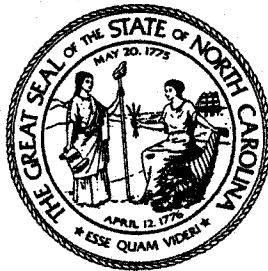


Biennial Report
to the
General Assembly
of North Carolina
2001-2003



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Assembly**

THE GENERAL STATUTES COMMISSION



**REPORT OF THE
GENERAL STATUTES COMMISSION
2001-2003**

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**

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Three new members were appointed during the 2001-2003 biennium. Mr. W. Erwin Fuller, Jr., of Greensboro was appointed by the President of the North Carolina Bar Association to replace Mr. F. Bruce Williams of Raleigh. Mr. David C. Smith of Durham was appointed by the Governor to replace Ms. Beverly R. Mitchell of Winston-Salem. Mr. Michael R. Abel of Greensboro was appointed by the General Statutes Commission to replace Mrs. Doris R. Bray of Greensboro.

Nine members were reappointed during the biennium. 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. Professor William A. Reppy of Durham was reappointed by the Dean of the School of Law of Duke University. Ms. Susan K. Ellis of Wilson was reappointed by the President of the North Carolina State Bar. 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.

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 2001 replacement set of the General Statutes of North Carolina, consisting of 19 volumes plus two index volumes, was published in April, 2002.

A 2002 edition of the Annotated Rules of North Carolina was published in November, 2001, and a supplement was published in May, 2002.

A 2002 Interim Supplement to the 2001 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2002 Replacement Index, consisting of two volumes, were published in December, 2002. The 2002 Interim Supplement contains the acts of a general and permanent nature enacted at the 2002 Extra Session and the 2002 Regular Session of the General Assembly.

A 2003 edition of the Annotated Rules of North Carolina was published in November, 2002, and a supplement will be published in May, 2003.

DRAFTING COMMITTEES OF THE GENERAL STATUTES COMMISSION

Three 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 General Assembly.

The Committee continues to work on other projects. Members of the Committee are Professor James B. McLaughlin, Jr., Ms. Barbara A. Maxwell, Professor Monica K. Kalo, Mr. J. Stanley Atwell, and Mr. Charles J. Murray. Ms. Linda Spellman Beerman 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. In the process of reviewing the Act, the Committee prepared a legislative proposal consolidating duplicate provisions in the business entity statutes, which was enacted as Session Law 2001-387. The Committee is preparing a legislative proposal based on the Revised Uniform Partnership Act for the Commission's consideration for possible introduction in the 2005 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. The Committee has continually provided the Commission with expertise in the area of secured transactions. Members of the Committee are Professor Caroline N. Brown, Mr. Mark T. Cain, and Mr. Tom Anderson.

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 Commissioner of Banks, 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. The Revisor of Statutes may also be contacted for legislative history of the Commission's legislative proposals.

LEGISLATION ENACTED BY THE 2001 GENERAL ASSEMBLY

The following acts were recommended by the General Statutes Commission and enacted by the 2001 General Assembly:

1. AN ACT TO AMEND THE LAW GOVERNING JUDICIAL SALES AND EXECUTION SALES TO PROVIDE FOR A ROLLING UPSET BID PROCEDURE AND TO CONFORM THE TIME PERIODS FOR POSTING AND PUBLISHING NOTICE OF SALE TO THE LAW GOVERNING FORECLOSURE SALES UNDER A POWER OF SALE. (Enacted as Session Law 2001-271, GSC DN 99-3).

2. AN ACT TO AMEND THE LAW DEFINING THE TIME STOCK AND OTHER EQUITY INTERESTS IN BUSINESS ASSOCIATIONS ARE PRESUMED ABANDONED FOR PURPOSES OF THE NORTH CAROLINA UNCLAIMED PROPERTY ACT. (Enacted as Session Law 2001-226, GSC DN 00-2).

3. AN ACT TO CONSOLIDATE IN ONE PLACE IN THE GENERAL STATUTES VARIOUS BUSINESS ASSOCIATION PROVISIONS TO AVOID UNNECESSARY REPETITION. (Enacted as Session Law 2001-387, GSC DN 00-3).

