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SENATE BILL DRS15023-BUxf-1*

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors: Senators Tillman, Hise, and Newton (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. IRC UPDATE**

6 **SECTION 1.1** G.S. 105-228.90(b)(1b) reads as rewritten:

7 "(1b) Code. – The Internal Revenue Code as enacted as of ~~February 9, 2018,~~ January
8 1, 2019, including any provisions enacted as of that date that become effective
9 either before or after that date."

10
11 **PART II. CORPORATE INCOME TAX CHANGES**

12 **SECTION 2.1.** G.S. 105-130.5(a) reads as rewritten:

13 "(a) The following additions to federal taxable income shall be made in determining State
14 net income:

15 ...

16 (26) The amount of gain that would be included for federal income tax purposes
17 without regard to section ~~1400Z-2(b)~~ 1400Z-2(a) of the Code. The adjustment
18 made in this subsection does not result in a difference in basis of the affected
19 assets for State and federal income tax purposes. The purpose of this
20 subdivision is to decouple from the deferral of gains reinvested into an
21 Opportunity Fund available under federal law.

22"

23 **SECTION 2.2.** G.S. 105-130.5(b) reads as rewritten:

24 "(b) The following deductions from federal taxable income shall be made in determining
25 State net income:

26 ...

27 (30) The amount of gain included in the taxpayer's federal taxable income under
28 section 1400Z-2(a) of the Code to the extent the same income was included in
29 the taxpayer's ~~federal taxable~~ State net income in a prior taxable year under
30 subdivision (a)(26) of this section. The purpose of this subdivision is to
31 prevent double taxation of income the taxpayer was previously required to
32 include in the calculation of State net income.

33"

34
35 **PART III. PERSONAL INCOME TAX CHANGES**

36 **SECTION 3.1.** Section 38.1(j) of S.L. 2018-5 reads as rewritten:



1 "SECTION 38.1.(j) Subsections (e), (f), and (h) of this section are effective for taxable years
2 beginning on or after January 1, 2018. G.S. 105-153.5(a), as amended by subsection (c) of this
3 section, is effective for taxable years beginning on or after January 1, 2018. The remainder of
4 this section is effective when it becomes law."

5 SECTION 3.2. G.S. 105-153.5(a1) reads as rewritten:

6 "(a1) Child Deduction Amount. – A taxpayer who is allowed a federal child tax credit under
7 section 24 of the Code for the taxable year is allowed a deduction under this subsection for each
8 ~~dependent-qualifying~~ child for whom the taxpayer is allowed the federal tax credit. The amount
9 of the deduction is equal to the amount listed in the table below based on the taxpayer's adjusted
10 gross income, as calculated under the Code:

11"

12 SECTION 3.3. G.S. 105-153.5(c2) reads as rewritten:

13 "(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer
14 must make the following adjustments to the taxpayer's adjusted gross income:

15 ...

16 (5) The taxpayer must add the amount of gain that would be included for federal
17 income tax purposes without regard to section ~~1400Z-2(b)~~ 1400Z-2(a) of the
18 Code. The adjustment made in this subsection does not result in a difference
19 in basis of the affected assets for State and federal income tax purposes. The
20 purpose of this subdivision is to decouple from the deferral of gains
21 reinvested into an Opportunity Fund available under federal law.

22 (6) The taxpayer may deduct the amount of gain included in the taxpayer's
23 adjusted gross income under section 1400Z-2(a) of the Code to the extent the
24 same income was included in the taxpayer's ~~adjusted gross~~ North Carolina
25 taxable income in a prior taxable year under subdivision (5) of this subsection.
26 The purpose of this subdivision is to prevent double taxation of income the
27 taxpayer was previously required to include in the calculation of North
28 Carolina taxable income.

29"

30 31 PART IV. EXCISE TAX CHANGES

32 SECTION 4.1. G.S. 105-113.6 reads as rewritten:

33 "§ 105-113.6. Use tax levied.

