



General Statutes Commission

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MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: HB 264 (GSC Technical Corrections 2019)
Date: June 24, 2019

General Comments

This bill contains corrections of a technical nature to the General Statutes and session laws as recommended by the General Statutes Commission. The proposed committee substitute (PCS) adds additional technical amendments approved by the General Statutes Commission at its May and June meetings. The new bill section numbers are decimal numbers (e.g. Section 6.1), so the additional material can be easily identified.

As a whole, the amendments correct typographical and other obvious drafting, redlining, spelling, and stylistic errors, including the addition of missing "bridge" language between the introductory language of a paragraph and a subsequent list, make conforming changes, correct or update statutory references, make references to public officials and other individuals gender neutral, correct or update formats and terminology, modernize drafting style, and repeal an obsolete provision.

Specific Comments

Section 1 amends G.S. 7A-308(a)(21) to remove an extraneous dollar sign; the dollar sign does not conform to the style of the subsection in which it appears.

Section 2 amends G.S. 7B-3101(a) to update the format of the list, change the last sentence to the indicative mood, and insert the word "the" before "superior court" in subdivision (2).

Section 3 amends G.S. 14-43.15 to correct the spelling of "General Statues" (should be "General Statutes").

Section 4(a) and (b) amend G.S. 14-50.21 and G.S. 14-50.25, respectively, to update a statutory reference. Both statutes refer to "G.S. 14-50.16 through G.S. 14-50.20." G.S. 14-50.16, however, was repealed by S.L. 2017-194, which substantially amended Article 13A of Chapter 14 of the General Statutes, dealing with criminal gangs. Among other things, the act repealed G.S. 14-50.16, enacted a new G.S. 14-50.16A (which contains only definitions), added another new criminal offense, and amended several of the remaining sections of the Article. Because former G.S. 14-50.16 contained a substantive criminal provision and new G.S. 14-50.16A contains only definitions, the proper replacement reference for G.S. 14-50.16 is G.S. 14-50.17.

Section 4.1 directs the Revisor of Statutes to move the definition of "Congressionally chartered veterans organizations" in G.S. 18B-1000 to its proper location in alphabetical order.

Section 4.2 amends G.S. 20-305.7 primarily to correct a redlining error. Subsection (b) of that statute was amended by S.L. 2018-27, s. 3, in part to add a new sentence. A portion of the new sentence was not underlined, so these words were not actually added to the law. The proposed amendment in Section 4.2 corrects that error by actually adding them.

Section 4.2 also removes legalese (e.g. "such," "said") throughout the statute; updates the format of lists; updates references to "this paragraph" to "this subsection" in a (long) one-paragraph subsection (subsection (b)); updates "promulgated" to "adopted," which is the term now used for rules in this State; corrects pronouns in dependent relative clauses in subsections (d) and (g1) and subdivision (f)(2); corrects the mood of a verb in subsections (e), (g), (g1), (h), and subdivision (f)(3) and eliminates a proviso in subsections (e) and (g1); removes "the provisions of" in subsection (g) as unnecessary, shortening the sentence; corrects "may not" to "shall not" to conform to drafting practices in this State in subsection (g1); and corrects the use of commas in various places.

Section 4.3 amends G.S. 47F-2-117(e) to update a statutory reference. G.S. 47-41 was divided into two new sections, G.S. 47F-41.01 and G.S. 47F-41.02, in 1991 (1991, c. 647, s. 3).

Section 5 amends G.S. 55-16-22 (annual reports from business corporations) to insert a subsection catchline in subsections (a1) and (a4) to match the style of the remaining subsections.

Section 5 further amends subsection (a4) to make a conforming amendment by removing the reference to the Secretary of Revenue. G.S. 55-16-22 was amended in 2017 by two separate acts, S.L. 2017-90 and S.L. 2017-204. S.L. 2017-90, s. 1(b), added subsection (a4) to require that annual report forms include space for a corporation to indicate whether it was a veteran-owned small business or a service-disabled veteran-owned small business. Because at the time, annual reports could be filed directly with the Secretary of State or with the Secretary of Revenue for transmission to the Secretary of State, the new subsection (a4) referenced both. S.L. 2017-204, s. 1.13, meanwhile, amended G.S. 55-16-22 to eliminate the option of filing with the Secretary of Revenue. The result was the now-meaningless reference to the Secretary of Revenue in subsection (a4).

