued to school named in the order. Amends GS 50B-3.1 to provide that if court finds that the defendant has any pending criminal charges in which the victim was a person with whom the defendant has a personal relationship (as defined in GS 50B-1), court may not return firearms to a defendant who has surrendered firearms under a protective order until final disposition of the criminal charges. Enacts GS 42-45.1 to allow tenant who is or has a household member who is a victim of domestic violence, sexual assault, or stalking to terminate a residential lease with written notice to the landlord that is effective 14 days after receipt by the landlord. Requires tenant to attach to notice a court order of protection or a copy of a police report regarding an act of domestic violence, sexual assault, or stalking. Enacts GS 42-47 as follows: (1) prohibits landlord from terminating tenancy or otherwise retaliating against a tenant based on the tenant or member of household being a victim of domestic violence, sexual assault, or stalking; (2) requires landlord to change locks on tenant's dwelling at tenant's expense if tenant gives landlord written notice of domestic violence, sexual assault, or stalking, and authorizes tenant to change locks and give key to landlord if landlord does not act promptly; and (3) provides that if perpetrator is tenant in same dwelling as victim, before locks are changed, victim must provide landlord with protective order that requires perpetrator to move out of the dwelling, and landlord has no duty to allow the perpetrator access to the dwelling or provide keys to the perpetrator. Amends GS 157-29 by providing that public housing authority must adopt waiting list preference for applicants who are homeless or who have been involuntarily displaced because the applicant is a victim of domestic violence, sexual assault, stalking, natural disaster, or government action.

Intro. by Cowell.

Ref. to Judiciary I

GS 50B, 42, 157

May 31, 2005

S 1029. CLARIFY/ENHANCE DOMESTIC VIO. & TENANCY LAWS. Intro. 3/24/05. Senate committee substitute makes the following changes to 1st edition. Amends GS 50B-3 to delete provision that orders entered upon the parties' consent are not required to contain findings of fact that an act of violence occurred and to require that the sheriff promptly deliver a copy of an order requiring that the defendant stay away from a child's school to the school's principal (was, order to be "issued promptly" to each school named). Enacts new GS 42-40(4) to define "protected tenant" as a tenant or household member who is either a victim of domestic violence under GS Chapter 50B or sexual assault or stalking under GS Chapter 14 and incorporates term into act's provisions. Transfers proposed GS 42-47 into new GS 42-42.1 (nondiscrimination) and 42-42.2 (lock changing). Modifies new GS 42-42.2 to require that the tenant serve perpetrator with court order requiring that perpetrator stay away from the dwelling unit before the landlord is given that order for the purpose of changing dwelling unit's locks and to clarify that the landlord may grant the perpetrator access to the dwelling to retrieve personal belongings if a court so orders. Clarifies that a perpetrator excluded from a dwelling unit by a court order remains liable under the lease for rent or damages to the dwelling unit, along with any other tenant (was, perpetrator only liable for rent or damages incurred prior to perpetrator's exclusion from dwelling unit). Further modifies proposed section to delete provision specifically prohibiting landlord from increasing the rent or any fees because of the perpetrator's exclusion from the dwelling unit and to add provision requiring that landlord change the dwelling unit's locks within 48 hours of request (was, required that locks be changed "promptly"). Modifies proposed GS 42-45.1 to require that the protected tenant give the landlord at least 30 (was, 14) days notice of lease termination and that landlord also be provided with a copy of a safety plan developed by a domestic violence program.

Provides that a protected tenant may also provide landlord with a valid Address Confidentiality Program card along with a written notice of lease termination. Replaces proposed GS 157-29(b)(3), requiring that housing preference be given to applicants who are homeless or are victims of domestic violence or other listed actions, with provision requiring that preference be given to households with incomes of less than 30% of the area median income. Also requires that housing authority take applications on a continuous basis.

Amends GS 7A-219 to provide that the failure of a defendant to file a counterclaim in a small claims action assigned to a magistrate, or failure by a defendant to appeal a judgment in a small claims action to a district court, will not bar those claims in a separate action. Makes technical and conforming changes. Makes act effective October 1, 2005.

August 1, 2005

S 1029. CLARIFY/ENHANCE DOMESTIC VIO. & TENANCY LAWS. Intro. 3/24/05. House committee substitute makes the following changes to 2nd edition. (1) Deletes amendment to GS 50B-3(a) which would have authorized the entry of a protective order with the consent of the parties. Also amends section to authorize the sheriff, if a defendant is ordered to stay away from a child's school, to deliver order to the school's principal or to the assistant principal or principal's designee in principal's absence. (2) Amends GS 50B-3.1(e) and (f) to provide for the return of weapons surrendered under an emergency or ex parte protective order upon final disposition of any pending criminal charges "committed against the person that is the subject of the protective order." Deletes amendments to GS 50B-3.1(g). (3) Revises proposed GS 42-42.1 to prohibit landlord from terminating a tenancy or failing to rent a dwelling if landlord's decision is based substantially on (was, on) the fact that the tenant was a victim of domestic violence, sexual assault, or stalking. (4) Modifies proposed GS 42.42.2, which sets forth landlord's obligation to change a dwelling's locks or allow locks to be changed by a victim of domestic violence, to require that landlord change locks or grant victim permission to do so within 72 hours if perpetrator is a cotenant (was, 48 hours). Further revises section to delete requirement that tenant serve cotenant with court order before locks are changed and to provide that landlord is not liable to cotenant for civil damages for the loss of use of the dwelling unit or damage to personal property. Requires that victim bear the expense of changing dwelling's locks. (5) Modifies proposed GS 42-45.1(a) to provide that order of protection accompanying notice of lease termination be issued by a court pursuant to GS Chapter 50B or 50C, other than an ex parte order (was, permanent order of protection under GS 50B-3) and to require that safety plan submitted with notice substantially comply with requirements of 50B-9 (was, comply). (6) Amends GS 42-30 (judgment in summary ejectment proceedings) to require entry of judgment if the defendant fails to appear, the plaintiff requests judgment in open court, the pleadings allege failure to pay rent, and the defendant has not filed a responsive pleading and to also authorize an award of rent or damages if supported by a preponderance of evidence. (7) Amends GS 42-34(b) to require that the magistrate's determination of the amount of rent in arrears under a judgment for possession entered due to the defendant's failure to appear must be based on certain listed factors. Requires that the clerk or the court hold a hearing within 10 days of the filing of a motion by either party to modify an order requiring payment of rent in arrears. Makes technical changes. Provides that amendments to GS 50B-3 are effective for orders entered on or after October 1, 2005, and that proposed GS 42-40, 42-42.1, 42-42.2, and 42-45.1 are effective for leases entered into or renewed on or after October 1, 2005. Remainder of act is effective October 1, 2005.

October 5, 2005

SL 2005-423 (S 1029). CLARIFY/ENHANCE DOMESTIC VIOLENCE & TENANCY LAWS. *AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY, TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION AND TO MAKE CHANGES TO LANDLORD TENANT LAW.* Summarized in *Daily Bulletin* 3/24/05, 5/31/05, and 8/1/05. Enacted September 22, 2005. Effective October 1, 2005.