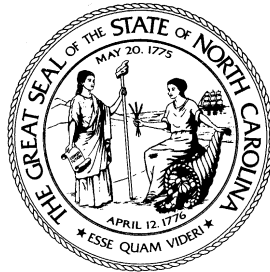


Biennial Report
to the
General Assembly
of North Carolina
2011-2013



THE GENERAL STATUTES COMMISSION

**REPORT OF THE
GENERAL STATUTES COMMISSION
2011-2013**

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 (also known as the Uniform Law Commission), or by other learned bodies.

Effective June 1, 2011, the General Assembly transferred the General Statutes Commission and its staff and the remaining functions of the Division of Legislative Drafting and Codification of Statutes from the Department of Justice to the General Assembly. The transfer was made by Session Law 2011-97. Under that session law, the Commission is located within the General Assembly for administrative purposes but continues to exercise all its prescribed statutory powers independently.

MEMBERSHIP AND MEETINGS OF THE COMMISSION DURING THE BIENNIUM

Five new members were appointed during the 2011-2013 biennium. Representative John M. Blust of Greensboro was appointed by the Speaker of the House to replace Representative Deborah K. Ross of Raleigh. Professor Richard T. Bowser of Raleigh was appointed by the Dean of Campbell University School of Law to replace Professor Charles C. Lewis of Buies Creek. Professor Marguerite I. Most of Hillsborough was appointed by the Dean of Duke University School of Law to replace Professor Thomas B. Metzloff of Durham. Ms. Sabra J. Faires of Cary was appointed by the General Statutes Commission to replace Mr. Michael R. Abel of Greensboro. Professor John J. Korzen of Kernersville was appointed by the Dean of Wake Forest University School of Law to replace Professor H. Miles Foy of Winston-Salem.

Eight members were reappointed during the biennium. Ms. Jean T. Adams of Winston-Salem was reappointed by the President of the North Carolina Bar Association. Ms. Meredith Jo Alcoke of New Bern was reappointed by the President of the North Carolina State

Bar. Professor H. Beau Baez III of Indian Trail was reappointed by the Dean of Charlotte School of Law. Professor A. Fleming Bell, II, of Durham and Mr. Edward C. Winslow III of Greensboro were reappointed by the Governor. Professor Todd J. Clark of Durham was reappointed by the Dean of North Carolina Central University School of Law. Professor Andrew J. Haile of Greensboro was reappointed by the Dean of Elon University School of Law. Professor A. Mark Weisburd of Chapel Hill was reappointed by the Dean of The University of North Carolina School of Law.

Senator Fletcher L. Hartsell, Jr., of Concord, having been reappointed in 2009 by the President Pro Tempore of the Senate, continues to serve by statute (G.S. 164-14(f)).

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 or by any two members of the Commission whenever the work of the Commission requires. The Commission's policies are available through the Revisor of Statutes, Research Division, North Carolina General Assembly, 300 N. Salisbury Street, Suite 545, Raleigh, North Carolina 27603-5925; telephone (919) 733-2578; fax (919) 715-5460.

PUBLICATION OF THE GENERAL STATUTES

A 2011 replacement set of the General Statutes of North Carolina, consisting of 19 volumes plus two index volumes, was published in December 2011.

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

A 2012 edition of the Annotated Rules of North Carolina was published in November 2011, and a supplement was published in May 2012.

A 2011-2012 Special Supplement was published in February 2012. The 2011-2012 Special Supplement contains acts of a general and permanent nature enacted at the 2011 Regular Session by Sessions Laws 2011-412 through Session Laws 2012-1. Session Laws 2011-1 through Sessions Laws 2011-411 of the 2011 Regular Session are reflected in the 2011 replacement set of the General Statutes of North Carolina that was published in December 2011. The legislation reflected in the 2011-2012 Special Supplement appeared in those acts from the 2011 and 2012 Regular Sessions that became law after the publication cutoff for the 2011 replacement set but before February 2012.

