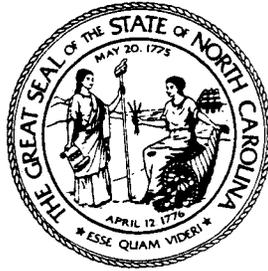


Biennial Report
to the
General Assembly
of North Carolina
1999-2001



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THE GENERAL STATUTES COMMISSION

**REPORT OF THE
GENERAL STATUTES COMMISSION
1999-2001**

TO THE GENERAL ASSEMBLY OF NORTH CAROLINA:

The General Assembly adopted the General Statutes as the general law in North Carolina in 1943 and at the time assigned to the Division of Legislative Drafting and Codification of Statutes of the Attorney General's Office the duty of keeping the laws as clear and concise as possible by means of continuous statutory research and correction.

The General Statutes Commission was created by the General Assembly in 1945 for the purpose of advising the Division of Legislative Drafting in its continuous statutory research and correction, in the publication of the General Statutes, and in making a continuing study of all matters involved in the preparation and publication of modern codes of law. In 1951, the General Assembly expressly authorized the General Statutes Commission to recommend substantive changes in the law. In 1981, the General Assembly expressly authorized the General Statutes Commission to receive and consider proposed changes in the law recommended by The American Law Institute, by the National Conference of Commissioners on Uniform State Laws, or by other learned bodies.

MEMBERSHIP AND MEETINGS OF THE COMMISSION DURING THE BIENNIUM

One new member was appointed during the 1999-2001 biennium. Ms. Susan K. Ellis of Wilson was appointed by the President of the North Carolina State Bar to replace Mr. David A. Irvin of Winston-Salem.

Eleven members were reappointed during the biennium. Mrs. Doris R. Bray of Greensboro was reappointed by the General Statutes Commission. Professor Charles C. Lewis of Buies Creek was reappointed by the Dean of the School of Law of Campbell University. Professor Charles E. Smith of Durham was reappointed by the Dean of the School of Law of North Carolina Central University. Senator Fletcher L. Hartsell, Jr., of Concord was reappointed by the President Pro Tempore of the Senate. Representative Bill Culpepper of Edenton was reappointed by the Speaker of the House. Ms. Beverly R. Mitchell of Winston-Salem was reappointed by the Governor. Professor William A. Reppy of Durham was reappointed by the Dean of the School of Law of Duke University. Professor Rhoda B. Billings of Winston-Salem was reappointed by the Dean of the School of Law of Wake Forest University. Mr. Edward C. Winslow III of Greensboro was reappointed by the Governor. Professor Mark Weisburd of Chapel Hill was reappointed by the Dean of the School of Law of the University of North Carolina at Chapel Hill. Mr. F. Bruce Williams of Raleigh was reappointed by the President of the North Carolina Bar Association.

The General Statutes Commission meets regularly on the first Friday of each month except July and August. Special meetings may be called by the chairman of the Commission whenever the work of the Commission requires. The Commission's rules are codified as Chapter 8 of Title 12 of the North Carolina Administrative Code.

PUBLICATION OF THE GENERAL STATUTES

A softbound 1999 edition of the Annotated Rules of North Carolina was published in December, 1998, and a supplement was published in May, 1999.

Beginning in 1999, the entire set of the General Statutes of North Carolina was published in a new softbound format. The 1999 replacement set, consisting of 19 volumes plus two Index volumes, was published in December, 1999.

A 2000 edition of the Annotated Rules of North Carolina was published in December, 1999, and a supplement was published in May, 2000.

A softbound 2000 Special Supplement to the General Statutes of North Carolina was published in March, 2000, and contains the acts of a general and permanent nature enacted at the 1999 Extra Session of the General Assembly held on December 15 and 16, 1999.

A softbound 2000 Interim Supplement to the 1999 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a softbound 2000 Replacement Index, consisting of two volumes, were published in October, 2000.

A 2001 edition of the Annotated Rules of North Carolina was published in November, 2000, and a supplement will be published in May, 2001.

DRAFTING COMMITTEES OF THE GENERAL STATUTES COMMISSION

Five committees of experts, appointed by the General Statutes Commission, have been engaged in work on major projects during the biennium.

