

**REPORT OF THE
GENERAL STATUTES COMMISSION
2009-2011**

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

Five new members were appointed during the 2009-2011 biennium. Professor Andrew J. Haile of Greensboro and Professor H. Beau Baez of Indian Trail were appointed by the Dean of Elon University School of Law and the Dean of Charlotte School of Law, respectively, when the membership of the Commission was increased from 12 members to 14 members pursuant to Session Law 2009-550. Ms. Jean T. Adams of Winston-Salem was appointed by the President of the North Carolina Bar Association to replace Mr. Matthew W. Sawchak of Cary. Ms. Meredith Jo Alcoke of New Bern was appointed by President of the North Carolina State Bar to replace Ms. Cynthia L. Wittmer of Raleigh. Professor Thomas B. Metzloff of Durham was appointed by the Dean of Duke University School of Law to replace Professor William A. Reppy of Durham.

Nine 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 A. Fleming Bell, II, of Durham was reappointed by the Governor. Representative Deborah K. Ross of Raleigh was reappointed by the Speaker of the House. Professor Todd J. Clark 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. Mr. Edward C. Winslow III of Greensboro was reappointed by the Governor. Professor A. 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

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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 2009 replacement set of the General Statutes of North Carolina, consisting of 19 volumes plus two index volumes, was published in December 2009.

A 2009 edition of the Annotated Rules of North Carolina was published in November 2008, and a supplement was published in May 2009.

A 2010 edition of the Annotated Rules of North Carolina was published in November 2009, and a supplement was published in May 2010.

A 2010 Interim Supplement to the 2009 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2010 Replacement Index, consisting of two volumes, were published in November 2010. The 2010 Interim Supplement contains the acts of a general and permanent nature enacted at the 2010 Regular Session of the General Assembly.

A 2011 edition of the Annotated Rules of North Carolina was published in December 2010, and a supplement will be published in May 2011.

Beginning with the publication of the 2010 Interim Supplement, certain changes to the format and layout of the General Statutes of North Carolina have been implemented to make the statutes more user friendly. The title of chapters, subchapters, articles, and parts are set out in all capital letters. The space between lines in the text of sections has increased. The historical citations are separated from the text of the section and are listed under the heading "History." For repealed sections only, the section number is set out followed by the historical citation to, and the effective date of, the repealing act. The content of the repealed section heading is set out in a descriptive editor's note, and the historical citation of the repealing act is added to the history note of the repealed section. The labels "Editor's Note," "Effect of Amendments," and "Section/Subsection/Subdivision Set Out Twice" are placed on a separate line rather than at the beginning of the note.

DRAFTING COMMITTEES OF THE GENERAL STATUTES COMMISSION

The General Statutes Commission has appointed the following committee 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; many of these have been enacted by the General Assembly. The Committee continues to work on other projects. Members of the Committee are Professor James B. McLaughlin, Jr., Mr. J. Stanley Atwell, Professor Alfred L. Brophy, and Mr. Thomas F. Wiggins.

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 the Secretary of State, the Department of State Treasurer, the Department of Transportation, the Department of Health and Human Services, The University of North Carolina, the North Carolina Medical Society, the North Carolina Sheriffs' Association, the North Carolina Bar Association, the North Carolina National Guard, the Department of Crime Control and Public Safety, the North Carolina Veterinary Medical Association, North Carolina Independent Colleges and Universities, The Arc of North Carolina, and others. The General Statutes Commission continues its interest in the work of the National Conference of Commissioners on Uniform State Laws and The American Law Institute.

The General Statutes Commission and its drafting committee 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 2009 GENERAL ASSEMBLY

The following acts were recommended by the General Statutes Commission and enacted by the 2009 General Assembly:

1. AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES. (Enacted as Session Law 2009-48, GSC DN 01-6).

2. AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF

FOREIGN MONEY JUDGMENTS. (Enacted as Session Law 2009-325, GSC DN 06-8).

3. AN ACT TO ENACT THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE. (Enacted as Session Law 2009-8, GSC DN 06-10).

