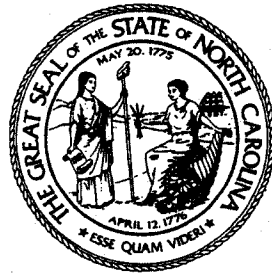
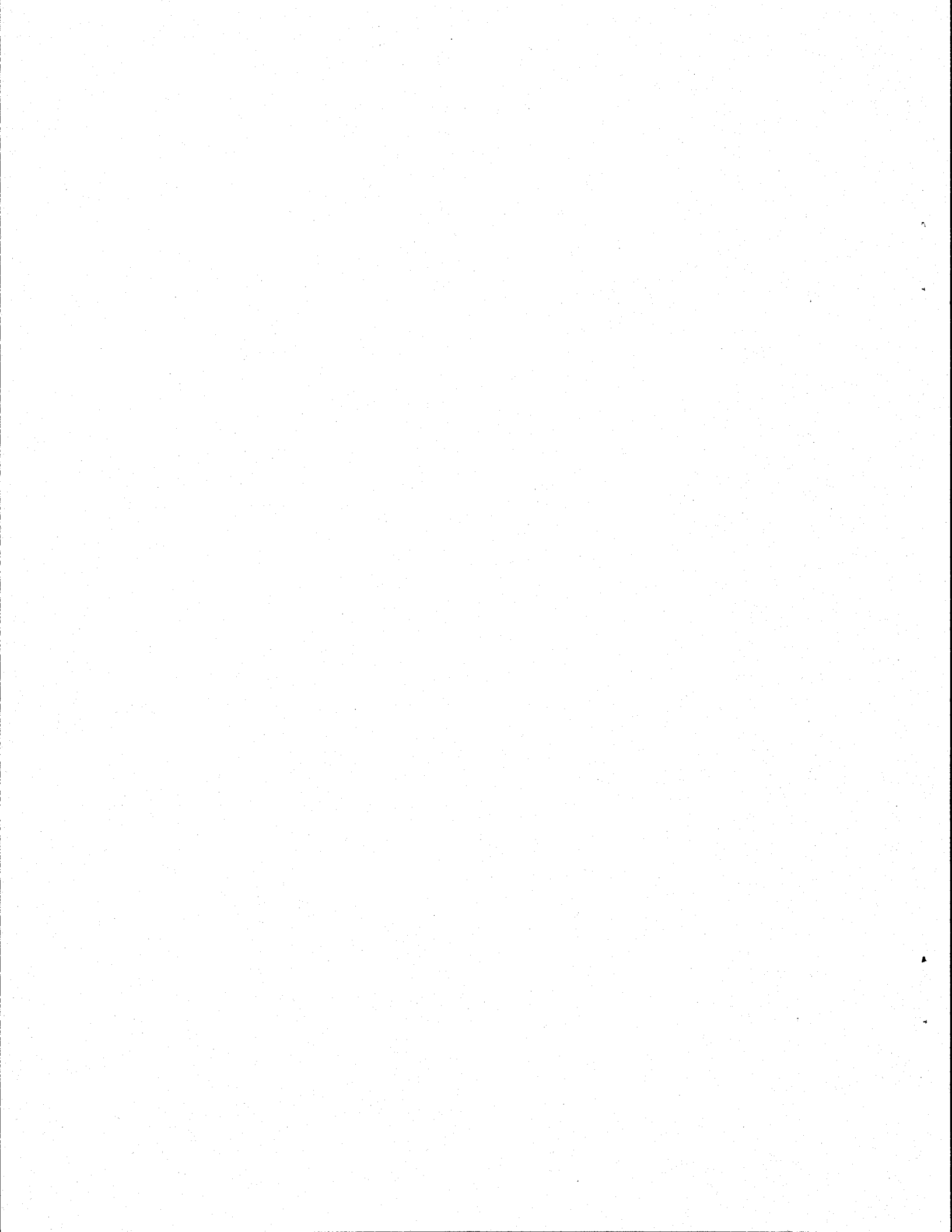


Biennial Report
to the
General Assembly
of North Carolina
2003-2005



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THE GENERAL STATUTES COMMISSION



**REPORT OF THE
GENERAL STATUTES COMMISSION
2003-2005**

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

Two new members were appointed during the 2003-2005 biennium. Professor H. Miles Foy of Winston-Salem was appointed by the Dean of Wake Forest University School of Law to replace Professor Rhoda B. Billings of Winston-Salem. Mr. B. Geoffrey Hulse of Goldsboro was appointed by the President of the North Carolina State Bar to replace Ms. Susan K. Ellis of Wilson.