A 2012 Interim Supplement to the 2011 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2012 Replacement Index, consisting of two volumes, were published in November 2012. The 2012 Interim Supplement is a cumulative supplement that contains the acts of a general and permanent nature enacted at the 2011 and 2012 Regular Sessions of the General Assembly after the publication cutoff for the 2011 replacement set.

A 2013 edition of the Annotated Rules of North Carolina was published in December 2012, and a supplement will be published in May 2013.

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. The Revisor of Statutes serves as an ex officio member of the Committee.

COOPERATION WITH OTHER GROUPS

The General Statutes Commission has cooperated and coordinated with the North Carolina General Assembly, the North Carolina Supreme Court, 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 Transportation, the Department of Health and Human Services, the North Carolina Bankers Association, the North Carolina Bar Association, the North Carolina National Guard, The Arc of North Carolina, the Office of Administrative Hearings, 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, Research Division, North Carolina General Assembly, 300 North Salisbury Street, Suite 545, Raleigh, North Carolina 27603-5925; telephone (919) 733-2578; fax (919) 715-5460. The Revisor of Statutes may also be contacted for legislative history of the

Commission’s legislative proposals.

LEGISLATION RECOMMENDED TO THE 2011 GENERAL ASSEMBLY

The following chart shows bills recommended by the General Statutes Commission to the 2011 General Assembly and their disposition:

General Statutes Commission – Recommended Bill Chart 2011-2012				
Bills were introduced in each chamber; the bill number of the one enacted is shown in bold				
Bill Number	Short Title	GSC Docket	Long Title As Introduced	Session Law
<u>HB 190</u> <u>SB 148</u>	General Statutes Comm. Technical Corrections	DN 11-1	An Act to Make Technical Corrections to the General Statutes.	2011-326
<u>HB 249</u> <u>SB 248</u>	Update Archaic Disability Terms	DN 09-4	An Act to Update Certain Terminology in Reference to Persons with Disabilities.	2011-29
<u>HB 250</u> <u>SB 251</u>	Various Clarifying Militia Law Amendments	DN 09-3	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.	2011-195
<u>HB 251</u> <u>SB 252</u>	Devisee/ Devise/ Statutory Construction	DN 91-5	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.	2011-284

General Statutes Commission – Recommended Bill Chart 2011-2012

Bills were introduced in each chamber; the bill number of the one enacted is shown in bold

Bill Number	Short Title	GSC Docket	Long Title As Introduced	Session Law
<u>HB 262</u> <u>SB 253</u>	References to Military Orgs./Make Uniform	DN 09-3	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.	2011-183
<u>HB 306</u> ¹ <u>SB 300</u>	Miscellaneous Service/ Process Amendments	DN 10-6	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 Summonses 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 that an Attorney May Be Served under Rule 5(b) by Mail.	2011-332
<u>HB 1070</u> <u>SB 847</u>	General Statutes Comm. Technical Corrections (later GSC Technical Corrections/ Other Changes)	DN 12-1	An Act to Make Technical Corrections to the General Statutes, Including Specifically Authorizing the Revisor of Statutes to Print Drafters’ Comments to Three Acts Enacted in 2011 in Which this Authorization Was Inadvertently Omitted.	2012-194

¹ This bill was actually enacted as Session Law 2011-97, but its content was completely rewritten to transfer the General Statutes Commission, its staff, and the remaining functions of the Division of Legislative Drafting and Codification of Statutes from the Department of Justice to the General Assembly.

General Statutes Commission – Recommended Bill Chart 2011-2012

Bills were introduced in each chamber; the bill number of the one enacted is shown in bold