34 A tax is levied upon the sale or possession for sale by a person other than a licensed
35 distributor, and upon the use, consumption, and possession for use or consumption of cigarettes
36 within this State at the rate set in G.S. 105-113.5. This tax does not apply, however, to cigarettes
37 upon which the tax levied in G.S. 105-113.5 has been paid."

38 SECTION 4.2. G.S. 105-113.9 reads as rewritten:

39 "§ 105-113.9. Out-of-state shipments.

40 Any licensed distributor engaged in interstate business shall be permitted to set aside part of
41 the stock as necessary to conduct interstate business without paying the tax otherwise required
42 by this Part, but only if the licensed distributor complies with the requirements prescribed by the
43 Secretary concerning keeping of records, making of reports, posting of bond, and other matters
44 for administration of this Part.

45 "Interstate business" as used in this section means:

46 (1) The sale of cigarettes to a nonresident where the cigarettes are delivered by
47 the licensed distributor to the business location of the nonresident purchaser
48 in another ~~state; and state.~~

49 (2) The sale of cigarettes to a nonresident purchaser who has no place of business
50 in North Carolina and who purchases the cigarettes for the purposes of resale
51 not within this State and where the cigarettes are delivered to the purchaser at

1 the business location in North Carolina of the licensed distributor who is also
2 licensed as a distributor under the laws of the state of the nonresident
3 purchaser."

4 **SECTION 4.3.** G.S. 105-113.13 reads as rewritten:

5 **"§ 105-113.13. Secretary may require a bond or irrevocable letter of credit.**

6 (a) Repealed by Session Laws 2013-414, s. 22(c), effective September 1, 2013.

7 (b) The Secretary may require a licensed distributor to furnish a bond in an amount that
8 adequately protects the State from loss if the licensed distributor fails to pay taxes due under this
9 Part. A bond must be conditioned on compliance with this Part, payable to the State, and in the
10 form required by the Secretary. The amount of the bond is two times the licensed distributor's
11 average expected monthly tax liability under this Article, as determined by the Secretary,
12 provided the amount of the bond may not be less than two thousand dollars (\$2,000) and may
13 not be more than two million dollars (\$2,000,000). The Secretary should periodically review the
14 sufficiency of bonds required of the licensed distributor and increase the required bond amount
15 if the amount no longer covers the anticipated tax liability of the licensed distributor and decrease
16 the amount if the Secretary finds that a lower bond amount will protect the State adequately from
17 loss.

18 For purposes of this section, a licensed distributor may substitute an irrevocable letter of
19 credit for the secured bond required by this section. The letter of credit must be issued by a
20 commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter
21 of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this
22 Article, and in the amounts stipulated in this section."

23 **SECTION 4.4.** The catch line of G.S. 105-113.77 reads as rewritten:

24 **"§ 105-113.77. City ~~beer-malt beverage and wine retail licenses.~~"**

25 **SECTION 4.5.** The catch line of G.S. 105-113.78 reads as rewritten:

26 **"§ 105-113.78. County ~~beer-malt beverage and wine retail licenses.~~"**

27 **SECTION 4.6.** The catch line of G.S. 105-113.82 reads as rewritten:

28 **"§ 105-113.82. Distribution of part of ~~beer-malt beverage and wine taxes.~~"**

29 **SECTION 4.7.** G.S. 105-113.80 reads as rewritten:

30 **"§ 105-113.80. Excise taxes on ~~beer-, malt beverages, wine, and liquor.~~**

31 (a) ~~Beer-Malt Beverage.~~ – An excise tax of sixty-one and seventy-one hundredths cents
32 (61.71¢) per gallon is levied on the sale of malt beverages.

33 (b) Wine. – An excise tax of twenty-six and thirty-four hundredths cents (26.34¢) per
34 liter is levied on the sale of unfortified wine, and an excise tax of twenty-nine and thirty-four
35 hundredths cents (29.34¢) per liter is levied on the sale of fortified wine.

