



STATE OF NORTH CAROLINA  
GENERAL STATUTES COMMISSION

February 12, 1975

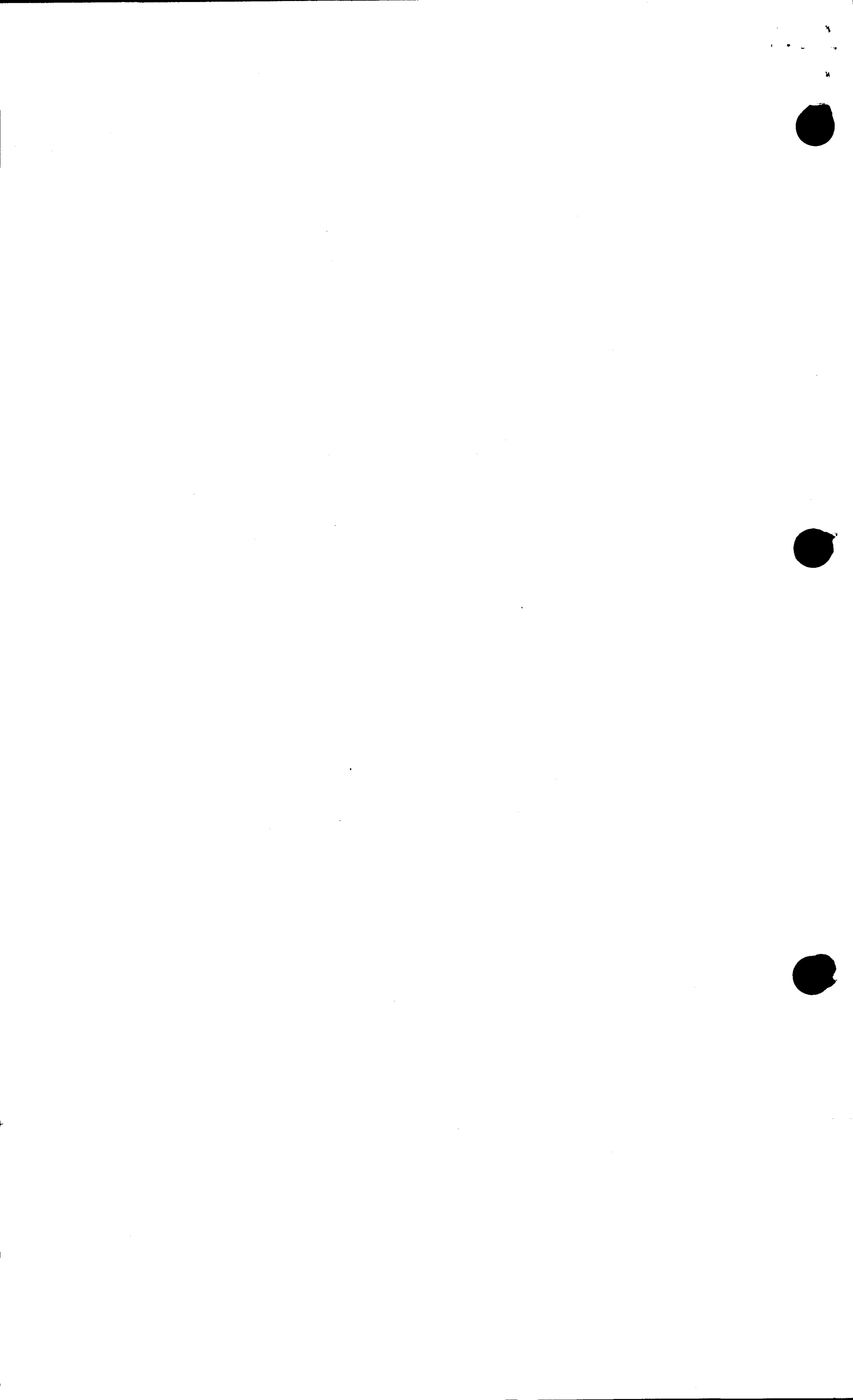
MEMORANDUM:

SUBJECT: SENATE BILL 102 - AN ACT TO AMEND VARIOUS SECTIONS OF  
THE GENERAL STATUTES TO MAKE TECHNICAL CORRECTIONS  
(G.S.C. 222 (1975)). (R, C 19, 1975-76)

The General Statutes Commission's normal procedure is to gather together all needed corrections of a technical variety into a single bill for consideration by the General Assembly at each session. Most of these "technical corrections" arise because of the very limited discretion given to the Codifier of Statutes and the publisher of the statutes to make changes where obvious errors appear. This memorandum accompanies the 1975 version of the Technical Corrections Bill and attempts to explain the reason why each change proposed by the bill is needed.

SECTIONS 2, 3, 4, 5, 6, 13, 16, 17, 18, 20, 21, 22, 23, 24,  
25, 26, 27, 31, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45,  
46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 61, 63, 66,  
67, 70, 71, 72.

Many times the Codifier and the publisher of the General Statutes in compiling the annual supplements and the replacement volumes come across errors which are, in their judgment, obvious but which they do not have the power to absolutely correct. Therefore, the practice is to place the proper word or words in brackets following the erroneous material. The changes proposed



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by these sections of the Technical Corrections Bill simply clean up the statutes involved by deleting the erroneous language and the bracketed correct language and reinserting the correct language.

SECTIONS 1, 19, 28, 30, 34, 49, 59.

These sections correct obvious misspellings or grammatical errors that are currently in the General Statutes.

SECTION 7.

Pursuant to legislative amendment, section G.S. 28A-11-5 was deleted from the 1974 act that created Chapter 28A and, therefore, it is necessary to delete the reference to that section.

SECTION 8.

The 1974 act that created Chapter 28A was amended by deleting the requirement for an appraisal report, however, the reference to the report was overlooked in G.S. 28A-9-2(a)(6).

SECTION 9.

This section corrects an obviously erroneous citation.

SECTIONS 10 and 11.

The words deleted are inconsistent with G.S. 28A-26-8(d)(4). The inconsistency is the result of an oversight in considering various alternatives that the drafters of the 1974 act were contemplating.

SECTION 12.

The purpose of this section is to clearly state that the



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procedures of the 1974 act are to affect only the estates of decedents dying after the effective date of the 1974 act.

SECTION 14.

This section is to delete a citation to a repealed statute.

SECTION 15.

This section accomplishes a change intended by s. 2, c. 1309, (1973 S.L.) but which could not be accomplished because of inaccurate directions in c. 1309.

SECTION 29.

G.S. 105-259 was amended twice in 1974 and the first amendment was placed in brackets, therefore this amendment will give effect to both amendments which were not contradictory.

SECTIONS 33 and 60.

These sections correct obviously erroneous citations.

SECTIONS 62, 64, 65, 68 and 69.

These sections accomplish intended amendments that could not be accomplished because of erroneous directions contained in various Session Laws.





C-54  
(1975)

**STATE OF NORTH CAROLINA**  
**GENERAL STATUTES COMMISSION**

February 13, 1975

MEMORANDUM

RE: House Bill 144; An Act to Make Conforming  
Amendments to G.S. 29-19 and G.S. 49-16  
Relating to Inheritance By Illegitimates.

Legislative amendments to Chapter 1062 of the 1973 Session Laws prior to its enactment in 1974 provided that a paternity suit could not be initiated or brought to judgment after the death of a putative father. Due to an oversight, language which was no longer appropriate was left in the statutes and, therefore the purpose of this bill is to delete the inappropriate language.

*RAT. C 54, 1975 S.L.,  
GSC ON 237*





MEMORANDUM

RE: HOUSE BILL 145: TO ESTABLISH A UNIFORM  
LOCATION FOR THE HOLDING OF FORECLOSURE SALES.

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The purpose of this bill is to require that a foreclosure sale of real property be held on the property or at the courthouse door when the mortgage or deed of trust provides that the mortgagee or trustee may unilaterally designate the place of foreclosure sale. The bill would prevent the practice of holding the sale at the bank or similar locations. That practice has been criticized as being unfair to the owner of the real property. The change provided by the bill is a procedural change and does not deprive the mortgagee of a property right.