Trusts Drafting Committee

The General Statutes Commission originally created this Committee in 1973 to draft a revision of the trusts laws of the State. The Committee's initial project was a revision of Chapter 36 of the General Statutes, containing the trusts statutes of North Carolina, which was enacted as Chapter 685 of the 1977 Session Laws. Since that time, the Committee has continually provided the General Statutes Commission with expertise in the areas of estates, trusts, and property and has prepared legislative proposals for the Commission's consideration. Some of the legislative proposals were enacted by the 1999 General Assembly. The Committee continues to work on other projects. Members of the Committee are Professor James B. McLaughlin, Jr., Ms. Linda Spellman Beerman, Professor Monica K. Kalo, Mr. J. Stanley Atwell, and Mr. Charles J. Murray. Ms. Jo Ann T. Harllee served as a member of the Committee until her resignation after many years of dedicated service to the Committee and the General Statutes Commission.

Revised Uniform Partnership Act Drafting Committee

The General Statutes Commission created this Committee in 1997 to make an initial review of and recommendation on the Revised Uniform Partnership Act. The Committee is preparing a legislative proposal for the Commission's consideration for possible introduction in the 2003 General Assembly. Members of the Committee are Mr. Michael R. Abel, Mr. J. Jerome Hartzell, and Professor Thomas L. Hazen.

Uniform Commercial Code Revised Article 9 Drafting Committee

The General Statutes Commission created this Committee in 1998 to make an initial review and recommendation on Uniform Commercial Code Revised Article 9 (Secured Transactions) and the conforming amendments to Uniform Commercial Code Articles 1, 2, 2A, 4, 5, 6, 7, and 8. The American Law Institute and the National Conference of Commissioners on Uniform State Laws approved Revised Article 9 in 1998 and recommended that all states enact the Article with a uniform effective date of July 1, 2001. Because of the work of the Committee, the Commission and interested individuals and groups, Revised Article 9 and various conforming amendments to the General Statutes were submitted to the General Assembly in 2000 and were enacted as Session Law 2000-169, effective July 1, 2001. Members of the Committee are Professor Caroline N. Brown, Mr. Mark T. Cain, and Mr. Tom Anderson. Professor Steven L. Schwarcz served as a member of the Committee until his resignation in 1999.

Appeals From The Clerk Drafting Committee

The General Statutes Commission created this Committee in 1995 to review the procedures established in Chapters 1 and 7A of the General Statutes for appealing decisions of the clerk of superior court. A legislative proposal to clarify and revise the procedures governing appeals or transfers from clerks of superior court to the trial courts was submitted to the 1999 General Assembly and was enacted as Session Law 1999-216, effective January 1, 2000. Members of the Committee were Mr. James C. Drennan, Ms. Joan G. Brannon, and Mr. James L. Carr.

Uniform Commercial Code Revised Article 5 Drafting Committee

The General Statutes Commission created this Committee in 1997 to make an initial review of and recommendation on Uniform Commercial Code Revised Article 5 (Letters of Credit) and the conforming and miscellaneous amendments to Uniform Commercial Code Articles 1, 2 and 9. Revised Article 5 and conforming and miscellaneous amendments were submitted to the 1999 General Assembly and were enacted as Session Law 1999-73, effective October 1, 1999. Members of the Committee were Professor Caroline N. Brown, Mr. John H. Loughridge, Jr., and Mr. Christopher E. Leon.

COOPERATION WITH OTHER GROUPS

The General Statutes Commission has cooperated and coordinated with the North Carolina Bar Association, the Administrative Office of the Courts, the Institute of Government, the North Carolina Association of Registers of Deeds, the Association of Clerks of Superior Court of North Carolina, the Department of State Treasurer, the Department of the Secretary of State, the North Carolina Bankers Association, and others. The General Statutes Commission continues its interest in the work of The American Law Institute and the National Conference of Commissioners on Uniform State Laws.

The General Statutes Commission and its drafting committees have continued their efforts to circulate their proposals among individuals and groups believed to be interested in the various topics considered by the Commission.