36 (c) Liquor. – An excise tax of thirty percent (30%) is levied on spirituous liquor and
37 antique spirituous liquor sold in ABC stores and in permitted distilleries. Pursuant to
38 G.S. 18B-804(b), the price of liquor on which this tax is computed is the ~~distiller's or the~~
39 spirituous liquor antique spirituous liquor seller's price plus (i) the State ABC warehouse freight
40 and bailment charges and (ii) a markup for local ABC ~~boards-boards, unless otherwise specified~~
41 by law."

42 **SECTION 4.8.** G.S. 105-113.83(b) reads as rewritten:

43 "(b) ~~Beer-Malt Beverage and Wine.~~ – The excise taxes on malt beverages and wine levied
44 under G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident
45 wholesaler or importer who first handles the beverages in this State. The excise taxes levied under
46 G.S. 105-113.80(b) on wine shipped directly to consumers in this State pursuant to
47 G.S. 18B-1001.1 must be paid by the wine shipper permittee. The taxes on malt beverages and
48 wine are payable only once on the same beverages. Unless otherwise provided, the tax is due on
49 or before the 15th day of the month following the month in which the beverage is first sold or
50 otherwise disposed of in this State by the ~~wholesaler, importer, or wine shipper permittee.~~
51 wholesaler or importer. When excise taxes are paid on wine or malt beverages, the wholesaler or

1 importer must submit to the Secretary verified reports on forms provided by the Secretary
2 detailing sales records for the month for which the taxes are paid. The report must indicate the
3 amount of excise tax due, contain the information required by the Secretary, and indicate
4 separately any transactions to which the excise tax does not apply. A wine shipper permittee shall
5 submit verified reports once a year on forms provided by the Secretary detailing sales records for
6 the year the taxes are paid. The verified report is due on or before the fifteenth day of the first
7 month of the following calendar year."

8 **SECTION 4.9.** G.S. 105-164.13 reads as rewritten:

9 **"§ 105-164.13. Retail sales and use tax.**

10 The sale at retail and the use, storage, or consumption in this State of the following tangible
11 personal property, digital property, and services are specifically exempted from the tax imposed
12 by this Article:

13 ...

14 (11) Any of the following fuel:

- 15 a. Motor fuel, as taxed in Article 36C of this Chapter, except motor fuel
16 for which a refund of the per gallon excise tax is allowed under
17 ~~G.S. 105-449.105A~~ G.S. 105-449.106(c) or G.S. 105-449.107.
18 b. Alternative fuel taxed under Article 36D of this Chapter, unless a
19 refund of that tax is allowed under G.S. 105-449.107.

20"

21 **SECTION 4.10.** G.S. 105-259(b) reads as rewritten:

22 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
23 access to tax information in the course of service to or employment by the State may not disclose
24 the information to any other person except as provided in this subsection. Standards used or to
25 be used for the selection of returns for examination and data used or to be used for determining
26 the standards may not be disclosed for any purpose. All other tax information may be disclosed
27 only if the disclosure is made for one of the following purposes:

28 ...

29 (15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D
30 of this Chapter with one of the following agencies when the information is
31 needed to fulfill a duty imposed on the Department or the agency:

- 32 a. The North Carolina Alcoholic Beverage Control Commission.
33 b. The Alcohol Law Enforcement Branch of the Department of Public
34 Safety.
35 c. The Bureau of Alcohol, Tobacco, and Firearms of the United States
36 Department of Justice.
37 c1. The Alcohol and Tobacco Tax and Trade Bureau of the United States
38 Department of the Treasury.
39 d. Law enforcement agencies.
40 e. The Section of Community Corrections of the Division of Adult
41 Correction and Juvenile Justice of the Department of Public Safety.

