

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 379  
PROPOSED COMMITTEE SUBSTITUTE H379-PCS70206-RF-9

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 Deposition 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,  
18 partnership, limited liability company, association, joint venture, public  
19 corporation, government, or governmental subdivision, agency, or  
20 instrumentality, or any 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.**

33 (a) To request issuance of a subpoena under this section, a party must submit a foreign  
34 subpoena to a clerk of court in the county in which discovery is sought to be conducted in this



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1 State. A request for the issuance of a subpoena under this act does not constitute an appearance  
2 in the courts of this State.

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

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

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

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

12 **"§ 1F-4. Service of subpoena.**

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

15 **"§ 1F-5. Deposition; production; inspection.**

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

18 **"§ 1F-6. Application to court.**

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

25 **"§ 1F-7. Uniformity of application and construction.**

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

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

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

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

41 ...."

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

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

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

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

5 (2) Obtaining a commission. –

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

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

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

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

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

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

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

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

- 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.  
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.