Ten members were reappointed during the biennium. Professor Charles C. Lewis of Buies Creek was reappointed by the Dean of Campbell University School of Law. Professor Charles E. Smith of Durham was reappointed by the Dean of North Carolina Central University School of Law. Mr. Michael R. Abel of Greensboro was reappointed by the General Statutes Commission. 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 Duke University School of Law. 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 University of North Carolina School of Law. Mr. W. Erwin Fuller, Jr., of Greensboro was reappointed by the President of the North Carolina Bar Association. Mr. David C. Smith of Durham was reappointed by the Governor.

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 2003 replacement set of the General Statutes of North Carolina, consisting of 19 volumes plus two index volumes, was published in November 2003.

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

A Special Supplement, containing the acts of a general and permanent nature enacted at the 2003 1st and 2nd Extra Sessions, was published in January 2004.

A 2004 Interim Supplement to the 2003 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2004 Replacement Index, consisting of two volumes, were published in November 2004. The 2004 Interim Supplement contains the acts of a general and permanent nature enacted at the 2003 1st and 2nd Extra Sessions and the 2004 Regular Session of the General Assembly.

A Special Supplement, containing the acts of a general and permanent nature enacted at the 2004 1st Extra Session, was published in December 2004.

A 2004 edition of the Annotated Rules of North Carolina was published in November 2003, and a supplement was published in May 2004.

A 2005 edition of the Annotated Rules of North Carolina was published in November 2004, and a supplement will be published in May 2005.

DRAFTING COMMITTEES OF THE GENERAL STATUTES COMMISSION

The General Statutes Commission has appointed two committees of experts, to assist it in work on major projects.

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, and Mr. J. Stanley Atwell. Mr. Charles J. Murray served as a member

of the Committee until his retirement from the North Carolina Department of Justice 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 regarding the Revised Uniform Partnership Act. In the process of reviewing the Act, the Committee also prepared a legislative proposal consolidating duplicate provisions in the business entity statutes, which was enacted as Session Law 2001-387. The Committee's completion of its work on a legislative proposal based on the Revised Uniform Partnership Act has been delayed due to the General Statutes Commission's work on studies assigned by the General Assembly. Members of the Committee are Mr. Michael R. Abel, Mr. J. Jerome Hartzell, and Professor Thomas L. Hazen.

COOPERATION WITH OTHER GROUPS

The General Statutes Commission has cooperated and coordinated with the Administrative Office of the Courts, the Association of Clerks of Superior Court of North Carolina, the Department of Agriculture, the Department of the Secretary of State, the Department of Cultural Resources, the Department of Environment and Natural Resources, the Commissioner of Banks, the North Carolina Sentencing and Policy Advisory Commission, the North Carolina Association of County Commissioners, the North Carolina Association of Registers of Deeds, the North Carolina League of Municipalities, the SPCA of Wake County, Durham County Animal Control, the North Carolina Bar Association, the North Carolina Bankers Association, the North Carolina Land Title Association, the Securities Industry 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, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001; 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 2003 GENERAL ASSEMBLY

The following acts were recommended by the General Statutes Commission and enacted by the 2003 General Assembly:

1. AN ACT TO AMEND THE LAW REGARDING THE CIVIL REMEDY FOR PROTECTION OF ANIMALS. (Enacted as Session Law 2003-208, GSC DN 02-11).

2. 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. (Enacted as Session Law 2003-57, GSC DN 02-13).

3. AN ACT TO PERMIT PHASE II PAYMENTS UNDER THE NATIONAL TOBACCO GROWER SETTLEMENT TRUST TO BE PAID WITHOUT REOPENING A DECEDENT'S ESTATE. (Enacted as Session Law 2003-295, GSC DN 02-16).

4. AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES. (Enacted as Session Law 2004-190, GSC DN 97-8).

5. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as Session Law 2004-203, GSC DN 03-1).

6. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as Session Law 2004-199, GSC DN 04-1).

