

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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SENATE BILL 349

PROPOSED HOUSE COMMITTEE SUBSTITUTE S349-PCS45550-SU-53

Short Title: Amend Various Laws.

(Public)

Sponsors:

Referred to:

March 23, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN LAWS RELATING TO THE FILING OF DOCUMENTS BY THE CLERK OF COURT AND TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AND IMPLEMENT A PILOT MAGISTRATE/CLERK STAFFING PROJECT; TO PROVIDE FOR MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT CIVIL ACTIONS; TO CREATE THE JOINT LEGISLATIVE STUDY COMMITTEE ON PUBLIC RECORDS AND OPEN MEETINGS; TO ALLOW THE BOARD OF PHARMACY TO OBTAIN CRIMINAL RECORD REPORTS FROM APPROVED REPORTING SERVICES; TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAYS OF PUBLIC ROADS IN BUNCOMBE COUNTY; AND TO CREATE A DEFINITION FOR PROVISIONAL PROVIDERS IN CHILD CARE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 1A-1, Rule 5, reads as rewritten:

"Rule 5. Service and filing of pleadings and other papers.

...

(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court pursuant to the rules promulgated under G.S. 7A-109 or subdivision (2) of this subsection as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. The failure to affix a date stamp or file stamp on any pleading or other papers filed in the courts shall not affect the sufficiency, validity, or enforceability of the document.

(2) Filing by electronic means. – If, pursuant to ~~G.S. 7A-34~~ G.S. 7A-34, G.S. 7A-49.5, and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by electronic means, filing may be made by the electronic means when, in the manner, and to the extent provided therein."

SECTION 1.(b) G.S. 1A-1, Rule 58, reads as rewritten:

"Rule 58. Entry of judgment.

Subject to the provisions of Rule 54(b), a judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court. ~~court.~~ court in accordance with Rule 5. The party designated by the judge or, if the judge does not otherwise designate, the party who prepares the judgment, shall serve a copy of the judgment upon all other parties within three days after the judgment is entered. Service and proof of service shall be in accordance with Rule 5. If service is



1 by mail, three days shall be added to the time periods prescribed by Rule 50(b), Rule 52(b), and
2 Rule 59. All time periods within which a party may further act pursuant to Rule 50(b), Rule 52(b),
3 or Rule 59 shall be tolled for the duration of any period of noncompliance with this service
4 requirement, provided however that no time period under Rule 50(b), Rule 52(b), or Rule 59 shall
5 be tolled longer than 90 days from the date the judgment is entered. Subject to the provisions of
6 Rule 7(b)(4), consent for the signing and entry of a judgment out of term, session, county, and
7 district shall be deemed to have been given unless an express objection to such action was made
8 on the record prior to the end of the term or session at which the matter was heard.

9 Notwithstanding any other law to the contrary, any judgment entered by a magistrate in a
10 small claims action pursuant to Article 19 of Chapter 7A shall be entered in accordance with this
11 Rule except judgments announced and signed in open court at the conclusion of a trial are
12 considered to be served on the parties, and copies of any judgment not announced and signed in
13 open court at the conclusion of a trial shall be served by the magistrate on all parties in accordance
14 with this Rule, within three days after the judgment is entered. If service is by mail, three days
15 shall be added to the time periods prescribed by G.S. 7A-228. All time periods within which a
16 party may further act pursuant to G.S. 7A-228 shall be tolled for the duration of any period of
17 noncompliance of this service requirement, provided that no time period shall be tolled longer than
18 90 days from the date judgment is entered."