4. AN ACT TO MAKE CONFORMING CORRECTIONS RELATED TO THE REPEALED STALKING STATUTE. (Enacted as Session Law 2009-58, GSC DN 09-1).

5. AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE GENERAL STATUTES. (Enacted as S.L. 2009-570, GSC DN 09-1).

6. AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES. (Enacted as Session Law 2010-96, GSC DN 10-1).

7. AN ACT TO AUTHORIZE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO REGISTER ANIMAL SHELTERS UNDER THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT FOR THE LIMITED PURPOSE OF OBTAINING, POSSESSING, AND USING DRUGS FOR ANIMAL EUTHANASIA, TO AUTHORIZE CERTIFIED EUTHANASIA TECHNICIANS TO ADMINISTER THESE DRUGS TO EUTHANIZE DOGS AND CATS ON THE PREMISES OF THE ANIMAL SHELTER, AND TO GIVE THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES EXPLICIT AUTHORIZATION TO REJECT CERTIFICATION OF OR TO DECERTIFY A EUTHANASIA TECHNICIAN FOR CERTAIN FELONY CONVICTIONS. (Enacted as Session Law 2010-127, GSC DN 05-5).

8. AN ACT TO EXTEND THE STUDY OF WAYS TO ENSURE THAT THE GENERAL STATUTES PROPERLY AND UNIFORMLY REFER TO FEDERAL AND STATE MILITARY ORGANIZATIONS. (Enacted as Session Law 2010-152, s. 25.1, GSC DN 09-3).

STUDIES DIRECTED BY THE GENERAL ASSEMBLY

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

1. Section 2 of Session Law 2009-281 (House Bill 632, Capitalize National Guard/GSC Study), as amended by Section 25.1 of Session Law 2010-152 (Senate Bill 900, Studies Act of 2010), directed the General Statutes Commission to "study and recommend to the 2011 Regular Session of the 2011 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal or state military organizations. These may include a single term that will include all organizations that compose the reserve components of the armed forces. The recommendations may include a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General."

(GSC DN 09-3)

2. Section 2 of S.L. 2009-264 (Senate Bill 208, People First) directed the General Statutes Commission “to recommend to the 2010 reconvened session of the 2009 General Assembly and to the 2011 Regular Session of the General Assembly any statutory changes and drafting policies needed to make the General Statutes and administrative rules refer to a person with a disability as a person first. The goal of such revisions shall be to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. In making recommendations, the General Statutes Commission shall distinguish those instances where a word or phrase is required by federal law or regulation, is describing a medical diagnosis, or is referring to nonliving entities such as facilities, organizations, programs, services, or zone designations.

(GSC DN 09-4)

3. Section 1 of Session Law 2009-273 (Senate Bill 870, Make General Statutes Gender Neutral), as amended by Section 25.2 of Session Law 2010-152 (Senate Bill 900, Studies Act of 2010), directed the General Statutes Commission to “study and recommend ways to make the General Statutes and the North Carolina Constitution gender neutral. These may include recommending legislative changes needed to make the General Statutes and the Constitution gender neutral and a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General to make the General Statutes gender neutral.” The effect of the 2010 amendment was to delete the reporting dates in Session Law 2009-273.

(GSC DN 09-5)

RECOMMENDED LEGISLATION, 2011

During the biennium, the General Statutes Commission has received suggestions for statutory changes from various sources including practicing attorneys, State officials and agencies, and from its Trusts Drafting Committee 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 has been made available to the members of the General Assembly.

The Commission, acting pursuant to G.S. 164-13, therefore has recommended enactment of

proposals in the following areas:

1. **An Act To Apply Throughout The General Statutes The Definition Of "Devisee" Found In Chapter 28A Of The General Statutes Relating To The Administration Of Decedents' Estates And To Define "Devise" Consistently With That Definition, To Make The Usage Of These Terms More Uniform Throughout The General Statutes, And To Make Technical Changes To Sections Of The General Statutes Otherwise Amended By This Act.**