The General Statutes Commission welcomes and solicits recommendations from any source as to areas for further legislation. Recommendations may be brought to the attention of the Revisor of Statutes, P. O. Box 629, Raleigh, North Carolina 27602-0629; telephone (919) 716-6800; fax (919) 716-6755. That office may also be contacted for legislative history of the Commission's legislative proposals.

LEGISLATION ENACTED BY THE 1999 GENERAL ASSEMBLY

The following acts were recommended by the General Statutes Commission and enacted by the 1999 General Assembly:

1. AN ACT TO CLARIFY THE LAW CONCERNING INTEREST ON MONEY JUDGMENTS. (Enacted as S. L. 1999-384, GSC DN 97-7).
2. AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS. (Enacted as S. L. 1999-296, GSC DN 97-4).
3. AN ACT TO BE KNOWN AS THE NORTH CAROLINA UNIFORM PRUDENT INVESTOR ACT. (Enacted as S. L. 1999-215, GSC DN 96-2).
4. AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES. (Enacted as S. L. 1999-460, GSC DN 97-3).
5. AN ACT TO ENACT REVISED ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE. (Enacted as S. L. 1999-73, GSC DN 97-5).

6. AN ACT TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO THE TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES. (Enacted as S. L. 1999-216, GSC DN 88-15).

7. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as S. L. 1999-456, GSC DN 99-1).

8. AN ACT TO AMEND THE LAW RELATING TO THE APPOINTMENT OF SUCCESSOR TRUSTEES TO CONFORM TO THE RULES OF CIVIL PROCEDURE AND TO UPDATE STATUTORY LANGUAGE. (Enacted as S. L. 1999-118, GSC DN 88-15).

9. AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE ADDITIONAL INFORMATION. (Enacted as S. L. 1999-137, GSC DN 96-3).

10. AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE. (Enacted as S.L. 1999-440, GSC DN 95-3).

11. AN ACT TO ENACT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE, AND CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES AND TO INCREASE CERTAIN FEES UNDER CURRENT ARTICLE 9. (Enacted as S. L. 2000-169, GSC DN 98-3).

12. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as S. L. 2000-140, GSC DN 00-1).

RECOMMENDED LEGISLATION, 2001

During the biennium, the General Statutes Commission has received numerous suggestions for statutory changes from various sources including practicing attorneys, State officials and agencies, and from its drafting committees and its own membership. In addition, the Commission has from time to time undertaken studies of specific areas of the law to determine the need for statutory change. The Commission reviewed all suggested changes and docketed those that it believed warranted further consideration. Some have resulted in recommended bills, and others are still under consideration.

Much of the Commission's time during the biennium was spent reviewing Uniform Commercial Code Revised Article 9 (Secured Transactions) and conforming amendments to other articles of the Uniform Commercial Code and to other sections of the General Statutes. This has

reduced the Commission's time to consider other legislative proposals for recommendation to the 2001 General Assembly.

The proposals set out below have been considered by the Commission and found to warrant recommendation to the General Assembly. A brief description of each proposal is set out and, in addition, a separate memorandum for each proposal will be made available to the members of the General Assembly.

The Commission, acting pursuant to G.S. 164-13, therefore intends to recommend enactment of proposals in the following areas:

1. **An Act To Enact The Uniform Transfer On Death (TOD) Security Registration Act.** This proposal is based on the Uniform TOD (Transfer on Death) Security Registration Act, which has been enacted in 46 states. The proposal provides a method for investment securities (such as stocks, bonds, mutual funds, and security accounts) to be registered in a form that would allow the securities to be transferred to named beneficiaries on the death of the owner of the securities without going through the probate process. The interest of the decedent remains liable for the debts of the decedent and recovery of the interest may be made from the beneficiary of the securities when the decedent's estate is insufficient to satisfy the decedent's debts.