19 **SECTION 1.(c)** Pilot Magistrate/Clerk Staffing Project. – The Administrative Office
20 of the Courts shall establish and implement a pilot project that will allow the clerk of superior
21 court of a county, with the written consent of the chief district court judge for the district in which
22 the county is located, to hire one deputy clerk or assistant clerk, based on the assistant clerk
23 allocation formula established by the Administrative Office of the Courts, in lieu of one of the
24 magistrate positions allocated to that county, notwithstanding the minimum number of magistrates
25 prescribed for each county under G.S. 7A-133(c). The pilot project is authorized for counties with
26 three or four magistrate allocations. To provide accessibility to law enforcement personnel and
27 citizens, in counties participating in this pilot project, the clerk of superior court's office will
28 provide some of the services traditionally provided by the magistrates' office during some or all of
29 the regular courthouse hours. The Administrative Office of the Courts shall report to the Joint
30 Legislative Oversight Committee on Justice and Public Safety on the outcomes of the pilot project
31 by March 1, 2017, and shall include recommendations on continuation or expansion of the pilot.

32 **SECTION 1.(d)** G.S. 1A-1, Rule 5(e)(1), as enacted by subsection (a) of this section,
33 is effective when this section becomes law and applies to all pleadings and papers filed with the
34 courts, including pleadings and papers filed prior to that date. G.S. 1A-1, Rule 5(e)(2), as enacted
35 by subsection (a) of this section, is effective when it becomes law and applies to all pleadings and
36 papers filed with the courts on or after that date. The remainder of this section is effective when it
37 becomes law.

38 **SECTION 2.(a)** The catch line of G.S. 7A-38.4A reads as rewritten:

39 "**§ 7A-38.4A. Settlement procedures in ~~district court~~ family financial actions.**"

40 **SECTION 2.(b)** G.S. 7A-38.4A(c) reads as rewritten:

41 "(c) Any chief district court judge in a judicial district may order a mediated settlement
42 conference or may order another settlement procedure, as provided under subsection (g) of this
43 section, for any action pending in that district involving issues of equitable distribution, alimony,
44 child or post separation support, or claims arising out of contracts between the parties under
45 G.S. 52-10, G.S. 52-10.1, or Chapter 52B of the General Statutes. The chief district court judge
46 may adopt local rules that order settlement procedures in all of the foregoing actions and designate
47 other district court judges or administrative personnel to issue orders implementing those
48 settlement procedures. However, local rules adopted by a chief district court judge shall not be
49 inconsistent with any rules adopted by the Supreme Court."

50 **SECTION 2.(c)** Article 5 of Chapter 7A of the General Statutes is amended by adding
51 a new section to read:

1 **"§ 7A-38.4B. Settlement procedures in district court general civil actions.**

2 (a) The General Assembly finds that a system of settlement events should be established to
3 facilitate the settlement of district court civil actions, other than those involving family issues
4 covered by the provisions of G.S. 7A-38.4A, in order to make that litigation more economical,
5 efficient, and satisfactory to the parties, their representatives, and the State. District courts should
6 be able to require parties to those actions and their representatives to attend a pretrial mediated
7 settlement conference or other settlement procedure conducted under this section and rules
8 adopted by the Supreme Court to implement this section.

9 (b) The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply in this section.

10 (c) The chief district court judge, or that person's designee, in a judicial district may order
11 a mediated settlement conference or may order another settlement procedure, as provided under
12 subsection (g) of this section, for any district court civil action, other than those involving family
13 issues covered by the provisions of G.S. 7A-38.4A and issues exempted by the rules of the
14 Supreme Court implementing this section. The chief district court judge may adopt local rules that
15 order settlement procedures in all of the foregoing actions and designate other district court judges
16 or administrative personnel to issue orders implementing those settlement procedures. However,
17 local rules adopted by a chief district court judge shall not be inconsistent with any rules adopted
18 by the Supreme Court.

19 (d) The parties to a district court action where a mediated settlement conference or other
20 settlement procedure is ordered, their attorneys, and other persons or entities with authority, by
21 law or contract, to settle a party's claim, shall attend the mediated settlement conference or other
22 settlement procedure, unless the rules ordering the settlement procedure provide otherwise. No
23 party or other participant in a mediated settlement conference or other settlement procedure is
24 required to make a settlement offer or demand that the party or participant deems contrary to that
25 party's or participant's best interests. Parties who have been victims of domestic violence may be
26 excused from physically attending or participating in a mediated settlement conference or other
27 settlement procedure.