This proposal applies throughout the General Statutes the Chapter 28A usage of the terms "devisee" and "devise" in referring to the disposition of real or personal property. The proposal amends G.S. 12-3 (Rules of construction of statutes) to define the terms "devisee" and "devise" consistently with their usage in Chapter 28A of the General Statutes. The term "devisee" is defined to mean any person entitled to take real or personal property by will. The term "devise," when used as a noun, is defined to mean a disposition of real or personal property by will, when used as a verb, is defined to mean to dispose of real or personal property by will. The proposal also makes conforming amendments consistent with the new definitions in G.S. 12-3, where appropriate, (i) by substituting the term "devisee" or "devise" for the traditional terms "legatee," "legacy," "bequest," and "bequeath" and (ii) by deleting, as unnecessary, the terms "legatee," "legacy," "bequest," and "bequeath," when used in a list that already contains the term "devisee" or "devise."

(GSC DN 91-5)

2. **An Act To Make References In Chapter 127A Of The North Carolina General Statutes To Federal And State Military Organizations Proper And Uniform, As Directed By Session Law 2009-281, As Amended By Session Law 2010-152, And To Make Other Clarifying, Conforming, And Technical Amendments.** This proposal amends Chapter 127A of the General Statutes to substitute uniform terms for the variety of terms that refer to federal and State military organizations. The proposal, among other things:

- Substitutes the term "North Carolina National Guard" for "National Guard" or "guard" where the reference is to the North Carolina National Guard.
- Substitutes the term "Armed Forces of the United States" for variations of "armed forces" and "armed services" and other alternative terms.
- Inserts "United States" in front of "Army," "Air Force," "Navy," "Marines," and "Coast Guard" throughout Chapter 127A when the reference is to the United States force.
- Capitalizes references to the Air or Army National Guard and to the Army, Air Force, Navy, and Marine Corps throughout Chapter 12A as needed.

The proposal also makes other clarifying, conforming, and technical changes.

(GSC DN 09-3)

3. **An Act To Make References In The North Carolina General Statutes To Federal And State Military Organizations Proper And Uniform, As Directed By Session Law 2009-281, As Amended By Session Law 2010-152, And To Make Conforming Changes And Other Technical Corrections To Those Sections.** This proposal amends sections of the General Statutes *other than* Chapter 127A (addressed in the preceding proposal) to substitute uniform terms for the variety of terms that refer to federal and State military organizations. The proposal, among other things:

- Substitutes “Armed Forces of the United States,” where appropriate, as a proper and uniform term for various references to the nation’s armed forces.
- Standardizes references to the branches of the Armed Forces of the United States by inserting “United States” before, and capitalizing, references to the “army,” “navy,” “marine corps,” “coast guard,” “air force,” and “merchant marine,” whether set out individually or in a list in various sections of the General Statutes.
- Substitutes the term “North Carolina National Guard,” where appropriate, for a variety of terms that refer to North Carolina National Guard.

The proposal also makes various conforming changes and other technical corrections.

(GSC DN 09-3)

4. **An Act To Update Certain Terminology In Reference To Persons With Disabilities.** As part of a study required by Session Law 2009-264 (“People First), this proposal, among other things, updates the following archaic terminology in reference to persons with disabilities: “lunatic,” “committee of a lunatic,” “dumb,” and “physically defective.” The proposal directs the State Banking Commission, when it next amends 04 NCAC 03D.0301, to revise the definition of “fiduciary” so that it does not use the term “lunatics.” The proposal also makes stylistic and gender neutral changes.

(GSC DN 09-4)

5. **An Act To (1) Allow Service By Signature Confirmation Or Designated Delivery Service In Small Claim Actions Assigned To Magistrates And In Administrative Cases, (2) Clarify That The Sixty-Day Time Frame For Serving A Summons Under Rule 4 Of The Rules Of Civil Procedure Applies To All Summons Under Rule 4(j) And (j1), (3) Require That A Copy Of A Motion To Terminate Parental Rights That Is Served On A Parent Be Sent To That Parent’s Attorney Of Record, If Any, (4) Require That A Party’s Attorney Of Record, If Any, Must Be Served When Service Is Made Under Rule 5(b) Of The Rules Of Civil Procedure, In Addition To Any Service On The Party, And (5) Clarify Than An Attorney May Be Served**