(GSC DN 93-10)

2. **An Act To Amend The Law Governing Judicial Sales And Execution Sales To Conform The Upset Bid Procedure And The Time Periods For Posting And Publishing Notice Of Sale To The Law Governing Foreclosure Sales Under A Power Of Sale.** This proposal amends Article 29A (Judicial Sales) and Article 29B (Execution Sales) of Chapter 1 of the General Statutes to conform the upset bid procedure and the minimum time periods for posting and publishing notice of sale to the "rolling" upset bid procedure and the time periods for posting and publishing notice of sale prescribed in Article 2A (Sales under Power of Sale) of Chapter 45 of the General Statutes for foreclosures under a power of sale. Unlike the current procedure for judicial and execution sales, the new upset bid procedure would not require a subsequent resale when an upset bid is submitted. Instead, the upset bid would be followed by a period of 10 days to allow for submission of a subsequent upset bid. In addition, the minimum time periods for posting and publishing notice of sale would be reduced from 30 days and four consecutive weeks, respectively, to 20 days and two consecutive weeks. This proposal also makes conforming amendments to other sections of the General Statutes.

(GSC DN 99-3)

3. **An Act To Consolidate In One Place In The General Statutes Various Business Association Provisions To Avoid Unnecessary Repetition.** This proposal enacts a new Chapter 55D for the purpose of consolidating in one place various duplicate requirements for domestic and foreign corporations, nonprofit corporations, limited liability companies, limited partnerships, and registered limited partnerships. The consolidation eliminates unnecessary repetitive provisions in Chapters 55, 55A, 57C, and 59 of the General Statutes. This proposal also makes conforming

amendments to other sections of the General Statutes.

(GSC DN 00-3)

4. **An Act To Permit A Corporation To Transfer Assets To A Wholly Owned Unincorporated Entity.** This proposal amends G. S. 55-12-01 to permit a corporation to transfer property to a wholly owned unincorporated entity. The statute already permits a corporation to transfer property to a wholly owned corporation. An unincorporated entity is defined in G.S. 55-1-40 to mean a domestic or foreign limited liability company, limited partnership, or other partnership.
(GSC DN 01-2)

In addition to the above, the Commission will introduce its usual technical corrections bill which will correct errors in grammar, erroneous statutory references, and other obvious errors in the General Statutes.

PENDING DOCKETS

Topics covered by the pending dockets of the General Statutes Commission include:

- (1) Uniform Probate Code Revised Article 2
(GSC DN 91-5)
- (2) Uniform Partnership Act (1992)
(GSC DN 93-8)
- (3) Uniform Unincorporated Nonprofit Associations Act
(GSC DN 93-9)
- (4) Retaining Safeguards for Public Records
(GSC DN 97-6)
- (5) UCC Article 6 (Bulk Transfers)
(GSC DN 97-8)
- (6) Uniform Principal and Income Act (1997)
(GSC DN 97-10)
- (7) Annual Report Form Mailings
(GSC DN 99-2)
- (8) Uniform Electronic Transactions Act
(GSC DN 99-5)
- (9) Statewide Application of G.S. 24-9
(GSC DN 00-4)

CONCLUSION

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2001 General Assembly will be carried over into the next biennium.

In submitting this report, the Commission wishes to make grateful acknowledgment of the cooperation and support received from Attorney General Michael F. Easley. The Commission is especially indebted to Special Deputy Attorney General Charles J. Murray; Mr. Floyd M. Lewis, Revisor of Statutes; Ms. P. Bly Hall, Assistant Revisor of Statutes; and Ms. Betty L. Bennett, Administrative Assistant to the Revisor of Statutes, for their dedicated service during the biennium. In addition, the Commission wishes to express its appreciation for the valuable services rendered by Mr. David A. Irvin who served as a member of the Commission, Ms. Jo Ann T. Harlee who served as a member of the Trusts Drafting Committee, and Professor Steven L. Schwarcz who served as a member of the Uniform Commercial Code Revised Article 9 Drafting Committee, during the biennium.

The Commission is most appreciative of the dedicated service of the members of the General Statutes Commission's drafting committees, as well as the cooperation of the North Carolina Bar Association, the Institute of Government, the Association of Clerks of Superior Court of North Carolina, the Department of State Treasurer, the Department of the Secretary of State, the North Carolina Association of Registers of Deeds, the North Carolina Bankers Association, the members of the Bar and others who have offered assistance and advice during the biennium.

This the 5th day of January, 2001.

Respectfully submitted,
Doris R. Bray, Chairman
Charles C. Lewis, Vice Chairman

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