4. AN ACT TO PROVIDE FOR THE STATEWIDE APPLICATION OF G.S. 24-9 WHICH PROHIBITS CERTAIN BUSINESS ENTITIES FROM ASSERTING THE DEFENSE OF USURY. (Enacted as Session Law 2001-8, GSC DN 00-4).

5. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as Session Law 2001-487, GSC DN 01-1).

6. AN ACT TO PERMIT A CORPORATION TO TRANSFER ASSETS TO A WHOLLY OWNED UNINCORPORATED ENTITY. (Enacted as Session Law 2001-508, GSC DN 01-2).

7. AN ACT TO AMEND THE ANTI-LAPSE STATUTE TO PROVIDE THAT THE INTEREST OF A DECEASED CLASS MEMBER WHO LEAVES NO ISSUE DEVOLVES UPON THE REMAINING CLASS MEMBERS AND THE ISSUE OF OTHER DECEASED CLASS MEMBERS. (Enacted as Session Law 2001-83, GSC DN 01-3).

8. AN ACT TO EXPAND THE LIST OF SECTIONS OF THE NORTH CAROLINA CONDOMINIUM ACT THAT APPLY TO CONDOMINIUMS CREATED ON OR BEFORE OCTOBER 1, 1986, AND TO CODIFY AN APPLICABILITY PROVISION RELATING TO THE NORTH CAROLINA PLANNED COMMUNITY ACT. (Enacted as Session Law 2002-112, GSC DN-01-8).

9. AN ACT TO CLARIFY THAT THE RECENT ESTABLISHMENT OF A ROLLING UPSET BID PROCEDURE FOR JUDICIAL AND EXECUTION SALES DID NOT AFFECT THE REQUIREMENT THAT SALES BE CONFIRMED BY THE APPROPRIATE JUDICIAL OFFICIAL. (Enacted as Session Law 2002-28 , GSC DN 01-9).

10. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND TO RESTORE THE DEFINITION OF FAMILY CARE HOME TO ITS ORIGINAL LANGUAGE. (Enacted as Session Law 2002- 159, GSC DN 02-1).

11. AN ACT TO AMEND THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO BYLAWS TO CONFORM TO THE VOTING REQUIREMENT FOR MEMBER APPROVAL OF AMENDMENTS TO ARTICLES OF INCORPORATION. (Enacted as Session Law 2002-27, GSC DN-02-2).

12. AN ACT TO REPEAL AN OBSOLETE ATTESTATION REQUIREMENT THAT CONVEYANCES BY BANKS MUST BE EXECUTED BY THE SECRETARY OR THE CASHIER AND TO VALIDATE CONVEYANCES BY BANKS THAT

OTHERWISE COMPLY WITH THE STATUTE ON EXECUTION OF CORPORATE CONVEYANCES. (Enacted as Session Law 2002-26, GSC DN 02-5).

13. AN ACT TO AMEND THE LAW RELATING TO SPECIAL MEETINGS OF SHAREHOLDERS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, TO AMEND THE LAW RELATING TO DISSENTERS' RIGHTS UNDER THE NORTH CAROLINA BUSINESS CORPORATION ACT, TO CLARIFY THAT A GENERAL PARTNER MUST EXECUTE DOCUMENTS FOR FILING BY THE SECRETARY OF STATE, AND TO CLARIFY THE LAW RELATING TO REGISTRATION OF GENERAL PARTNERSHIPS. (Enacted as Session Law 2002-58, GSC DN-02-6).

14. AN ACT TO REPEAL AN OBSOLETE PROHIBITION ON THE ESTABLISHMENT OF AUTOMATED TELLER MACHINES OR OTHER INFORMATION-PROCESSING DEVICES OR MACHINES BY OUT-OF-STATE FINANCIAL INSTITUTIONS. (Enacted as Session Law 2002-29, GSC DN 02-7).

15. AN ACT TO AMEND THE LAW RELATING TO DISTRIBUTION TO KNOWN BUT UNLOCATED DEVISEES OR HEIRS TO CONFORM TO THE NORTH CAROLINA UNCLAIMED PROPERTY ACT. (Enacted as Session Law 2002-62, GSC DN 02-8).

