

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 379
Committee Substitute Favorable 5/9/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H379-PCS80263-RN-26

Short Title: Uniform Depositions and Discovery Act.

(Public)

Sponsors:

Referred to:

March 17, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA INTERSTATE DEPOSITIONS AND
3 DISCOVERY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE
4 NORTH CAROLINA RULES OF CIVIL PROCEDURE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

7 **"Chapter 1F.**

8 **"North Carolina Interstate Depositions and Discovery Act.**

9 **"§ 1F-1. Short title.**

10 This Chapter may be cited as the 'North Carolina Uniform Interstate Depositions and
11 Discovery Act.'

12 **"§ 1F-2. Definitions.**

13 The following definitions apply in this Chapter:

- 14 (1) Foreign jurisdiction. – A state other than North Carolina.
15 (2) Foreign subpoena. – A subpoena issued under authority of a court of record
16 of a foreign jurisdiction.
17 (3) Person. – An individual, corporation, business trust, estate, trust, partnership,
18 limited liability company, association, joint venture, public corporation,
19 government, or governmental subdivision, agency, or instrumentality, or any
20 other legal or commercial entity.
21 (4) State. – A state of the United States, the District of Columbia, Puerto Rico,
22 the United States Virgin Islands, a federally recognized Indian tribe, or any
23 territory or insular possession subject to the jurisdiction of the United States.
24 (5) Subpoena. – A document, however denominated, issued under authority of a
25 court of record requiring a person to:
26 a. Attend and give testimony at a deposition, either oral or upon written
27 questions;
28 b. Produce and permit inspection and copying of designated books,
29 documents, records, electronically stored information, or tangible
30 things in the possession, custody, or control of the person; or
31 c. Permit inspection of premises under the control of the person.

32 **"§ 1F-3. Issuance of subpoena.**



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1 (a) To request issuance of a subpoena under this section, a party must submit a foreign
2 subpoena to a clerk of court in the county in which discovery is sought to be conducted in this
3 State. A request for the issuance of a subpoena under this act does not constitute an appearance
4 in the courts of this State.

5 (b) When a party submits a foreign subpoena to a clerk of court in this State, the clerk,
6 in accordance with that court's procedure, shall promptly open an appropriate court file, assign
7 a file number, collect the applicable filing fee pursuant to G.S. 7A-305(a)(2), and issue a
8 subpoena for service upon the person to which the foreign subpoena is directed.

9 (c) A subpoena under subsection (b) of this section must:

10 (1) Incorporate the terms used in the foreign subpoena; and

11 (2) Contain or be accompanied by the names, addresses, and telephone numbers
12 of all counsel of record in the proceeding to which the subpoena relates and
13 of any party not represented by counsel.

14 **"§ 1F-4. Service of subpoena.**

15 A subpoena issued by a clerk of court in North Carolina under G.S. 1F-3 must be served in
16 compliance with G.S. 1A-1, Rule 45(b) of the North Carolina Rules of Civil Procedure.

17 **"§ 1F-5. Deposition; production; inspection.**

18 Rules 26, 28, 30, 31, 34, and 45 of G.S. 1A-1, the North Carolina Rules of Civil Procedure,
19 apply to subpoenas issued under G.S. 1F-3.

20 **"§ 1F-6. Application to court.**

21 An application to the court for a protective order or to enforce, quash, or modify a subpoena
22 issued by a clerk of court under G.S. 1F-3 must comply with the rules or statutes of this State
23 and be submitted to the court in the county in which discovery is to be conducted. Where a
24 dispute exists between the parties to the action, the party opposing the discovery shall apply for
25 appropriate relief to the court in which the action is pending and not to the court in the state in
26 which the discovery is sought.

27 **"§ 1F-7. Uniformity of application and construction.**

28 In applying and construing this Chapter, consideration shall be given to the need to promote
29 uniformity of the law with respect to its subject matter among states that have enacted the
30 Uniform Interstate Depositions and Discovery Act."

31 **SECTION 2.** G.S. 1A-1, Rule 28(d), reads as rewritten:

32 "(d) Depositions to be used ~~outside this State.~~ in foreign countries. –

33 (1) A person desiring to take depositions in this State to be used in proceedings
34 pending in the courts of any other ~~state~~ or country may present to a judge of
35 the superior or district court a commission, order, notice, consent, or other
36 authority under which the deposition is to be taken, whereupon it shall be the
37 duty of the judge to issue the necessary subpoenas pursuant to Rule 45.
38 Orders of the character provided in Rules 30(b), 30(d), and 45(b) may be
39 made upon proper application therefor by the person to whom such
40 subpoena is directed. Failure by any person without adequate excuse to obey
41 a subpoena served upon him pursuant to this rule may be deemed a contempt
42 of the court from which the subpoena issued.