28 (e) Any person required to attend a mediated settlement conference or other settlement
29 procedure under this section who, without good cause, fails to attend or fails to pay any or all of
30 the mediator's or other neutral's fee in compliance with this section is subject to the contempt
31 powers of the court and monetary sanctions imposed by a district court judge. A party seeking
32 sanctions against another party or person shall do so in a written motion stating the grounds for the
33 motion and the relief sought. The motion shall be served upon all parties and upon any person
34 against whom sanctions are being sought. The court may initiate sanction proceedings upon its
35 own motion by the entry of a show cause order. If the court imposes sanctions, it shall do so, after
36 notice and hearing, in a written order making findings of fact and conclusions of law. An order
37 imposing sanctions is reviewable upon appeal, and the entire record shall be reviewed to
38 determine whether the order is supported by substantial evidence.

39 (f) The parties to a district court action in which a mediated settlement conference is to be
40 held under this section shall have the right to designate a mediator. Upon failure of the parties to
41 designate within the time established by the rules adopted by the Supreme Court, a mediator shall
42 be appointed by a district court judge.

43 (g) A chief district court judge, or that judge's designee, at the request of a party and with
44 the consent of all parties, may order the parties to attend and participate in any other settlement
45 procedure authorized by rules adopted by the Supreme Court or adopted by local district court
46 rules, in lieu of attending a mediated settlement conference. Neutrals acting under this section
47 shall be selected and compensated in accordance with rules adopted by the Supreme Court.
48 Nothing herein shall prohibit the parties from participating in other dispute resolution procedures,
49 including arbitration, to the extent authorized under State or federal law. Nothing herein shall
50 prohibit the parties from participating in mediation at a community mediation center operating
51 under G.S. 7A-38.5.

1 (h) Mediators and other neutrals acting under this section shall have judicial immunity in
2 the same manner and to the same extent as a judge of the General Court of Justice, except that
3 mediators and other neutrals may be disciplined in accordance with enforcement procedures
4 adopted by the Supreme Court under G.S. 7A-38.2.

5 (i) Costs of mediated settlement conferences and other settlement procedures shall be
6 borne by the parties. Unless otherwise ordered by the court or agreed to by the parties, the
7 mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme
8 Court shall set out a method whereby a party found by the court to be unable to pay the costs of
9 settlement procedures is afforded an opportunity to participate without cost to that party and
10 without expenditure of State funds.

11 (j) Evidence of statements made and conduct occurring in a mediated settlement
12 conference or other settlement proceeding conducted under this section, whether attributable to a
13 party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall
14 not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil
15 actions on the same claim, except in any of the following:

16 (1) Proceedings for sanctions under this section.

17 (2) Proceedings to enforce or rescind a settlement of the action.

18 (3) Disciplinary proceedings before the State Bar or any agency established to
19 enforce standards of conduct for mediators or other neutrals.

20 (4) Proceedings to enforce laws concerning juvenile or elder abuse.

21 As used in this subsection, the term "neutral observer" includes persons seeking mediator
22 certification, persons studying dispute resolution processes, and persons acting as interpreters.

23 No settlement agreement to resolve any or all issues reached at the proceeding conducted
24 under this section or during its recesses shall be enforceable unless it has been reduced to writing
25 and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely
26 because it is presented or discussed in a settlement proceeding.

27 No mediator, other neutral, or neutral observer present at a settlement proceeding under this
28 section shall be compelled to testify or produce evidence concerning statements made and conduct
29 occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other
30 settlement proceeding pursuant to this section in any civil proceeding for any purpose, including
31 proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any
32 agreements, and except proceedings for sanctions under this section, disciplinary hearings before
33 the State Bar or any agency established to enforce standards of conduct for mediators or other
34 neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

35 (k) The Supreme Court may adopt standards for the certification and conduct of mediators
36 and other neutrals who participate in settlement procedures conducted under this section. The
37 standards may also regulate mediator training programs. The Supreme Court may adopt
38 procedures for the enforcement of those standards. The administration of mediator certification,
39 regulation of mediator conduct, and decertification shall be conducted through the Dispute
40 Resolution Commission.