Under Rule 5(b) By Mail. This proposal makes amendments related to service of process or notice in various sections of the General Statutes. The proposal, among other things:

- Amends G.S. 7A-217 to update the provisions for service of process in small claims actions assigned to magistrates by adding designated delivery services and the United States Postal Service's signature confirmation service as permissible methods of service of process.
- Amends G.S. 150B-23, 150B-36, 150B-38, and 150B-42 (i) to add designated delivery services and the United States Postal Service's signature confirmation service as permissible methods of serving notices of hearing and final agency decisions in administrative contested cases and (ii) to include service under G.S. 1A-1, Rule 4(j3), which provides for service on parties who are located in a foreign country.
- Amends G.S. 1A-1, Rule 4(c) to clarify that the 60-day time period provided in Rule 4(c) for service of process in civil actions applies to all methods of service under Rule 4(j) (personal service, service by mail, etc., service on a process agent, and service in certain specific cases) and Rule 4(j1) (service by publication).
- Amends G.S. 7B-1102 to require that a copy of a motion and notice to terminate parental rights be sent to a parent's attorney of record, if any, if the parent is being served with the motion under G.S. 1A-1, Rule 4.
- Amends G.S. 1A-1, Rule 5(b) (i) to require that service under G.S. 1A-1, Rule 5, be made on a party's attorney of record, if there is one, and that if a court orders service on the party, the attorney must also be served and (ii) to reorganize Rule 5(b) and clarify that a party's attorney can be served by mail under the Rule.

(GSC DN 10-6)

In addition to these proposals, the Commission has introduced its usual technical corrections bill, which corrects errors in grammar, erroneous statutory references, and other obvious errors and makes other technical changes in the General Statutes.

OTHER SIGNIFICANT WORK

At the request of the Hon. Allyson K. Duncan, U.S. Circuit Court Judge, Fourth Circuit Court of Appeals, prompted by other judges on the Fourth Circuit Court of Appeals, and other interested persons that North Carolina look into establishing a procedure allowing certification of questions of law to this State's courts, the General Statutes Commission resumed work on its pending docket DN 05-2 - Certification of Questions of Law. Among other things, the Commission identified key issues that would be involved in the adoption of any such procedure and reviewed law from other

states. The Commission concluded that the initial central issue is whether the North Carolina Supreme Court already has the authority under the North Carolina Constitution to adopt a rule to allow the certification of questions of law or whether the Constitution must be amended to confer such authority upon the court. The Commission prepared a memorandum for the Chief Justice and the Associate Justices, with supporting documentation summarizing the information the Commission gathered and the arguments supporting the position that the Court already has this authority, and submitted this material to the Chief Justice.

The Commission submitted a follow-up letter to the Chief Justice in December 2010. The Chief Justice responded by telephone on February 2, 2011, and indicated that the Justices were not interested in pursuing certification procedures at this time.

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) Certification of Questions of Law
(GSC DN 05-2)
- (5) Business under Assumed Name
(GSC DN 06-7)
- (6) Intestate Share of Surviving Spouse
(GSC DN 08-2)
- (7) Assignment of Year's Allowance
(GSC DN 08-3)
- (8) Limited Liability for Volunteer Health Care Professionals
(DN 08-5)
- (9) Gender Neutralization of Constitution and Statutes
(DN 09-5)
- (10) Revised Uniform Unincorporated Association Act
(DN 10-2)

(11) 2010 Amendments to UCC Article 9
(DN 11-2)

(12) Uniform Partition of Heirs Property Act.
(DN 11-3)

Please note that older dockets are kept open if they present ongoing issues.

CONCLUSION

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2011 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 Professor William A. Reppy, Mr. Matthew W. Sawchak, and Ms Cynthia L. Wittmer, who served as members of the Commission during the biennium. The Commission also wishes to express its appreciation for the efforts of Lieutenant Colonel Elizabeth B. Smart, who provided valuable assistance with the Commission's work on making references in the General Statutes to federal and State military organizations proper and uniform.

The Commission is most appreciative of the dedicated service of the members of the General Statutes Commission's Trusts Drafting Committee, 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 1st day of April, 2011.

Respectfully submitted,
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