Bill Number	Short Title	GSC Docket	Long Title As Introduced	Session Law
HB 1066 SB 846	Passing Title by Will	DN 12-4	An Act to Clarify, Modify, and Consolidate the Law Applicable to the Passing of Title to Interests in Real and Personal Property Devised by a Will and the Rights of Lien Creditors and Purchasers for Value.	2012-68
HB 1067 SB 845	Co-owners/ Unequal Shares/ Simultaneous Death	DN 11-5	An Act to Conform the Law Governing Co-Owners with Right of Survivorship under the Simultaneous Death Act to the Law Governing the Holding of Unequal Shares in a Joint Tenancy with Right of Survivorship.	2012-69
HB 1068 SB 844	Amend UCC Article 9/ Secured Transactions	DN 11-2	An Act to Amend Article 9 of the Uniform Commercial Code Relating to Secured Transactions.	2012-70
HB 1069 SB 843	Intestate Property/ Child's Year's Allowance	DN 8-2	An Act to Increase the Minimum Amount of Intestate Personal Property Passing to the Surviving Spouse and the Amount of the Year's Allowance from a Decedent's Estate for a Surviving Child, to Reinsert Erroneously Removed References to a Child's "Next Friend" in the Statutes Relating to a Child's Year's Allowance, and to Specify that the Child's Year's Allowance May Be Paid to a Widower on the Child's Behalf as Well as to a Widow.	2012-71
HB 979 SB 838	Technical Change/ Exempt Property Form	DN 11-6	An Act to Make Conforming Changes to the Statutory Form Set Forth in G.S. 1C-1603 so that the Form Corresponds with the Substance of G.S. 1C-1601.	Not enacted

STUDIES DIRECTED BY THE GENERAL ASSEMBLY

The following study was directed by the General Assembly and has resulted in the opening of a docket:

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.

An act to update certain terminology in reference to persons with disabilities was recommended by the Commission and was enacted as Session Law 2011-29. This act, among other things, updated the following archaic terminology in reference to persons with disabilities: "lunatic," "committee of a lunatic," "dumb," and "physically defective."

Session Law 2012-194 (General Statutes Commission Technical Corrections) included an amendment to repeal G.S. 20-9(d), an obsolete provision which referred to a person as an "idiot," "imbecile," or "feebleminded." The provision was determined to be obsolete after further consultation with the North Carolina Department of Transportation.

In addition, in June 2011, the Commission filed a report with the General Assembly containing recommendations on a possible approach if additional terms are to be reviewed.

(GSC DN 09-4)

RECOMMENDED LEGISLATION, 2013

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 will be 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 Amend Uniform Commercial Code Article 4A, Funds Transfers, to Continue the Applicability of that Article to Remittance Transfers that Are Not Electronic Fund Transfers.** This proposal is based on an amendment to Section 4A-108 (Relationship to Electronic Fund Transfer Act) of Uniform Commercial Code Article 4A, Funds Transfers, as approved in 2012 by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. The amendment to Section 4A-108 was necessitated by an amendment to the federal Electronic Fund Transfer Act (EFTA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). Under Section 4A-108, Article 4A does not govern a funds transfer any part of which is governed by the EFTA. When the Dodd-Frank amendment and its implementing rules go into effect in 2013, the EFTA will govern "remittance transfers" (i.e., the electronic transfer of funds requested by a consumer to a person located in a foreign country that is initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also electronic fund transfers as defined in the EFTA. Thus, the result of Section 4A-108 will be that a funds transfer initiated by a remittance transfer will be entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer. The amendment to Section 4A-108 clarifies the relationship of the scope of the EFTA to the scope of Article 4A in the context of remittance transfers so that providers of international funds transfers that would qualify as remittance transfers but not electronic fund transfers and the receiving banks are able to rely on the provisions of Article 4A governing the rights and responsibilities among those parties.

The proposal amends G.S. 25-4A-108 (Exclusion of consumer transactions governed by federal law) to retain the substance of current G.S. 25-4A-108 and to make its application subject to an exception under new subsection (b). Subsection (a) provides that Article 4A does not apply to a funds transfer if the EFTA governs any part of the funds transfer, except as provided in subsection (b). Subsection (b) provides that Article 4A applies to a funds transfer that is an EFTA-defined remittance transfer, unless the remittance transfer is an EFTA-defined electronic fund transfer. Subsection (c) provides that if the resulting application of Article 4A to an EFTA-defined remittance transfer that is not an EFTA-defined electronic fund transfer creates an inconsistency between an applicable provision of Article 4A and an applicable provision of the EFTA, as a matter of federal supremacy, the provision of the EFTA governs to the extent of the inconsistency.

The proposal also authorizes the printing of the revised official comments to Section 4A-108 of the Uniform Commercial Code.