41 (l) An administrative fee not to exceed two hundred dollars (\$200.00) may be charged by
42 the Administrative Office of the Courts to applicants for certification and annual renewal of
43 certification for mediators and mediator training programs operating under this section. The fees
44 collected may be used by the Director of the Administrative Office of the Courts to establish and
45 maintain the operations of the Commission and its staff. The administrative fee shall be set by the
46 Director of the Administrative Office of the Courts in consultation with the Dispute Resolution
47 Commission.

48 (m) The Administrative Office of the Courts, in consultation with the Dispute Resolution
49 Commission, may require the chief district court judge of any district to report statistical data
50 about settlement procedures conducted under this section for administrative purposes.

1 (n) Nothing in this section or in rules adopted by the Supreme Court implementing this
2 section shall restrict a party's right to a trial by jury.

3 (o) The Supreme Court may adopt rules to implement this section."

4 **SECTION 2.(d)** This section becomes effective October 1, 2016, and applies to
5 actions filed on or after that date.

6 **SECTION 3.(a)** Creation. – There is created the Joint Legislative Study Committee
7 on Public Records and Open Meetings. The Committee shall consist of 10 members to be
8 appointed as follows:

9 (1) Five members of the House of Representatives appointed by the Speaker of the
10 House of Representatives.

11 (2) Five members of the Senate appointed by the President Pro Tempore of the
12 Senate.

13 **SECTION 3.(b)** Study. – The Joint Legislative Study Committee on Public Records
14 and Open Meetings shall study ways to improve transparency of State and local government in
15 North Carolina. In the conduct of its study, the Committee shall examine existing State laws
16 regarding public access to government records and meetings and legislation enacted in other states
17 that allow greater public access than currently exists in North Carolina. Specifically, the
18 Committee shall study:

19 (1) Strategies for the executive branch of North Carolina State government to
20 streamline the processes by which the public may access government records
21 and meetings.

22 (2) Strategies for local government entities in North Carolina to streamline the
23 processes by which the public may access government records and meetings.

24 (3) The development of legislative alternatives to existing provisions of the North
25 Carolina Public Records Act and Open Meetings Law that restrict or entirely
26 prohibit public access to government records of meetings.

27 **SECTION 3.(c)** Cochairs; Vacancies. – The Speaker of the House of Representatives
28 shall designate one representative to serve as cochair, and the President Pro Tempore of the Senate
29 shall designate one senator to serve as cochair. Vacancies on the Committee shall be filled by the
30 same appointing authority making the initial appointment.

31 **SECTION 3.(d)** Powers. – The Committee, while in the discharge of its official
32 duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through
33 G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs. The
34 Committee may meet in the Legislative Building or in the Legislative Office Building.

35 **SECTION 3.(e)** Staffing. – The Legislative Services Commission, through the
36 Legislative Services Officer, shall assign professional staff to assist the Committee in its work.
37 The Directors of Legislative Assistants of the Senate and of the House of Representatives shall
38 assign clerical staff to the Committee and the expenses relating to the clerical employees shall be
39 borne by the Committee. Members of the Committee shall receive subsistence and travel expenses
40 at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

41 **SECTION 3.(f)** Report. – The Committee shall submit a final report, including
42 findings and legislative recommendations, to the 2017 General Assembly. The Committee shall
43 terminate upon filing its final report.

44 **SECTION 4.** G.S. 90-85.15 reads as rewritten:

45 **"§ 90-85.15. Application and examination for licensure as a pharmacist; prerequisites.**

46 (a) Any person who desires to be licensed as a pharmacist shall file an application with the
47 Executive Director on the form furnished by the Board, verified under oath, setting forth the
48 applicant's name, age, the place at which and the time that ~~he~~the applicant has spent in the study
49 of pharmacy, and ~~his~~the applicant's experience in compounding and dispensing prescriptions
50 under the supervision of a pharmacist. The applicant shall also appear at a time and place
51 designated by the Board and submit to an examination as to ~~his~~the applicant's qualifications for

1 being licensed. The applicant must demonstrate to the Board ~~his~~ the applicant's physical and
2 mental competency to practice pharmacy.