Section 5.1 amends the introductory language of G.S. 66-58(c) to add "of this section" after the reference to subsection (a) and to insert an apparently missing word in subdivision (c)(7). G.S. 66-58 (the Umstead Act) in general prohibits State entities from selling goods or providing various services in competition with private businesses. Subsection (c) of that statute contains a list of certain activities that can be done by governmental entities that are otherwise subject to the statute's prohibitions. Subdivision (c)(7) begins, "The operation by penal, correctional, or facilities operated by [a list of entities]." There does not appear to be a noun that is modified by the adjectives "penal, correctional," so the amendment to this subdivision supplies the noun "facilities," which appears to be the intended reference. The missing noun appears to have been missing since this statute was rewritten in 1951 (1951, c. 1090, s. 1)

Section 5.2(a) and (b) respectively amend G.S. 106-1018 and G.S. 106-1026 to correct statutory references that need changing due to later recodifications. Article 81 of Chapter 106 of the General Statutes was recodified as Article 84 of that Chapter, and no conforming change was made to the reference in G.S. 106-1018. Similarly, Article 11 of "this Chapter," which actually refers to Chapter 113A of the General Statutes, was recodified as Article 83 of Chapter 106, and no conforming change was made to G.S. 106-1026. In addition, in G.S. 106-1018, Section 5.2(a) corrects the name of the Primary Forest Product Assessment Act and shortens two

sentences by removing "the provisions of" as unnecessary, and in G.S. 106-1018, Section 5.2(b) also updates the form of the statutory reference.

Section 6 amends G.S. 120-37(c) and (f) to (i) insert the missing word "thousand" in subsection (c) and (ii) make the reference to the General Assembly's principal clerks gender neutral in subsection (f).

Section 6.1(a) amends G.S. 122C-55 to correct two redlining errors and to make other technical amendments.

Subsections (a2) and (a3) of G.S. 122C-55 were amended by Section 5 of S.L. 2018-33 to remove a reference to area facilities in the phrase "State or area facilities." Inadvertently, in two places, only the word "area" was deleted, thus leaving in the word "or," which the proposed amendment removes.

Section 6.1(a) also updates the format of the definitions in subsection (a) of G.S. 122C-55; adds an Oxford comma after "treatment" in subsections (a) and (a1), after "furnished" in subsections (c) and (c1), after "care" in subsection (e1), and after "consultants" in subsection (h); makes references gender neutral in subsections (a7), (b), (d), (f), (g), (j), (k), and (l); eliminates provisos in subsections (a7), (j), and (l); corrects verbs to the indicative mood in subsections (c) and (c1); corrects pronouns in dependent relative clauses in subsections (e) and (e1); shortens the text by deleting "under the provisions of" as unnecessary in subsection (k); and updates the format of the list in subsection (l).

Section 6.1(b) corrects a citation in the effective date of S.L. 2018-33 by effectively changing "Section 5(c1)" to "G.S. 122C-55(c1), as enacted by Section 5 of this act." S.L. 2018-33 does not have a Section 5(c1); the intended reference was to G.S. 122C-55(c1), which was enacted by Section 5 of that session law. **Section 6.1(c)** makes the effective date of this amendment retroactive to June 22, 2018, which is the date S.L. 2018-33 became law and the intended effective date for G.S. 122C-55(c1), but the section also includes a savings provision for facilities or sheriffs who did not comply with the new subsection during the interval between the effective date of the 2018 session law and the effective date of this act.

Section 6.1(b) and (c) were reviewed by representatives from the Department of Health and Human Services, the North Carolina Sheriffs' Association, and the North Carolina Healthcare Association.

Section 7(a) and (b) amend G.S. 122C-263 and G.S. 122C-283, respectively, to do all of the following:

- Delete the same "garbage language" from G.S. 122C-263(a) and G.S. 122C-283(a). Both Section 24 of S.L. 2018-33 and Section 3.2(a) of S.L. 2018-76 amended G.S. 122C-263(a) and G.S. 122C-283(a), each act making essentially the same changes to each statute. The later act did not, however, take into account the amendments made to the two statutes by the earlier act, and the language the later act added to each statute was similar but not identical to the language added by the earlier act, resulting in garbage language. The amendments in Section 7(a) and (b) delete the garbage language so that G.S. 122C-263(a) and G.S. 122C-283(a) are set out according to the amendments in S.L. 2018-76, the later-enacted session law.

- Make People First Language changes by changing references to "the mentally ill" to read "individuals with mental illnesses," make language gender-neutral, and modernize the format of a list.

Section 7(c) provides an effective date and applicability provision that is the same as the effective date and applicability provision in S.L. 2018-33 and S.L. 2018-76 for the amendments being corrected.

Section 7.1 amends G.S. 130A-335(a2)(1) to correct the spelling of "evalutation" (should be "evaluation").