STUDIES AUTHORIZED BY THE 2001 GENERAL ASSEMBLY

The following studies were authorized by the 2001 General Assembly and have resulted in the opening of dockets:

1. Part XXVI of Session Law 2001-491 (Senate Bill 166, Studies Act of 2001) provided that the General Statutes Commission "may study renumbering, rearranging, and consolidating the provisions of Chapter 20 of the General Statutes [and] . . . may report its findings and recommendations to the 2003 General Assembly and to the 2005 General Assembly." (GSC DN 02-9). A separate report will be filed.

2. Section 2 of Session Law 2002-88 (House Bill 1099, Financial Institutions Asset Securitization) directed the General Statutes Commission to "study and report to the 2003 General Assembly on the question of whether the waiver of the equity of redemption, as permitted under this act for certain financial institutions, should be extended to apply to other business entities in other commercial transactions." (GSC DN 02-12).

3. Section 18.1 of Part XVIII of Session Law 2002-180 (Senate Bill 98, Studies Act of 2002) directed the General Statutes Commission to “study and report to the 2003 General Assembly on the question of the personal representative’s authority to take possession of and dispose of real property of an estate without an order of the court.” (GSC DN 02-15).

4. Section 18.2 of Part XVIII of Session Law 2002-180 (Senate Bill 98, Studies Act of 2002) provided in part that the General Statutes Commission “may study and report to the 2003 General Assembly on the question of whether North Carolina should allow a method for the distribution of property coming to an estate after the estate is closed without the necessity of reopening the estate.” (GSC DN 02-16). A study was made of reopening an estate for Phase II tobacco payments and legislation will be introduced as described below.

5. Section 1 of Session Law 2002-189 (Senate Bill 1455, Strengthen Securities Fraud Enforcement Laws) directed the General Statutes Commission to “study the provisions of Senate Bill 1455, 4th Edition, Strengthen Securities Fraud Enforcement Laws, introduced in the 2001 General Assembly, in consultation with the Department of the Secretary of State, the Securities Industry Association, the North Carolina Bar Association, and other interested parties, and to make recommendations to the 2003 Regular Session of the 2003 General Assembly.” (GSC DN 02-14). The study was completed and recommendations will be made.

RECOMMENDED LEGISLATION, 2003

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.

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 Revised Article 6 Of The Uniform Commercial Code, Bulk Sales, And Conforming Amendments To Other Articles Of The Uniform Commercial Code.** This proposal is based on Revised Article 6 of the Uniform Commercial Code , regulating bulk sales, and the conforming amendments to Article 1 (General Provisions) and Article 2 (Sales) of the Uniform Commercial Code. Revised Article 6 is designed to reduce the burdens and risks imposed upon good-faith buyers of business assets while increasing the protection afforded to creditors.

Article 6 was revisited in 1989 by the National Conference of Commissioners on Uniform State Laws and The American Law Institute. The Conference and the Institute concluded that Article 6 had become obsolete and that changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Both bodies withdrew their support for Article 6 and encouraged states to repeal it. However, the Conference and the Institute recognized that some legislatures may wish to continue to regulate bulk sales and therefore promulgated Revised Article 6 as an alternative to repealing Article 6. Since 1989, 41 states have repealed Article 6 or its equivalent, and four states have enacted Revised Article 6.

Article 6 was enacted in North Carolina in 1965, effective July 1, 1967, and has been amended only once since its enactment. Bills to repeal Article 6 failed to be enacted in the 1997, 1999, and 2001 sessions of the General Assembly. While the General Statutes Commission still believes that Article 6 should be repealed, the Commission also believes that Revised Article 6 is better than Article 6.

(GSC DN 97-8)

2. **An Act To Amend The Law Regarding Civil Remedy For Protection Of Animals.** This proposal amends Article 1 of Chapter 19A of the General Statutes on civil remedies for the protection of animals to conform the definition of animal to the one in the criminal statute on cruelty to animals, to explicitly impose a duty to refrain from cruelty to animals, to modify the list of exempted activities to conform to the equivalent list in the criminal statute on cruelty to animals and to require that the listed activities be conducted in compliance with commonly accepted practices, to restructure the injunction provisions to better conform to Rule 65 of the Rules of Civil Procedure, to clarify that the final order may change the animal's ownership, and to state the standard that the plaintiff must meet before such a change can be ordered.