REP. C. 57, 1975 S.L.  
GSC DN 307



C-57  
(1975)

MEMORANDUM

RE: HOUSE BILL 145: TO ESTABLISH A UNIFORM LOCATION  
FOR THE HOLDING OF FORECLOSURE SALES.

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The purpose of this bill is to require that a foreclosure sale of real property be held on the property or at the courthouse door regardless of what the mortgage or deed of trust provides. The bill would prevent the practice of holding the sale at the bank or similar locations. That practice has been criticized as being unfair to the owner of the real property. The change provided by the bill is a procedural change and does not deprive the mortgagee of a property right.

RAJ. C 57, 1974 S.L.  
S.C. DN 303





C-69  
(1975)

**STATE OF NORTH CAROLINA**  
**GENERAL STATUTES COMMISSION**

February 12, 1975

MEMORANDUM

RE: Senate Bill 85; To Delay the Effective Date of  
the Administrative Procedure Act.  
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This bill provides for a delay in the effective date of the Administrative Procedure Act which was passed in 1974. There are no substantive changes involved.

Under the Administrative Procedure Act, the Attorney General's Office is responsible for the form and publication of the regulations of other State agencies. The uncertainty as to who would be elected to serve permanently as Attorney General prevented final decisions as to the implementation of the act until November, 1974, and therefore the additional time provided for by this bill will allow for the orderly transition to the new procedures required by the 1974 act.

RAT C 69, 1975 S.L.  
GSC PD 250/20270



C-121  
(1975)



**STATE OF NORTH CAROLINA**  
GENERAL STATUTES COMMISSION

February 13, 1975

MEMORANDUM:

RE: House Bill 415, An Act To Permit All Fiduciaries  
To Hold Stocks and Bonds in The Name of a Nominee.

During 1973, G.S. 36-32 was rewritten twice by two separate acts. The purpose of the first act was to permit all fiduciaries, rather than just banks, to hold stocks and bonds in the name of a nominee. The purpose of the second 1973 act was to insert language in G.S. 36-32 that would conform to a statutory change allowing the filing of securities by issue. G.S. 36-32 is currently repeated twice in the 1974 Cumulative Supplement. The purpose of House Bill 415 is to incorporate both 1973 amendments.

*Ref C. 121, 1975 S.L.  
GSC PA*





MEMORANDUM:

RE: SENATE BILL 132: TO RESTRICT THE EXERCISE OF A POWER  
FOR A FIDUCIARY'S BENEFIT

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The purpose of the bill is to prevent a fiduciary from exercising a power to allocate the property res of a trust to his own benefit. The bill controls the situation where an unsuspecting draftsman by attempting to create a special power of appointment to be exercised by a trustee may have created what the Internal Revenue Service at the time of the trustee's death, designates as a general power of appointment. If the instrument states that the trustee may exercise a power to use the res for his own "maintenance, support and welfare" or similar language, the I.R.S. will designate the power as a general power of appointment. This would then result in the res of the trust being included in the trustee's estate for federal estate tax purposes, a result that in many instances was completely unsuspected and may be characterized as an unjust windfall to the I.R.S. By requiring that the exercise of the power for the benefit of the trustee be accomplished by the court or other co-trustees this statute prevents the inclusion of the res of the trust in the trustee's estate for tax purposes.

The bill does not deprive the trustee of a property interest, rather the bill regulates the administration of a trust. The State, through the exercise of its general powers over trusts, has the authority to so regulate.



