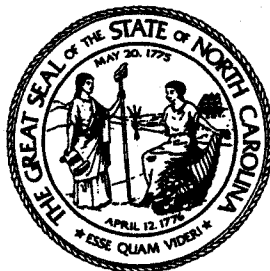


Biennial Report
to the
General Assembly
of North Carolina
2005-2007



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THE GENERAL STATUTES COMMISSION

**REPORT OF THE
GENERAL STATUTES COMMISSION
2005-2007**

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

Four new members were appointed during the 2005-2007 biennium. Professor A. Fleming Bell, II, of Durham was appointed by the Governor to replace Mr. David C. Smith of Durham. Mr. Matthew W. Sawchak of Cary was appointed by the President of the North Carolina Bar Association to replace Mr. W. Erwin Fuller, Jr. of Greensboro. Representative Deborah K. Ross of Raleigh was appointed by the Speaker of the House to replace former Representative Bill Culpepper of Edenton. Mr. Keith O. Gregory of Raleigh was appointed by the President of the North Carolina State Bar to replace Mr. B. Geoffrey Hulse of Goldsboro.

Eight 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. Professor H. Miles Foy of Winston-Salem was reappointed by the Dean of Wake Forest University School of Law. 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.

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 2005 replacement set of the General Statutes of North Carolina, consisting of 19 volumes plus two index volumes, was published in December 2005.

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

A 2006 edition of the Annotated Rules of North Carolina was published in November 2005, and a supplement was published in May 2006.

A 2006 Interim Supplement to the 2005 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2006 Replacement Index, consisting of two volumes, were published in November 2006. The 2006 Interim Supplement contains the acts of a general and permanent nature enacted at the 2006 Regular Session of the General Assembly.

A 2007 edition of the Annotated Rules of North Carolina was published in November 2006, and a supplement will be published in May 2007.

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.

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 S.L. 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 Department of Justice, the Administrative Office of the Courts, the Association of Clerks of Superior Court of North Carolina, the Department of Agriculture and Consumer Services, the Department of the Secretary of State, the Department of Cultural Resources, the North Carolina Conference of District Attorneys, Equality NC, the Department of Environment and Natural Resources, the Department of Transportation, 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, the Property Records Industry Association, The University of North Carolina School of Government, the North Carolina Veterinary Medical Association, the North Carolina Wildlife Resources Commission, the North Carolina Board of Pharmacy, 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 2005 GENERAL ASSEMBLY

The following acts were recommended by the General Statutes Commission and enacted by the 2005 General Assembly:

1. AN ACT TO ENACT THE UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT AND TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as S.L. 2006-226, GSC DN 93-9).
2. AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS. (Enacted as S.L. 2006-107, GSC DN 01-7).

3. AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM WAREHOUSE RECEIPTS ACT. (Enacted as S.L. 2005-112, GSC DN 03-5 and DN 04-2).

4. 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. (Enacted as S.L. 2005-214, GSC DN 04-4).

5. 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. (Enacted as S.L. 2005-212, GSC DN 04-5).

6. AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT. (Enacted as S.L. 2005-391, GSC DN 04-6).

7. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as S.L. 2006-264, GSC DN 05-1).

8. AN ACT TO AMEND THE LAW RELATING TO THE PROTECTION OF ANIMALS. (Enacted as S.L. 2006-113, GSC DN 05-5).

9. AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES. (Enacted as S.L. 2006-259, GSC DN 06-1).

10. AN ACT TO AMEND THE TRANSITION PROVISIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE TO RESOLVE A TIME-SENSITIVE PROBLEM REGARDING THE EFFECTIVENESS OF CERTAIN FINANCING STATEMENTS. (Enacted as S.L. 2006-11, GSC DN 06-3).

REPORTS SUBMITTED TO THE 2005 GENERAL ASSEMBLY

The following reports were submitted to the 2005 General Assembly pursuant to studies authorized by the 2003 General Assembly:

1. Section 2 of S.L. 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 was submitted to the 2005 General Assembly during its 2006 Regular Session.