(GSC DN 02-11)

3. **An Act To Increase The Membership Of The Board Of Trustees Of The North Carolina School Of Science And Mathematics To Conform To The Increase In The Number Of Congressional Districts In This State.**

This proposal increases from 26 to 27 the total number of members of the Board of Trustees of the North Carolina School of Science and Mathematics, increases from 12 to 13 the number of Board members appointed by the Board of Governors of The University of North Carolina to reflect the 13 congressional districts, amends the provision providing for staggered terms to reflect the increase in the number of Board members, and makes various stylistic changes. The proposal also provides an effective date of July 1, 2003, and an initial expiration date of the term of the new Board member of June 30, 2007. The proposal follows what was done in 1992 when the number of Board members was increased from 11 to 12 to conform to an increase in the number of congressional districts as a result of the 1990 Census.

(GSC DN 02-13)

4. **An Act To Permit Phase II Payments Under The National Tobacco Grower Settlement Trust To Be Paid Without Reopening A Decedent's Estate.**

This proposal permits Phase II payments under the National Tobacco Grower Settlement Trust to be paid to a decedent's devisees or heirs after a solvent estate is closed without reopening the estate. Under this proposal, a decedent's personal representative or collector may prepare a list of devisees or heirs who would be entitled to any Phase II payments and may file the list with the final account if there are no unsatisfied creditors, there are no unsatisfied general monetary bequests, and all assets other than any Phase II payments have been distributed. If the list is approved by the clerk of superior court and the estate is closed, Phase II payments may be paid directly to the persons on the list.

This proposal was prepared pursuant to Section 18.2 of Part XVIII of Session Law 2002-180 which provided in part that the General Statutes Commission "may study and report to the 2003 General Assembly on the question of whether North Carolina should allow a method for the distribution of property coming to an estate after the estate is closed without the necessity of reopening the estate."

(GSC DN 02-16)

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 (dockets not covered in pending legislation)

- (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) Uniform TOD Security Registration Act
(GSC DN 93-10)
- (5) Retaining Safeguards for Public Records
(GSC DN 97-6)
- (6) Uniform Principal and Income Act (1997)
(GSC DN 97-10)
- (7) UCC Revised Article 9 (Secured Transactions)
(GSC DN 98-3)
- (8) Amend Anti-Cruelty Statute
(GSC DN 01-4)
- (9) Uniform Arbitration Act (2000)
(GSC DN 01-5)
- (10) Renunciation Amendments
(GSC DN 01-6)
- (11) Slayer Statute
(GSC DN 01-7)
- (12) Uniform Athlete Agents Act (2000)
(GSC DN 02-3)

- (13) Uniform Trust Code (2000)
(GSC DN 02-4)
- (14) Study Rearranging and Consolidating Motor Vehicle Statutes
(GSC DN 02-9)
- (15) Uniform Consumer Leases Act
(GSC DN 02-10)
- (16) Waiver of the Equity of Redemption
(GSC DN 02-12)
- (17) Authority of Personal Representative to Sell Real Property
(GSC DN 02-15)

CONCLUSION

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2003 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 Roy Cooper. 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, former 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. F. Bruce Williams and Mrs. Beverly R. Mitichell who served as members of the Commission, and Ms. Linda Spellman Beerman who served as a member of the Trusts Drafting Committee, during the biennium. In particular, the Commission wishes to express its appreciation for the efforts of Mrs. Doris R. Bray, who provided valuable information and insight to the Commission for 20 years, first as a member and then as vice chairman and chairman.

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 Administrative Office of the Courts, the Institute of Government, the Association of Clerks of Superior Court of North Carolina, the Department of Justice, the Department of State Treasurer, the Department of the Secretary of State, the

North Carolina Association of Registers of Deeds, the Commissioner of Banks, the North Carolina Bankers Association, the members of the Bar, and others who have offered assistance and advice during the biennium.

This the 7th day of March, 2003.

Respectfully submitted,
Charles C. Lewis, Chairman
Charles E. Smith, Vice Chairman

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