(GSC DN 12-7)

2. **An Act to Delete a Provision for a Fifty-Dollar Payment to Members of the Board of Law Examiners that Has Not Been Paid Since the 1970s and to Clarify a Provision Relating to Expenses of that Board.** This proposal was requested by the North Carolina

Board of Law Examiners. The proposal amends G.S. 84-26 to remove a provision for a \$50 payment to the members of the Board that has not been paid since the 1970's. The members of the Board currently receive as compensation for their services the per diem authorized under G.S. 93B-5, the statute providing the per diem for occupational licensing boards. Members of the Board of Law Examiners have been requesting per diem in accordance with G.S. 93B-5 since 1975. The proposal also makes other clarifying and technical changes.

(GSC DN 12-6)

In addition to these proposals, the Commission plans to introduce 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.

PENDING DOCKETS (dockets not covered in pending legislation)

- (1) Uniform Partnership Act (1992)
(GSC DN 93-8)
- (2) Retaining Safeguards for Public Records
(GSC DN 97-6)
- (3) Certification of Questions of Law
(GSC DN 05-2)
- (4) Business under Assumed Name
(GSC DN 06-7)
- (5) Limited Liability for Volunteer Health Care Professionals
(GSC DN 08-5)
- (6) Person-First Reference to Persons with Disabilities
(GSC DN 09-4)
- (7) Gender Neutralization of Constitution and Statutes
(GSC DN 09-5)
- (8) Revised Uniform Unincorporated Association Act
(GSC DN 10-2)
- (9) 2010 Amendments to UCC Article 9
(GSC DN 11-2)
- (10) Uniform Partition of Heirs Property Act.

(GSC DN 11-3)

- (11) Exercise of Power of Appointment by Will
(GSC DN 11-4)
- (12) Update Judgment Debtor's Exempt Property Form
(GSC DN 11-6)
- (13) Uniform Electronic Legal Material Act
(GSC DN 11-7)
- (14) State Vital Records Law
(GSC DN 12-2)
- (15) In re Foreclosure of Vogler Realty, Inc.
(GSC DN 12-4)
- (16) Retention of AOC Staffing Numbers in Statutes
(GSC DN 12-5)
- (17) Uniform Deployed Parents Custody and Visitation Act
(GSC DN 12-8)
- (18) Official and Drafters Comments
(GSC DN 12-9)
- (19) Slayer Statute/Survivorship Property
(GSC DN 12-10)

Please note that older dockets may be 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 2013 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 Roy Cooper, Attorney General, George R. Hall, Legislative Services Officer of the North Carolina General Assembly, O. Walker Reagan, Director of the Research Division of the North Carolina General Assembly, and Gerry Cohen, former Director of the Bill Drafting Division of the North Carolina General Assembly. The Commission is especially indebted to Mr. Floyd M. Lewis, Revisor of Statutes, Ms. P. Bly Hall,

Assistant Revisor of Statutes, Elizabeth H. Smith, Legislative Secretary, and Alison P. Taylor, 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 Representative Deborah K. Ross, former Professor Charles C. Lewis, Professor H. Miles Foy, Mr. Michael R. Abel, and Professor Thomas B. Metzloff, who served as members of the Commission during the biennium. The Commission also wishes to express its appreciation for the efforts of W. Austin Morris, Richard K. Brown and Armand A. Perry, who provided valuable assistance with the Commission's review of the 2010 Amendments to Uniform Commercial Code Article 9, Secured Transactions, and Lieutenant Colonel Elizabeth B. Smart and former Representative Grier Martin, who provided valuable assistance with the Commission's two bills that dealt with making references 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 February, 2013.

Respectfully submitted,

Edward C. Winslow III, Chairman
Fletcher L. Hartsell, Jr., Vice Chairman

Todd J. Clark
John M. Blust
Sabra J. Faires
H. Beau Baez III
Richard T. Bowser
Meredith Jo Alcocke

Jean T. Adams
John J. Korzen
Andrew J. Haile
A. Mark Weisburd
A. Fleming Bell, II
Marguerite I. Most

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