43"

44 **SECTION 3.** G.S. 1A-1, Rule 45, is amended by adding the following new
45 subsection to read:

46 "(f) Discovery From Persons Residing Outside the State. –

47 (1) Any party may obtain discovery from a person residing in another state of
48 the United States or a territory or an insular possession subject to its
49 jurisdiction in any one or more of the following forms: (i) oral depositions,
50 (ii) depositions upon written questions, or (iii) requests for production of
51 documents and tangible things. In doing so, the party shall use and follow

1 any applicable process and procedures required and available under the laws
2 of the state, territory, or insular possession where the discovery is to be
3 obtained. If required by the process or procedure of the state, territory, or
4 insular possession where the discovery is to be obtained, a commission may
5 issue from the court in which the action is pending in accordance with the
6 procedures set forth in subdivision (2) of this subsection.

7 (2) Obtaining a commission. –

8 a. The party desiring a commission to obtain discovery outside the State
9 shall prepare and file a motion indicating the party's intent to obtain a
10 commission and requesting that the commission be issued.

11 b. The motion shall indicate that the moving party has conferred, or
12 describe fully the moving party's good faith attempts to confer, with
13 counsel for all other parties regarding the request and shall indicate
14 whether the motion is unopposed. The motion shall also attach a
15 copy of any proposed subpoena, notice of deposition, or other papers
16 to be served on the person from whom the moving party is seeking to
17 obtain discovery.

18 c. The motion shall indicate that counsel for the moving party has read
19 the applicable rules and procedures of the foreign state and that the
20 moving party will comply with those rules and procedures in
21 obtaining the requested discovery.

22 d. If the motion reflects that it is unopposed or indicates that the moving
23 party has made reasonable, good faith efforts to confer with all other
24 parties and that no other party has indicated that it opposes the
25 motion, the motion shall immediately be placed on the calendar for a
26 hearing within 20 days before the court in which the action is
27 pending where the commission shall be issued. However, if the court
28 determines, in its discretion, that the moving party has failed to make
29 reasonable, good faith efforts to confer with all other parties prior to
30 filing the motion, the court shall refuse to issue the commission, and
31 the motion shall be denied.

32 e. If the motion does not reflect that it is unopposed or that the moving
33 party has made reasonable, good faith efforts to confer with all other
34 parties and that no other party has indicated that it opposes the
35 motion, any party wishing to oppose the motion shall file written
36 objections to issuance of the commission within 10 days of being
37 served with the motion, and the motion shall immediately be placed
38 on the calendar for a hearing to be held within 20 days before the
39 court in which the action is pending. The hearing may be held by
40 telephone in the court's discretion. The court may refuse to issue the
41 commission only upon a showing of substantial good cause to deny
42 the motion.

43 f. If the court, in its discretion, determines that any party opposing the
44 motion did so without good cause, the court shall require the party
45 opposing the motion to pay the moving party the reasonable costs
46 and expenses incurred in obtaining the order, including attorneys'
47 fees, unless circumstances exist which make an award of expenses
48 unjust.

49 (3) In addition to any terms required by the foreign jurisdiction to initiate the
50 process of obtaining the requested discovery, the commission shall:

51 a. State the time and place at which the requested discovery is to occur;

- 1 b. State the name and address of the person from whom the discovery is
2 sought, if known, and, if unknown, a general description sufficient to
3 identify the person or the particular class or group to which he or she
4 belongs; and
5 c. Attach a copy of any case management order, discovery order, local
6 rule, or other rule or order establishing any discovery deadlines in the
7 North Carolina action."

8 **SECTION 4.** The Revisor of Statutes shall cause to be printed, as annotations to
9 the published General Statutes, all relevant portions of the Official Comments to the Uniform
10 Interstate Depositions and Discovery Act and all explanatory comments of the drafters of this
11 act as the Revisor may deem appropriate.

12 **SECTION 5.** This act becomes effective December 1, 2011, and shall apply to all
13 cases then pending or filed on or after that date.