(GSC DN 03-4)

2. Section 6.1 of Part VI of S.L. 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. A legislative proposal based on the Uniform Real Property Electronic Recording Act was enacted as S.L. 2005-391.

(GSC DN 04-6)

3. Section 7.1 of Part VII of S.L. 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 was submitted to the 2005 General Assembly during its 2006 Regular Session. A legislative proposal based on the Uniform Unincorporated Nonprofit Association Act was enacted as S.L. 2006-226.

(GSC DN 93-9)

STUDY DIRECTED BY THE 2005 GENERAL ASSEMBLY

The following study was directed by the 2005 General Assembly during its 2006 Regular Session and has resulted in the opening of a docket:

Section 32 of S.L. 2006-59 (House Bill 1432, Notary Public Corrections) directed the General Statutes Commission to study “the need for additional changes to laws relating to notaries public, the notarization of documents, and the registration of instruments notarized in other jurisdictions.” The Commission was also directed “to determine whether there is a need for additional conforming changes in the law that arise from changes made by [S.L. 2006-59] and recommend to the General Assembly any legislation to address the needs identified by [the] study.” The Commission was directed to report the results of the study to either the 2007 or 2009 General Assembly.

RECOMMENDED LEGISLATION, 2007

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 Amend The Law Relating To Renunciations.** This proposal amends Chapter 31B of the General Statutes, which provides a statutory procedure for certain designated persons to renounce (refuse to accept) a property interest. The proposal:

- Expands the list of persons who may renounce to include (i) all fiduciaries acting in a fiduciary capacity, except as expressly restricted by statute, and (ii) donees.
- Allows a custodial parent of a minor for whom no general guardian or guardian of the estate has been appointed to renounce, in whole or in part, an interest in or power over property (including a power of appointment) that, but for the custodial parent’s renunciation, would have passed to the minor as the result of another renunciation.
- Allows a person to renounce any interest in or power over property, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction on the right to renounce.

- Allows a fiduciary to institute a special proceeding to determine whether a renunciation is or would be compatible with the fiduciary's duties.
- Provides detailed instructions with regard to the delivery and filing of a renunciation to provide notice of the renunciation to anyone who has a duty to distribute the renounced property.
- Provides that, except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person renouncing holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation.
- Provides that an instrument waiving or barring the right to renounce an interest in real property is not effective as to lien creditors and purchasers for value until either registered as provided in G.S. 47-18 or G.S. 47-20 or registered pursuant to a judicial sale proceeding in which the person renouncing is a party.
- Provides that, if a renunciation is a qualified disclaimer for federal estate and gift tax purposes, the renunciation is an effective renunciation, notwithstanding any other provision of Chapter 31B.

The proposal also makes clarifying, conforming, and other minor changes in Chapter 31B.

(GSC DN 01-6)

2. **An Act To Revise The Uniform Simultaneous Death Act.** This proposal is based on the revised Uniform Simultaneous Death Act as approved in 1991 and amended in 1993 by the National Conference of Commissioners on Uniform State Laws. The proposal revises Article 24 of Chapter 28A of the General Statutes, the Uniform Simultaneous Death Act. The current Act generally provides that, where there is "no sufficient evidence" that two or more persons have died otherwise than "simultaneously" and the title to property or the devolution of property depends upon the order of their deaths, the property of each person is distributed as if that person had survived the other.

The proposal extends the current Act to situations in which there is sufficient evidence that one individual survives the other, but the period of survival is insubstantial. The proposal imposes a 120-hour requirement of survival, so that a person who fails to survive another person by at least 120 hours is deemed to have predeceased the other person. The proposal also replaces the "no sufficient evidence" standard of proof with a "clear and convincing evidence" standard of proof, thereby requiring that survival by at least 120 hours must be shown by clear and convincing evidence.

Under the proposal, the 120-hour survival requirement does not apply under specified circumstances, e.g., if the governing instrument expressly indicates a contrary intent or the application of the 120-hour survival requirement would result in an escheat of the property. The proposal provides rules of evidence that apply to the determination of death of a beneficiary subject to a requirement of survivorship and of the person the beneficiary must survive. The proposal also gives protection (i) to bona fide purchasers and (ii) to payors and other third parties who, before receiving written notice of a claimed lack of entitlement under the revised Act, pay off or in other ways rely on a survivor's apparent entitlement to succeed to property.