7. AN ACT TO CLARIFY THE LAWS ON THE POWERS OF CONDOMINIUM UNIT OWNERS' ASSOCIATIONS AND PLANNED COMMUNITY OWNERS' ASSOCIATIONS. (Enacted as Session Law 2004-109, GSC DN 04-3).

REPORTS SUBMITTED TO THE 2003 GENERAL ASSEMBLY

The following reports were submitted to the 2003 General Assembly pursuant to studies authorized by the 2001 General Assembly:

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 [relating to motor vehicles and] may report its findings and recommendations to the 2003 General Assembly and to the 2005 General Assembly." A report was submitted to the 2003 General Assembly. For the reasons set out in the report, the Commission was unable to conduct the study.

(GSC DN 02-9)

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.” The Commission completed its study and submitted a report to the 2003 General Assembly during its 2004 Regular Session. For the reasons set out in the report, the Commission concluded that no legislation was warranted at this time.

(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.” The Commission conducted a study on the issue and submitted a report to the 2003 General Assembly during its 2004 Regular Session. For reasons set out in the report, the Commission did not recommend any legislation but attached its most recent draft legislative proposal to the report for the General Assembly’s information.

(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.” A study was made of reopening an estate for Phase II tobacco payments and a report was submitted to the 2003 General Assembly. A legislative proposal resulting from the study was enacted as Session Law 2003-295, as described above.

(GSC DN 02-16)

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.” The study was completed and a report was submitted to the 2003 General Assembly. A bill based on the Commission’s report was introduced by Senator Tony Rand and enacted as Session Law 2003-413.

(GSC DN 02-14)

STUDIES AUTHORIZED OR DIRECTED BY THE 2003 GENERAL ASSEMBLY

The following studies were authorized or directed by the 2003 General Assembly and have resulted in the opening of dockets:

1. Section 2 of Session Law 2003-208 (Senate Bill 669, Civil Remedy for Animal Cruelty) authorized the General Statutes Commission, in consultation with the North Carolina Department of Agriculture and Consumer Services, to study “the need to regulate the unlimited breeding of dogs and cats and the animal cruelty resulting from the operations commonly referred to as ‘puppy mills.’” The Commission was further authorized to make an interim report to the 2003 General Assembly, 2004 Regular Session, and to make its final report to the 2005 General Assembly. An interim report was submitted to the 2003 General Assembly during its 2004 Regular Session. A final report will be submitted to the 2005 General Assembly during its 2006 Regular Session.

(GSC DN 03-4)

2. Section 6.1 of Part VI of Session Law 2004-161 (Senate Bill 1152, Studies Act of 2004) directed the General Statutes Commission to study “the issue of electronic recordation, specifically with regard to real property documents and other documents filed with registers of deeds” and to study “methods for establishing uniform legal standards for the receipt, recordation, authentication, preservation, and retrieval of electronic documents.” The Commission was also directed “to include in its study consideration of the Uniform Real Property Electronic Recordation Act drafted by the National Conference of Commissioners on Uniform State Laws as well as other resources on electronic recording standards from national organizations such as the Property Records Industry Association (PRIA) and the Mortgage Industry Standards Maintenance Organization (MISMO).” The Commission was directed to report its findings and recommendations and any legislative proposals to the 2005 General Assembly upon its convening. A report was submitted to the 2005 General Assembly upon its convening on January 26, 2005, and a supplement to the report was submitted on March 8, 2005.

(GSC DN 04-6)

3. Section 7.1 of Part VII of Session Law 2004-161 (Senate Bill 1152, Studies Act of 2004) directed the General Statutes Commission to study “the Uniform Unincorporated Nonprofit Association Act in consultation with interested parties and to report to the 2005 General Assembly on the Commission’s recommendations and legislative proposals.” A report will be submitted to the 2005 General Assembly during its 2006 Regular Session.

(GSC DN 93-9)

RECOMMENDED LEGISLATION, 2005

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 Validate Certain Subordination Agreements And To Clarify The Law On The Priority Of Instruments Registered In The Office Of The Register Of Deeds.** This proposal amends G.S. 39-6.6, relating to subordination agreements, to provide that the statute applies to a subordination agreement regardless of when the agreement was signed by the party or parties to the agreement, except that the statute does not apply to an agreement that (i) is the subject of litigation pending on the effective date of the proposal and (ii) was filed or recorded before October 1, 2003. The proposal also makes minor stylistic and technical changes throughout G.S. 39-6.6.