C. 371, 1975 S.L.  
ESC OF 206

MEMORANDUM

RE: SENATE BILL 117: TO PROVIDE FOR THE RENUNCIATION  
OF TRANSFERS BY WILL, INTESTACY, APPOINTMENT OR  
INSURANCE CONTRACT.  
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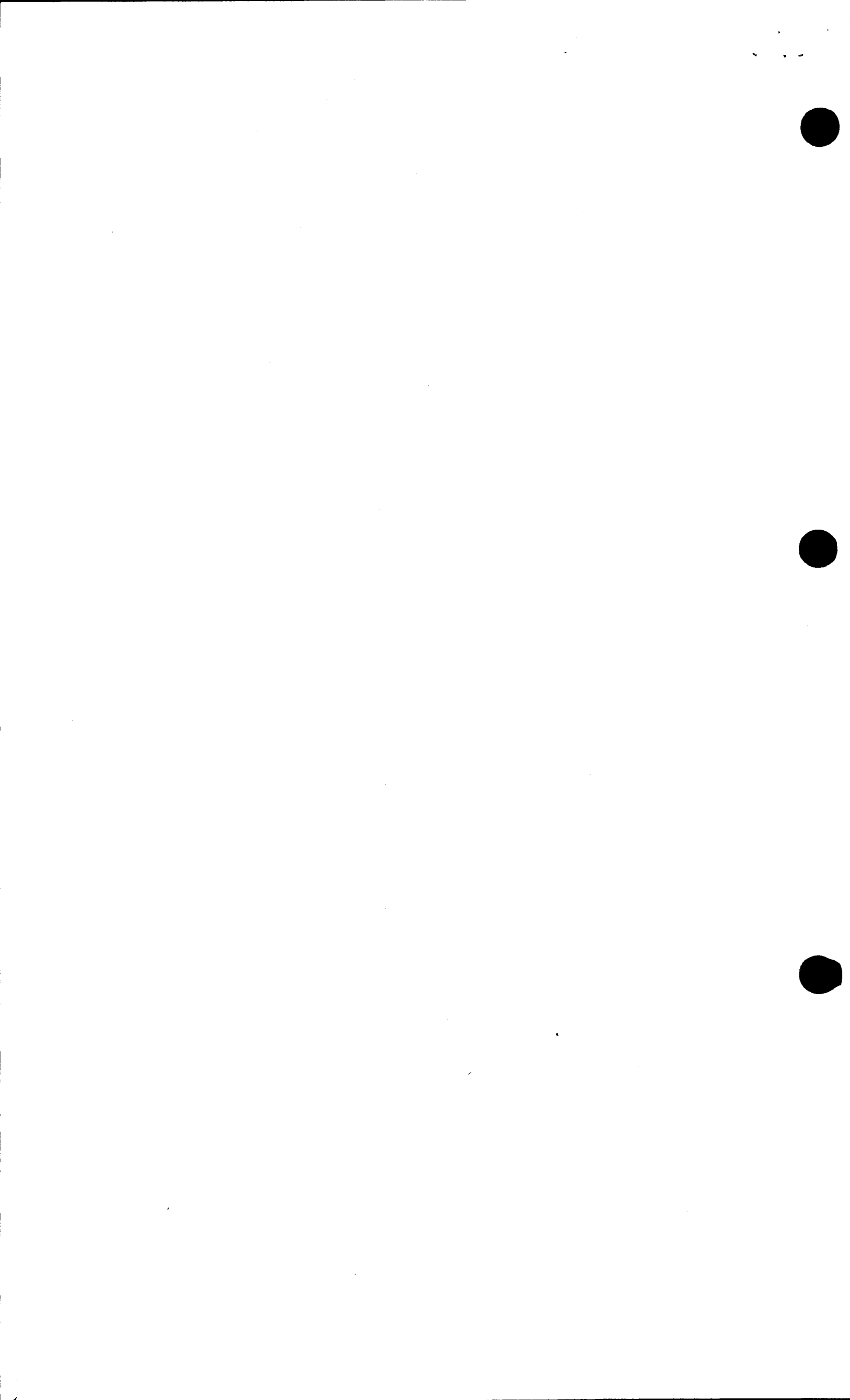
The purpose of this bill is to recodify the law of renunciation of intestate property and to codify the law of renunciation of other types of property of a decedent. Renunciation is a useful tool to a citizen of North Carolina in a situation where receiving unnecessary property of a decedent would result in increasing the value of his estate at the time of his own death, and thereby creating an increase in federal estate tax.