42"

43 **SECTION 4.11.** G.S. 105-449.76 reads as rewritten:

44 **"§ 105-449.76. Cancellation or revocation of license.**

45 (a) Reasons. – The Secretary may cancel a license issued under this Article upon the
46 written request of the ~~licensee~~ licensee and the immediate return of the license to the Secretary.
47 The Secretary may summarily revoke a license issued under this Article when the Secretary finds
48 that the licensee is incurring liability for the tax imposed under this Article after failing to pay a
49 tax when due under this Article. In addition, the Secretary may revoke the license of a licensee
50 that commits one or more of the acts listed in G.S. 105-449.120 after holding a hearing on
51 whether the license should be revoked.

1 (b) Procedure. – The Secretary must send a person whose license is summarily revoked
2 a notice of the revocation and must give the person an opportunity to have a hearing on the
3 revocation within 10 days after the revocation. The Secretary must give a person whose license
4 may be revoked after a hearing at least 10 days' written notice of the date, time, and place of the
5 hearing. A notice of a summary license revocation and a notice of hearing must be sent by
6 ~~registered~~ certified mail to the last known address of the licensee.

7 (c) Release of Bond. – When the Secretary cancels or revokes a license and the licensee
8 has paid all taxes and penalties due under this Article, the Secretary must take one of the
9 following actions concerning a bond or an irrevocable letter of credit filed by the licensee:

10 (1) Return an irrevocable letter of credit to the licensee.

11 (2) Return a bond to the licensee or notify the person liable on the bond and the
12 licensee that the person is released from liability on the bond."

13 **SECTION 4.12.** G.S. 105-449.90(e) reads as rewritten:

14 "(e) Monthly Filers on 3rd. – An occasional importer must file a monthly return by the
15 third day of each month. An occasional importer is not required to file a ~~return, however, return~~
16 if all the motor fuel imported by the importer in a reporting period was removed at a terminal
17 located in another state and the supplier of the fuel is an elective supplier or a permissive
18 supplier."
19

20 **PART V. SALES TAX CHANGES**

21 **SECTION 5.1.** Section 38.5(aa) of S.L. 2018-5 reads as rewritten:

22 "**SECTION 38.5.(aa)** Except as otherwise provided, this section is effective when it
23 becomes law.

24 Subsection (a) of this section is effective retroactively to January 1, 2017. If the
25 amendment to G.S. 105-164.3(20b), as enacted by subsection (a) of this section, increases sales
26 and use tax liability, then it is effective when this section becomes law.

27 Subsection (g) of this section is effective retroactively to January 1, 2017, and applies
28 to sales and purchases made on or after that date.

29 G.S. 105-164.13(5e), as enacted by Section 38.8(c) of S.L. 2017-57 and amended by
30 subsection (j) of this section, is effective July 1, 2018.

31 Subsection (k) of this section is effective retroactively to July 1, 2014. A person who
32 paid sales and use tax for a return period ending prior to the date this section becomes law on an
33 item exempt from sales and use tax pursuant to G.S. 105-164.13E, as amended by subsection (k)
34 of this section, may apply to the Department of Revenue for a refund of any excess tax paid to
35 the extent the refund is the result of the change in the law enacted by subsection (k) of this section.
36 A request for a refund must be made on or before October 1, 2018. Notwithstanding
37 G.S. 105-241.6, a request for a refund received after this date is barred and the provisions of
38 G.S. 105-164.11 do not apply.

39 Subsections (x) and (y) of this section become effective January 1, 2020."

40 **SECTION 5.2.** G.S. 105-164.8(b) is amended by adding a new subdivision to read:

41 "(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this
42 State and is subject to the tax levied under this Article if at least one of the following conditions
43 is met:

44 ...

45 (9) The retailer, with respect to remote sales into North Carolina for the previous
46 calendar year, had one or more of the following:

47 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

48 b. Two hundred or more separate transactions."