This proposal also amends G.S. 47-18(a) and G.S. 47-20(a), relating to the priority of instruments registered in the office of the register of deeds, to conform terminology and remove surplus language.

(GSC DN 04-5)

2. **An Act To Allow Attorneys' Fees To Be Awarded To The Prevailing Party In An Action To Enforce Provisions Of The Articles Of Incorporation, Declaration, Bylaws, Or Rules Of A Planned Community Created Prior To January 1, 1999, If Recovery Of Attorneys' Fees Is Allowed In The Declaration.** This proposal amends the North Carolina Planned Community Act, specifically G.S. 47F-1-102(c), to add G.S. 47F-3-120 (Declaration limits on attorneys' fees) to the list of provisions that apply to planned communities created before January 1, 1999, the effective date of the Act. G.S. 47F-3-120 allows a court to award attorneys' fees to the prevailing party in an action to enforce provisions of the articles of incorporation, declaration, bylaws, or rules of a planned community, if the declaration allows the recovery of attorneys' fees.

(GSC DN 04-4)

3. **An Act To Enact the Uniform Real Property Electronic Recording Act.** This proposal is based on the Uniform Real Property Electronic Recording Act, which was approved by the National Conference of Commissioners on Uniform State Laws in 2004. The proposal was prepared pursuant to Section 6.1 of Part VI of Session Law 2004-161, which, as discussed more fully above, required the General Statutes Commission to study the issue of electronic recordation of real property documents.

The proposal expressly authorizes registers of deeds to receive, record, and retrieve real property documents and information in electronic form and provides that a document in electronic form and an electronic signature satisfy, respectively, State law requirements that a real property document be an original, on paper, or in writing and that the document contain a signature. It also requires a register of deeds who implements electronic recording to comply with uniform statewide standards adopted by the Secretary of State upon recommendation of a newly created Electronic Recording Council.

(GSC DN 04-6)

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 and make other technical changes in the General Statutes.

PENDING DOCKETS (dockets not covered in pending legislation)

- (1) Uniform Partnership Act (1992)
(GSC DN 93-8)
- (2) Uniform Unincorporated Nonprofit Associations Act
(GSC DN 93-9)
- (3) Uniform TOD Security Registration Act
(GSC DN 93-10)
- (4) Retaining Safeguards for Public Records
(GSC DN 97-6)
- (5) UCC Revised Article 9 (Secured Transactions)
(GSC DN 98-3)
- (6) Renunciation Amendments
(GSC DN 01-6)
- (7) Slayer Statute
(GSC DN 01-7)
- (8) Procedures for Judicial, Execution, and Foreclosure Sales
(GSC DN 01-9)
- (9) Uniform Trust Code (2000)
(GSC DN 02-4)

- (10) Uniform Consumer Leases Act
(GSC DN 02-10)
- (11) Uniform Mediation Act
(GSC DN 03-2)
- (12) Amendments to UCC Articles 3 and 4
(GSC DN 03-3)
- (13) Puppy Mills
(GSC DN 03-4)
- (14) Amendments to UCC Articles 1, 2, and 2A
(GSC DN 03-5)
- (15) Uniform Simultaneous Death Act
(GSC DN 03-6)
- (16) UCC Revised Article 7
(GSC DN 04-2)

CONCLUSION

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2005 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 Charles J. Murray, former Special Deputy Attorney General, Mr. Floyd M. Lewis, Revisor of Statutes, Ms. P. Bly Hall, Assistant Revisor of Statutes, and Alison P. Taylor, 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 Professor Rhoda B. Billings and Ms. Susan K. Ellis, who served as members of the Commission during the biennium, and for special and valuable assistance rendered by former Commissioner and Chairman Doris R. Bray.

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 Association of Clerks of Superior Court of North Carolina, the North Carolina Association of Registers of Deeds, the North Carolina Land Title Association, the Department of Justice, the Department of Agriculture, the Department of the Secretary of State, the Department of Cultural Resources, the Commissioner of Banks, the North

Carolina Sentencing and Policy Advisory Commission, the North Carolina Bankers Association, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the SPCA of Wake County, Durham County Animal Control, the members of the Bar, and others who have offered assistance and advice during the biennium.

This the 1st day of April, 2005.

Respectfully submitted,
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