3 (b) On or after July 1, 1982, all applicants shall have received an undergraduate degree
4 from a school of pharmacy approved by the Board. Applicants shall be required to have had up to
5 one year of experience, approved by the Board, under the supervision of a pharmacist and shall
6 pass the required examination offered by the Board. Upon completing these requirements and
7 upon paying the required fee, the applicant shall be licensed.

8 (c) ~~The Department of Public Safety may provide a criminal record check to the Board for
9 a person who has applied for a license through the Board. The Board shall provide to the
10 Department of Public Safety, along with the request, the fingerprints of the applicant, any
11 additional information required by the Department of Public Safety, and a form signed by the
12 applicant consenting to the check of the criminal record and to the use of the fingerprints and other
13 identifying information required by the State or national repositories. The applicant's fingerprints
14 shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history
15 record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the
16 Federal Bureau of Investigation for a national criminal history check. The Board shall keep all
17 information pursuant to this subsection privileged, in accordance with applicable State law and
18 federal guidelines, and the information shall be confidential and shall not be a public record under
19 Chapter 132 of the General Statutes.~~

20 ~~The Department of Public Safety may charge each applicant a fee for conducting the checks of
21 eriminal history records authorized by this subsection. The Board may require an applicant to
22 provide the Board with a criminal record report. All applicants shall obtain criminal record reports
23 from one or more reporting services designated by the Board to provide criminal record reports.
24 Applicants are required to pay the designated reporting service for the cost of these reports."~~

25 **SECTION 5.(a)** It is unlawful to hunt with a firearm or deadly weapon, or to attempt
26 to hunt with a firearm or deadly weapon, any wild animal or wild bird on, from, or across the
27 right-of-way of any public road or highway.

28 **SECTION 5.(b)** Violation of subsection (a) of this section is a Class 3 misdemeanor.

29 **SECTION 5.(c)** This section is enforceable by law enforcement officers of the
30 Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with
31 general subject matter jurisdiction.

32 **SECTION 5.(d)** This section applies only to Buncombe County.

33 **SECTION 5.(e)** This section becomes effective October 1, 2016, and applies to acts
34 committed on or after that date.

35 **SECTION 6.(a)** G.S. 110-90.2(a) is amended by adding a new subdivision to read:

36 "**§ 110-90.2. Mandatory child care providers' criminal history checks.**

37 (a) For purposes of this section:

38 ...

39 (3a) "Provisional provider" means a person who has been employed as a child care
40 provider whose notification of qualification under subsection (b) of this section
41 is pending.

42"

43 **SECTION 6.(b)** G.S. 110-90.2 is amended by adding a new subsection to read:

44 "(b2) A provisional provider may be hired, begin orientation and training, and be counted in
45 staff/child ratio so long as the provisional provider is supervised by a qualified child care provider
46 when supervising any child and is clearly identified as a provisional provider by wearing in plain
47 view a badge identifying the person as a provisional provider. An explanation of the status of
48 provisional provider shall be included in a policy statement provided to parents and shall also be
49 posted in a conspicuous place in the child care facility.

50 (1) A child care provider subject to a criminal history check every three years in
51 accordance with subsection (b) of this section shall be treated as a provisional

1 provider until receiving notification of the Department's determination under
2 subsection (d) of this section.
3 (2) If the child care provider has not received notification of the Department's
4 determination within 90 calendar days from the date the criminal history check
5 was requested by the Department, the child care provider shall not enter or
6 remain on the premises of the child care facility until such notification is
7 received."

8 **SECTION 6.(c)** This section becomes effective August 1, 2016.

9 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes law.