49 **SECTION 5.3.** G.S. 105-164.13 reads as rewritten:

50 "**§ 105-164.13. Retail sales and use tax.**

1 The sale at retail and the use, storage, or consumption in this State of the following tangible
2 personal property, digital property, and services are specifically exempted from the tax imposed
3 by this Article:

4 ...

5 (38) Food and other items lawfully purchased under the ~~Food Stamp Program,~~
6 Supplemental Nutrition Assistance Program, 7 U.S.C. § 2011, and
7 supplemental foods lawfully purchased with a food instrument issued under
8 the Special Supplemental Nutrition Program, 42 U.S.C. § 1786, and
9 supplemental foods purchased for direct distribution by the Special
10 Supplemental Nutrition Program.

11"

12 **SECTION 5.4.** G.S. 105-164.13E reads as rewritten:

13 "**§ 105-164.13E. Exemption for farmers.**

14 (a) Exemption. – A qualifying farmer is a person who has an annual income from farming
15 operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has
16 an average annual income from farming operations for the three preceding taxable years of ten
17 thousand dollars (\$10,000) or more. For purposes of this section, the term "income from farming
18 operations" means sales plus any other amounts treated as gross income under the Code from
19 farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg
20 producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in
21 G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary
22 for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires
23 when a person fails to meet the income threshold for three consecutive taxable years or ceases to
24 engage in farming operations, whichever comes first.

25 Except as otherwise provided in this section, the items exempt under this section must be
26 purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional
27 farmer primarily in farming operations. For purposes of this section, an item is used by a farmer
28 for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm
29 ~~erops or crops~~, in the production of dairy products, eggs, or ~~animals~~, animals, or by a person who
30 boards horses. The following tangible personal property and services that may be exempt from
31 sales and use tax under this section are as follows:

32 ...

33 (c1) Services for Farmer. – A qualifying item listed in subdivision (6) of subsection (a) of
34 this section purchased to fulfill a service for a person who holds a qualifying farmer exemption
35 certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is
36 exempt from sales and use tax to the same extent as if purchased directly by the person who holds
37 the exemption certificate. A person that purchases one of the items allowed an exemption under
38 this subsection must provide an exemption certificate to the retailer that includes the name of the
39 ~~purchaser~~ qualifying farmer or conditional farmer and ~~an~~ the exemption number issued to the
40 ~~purchaser~~ qualifying farmer or conditional farmer by the Department pursuant to
41 G.S. 105-164.28A. A person that purchases an item exempt from tax pursuant to this subsection
42 must maintain records to substantiate that an item is used to provide a service for a person who
43 holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.

44"

45 **SECTION 5.5.** G.S. 105-164.27A(a3) reads as rewritten:

46 "(a3) Boat and Aircraft. – A direct pay permit issued under this subsection authorizes its
47 holder to purchase tangible personal property, digital property, or repair, maintenance, and
48 installation services for a boat, an aircraft, or a qualified jet engine without paying tax to the seller
49 and authorizes the seller to not collect any tax on the item or services from the permit holder. A
50 person who purchases the property or services under a direct pay permit must file a return and
51 pay the tax due to the Secretary in accordance with ~~G.S. 105-164.14.~~ G.S. 105-164.16. A permit

holder is allowed a use tax exemption on one or more of the following: (i) the installation charges that are a part of the sales price of tangible personal property or digital property purchased by the permit holder for a boat, an aircraft, or a qualified jet engine, provided the installation charges are separately stated and identified as such on the invoice or other documentation given to the permit holder at the time of the sale and (ii) the sales price of or gross receipts derived from repair, maintenance, and installation services provided for a boat, an aircraft, or a qualified jet engine.

In lieu of purchasing under a direct pay permit pursuant to this subsection, a purchaser may elect to have the seller collect and remit the tax due on behalf of the purchaser. Where the purchaser elects for the seller to collect and remit the tax, an invoice given to the purchaser bearing the proper amount of tax on a retail transaction extinguishes the purchaser's liability for the tax on the transaction. Where a seller cannot or does not separately state installation charges that are a part of the sales price of tangible personal property or digital property for a boat, an aircraft, or a qualified jet engine on the invoice or other documentation given to the purchaser at the time of the sale, tax is due on the total purchase price.