The specific changes in North Carolina law provided for in the bill are as follows:

1. Allowing partial renunciation;
2. Codification of the right to renounce: (a) testate property; (b) benefits under an insurance policy where the beneficiary did not own the incidents of ownership; (c) a power of appointment; (d) future interests;
3. Codification of a right to renounce by a personal representative or by a guardian.

Additional benefits of the bill are that it contains specific requirements as to the necessary procedures to be followed and also provides for registration of a renunciation involving real property.

Due to an oversight, the new chapter was erroneously designated as Chapter 31C and, therefore, Senate Bill 117 should be amended to create a new Chapter 31B.



§ 31B-2(b) requires a future interest be renounced not later than six months after the interest has become indefeasibly vested and there is a right to possession.

§ 31B-2(c) requires the recording and filing of the renunciation instrument with the appropriate clerk of court as well as the personal representative administering the estate.

§ 31B-2(d) requires the recording and indexing of a renunciation of a real property interest in the register of deed's office before the renunciation is effective.

§ 31C-3 states that the effect of the renunciation is the same as if the person renouncing had predeceased the decedent. The decedent may provide in the instrument creating the property interest for a different disposition.

§ 31C-4(a) states that the right to renounce is barred by any assignment, conveyance, encumbrance, pledge or transfer, or a contract therefore, or a waiver, or acceptance, or a judicial sale. Therefore a creditor extending credit based on an expected transfer into a debtor can protect his rights.

§ 31B-4(b) provides that the right to renounce is not barred by a spendthrift trust or similar provision.

§ 31B-4(c) is a positive statement that a renunciation or a waiver is binding upon the person renouncing or waiving and persons claiming through or under him.

§ 31B-5 provides that other methods of waiving, releasing, disclaiming or renouncing provided by law are not prohibited.



§ 31B-6 states the application of this statute to existing situations.

§ 31B-7 provides a short title for the Chapter.

Section 2 of the bill repeals and rewrites G.S. 29-10, the existing section that sets out the provisions for renunciation of an intestate share. As rewritten, the section would make reference to the new Chapter 31B.

Sections 3, 4, and 5 make appropriate references to the new Chapter 31B.





SUMMARY OF SENATE BILL 117 PROVIDING FOR RENUNCIATION OF  
TRANSFERS BY WILL, INTESTACY, APPOINTMENT OR INSURANCE CONTRACT.

Section 1 provides for a new Chapter 31B as follows:

§ 31B-1(a) contains a list of individuals receiving property because of the death of another who are authorized to renounce, in whole or in part. The allowing of partial renunciation is a change from the current North Carolina law. The Internal Revenue Service will recognize a partial renunciation if it is authorized by State law. There have been at least eight other states (Colorado, Illinois, Indiana, Minnesota, Hawaii, Kansas, South Dakota and New York) that have authorized partial renunciation.

§ 31B-1(b) prevents the person or persons receiving the renounced share from receiving more than the person renouncing would have received. This subsection was taken from the current North Carolina law.

§ 31B-1(c) requires that the instrument describe the property renounced, declare the renunciation and its extent and be signed and acknowledged.

§ 31B-2(a) requires that a present interest be renounced not later than seven months after the death. The period is seven months rather than six, as in the following subsection, in order to better estimate the value of the property and, therefore, be in a better position to estimate the tax consequences.



MEMORANDUM

RE: HOUSE BILL 146; TO ALLOW PARTNERSHIPS TO SUE AND BE  
SUED IN THEIR COMMON NAME.  
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The purpose of this bill is to amend the Code of Civil Procedure to allow the use of the common name of a partnership in a suit brought by, or against the partnership, rather than naming all of the partners. The recent trend towards partnerships of several hundred members makes this change very desirable.

The change provided for in this bill is procedural only and it does not affect the substantive law relating to partnerships. A judgment against the partnership would still bind the partnership and if the obligation is joint and several the individual members or any of them could be joined and served with summons and complaint and a personal judgment secured as well as a judgment against the partnership. (G.S. 1A-1, Rule 4J(7)). Additionally, there is a penal statute requiring that a partnership, other than a limited partnership, record the name under which it is doing business and the names of its members. (G.S. 66-68).

*Ref C, 393, 1975 S.L.  
GSC 11/86*