Section 8 amends G.S. 143B-139.4B to correct two drafting errors that occurred when the statute was amended last year. Section 15.1 of S.L. 2018-44 amended the introductory language of subsection (b) of that statute to remove the word "acute" from the phrase "an acute mental health" but failed to make a conforming change to the "an." The session law also added the words "or for patients in need of mental health or substance abuse care ... approved community-based site" after the word "crisis" at the end of the sentence, which meant that the period after "crisis" needed to be changed to a comma. When a drafter is redlining punctuation changes, the policy is to strike through the word just in front of the punctuation being changed, because redlining the punctuation alone would be too easily missed. In this case, the drafter struck out "crisis." but failed to reinsert "crisis,". The proposed amendment corrects both errors.

Section 8.1 amends G.S. 147-86.20 to correct a statutory reference and to make two stylistic corrections.

The definition of "electronic payment" in subdivision (2a) of G.S. 147-86.20 refers to an electronic funds transfer "as defined in this subsection." There is, however, no definition of "electronic funds transfer" in G.S. 147-86.20. The definition of "electronic payment" was added to this statute by Section 1 of S.L. 1999-434. In an earlier version of that act, the new definition was to have been added to G.S. 105-228.90(b), which does have a definition of "electronic funds transfer." When the definition of "electronic payment" was moved to G.S. 147-86.20, the drafter inadvertently failed to make a conforming change. The proposed amendment to subdivision (2a) accordingly changes "this subsection" to "G.S. 105-228.90(b)."

Section 8.1 also amends subdivision (3) to include a hyphen in "past due" for uniformity with the style elsewhere in the same article and amends subdivision (5) to correct the capitalization of the "A" in "Agency."

Section 8.2 repeals G.S. 150B-1(e)(11), which contains an exception to the contested case provisions of Chapter 150B of the General Statutes (Administrative Procedure Act) for the former Willie M program, which was repealed in 2000 (S.L. 2000-67, s. 11.21(a)-(e)).

Section 8.3 corrects a statutory reference in G.S. 161-16. The reference to G.S. 161-15 should have been a reference to G.S. 161-14. G.S. 161-14 deals generally with the requirements for the registration of all instruments and the register of deeds' duties in that regard, including time restrictions, while G.S. 161-15 deals with certifying and registering copies of deeds from other counties and has no time restrictions.

This amendment corrects what was apparently a codification error from 1919, when the Consolidated Statutes (the predecessor of the General Statutes) were created. The original language in what is now G.S. 161-16 referred to the "preceding section," which as originally

enacted was the predecessor of current G.S. 161-14. What is now G.S. 161-15 was enacted later, and was at first placed before the predecessor to G.S. 161-14 (see Pell's Revisal, 1909). In the Consolidated Statutes, however, the order of the sections that are now G.S. 161-14 and G.S. 161-15 was reversed, apparently inadvertently, causing the predecessor to G.S. 161-15 to appear as the "preceding section" to the predecessor to G.S. 161-16. As a result, in the creation of the General Statutes, the phrase "preceding section" was changed by the recodification commission to the new G.S. number, and the statute has not been amended since that time.

The North Carolina Association of Registers of Deeds has been informed of the proposed amendment, and as of the date of this memorandum has made no objection to the proposed change.

Section 9 (a), (b), (c), and (d) amend G.S. 7A-304(a), 105-164.3(30b), 105-282.1(a)(2), and 143B-437.56(a1), respectively, to insert missing "bridge" language between the introductory language of the paragraph and the list that follows. Section 9(a) also amends G.S. 7A-304 in subsection (a) to correct a reference to "section" that should have read "subsection," in subsection (d) to replace a "such" (legalese) with "the," and in subsection (g) to correct the form of a self-citing statutory reference. The reference is to "G.S. 7A-304(a)(6)," but the reference itself is actually in G.S. 7A-304; it should have been phrased as a reference to "subdivision (a)(6) of this section."

Section 10 amends the introductory language of Section 13A.1(a) of S.L. 2018-5 to correct the reference to the statute being amended. The reference is to "G.S. 143B-344.62," but it is clear from the text being amended that the intended section was G.S. 143B-344.60.

Section 10.1 corrects the identification of the session law that was being amended by Sections 3.11(a) and (b) of S.L. 2018-13. The references to Sections 30.8 and 30.9 of "2013-281" should have been to "2013-381." S.L. 2013-281 contains only four sections and deals with amendments to the escheat fund statutes. The text being amended by Section 3.11(a) and (b) of S.L. 2018-13 came from Sections 30.8 and 30.9 of S.L. 2013-381, which deals with election matters.

Section 11 makes the bill effective when it becomes law unless otherwise provided.