The amount of the use tax exemption is the amount of the installation charges and sales price of or gross receipts derived from the repair, maintenance, and installation services that exceed twenty-five thousand dollars (\$25,000)."

SECTION 5.6. G.S. 105-164.28A(a) reads as rewritten:

"(a) Authorization. – The Secretary may require a person who purchases an item that is exempt from tax ~~or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the item~~ to obtain an exemption certificate from the Department to receive the ~~exemption or preferential rate~~ exemption. The Department must issue a ~~preferential rate or~~ use-based exemption number to a person who qualifies for the ~~exemption or preferential rate~~ exemption. A person who no longer qualifies for a ~~preferential rate or~~ use-based exemption number must notify the Secretary within 30 days to cancel the number.

An exemption certificate issued by the purchaser authorizes a retailer to sell an item to the holder of the certificate and ~~either collect tax at a preferential rate or not collect tax on the sale, as appropriate~~ sale. A person who no longer qualifies for an exemption certificate must give notice to each seller that may rely on the exemption certificate on or before the next purchase. A person who purchases an item under an exemption certificate is liable for any tax due on the purchase if the Department determines that the person is not eligible for the exemption certificate or if the person purchased items that do not qualify for an exemption under the exemption certificate. The liability is relieved when the seller obtains the purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate."

SECTION 5.7. G.S. 105-241.14(b) reads as rewritten:

"(b) Assessment. – If a taxpayer files a timely request for a Departmental review of a proposed assessment and the Department and the taxpayer are unable to resolve the taxpayer's objection to the proposed assessment, the Department must send the taxpayer a notice of final determination concerning the proposed assessment. A notice of final determination concerning ~~an the proposed~~ assessment must contain the following information:

- (1) The basis for the determination. This information may be stated on the notice or be set out in a separate document. The statement of the basis for the determination does not limit the Department from changing the basis.
- (2) The amount of tax, interest, and penalties payable by the taxpayer.
- (3) The procedure the taxpayer must follow to contest the final determination.
- (4) A statement that the amount payable stated on the notice is collectible by the Department unless the taxpayer contests the final determination.

(5) An explanation of the collection options available to the Department if the taxpayer does not pay the amount shown due on the notice and any remedies available to the taxpayer concerning these collection options."

SECTION 5.8. G.S. 105-244.3(a) reads as rewritten:

"(a) Grace Period. – The Department shall take no action to assess any tax due for a filing period beginning on or after March 1, 2016, and ending prior to January 1, 2019, if one or more of the conditions of this subsection apply and the retailer did not receive specific written advice from the Secretary for the transactions at issue for the laws in effect for the applicable periods. Except as otherwise provided, this subsection also applies to use tax liability imposed on a purchaser under G.S. 105-164.6. The conditions are as follows:

...

(8) A person failed to collect sales tax on the taxable portion of a mixed service contract that exceeds ten percent (10%) for a transaction on or after January 1, 2017, and prior to January 1, 2019. This subdivision does not prohibit the Secretary from assessing use tax on purchases used to fulfill a mixed service contract.

...

(8b) A person failed to collect sales tax on the taxable portion of a bundled transaction that included a contract for two or more services, one of which was subject to tax and one of which was not subject to tax, for a transaction on or after March 1, 2016, and prior to January 1, 2017.

...."

SECTION 5.9. G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute a~~the local~~ portion of the net use tax proceeds collected under this section ~~to counties and cities. in accordance with Subchapter VIII of this Chapter and Chapter 1096 of the 1967 Session Laws. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, and 43 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section.~~"

PART VI. EFFECTIVE DATE

SECTION 6.1. Except as otherwise provided, this act is effective when it becomes law.