(GSC DN 03-6)

3. **An Act To Update The Law Regarding Testamentary Additions To Trusts, To Codify The Doctrines Of Incorporation By Reference And Acts Of Independent Significance, And To Allow, If Authorized By Will, The Disposition Of Tangible Personal Property Other Than Money By A Separate Writing.** This proposal amends G.S. 31-47, which currently permits a testator by will to transfer property at death to the trustee of any trust, including an existing testamentary trust, if the trust is established in writing before the execution of the testator's will. The proposed amendment allows the trust instrument to be executed before or concurrently with the execution of the testator's will and clarifies that the trust need not have been funded with a trust corpus during the testator's lifetime.

The proposal also adds a new Article 9 to Chapter 31 of the General Statutes (Wills) for the purposes of codifying the common-law doctrines of incorporation by reference and acts of independent significance and allowing disposition at death of tangible personal property, other than money, by a writing separate from the testator's will if expressly authorized by the will. Article 9 is based on Sections 2-510 (Incorporation by Reference), 2-512 (Events of Independent Significance) and 2-513 (Separate Writing Identifying Devise of Certain Types of Tangible Personal Property) of the Uniform Probate Code.

(GSC DN 06-2)

4. **An Act To Correct An Apparent Error In The Expiration Date For Drivers Licenses.** This proposal amends G.S. 20-7(f), relating to the duration and renewal of drivers licenses, to base the expiration date of original and renewed licenses on the birthday of the licensee rather than the date of issuance of the license. The proposal also makes technical changes to the subsection.

(GSC DN 07-2)

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 and make other technical changes in the General Statutes.

PENDING DOCKETS (dockets not covered in pending legislation)

- (1) Uniform Probate Code Revised Article II
(GSC DN 91-5)
- (2) Uniform Partnership Act (1992)
(GSC DN 93-8)
- (3) Retaining Safeguards for Public Records
(GSC DN 97-6)
- (4) Uniform Consumer Leases Act
(GSC DN 02-10)
- (5) Puppy Mills
(GSC DN 03-4)
- (6) Certification of Questions of Law
(GSC DN 05-2)
- (7) *Lawrence v. Texas* Conforming Changes
(GSC DN 05-4)
- (8) Animal Amendments
(GSC DN 05-5)
- (9) Business Corporations
(GSC DN 06-1A)
- (10) Service of Process by Signature Confirmation
(GSC DN 06-5)
- (11) Notary Public Amendments
(GSC DN 06-6)
- (12) Business under Assumed Name
(GSC DN 06-7)
- (13) Uniform Foreign-Country Money Judgments Recognition Act
(GSC DN 06-8)
- (14) Revised Uniform Anatomical Gift Act
(GSC DN 06-9)

(15) Uniform Prudent Management of Institutional Funds Act
(GSC DN 06-10)

(16) Correction to G.S. 20-7 Re Visa
(GSC DN 07-2)

CONCLUSION

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2007 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 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 former Representative Bill Culpepper, Mr. W. Erwin Fuller, Jr., Mr. B. Geoffrey Hulse, and Mr. David C. Smith, who served as members of the Commission during the biennium. The Commission also wishes to express its appreciation for the efforts of Mr. Richard K. Brown and Professor James P. Beckwith, Jr., who provided valuable assistance with the Commission's work on the Uniform Commercial Code, and to Senator Kay R. Hagan for serving as the primary sponsor of Senate Bill 1479, enacted as S.L. 2006-226 (Uniform Unincorporated Nonprofit Association Act, GSC DN 93-9).

The Commission is most appreciative of the dedicated service of the members of the General Statutes Commission's drafting committees, as well as the assistance of the many groups that have cooperated with the Commission in its work, the members of the Bar, and others who have offered assistance and advice during the biennium.

This the 2nd day of March, 2007.

Respectfully submitted,
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